

**1. Requested Motion:**

**Meeting Date:** June 2, 2014

Motion to approve a request to amend the Schedule of Uses for the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies

**Why the action is necessary:**

In 2013, Publix was cited for Outdoor Display without a permit. The current schedule of uses for the CPD does not allow Outdoor Display.

**What the action accomplishes:**

To allow Publix to resume the use of Outdoor Display and to place a temporary sign for posting of holiday or emergency hours.

**2. Agenda:**

☐ Consent  
☐ Administrative  
☒ Public Hearing

**3. Requirement/Purpose:**

☒ Resolution  
☐ Ordinance  
☐ Other

**4. Submitter of Information:**

☐ Council  
☒ Town Staff  
☐ Town Attorney

**5. Background:**

Gary Resnick, agent for Publix Super Market, Inc. has requested a CPD amendment for the property at 4791 Estero. No additional development will take place. The amendment would allow outdoor display of merchandise to resume at the entrance to the store, and would allow placement of a portable sign for posting of holiday or emergency hours. Minutes from the May 13, 2014 LPA meeting are not yet available, but the LPA encouraged staff to bring the case forward to Town Council expeditiously.

Attachments:

- Tab a – Draft Council Resolution 14-14
- Tab b – LPA Resolution 2014-008
- Tab c – May 13, 2014 LPA packet materials

**6. Alternative Action:**

Deny the requests

**7. Management Recommendations:**

Approve the request.

**8. Recommended Approval:**

| Town Manager                                                                        | Town Attorney | Finance Director | Public Works Director | Community Development Director | Parks & Recreation Director | Town Clerk |
|-------------------------------------------------------------------------------------|---------------|------------------|-----------------------|--------------------------------|-----------------------------|------------|
|  |               |                  |                       | JRO                            |                             |            |

**9. Council Action:**

☐ Approved ☐ Denied ☐ Deferred ☐ Other

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 14-14  
DCI2014-0001 – Publix CPD Amendment

WHEREAS, Gary Resnick, authorized agent for Publix Super Market, Inc., owner of property located at 4791 Estero Boulevard, Fort Myers Beach, Florida has requested an amendment to the Schedule of Uses for the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies; and

WHEREAS, the subject property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP number for the subject property is 28-46-24-W4-00001.0040 and the legal description is provided as follows:

*A parcel of land located in the Southwest Quarter (SW1/4) of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:*

*Begin at the Westerlymost corner of Lot 6, Block A, Holiday Shores Subdivision, as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County, Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard (SR865) 32.5 feet from the centerline of Estero Boulevard; Thence run N49°57'33"W along said Northeasterly right-of-way line for a distance of 195.10 feet; Thence run N20°45'47" for a distance of 596.34 feet; Thence run S51°46'07"W for a distance of 374.01 feet to a point on the Northwesterly line of said Holiday Shores Subdivision; Thence run S38°13'53"W along the Northwesterly line of said Holiday Shores Subdivision for a distance of 575.00 feet to the Point of Beginning; and*

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 13, 2014, regarding the requested amendment; and

WHEREAS, the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 2, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2014-008, the recommendation of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The Town Council **APPROVES/DENIES** the requested amendment to the schedule of uses to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies.

**FINDINGS AND CONCLUSIONS:**



In accordance with the requirements of LDC Sections 34-85 regarding approval of variance requests, the Town Council reaches the following findings and conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*

There is no ambiguity which must be corrected, but the Schedule of Uses should be amended to allow outdoor display where a typical supermarket provides outdoor displays at their entrance. **APPROVE/DENY**

2. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition occurred in 2013 when Code Enforcement conducted a "sweep" of outdoor displays within the Town as part of the Outdoor Display Working Group process to change the provisions for outdoor displays in the Downtown zoning district. It was determined that Outdoor Display is a separate use that needed to be allowed in the zoning district to be permitted on the property. **APPROVE/DENY**

3. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34. **APPROVE/DENY**

4. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

Resolution 98-11 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Boulevard Future Land Use category, a land use category that allows commercial activities on Fort Myers Beach. **APPROVE/DENY**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

Resolution 98-11 found the requested CPD zoning to be in compliance with all performance and locational standards. **APPROVE/DENY**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along Estero Boulevard. **APPROVE/DENY**

7. *Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*

Resolution 98-11 found the requested CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources. **APPROVE/DENY**

8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The requested amendment would allow outdoor display to resume, where it had previously occurred, and to allow a temporary sign to alert customers to special hours of operation. Neither request will cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE/DENY**

9. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities. **APPROVE/DENY**

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*
- a. The proposed mix of uses is appropriate at the subject location.*
  - b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
  - c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
  - d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan. **APPROVE/DENY**

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                       |         |                       |         |
|-----------------------|---------|-----------------------|---------|
| Anita Cereceda, Mayor | AYE/NAY | Dan Andre, Vice Mayor | AYE/NAY |
| Rexann Hosafros       | AYE/NAY | Alan Mandel           | AYE/NAY |
| Summer Stockton       | AYE/NAY |                       |         |

DULY PASSED AND ADOPTED THIS **2nd** day of **JUNE, 2014**.

By: \_\_\_\_\_  
Anita Cereceda, Mayor

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Fowler White Boggs, P.A.  
Town Attorney

ATTEST:

By: \_\_\_\_\_  
Michelle Mayher  
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2014-008  
DCI2014-0001  
Publix CPD Amendment

WHEREAS, Gary Resnick, authorized agent for Publix Super Markets, Inc., owner of property located at 4791 Estero Boulevard, Fort Myers Beach Florida has requested an amendment to the schedule of uses in the Publix CPD, to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies; and

WHEREAS, the subject property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the applicant has indicated that the STRAP for the subject property 28-46-24-W4-00001.0040 and the legal description is provided as follows:

*A parcel of land located in the Southwest Quarter (SW1/4) of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:*

*Begin at the Westerlymost corner of Lot 6, Block A, Holiday Shores Subdivision, as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County, Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard (SR865) 32.5 feet from the centerline of Estero Boulevard; Thence run N49°57'33"W along said Northeasterly right-of-way line for a distance of 195.10 feet; Thence run N20°45'47" for a distance of 596.34 feet; Thence run S51°46'07"W for a distance of 374.01 feet to a point on the Northwestern line of said Holiday Shores Subdivision; Thence run S38°13'53"W along the Northwestern line of said Holiday Shores Subdivision for a distance of 575.00 feet to the Point of Beginning; and*

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 13, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for an amendment to the schedule of uses to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies.



**RECOMMENDED FINDINGS AND CONCLUSIONS:**

1. *Whether there exists an error or ambiguity which must be corrected.*

There is no ambiguity which must be corrected, but the Schedule of Uses should be amended to allow outdoor display where a typical supermarket provides outdoor displays at their entrance. **APPROVE**

2. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition occurred in 2013 when Code Enforcement conducted a "sweep" of outdoor displays within the Town as part of the Outdoor Display Working Group process to change the provisions for outdoor displays in the Downtown zoning district. It was determined that Outdoor Display is a separate use that needed to be allowed in the zoning district to be permitted on the property. **APPROVE**

3. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34. **APPROVE**

4. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

Resolution 98-11 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Boulevard Future Land Use category, a land use category that allows commercial activities on Fort Myers Beach. **APPROVE**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

Resolution 98-11 found the requested CPD zoning to be in compliance with all performance and locational standards. **APPROVE**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along Estero Boulevard. **APPROVE**

7. *Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*

Resolution 98-11 found the requested CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources. **APPROVE**

8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The requested amendment would allow outdoor display to resume, where it had previously occurred, and to allow a temporary sign to alert customers to special hours of operation. Neither request will cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE**

9. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities. **APPROVE**

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*

1. *The proposed mix of uses is appropriate at the subject location.*
2. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
3. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan. **APPROVE**

11. The Local Planning Agency recommends expedition of Resolution to Town Council.

*Remainder of this page intentionally left blank*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Shamp** and seconded by LPA Member **Plummer**, and upon being put to a vote, the result was as follows:

|                  |         |                          |     |
|------------------|---------|--------------------------|-----|
| Hank Zuba, Chair | AYE     | Joanne Shamp, Vice Chair | AYE |
| Chuck Bodenhafer | AYE     | Al Durrett               | AYE |
| John Kakatsch    | EXCUSED | Jane Plummer             | AYE |
| Jim Steele       | AYE     |                          |     |

DULY PASSED AND ADOPTED THIS 13<sup>th</sup> day of MAY 2014.

By: \_\_\_\_\_  
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Fowler, White, Boggs  
LPA Attorney

By: \_\_\_\_\_  
Michelle Mayher  
Town Clerk





# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development (CPD) Amendment

**CASE NUMBER:** DCI2014-0001

**LPA HEARING DATE:** May 13, 2014

**LPA HEARING TIME:** 9:00 AM

### **I. APPLICATION SUMMARY**

**Applicant:** Gary Resnick, agent for Publix Super Markets, Inc.

**Request:** To amend the schedule of uses of the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies

**Subject property:** See attached Exhibit A

**Physical Address:** 4791 Estero Boulevard

**STRAP #:** 28-46-24-W4-00001.0040

**FLU:** Boulevard

**Zoning:** CPD (Resolution 98-11/11A, as amended by Resolution 01-06)

**Current use(s):** Publix Supermarket

**Adjacent zoning and land uses:**

**North:** Residential Multifamily (RM), Mixed Residential FLUM  
Ocean Harbor Condominium

**South:** Residential Single-family (RS), Low Density FLUM  
Single-family residences

**East:** Commercial Planned Development (CPD), Marina FLUM  
Snook Bight Marina

West: Estero Boulevard, then Residential Multifamily (RM), Mixed Residential FLUM, Shores of Fort Myers Beach Condominium and Seaside Condominium

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

The subject property is 3.736 acres in size, and is developed with a Publix Supermarket. The property was originally rezoned from Residential Multiple-Family (RM-2) to Commercial Planned Development (CPD) for development of a 28,000 square foot grocery/supermarket in Resolution 98-11 (attached as Exhibit B). Resolution 98-11A (attached Exhibit C) clarified the legal description of the project. The CPD was amended in Resolution 01-06 (attached Exhibit D) to allow an additional sign, and to allow an off-site sign.

The Publix Supermarket was developed in 2000, and has operated continuously since that time. A usual and customary sales tactic of grocery stores and supermarkets is to provide some merchandise outside of the store walls, near the entrance of the store. Publix has employed that strategy at this location for years. In June of 2013, as part of a Town-wide "sweep" of outdoor displays, Publix was cited for a code violation of "Excessive Displays & No permit" in CE13-0262. A search of the approved schedule of uses for the CPD revealed that *Outdoor Display* was not a permitted use. Publix removed the outdoor displays to abate the violation, but has requested this CPD amendment to allow outdoor displays to resume.

The second part of the CPD amendment request is to allow a temporary sign to announce store hours after an emergency event or for posting of holiday hours.

### **Analysis:**

The request has two components, which will be discussed separately. The first request is to allow outdoor display of merchandise to resume where it has previously occurred before it was determined to be in violation of the schedule of uses for the Publix CPD. The use is non-obtrusive, as it funnels customers towards the entrance of the store. It also provides a suitable location for merchandise such as firewood that should remain outside, and large items such as beach chairs or boogie boards that would take up quite a bit of space inside the supermarket. Publix has used outdoor display in the past, as shown in the photos attached as Exhibit E.

The second request is to allow Publix to put out a temporary sign following natural disasters or to post holiday hours. The supermarket's role is vital following a natural disaster to allow residents and visitors to return to the island and return to normalcy after such an event. The temporary sign will alert residents to Publix's emergency hours, and can also be used to inform customers of any reduced holiday hours. An example is shown in the photo attached as Exhibit F.

Findings and Conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*

There is no ambiguity which must be corrected, but the Schedule of Uses should be amended to allow outdoor display where a typical supermarket provides outdoor displays at their entrance.

- b. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition occurred in 2013 when Code Enforcement conducted a "sweep" of outdoor displays within the Town as part of the Outdoor Display Working Group process to change the provisions for outdoor displays in the Downtown zoning district. It was determined that Outdoor Display is a separate use that needed to be allowed in the zoning district to be permitted on the property.

- c. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34.

- d. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

Resolution 98-11 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Boulevard Future Land Use category, a land use category that allows commercial activities on Fort Myers Beach.

- e. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

Resolution 98-11 found the requested CPD zoning to be in compliance with all performance and locational standards.

- f. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along Estero Boulevard.

- g. *Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*



Resolution 98-11 found the requested CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources.

- h. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The requested amendment would allow outdoor display to resume, where it had previously occurred, and to allow a temporary sign to alert customers to special hours of operation. Neither request will cause damage, hazard, nuisance, or other detriment to persons or property.

- i. Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities.

- j. For planned development rezonings, see § 34-216 for additional considerations (below):*

- 1. The proposed mix of uses is appropriate at the subject location.*
- 2. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
- 3. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
- 4. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

### **III. RECOMMENDATION**

The two requests are innocuous and will not have any negative impacts on neighboring properties. Publix had maintained outdoor display of merchandise for several years at this location before it was determined that the use was not listed in the schedule of uses of the CPD. The temporary sign is being provided as a community service to alert residents of the supermarket's hours after a natural disaster or of reduced holiday hours. Both are fairly minor requests, but cannot be approved except through a public hearing amendment to the CPD. For these reasons, staff recommends **APPROVAL** of the request to amend the schedule of uses of the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies.

### **IV. CONCLUSION**

The granting of the requested CPD amendment for outdoor display would legitimize the outdoor display of merchandise that has taken place since Publix opened in 2000. The

other request is being requested as a public service to inform of special hours on holidays or after a natural disaster. Neither request will have a negative impact on surrounding property owners or the general public.

If Town Council finds that the requested CPD amendment is contrary to the public interest or the health, safety, comfort, convenience and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding rezonings, Town Council should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning.

Staff recommends **APPROVAL** of the requested CPD amendment to allow outdoor display of merchandise and a temporary sign to advertise special hours of operation during limited duration events.

Exhibits:

A – Legal Description

B – Resolution 98-11

C – Resolution 98-11A

D – Resolution 01-06

E – Photos of Outdoor Display

F – Photo of Temporary Sign

Exhibit A  
Legal Description

A parcel of land located in the Southwest Quarter (SW1/4) of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Begin at the Westerlymost corner of Lot 6, Block A, Holiday Shores Subdivision, as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County, Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard (SR865) 32.5 feet from the centerline of Estero Boulevard; Thence run N49°57'33"W along said Northeasterly right-of-way line for a distance of 195.10 feet; Thence run N20°45'47"W for a distance of 596.34 feet; Thence run S51°46'07"W for a distance of 374.01 feet to a point on the Northwesterly line of said Holiday Shores Subdivision; Thence run S38°13'53"W along the Northwesterly line of said Holiday Shores Subdivision for a distance of 575.00 feet to the Point of Beginning.

Containing 3.736 acres, more or less.



RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 98-11

WHEREAS, James & Deborah Figuerado, represented by Stephen Roth, in reference to Publix Supermarket, filed a request to rezone from Multiple-Family (RM-2) to Commercial Planned Development (CPD) to permit the development of a grocery store /supermarket with a maximum of 30,00 square feet of gross floor area with a maximum height from finished floor to main building parapet of 19 feet 7 inches; and

WHEREAS, the subject property is located at 4765 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as:

LEGAL DESCRIPTION: In Section 28, Township 46 South, Range 24 East, Lee County, Florida:

A parcel of land located in the Southwest Quarter of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:  
BEGIN at the Westerly most corner of Lot 6, Block "A" of HOLIDAY SHORES SUBDIVISION as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard 325 feet from the centerline of Estero Blvd; THENCE run N49degrees45'47"E for a distance of 596.34 feet; THENCE run S51degrees46'07"E for a distance of 374.01 feet to a point on the Northwesterly line of said HOLIDAY SHORES SUBDIVISION; THENCE run S38degrees13'53"W along the Northwesterly line of said HOLIDAY SHORES SUBDIVISION for a distance of 575.00 feet to the POINT OF BEGINNING Containing 3.736 acres, more or less.

WHEREAS, the applicant has indicated the property's current STRAP number is: 28-46-24-W4-0000 1.0030; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency on April 14, 1998 at which full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, and after which the Agency recommended denial; and

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Lee Plan.

- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.
- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in Chapter 34 of the L. D. C..

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED/~~DENIED~~ SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

SEE ATTACHED

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

|                   |               |
|-------------------|---------------|
| Anita T. Cereceda | <u>aye</u>    |
| Ted FitzSimons    | <u>absent</u> |
| John Mulholland   | <u>aye</u>    |
| Garr Reynolds     | <u>aye</u>    |
| Ray Murphy        | <u>aye</u>    |

APPLICATION DULY GRANTED/~~DENIED~~ this 5<sup>th</sup> day of May, 1998.

ATTEST:

TOWN OF FORT MYERS BEACH

By: Marsha Segal-George  
Marsha Segal-George, Town Clerk

By: Anita T. Cereceda  
Anita T. Cereceda, Mayor

Approved as to form by:

Richard V.S. Roosa  
Richard V.S. Roosa, Town Attorney

Publix CPD  
CONDITIONS OF APPROVAL

1. The development and use of the subject property must be in substantial compliance with the approved Master Concept Plan entitled "Conceptual Site Plan, Scheme"2"(last revised 3/3/98, stamped received March 4, 1998) as prepared by Sverdrup Architecture, except that there will be no pedestrian walkway to Coquina and Coral Streets, and except as modified by the conditions herein. Unless specifically approved as part of this rezoning, development must comply with all applicable local development regulations.
2. A maximum of 28,000 square feet is allowed within this planned development.
3. Exhibit "A" will be the permitted uses within this planned development.
4. Development of the CPD will comply with the following Property Development Regulations:

Minimum Lot Area and Dimensions: Specific parcel as depicted on the approved Master Concept Plan. No parcel split or land division has been approved.

Minimum Setbacks:

Street: variable according to the functional  
classification of the street or road (Section  
34-2191 et seq.)

Side: 15 feet

Rear: 50 feet

Maximum Building Height: 24 feet (Tower: 43')

5. The truck loading dock and trash (dumpster) area(s) must be covered by a roof to screen the view and deflect the noise of this area from the adjacent residential condominiums to the north (Ocean Harbor).
6. Air conditioning, cooling, or refrigeration units may be placed on the roof of the building. All such units must be covered with a roof to screen their view and baffled to deflect their noise from the adjacent residential condominiums.
7. The hours of operation of this store are limited from 8:00 AM to 10:00 PM daily. Delivery of goods is also limited to

these same hours. No delivery trucks are allowed onsite except during these hours.

8. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic requirements. Additional conditions may be required to obtain a local development order, consistent with local development regulations. These conditions include a southbound left turn lane and, if necessary, a northbound turn lane, and any expansion or potential redesign of the intersection of the access to the subject property with Estero Boulevard.
9. An enhanced buffer along the southern property line (adjacent to the Holiday Shores subdivision) must be provided. This buffer must consist of a berm and landscaping that is no less than eight feet in height. Within one year of occupancy, visibility through any buffer installed pursuant to this section must be opaque when viewed at right angles.
10. The architectural design will be as submitted on 5/5/98.
11. Any exterior lighting must be shielded to prohibit any light from shining onto adjacent parcels.

#### Deviation

Deviation from LDC 34-2013 to allow driveway aisle along south side of site serving parking spaces for the supermarket to also act as an accessway to the marina and restaurant.

If this deviation is approved, in order to reduce the potential impact to the public it is recommended that these parking areas be utilized by employees so that the high turn-over parking areas are located nearest the store and minimizing impact on traffic entering or leaving the marina.



## EXHIBIT A

### Approved Schedule of Uses

ESSENTIAL SERVICES

ESSENTIAL SERVICE FACILITIES, Group I

FOOD STORE, GROUP I only (supermarket)

PARKING LOT: Accessory

SIGNS, in accordance with the Land Development Code

---

NOTE: For purposes of clarification, the legal description has been attached as Exhibit B.

Exhibit C

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 98-11 A

WHEREAS, James & Deborah Figuerado, represented by Stephen Roth, in reference to Publix Supermarket, filed a request to rezone from Multiple-Family (RM-2) to Commercial Planned Development (CPD) to permit the development of a grocery store /supermarket with a maximum of 30,00 square feet of gross floor area with a maximum height from finished floor to main building parapet of 19 feet 7 inches; and

WHEREAS, the subject property is located at 4765 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as:

LEGAL DESCRIPTION: See Exhibit B.

WHEREAS, the applicant has indicated the property's current STRAP number is: 28-46-24-W4-0000 1.0030; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency on April 14, 1998 at which full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, and after which the Agency recommended denial; and

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Lee Plan.

- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.
- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in Chapter 34 of the L. D. C..

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED/~~DENIED~~ SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

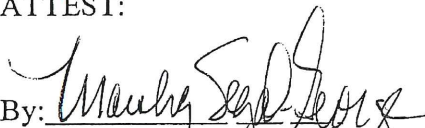
SEE ATTACHED

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

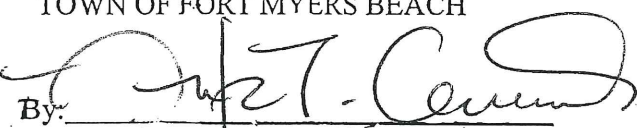
|                   |               |
|-------------------|---------------|
| Anita T. Cereceda | <u>aye</u>    |
| Ted FitzSimons    | <u>absent</u> |
| John Mulholland   | <u>aye</u>    |
| Garr Reynolds     | <u>aye</u>    |
| Ray Murphy        | <u>aye</u>    |

APPLICATION DULY GRANTED/~~DENIED~~ this 5<sup>th</sup> day of May, 1998.

ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Anita T. Cereceda, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

Publix CPD  
CONDITIONS OF APPROVAL

1. The development and use of the subject property must be in substantial compliance with the approved Master Concept Plan entitled "Conceptual Site Plan, Scheme"2"(last revised 3/3/98, stamped received March 4, 1998) as prepared by Sverdrup Architecture, except that there will be no pedestrian walkway to Coquina and Coral Streets, and except as modified by the conditions herein. Unless specifically approved as part of this rezoning, development must comply with all applicable local development regulations.
2. A maximum of 28,000 square feet is allowed within this planned development.
3. Exhibit "A" will be the permitted uses within this planned development.
4. Development of the CPD will comply with the following Property Development Regulations:

Minimum Lot Area and Dimensions: Specific parcel as depicted on the approved Master Concept Plan. No parcel split or land division has been approved.

Minimum Setbacks:

Street: variable according to the functional classification of the street or road (Section 34-2191 et seq.)

Side: 15 feet

Rear: 50 feet

Maximum Building Height: 24 feet (Tower: 43')

5. The truck loading dock and trash (dumpster) area(s) must be covered by a roof to screen the view and deflect the noise of this area from the adjacent residential condominiums to the north (Ocean Harbor).
6. Air conditioning, cooling, or refrigeration units may be placed on the roof of the building. All such units must be covered with a roof to screen their view and baffled to deflect their noise from the adjacent residential condominiums.
7. The hours of operation of this store are limited from 8:00 AM to 10:00 PM daily. Delivery of goods is also limited to



these same hours. No delivery trucks are allowed onsite except during these hours.

8. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic requirements. Additional conditions may be required to obtain a local development order, consistent with local development regulations. These conditions include a southbound left turn lane and, if necessary, a northbound turn lane, and any expansion or potential redesign of the intersection of the access to the subject property with Estero Boulevard.
9. An enhanced buffer along the southern property line (adjacent to the Holiday Shores subdivision) must be provided. This buffer must consist of a berm and landscaping that is no less than eight feet in height. Within one year of occupancy, visibility through any buffer installed pursuant to this section must be opaque when viewed at right angles.
10. The architectural design will be as submitted on 5/5/98.
11. Any exterior lighting must be shielded to prohibit any light from shining onto adjacent parcels.

#### Deviation

Deviation from LDC 34-2013 to allow driveway aisle along south side of site serving parking spaces for the supermarket to also act as an accessway to the marina and restaurant.

If this deviation is approved, in order to reduce the potential impact to the public it is recommended that these parking areas be utilized by employees so that the high turn-over parking areas are located nearest the store and minimizing impact on traffic entering or leaving the marina.

## EXHIBIT A

### Approved Schedule of Uses

ESSENTIAL SERVICES

ESSENTIAL SERVICE FACILITIES, Group I

FOOD STORE, GROUP I only (supermarket)

PARKING LOT: Accessory

SIGNS, in accordance with the Land Development Code

---

EXHIBIT B

LEGAL DESCRIPTION: In Section 28, Township 46 South, Range 24 East, Lee County, Florida:

A parcel of land located in the Southwest Quarter (SW¼) of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Begin at the Westerlymost corner of Lot 6, Block "A" of HOLIDAY SHORES SUBDIVISION as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard (State Road 865) 32.5 feet from the centerline of Estero Boulevard; THENCE run N49°57'33"W along said Northeasterly right-of-way line for a distance of 195.10 feet; THENCE run N20°45'47"E for a distance of 596.34 feet; THENCE run S51°46'07"E for a distance of 374.01 feet to a point on the Northwesterly line of said HOLIDAY SHORES SUBDIVISION; THENCE run S38°13'53"W along the Northwesterly line of said HOLIDAY SHORES SUBDIVISION for a distance of 575.00 feet to the POINT OF BEGINNING.

Containing 3.736 acres, more or less.

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 01-06

WHEREAS, Mid Island Marina, Inc., in ref. To Publix Super Market, Inc., CPD has filed a request to amend the CPD zoning approved in zoning Resolution Z-98-11 and Z-98-11a, to add deviations from the sign regulations contained in the Town's LDC section 30-153(2)a.4 to allow an additional sign, and to allow an off-site sign; and,

WHEREAS, the subject property is located at 4791 Estero Blvd., Ft. Myers Beach, Florida, and the applicant has indicated the property's current STRAP number is: 28-46-24-W4-00001.0040; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and recommended the Town Council approve the Applicant's request to amend the existing Commercial Planned Development zoning to add two deviations with the conditions and deviations as recommended on Pages 2-3 of the Staff Report dated December 29, 2000 which is attached hereto and incorporated herein by reference and one additional condition that requires that all existing temporary signs including but not limited to a mailbox sign are removed prior to completion of the additional requested ground sign; and,

WHEREAS a hearing was held and the council considered the following criteria, recommendations and testimony of the staff, testimony from the applicant and from the public.

IT IS THE FINDING of this council that the following exist:

- a. That there are/not exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district;
- b. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created);
- c. That the variance is/not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
- d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and



e. That the condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the ordinance.

NOW THEREFORE BE IT RESOLVED THAT THE VARIANCE IS DISAPPROVED/APPROVED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the variance requested:

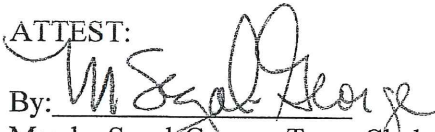
1. The development of this project must continue to be consistent with the original zoning approvals contained in Resolutions Z-98-11 and Z-98-11a.
2. The approved sign must be developed in compliance with the submitted sign plan received on October 31, 2000.
3. The sign must be designed with internal illumination and sign panels with opaque backgrounds and white letter copy.
4. The sign must be located to provide adequate and safe line-of-sight at the driveway entrance for vehicles and pedestrians entering and leaving.
5. All existing temporary signs, including but not limited to a mailbox sign, are to be removed prior to completion of the requested ground sign and may not be replaced.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

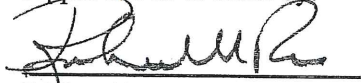
|                  |     |
|------------------|-----|
| Daniel Hughes    | aye |
| Garr Reynolds    | aye |
| Ray Murphy       | aye |
| Terry Cain       | aye |
| Howard Rynearson | aye |

APPROVED this 12<sup>th</sup> day of February, 2001.

ATTEST:

By:   
Marsha Segal George, Town Clerk

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

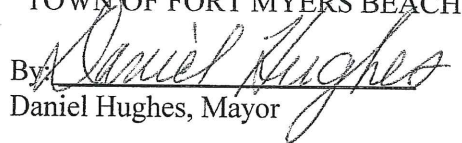
By:   
Daniel Hughes, Mayor



Exhibit E









WHERE SHOPPING IS A PLEASURE

5<sup>49</sup>

SOUTHERN FUELWOOD  
BUNDLED FIREWOOD  
0.75 cu. yard

ALL NATURAL MIXED SOUTHERN HARDWOODS  
Southern Fuelwood, Inc.  
**FIREWOOD**  
FIREPLACES • CAMP FIRES • STOVES • BAR B QUE

ALL NATURAL MIXED SOUTHERN HARDWOODS  
Southern Fuelwood, Inc.  
**FIREWOOD**  
FIREPLACES • CAMP FIRES • STOVES • BAR B QUE

ALL NATURAL MIXED SOUTHERN HARDWOODS  
Southern Fuelwood, Inc.  
**FIREWOOD**  
FIREPLACES • CAMP FIRES • STOVES • BAR B QUE



Exhibit F







# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT

### APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: DCI 2014-0001 DATE: 4-1-14

Site Address: 4791 Estero Blvd., Fort Myers Beach, Florida 33931

STRAP Number: 28-46-24-W4-0000 1.0040

Applicant: Publix Super Markets, Inc. Phone: (863) 688-1188 Ext 54602

Contact Name: Gary Resnick, Esq. Phone: (954) 761-8111

Email: gary.resnick@gray-robinson.com Fax: (954) 761-8112

Current Zoning District: CPD

Future Land Use Map (FLUM) Category: Boulevard

FLUM Density Range: up to 6 Platted Overlay: ☐ YES ☒ NO

#### ACTION REQUESTED

- ☐ Special Exception
- ☐ Variance
- ☐ Conventional Rezoning
- ☒ Planned Development ☒ Commercial ☐ Residential
- ☐ Master Concept Plan Extension
- ☐ Appeal of Administrative Action
- ☐ Vacation of Platted Right-of-way and Easement
- ☐ Other – cite LDC Section: \_\_\_\_\_

#### SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet



## PART I – General Information

A. Applicant\*: Publix Super Markets, Inc. Phone: (863) 688-1188 Ext 54602

*\*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.  
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

Email: austin.stone@publix.com

Fax:

Contact Name: Austin Stone

Phone: (863) 688-1188 Ext 54602

B. Relationship of Applicant to subject property:

☒ Owner\*

☐ Land Trust\*

☐ Partnership\*

☒ Corporation\*

☐ Association\*

☐ Condominium\*

☐ Subdivision\*

☐ Timeshare Condo\*

☐ Contract Purchaser\*

☐ Authorized Representative\*

☐ Other\* (please indicate)

*\*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.  
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Gary Resnick, Esq.

Phone: (954) 761-8111

Address: P.O. Box 2328, Ft. Lauderdale, FL 33303-9998

Email: gary.resnick@gray-robinson.com

Fax: (954) 761-8112

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name:

Phone:

Address:

Email:

Fax:

Name:

Phone:

Address:

Email:

Fax:

Name:

Phone:

Address:

Email:

Fax:

## PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section \_\_\_\_\_ - \_\_\_\_\_
- ☐ Conventional Rezoning from \_\_\_\_\_ to \_\_\_\_\_
- ☒ Planned Development
- ☐ Rezoning from \_\_\_\_\_ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: Resolution No. 98-11
- ☐ Extension/reinstatement of Master Concept Plan. List project number: \_\_\_\_\_
- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: Section 34-212(5) and (6) Description: Traffic Impact Statement  
and Architectural Evaluations. Submitted Application for Waiver of Submittal Requirements on 2-14-14

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

## PART IV - Property Ownership

- ☐ Single Owner (individual or husband and wife)
- Name: \_\_\_\_\_ Phone: \_\_\_\_\_
- Mailing Address: \_\_\_\_\_
- Email: \_\_\_\_\_ Fax: \_\_\_\_\_



☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

☒ Complete Disclosure of Interest Form (see below)

☐ Attach list of property owners as Exhibit 4-1

☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

### DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 28-46-24-W4-0000 1.0040

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address  
N/A

Percentage Ownership

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

William E. Crenshaw, CEO, 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

Percentage of Stock

John A. Attaway, Jr., SRVP, 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

David P. Phillips, CFO, 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

Randall T. Jones, President, 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

Jeffrey G. Chamberlain, VP, 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

Dave Duncan, Vice President, 3300 Publix Corporate Pkwy., Lakeland, FL 33811-3311

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

| Name and Address | Percentage of Interest |
|------------------|------------------------|
| N/A              |                        |
|                  |                        |
|                  |                        |
|                  |                        |
|                  |                        |
|                  |                        |

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
| N/A              |                         |
|                  |                         |
|                  |                         |
|                  |                         |
|                  |                         |
|                  |                         |

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

| Name, Address and Office | Percentage of Stock |
|--------------------------|---------------------|
| N/A                      |                     |
|                          |                     |
|                          |                     |
|                          |                     |
|                          |                     |

Date of Contract: \_\_\_\_\_

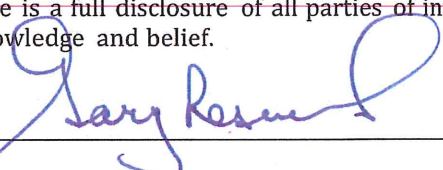


If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

| Name | Address |
|------|---------|
| N/A  |         |
|      |         |
|      |         |
|      |         |
|      |         |
|      |         |

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

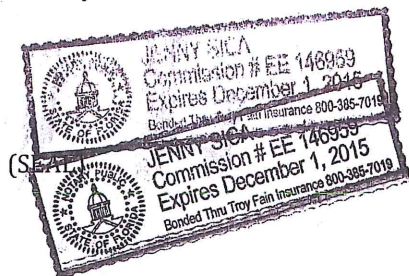
The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

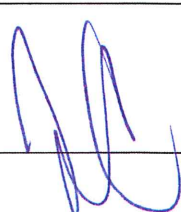
  
Signature

Gary Resnick, Esq.  
Printed Name

STATE OF FLORIDA)  
COUNTY OF Broward

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 3-27-14 (date) by Gary Resnick, Esq. (name of person providing oath or affirmation), who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.



  
Signature

JENNY SICA  
Printed Name

**PART V – Property Information**

**A. Legal Description:**

STRAP: 28-46-24-W4-0000 1.0040

Property Address: 4791 Estero Blvd., Fort Myers Beach, Florida 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 5-1.

☐ Yes. Property identified in subdivision: \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_ Unit: \_\_\_\_\_ Block: \_\_\_\_\_ Lot(s): \_\_\_\_\_

**B. Boundary Survey:**

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

**C. Property Dimensions:**

Width (please provide an average width if irregular in shape) 290 feet

Depth (please provide an average width if irregular in shape) 600 feet

Frontage on street: 190 feet. Frontage on waterbody: \_\_\_\_\_ feet

Total land area: 162,440 ☐ acres ☒ square feet

**D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☒ Attach Area Location Map as Exhibit 5-3

**E. Property Restrictions (check applicable):**

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.



F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.
- ☒ Attach a map showing the surrounding property owners as Exhibit 5-7.
- ☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- |                                                |                                          |
|------------------------------------------------|------------------------------------------|
| <input type="checkbox"/> Low Density           | <input type="checkbox"/> Marina          |
| <input type="checkbox"/> Mixed Residential     | <input type="checkbox"/> Recreation      |
| <input checked="" type="checkbox"/> Boulevard  | <input type="checkbox"/> Wetlands        |
| <input type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Platted Overlay |

H. Zoning (see official Zoning Map):

- |                                                                          |                                                        |
|--------------------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> RS (Residential Single-family)                  | <input type="checkbox"/> CF (Community Facilities)     |
| <input type="checkbox"/> RC (Residential Conservation)                   | <input type="checkbox"/> IN (Institutional)            |
| <input type="checkbox"/> RM (Residential Multifamily)                    | <input type="checkbox"/> BB (Bay Beach)                |
| <input type="checkbox"/> RPD (Residential Planned Development)           | <input type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> CM (Commercial Marine)                          | <input type="checkbox"/> DOWNTOWN                      |
| <input type="checkbox"/> CO (Commercial Office)                          | <input type="checkbox"/> SANTOS                        |
| <input type="checkbox"/> CB (Commercial Boulevard)                       | <input type="checkbox"/> VILLAGE                       |
| <input type="checkbox"/> CR (Commercial Resort)                          | <input type="checkbox"/> SANTINI                       |
| <input checked="" type="checkbox"/> CPD (Commercial Planned Development) |                                                        |

PART VII

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.),  
LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Austin Stone (name), as Property Representative (title)  
of Publix Super Markets, Inc. (company), swear or affirm under oath, that I am the  
owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Publix Super Markets, Inc.

Name of Entity (corporation, partnership, LLP, LLC, etc)

[Signature]  
Signature

Austin Stone

Typed or Printed Name

Property Representative

Title

10-7-13  
Date

STATE OF FLORIDA)

COUNTY OF ~~LEE~~ Polk

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 10/7/2013  
(date) by Austin Stone (name of person providing oath or affirmation), who is  
personally known to me or who has produced (type  
of identification) as identification.

(SEAL)



ALLISON E. NOLES  
MY COMMISSION # DD 954811  
EXPIRES: February 22, 2014  
Bonded Thru Budget Notary Services

[Signature]  
Signature

Allison E Noles  
Printed Name



EXHIBIT B

LEGAL DESCRIPTION: In Section 28, Township 46 South, Range 24 East, Lee County, Florida:

A parcel of land located in the Southwest Quarter (SW¼) of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Begin at the Westerlymost corner of Lot 6, Block "A" of HOLIDAY SHORES SUBDIVISION as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard (State Road 865) 32.5 feet from the centerline of Estero Boulevard; THENCE run N49°57'33"W along said Northeasterly right-of-way line for a distance of 195.10 feet;

THENCE run N20°45'47"E for a distance of 596.34 feet;

THENCE run S51°46'07"E for a distance of 374.01 feet to a point on the Northwestern line of said HOLIDAY SHORES SUBDIVISION;

THENCE run S38°13'53"W along the Northwestern line of said HOLIDAY SHORES SUBDIVISION for a distance of 575.00 feet to the POINT OF BEGINNING.

Containing 3.736 acres, more or less.





| Revision | By      | Description |
|----------|---------|-------------|
| 1        | [blank] | [blank]     |
| 2        | [blank] | [blank]     |
| 3        | [blank] | [blank]     |
| 4        | [blank] | [blank]     |
| 5        | [blank] | [blank]     |
| 6        | [blank] | [blank]     |
| 7        | [blank] | [blank]     |
| 8        | [blank] | [blank]     |
| 9        | [blank] | [blank]     |
| 10       | [blank] | [blank]     |



**Publix Super Markets, Inc.**  
 4066 ESTERO BOULEVARD  
 FLEMING APT. 100, MIAMI BEACH, FL 33139  
 TELEPHONE: (305) 666-1188

**STONE & KIRBY, INC.**  
 4066 ESTERO BOULEVARD  
 FLEMING APT. 100, MIAMI BEACH, FL 33139  
 TELEPHONE: (305) 666-1188



**STANDARD FACILITIES, INC.**  
 10000 Highway 100, Suite 100, Jacksonville, FL 32210  
 Telephone: (904) 750-1000

**SITE PLAN**

Date: 11/7/79  
 Drawn by: [blank]  
 Checked by: [blank]  
 Approved by: [blank]



- NOTES:**
1. ALL DIMENSIONS ARE IN FEET AND INCHES. DIMENSIONS IN PARENTHESES ARE IN METERS.
  2. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  3. THE SITE IS ZONED R-1 (RESIDENTIAL SINGLE-FAMILY).
  4. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  5. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  6. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  7. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  8. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  9. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
  10. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.

| NO. | AREA   | AREA (SQ. FT.) | AREA (SQ. M.) | PERCENT |
|-----|--------|----------------|---------------|---------|
| 1   | LOT 1  | 10,000.00      | 929.03        | 10.00   |
| 2   | LOT 2  | 10,000.00      | 929.03        | 10.00   |
| 3   | LOT 3  | 10,000.00      | 929.03        | 10.00   |
| 4   | LOT 4  | 10,000.00      | 929.03        | 10.00   |
| 5   | LOT 5  | 10,000.00      | 929.03        | 10.00   |
| 6   | LOT 6  | 10,000.00      | 929.03        | 10.00   |
| 7   | LOT 7  | 10,000.00      | 929.03        | 10.00   |
| 8   | LOT 8  | 10,000.00      | 929.03        | 10.00   |
| 9   | LOT 9  | 10,000.00      | 929.03        | 10.00   |
| 10  | LOT 10 | 10,000.00      | 929.03        | 10.00   |

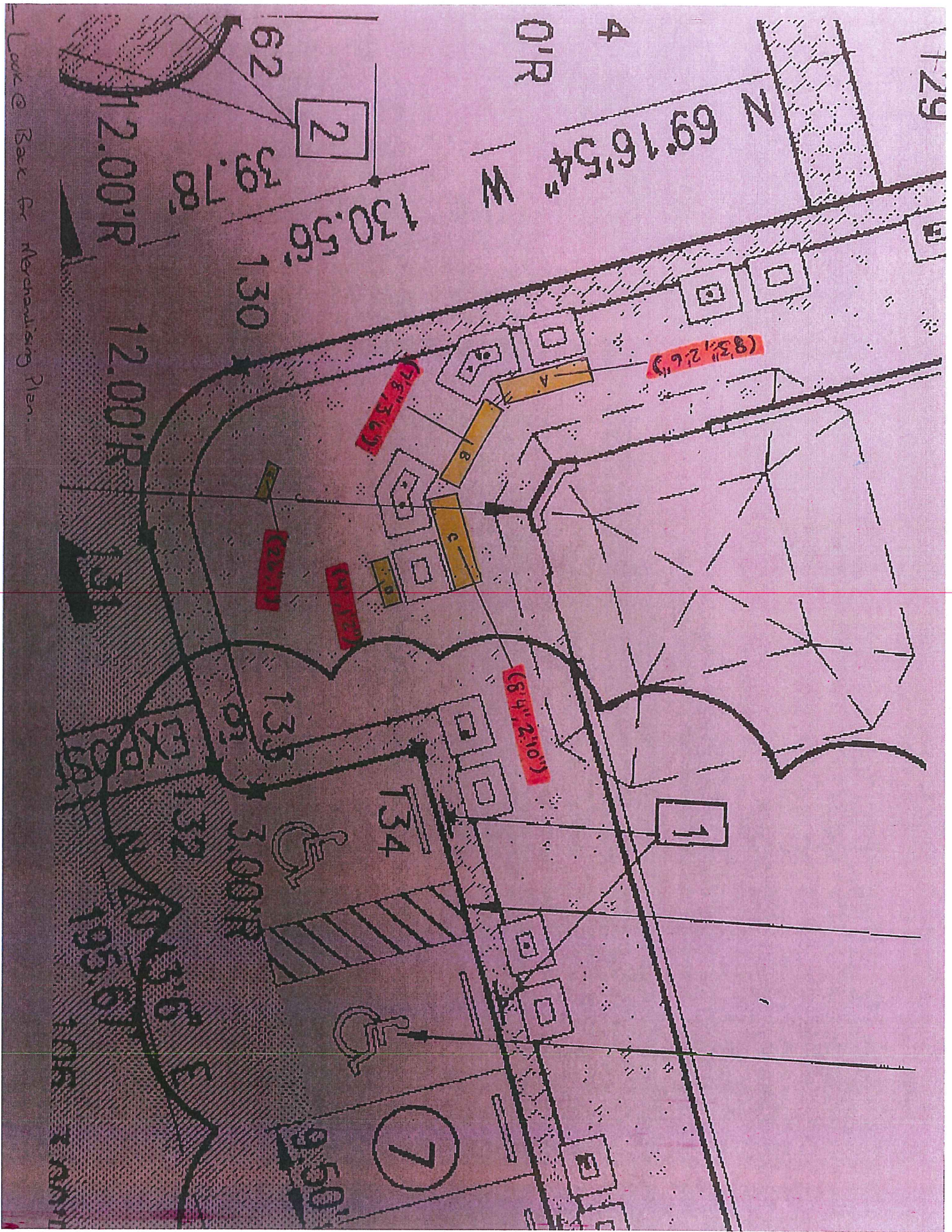
**GENERAL NOTES:**

1. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
2. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
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10. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.

**CONSTRUCTION NOTES:**

1. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
2. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.
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10. THE SITE IS LOCATED IN THE CITY OF MIAMI, Dade County, Florida.









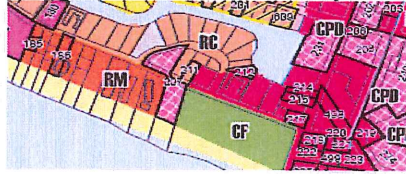
| STRAP ▲                | Owner Name               | Site Address                       | Last Trans. Date | Last Trans. Amt | Just Value  | Taxable Value |  |
|------------------------|--------------------------|------------------------------------|------------------|-----------------|-------------|---------------|--|
| 28-46-24-W4-00001.0040 | PUBLIX SUPER MARKETS INC | 4791 ESTERO BLVD, FORT MYERS BEACH | 10-1999          | \$1,627,400     | \$2,818,699 | \$2,818,699   |  |



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Supplement PH-D**

**Additional Required Information for a  
Planned Development Application**

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

|                                                         |
|---------------------------------------------------------|
| <b>Project Name:</b>                                    |
| <b>Authorized Applicant:</b> Publix Super Markets, Inc. |
| <b>LeePA STRAP Number(s):</b> 28-46-24-W4-0000 1.0040   |
|                                                         |

|                                                                                    |
|------------------------------------------------------------------------------------|
| <b>Current Property Status:</b> CPD                                                |
| <b>Current Zoning:</b> CPD                                                         |
| <b>Future Land Use Map (FLUM) Category:</b> Boulevard                              |
| <b>Platted Overlay?</b> __yes <sup>x</sup> __no <b>FLUM Density Range:</b> up to 6 |

|                                                                                              |
|----------------------------------------------------------------------------------------------|
| <b>Requested Action:</b>                                                                     |
| <input type="checkbox"/> DRI (with rezoning)                                                 |
| <input checked="" type="checkbox"/> Planned Development (also check below)                   |
| <input type="checkbox"/> Rezoning from: _____ to: _____                                      |
| <input checked="" type="checkbox"/> Amendment to Master Concept Plan/attendant documentation |



Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**PART I**  
**Narrative Statements**

**A. Comprehensive Plan Amendments (check one)**

|                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.                                                                  |
| <input type="checkbox"/> The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect) |
| N/A                                                                                                                                                                                                        |
|                                                                                                                                                                                                            |
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**B. Phasing of Construction**

|                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> The development is to be constructed in a single phase.                                      |
| <input type="checkbox"/> The development is to be constructed in phases as follows: (describe proposed phasing below) |
| N/A. There is no construction necessary with respect to Publix's proposed Amendment.                                  |
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Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

### C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

|                                                                                                        |
|--------------------------------------------------------------------------------------------------------|
| The property is currently used for retail shopping on Estero Blvd. consistent with the Town's          |
| Comprehensive Plan and the amendment sought simply expands upon the intended retail use of the         |
| property for outdoor display of merchandise and appropriate signage to alert the public of changed     |
| hours in the event of emergencies. Allowing outdoor display of merchandise will lessen                 |
| the "freeway" feel of Estero Blvd and will support a more lively retail environment and greater retail |
| visibility consistent with the Comprehensive Plan. The merchandise to be displayed would be the        |
| type of merchandise residents and visitors would use at the beach and outdoors, consistent with the    |
| Comprehensive Plan. The temporary signage to post changes in hours during emergencies is               |
| consistent with communicating information to the public during times of such emergencies, set forth    |
| in the Comprehensive Plan.                                                                             |
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### D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

|                                                                                                   |
|---------------------------------------------------------------------------------------------------|
| N/A. While these provisions do not apply, it may be worth noting that 34-997(d) allows pedestrian |
| passages to provide addition retail frontages.                                                    |
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Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**E. Decision-making Compliance**

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

|                                        |
|----------------------------------------|
| N/A. This does not involve a rezoning. |
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**F. Schedule of deviations and written justification**

Provide a list of the requested deviations keyed to the Master Concept Plan, and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

|                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| N/A. Publix does not seek deviations from the Master Concept Plan. Publix seeks to add a use to allow outdoor display of merchandise. See Attachment A showing photographs of the proposed outdoor displays. |
|                                                                                                                                                                                                              |
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Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**G. Administrative amendments to approved Master Concept Plan**

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

|                                                                                                   |
|---------------------------------------------------------------------------------------------------|
| The Town's staff has advised that the requested amendment, to add outdoor displays of merchandise |
| to the approved uses on Publix's Master Concept Plan, even though no construction would occur,    |
| constitutes a "major" amendment pursuant to Section. 34-219(b) of the Land Development Code.      |
| A major amendment cannot be processed administratively. In addition, the request to be able       |
| to display signage about changes in hours of operations during emergencies cannot be approved     |
| administratively.                                                                                 |
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**PART 2**

**Submittal Requirements**

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

**Required Items**

Public Hearing Request Form  
Supplement Form PH-D  
Master Concept Plan  
Traffic Impact Statement  
Architectural Elevations  
Schedule of Uses

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.













Feel free to stop by  
July 4th.

Publix is open regular  
business hours  
for the holiday.



WHERE SHOPPING IS A PLEASURE

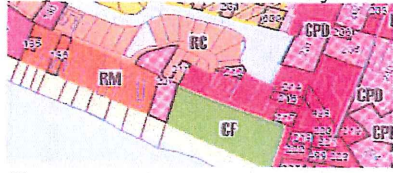
549

SOUTHERN FUELWOOD  
BUNDLED FIREWOOD  
0.73 cu ft/bundle





**Town of Fort Myers Beach**  
Department of Community Development



Zoning Division

**Application for Waiver of Submittal Requirements**

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

**Public Hearing**

- ☐ General Requirements
- ☐ DRI
- ☒ Planned Development
- ☐ Conventional Rezoning
- ☐ Special Exception
- ☐ Variance
- ☐ Appeal
- ☐ Other

**Administrative Action**

- ☐ General Requirements
- ☐ Planned Dev. Amendment
- ☐ Commercial Antenna
- ☐ Consumption on Premises
- ☐ Forced Relocation of a Business
- ☐ Interpretation of LDC
- ☐ Minimum Use Determination
- ☐ Setback Variance
- ☐ Other

Name of Project: Publix Outdoor Display

Applicant: Publix Super Markets, Inc.

LeePA STRAP Number(s): 28-46-24-W4-0000 1.0040

Street address: 4791 Estero Blvd., Fort Myers Beach, FL 33931

Phone Number: 954-761-7478

E-mail: gresnick@gray-robinson.com

**Specific requirements from which waiver is sought**

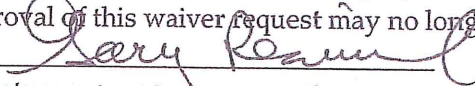
| Section Number            | Requirement                                           |
|---------------------------|-------------------------------------------------------|
| Section 34-212(5) and (6) | Traffic Impact Statement and Architectural Elevations |
|                           |                                                       |
|                           |                                                       |
|                           |                                                       |
|                           |                                                       |

**Scope of project and reasons for request**

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

|                                                                                                              |
|--------------------------------------------------------------------------------------------------------------|
| Publix will be filing an application to amend the uses of this planned development to allow outdoor          |
| displays of merchandise and temporary signs to alert customers to changes in hours in the event of           |
| emergencies. Publix will not be performing any construction or altering the existing building or             |
| adjacent parking/sidewalk areas. Rather, the outdoor displays will be moved to the area outside the entrance |
| and placed in the store every night. Publix will show on the site plan where such outdoor displays will be   |
| located. In addition, there will not be any traffic impacts as Publix will not be altering the parking or    |
| ingress/egress into the shopping plaza. The outdoor displays also will not increase traffic into the plaza.  |
|                                                                                                              |
|                                                                                                              |
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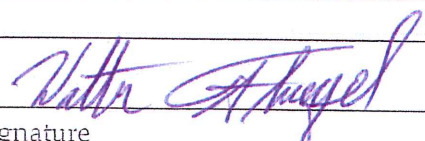
I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.


2-14-14  
 Signature Agent for Applicant Date

Director's Decision ☒ Approved ☐ Denied

Comments:

|  |
|--|
|  |
|  |
|  |


2-18-14  
 Signature Date