MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, March 24, 2009

I. CALL TO ORDER

Meeting was called to order at 10:40 AM by Chairperson Dennis Weimer. Six members present:

Dennis Weimer
Rochelle Kay
Alan Mandel
Bill Van Duzer
Joanne Shamp
Joe Yerkes
Evie Barnes was absent (excused).

Staff present: LPA Attorney Ann Dalton; Community Development Director Dr. Frank Shockey. Members of the community were also present.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION-Mr. Weimer

IV. MINUTES

Motion by Mr. Van Duzer to adopt the minutes, as recorded.
Second: Mr. Yerkes

Ms. Shamp corrected her original wording recorded in pg. 1, Section V;
Motion maker and seconder so noted and accepted.
Vote: 6-0

V. TOWN CAPITAL IMPROVEMENT PROGRAM (CIP) ITEMS

Ms. Shamp reported that Mr. Janke is working with Mr. Small to get the materials to work on the CIP issues and have all of it disseminated to the LPA, and getting a presentation on the agenda.

Motion to adjourn as LPA and reconvene as HPB: Ms. Kay
Second: Ms. Shamp

Vote: 6-0

VI. ADJOURN AS LPA-RECONVENE AS HPB

Ms. Shamp opened the meeting of the HPB at 10:47 am

A. HPB Hearing FMB COA2009-0001- Seven Seas Special Certificate of Appropriateness

Ms. Dalton swore in witnesses.
Ms. Shamp asked staff for their presentation of the Affidavit of Publication or copy of legal advertisement from the newspaper of record. Dr. Shockey stated that the affidavit was not available but that the notice did appear in the News-Press on Wednesday, March 18, and he received the mailed receipt for notice he mailed to the Town Manager.
Ms. Shamp asked the applicant to present its case.

Ms. Theresa Schober addressed the meeting. She presented the project, restoration of the Seven Seas, a locally designated historic structure that is eligible for the National registry of Historic places. The Town, as applicant, is proposing to reutilize this as a community gathering place, requiring few alterations to the entire building, and this use is consistent with the prior uses historically. She cited other minor changes and some "rehabilitation" rather than replacements in other cases (she distributed copies of the changes). In addition, she distributed new floor plans and other visual aids for HPB review. Specifically, one addition was (see attachments) pointed out, having to do with an exterior ramp which was not included in the original application.

Before questions were taken, Ms. Shamp polled the HPB members for any ex-parte communications. Other than Ms. Shamp having a site visit, no one had any.

Mr. Yerkes commented on the fact that although the ramping is needed, it drastically affects the historic look and originality of the property. Ms. Schober addressed his concern and added that most are requirements of the federal ADA act. He asked if there are some plans for beautification of the property by hiding the ramps with vegetation or something. She said that vegetation will be planted but not specifically to hide the ramp. Mr. Yerkes asked if the applicant's plan will outside landscape-cover and beautify the appearance of the ramps. Ms. Schober answered "if we're required." She reiterated that the ramps must be accessible and visible so that they can be used, and cannot conflict with the pathways. There is a plan in place to put vegetation that will minimize the appearance of the site overall, but no plan specific to minimize the ramping.

Mr. Weimer asked a question specific to a diagram in the packet and Ms. Schober pointed out what he needed to clarify, dealing with proposed vegetation and other plans. Mr. Mandel also referred to this diagram, regarding placement of bushes and there was some discussion.

Ms. Shamp asked about hurricane protection changes to the structure and Ms. Schober answered her concerns, pointing out the sliding glass doors and certain "invisible" hurricane shutter attachments, the same as the other historic property protections in place on the beach. Mr. Yerkes asked if the building is flood proof. Ms. Schober said that there is no proposed dry-proofing because that would alter the historic fabric of the structure.

With no further questions for the applicant, Ms. Shamp asked for the staff presentation. For clarification, Ms. Shamp directed a question from Mr. Mandel to the Town attorney: what the HPB is approving today is just the COA for modifications to the building itself, and not relating to landscaping or other plans? Ms. Dalton agreed that restoration of the building is the only item to be considered.

Dr. Shockey addressed the meeting for the staff and summarized the request from the applicant. He reported that the staff recommendation for the property is to approve the COA and make the appropriate findings regarding the standards for consideration. The staff report and attachments were entered into the record, including electronically submitted documents provided by the applicant.

Mr. Yerkes asked if the HPB could expect that there would be another plan for landscaping or if this is not required. Dr. Shockey felt that this is a possibility, depending on future choices about how to operate the site, but said the applicant is not required to do so. Mr. Yerkes also asked if there were any operational plan policies for hurricane preparation to avoid the valuable items from being lost. Dr. Shockey said he knew of none but could research what other coastal towns have done.

Ms. Shamp asked for public comment; there being none, public comment was closed.

Ms. Schober addressed Mr. Yerkes's concerns and said she didn't know exactly what the internal contents of the structure would be but offered an example of the approach the Town has taken at the Mound House. Artifact cases are individually humidified, for example, and the cases can be removed, as well as the signage. She gave other examples of the plan for protection of the artifacts.

With no further comments or discussion, Mr. Weimer stated that he was ready to make a motion.

Motion by Mr. Weimer: Regarding HPB 2009-08 (page 205); *"now therefore it is resolved by the Historic Preservation Board of the Town of Ft. Myers Beach as follows: the HPB approves, under the Findings of Fact and Conclusions of Law,*

1. *the property will be used for historic purposes;*
2. *the historic character of the subject property will be retained; the removal of historic materials or alteration that characterize the property will be avoided;*

3. *the subject property will be recognized as a physical record of its time, place and use and changes that create a false sense will not be undertaken;*
4. *most properties change over time...will be retained;*
5. *distinctive features will be preserved;*
6. *-deteriorated historic features will be repaired, when severity of deterioration requires replacement, the new feature match the old when possible and replacement of missing features will be substantiated by documentary pictorial evidence;*
7. *chemical or physical treatment will not be used, surface cleaning, if appropriate, will be undertaken using the gentlest possible means;*
8. *significant archeological resources affected by the project will be protected; if such resources are disturbed, mitigation measures will be undertaken;*
9. *will additions will not destroy historic materials and the new work will be differentiated from the old and compatible with the mass;*
10. *new additions...will be undertaken in such a manner that if removed in the future the environment would be unimpaired;*
11. *the proposed alteration will meet specific guidelines of the designating resolution specifically"* and so on.

Second by Mr. Mandel;
Vote: 6-0, with Ms. Barnes absent.

Ms. Shamp closed the hearing and asked for a motion to adjourn.

Motion to Adjourn as HPB/Reconvene as LPA by Mr. Weimer;
Second by Ms. Kay;
Vote: 6-0

VII. ADJOURN AS HPB-RECONVENE AS LPA

Mr. Weimer reconvened the LPA meeting at 11:24 AM.

VIII. PUBLIC HEARING

A. Ordinance 09-XX Amending LDC Lodging Regulations

The staff and LPA attorney requested a continuance for this hearing. Mr. Weimer asked for a motion to continue.
Motion by Mr. Van Duzer to continue to a date to be determined;
Second by Mr. Yerkes;
Vote: 6-0, with Ms. Barnes absent.

B. DCI 2006-0001 and DCI 2006-0002 White Sands, Captiva Villas and Bayside CPD Zoning Amendments

Mr. Weimer asked staff for their presentation of the Affidavit of Publication or copy of legal advertisement from the newspaper of record. Dr. Shockey stated that the affidavit was not yet available but that the notice did appear in the News-Press on Wednesday, March 18th.

Mr. Weimer polled the LPA members for any ex-parte communications. Mr. Yerkes stated he did not but disclosed that his company employs Roetzel & Andress as their primary attorneys. Mr. Van Duzer mentioned a phone call from a member of the public, commenting on the request. Ms. Shamp had a site visit. Mr. Weimer stated that he has had some ex parte communications. The LPA attorney swore in witnesses.

Beverly Grady, Roetzel & Andress addressed the LPA on behalf of Pink Shell in its request for modifications to the zoning plan. Ms. Grady stated that they have eleven revisions and she also introduced Robert Mulhere, Planner with RWA, and Bill Waichulis, Regional Manager of Pink Shell.

Ms. Grady said that her client wanted to review the original requests they submitted (referring to the staff report page 12). Ms. Grady referred to her chart of the applicant's eleven requests for modification:

- to replace the tennis courts with parking, adding forty-two parking spaces, and the plan includes landscaping for buffering.
- clarification of the plans, showing the location of the boat ramp and pedestrian walkway.
- 3& 4 deals with if there are any changes in the right-of-way size between Captiva Villas and the Bayside, the applicant would just like the ability to amend administratively to reflect that change to match the Master Plan.
  #5-refers to the alternate landscape betterment plan.
- #6 and #7- commercial restaurant's retail personal services to eliminate a restriction that was in some places regarding guests of Pink Shell only, or regarding external advertisement.
- #8- staff thought a uniform sign package would be a good idea.
- #9- a roll-off container to be replaced by a trash compacter.
- #10 – add additional valet parking.
- #11- show some gates on the property to restrict access.

Ms. Grady said that her firm took the staff's conditions from their report and then reflected where they had a question, comment, etc., and she passed out copies of that marked up version of the report. She pointed out that, beyond the eleven requests, which were modifications to twenty-five years of approvals, this will show them that this new set of conditions repeals all prior approval that have been granted over the last twenty-five years. She said the applicant has questions and concerns regarding these and wondered where Pink Shell would be if staff's conditions are adopted. Her examples were the ability to rebuild and some other things. Mr. Weimer interrupted to say that the LPA could not accept any new documents and Ms. Grady agreed to read these points, basically saying that the applicant received a staff report that contained far more than the application requested. She said that the document she is referencing is due to the staff report and shows their concerns about the repeal of every approval Pink Shell ever had. Mr. Weimer directed the question of allowing the document to the attorney, who said it would be more expeditious so that the applicant and Dr. Shockey and Ms. Dalton could review the issues in the document. Ms. Grady said that the applicant requested a meeting when they received the report and were told to go to the LPA for any changes. Dr. Shockey stated that some of these issues could be discussed in a recess but also thought that there would be a fundamental disagreement about the rights conferred by planned development zoning. Ms. Dalton commented on Ms. Grady's earlier statement that this is "unique rule," and said that it is not, as she serves on a Fort Myers board and they have the same rule regarding presentation of documents.

Mr. Weimer asked for the LPA approval to allow for a short break to review the document Ms. Grady is going to read from, as it is quite lengthy. Mr. Yerkes expressed his concern in allowing this, after hearing Dr. Shockey caution that there is clearly a fundamental difference, and did not feel comfortable to deal with this at the present. He said that these passed deviations are wide-reaching and staff seems to have taken a logical direction to achieve the goal from a planning standpoint. Ms. Shamp added that she is also not comfortable in receiving this document as it is not accepted practice to do so. Mr. Mandel felt that if this is significant, he would like a chance to read the applicant's document before she reads it to the board and he still wanted the chance to have staff and the applicant meet briefly to see if this could be addressed easily or need time for a longer hearing. Mr. Van Duzer suggested a recess to give the parties a chance to review this and if no common ground can be found, continue the hearing.

Mr. Weimer asked if the applicant would agree to a forty minute break to review and discuss the options, and probably allow public comment today because there are so many members of the public present. Mr. Yerkes agreed to this suggestion and Ms. Shamp asked if public comment can be allowed today and again at a continuance of the hearing at a later meeting; Ms. Dalton stated that this is permissible. Mr. Weimer then announced that the applicant should continue with her presentation and then they would take public comment before any staff presentation. Ms. Grady agreed but discussed it with her client, adding that the applicant's planner can do just a brief presentation on what their application was and what they are requesting. She introduced Mr. Robert Mulhere, expert in land use planning.

Mr. Mulharre addressed the LPA, giving a brief background of his qualifications. He read from a handout and said that one of the substantive concerns with the staff report as relates to the use is the parking calculation and the methodology which was used to prepare that. He referred to the LDC, wherein it defines subordinate commercial uses, to hotel/motel/multi-family, which allows for up to 10 % of the gross sq. ft. of the principal use to be dedicated to the subordinate personal uses including small retail and restaurant. He pointed out that the 10% does not require any additional parking and referred to the calculations of the staff report and the difference in his calculations. In addition, he added that he has also reviewed all of the requests, with respect to compliance with the Comp. Plan, as well as with the LDC, and he feels there is nothing that would be inconsistent with the Comp Plan.

Ms. Grady added that as part of the application, 75% of the unit owners of Captiva Villas and White Sands support the application. She feels that their requests are an improvement and will be an asset to the beach and to Pink Shell.

Mr. Weimer asked for LPA questions and he asked the planner about the number of parking spaces per square foot of restaurant and commercial area, asking how many per thousand. Mr. Mulharre said it was 8 per thousand. Mr. Weimer asked for clarification as the whole presentation from Mr. Mulhere was a bit confusing and difficult to follow. He said that, in the applicant's calculation for total commercial uses is 20,247 sq. ft. was the correct number so, after the 10% allowance, the remaining sq. ft. over that 10% is 479 sq. ft., making it 4 additional spaces. Ms. Shamp stated that she did a site visit and saw only gravel parking area where the tennis court is shown in the plan and asked if there is a tennis court there. The applicant said "there is a tennis court that's used by approval for temporary parking during the season, and that's been approved." Mr. Wauchulis, General Manager of the Pink Shell answered for the applicant, saying that they "applied for a permit a year and a half ago to remove the tennis courts; we removed them and filed for a temporary seasonal parking permit, which we have up to date for parking."

Open Public Comment

Mr. Weimer asked for public comment and notified the LPA that he received a request that one individual would represent a whole body. Carl Bradley addressed the LPA and said he is a resident of Pink Shell and asked if those in opposition can attend the discussions between staff and the applicant. Ms. Dalton responded to Mr. Bradley's concerns and it was satisfied.

Mr. Bradley advised that thirty-seven property owners sent letters, and fourteen were present to address the LPA today. He said that they would limit their presentation to about 6 speakers and limited their speaking time to testify. He read the letter signed by the property owners to the LPA (in packets), which does not support the request to amend the zoning at Pink Shell Resort. Basically, the residents/owners are opposed to the commercializing of the facilities by the new owners to allow use by the public and not just by the guests staying at the resort. He read another letter from Carleton Ryffel, an owner and association board member who could not attend because he was accepting an award in Alabama for his expertise in planning for the City of Auburn, AL. The letter briefly described his background and service in city planning and zoning, and stated how all of the residents historically supported zoning changes, etc. at the Pink Shell for the good of the Town and its citizens, especially for the Pink Shell owners. He stated his opposition, as a professional and a resident/owner, to changing the zoning and uses of the property from the limited use by guest to commercial uses by the general public. He cited the parking issues and the misuse of former "open space" (which Ms. Shamp referred to earlier as the location of the tennis courts) now being used as a "temporary" parking area, saying it should be returned to open space. Mr. Bradley then discussed some of his views regarding parking on the property and cited Sec. 34-2020 of the LDC, which he says requires 1.5 spaces for every hotel room and 1 space for every 2 boat slips; this yields a total of 218 spaces required right now. He said that JABO is 9 spaces short of their requirement, without inviting the public in. He added that JABO even tore down a fence at one point so they could use a water retention area for parking. Mr. Bradley pointed out the tennis courts which are not there any more and that the space is getting bigger for parking rather than going back to what it was meant to be: a green area. Now the proposed additional spaces are at 265 and he referred to pages 4 and 5 of the staff report, which says that 316 spaces will be required if that commercial space, which is now incidental to the resort and not open to the public, is opened to the public, Section 34-2020 clearly requires that number of spaces. Mr. Bradley continued to discuss JABO and its website boasting of amenity size and space, and referred to page 19 of the staff report and the additional parking spaces required for facilities of that size including banquet halls and ballrooms.

Mr. Charles Ramsey then addressed the LPA as a resident and neighbor of the Pink Shell resort. He strongly objected to the commercialization of the property, too, and complained that the Pink Shell is usually loud and noisy as it is, even without inviting more of the public in.

Ms. Susan Lisich, who has property on Estero Blvd., between the gravel parking lot and the green space area of the resort, addressed the meeting. She also asked that the LPA deny any intensification of commercial use to the Pink Shell owners, by allowing public use.

Dr. Robert Fitz addressed the meeting. He also said that the parking lot, which used to be a tennis court, was supposed to be a temporary thing, to be utilized by construction workers building the buildings. He said that the "temporary" parking lot is still there and is now used by the Pink Shell employees. He complained that the workers arrive early in the morning with blasting radios and loud noises disturbing to the residents. He added that disturbances occur in that lot whenever there is a party at the property and the employees are leaving very late and loudly.

Ms. Jean Bradley is also a resident near Pink Shell (though no relation to Carl Bradley). She also asked the LPA not to allow the changes to the peaceful nature of the Pink Shell by granting the commercial use requests of the applicant.

Mr. Simon Colgate, owner of a sailing school at the Pink Shell resort, addressed the LPA. He discussed waterfront access and his support of Pink Shell owners installing a marina there due to diminishing waterfront access by the public.

Mr. Robert Haller addressed the meeting and talked about his background in Southwest Florida. He also presented a diagram of a platted parking area, which the staff has been given. He said that the JABO Co., owners of Pink Shell, intends to move the parking areas, in conflict with original plan for their easement. He referred to a document which was given to staff earlier. Mr. Haller stated the JABO does not have legal right to disregard the easement and arbitrarily move parking areas. He asked that the LPA review all of the laws and the record and not allow the changes.

Mr. Peter Lisich addressed the LPA, giving his background, including years of experience as a land use planner and a degree in Public Service Administration. He pointed out his property on the map displayed. He pointed out that the master plan indicates "eliminate tennis courts" but that this had been done quite awhile ago. He referred to comments by the applicant: #1-converting the tennis courts and he said these do not exist; he said the area is a parking lot and has been so for at least 2 years. In item #2 (referring to the applicant's chart displayed in the room), there is confusion about the existing boat ramp. He said that the deeded public walkway was prepared and recorded, but the plan approved in a previous zoning request by Ms. Grady's firm has the walkway going through where the existing boat ramp is with the boat ramp removed. Now, this is being represented as an obstruction. Mr. Lisich referred to other items on the chart, including a contradiction of earlier testimony of the expert, Mr. Mulhere, regarding page 4 of the staff report and the calculation of principal uses in square feet. He stated that this would simply be applying current code to previous zonings. He pointed out that the current square footage of Captiva Villas Restaurant is 3750 sq. ft., and the existing principal use is 28,000 sq. ft.; making it 13.29% of the principal use. This exceeds what the LDC allows for restaurants and approval of this subordinate use based on the current code, will outlaw the existing restaurant in that building. Mr. Lisich asked for denial of any of these requests.

Mr. Ed Schmidt addressed the LPA and is a resident adjacent to the Pink Shell. He said that the Pink Shell has always been a "good neighbor" and he supports their requests, asking the LPA to approve.

Ms. Janet Middleton addressed the LPA as a representative of a management company of 10 associations on the beach. She stated her many years of experience in managing these associations and that the Pink Shell has been a good neighbor for many years. However, she added, recently this attitude has changed with the current owners and she said that the other associations, and the management company, feel as though they are being bullied by the JABO Co. She described more and more abuses of the area by the Pink Shell management and she requested that the LPA deny all requests for commercialization of the property.

NOTE: Mr. Mandel stated, for the record, that Ms. Middleton's company manages his condo association but he did not feel it would influence his decision.

Ms. Sharon Faircloth addressed the meeting and is the owner of Holiday Water Sports and Holiday Tours/Boat Rentals, operating at the Pink Shell. She was in favor of the proposed requests and feels that giving off-property guests the opportunity to use the facilities would improve business and revenue on the beach. She added other points about how these proposed changes will help her businesses and the beach.

Ms. Peggy Scarpetti addressed the meeting and is an employee of the Pink Shell. She supported the requested proposals and stated how these would help the whole area.

Ms. Robin Jordan, also employed at the Pink Shell, addressed the LPA and also supported the changes, stating that they will help the beach.

Ms. Jacqueline Rowlins, also an employee of Pink Shell, addressed the LPA and supported their requests.

Public Comment Closed.

Mr. Weimer asked for a motion to recess for 45 minutes to give Community Development and the applicant an opportunity to discuss the issues.

Motion by Mr. Yerkes;
Seconded by Mr. Mandel. Ms. Dalton asked to make a comment before the vote. She stated that if there is to be a continuance, the public can submit documents to Dr. Shockey and they would be furnished to the LPA after the hearing.
Vote: 6-0.

LUNCH BREAK
1:55 PM RECONVENE

Mr. Weimer reconvened the public hearing.

Mr. Weimer asked the staff to present its case and asked if there were any requests as a result of the recess. Ms. Dalton stated that there was a mutual consent between the applicant and staff to ask for a continuance; the applicant requested a continuance to April 28th. Mr. Weimer asked for a motion to continue the hearing until April 28th at 10:30 AM.

Motion by Mr. Van Duzer to continue the public hearing on the White Sands, Captiva Villas and Bayside CPD until April 28th ;
Second by Mr. Mandel.
Vote: 6-0, with Ms. Barnes absent.

Discussion took place regarding the requirements of the LDC about notification of the continuance. Dr. Shockey will investigate and ensure that notices comply with the requirements.

Public Hearing on DCI2006-001 and DCI2006-002 closed.

C. Ordinance 09-01 Vacation of Town interest in Property
Continued from March 10, 2009
Ms. Dalton read the ordinance for the record, #09-01: *"an ordinance amending the Town of Fort Myers Beach LDC, providing authority, finding of necessity, purpose*

and intent, adopting amendments to Chapter 10 of the LDC which is titled "Development Orders and Engineering Standards;" establishing application requirements and legal procedures for vacating Town-owned public interests in real property severability;" amending division 5, "Plats and Vacations;' amending subdivision II "Vacation of Town interest in real property;" amending section 10-218 "Purpose and Intent;" Amending section 10-219 "applications;"amending section 10-220 "Procedures;" Providing severability; effect of ordinance; and effective date."

Mr. Weimer refreshed the LPA about what needed to be changed from the last hearing to the current draft of the Ordinance. He said that the items have been updated, referring to the draft in the packets.

Mr. Weimer opened the meeting up for discussion. Mr. Yerkes asked if he can now vote to break the 3-3 tie from the last hearing. He stated his opinion as to the two appraisal requirement and thinks two are needed. Some discussion ensued regarding the appraisals; Ms. Shamp and Mr. Weimer discussed remuneration and Mr. Yerkes believed that the value of the property helps determine the process and number of appraisals needed. Mr. Weimer stated that the basic decision from this meeting should be whether one or two appraisals shall be required. Members were polled as to who was in favor of two appraisals; four members were in favor and two were not; Ms. Barnes was absent. Mr. Van Duzer, who is not in favor of two appraisals, wished to be on record and referred to the ordinance, Sec. 219 b 12 " increase in market value of the applicant's real property if the Town approves the vacation; the increase will be determined by an independent appraisal commissioned by the director with full cost paid by the applicant..." His feeling is that if the Town is commissioning the appraisal, the Town should pay for it and he does not see the sense in two appraisals.

Mr. Yerkes asked Dr. Shockey how many vacations are done in the Town, on average. With an answer that it may come to 1 in 4-5 years, the cost maybe being $500.00 dollars per appraisal, Mr. Yerkes said they were arguing "about nothing." He feels strongly that two appraisals are necessary. With no further argument, Mr. Weimer asked for a motion on the resolution.

Mr. Yerkes suggested a motion to take the wording of the existing motion and say that the motion failed and the enclosed draft ordinance contains the requirement for two appraisals. Dr. Shockey added that they should adopt a resolution that recommends that Council pass or not pass an ordinance, not fail to pass a resolution that would have recommended the opposite of what they want. Mr. Weimer said the ordinance would be modified and it would be the basis of the resolution recommending the Town Council pass it. He clarified that a motion regarding this resolution and the ordinance before them.

Motion: Mr. Mandel moved that the Resolution 209-01that therefore be it resolved that the LPA recommends that the Town Council approves the adoption of Town Ordinance 09-01, with the change on page 2 of 5, changing the word

"and" to "two," and deleting the paragraph that begins with "In addition."
Second by Ms. Shamp.
Vote: 6-0, with Ms. Barnes absent.

Hearing on 09-01was closed at 2:30 PM.

Motion: Ms. Shamp moved to adjourn as the LPA and reconvene as the HPB;
Second by Ms. Kay;
Vote: 6-0

IX. ADJOURN AS LPA; RECONVENE AS HPB

A. Update on Historic Vistas Project

Ms. Shamp began the meeting at 2:32 PM and turned the meeting over to Ms. Kay. Ms. Kay reported on the last meeting and gave suggestions which were made to the brochures. The group discussed vistas and signs vs. markers, as well as the need for photographic vistas and said this is still a work in progress. She said that the HAC also urges the Council not to destroy the Cottage and feels it is important to the history of the beach. Mr. Weimer asked Dr. Shockey for a status on the plaques and he reported that he is in the process of getting additional mailings together for that purpose.

Ms. Kay explained the position of the HAC concerning the vistas and discussion ensued regarding that and the use of public or private property for these vistas. Mr. Yerkes had concerns and questions about this and Ms. Kay asked if he could attend the next meeting to bring up his issues. Dr. Shockey will notify Mr. Yerkes of the next meeting date.

Mr. Mandel asked if Theresa Schober has researched any possible funding for kiosks. Ms. Kay said it was discussed but that the HAC wants to see this go forward as an historical item, not archeological one. Mr. Mandel thought she could find grant funds to make attractive kiosks, etc. to place around the beach. No further discussion.

Ms. Shamp asked for a motion to adjourn.

Motion to adjourn by Mr. Weimer;
Second by Mr. Mandel.
Vote: 6-0

X. ADJOURN AS HPB; RECONVENE AS LPA

Mr. Weimer reconvened the LPA at 2:44 PM and moved to the Administrative Agenda

XI. ADMINISTRATIVE AGENDA

A. Update on Storm Water Management

Mr. Van Duzer reported to the LPA and advised that he and Ms. Kay met with Jack Green and Cathie Lewis; they addressed the issue of creating a maximum allowable impervious area for residential properties in the Town. In addition, this included water retention issues on those properties. He stated that he is still receiving information from inquiries in other areas regarding what they do to address these issues; he hopes to have information for a full report in thirty days. He is also waiting for the consulting engineer's report on stormwater, hopefully in May, and a presentation of that to the LPA.
Nothing further.

XII. LPA MEMBER ITEMS

Mr. Yerkes reported on Animal Control reporting that he met with Dr. Shockey and the attorney and he is submitting an executive summary of the proposed changes to be distributed in a few days.
Ms. Kay and Mr. Van Duzer had nothing to report.
Ms. Shamp jokingly referred to an article she brought from Cape Cod regarding an issue similar to one the Town is addressing dealing with topless females on the public beach. The members agreed that this is a serious issue which will eventually need to be addressed by the LPA and Council, even though they joked that it may not be popular with some of the members (and their families) to act restricting this practice.
Mr. Weimer jokingly expressed his interest in the participating in the Code Enforcement part of any action addressing this.
Mr. Mandel reported that he attended an M&P meeting with the Town manager and Council, working on this year's budget, to deal with a $650,000 shortfall, trying to balance it. He anticipates bigger budget problems next year.
Mr. Weimer asked if the intent is to re-issue the whole package regarding the continued hearing on Ordinance 09-XX, LDC Lodging, because of the wording. Dr. Shockey said there would be new copies of the materials distributed of the revised proposal. Mr. Weimer also reported that he notified staff, with a copy to the mayor, that the LPA declined participation in the last Town meeting, due to possible conflict.
No further items.

XIII. LPA ATTORNEY ITEMS

Ms. Dalton only reported that the Shrimp Festival was wonderful, as was the parade. Mr. Van Duzer reported that there were 1350 dinners served on Saturday and over 850 more on Sunday.

XIV. COMMUNITY DEVELOPMENT DIRECTOR ITEMS
Nothing to report.

XV. LPA ACTION ITEMS

- Resolution 2008-42-Snug Harbor-TBD
- Gulfview-TBD (Vacating ordinance needs to go to Council first).
- LDC Hearing process-Dr. Shockey reported that Council had no questions with the first hearing and it is progressing to the second hearing, on April 6
- Historic Plaques-TBD
- The Cottage-Deferral of action on the relocation issue is scheduled for 4/14/09.
- Commercial Rights-of-Way-5/16/09
- Pink Shell continued hearing-4/28/09 NOTE: Mr. Yerkes asked staff to check into the "temporary parking area" at the property because he is concerned that they do not have any type of permit to operate that way; he wants to address this at the hearing.
- Resolution 2009-01 (Vacating Property)-Ms. Kay will handle for the Council meeting-TBD
- Resolution regarding allocation of resources for Town historic properties to be added to the National Registry-next meeting-Ms. Dalton.
- Storm Water Management-Mr. Van Duzer-5/16/09
- Seasonal Parking-Dr. Shockey advised he and Ms. Dalton are still working on this but have to prioritize either this or animal control-5/16/09
- Animal Control-4/14/09
- Alcoholic Beverages, Noise ordinance, etc (involving Mr. Murphy)-4/28/09
- Parcelization ordinance-5/16/09
- HPB Vistas-Discussion ensued, started by Ms. Kay, about the kiosks vs signs, etc. for the vistas; it was decided that the LPA would direct the group to make a decision to get this moving since Ms. Kay's group cannot seem to decide; update 4/28/09.

XVI. PUBLIC COMMENT

Mr. Melsek of FMB wanted to comment on the vacation ordinance and expressed his disappointment that there was no opportunity for comment before the new vote. He believes that the LPA missed the chance to protect the public access to beaches by not revising the ordinance to guarantee no future sales of the accesses by the public. He also stated that the Civic Association supports the LPA's intent to look at the current noise ordinance but opposes the attempt to save the Newton Cottage as a historic building. He said that the erroneous information supplied originally is still carrying this as an historic structure and it is not because it does not belong to the beach. He stated that this structure is wasting the Town's money meant to preserve actual beach historic sites.

No further comments.
Mr. Weimer asked for a motion to adjourn.

Motion to adjourn by Mr. Van Duzer;
Second by Ms. Shamp.
Vote: 6-0

XVII. ADJOURNMENT

Adjourned at 3:20 PM.

Next meeting April 14, 2009 10:30 AM.

Adopted April 14, 2009 5-0 with/without changes. Motion by Van Duzer (Sharp second)

(DATE)

Vote: 5-0

Dennis Weimer, LPA Chair

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MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, May 12, 2009

I. CALL TO ORDER

Meeting was called to order at 10:43 AM by Chairperson Weimer. Five members present:

Dennis Weimer
Rochelle Kay
Bill Van Duzer
Joanne Shamp
Joe Yerkes
Evie Barnes- absent with excuse
Alan Mandel- absent with excuse

Staff present: LPA Attorney Ann Dalton; Community Development Director Dr. Frank Shockey. Members of the public were also present.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION-Mr. Dennis Weimer

IV. TOWN CAPITAL IMPROVEMENT PROGRAM (CIP) ITEMS

Ms. Shamp reported that she has communicated with Scott Janke, Evelyn, Dr. Shockey and Jack Green regarding the workshop scheduled for May 26th (following the LPA meeting), and all are available. Evelyn will prepare the information packet in advance and they asked if it is required for the LPA attorney to attend. Dr. Shockey feels that Evelyn is capable of handling questions on funding issues that day. Ms. Dalton added that she will be on the premises that day in the event she is needed, but there should be no Sunshine or legal issues to address for such a workshop.

V. PUBLIC HEARING

A. DCI2006-0001 and DCI 2006-0002-White Sands, Captiva Villas and Bayside CPD Zoning Amendments—Continued hearing

Ms. Dalton swore witnesses. Mr. Weimer polled members as to any ex-parte communications regarding this matter. Mr. Van Duzer had a "lengthy discussion" with Peter Lisich, a neighbor. No others had any communications.
Mr. Weimer stated that Town staff asked for a continuance due to the receipt of a large amount of paperwork for the subject. Dr. Shockey reported that the Town was given this paperwork on the afternoon of May 1 and haven't had the time to review the information fully, which appears to include changes to the requested action.

On behalf of the applicant, Bill Waichulis addressed the meeting and acknowledged receiving the notice and commented that they only had two changes, which they felt did not require any action but were added for clarity.

Mr. Weimer asked for public comment. Carlton Ryffel asked the LPA to take the proper time to research this issue and still give the public the opportunity to see it and comment. Mr. Van Duzer requested that, before the hearing, LPA members be furnished with a copy of the original CPD resolution and the agreement made at that time. Mr. Weimer asked for a motion to continue the hearing to **June 9th at 10:30 AM.**

Ms. Shamp moved to grant the continuance;
Ms. Kay seconded.
Vote: 5-0

VI. ADMINISTRATIVE AGENDA

A. Update on Commercial ROW Usage Issues

Mr. Van Duzer stated that he prepared a report, each member has a copy, which outlines four major issues and he suggested that it should be discussed at a future meeting. He added that he feels there should be an addition to this issue regarding pervious and impervious surfaces, although they may not seem to be directly related to ROW, but are certain connected to it. He gave a summary of the few other items that should be discussed and worked out before finalizing any ROW issues. Ms. Shamp asked if there should be a ban on impervious surfaces altogether. There was discussion about this and the possibility of expanding the research project to include expert input, workshop, etc. Mr. Weimer agreed with Mr. Van Duzer's opinion that some LPA members take part in responsibility for further investigation into the four main items and asked which Mr. Van Duzer will take. Mr. Van Duzer felt that there were two "most serious" issues: maximum impervious surface allowance on residential properties and the connection of private property to the ROW. There was more discussion about which items were to be taken by whom and how. It was decided that the "impervious surface connection to the ROW" issue will be the first item to be addressed by the LPA and that all of the items will be handled separately.

B. Discussion of the Proposed LDC amendment to add Section14-12 "Beach furniture and equipment licenses"

Dr. Shockey addressed the LPA and referred to a "blue sheet" that went to Council on April 20th, transmitting MRTF's resolution recommending an LDC amendment to add a proposed section 14-12 requiring licensing of beach furniture and equipment vendors. Council agreed to initiate the LDC amendment process and the language is now before the LPA for consideration, though this is not a hearing. Mr. Weimer advised the LPA that this is proposed change to the LDC that MRTF had previously suggested to Council and this part of it (labeled "Exhibit C") had been rejected. However, today this is a new ordinance MRTF has suggested be adopted. Mr. Weimer asked why this was rejected before and Dr. Shockey recalled that Council members expressed discomfort with more restrictions and additional licensing requirements, and disliked the idea of a cap on the number of licenses; Ms. Dalton added that specific concerns with the insurance requirement and taking in garbage receptacles each evening had precluded this from passing.

Mr. Yerkes was disappointed that it was rejected before, considering the amount of work he and MRTF put into this previously and feels that it is ridiculous to start this over again. Ms. Shamp said she had been present at the Council meeting when this was decided and there was discussion here by LPA members and the attorney regarding why the number "14" was picked as the cap on the number of licenses. Mr. Yerkes added that there was another part of the original draft that is still absent, that being the danger to children in the stacking of chairs, etc. Ms. Shamp asked about how this item would affect beach renourishment and there was more discussion about this.

It was decided that there should be more research and information gathered and reviewed before this item moves forward on this; specifically, the number of current licenses that are there, the number of beachfront resorts that supply furniture and equipment, etc. Mr. Weimer also wants to have information in the packet regarding what the prior recommendation from MRTF was and the revisions made to Chapter 14 that affect this. A MRTF representative and the MRTF staff liaison, Keith Laakonen, may also be requested at meeting at which this is next considered.

Motion made by Ms. Kay to bring this forward to a public hearing;
Second by Mr. Van Duzer.
Mr. Yerkes commented that he'd like more background to review and discuss this first, before going to a public hearing. Ms. Shamp agreed.
The motion was withdrawn and the item was rescheduled to be an agenda item, tentatively for June 23, 2009.

Motion by Mr. Van Duzer to adjourn as the LPA and reconvene as the HPB
Second by Mr. Yerkes
Vote: 5-0

VII. ADJOURN AS LPA; RECONVENE AS HPB

Ms. Shamp called the meeting of the HPB to order at 11:42 AM, five members present with Evie Barnes and Alan Mandel- absent with excuse.

VIII. ADMINISTRATIVE AGENDA

A. Update-National Historic Register Application process

At the April 28th meeting the HPB requested the register process to begin, which was to be authorized by the Town Manager and Dr. Shockey. Ms. Shamp passed around the letter requesting those funds, which she is asking HPB to approve for her to submit to the Town Council. There was discussion about the funding and releasing of those funds. The Town Manager had asked that the HPB specifically request the Town Council to allow some of the funds that were set aside for the plaque/brochure/website programs to be used for this purpose, if that is their intention.

Mr. Weimer moved to approve and submit the letter for funding request;
Second by Mr. Yerkes.
Vote: 5-0

Ms. Shamp asked if someone could attend the meeting on May 18th on her behalf. Ms. Kay will attend. Ms. Shamp asked for a motion to adjourn.

Mr. Van Duzer moved to adjourn as HPB and reconvene as the LPA
Second by Mr. Yerkes;
Vote: 5-0

IX. ADJOURN AS HPB; RECONVENE AS LPA

X. LPA MEMBER ITEMS AND REPORTS

Mr. Weimer advised that the issue about the possible conflict in meeting times has been resolved with Mr. Janke, as discussed at the prior meeting in his absence.

XI. LPA ATTORNEY ITEMS

Ms. Dalton advised that Mr. Mandel has been named as the head of the Utility Ad Hoc committee and will proceed accordingly.

She also advised that the Town is working on a Franchise Fee ordinance and she gave Mr. Van Duzer a copy of that due to its ROW issues.

XII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Dr. Shockey referred to a report in the packets, written by him, referencing refuse containers and some sections of the land development code. He advised that the Town Manager had created an ad hoc committee to find facts about refuse container issues there were a few items that came out of that. He wanted to present some suggested changes to the LPA due to these concerns and give the LPA the opportunity to suggest any revisions or other changes they felt were necessary. Town Council will consider whether to initiate these changes and if Council does so, they will be back as a legislative hearing before the LPA.

XIII. LPA ACTION ITEMS

Resolutions to Town Council

- Snug Harbor-continued by Council to June 1, 2009
- 135 Gulfview-TBD
- Vacation Ordinance-Moved to first hearing/May 18, 2009 (Ms. Kay)
- National Registry Letter-May 18, 2009 (Ms. Kay)

LPA Continued Hearings

- The Cottage-June 23, 2009
- Pink Shell-June 9, 2009

Future Work Activities

- Commercial Rights-of-Way: will be divided into four sections- #2 June 9, 2009, regarding Impervious ROW; items #1, #3 & #4-TBD
- Storm Water-TBD
- Seasonal Parking-July 14, 2009
- Animal Control-June 9, 2009
- Alcoholic Beverages-July 14, 2009
- Parcelization-TBD
- Future Review of SO Ordinance-July 14, 2009
- Kiosk Project-June 23, 2009
- CIP Workshop-TBD
- Historic Plaque presentation-TBD
- LDC 14-12-June 23, 2009 (Dr. Shockey to provide backup and contact MRTF and Keith about their attendance)

XIV. PUBLIC COMMENT

No further comments.

Motion to adjourn by Ms. Shamp;
Second by Mr. Van Duzer.
Vote: 5-0.

XV. ADJOURNMENT
Adjourned at 12:13 PM.

Next meeting May 26, 2009 10:30 AM.

Adopted 6/9/09 (DATE) ~~with~~/without changes. Motion by Van Duzer / Shamp

Vote: 5-0

Dennis Weimer, LPA Chair

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MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, June 9, 2009

I. CALL TO ORDER

Meeting was called to order at 10:32 AM by Chairperson Weimer. Following members present:

Dennis Weimer
Rochelle Kay
Bill Van Duzer
Joanne Shamp
Alan Mandel

Staff present: LPA Attorney Ann Dalton; Community Development Director Dr. Frank Shockey. Members of the public and applicants were also present.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION-Mr. Dennis Weimer

IV. MINUTES

Acceptance of minutes from April 28, May 12 and May 26, 2009 meetings.

Motion: Mr. Van Duzer moved that all minutes be accepted as written. Second by Ms. Shamp.
Vote: Motion carried 5-0

V. TOWN CAPITAL IMPROVEMENT PROGRAM (CIP) ITEMS

Ms. Shamp reported that she sent "Thank You" notes to Town manager and staff, and wished to thank all staff, Jack Green, Evelyn Wicks and Scott Janke for their participation in the workshop.

VI. PUBLIC HEARING

A. DCI2006-0001 and DCI 2006-0002-White Sands, Captiva Villas and Bayside CPD Zoning Amendments—Continued hearing-reopened

Ms. Dalton swore witnesses. Mr. Weimer polled members as to any ex-parte communications regarding this matter. Mr. Van Duzer had meetings with several people regarding the hearing: a lengthy meeting with Peter Lisich, several discussions with Carlton Ryffel; on site meeting at Pink Shell with Mr. Wauchulis and staff; two site visits. Ms. Shamp had two site visits. Mr. Mandel declined a meeting at the Pink Shell. Mr. Weimer has had some discussions with members of the public, with some Town staff, and made a site visit. No others had any communications. Mr. Weimer stated that this is the fourth session for addressing this and asked that the public remember that the meeting must move along and that comments should be kept short and on subject, adding that public comments have been heard in past hearings.

Dr. Shockey updated the meeting about the additional items, submitted by applicant at the last hearing, which have been added to the packets and explained the documents.

Applicant Comments: Beverly Grady, Roetzel & Andress, representing the Pink Shell Resort, presented the application for the modifications to the existing development. She said there were two public hearing applications filed, one for Captiva Villas and one for Bayside/White Sands. There was a consensus with staff that only one Master Concept Plan should be used for these purposes. Ms. Grady presented a Power Point demonstration to outline the requested modifications, which the applicant feels will better the Town, tourists, workforce and neighbors. She discussed how the proposed changes would impact the Town of Fort Myers Beach and how these would improve the overall lifestyle of the beach.

Ms. Grady commented that the property went through the typical application process for applying for and instituting any modifications to the Town's Development orders. She said that Pink Shell built pursuant to the Town's Chapter 10 Development Order and the Town issued the permits. Property development regulations are defined in the Town code including height, setbacks, FAR, intensity, etc. Other resolutions granting CPD or RPD zoning, showing how the deviations were granted, were included in the packets she provided. She said that there is a staff recommendation of approval for most of the modifications but one primary concern is the conditions at the end of the proposed resolution, which are not clear as to the entitlements that are already in place which make up the existing Pink Shell Resort Development. Ms. Grady stated that staff's recommended condition would require redevelopment to comply with RM zoning district setbacks, but this would not allow Pink Shell to keep what it already has today. In addition, she expressed concern that the latter part of staff recommendations would repeal all existing deviations that have been granted through the years, that the Town had previously approved as consistent with its Plan and LDC. The applicant is most concerned about the language and specifically the words used in the proposed resolution because, she feels, it is not clear enough to protect the existing rights of the applicant. Ms Grady requested that the process to the extent that the LPA grants approval of some or all of the modifications, that the applicant would continue through the "historically applied process." She stated that Pink Shell and the other properties were all built and found to be in compliance with the Comp Plan, the Plan Development Zoning Resolutions, Chapter 10 Dev Orders; however, she stated, that the current staff report conditions place uncertainty and threatens those entitlements. She continued that Pink Shell has spent millions in reliance on the Council's approvals to arrive at the resort that exists today. Ms. Grady said that the applicant is suggesting minor changes, such as:

- Retention of the boat ramp which, she said was originally permitted but may have been removed from the site plan when a different plan was being considered. This change reflects something that has been there all along so it is a minor change.
- Permission to relocate a walkway easement that is currently between Captiva Villas and White Sands and just relocate it on Captiva Villas but on the Sanibel View side. She said that they would still need to get approvals from the Council and the County so they just need sufficient language to allow this take place, if decided, without having to go through another public hearing.
- The applicant wants to be "like other resorts" in that they would like to serve the public in addition to their own guests.
- An increase in parking spaces, in place of a landscaped area, but with an additional buffer area
- The applicant requests the ability to use existing units to provide employee housing.
- Permission to replace the existing dumpster with a trash compactor.
- Unified sign package (included in lieu of variances from the sign ordinance).
- The applicant requests to replace accessory docks on the bay side of the property

Ms. Grady introduced Bob and Jack Boykin, Bill Waichulis, Pink Shell manager, Ted Treesh, transportation expert and Bob Mulhere, land use planner (gave his credentials). Ms. Grady turned the floor over to Mr. Mulhere to review the applicant's plan and its consistency with the LDC and the Comp Plan.

Mr. Mulhere showed photos of the existing boat ramp and talked about the use. He also asked the LPA for the ability to request the relocation of the walkway. He said that the applicant's request to remove advertising and "guest only" restrictions is just to make the business competitive in the business world and referred to a traffic study in the packets, which he said show that there is minimal impact to traffic. Mr. Mulhere reviewed the parking space request, saying that the applicant is only requesting to add 57 spaces (referred to visual aids) and would like to move certain spaces to meet safety standards. Control gates are proposed at the entrances to these lots to control access and he also discussed the requested modification to the Type C buffer (visual aid) and discussed the size and location.

A concern of the applicant involving the staff report is the calculation of required parking. Mr. Mulhere said that the LDC allows for "subordinate uses," as defined in Section 3430-21 and pointed out that the applicant is proposing more specific and restrictive uses so that there are no abuses of the property. He discussed the need for some additional parking but also that the increase in amenities would not necessarily create a need for more parking. He then turned over the floor to Mr. Ted Treesh to address transportation.

Mr. Treesh, TR Transportation Consultants, referred to a traffic analysis in the packets which reviewed the impact of the added facilities to local traffic patterns. Basically, he summarized that this proposed project will have a very minimal impact on the traffic. Mr. Mulhere again spoke, discussing each item and offered advantages and improvements each would provide to the area. He said there are basically three deviations: the unified signage package; reduction of the landscape buffer along Estero Blvd. (only if the Town acquires some of that land) to approve an alternative betterment plan that includes the elimination of the required internal landscaping for the tennis court parking, a deviation for the required landscape buffer width only adjacent to the south property line; and (this was inserted by staff) that the applicant needs to have 321 spaces. He added that he did an in-depth analysis and found that the requests are clearly consistent with the Comp Plan.

Ms. Grady readdressed the meeting and wanted to recognize the residents and business people of the area. She said that the Pink Shell Resort serves all of these people and supports the public and the community, and she gave examples of the many letters and other signs of public support for these requests. In summary, the applicant submits that there are minor modifications, each consistent with the Comp Plan and LDC, and they would like language to ensure that the applicant keep any existing entitlements. The applicant also feels that the amenities, which are subordinate commercial uses, are an integral part of any resort and should be available to the public. Ms. Grady then reviewed the documents and attachments included in the packets, pointing out that the applicant has filed and presented all necessary applications and supporting documents, in addition to the proposed conditions.

Mr. Robert Boykin, owner of the Pink Shell Resort, addressed the meeting and gave a brief history of the company, including that it has been in the family for many years. He said that there is a wealth of support for these modifications and complimented the staff for their diligence in preparing these proceedings and their hard work.

LPA Questions to Applicant: Mr. Weimer asked for questions from the LPA members. Ms. Kay asked for clarification as to a part of the resolution, regarding ownership of the business being identified as a "foreign" corporation. Ms. Dalton clarified that this meant the headquarters of the corporation was outside Florida. Ms. Kay also asked about parking calculations recorded as "0" and asked how can that be. Mr. Treesh responded and explained that some of the amenities do not need extra spaces. Mr. Waichulis added the capacity of certain amenities of the property.

Ms. Shamp asked about the current entitlements and deviations that the applicant stated would no longer be permitted or repealed. Ms. Grady referred to item 13, pg. 3, where the applicant marked up Dr. Shockey's comments and specifically read the item that most concerns her: "redevelopment must comply with the setback and property development

regulations applicable to the RM zoning district at the time of development order approval, except where otherwise allowed by LDC Chapter 34, Article 5." Ms. Grady said that this is very unclear and the language needs to be eliminated. She also referred to condition #16, pg. 6, and said that the applicant proposed certain language (read from the mentioned section). She further pointed out that there are conditions 16 through 31 which she feels each take a previous resolution and repeals it.
Ms. Shamp also asked how the beach access being proposed to move relates to beach access 41, advertised as a public access. The applicant explained, using visual aids. Ms. Shamp also had some questions about the trash compactor, external advertising, and extra parking for events. There was also some discussion about the boat ramp and the dimensions being changed.

Mr. Mandel asked if non-guests currently use the facilities at Pink Shell and the applicant said that they cannot advertise that but they don't actively restrict outsiders. He also referred to the letters received and asked who the authors were and what percentage are owners.

Mr. Weimer stated that his interpretation of the proposed resolution is a good thing and he does not see how anything would be detrimental to the applicant or other property owners. His feeling is that this is like a "clean sheet of paper" in that the old piece-meal modifications and allowances are all being cleaned up and this will be the new basis for all business modification applications, etc. He asked Ms. Grady if there are other properties in the original MPD which are no longer included in this commercial plan development and asked why they are not included anymore. Ms. Grady stated that these are now separate entities. Mr. Weimer referred to pg. 3, sec. 13, Maximum Building Heights and asked if the applicant was proposing to elevate the building according to the section; Ms. Grady said they are. Discussion took place about the rebuilding in the event of a disaster and the concern that this would become an issue as to height and other specifications such as setbacks. Mr. Mulhere agreed that having specifics to comply with is important for all building but not a blanket ruling since that may cause some businesses to rebuild at the current regulations and lose all that they had from previous applications, thereby losing the millions that were spent to get those provisions in the first place.
Mr. Weimer asked the applicant why his specific change from "guest use only" facilities to public use is considered a minor change when this seems to encroach into the residential element of the property and neighborhood. Applicant argued that this property is not mostly residential and that it has always had difficulty keeping the general public out. He stated that it would not be a big change to openly extend use to the general public, even with the parking, provided the extra spaces can be added. Mr. Weimer stated that the general public's comments against this request have to do with parking and asked the manager if they have done anything to preclude the public from parking on Estero Blvd. and if the extra proposed spaces would actually help that much. Mr. Waichulis said the extra space will absolutely help and that recently, there were no parking problems during major events. Discussion ensued about the parking, buffering areas and the dumpster replacement.

Staff Comments: Dr. Shockey referred to the packets and an additional memo. He discussed basic ownership of the property, explaining that not only is there corporate ownership but also condominium ownership as well, therefore it is a bit more complicated than typical property requests of this nature in which one entity is the sole applicant. Dr. Shockey asked that everyone keep in mind that the general context of planned development zoning it to allow people the opportunity to create a development that is essentially compliant with the comprehensive plan's vision for the area but give some flexibility from requirements the development might not meet precisely. Then, changing times may make it necessary to revise some of those requirements while keeping within the general confines of the original plan.

Dr. Shockey reviewed the applicant's requests and said that, overall, the staff does recommend approval of the request to amend the zoning districts, agreeing that many of the applicant's requests are minor and do not involve deviations from the LDC. However, the conditions developed by staff are intended to address the needs of the future, with regard to problems with the past conditions and a reasonable interpretation of what the past conditions ought to mean for the property in the future. In condition #2, the schedule of uses ought to reflect the uses that exist on the property, which he said are somewhat more lenient than before. Dr. Shockey discussed the requests for public usage and advertising to the public and referred to prior resolutions wherein it was ruled that these facilities not be openly advertised for use by the general public. Agreeing with the applicant that this is difficult to enforce, the staff proposed conditions include allowing the applicant the same privileges as any other new hotel on the island: subordinate commercial uses such as small retail stores, personal services, and restaurants, within certain limitations.

The recommended conditions are established in order to maintain the Town's ability to control what goes on with commercial resort properties, regarding subordinate uses, in a consistent fashion rather than site by site basis. Dr. Shockey referred to the site development regulations in Condition 2 and said they are related to the minor site changes in the future and not to build a new structure. Dr. Shockey continued with a review of each condition area and gave the general reasons for these. He referred to document "B" in the staff report packet, representing a landscape plan, and advised that one of the deviations is being recommended to be denied, but that a revised version could be considered, adding that the required 15 ft. wide buffer between the proposed parking lot and the Avaco Bldg. remain in the plan. Dr. Shockey reviewed Conditions #5 and #8 and briefly discussed the existing units on the property, proposed to be used for employee housing.

Dr. Shockey said he could not totally address the alcohol consumption issue because he does not have all of the pertinent information regarding the applicant's state license, so Condition #10 language should recommend that it be limited to the current beverage license rules and expansions must go through usual process. He then reviewed the deviations, in general, and gave reasons why staff is or is not recommending approval. Staff is recommending denial of the landscaping deviation as presented but suggests that the Town Council could approve a modified plan. The last deviation, regarding reducing the required 321 parking spaces based on the current plan, to 265 proposed parking spaces, is recommended for denial also because staff feels that the applicant could provide more spaces, or reduce the intensity of activities on the property.

Dr. Shockey referred to the applicant's constant use of the word "entitlements" to refer to the existing development on the property. The LDC does not use that word to describe the outcome of a zoning action, nor does the Comp Plan. The Town Council has the authority to amend the LDC and zoning map, without the property owner's permission, as well as the build back provisions contained in the regulations and in the Comp Plan. He said that the applicant is asking for a special condition that provides a guarantee that they will be able to build back exactly what is there, without regard for the reason for the build back, i.e., damage, total destruction or just remodeling or a desire to replace the buildings with new ones. Policy #4-B-1 in the Comp Plan states that "buildings and developments damaged more than 50% of the replacement cost, can be rebuilt to their legally documented actual use, density, ...provided the new construction complies with...any required zoning or other development regulations other than density or intensity, except where compliance would preclude reconstruction otherwise intended by this policy." He continued to read the regulations in the Comp Plan that apply to rebuilding and summarized that the staff's recommended condition is there because a development order is not guaranteed forever, and the rights conferred by planned development zoning are not permanent. If the regulations change before you get a development order, you must comply with the new regulations. Dr. Shockey stated again that the conditions staff recommended are to protect the Town's ability to control what happens on that property in the future, not to guarantee that it remains exactly as it is today. Dr. Shockey then requested the acceptance of his report and all attachments as staff testimony for the record.

LPA Questions to Staff: Mr. Weimer asked for questions from LPA for staff. Mr. Mandel asked if the applicant would still be able to rebuild the same number of units that exist today in the event there was a disaster. In essence, Dr. Shockey indicated that this would ultimately be up to the Council's approval, but did not provide a specific answer to the question. Under the current Comp Plan policies and code regulations it depends in part on whether the buildings have been damaged by a disaster. Mr. Mandel asked if staff is satisfied that the 321 spaces would be sufficient for the property when large parties such as weddings and company retreats are held at the resort. Dr. Shockey basically said that this is usually only an issue during special events, which are subject to approval and regulation by the Town manager, and therefore are looked at on a case by case basis.

Ms. Shamp referred to parking and LDC 34-2020, and a public comment document wherein the number of spaces was different, and she wondered how the number of parking spaces was calculated. Dr. Shockey wasn't sure but assumed that the difference between them had to do with square footage measurements and where they came from, or classifying the use of floor areas in one way rather than another. He is satisfied that the number of spaces noted as the requirement matches the use of the floor areas. Ms. Shamp also referred to the sign package and Sec. 30-153, which reads "in order to provide fair, equal and adequate exposure to public and prevent businesses from visually dominating neighborhood properties." they should be regulated and she asked why then shouldn't the applicant be held to the same rules as other businesses on the island. Dr. Shockey stated that the criteria for granting deviations from the LDC are different from the requirements for a variance. Planned development zoning allows the property to be considered as a single unified resort. Under the sign ordinance each business would have been looked at separately and been allotted a specific maximum number of square feet of sign area. Many more things can be taken into consideration for granting a deviation to allow a sign package in the planned development context. Ms. Shamp also asked if there are other trash compactors on the island and how they are regulated in the LDC. Dr. Shockey stated that there is no specific regulation for these in the LDC but his opinion is that the proposed location is not a good one for the compactor. Discussion ensued about the current use regulations in effect for the property and the temporary use parking permit and disposition of the tennis courts.

Mr. Van Duzer asked if the Pink Shell Resort obtained a special events permit for the most recent "Catch & Release Tournament." Dr. Shockey said that they did apply for one but the Town manager decided it was not needed because it was within the scope of normal resort operations. Mr. Van Duzer asked if a person who participated in the event would have been considered a guest at the resort. Dr. Shockey replied that this is an issue that has ultimately brought them to a hearing today. Mr. Van Duzer also proposed that if Dr. Shockey was directed by the LPA to review all of the applicant's requests and come up with a resolution, could this be written up in a much shorter version to forward to Council. Dr. Shockey agreed that it could be shorter by simply referring to the outdated conditions, but the 4 pages of conditions are included to try to prevent the problems from coming up again in the future.

Mr. Weimer asked what other adjacent properties were included in the original PUD that are not included here. Dr. Shockey said that he thought the Estero Island Beach Villas was part of it from the 1980s, and also Sanibel View. Vacation Villas was not part of the original plan, but Abaco Villas was once included. Mr. Weimer asked what happens to the ones that may still be part of the old PUD and if those places and zoning stay in place. Dr. Shockey said that the recommended conditions would assure that any excluded properties are not affected by this application. Mr. Weimer asked for another clarification as to what exactly staff is recommending. Dr. Shockey repeated staff recommendations, as above. Discussion ensued regarding valet parking and other rights requested by the applicant. Mr. Weimer referred to Condition #9 and its terminology and said that the way it is written, if the LPA recommends approval, this would mean that the LPA supports the expansion of those commercial uses, outside of just guests staying at the resort. He also referred to Condition #10, alcoholic beverages, and said that this usually comes before the LPA under the COP Special Exception process, wondering why it is dealt with here for the applicant. Dr. Shockey explained that this is partially true but that there are certain circumstances wherein this is dealt with in several processes other than a special exception; he explained the regulations. He said that the condition proposed in the staff report would require the applicant to go through either administrative approval or special exception process in order to get the changes to their current license. Discussion ensued to clarify language for this condition and more discussion to review and clarify #24 and #25. Mr. Weimer asked how the signage issue is determined. Dr. Shockey suggested that in the planned development context a sign package can be related to on the size and type of businesses involved; discussion about the requested signs ensued.

RECESS FOR LUNCH-1:45 PM
RECONVENE-2:20 PM

Mr. Weimer reconvened the hearing and asked for public comment.

Public comment opened.

Carleton Ryffel addressed the meeting and had Dr. Shockey hand out some papers he had prepared. Mr. Ryffel also presented a visual presentation and said he represents several citizens and gave a history of his qualifications, including serving on the Lee County Local Planning Agency and LDC Advisory Committee. He was involved in many of the rezoning cases involving the Pink Shell Resort in the past, with several other owners. He also represents the condo associations who are located in the vicinity of the Pink Shell properties and represents their interests. Mr. Ryffel showed diagrams of the locations involved and discussed the many letters of opposition he submitted from the neighboring property owners involved. He read one of the letters which opposed the applicant's requested changes and referred to the many copies in the packets he provided. Mr. Ryffel requested, on behalf of all of the property owners he represents, that these changes requested by the applicant be denied. He referred to resolutions, included in the packet of documents he handed out, which he feels stipulate that the resort property, including commercial activities such as the restaurants, has always been meant to be for the use of guests and Pink Shell staff only, and states the prohibition against outside advertising the restaurants and other amenities. Mr. Ryffel then referred to the staff report, on pg. 12, item #4 and cited several points, which he addressed one at a time. He said that tennis courts were damaged after the hurricane but the applicant continues to use the open space as a parking area. He also discussed the Vacation Villas easement near the former tennis courts, and their objection to the applicant attempting to use this easement for something it was not intended for. The existing boat ramp is to remain, with the pedestrian walkway rerouted, as shown in the Master Concept Plan. He said that the boat ramp is in the spot where the walkway was meant to be according to the past approvals. Mr. Ryffel said that his group strongly objects to the property being opened to be used by the general public as it is contrary to the basic approval of the Pink Shell as it exists today. He also showed many photos of the parking problems created by the events at the Pink Shell. His group also opposes to the advertising change as this is again against the original purpose of the resort. He showed a photo of a sign at the Chamber of Commerce building advertising that the Pink Shell is "Open to the Public." The group also objects to the proposed location of the trash compactor as it is directly across from this group's property and imposes on their parking easement, view and other privileges. Lastly, Mr. Ryffel also opposed to the additional parking and valet parking issues. He referred to the memos from Dr. Shockey regarding the language for the COP. He said the second one proposed is not as clear as the original language and showed pictures of people consuming alcohol at tables on the beach, expressing his view that if the state issued a license for this, it does not comply with the prior zoning conditions, and the future should be limited by past conditions, not allowed to expand.

Peter Lisich, owner of the property at 131-133 Estero Blvd., a commercial planned development, addressed the meeting. He said that his property is surrounded by the Pink Shell Resort on all sides, sitting between the tennis courts and the open green space next to the valet parking area, with the interpretive walkway. He stated his concern for the applicant's "shameless, vulgar and totally unacceptable request" to expand what was previously approved and had been assured not to have a negative impact to the neighbors. He expressed that the reference to these changes as "minor" is insulting and says that these changes would immediately undo the twenty years of peaceful living that has been enjoyed at his property. He pointed out that during the time he has lived there, Pink Shell had gone through at least three different owners, all with whom they had gotten along with and who respected their peace and quiet, as had the previous managers and employees. He said that these changes have divided the neighborhood and disrupted their quality of life. He referred to the applications and said that no one is clear about the actual document that is up for approval since the applicant keeps changing it. Mr. Lisich agreed with all of the points that Mr. Ryffel brought up and supported that same opinion as to requesting denial of these "minor" changes. He discussed points presented by Mr. Mulhere regarding the "rental community confusion" and said that the owners of individual condo within the Pink Shell Resort do not own things like a simple parking spot. He said the current owners of the Pink Shell condos are a management company used to handling renters for individual condo owners and that the commercial component is a different entity. Mr. Lisich discussed uses and square footage for commercial uses, giving numbers supporting that 48% more commercial use is at the resort than should be there, based on what the applicant's expert pointed out. He also said that no one is clear about the situation with the boat slips (showed a visual aid) and presented documents specifying the number of slips allowed and their uses. Mr. Lisich referred to the Submerged Land Lease reference, the same one referenced by Dr. Shockey in his report, and pointed out the cover memo he included in the packet. Dr. Shockey refers, he said, to the one that is currently expired and titled "Submerged Land Lease Renewal and Modification to Change Description of Use" and Mr. Lisich claimed that this latter lease represents a significant expansion from the uses that were approved with the zoning and in effect at the time. He read the recommendations of Dr. Shockey from the memo and asked where is the current lease, where are the existing slips, when did the Town approve the official slips and the commercial uses. He asked why the LPA would even consider voting on this today without even knowing the answers to these questions, and insisted that this is what staff is recommending, while he doesn't have the correct facts. He also vehemently opposed the installation of the garbage compactor and suggested that the applicant keep it on the other side of their property on the far side of their lots. He asked that the LPA reject all of the applicant's requests.

Mr. John Boucher addressed the meeting and said that he owns a condo in Estero Island Beach Villas, which is totally fenced off from Pink Shell. He said that he and the other residents oppose these changes for several reasons. He stated that this applicant was given height, density and setback variances and agreed to certain conditions which would preserve the quiet, peaceful enjoyment on the north end of the island. The staff recommends rescinding Town Council conditions and creating new ones but he feels that they are dealing with an applicant that does not comply with conditions. He gave examples of the applicant's non-compliance, i.e. advertising to be open to the public, hosting public functions and advertising meeting rooms, etc. even on the internet. He said that one of the existing conditions is no live loud music yet he and neighbors have called police because of several loud bands at late hours on the property. Alcohol consumption off premises is another problem there, according to Mr. Boucher, who witnessed a vehicle being driven around on the beach there and selling beer. He also pointed out that there was to be a "Beach Public Access" sign on the property which was never installed. He gave several more examples about the non-compliance of this applicant again asked that the LPA not approve any of these changes requested by the applicant. He added that there is no way to police the specific request asking for housing for employees and the residents are afraid that these will become overcrowded migrant worker units, since there is no way to regulate how many people these house. Mr. Boucher warned that this applicant has a history of non-compliance and these changes will not help the applicant suddenly get better about compliance. He also discussed his objection to the proposed parking arrangements.

Public comment closed.

Applicant rebuttal. Ms. Grady again addressed the meeting and asked Mr. Mulhere to speak about some of the comments made by public. Mr. Mulhere asked the meeting to assume that Pink Shell would need to provide parking as required in the Code for the subordinate uses, and said that he considered that scenario. He said that there is a section of the Code, 34-2020, which reads "restaurant parking requirement for accessory restaurant: when a restaurant is located within the same building as the principal use and is clearly provided primarily for the employees and customers of the principal use, (the resort) no additional parking spaces are required." He remains that they would then need no additional spaces. The Code requires 2 spaces for the meeting space; the ballroom would need 16 spaces; the fitness facility, it is not open to the public, so that is 0 spaces; he continued to add spaces according to the Code square footage requirements until his sum of 266 spaces and said that Pink Shell has 265 spaces on the site plan.

Ms. Grady asked Carlton Ryffel, for the record, if he took the photos that he presented. Ms. Dalton objected to Ms. Grady's questioning of Mr. Ryffel. She asked Mr. Weimer if she could ask the question and was denied questioning any of the public. She stated her question to the LPA and asked who took the photos, which she believes were taken 2 years ago, and wanted to know who the people are that Mr. Ryffel said he was representing.

Ms. Grady again discussed the requests, beginning with the boat ramps. She said that she is not aware of an actual request to fill in the boat ramp, as stated by Mr. Ryffel. She added that the boat ramp would not be used by outsiders bringing a trailer to the site and parking there and, she added that Pink Shell is willing to limit the use of the ramp. She said that the valet parking is something that is permitted and that it does need to be available to meet parking requirements of prior resolutions. Pink Shell wants to retain that permitted ability to use it. She said that the extra spaces are 57 are in addition to what is considered adequate by the code, established by Mr. Mulhere's testimony. The signage idea was developed in meetings with staff as a good thing for the north end of the island to have one unified set of signs for the resort. Most of the signs, she said, are directional and for the convenience of the guests to find parts of the resort. Ms. Grady discussed the trash compactor and the fact that no one came up with an alternative, so at this point the request remains to just replace the existing dumpster with a trash compactor, adding that applicant felt this was a positive move.

Ms. Grady further discussed the process of the application for changes and said that the applicant believes that the changes are minor. She agreed that there is a post-disaster build-back provision but it is left to interpretation of people in the future who are not present today and their concerns is that those people may have different views. She added that the comments by Dr. Shockey worry her in the case of vested rights and the wording of the resolution is not respecting the past rights. She said that the property owner relies on the Town Council's application of its Plan and its Code, approves that plan and that guarantees that they can rebuild that master concept plan. The applicant requested the LPA make a recommendation of approval on each request.

LPA Questions on rebuttal: Mr. Van Duzer referred to the parking spaces, specifically to the restaurant area of 5450 sf. He said that there are no more required parking spaces because it is currently primarily used by guests only. However, if the restriction is taken away, he feels there would then be additional parking spaces required. The applicant claimed that the restaurant is primarily to serve guests and employees, as stated in the Code. Mr. Van Duzer asked what structures will be used by employees. Ms. Grady stated that there is no stipulation as to what buildings will be used. Mr. Waichulis stated that there are currently 9 students from other countries in the two existing cottages and they are working as servers.

Ms. Kay asked if primary use is the same when the restaurant is advertised to the public. Mr. Mulhere stated that the Code says "primarily" and not "primary" use so it is vague.

Ms. Shamp read the exact Code as to the words "clearly" and "primarily" and said that the applicant focused on "primarily" yet she believes that when a restaurant is not advertised externally, then it could be said that it "clearly" is for the guests primarily. Mr. Mulhere agreed with this usage.

Mr. Mandel asked where is the "satellite parking" which was referred to earlier. Mr. Waichulis said that they have used Summerlin Square shopping center and worked with Lee County, to use its parking areas for Park & Ride. Mr. Mandel pointed out that there is supposed to be no advertised use of the property now but there is still a need for parking; he asked if the applicant has any ideas for extra parking. Ms. Grady thought that the 5 extra spaces they proposed on adjacent property would be helpful and discussed the additional spaces they requested to add on the bayside, but thought they had proposed adequate parking. Ms. Kay asked Ms. Grady about the scenic walk and asked if it was supposed to have been built because it isn't there now. Ms. Grady said "yes, and it's been there..." but Ms. Kay pointed out that it is not there and is not connected because the boat ramp cuts it in two. Mr. ? (did not identify) quickly addressed Ms. Kay with a visual aid and added that it is in the plan.

Ms. Shamp asked about entrance gates and said it would encourage the use of valet parking services but wanted to know about lot #41 and if it is a part of the entrance gates referred to (pointing to a diagram). Ms. Shamp said that while doing her site visit, she saw a small walkway from Vacation Villas, another area chained off and said that there was no access to the beach there, although the plan says there should be. Mr. Waichulis answered, referring to the diagram.

Mr. Weimer commented that one of the public comments clearly points out a significant issue that he sees with the application before the LPA. He said that the arguments the applicant presented look to be "cherry picking." He said the applicant wants to consider expansion of the restaurant to the public but wants to take no responsibility as to its impact on parking. He added that the applicant takes the position that people don't go to the pool bar, they'll go to the resort and just happen to eat at the pool bar. He encouraged the applicant to really consider what their responsibilities are as this moves forward to the Council because he didn't feel that they would be easily swayed by this argument. Mr. Weimer asked the Town attorney to clarify his interpretation of the parking requirement and the neighbors' claims about the easement. Ms. Dalton said there is a private matter dispute between the two property owners and Mr. Weimer wondered if there would be a legal difficulty involving the Town at some future proceeding if they pass a resolution to grant certain changes that the applicant is requesting. Ms. Dalton opined that if the LPA agreed to the Pink Shell's requests, the Town could potentially be pulled into a future legal proceeding. Dr. Shockey pointed out the condition #29 in the recommended items which is a continuation of the county commissioners resolution ZAB-84-196, condition #2, that six parking spaces provided by the developer on lots 38 and 39 are for the use of Pink Shell Vacation Villas Condo and it says that a minimum of six spaces must continue to be provided on those lots. He said that the dispute as to where these should be is between the two owners. Dr. Shockey located the resolution online to check the correct number of required spaces. Ms. Grady added that this may have been a mistake on their part and referred to the actual easement document, which states five spaces. Discussion ensued about the discrepancy between the easement and the resolution requirements for either five or six spaces. Mr. Weimer asked Ms. Grady if there have been any negotiations in regard to just moving the parking spaces and she answered with all of the conditions for the process to do so. She said there are three steps: first, local government approval, second, county approval and then third, the actual other party, Vacation Villas. Mr. Weimer reiterated that this is an especially important process because it shows that the LDC and the Comp Plan need some changes and that these regulations reflect possible future changes.

Ms. Dalton said that the Town doesn't know if the county has signed off on this easement since it was 1989 and things were dealt with differently then, and not all records are available. In addition, she said that there is an alternate thought that when an application comes forward for consideration, all interested parties are supposed to be joined into the application and staff has indicated the applicants do not include the other party to the easement.

Staff Rebuttal: Dr. Shockey clarified that nothing in this application, including any of the entrance gates shown on the plan presented by the applicant, has to do with the Sanibel View property. He also referred to Mr. Lisich's phase "existing only" with reference to the dockage. He said that this term is defined in the Town and the county's LDC to a use permitted because it is "existing only" as of a specific date in the past. He read the Town's definition and said that a use that is "existing only" is treated the same as a "permitted use" and may be expanded or reconstructed on the same parcel, in accordance with all applicable regulations. Dr. Shockey again addressed the items that are being requested and argued subordinate uses and conditions. He suggested that some lessened deviation from the parking requirement, to require more parking to be provided than proposed but less than the LDC might otherwise require, may be appropriate but that it is up to the LPA to decide if they wish to recommend that.

Dr. Shockey again pointed out that amendments to the LDC and the Comp Plan can create non-conformities. He did not recommend following what the applicant is suggesting, that the Town should specifically guarantee some future rebuilding that may be at odds with what the Comp Plan and LDC could be amended to require as the Town changes.

LPA Follow up: Mr. Weimer asked if the LPA chose not to approve opening the business to the public, would that change the number of spaces. Dr. Shockey said it would depend on what was opened to the public and what was not. Mr. Weimer asked if Dr. Shockey had any opinion as to the removal of the boat ramp. He said he did not see any specific condition requiring it to be removed; it merely was not shown on some prior plans. Mr. Van Duzer answered that, from his recollection, the ramp was removed because there were plans at one time to put a building there. Then, the building was not constructed but later plans never had the ramp again.

Short recess-15 minutes

Mr. Weimer polled the LPA members as to continuing with the hearing. Members agreed to attempt to finalize this matter. Mr. Van Duzer said that there are about eleven conditions listed on pgs. 1-2 and suggested that they make a motion on these items and then direct staff to redraft the resolution and present it again at the next meeting for approval. Ms. Dalton said that could be done but it would necessitate another hearing at the next meeting. Mr. Weimer also agreed that a motion at this point would help to move this forward. Ms. Dalton stated that she can print out the motion to make it easier.

MOTION: Mr. Weimer moved approval of LPA Resolution 2009-13. The LPA recommends that the Town Council APPROVE applicant's request to amend the CPD zoning district subject to the approval of thirty [30] conditions and the DENIAL of one [1] condition. The LPA further recommends that the Town Council DENY two [2] deviations as set forth with specificity below.

Conditions:
LPA recommends APPROVAL OF Condition #1.
LPA recommends APPROVAL of Condition #2, as written.

LPA recommends APPROVAL of Condition #3, as written.
LPA recommends DENIAL of Condition #4, as written; With the change *"Refuse containers on the subject property must comply with LDC Section 6-11 and all applicable buffer requirements"* the LPA would recommend APPROVAL of Condition #4.
LPA recommends APPROVAL of Condition #5, as written.
LPA recommends APPROVAL of Condition #6, as written.
LPA recommends APPROVAL of Condition #7, as written.
LPA recommends APPROVAL of Condition #8, as written.
LPA recommends DENIAL of Condition #9, as written.
LPA recommends APPROVAL of Condition #10, as written and not as suggested in Dr. Shockey's report.
LPA recommends APPROVAL of Condition #11, with the change *"a maximum of [forty-one 41], boat slips were approved by that lease."*
LPA recommends APPROVAL of Condition #12, with the change: *"Use of this building is limited to accessory administrative offices for the management of water related activities and leasing of boats and boat slips"* etc.
LPA recommends APPROVAL of Condition #13, as written.
LPA recommends APPROVAL of Condition #14, as written.
LPA recommends APPROVAL of Condition #15, as written.
LPA recommends APPROVAL of Condition #16, as written.
LPA recommends APPROVAL of Condition 17, as written.
LPA recommends APPROVAL of Condition #18, as written.
LPA recommends APPROVAL of Condition #19, with corrections on a, b, c and d; also conditions 1-8 and condition 10 are repealed, but condition 9 remains in force.
LPA recommends APPROVAL of Condition #20, as written.
LPA recommends APPROVAL of Condition #21, with correction on a.
LPA recommends APPROVAL of Condition #22, as written.
LPA recommends APPROVAL of Condition #23, as written.
LPA recommends APPROVAL of Condition #24, as written.
LPA recommends APPROVAL of Condition #25, with corrections conditions 1-5 and 8 and 9 (inclusive) of Resolution Z-8295-017 are repealed; condition 6 is modified to conform to the uses and s/f stated in Condition #2 of this Resolution; condition 7 is modified as follows: a-signage indicating that the services are for guests of the hotel/motel only must be prominently displayed; b-advertising of the commercial uses is prohibited except in connection with advertising for the hotel/motel operation, and such advertising must reasonably indicate that such uses are for hotel/motel guests only; c-outdoor entertainment must be limited to the hours between 7:00 AM and 10:00 PM; d-this condition is repealed; but otherwise continues in full force and effect.
LPA recommends APPROVAL of Condition #26, as written.
LPA recommends APPROVAL of Condition #27, as written.
LPA recommends APPROVAL of Condition #28, as written.
LPA recommends APPROVAL of Condition #29, as written.
LPA recommends APPROVAL of Condition #30, as written.
LPA recommends APPROVAL of Condition #31, as written.
Deviations:
LPA recommends DENIAL of Deviation #1.

LPA recommends DENIAL of Deviation #2.
(Lengthy discussion ensued about adding spaces and the Code requirements for parking.)
LPA recommends ELIMINATION of Deviation #3.

Recommended findings and conclusions:

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned, DOES comply;
2. The proposed use or mix of uses as conditioned above IS appropriate at subject location;
3. Sufficient safeguards to the public interest ARE provided by the special conditions to the concept plan or by other applicable regulations;
4. All special conditions ARE reasonably related to the impacts on the public's interest created by or expected from the proposed development;
5. The proposed use MEETS all specific requirements of the Comp Plan that are relevant to the requested planned development, such as the following policies:
   ---Comp Plan Policy 4B4
   ---Comp Plan Policy 4C3
6. **A-Regarding requested Deviation #1**, the LPA recommends DENIAL of this deviation.
   a. Deviation #1 DOES NOT enhance the achievement of the objectives of the planned development; and
   b. The general intent of LDC Chapter 34 to protect the public health, safety and welfare WILL NOT be promoted by Deviation #1[as modified] and;
   c. Deviation #1 DOES NOT OPERATE to the benefit and MAY OPERATE to the detriment of the of the public interest; and
   d. Deviation #1 IS NOT consistent with the Ft. Myers Beach Comp Plan.

   B-Regarding Deviation #2, LPA recommends DENIAL of this deviation.
   a. Deviation #1 DOES NOT enhance the achievement of the objectives of the planned development; and
   b. The general intent of LDC Chapter 34 to protect the public health, safety and welfare WILL NOT be promoted by Deviation #1[as modified] and;
   c. Deviation #1 DOES NOT OPERATE to the benefit and MAY OPERATE to the detriment of the of the public interest; and
   d. Deviation #1 IS NOT consistent with the Ft. Myers Beach Comp Plan.

2 MINUTE RECESS

MOTION SECONDED-by Mr. Mandel;
Discussion: Ms. Shamp stated that she took this matter very seriously and that this was a very difficult issue for her; other members agreed with her comments.

VOTE: Motion carried 5-0.

Hearing closed-DCI2006-0001 and DCI 2006-0002-White Sands, Captiva Villas and Bayside CPD Zoning Amendments

MOTION TO ADJOURN: by Ms. Kay;
Seconded by Mr. Mandel.
VOTE: 5-0.

VII. ADJOURNMENT
Adjourned at 6:31 PM.

Adopted 8/11/2009 (DATE) with/without changes Motion by Van Duzer Second - Mandel

Vote: 5-0

Dennis Weimer
Dennis Weimer, LPA Chair

- End of document