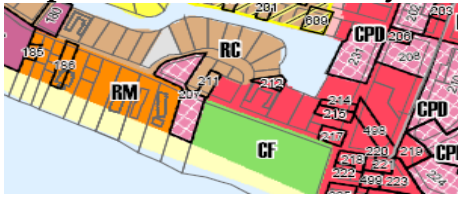


Town of Fort Myers Beach
Department of Community Development



MEMORANDUM

To: Town Council

CC: Jack Green, Interim Town Manager
Anne Dalton, Town Attorney

From: Frank Shockey, Interim Community Development Director

Date: November 25, 2009

RE: EXECUTIVE SUMMARY -- DCI2006-0001 and DCI2006-0002 Captiva
Villas, White Sand, and Bayside CPD zoning amendments

Representatives of JABO LLC, the primary applicant for the zoning actions listed above, have expressed some concern about specific recommendations in the LPA resolution and staff report. Neighbors have also expressed concern about the recommendations and about the Pink Shell Resort's ongoing and proposed operations. This summary addresses the main concern raised by the applicant's representative.

The amendments requested by the applicant have changed repeatedly since the application was initially submitted several years ago. Several requests discussed at length by the LPA in its hearing of March 24, May 12, and June 9, 2009 were withdrawn subsequent to the LPA hearing. Portions of the LPA resolution therefore address requests that have been withdrawn. The staff report addresses the specific amendments requested by the applicant and emphasizes where these amendments have been withdrawn. The withdrawn requests are also shown in strike-through format in the draft Council Resolution. This was done rather than deleting them, to allow Council to more easily review and compare the LPA resolution with the Council resolution.

The property encompassed by the request, and some adjacent property, was originally rezoned to PUD (Planned Unit Development) by the Lee County

Board of County Commissioners in the early 1980s. The phases of the original PUD have since been treated both together and separately at various times. Changes to proposed developments and to zoning conditions have affected different combinations of parcels from the original whole. As the staff report explains in greater detail, the history of resolutions affecting each parcel is long and complicated. Some resolutions affect multiple parcels and some do not.

LDC Section 34-214(b)(3) states that

If the land development code has changed since the previous approval, the proposed amendment must be based on the current regulations (for example, the proposed uses and deviations must reflect the terminology and regulations in the current code).

LDC Section 34-214(b) states that

The intent is to have resolutions that amend a planned development be current and complete and not require references to a previous resolution on the same property.

The uses allowed on parts of the subject property cannot be determined without referring to multiple resolutions, several of which are not the most recent resolution for the affected property, and without referring to the Lee County Land Development Code in effect at the time of the adoption of each such resolution. Uses have been transferred from one portion of the subject property to another without replacing or updating the schedule of uses, and without clarifying whether limiting conditions on those uses from prior resolutions were transferred with them.

The Local Planning Agency and staff recommend explicitly repealing most of the conditions and deviations approved in prior zoning resolutions and replacing them with a single consistent list of conditions and deviations that can be read and understood using the terminology of the Town's current land development regulations. This follows the requirements of LDC Section 34-214(b).

The recommended conditions recognize that much of the construction of buildings proposed in prior resolutions has been completed. The conditions also recognize and allow the continued existence of the buildings and other site improvements. In previous resolutions, deviations from prior regulations were granted and various conditions were placed on the ongoing uses. The single

consistent list of conditions and deviations should greatly reduce the debate over which conditions apply to which part of the property. Knowing what can and cannot be done on the subject property under the current zoning is “reasonably related to the proposed development.” The proposed development is a set of amendments affecting multiple planned development zoning districts that implicates a bramble bush of prior resolutions.

The objective of this consolidation is not to “take away” any existing rights under the Fort Myers Beach Comprehensive Plan. The consolidation will clarify what improvements and uses exist, and what conditions restrict them. However, care should be taken to ensure that the consolidation does not bestow upon the applicant inappropriate guarantees regarding the future. The Comprehensive Plan already specifies the residential and commercial activities that are allowable in the Mixed Residential Future Land Use Map (FLUM) category. The Comprehensive Plan also provides for the redevelopment of nonconforming properties in the “Post-Disaster Buildback” policy (4-D-1) and in the “Pre-Disaster Buildback” policy (4-E-1). More specific guarantees of development rights for open-ended timeframes should not be provided. Permanently guaranteeing the right to rebuild nonconforming density and intensity outside of Comprehensive Plan Policies 4-D-1 and 4-E-1 would not be consistent with the Mixed Residential FLUM category.

The applicant’s concern regarding the existing docks is an instructive example. These docks existed before the adjacent upland property was rezoned from RM-2 to PUD by the Lee County BOCC in 1982. A condition to limit these docks to the existing capacity and existing uses is appropriate unless the Town is formally asked to allow otherwise through the planned development process. Whether proposed commercial use of existing or proposed docks attached to the subject property can be found to be consistent with the Mixed Residential FLUM category must be evaluated through the planned development process, as required by Comprehensive Plan Policy 4-B-4. Stating this requirement in a condition simply makes it clearer.