



# Town of Fort Myers Beach

## LOCAL PLANNING AGENCY

Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, Florida  
33931

**August 8, 2017**

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### AGENDA

9:00 AM

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- I. Call to Order
- II. Pledge of Allegiance
- III. Invocation
- IV. Minutes
  - A. Minutes of June 13, 2017
- V. Review of Capital Improvement Program (CIP)
- VI. SEZ17-0003 – Fish-Tale Marina Restaurant expansion of COP and outdoor seating
- VII. LDC Amendment Docks LDC Section 26-71
- VIII. Review LPA Policies and Procedures Manual
- IX. LPA Budget Discussion – Project Budget Requests
- X. Historic Preservation Board meeting:  
Adjourn as LPA and reconvene as Historic Preservation Board

Adjourn as Historic Preservation Board and reconvene as LPA

- XI. LDC Amendment Mobile Tourist Information Center LDC Section 34-0351
- XII. LPA Member Items and Reports
- XIII. LPA Attorney Items
- XIV. Community Development Items
- XV. Items for next month's Agenda
- XVI. Public Comment
- XVII. Adjournment

Next Meeting: September 12, 2017



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**FORT MYERS BEACH  
LOCAL PLANNING AGENCY (LPA)  
MINUTES  
Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931  
Tuesday, June 13, 2017**

**I. CALL TO ORDER**

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Megan Heil, Dan Hendrickson, Suzanne Katt, Jane Plummer, Scott Safford, Lorrie Wolf and Hank Zuba.

Town Attorney: Town Attorney Peterson

Staff: Matt Noble

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES - May 9, 2017**

Correction: Mr. Carter stated that the ~~Friends of Matanzas Pass~~ Historic Society was dedicated to saving historic structures on Fort Myers Beach...

Clarification: Mr. Orlandini stated that they had the ability to put two structures on the property (Historic Society).

Mr. Lavender distributed copies of the concept plan and he indicated they could entertain amending the current lease (with the Historic Society) to include more property if needed.

**MOTION:** Mr. Hendrickson moved to approve the minutes as amended, second by Ms. Plummer.

**VOTE:** Motion approved; 7-0.

**V. LDC AMENDMENT 50% FLOODPLAIN REGULATIONS IN CHAPTER 6**

Kara Stewart, Community Development Director, reviewed the history of past discussions and the change in language. Mr. Hendrickson noted that he wished they went to one year instead of permit-to-permit due to unintended consequences.

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Ms. Plummer commented that they needed to proceed for the residents with ground-level homes. She did not want to go backwards.

Mr. Safford clarified that it would be easier for staff with a permit-to-permit system.

**MOTION:** Ms. Plummer moved to approve ordinance 17-09 with its changes and improvements; second by Ms. Heil.

**VOTE:** Motion approved; 7-0.

Discussion was held regarding educating the public concerning the change. Ms. Plummer offered to write an educational piece to distribute to the realtors.

## **VI. LDC AMENDMENT NEIGHBORHOOD FLOODING CHAPTER 6, ADD SEC. 6-14**

Ms. Stewart reviewed Council's request to add the section back to Chapter 6 and she summarized changes made to the amendment. LPA Member Hendrickson discussed public nuisance and flooding and Ms. Stewart stated that they had the ability to deal with that in the Property Maintenance Code. Mr. Hendrickson noted that 6-1 through 6-15 were very specific compared to the International Property Maintenance Code. Ms. Stewart replied that they were looking to add specificity to design to a certain standard. Mr. Hendrickson asked whether they could provide relief to residents who were getting flooded out now by passing the amendment without the 67% impervious rule and the 1-1.6 inch of water rule in order to perform research on those two figures. Ms. Stewart indicated that a representative from Tetra Tech will be in the audience later to answer questions.

Town Manager Hernstadt suggested that not having a standard to design to was a serious issue and he urged them to try to address it as quickly as possible. He stated that if a particular factor was not perfect, it was better than not having one at all and variances could be obtained for particular situations. Ms. Stewart stated the new Ordinance provided more specificity and protection for residents than 6-14. Town Manager Hernstadt explained that redundancy increased the potential for errors and he urged them not to be redundant.

Ms. Plummer questioned how to explain the 67%. Ms. Stewart stated that it addressed new construction only, not retroactive drainage issues. Ms. Wolf questioned the elimination of the six inch rule for fill in 6-14. Ms. Stewart indicated that bringing in fill for any reason would require a fill permit and she did not propose a limit to elevation.

Ms. Stewart clarified that they proposed that an engineered drawing be required to provide expertise.

Ms. Plummer questioned whether it was too restrictive.

Chair Zuba did not think it was overly restrictive.

Mr. Hendrickson stated that he did not think it was restrictive enough.

Ms. Heil commented on protecting residents.

Ms. Plummer questioned whether they could have an example of new permits that did or did not meet the 67% rule.

**MOTION:** Chair Zuba moved to approve the draft with the condition to include two examples of recent permit approvals and how they might be affected by this in order to give Council sufficient information to evaluate going forward; second by Ms. Katt.

**VOTE:** Motion approved; 6-1 with Ms. Plummer dissenting.

## **VII. REVIEW LPA ENABLING ORDINANCE 96-01**

Ms. Katt noted a conflict of appointment dates between the Ordinance and the Land Development Code (LDC). She would like people who have knowledgeable backgrounds to be appointed and she questioned the resident requirement in the LDC.

Ms. Wolf noted that meeting requirements needed to be clarified.

Ms. Plummer agreed with using resources to try to bring in people who have specific qualifications but she felt they should be residents.

Ms. Safford questioned whether the Lee County School Board requirement came from the Florida Statute. Mr. Noble replied in the affirmative and noted that the School Board was not interested in participating.

Ms. Heil agreed that there should be language as to preference of qualifications.

Chair Zuba questioned whether staff would be interested in creating internships or other relationships with area universities. Mr. Noble replied that they had interns in public works in the past.

Chair Zuba thought members of the LPA should make an effort to reach out to universities to discuss what they were looking for.

He questioned what the LPA thought about developers hiring their own experts to assist the LPA with their reviews. Ms. Katt thought it would be helpful. Mr. Hendrickson questioned conflicts of interest.

Ms. Katt noted that it would be good to have expert input. Ms. Heil questioned a conflict with implied representation to the person who paid the bill. Ms. Plummer discussed manipulation on either side and she felt each side should make their own case without hiring an outside expert. Ms. Katt discussed experts maintaining their professional reputations. Ms. Wolf stated that outside opinions were already covered in Section 34-119. Ms. Plummer discussed internships.

## **VIII. LPA BUDGET DISCUSSION - PROJECT BUDGET REQUESTS**

Ms. Stewart explained that they were presenting budget add-ons to Council for higher levels of service. Chair Zuba brought up the ability to send members to conferences. Ms. Heil questioned adding funds for a consultant. Mr. Hendrickson questioned hiring experts for the TPI proposal. Ms. Stewart replied that they were pursuing procuring a firm to assist them.

## **IX. HISTORIC PRESERVATION BOARD MEETING**

**MOTION:** Chair Zuba moved to adjourn as LPA and reconvene as Historic Preservation Board; second by Ms. Plummer.

**VOTE:** Motion approved; 7-0.

Chair Katt stated they had no action pending regarding the cottages. Mr. Noble stated that the Historic Society and Friends of Matanzas Pass were working together. Jesse Lavender, Lee County Parks & Recreation Director, indicated that costs to move the Hepburn Cottage from Boca Grande increased substantially. Mr. Lavender was hopeful that he would resolve the funding issue. Chair Katt clarified that the Hepburn Cottage was under the purview of Lee County and the second cottage was located on Estero Blvd. Mr. Hendrickson questioned whether there was anything they could do to anticipate issues with historic structures. Mr. Noble indicated that they could work toward tracking historic resources. He discussed the lease between the school and the Historic Society. Ms. Plummer offered to track MLS

listings. Chair Katt invited Ms. Plummer to the next HAC meeting to discuss identifying cottages. Discussion was held regarding the demolition permit.

Chair Katt indicated that letters concerning the plaque program will be sent to property owners of historic structures. She noted that a news release would be sent out and several meetings would be held at the library to assist people with the applications. Mr. Noble noted that funds for plaques were available. Chair Katt questioned increasing the budget to \$500.00. Mr. Noble agreed. He indicated that letters would be available within a couple of days.

**MOTION:** Ms. Wolf moved to adjourn as Historic Preservation Board and reconvene as the LPA; second by Mr. Hendrickson.

**VOTE:** Motion approved; 7-0.

## **X. LPA MEMBER ITEMS AND REPORTS**

Ms. Plummer questioned the construction on 2633 Estero Blvd. Ms. Stewart will research it and get back to Ms. Plummer.

Mr. Hendrickson questioned whether their meeting packets could mirror Councils for items that were voted on. Ms. Stewart noted his request. He would like to have a discussion regarding code enforcement in the future.

Chair Zuba noted they would not meet in July. He stated that the owner of Seafarer's was not being consistent with the zoned used for that property, they have not applied for a special use permit and they have not been cited for the illegal uses.

## **XI. LPA ATTORNEY ITEMS**

Attorney Peterson explained the form from the Supervisor of Elections. It should be returned as close to July 1, 2017 as possible.

## **XII. COMMUNITY DEVELOPMENT ITEMS**

Scott Baker, Public Works Director, provided an update on the stormwater master plan. He explained that the "Cadillac" plan was put in place for funding purposes. Tyler Wainwright, Tetra Tech engineer, stated they were moving forward with the 30% design phase and they were identifying the worst areas first. He stated they expected to make a presentation to Council in August, 2017.

Mr. Baker encouraged people with issues to call public works, and that Tetra Tech would provide examples for the neighborhood flooding ordinance discussed above.

Ms. Stewart indicated that the floodplain issue was on Council's agenda for June 19, 2017.

## **XIII. ITEMS FOR NEXT MONTH'S AGENDA**

## **XIV. PUBLIC COMMENT**

John Gucciardo, resident, discussed the demolition delay process in Bonita Springs. He indicated that they may want to use them as a resource moving forward.

**XV. ADJOURNMENT**

**MOTION:** Ms. Plummer moved to adjourn the meeting; second by Mr. Hendrickson.

**VOTE:** Motion approved; 7-0.

Meeting adjourned at 11:26 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

- End of document

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE  
TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2017-06  
Proposed FY2017-2018  
Capital Improvements Plan**

**WHEREAS**, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174 and the specific functions, powers, and duties of the LPA are set forth in Chapter 163, Florida Statutes, and the Town of Fort Myers Beach Land Development Code (LDC) Section 34-120, and the Town Comprehensive Plan; and

**WHEREAS**, Policy 11-A-2 of the Town Comprehensive Plan requires the Town Manager to develop, on an annual basis, a proposed capital improvement program (CIP) which is based on a review of existing Town facilities, level of service standards, current and projected deficiencies, and capital needs as identified in the Comprehensive Plan; and

**WHEREAS**, the Town Manager in conjunction with staff have calculated the Renewal and Replacement (R&R) costs of all of the Town's assets and based upon each items service life have established an annual "R&R" amount to insure adequate funds are available if Town Council authorizes the Replacement; and

**WHEREAS**, pursuant to Comprehensive Plan Policy 11-A-2 and LDC Section 34-120(5) the LPA is required to review the proposed CIP on an annual basis and make a recommendation to the Town Council concerning the CIP's consistency with the Town's Comprehensive Plan; and

**WHEREAS**, following public notice, as required by law, the LPA, at its regularly scheduled meeting of August 8, 2017 conducted its required review of the Town Manager's proposed 2017-2018 CIP, which is attached hereto and incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA**, as follows:

- 1) The LPA hereby recommends that the Town Council find 13 of the 13 items on the attached proposed 2017-2018 CIP are consistent with the Town of Fort Myers Beach Comprehensive Plan.
- 2) The LPA specifically finds that the following items from the proposed 2017-2018 CIP are consistent with the referenced Town of Fort Myers Beach Comprehensive Plan policies and objectives:
  - a) **Road Resurfacing/Improvements**  
Goal 7, Transportation Element, Objective 7-J-1, Protecting Public Access including Town Right of Way.
  - b) **Stormwater/Outfalls (8 Streets)**  
Goal 3, Community Design Element, Policy 3-D-7 Continue to Implement Stormwater Management Plan; Goal 9, Stormwater Management Element, Objective 9-D, Levels of Service, Maintain interim levels of service for flood

protection.

- c) **Water Line Replacement Utility Project**  
Goal 6, Conservation Element, Objective 6-I, Water Supply - Insure continued supplies of drinking water of sufficient quantity and quality to meet the projected demands of all consumers and the environment.
- d) **Sanitary Sewer**  
Goal 8, Utilities Element, Objective 8-A-3, Town shall have significant role in policy matters concerning Lee County Utilities' sewer service.
- e) **Town Hall Roof Repair**  
Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective; 11C-4, General Fund set aside.
- f) **Town Hall Renewal & Replacement**  
Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective; 11C-4, General Fund set aside.
- g) **Times Square Renewal & Replacement**  
Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective; 11C-4, General Fund set aside.
- h) **Times Square Water Line Replacement**  
Goal 6, Conservation Element, Objective 6-I, Water Supply - Insure continued supplies of drinking water of sufficient quantity and quality to meet the projected demands of all consumers and the environment.  
Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective; 11C-4 General Fund set aside.
- i) **Beach & Bay Access Improvements**  
Goal 5, Coastal Management Element, Objective 5E Access to the Water;  
Goal 10, Recreation Element, Objective 10-G, Access to the Public.
- j) **Bay Oaks Pool Renewal & Replacement**  
Goal 10, Recreation Element, Objective 10-D Increase high level of access to recreation facilities; Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective 11C-4, General Fund set aside.
- k) **Bay Oaks Recreation Center Renewal & Replacement**  
Goal 10, Recreation Element, Objective 10-D Increase high level of access to recreation facilities; Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective 11C-4, General Fund set aside.
- l) **Bayside Public Park Renewal & Replacement**  
Goal 5, Coastal Management Element, Objective 5E, Access to the Water;  
Goal 10, Recreation Element, Objective 10-C Downtown as a Recreation Hub;  
10-G, Access to the Public.
- m) **Maritime Dinghy Dock Replacement**  
Goal 5, Coastal Management Element, Objective 5E, Access to the Water;  
Goal 10, Recreation Element, Objective 10-C Downtown as a Recreation Hub;  
10-G, Access to the Public.
- n) **Meter & Pay Stations Renewal & Replacement**  
Goal 11, Capital Improvements Element, Objective 11-C, Capital Financing Policies and Objective; 11C-4, General Fund set aside.

**Town of Fort Myers Beach FY 2017-2018 Proposed Capital Projects\***

<b>Project</b>	<b>FY 17-18 Budget</b>
(a) Road Resurfacing Improvements	\$2,000,000
(b) Stormwater/Outfalls (8)	\$2,600,000
(c) Water Line Replacement Utility Project	\$2,200,000
(d) Sanitary Sewer (reimbursed by Lee County)	\$ 350,000
(e) Town Hall Roof Repair	\$ 150,000
(f) Town Hall R & R	\$ 50,000
(g) Times Square R &R	\$ 50,000
(h) Times Square Water Line Replacement	\$ 150,000
(i) Bay Access (Coconut, Delmar & Hercules)	\$ 13,335
(j) Bay Oaks Pool R & R	\$ 18,730
(k) Bay Oaks Recreation R & R	\$ 53,420
(l) Bayside Park R & R	\$ 25,000
(m) Maritime Dinghy Dock Replacement	\$ 32,000
(n) Meter & Pay Stations R&R	\$ 25,000
<b>TOTAL</b>	<b>\$7,692,485</b>

\* Excludes equipment and vehicle replacements  
R&R = Renewal & Replacement

3) The LPA specifically finds that the following items from the proposed 2017-2018 CIP are not consistent with the referenced Town of Fort Myers Beach Comprehensive Plan policies and objectives: **None**

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

**DULY PASSED AND ADOPTED** this 8th day of August, 2017.

**LOCAL PLANNING AGENCY OF THE  
TOWN OF FORT MYERS BEACH**

**ATTEST:**

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

By: \_\_\_\_\_  
Michelle Mayer, Town Clerk

Approved as to Legal Sufficiency

\_\_\_\_\_  
Town Attorney



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT

### STAFF REPORT

**TYPE OF CASE:** Special Exception (SEZ) for the Fish-Tale Marina Restaurant to expand the already approved consumption on premise (COP) and expand outdoor seating.

**CASE NUMBER:** SEZ17-0003

**STAFF REPORT DATE:** July 21, 2017

**LPA HEARING DATE:** August 8, 2017

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

**STAFF RECOMMENDATION:** APPROVE

#### **I. APPLICATION SUMMARY**

**Applicant/Agent:** Fish Tale Marina/R.J. (Buck) Ward, P.E.

**Request:** A special exception in the SANTINI zoning district to expand the area of the already approved consumption on premises (4 COP SRX) and expand the outdoor seating area by 2,811 square feet (1,030 S.F. Courtyard, 1,293 S.F. Chickee Hut, and 488 S.F. Open Air Dining) at 7225 Estero Boulevard within 500 feet of a dwelling unit under separate ownership.

**Subject property:** See Exhibit A

**Physical Address:** 7225 Estero Boulevard

**STRAP #:** 03-47-24-W1-00011.0010

**FLU:** Pedestrian Commercial

**Zoning:** Santini

**Current use(s):** Marina/Restaurant

Adjacent zoning and land uses:

North:	Bay Beach (Palm Harbor Club at Bay Beach), Pedestrian Commercial FLUM.
South:	Canal then Commercial Resort (CR) (Santa Maria Resort Condos), Mixed Residential FLUM.
East:	Marina Boat Basin/Canal then Boat Docks (Ostego Bay Yacht Club Association Inc.), Mixed Residential FLUM.
West:	Santini (Santini Plaza), Pedestrian Commercial FLUM.

**II. BACKGROUND AND ANALYSIS**

Background:

The Fish-Tale Marina Restaurant, 7225 Estero Boulevard, is a restaurant (FKA Fish House Restaurant) that has requested an expansion of a 4 COP liquor license and outdoor seating. The subject site is located in the Santini District Area as contained on Figure 34-17 of the Land Development Code (LDC). The restaurant is currently being remodeled.

The Applicant requests a Special Exception (see Exhibit B – Application Materials) in the Santini zoning district to permit Consumption on Premise (4 COP SRX) within the expanded seating areas (see Exhibit C – Seating Plan). The existing restaurant has a total gross floor area of 2,485 square feet and a covered screened deck of 2,583 square feet. The applicant proposes to add a covered open air 488 square foot dining area (pet-friendly) on the south side of the rebuilt dining area that proposes 42 seats. In addition a 1,293 square foot Chickee Hut open air dining area with 62 seats, and a 1,030 square foot courtyard waiting area with seating for 22 is proposed. The proposed Fish-Tale Marina Restaurant seating plan (see Exhibit C) includes a total of 7,879 square feet with 272 seats that is proposed to permit consumption on premises.

The Land Development Code Section 34-1264 requires a Special Exception for the on-site consumption of alcoholic beverage. Land Development Code 34-1264(a)(2) requires a Special Exception for any establishment that wants to provide outdoor seating where patrons can consume alcoholic beverages. There are residences within 500 feet (on Lenell Road) of the subject property so the request cannot be approved administratively.

The Special Exception request is to support the proposed expanded restaurant. A Limited Development Order (LDO) has been applied for (LDO2016-0007) to accommodate the expansion. This LDO has been approved. This application seeks the ability to serve alcoholic beverages in these expanded dining areas.

History

A restaurant has been in use at this location for many years. The applicant has indicated that the Fish House Restaurant was started on the site in 1996. Concerning past COP

approvals and the current remodeling effort the applicant has provided the following discussion:

*The prior COP license licensed the restaurant and the covered deck dining area. The remodeling includes a new open air dining area under the cover of a chickee hut, an open air dining area on the covered deck south of the screened dining room, and an open courtyard waiting area that would also be licensed by the new COP. A copy of the previously approved C.O.P. plan is provided herewith and the seating plan has been augmented to show the area previously approved. A copy of the page from the previously approved COP showing the areas previously approved accompanies this narrative. The areas previously approved for C.O.P. are also shown on the seating plan accompanying this narrative.*

The applicant provided copies of previously approved COP2002-00066 and COP2005-00197. The applicant has also provided a list of consumption on premises already in operation on properties within 500 feet of the subject property. The provided list contains the following establishments:

South Beach Grille  
Skye's  
Castaway's Bar & Grill  
The Sandbar & Grill

These restaurants are all located in the Santini Plaza just west of the marina and subject restaurant site.

#### Special Exception Use

The LDC Chapter 34 defines the term special exception use as follows:

*Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.*

As noted above, the restaurant use and proposed expansion of outdoor COP is located in close proximity to similar uses but is also in close proximity to residential uses such as the condos at Palm Harbor Club at Bay Beach. The special exception process provides the opportunity to condition the requested use if the conditions are reasonably related to the impacts of the use that is the subject of the request.

#### Submitted Project Narrative Request:

On June 22, 2017, the applicant provided the following revised request narrative:

*Request for approval of a Special Exception in the Santini zoning district to grant a Consumption On Premise (COP) license approval for the restaurant at Fish Tale Marina, located at 7225 Estero Blvd and currently being remodeled. The property is in the Pedestrian Commercial future land use category.*

*The COP permit will allow for the sale of beer, wine and liquor in support of food service through the State of Florida's 4 COP SRX license...*

Analysis:

The subject property is located in the Santini zoning district and is adjacent to the Santini Plaza and is within walking distance of numerous hotels and rental properties. This area of the Town is known for a variety of establishments offering a range of food and beverage options such as South Beach Grille, Skye's, Castaway's Bar & Grill, and The Sandbar & Grill. The Wyndham Garden Hotel is also nearby. The restaurant was developed as part of the marina several decades ago before the adjacent condos were developed.

Parking:

LDC Section 34-2020 specifies the required parking spaces for new developments by use. This section of the code also addresses existing developments and provides that these buildings and uses may be modernized, altered, or repaired without providing additional parking spaces if there is no increase in total floor area or capacity. This part of the code also specifies that existing buildings or uses enlarged must provide additional parking spaces for the enlarged floor area in accordance with the requirements of the code. The applicant has provided a parking analysis as part of the project narrative:

*The town of Fort Myers Beach Land Development Code, Section 34-2020, parking regulations require marinas to provide parking at the rate of one space per two boat slips and one space per six dry unit stalls. Fish-Tale Marina is permitted to have 98 wet slips and 330 dry storage units, although fewer than these numbers exist at present. The regulations require the marina to provide  $1/2 \times 98$  and  $1/6 \times 330$ , or  $49 + 55 = 104$  parking spaces.*

*The minimum parking requirement for restaurants is eight spaces per 1,000 square feet of total floor area. If the restaurant contains a cocktail lounge or bar, the minimum requirement is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates. The restaurant building and the associated covered deck, chickee hut, and outdoor waiting area contain a total of 7,879 square feet. The bar area is 700 square feet within the area of the covered deck and chickee hut. The regulations require that the restaurant must have  $8 \times 7879/1000$  plus  $5 \times 700/1000$ , or  $63 + 4 + 67$  parking spaces. The parking code, Section 34-2020, requires that  $104 + 67 = 171$  parking spaces must be provided for the marina and the restaurant.*

*The Santini Zoning District, the pedestrian commercial district within which Fish-Tale Marina lies, contains the following provision: "Reductions to minimum parking requirements. Neighborhood centers are "park-once" districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 of this chapter shall be multiplied by 67 percent to determine the adjusted parking requirement for the Santini district." 171 X 67% = 115 parking spaces required.*

*Fish-Tale Marina has 139 standard on-site parking spaces. An additional 24 parking spaces are leased from Palm Harbor Club, adjacent to Fish-Tale Marina immediately to the north of the parking lot next to the restaurant. A valet parking service with an additional 64 parking spaces will be provided for the restaurant patrons. A total of  $139 + 24 + 64 = 227$  parking spaces will be provided, almost double the 115 parking spaces required by the regulations.*

The application has provided an analysis of the relevant parking requirements of the Town's Land Development Code, Section 34-2020. This section of the code provides that the minimum parking requirements for restaurants is eight (8) spaces per 1,000 square feet of total floor area plus any outdoor seating area. This section of the code also specifies that if the restaurant contains a cocktail lounge or bar an additional five (5) spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. Section 34-683(m) also allows for reduction in parking in the Santini Zoning District. This section of the code is reproduced below:

*(m) Reductions to minimum parking requirements. Neighborhood centers are "park once" districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 of this chapter shall be multiplied by 67 percent to determine the adjusted parking requirement for the Santini district. Adjoining on-street parking spaces may be counted toward this parking requirement.*

Staff concurs with the applicant's required parking analysis and conclusion that there is adequate on-site parking to support the marina and restaurant uses that exist or are proposed. Staff finds that the request is supported by adequate on-site parking.

In the following section of this report, the request consistency with the Town's Comprehensive Plan is discussed.

Request Comprehensive Plan Consistency:

The subject site is classified by the Town's comprehensive plan as "Pedestrian Commercial." The category descriptor policy is reproduced below:

***Policy 4-B-6 "PEDESTRIAN COMMERCIAL":*** a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per

*acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.*

The subject site is thus located in a primarily commercial district namely the Villa Santini Plaze activity center. The site is located along a Secondary Street as identified on Figure 34-17 of the LDC. The requested outdoor seating will contribute to the pedestrian-oriented public realm of this activity center.

The application also addresses Objective 4-F Redevelopment. This Objective is reproduced below:

***OBJECTIVE 4-F REDEVELOPMENT*** – *Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for land-owners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, and by providing building code relief for historic buildings.*

Concerning the Pedestrian Commercial designation and the Redevelopment Objective, the application provides the following discussion:

*The restaurant at Fish Tale Marina, a decades-old building, is being renovated and upgraded. It is accessible directly by pedestrians walking from Santini Plaza via pedestrian promenades and from its neighbor Palm Harbor Club by a direct pedestrian connection. A restaurant with consumption on the premises is an ideal feature in a pedestrian commercial area.*

Staff finds that the proposal is consistent with the Pedestrian Commercial future land use designation of the subject site as well as Objective 4-F. Prior to the renovation effort, the covered deck area was in bad shape with the deck heavily warped. The applicant has stated to staff that this deck area had to be removed and replaced to facilitate the replacement of the adjacent seawall.

The plan contains Policy 4-A-3, which seeks to protect residential neighborhoods from the impacts of "intrusive" commercial activities. This policy is reproduced below:

***POLICY 4-A-3*** *The town shall protect residential neighborhoods from intrusive commercial activities (see Policies 4-C-2 and 4-C-3).*

The subject site is located adjacent to the Palm Harbor Club at Bay Beach condominiums. Policy 4-A-3 also refers to two additional Policies, Policies 4-C-2 and 4-C-3 which are discussed below.

Policy 4-C-2 addresses "Commercial Intensity". This policy states that "the maximum intensity of allowable commercial development in any category may be controlled by height restrictions or by other provisions of this plan and the Land Development Code". The policy also provides that standards in the LDC will encourage more intense commercial uses only in the "Pedestrian Commercial" category. As stated previously, the subject site is located in the Pedestrian Commercial category. The subject site is thus located in an area that accommodates more intense commercial uses.

Policy 4-C-3 provides direction concerning commercial locations for new or expanded commercial uses. This policy notes that where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. This policy also provides that the neighborhood context of proposed commercial uses is of paramount importance. The policy further states that "the sensitivity of a proposed commercial activity to nearby residential areas can be affected by" the type of commercial activities (such as traffic to be generated, hours of operation, and noise); physical scale (such as the height, and bulk of proposed buildings); and, the orientation of buildings and parking. The policy provides that "commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved".

The application provides the following discussion concerning potential impacts to surrounding properties:

***GRANTING THE REQUESTED SPECIAL EXCEPTION COULD IMPACT SURROUNDING PROPERTIES AS FOLLOWS:***

*This location has been in use as a restaurant with consumption on the premises for many years. The impact of the remodeling should be minimal, in that the use as a restaurant with open-air dining will continue as before. The chickee hut, replacing an open deck, will help to reduce the impacts of sound and visual impacts. A proposed visual screen and sound barrier along the north side of the chickee hut and courtyard will also reduce sound and visual impacts. The addition of these features should have the affect (sic) of keeping sound and visual impacts at or below their former levels.*

Staff notes that the subject site was in use as a restaurant prior to the development of Palm Harbor Club. A review of historic aerials confirms this (see Exhibit D). The restaurant and associated outdoor seating on the deck is clearly visible on the 1998 aerial but Palm Harbor Club has not yet been developed. The applicant has provided a letter signed by the Palm Harbor Club Association President (see Exhibit E). This letter, in part, concludes with the following:

*In closing the consensus from the members present was that this waterfront/road access restaurant would be an asset to have next to the Palm Harbor property. To be able get (sic) a first class meal at a fair competitive price within walking distance to the Condominium would be a treasure to the community. Your openness and dedication to being a good neighbor are greatly appreciated by all.*

*Special Note to the Fort Myers Beach Town Council: Please move forward on the last few variances so that the Fish-Tale Restaurant will be open in the fall for all of us to enjoy.*

Town Council is the final arbitrator of what constitutes commercial intrusion into a residential neighborhood. In staff's opinion the requested activity, as conditioned, does not have the potential to disturb the "comfort" of the residents and does not constitute commercial intrusion into a residential neighborhood.

Special Exception Considerations:

The Land Development Code includes a list of items that the Town Council must consider, if applicable, when reviewing approval of a requested special exception. These "Considerations" are contained in LDC Section 34-88 and are reproduced and discussed below.

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

The subject site has been approved and developed with a commercial building that has accommodated the use in the past known as Fish House Restaurant. The Fish House Restaurant recently relocated to the Times Square area of the island and the site entered a major remodeling effort. The applicant is seeking to expand the restaurant and outdoor seating area. The applicant has provided the following concerning this consideration:

*The changed conditions that make approval of the request appropriate are that the restaurant that formerly occupied the restaurant building has moved to a different location and the restaurant facilities are being renovated.*

The subject site is an example of continued redevelopment on the island. Staff notes there are substantial public investments in the area with the Town's Water Refresh Project and the County's improvements to the road as well as replacement of sewer lines.

In addition, the Town Council has recently adopted a Noise Control Ordinance that regulates noise that is generated from properties, including commercial properties. All of these factors constitute changed conditions that could make approval of the request appropriate.

- b. *The testimony of any applicant.*

The Council will be able to hear from the applicant at the public hearing.

c. *The recommendation of staff and of the local planning agency.*

The staff recommendation is contained in this staff report. The LPA recommendation will be obtained at the LPA public hearing.

d. *The testimony of the public.*

The public will have the opportunity to testify at the LPA public hearing as well as at the Town Council public hearing.

e. *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Concerning this consideration the applicant provides the following:

*The request is consistent with the Fort Myers Beach Comprehensive Plan. The following instances are cited:*

*OBJECTIVE 3-C SANTINI "MAIN STREET" – Redevelop the Villa Santini Plaza and Its environs as a Main Street town center for the south end of the island.*

*The Santini district consists primarily of Santini Plaza and Fish Tale Marina. Restaurants that serve cocktails for their patrons to enjoy with their meals are an integral part of the vitality of any main street town center.*

Staff finds that the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan. The request does raise compatibility concerns with the adjacent hotel use.

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

Concerning this consideration the applicant provides the following:

*The request is in full compliance with the Fort Myers Beach Land Development Code. The request complies with the provisions of Section 34, Subdivision III. – Santini Zoning District and other section (sic) of the Fort Myers Beach Land Development Code. The proposed use has been an existing use at this specific location for many years.*

The proposed use is located in a fairly intense land use category, "Pedestrian Commercial", and is located in an activity center. The subject site has adequate parking.

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

Concerning this consideration the applicant provides the following:

*Fish Tale Marina has been designated as a 'Green Marina' by the Florida Department of Environmental Protection and is committed to clean water practices and protection of our environment and ecosystems. The requested COP does not impair or directly affect that commitment.*

The subject site is fully developed, contains no environmentally critical areas or natural resources to protect, conserve, or preserve other than the adjacent waters which are connected to the back bay which has been addressed by the facility being designated as a "Green Marina".

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

Concerning this consideration the applicant provides the following:

*The request for a COP is compatible with uses in the Comprehensive Plan and with existing uses, in that a restaurant with consumption on the premises has existed for years in the location for which this COP is now requested.*

The applicant has indicated to staff that the hours of operation that is proposed 7 AM to 1 AM has been the hours of operation for the then existing restaurant for approximately 20 years on the site. The applicant has indicated that no live entertainment will occur at the restaurant. The Palm Harbor Club review letter (see Exhibit E) also mentions that the applicant explained to them that "no loud music/live bands would be present or permitted during the normal hours of operation..." Staff is recommending a condition that states live entertainment is prohibited. Staff finds that the project, as conditioned, is compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

- i. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter (Chapter 34).*

Concerning this consideration the applicant provides the following:

*The request is in full compliance with the Fort Myers Beach Land Development Code. The request complies with the provisions of Section 34, Subdivision III. – Santini Zoning District.*

Staff finds that the requested COP and outdoor seating will be in compliance with applicable general zoning provisions.

**Special Exception Findings and Conclusions:**

The Land Development Code, in Section 34-88, provides a series of *Findings* that Town Council has to make before granting any special exception. The Town Council must find that the applicant has demonstrated that the requested special exception:

- a. Complies with the Fort Myers Beach Comprehensive Plan.
- b. Complies with the Land Development Code.
- c. Complies with other applicable town ordinances or codes.

Staff recommends that the Town Council find that the applicant has demonstrated that the requested special exception complies with the Town's Comprehensive Plan and the Land Development Code.

### **III. RECOMMENDATION**

Staff recommends APPROVAL of the requested special exception to permit consumption on premises (4COP - SRX) for the Fish Tale Marina Restaurant as depicted on Exhibit C and as conditioned.

If the Town Council chooses to approve the request, Staff is proposing to codify the conditions that apply to this restaurant, so if approved, this set of conditions would supersede the previous approvals:

#### **CONDITIONS OF APPROVAL:**

1. *Alcoholic beverage consumption on premises on the subject property is approved in conjunction with a restaurant use as defined in the LDC only (consistent with LDC Section 34-1264(k)). Alcoholic beverage consumption on premises in conjunction with any other use, specifically including but not limited to a bar or cocktail lounge, will require a new approval in compliance with all applicable requirements of the LDC at that time.*
2. *The area of the subject property used for outdoor consumption on premises must be confined entirely to the proposed areas as shown on Exhibit C.*
3. *Outdoor seating for the restaurant is limited to those areas as shown on Exhibit C.*
4. *Sales, service, and consumption of alcoholic beverages must not begin earlier than 7:00 AM and must end no later than 1:00 AM each day (Hours of operation are from 7 AM to 1 AM).*
5. *Live entertainment is prohibited.*

#### **Attachments:**

- A. - Legal Description/Plot Plan
- B. - Application Materials
- C. - Restaurant Seating Plan
- D. - Historic Aerials
- E. - Palm Harbor Club Review Letter

Case # SEZ 17-0003  
Planner \_\_\_\_\_

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



# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-A

#### Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

<b>Project Name:</b> Fish-Tale Marina
<b>Authorized Applicant:</b> R. J. Ward, PE
<b>LeePA STRAP Number(s):</b>
03-47-24-W1-00011.0010

<b>Current Property Status:</b>
<b>Current Zoning:</b> Santini district
<b>Future Land Use Map (FLUM) Category:</b> Pedestrian Commercial
<b>Platted Overlay?</b> <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <b>FLUM Density Range:</b> 6 DU/ac

#### Requested Action:

<input type="checkbox"/> Use of premises in the EC (Environmentally Critical) zoning district for:
<input checked="" type="checkbox"/> Use of premises in the <u>Santini</u> zoning district for:
<b>Consumption on Premises:</b>





# EXHIBIT B

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

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

## **For Consumption of Alcoholic Beverages (COP) license approval:**

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

## **For transit terminals:**

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

## **For use of the EC zoning district:**

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

# EXHIBIT B

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

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

## Guide to Filing Supplement PH-A for Special Exceptions

**Case Number** will be inserted by Community Development staff.

**Project Name** must be the same as the name used on the Request for Public Hearing form.

**Authorized Applicant** must be the same as on the Request for Public Hearing form.

**STRAP numbers** must be the same as on the Request for Public Hearing form.

**Current status of property** must be the same as on the Request for Public Hearing form.

**Requested Action:** Indicate the nature of the request and include the current zoning of the property.

### Part 1 Narrative Statements:

#### **“Request for...”**

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

#### **“The property qualifies for a special exception because...”**

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

# EXHIBIT B

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

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

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

## **“Granting the requested special exception could impact surrounding properties as follows...”**

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

## **Part 2 Submittal Requirements**

**Public Hearing Application Form.** Applications for special exception consist of the Public Hearing form and the supplemental form PH-A. Both parts of the application form must be completed and submitted.

**Site Plan.** The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

EXHIBIT B

AFFIDAVIT OF OWNERSHIP OR UNIFIED CONTROL, AND AUTHORIZATION OF AGENT

I do hereby swear and affirm that I, AC DURRETT, Owners(s) or Corporate Officer of Fish Tale Marina, Company Name and/or Address

have full power and authority to represent and bind all legal and equitable owners of the property herein described. As such, I affirm the owner's responsibility for payment of all fees, taxes, assessments and/or debts incurred in the development of this property.

Further I affirm that I authorize Spectrum Engineering, Inc., its officers and employees, to act as agent in procuring the required reviews, permits, and/or approvals associated with the development of this property.

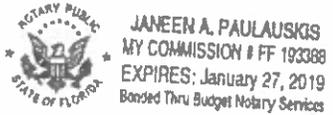
Description: STRAP 03-47-24-W1-00011.0010 7225 Estero Blvd., Fort Myers Beach, Florida See attached Legal Description

Signature: AC Durrett Print Name(s), Title, and Date: AC DURRETT PRES MAR. 27th 2017

State of Florida County of Lee

Sworn to and subscribed before me this 27 day of March, 2017 by the aforesigned, who is personally known to me or has produced as identification and who did (did not) take an oath.

Notary Public: Janeen Paulauskis CC # FF 193388 My commission expires: January 27, 2019



## EXHIBIT B

### Narrative to Accompany Application for Public Hearing and Supplement PH-A

#### A. Request for:

Request for approval of a Special Exception in the Santini zoning district to grant a Consumption On Premise (COP) license approval for the restaurant at Fish Tale Marina, located at 7225 Estero Blvd and currently being remodeled. The property is in the Pedestrian Commercial future land use category.

The COP permit will allow for the sale of beer, wine and liquor in support of food service through the State of Florida's 4COP SRX license. The site is the former home of the Fish House Restaurant which has relocated. The restaurant facilities are being remodeled. The prior COP license licensed the restaurant and the covered deck dining area. A copy of the page from the previously approved COP showing the areas previously approved accompanies this narrative. The areas previously approved for C.O.P. are also shown on the seating plan accompanying this narrative. The remodeling includes a new open air dining area under the cover of a chickee hut, an open air dining area on the covered deck south the screened dining room, and an open courtyard waiting area that would also be licensed by the new COP.

#### B. Reasons for request:

*The property qualifies for a Special Exception because:* The request falls under the condition in the Fort Myers Beach Land Development Code Section 34-1264(a)(2)b which states that a special exception for consumption on the premises shall be required for "Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership." The open air dining under the cover of the chickee hut, covered deck, and the courtyard waiting area are located within 500 feet of dwelling units under separate ownership.

#### Considerations:

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

The changed conditions that make approval of the request appropriate are that the restaurant that formerly occupied the restaurant building has moved to a different location and the restaurant facilities are being renovated.

*Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

The request is consistent with the Fort Myers Beach Comprehensive Plan. The following instances are cited:

*OBJECTIVE 3-C SANTINI "MAIN STREET" -Redevelop the Villa Santini Plaza and Its environs as a Main Street town center for the south end of the island.*

## EXHIBIT B

The Santini district consists primarily of Santini Plaza and Fish Tale Marina. Restaurants that serve cocktails for their patrons to enjoy with their meals are an integral part of the vitality of any main street town center.

*POLICY 4-B-6 " PEDESTRIAN COMMERCIAL": a primarily commercial district applied to... the area around the Villa Santini Plaza.... Commercial activities must contribute to the pedestrian-oriented public realm...*

and

*OBJECTIVE 4-F REDEVELOPMENT - Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ...by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct,...*

The restaurant at Fish Tale Marina, a decades-old building, is being renovated and upgraded. It is accessible directly by pedestrians walking from Santini Plaza via pedestrian promenades and from its neighbor Palm Harbor Club by a direct pedestrian connection. A restaurant with consumption on the premises is an ideal feature in a pedestrian commercial area.

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

The request is in full compliance with the Fort Myers Beach Land Development Code. The request complies with the provisions of Section 34, Subdivision III. - Santini Zoning District and other section of the Fort Myers Beach Land Development Code. The proposed use has been an existing use at this specific location for many years.

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

Fish Tale Marina has been designated as a 'Green Marina' by the Florida Department of Environmental Protection and is committed to clean water practices and protection of our environment and ecosystems. The requested COP does not impair or directly affect that commitment.

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

The request for a COP is compatible with uses in the Comprehensive Plan and with existing uses, in that a restaurant with consumption on the premises has existed for years in the location for which this COP is now requested.

*• Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The request is in full compliance with the Fort Myers Beach Land Development Code. The request complies with the provisions of Section 34, Subdivision III. - Santini Zoning District.

### **C. Surrounding properties:**

*Granting the requested Special Exception could impact surrounding properties as follows:* This location has been in use as a restaurant with consumption on the

## EXHIBIT B

premises for many years. The impact of the remodeling should be minimal, in that the use as a restaurant with open-air dining will continue as before. The chickee hut, replacing an open deck, will help to reduce the impacts of sound and visual impacts. A proposed visual screen and sound barrier along the north side of the chickee hut and courtyard will also reduce sound and visual impacts. The addition of these features should have the affect of keeping sound and visual impacts at or below their former levels.

### **Parking:**

The Town of Fort Myers Beach Land Development Code, Section 34-2020, parking regulations require marinas to provide parking at the rate of one space per two boat slips and one space per six dry unit stalls. Fish-Tale Marina is permitted to have 98 wet slips and 330 dry storage units, although fewer than these numbers exist at present. The regulations require the marina to provide  $1/2 \times 98$  and  $1/6 \times 330$ , or  $49 + 55 = 104$  parking spaces.

The minimum parking requirement for restaurants is eight spaces per 1,000 square feet of total floor area. If the restaurant contains a cocktail lounge or bar, the minimum requirement is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates. The restaurant building and the associated covered deck, chickee hut, and outdoor waiting area contain a total of 7,879 square feet. The bar area is 700 square feet within the area of the covered deck and chickee hut. The regulations require that the restaurant must have  $8 \times 7879/1000$  plus  $5 \times 700/1000$ , or  $63 + 4 = 67$  parking spaces. The parking code, Section 34-2020, requires that  $104 + 67 = 171$  parking spaces must be provided for the marina and the restaurant.

The Santini Zoning District, the pedestrian commercial district within which Fish-Tale Marina lies, contains the following provision: "Reductions to minimum parking requirements. Neighborhood centers are "park-once" districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 of this chapter shall be multiplied by 67 percent to determine the adjusted parking requirement for the Santini district."  $171 \times 67\% = 115$  parking spaces required.

Fish-Tale Marina has 139 standard on-site parking spaces. An additional 24 parking spaces are leased from Palm Harbor Club, adjacent to Fish-Tale Marina immediately to the north of the parking lot next to the restaurant. A valet parking service with an additional 64 parking spaces will be provided for the restaurant patrons. A total of  $139 + 24 + 64 = 227$  parking spaces will be provided, almost double the 115 parking spaces required by the regulations.

Refer to the parking plan accompanying this narrative.

## EXHIBIT B

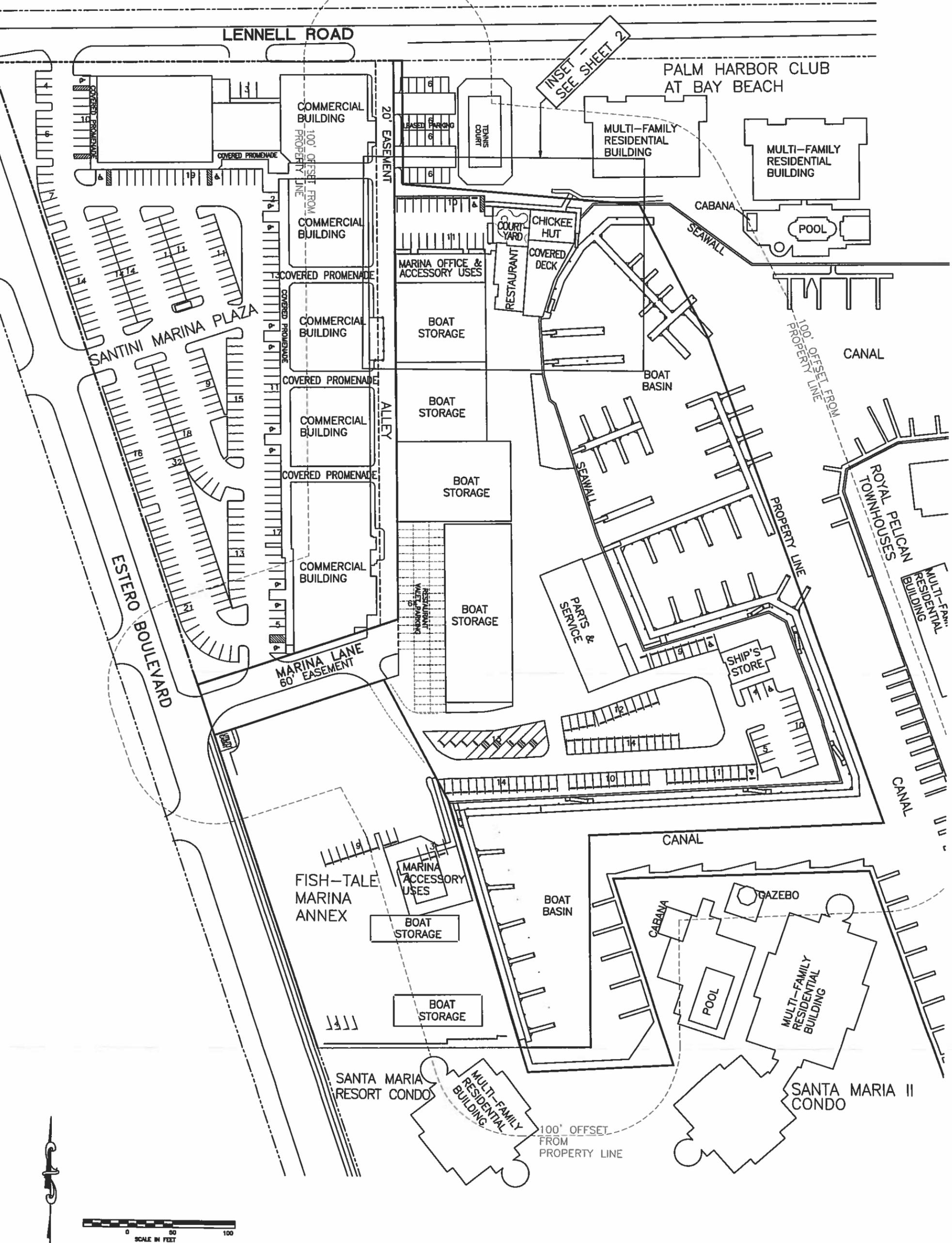
### For Consumption of Alcoholic Beverages (COP) license approval

- a. *Notarized authorization from the Property Owner to apply for permit*
  - Affidavit accompanies this application
- b. *A statement indicating:*
  - The type of establishment:*
    - A restaurant at Fish-Tale Marina
    - The type of state license to be acquired,*  
4COP- SRX
    - *And the planned hours of operation.*
    - 7:00am to 1:00am
    - Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.*
    - The request is for, the restaurant building, a covered open-air screened dining room, a covered open-air unscreened dining area, an open-air chickee hut, and a landscaped courtyard waiting area. The areas and seating capacities are shown on the accompanying seating plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

FORT MYERS BEACH FIRE CONTROL

TOWN OF FORT MYERS BEACH WATER STORAGE

EXHIBIT B



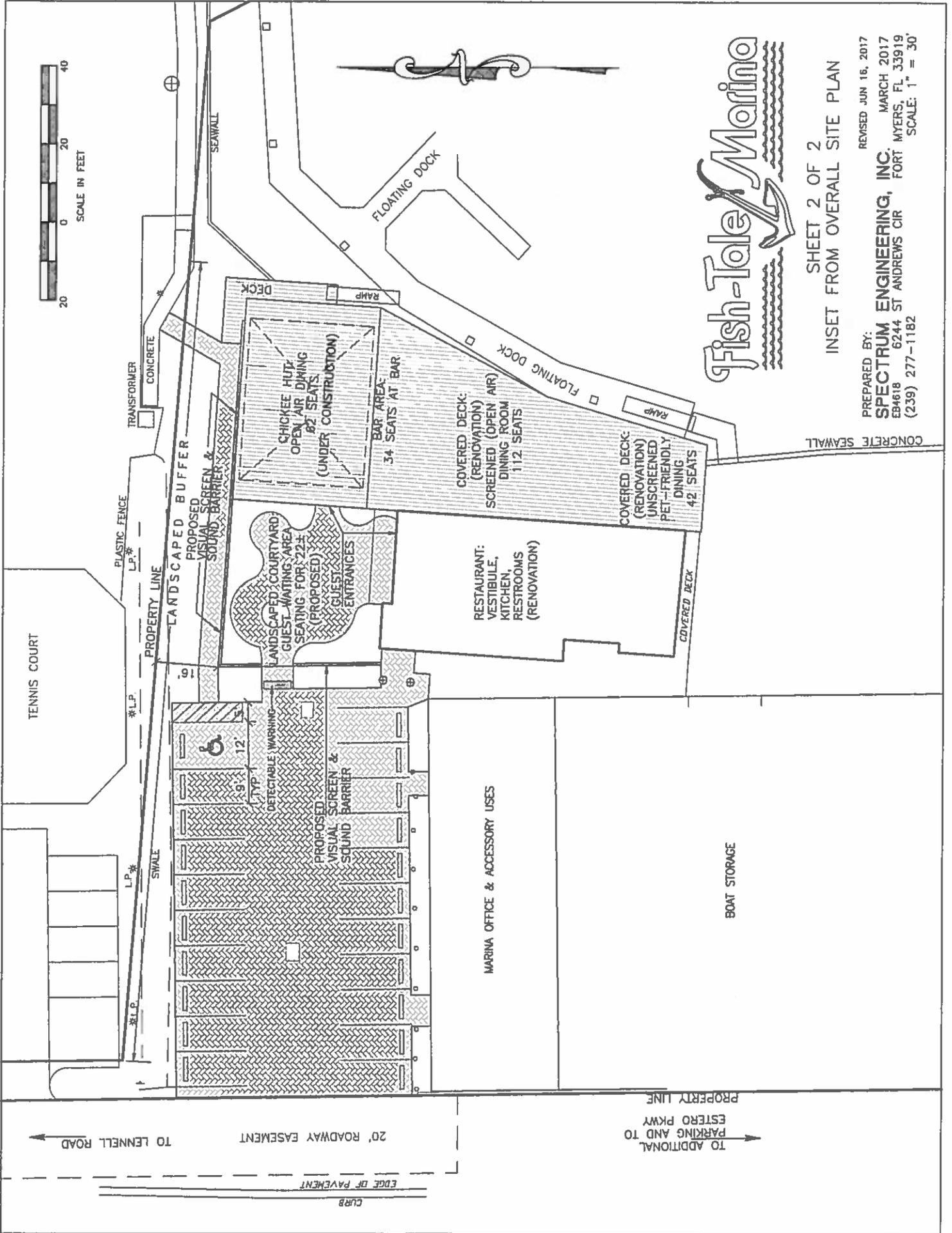
SHEET 1 OF 2  
SEE INSET. SHEET 2 OF 2

**SANTINI DISTRICT  
OVERALL SITE PLAN**  
FISH TALE MARINA, INC.  
7225 ESTERO BOULEVARD  
FT. MYERS BEACH, FL 33931-4789

PROJECT 2116  
DATE: MAR 2017  
SCALE: 1" = 100'

**SPECTRUM  
ENGINEERING, INC.**  
6244 ST. ANDREWS CIR. N FORT MYERS, FLORIDA 33919 EB4618  
rjward@SpectrumEngineering.net 239-277-1182

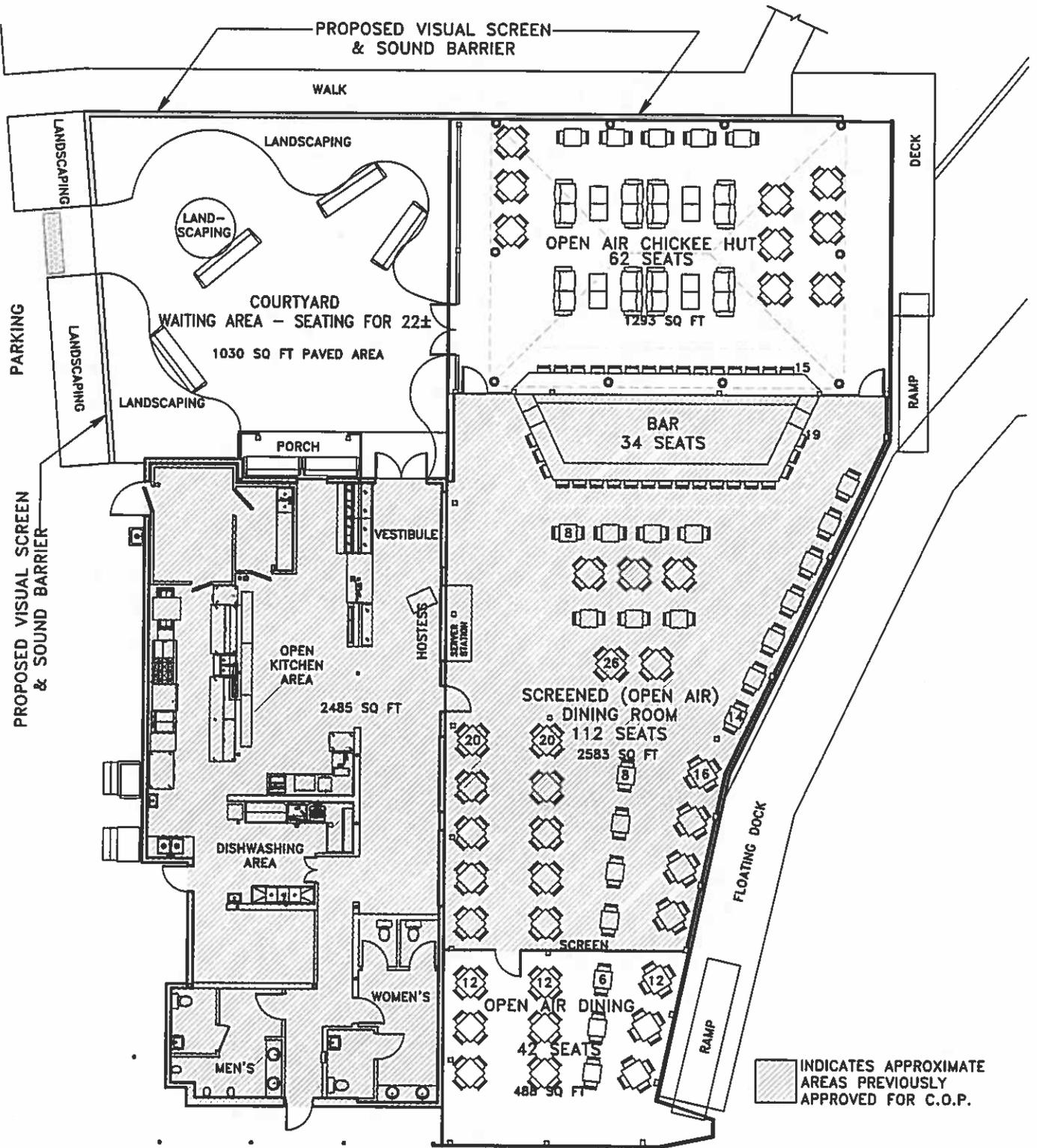
# EXHIBIT B



SHEET 2 OF 2  
 INSET FROM OVERALL SITE PLAN  
 PREPARED BY:  
**SPECTRUM ENGINEERING, INC.**  
 EB4618 6244 ST ANDREWS CIR  
 (239) 277-1182  
 REVISED JUN 16, 2017  
 MARCH 2017  
 FORT MYERS, FL 33919  
 SCALE: 1" = 30'



# EXHIBIT B



KITCHEN AND RESTROOMS BUILDING.....	2485 SF	
COVERED DECK SCREENED (OPEN AIR) DINING ROOM.....	2583 SF	112 SEATS
COVERED DECK UNSCREENED (OPEN AIR PET-FRIENDLY) DINING.....	488 SF	42 SEATS
CHICKEE HUT OPEN AIR DINING.....	1293 SF	62 SEATS
OUTDOOR WAITING AREA.....	1030 SF	22 SEATS
BAR.....		34 SEATS
TOTALS.....	7879 SF	272 SEATS

## FISH-TALE MARINA RESTAURANT, SEATING PLAN

SCALE:  
1/16"=1'-0"

REVISED 6/21/2017

# EXHIBIT B

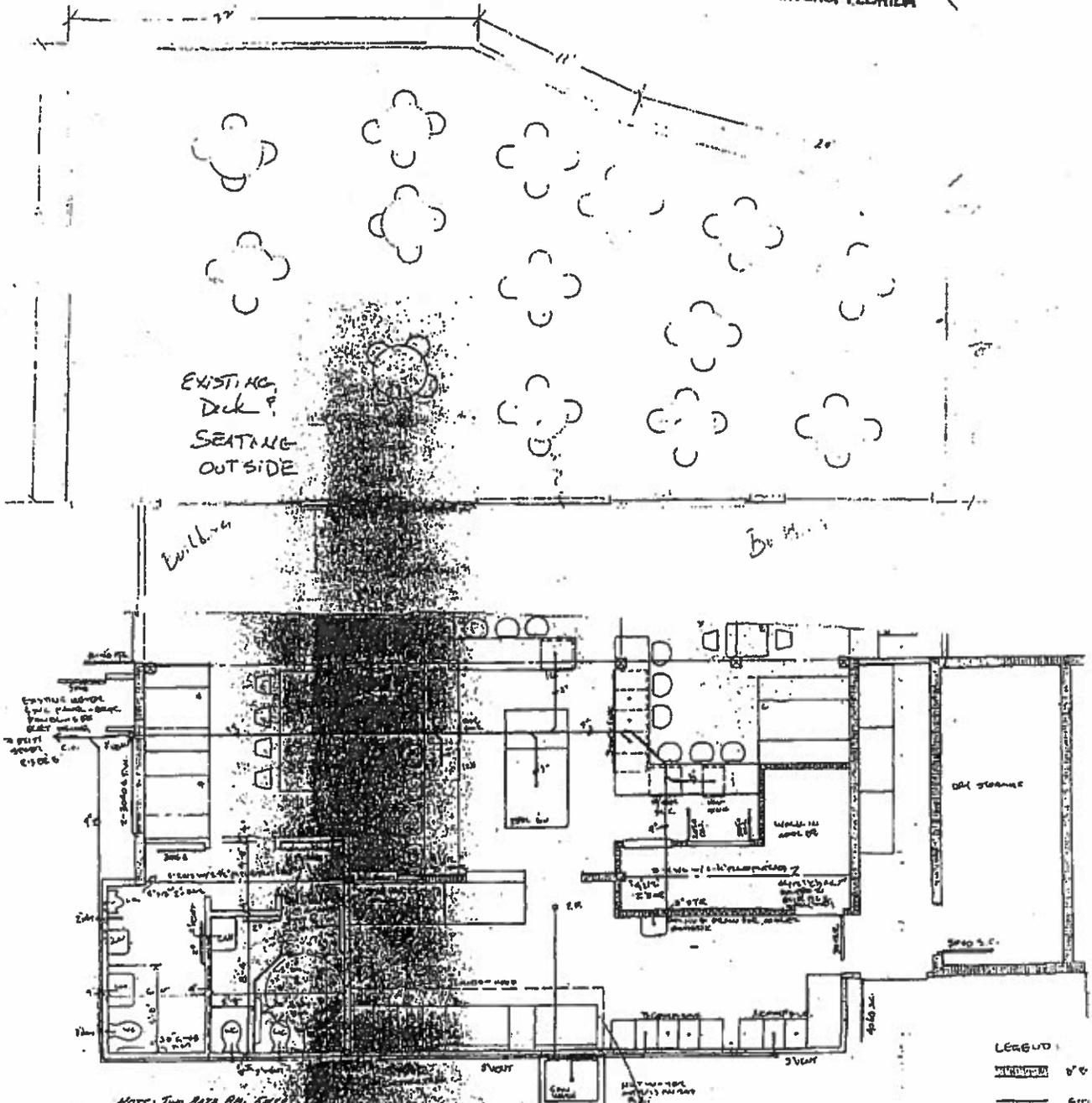
JUN 4 2002 2:23PM DIV. OF REG. FORT MYERS

## PREVIOUSLY APPROVED C.O.P. PLAN

**RECEIVED**  
DEPT. OF BUSINESS REGULATIONS

FEB 18, 1996

DIVISION OF BEVERAGE  
FORT MYERS, FLORIDA



EXISTING Deck SEATING OUTSIDE

Building

EXISTING RESTROOM  
EXISTING PLUMBING  
EXISTING ELECTRICAL  
EXISTING SERVICE COUNTER

NOTE: Two Bath Rm. Girls  
To Also Self Clean

LEGEND  
V.C.  
6m

*Handwritten signature and date: 1/24*

**EXHIBIT B**

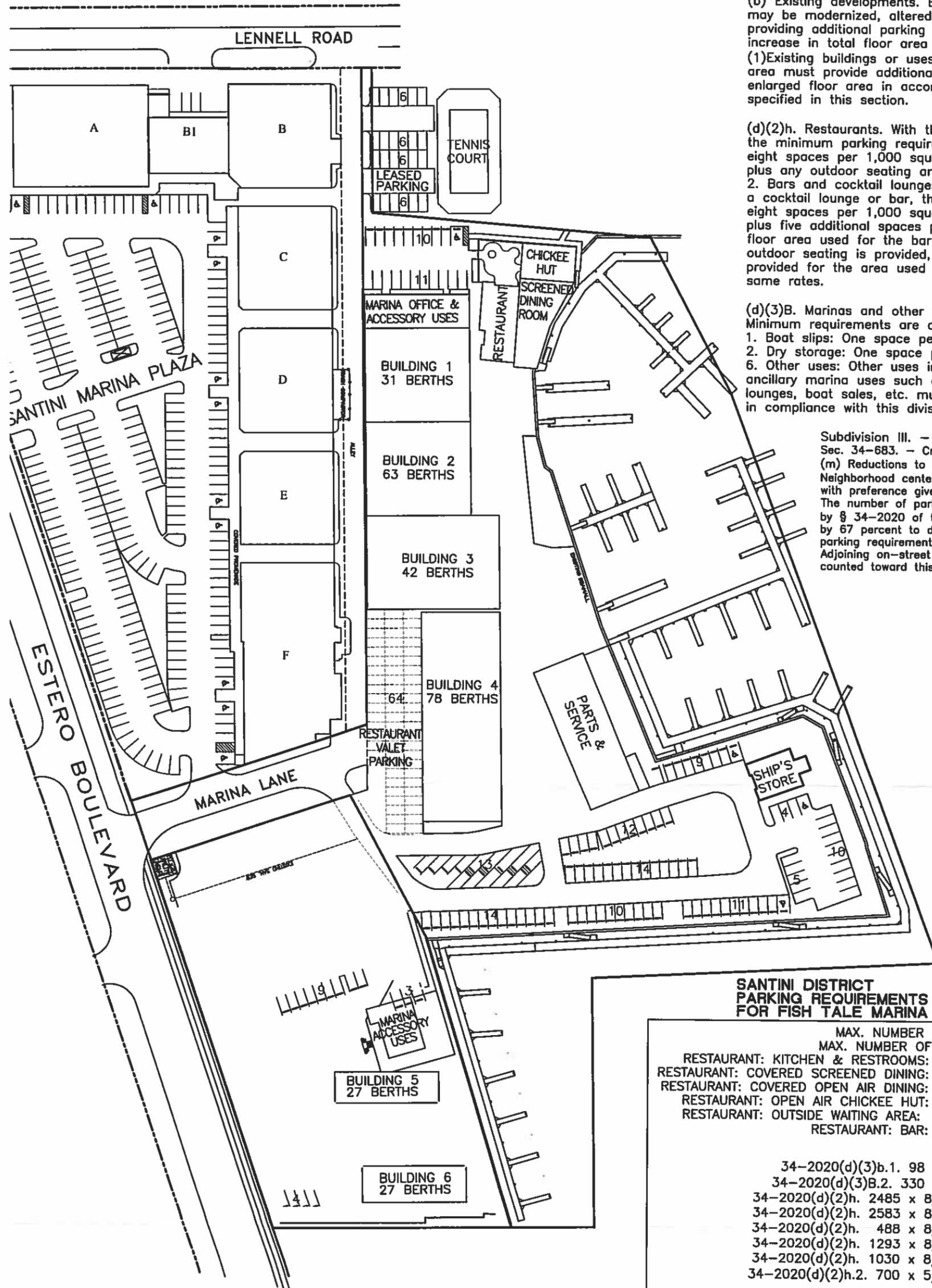
Fort Myers Beach Land Development Code  
**Parking Requirements**

Sec. 34-2020. - Required parking spaces  
 (b) Existing developments. Existing buildings and uses may be modernized, altered, or repaired without providing additional parking spaces, if there is no increase in total floor area or capacity.  
 (1) Existing buildings or uses enlarged in terms of floor area must provide additional parking spaces for the enlarged floor area in accordance with the standards specified in this section.

(d)(2)h. Restaurants. With the exceptions noted below, the minimum parking requirements for restaurants is eight spaces per 1,000 square feet of total floor area plus any outdoor seating area.  
 2. Bars and cocktail lounges. If the restaurant contains a cocktail lounge or bar, the minimum requirement is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.

(d)(3)B. Marinas and other water-oriented uses. Minimum requirements are as follows:  
 1. Boat slips: One space per two slips.  
 2. Dry storage: One space per six unit stalls.  
 6. Other uses: Other uses including accessory or ancillary marina uses such as restaurants, bars, or lounges, boat sales, etc. must be calculated separately in compliance with this division.

Subdivision III. - Santini Zoning District  
 Sec. 34-683. - Creation of neighborhood center.  
 (m) Reductions to minimum parking requirements. Neighborhood centers are "park-once" districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 of this chapter shall be multiplied by 67 percent to determine the adjusted parking requirement for the Santini district. Adjoining on-street parking spaces may be counted toward this parking requirement.



**SANTINI DISTRICT  
 PARKING REQUIREMENTS  
 FOR FISH TALE MARINA**

MAX. NUMBER OF WET BERTHS:	98
MAX. NUMBER OF DRY BERTHS:	330
RESTAURANT: KITCHEN & RESTROOMS:	2485 SQUARE FEET
RESTAURANT: COVERED SCREENED DINING:	2583 SQUARE FEET
RESTAURANT: COVERED OPEN AIR DINING:	488 SQUARE FEET
RESTAURANT: OPEN AIR CHICKEE HUT:	1293 SQUARE FEET
RESTAURANT: OUTSIDE WAITING AREA:	1030 SQUARE FEET
RESTAURANT: BAR:	700 SQUARE FEET

**PARKING STANDARDS:**

34-2020(d)(3)b.1.	98 x 1/2 = 49 SPACES
34-2020(d)(3)B.2.	330 x 1/6 = 55 SPACES
34-2020(d)(2)h.	2485 x 8/1000 = 20 SPACES
34-2020(d)(2)h.	2583 x 8/1000 = 21 SPACES
34-2020(d)(2)h.	488 x 8/1000 = 4 SPACES
34-2020(d)(2)h.	1293 x 8/1000 = 10 SPACES
34-2020(d)(2)h.	1030 x 8/1000 = 8 SPACES
34-2020(d)(2)h.2.	700 x 5/1000 = 4 SPACES

TOTAL PARKING SPACES REQUIRED = 171 SPACES  
 PARKING REDUCTION FACTOR: 0.67  
 TOTAL NO. OF PARKING SPACES REQUIRED: 115\*  
 \*DOES NOT TAKE CREDIT FOR THE PROVISIONS OF 34-2020(b)

**FISH TALE PARKING AVAILABILITY**

NUMBER OF PARKING SPACES SHOWN:	
FISH TALE MARINA, EXISTING:	139
LEASED PARKING SPACES:	24
RESTAURANT VALET SPACES:	64
TOTAL NUMBER OF SPACES AVAILABLE:	227



**PARKING PLAN**

FISH TALE MARINA, INC.  
 7225 ESTERO BOULEVARD  
 FT. MYERS BEACH, FL 33931-4789

PROJECT 2116  
 DATE: MAR 2017  
 SCALE: 1" = 100'

REVISED 6/21/2017



8244 ST. ANDREWS CR. N FORT MYERS, FLORIDA 33919 EB4818  
 rjward@SpectrumEngineering.net 239-277-1182



## EXHIBIT B

A list of consumption-on-premises, already in operation on properties within 500 feet of the property for which this request pertains.

<u>Name</u>	<u>Location</u>	<u>Address</u>
South Beach Grille	Santini Marina Plaza	7205 Estero Blvd.
Skye's	Santini Marina Plaza	7205 Estero Blvd.
Castaway's Bar & Grill	Santini Marina Plaza	7205 Estero Blvd.
The Sandbar & Grill	Santini Marina Plaza	7205 Estero Blvd.

EXHIBIT B

RECEIVED  
JUN 22 2017

SPECTRUM ENGINEERING, INC.

6244 St. Andrews Cir N  
Fort Myers, FL 33919  
239-277-1182  
www.SpectrumEngineering.net

BY:.....

EB4618

June 22, 2017

Town of Fort Myers Beach  
2525 Estero Blvd  
Fort Myers Beach, FL 33931

Attn Matt Noble

Re: SEZ17-0003 Fish-Tale Marina COP

To Whom It May Concern:

We respond to your sufficiency comments dated June 15, 2017, as follows:

*Request: The submittal provides that this is a "Request for approval of a Special Exception in the Santini zoning district to grant a Consumption on Premise (COP) license approval for the restaurant at Fish Tale Marina ... " Staff understands that the restaurant already has COP approval and that this application is covering areas not previously approved. Please revise the application materials to specifically identify the portions of the property that have been previously approved for COP and the areas now being proposed to be allowed COP. Please provide copies of previous COP approvals for this restaurant.*

The narrative does addresses this issue; he second paragraph under A. Request for: contains the following statement: "The prior COP license licensed the restaurant and the covered deck dining area. The remodeling includes a new open air dining area under the cover of a chickee hut, an open air dining area on the covered deck south of the screened dining room, and an open courtyard waiting area that would also be licensed by the new COP." A copy of the previously approved C.O.P. plan is provided herewith and the seating plan has been augmented to show the area previously approved. The following references have been added to this paragraph of the narrative: "A copy of the page from the previously approved COP showing the areas previously approved accompanies this narrative. The areas previously approved for C.O.P. are also shown on the seating plan accompanying this narrative"

Copies of previously approved COP2002-00066 and COP2005-00197 are submitted herewith.

## EXHIBIT B

*Site Plan & Seating Plan: Please clarify the number of seats as the application includes some contradictory information. For example, the site plan (sheet 2 of 2) includes "Unscreened Pet-Friendly Dining 112 Seats" while the restaurant seating plan lists "Open Air Dining 42 Seats" in the same location. Please correct/clarify the seating plans.*

There was an error on the site plan inset. 42 is the correct number. A corrected copy of this plan is accompanies this letter.

*Parking Calculations: Please revise the project narrative to include a discussion and analysis of the Town's parking requirements and how the site accommodates the required amount of parking.*

A discussion and analysis of the Town's parking requirements and how the site accommodates the required amount of parking has been added to the narrative.

*Please include an exhibit that depicts the location of the square footages used in the analysis. This could be accomplished by adding this information to the seating plan exhibit. For example, where is the courtyard waiting area 1,660 square footage accounted for in the analysis?*

As we discussed, the paved area within the landscaped courtyard, 1030 square feet, has been added to the parking analysis, both on the parking plan and in the narrative.

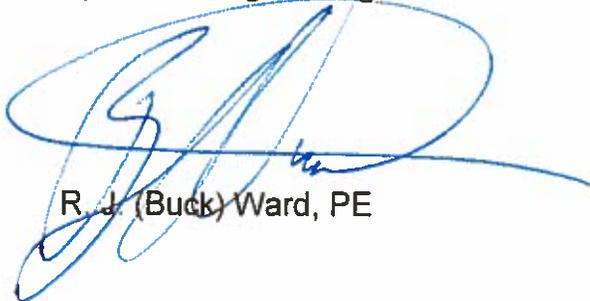
*The application refers to 24 leased spaces. Please provide a copy of the lease agreement.*

A copy of the parking lease is submitted herewith

Accompanying this letter please find:

- Supplement PH-A, Additional Required Information for a Special Exception Application, Replaced or new pages are indicated with a small red R in the lower right corner
- COP2002-00066 and COP2005-00197
- Parking lease

Respectfully submitted,  
Spectrum Engineering, Inc.



R. J. (Buck) Ward, PE

EXHIBIT B

DBPR ABT-6023 - Division of Alcoholic Beverages and Tobacco Special License Inspection Form

Florida's Future...  
**Right Here.  
Right Now.**

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL  
REGULATION  
1940 North Monroe Street  
Tallahassee, FL 32399-0783

If you have any questions or need assistance in completing this application, please contact the Department of Business and Professional Regulation. Please submit your completed application to your local district office. Submission may be done by mail, through appointment or dropped off at your local district office. A District Office Address and Contact Information Sheet can be found on AB&T's page of the DBPR web site at the link provided below.

<http://www.state.fl.us/dbpr/abt/contact/index.shtml>

Full Name of Applicant (If this is a corporation or other legal entity, enter the name as registered with the Secretary of State)		
Island Endeavors, Inc.		
Trade Name (D/B/A)	Telephone Number	
Fish House Restaurant (Inc)	239	947 7755
Current Location Address		
1205 Estero Blvd.		
City	State	Zip Code
Ft. Myers Beach	FL	33923

Full Name of Applicant		
Island Endeavors, Inc.		
Food Service - Special Restaurant License		
Square footage of entire premises to be licensed		
<ul style="list-style-type: none"> <li>Must derive at least 51 percent of its gross revenue from the sale of food and non-alcoholic beverages.</li> <li>Must include any space used exclusively in the operation of the restaurant, including but not limited to, kitchens, food service areas, pantries, storage rooms, offices and bathrooms.</li> <li>Must be contiguous and under the management and control of a single, licensed restaurant establishment.</li> </ul>		
<input type="checkbox"/> at least 1,800 sq. ft.	<input checked="" type="checkbox"/> at least 2,500 sq. ft.	<input type="checkbox"/> at least 3,000 sq. ft.
<input type="checkbox"/> at least 4,000 sq. ft.	<input type="checkbox"/> at least 5,000 sq. ft.	

kwiktag\* 034 999 786



EXHIBIT B

SECTION 10.01 - ZONING AUTHORITY GOVERNING ALL BUSINESS, OCCUPANCY AND PLANNING

Trade Name (D/B/A) Fish House Restaurant (The)

Street Address 7205 Estero Blvd.

City Ft. Myers Beach County Lee State FL Zip Code 33909

Are there outside areas which are contiguous to the premises which are to be part of the premises sought to be licensed?  
 Yes  No AKW

If this application is for issuance of an alcoholic beverage license where zoning approval is required, the zoning authority must complete "A" and "B." If zoning is not required, the applicant must complete section "B."

A. The location complies with zoning requirements for the sale of alcoholic beverages or wholesale tobacco products pursuant to this application for a Series 4 COP license. SAX

Signed AKW Date 11/29/05

Title Permit Rep COP 2005 - 00197

B. Is the location within the limits of an "Incorporated City or Town?"  Yes  No  
 If yes, enter the name of the city or town: Ft. Myers Beach

034724 W1000110010

RECEIVED  
NOV 29 2005

PERMIT COUNTER



EXHIBIT B

TOTAL TREES REQUIRED = 80  
 TOTAL SHRUBS REQUIRED = 155

▲ UTILITIES:

WATER:  
 FLORIDA CITIES WATER COMPANY  
 1700 COLLEGE PARKWAY  
 FORT MYERS, FL 33907  
 (813) 936-0247

SEWER:  
 LEE COUNTY UTILITIES  
 2170 MCGREGOR BLVD.  
 FORT MYERS, FL 33907  
 (813) 335-2825

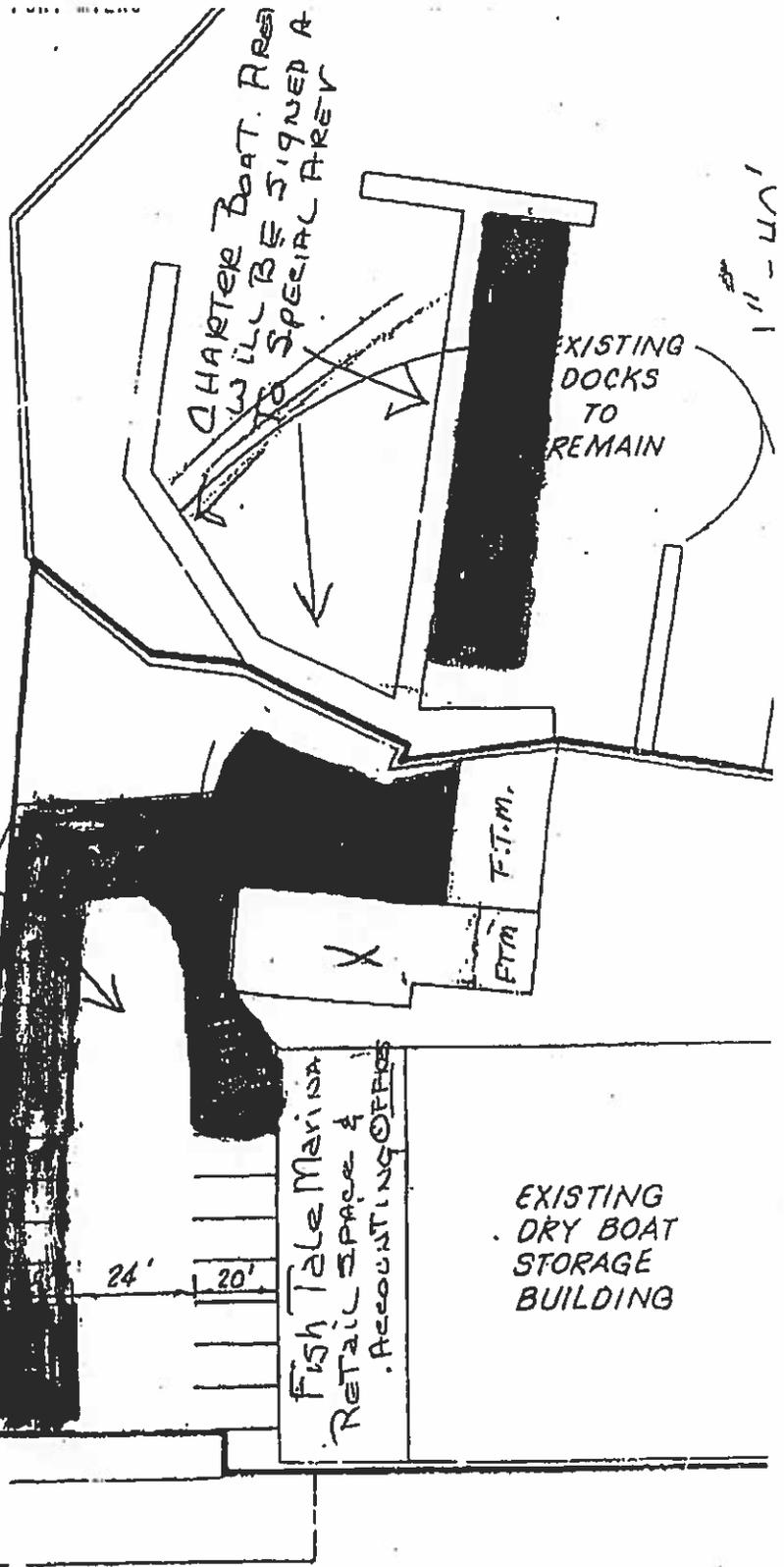
POWER:  
 FLORIDA POWER AND LIGHT CO.  
 1924 VICTORIA AVENUE  
 FORT MYERS, FL 33901  
 (813) 332-2427

TELEPHONE:  
 UNITED TELEPHONE OF FLORIDA  
 POST OFFICE BOX 370  
 FORT MYERS, FL 33902  
 (813) 335-3111

REFUSE COLLECTION:  
 BFI  
 17101 PINE RIDGE ROAD, SW  
 FORT MYERS, FL 33931  
 (813) 466-8800

NO OTHER PUBLIC WATER OR  
 SEWER SYSTEMS ARE LOCATED  
 WITHIN ONE-QUARTER MILE.

PARKING TO SHARED BY LAZY FLAMINGO  
 FISH TALE MARINA  
 YACHTS OF FLOW



RE-STRIPE EXISTING  
 PARKING LOT AS  
 SHOWN ~ 22 SPACES  
 1 ~ HANDICAP @ 12' x 20'  
 8 @ 10' x 20'  
 13 @ 10' x 18'

EXISTING  
 DRY BOAT  
 STORAGE  
 BUILDING

Fish Tale Marina  
 Island Endeavors, Inc. *De Durette*  
*Blumenthal*

EXISTING REI  
 VIII A 50N7

# EXHIBIT B

RESOLUTION NUMBER Z-88-268

2552583

## RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

WHEREAS, Stardial Investment Company, Buncha Beach Land Trust, & Fish Tale Marins, Inc. has properly filed an application for a rezoning from C-1 and OT to Commercial Planned Development, to permit the expansion of an existing marina not to exceed 55 feet above average grade, on 7.9± total acres of land. The proposed development will also include a maximum of 428 wet and dry slips, as well as accessory uses, and other commercial uses including retail and restaurant use.

NOTE:

If approved, the Master Concept Plan will deviate from the following Lee County standards:

- (1) Zoning: (461.C.2.A.1) to change minimum building setback from 15 feet to approximately one foot for existing and proposed dry boat storage buildings, and to the width of the minimum buffer for pavement.
- (2) Zoning: (461.C.2.A.2) to change minimum setback for parking or internal roads or drives from 25 feet to the width of the minimum buffer.
- (3) Zoning: (461.C.4.c.) to eliminate requirement that artificial bodies of water may not exceed 25% of the minimum required open space.
- (4) Zoning: (202.10.E) to eliminate requirement for eight-foot high visual screen where abutting uses are separated from the proposed development by a navigable waterway.
- (5) Zoning: (202.13.G) to change requirement for paved parking areas to allow alternate surfaces for improved, all weather parking.
- (6) Zoning: (202.13.J.1.) to allow in accordance with 202.B.H. joint use of parking so that up to one half of the spaces required for the marina may be used to offset the required parking spaces for a standard restaurant.
- (7) Zoning: (202.15.A.4) to eliminate the requirement for increased setback for buildings exceeding 35 feet on Estero Island.
- (8) Development Standards Ordinance: (C.3.h.) to reduce minimum intersection separation from 660 feet to approximately 125 feet.
- (9) Development Standards Ordinance: (C.6.c.(3)(e)) to change the provision that existing bodies of water may be used to offset up to a maximum of 25 percent of the required open space area to 50 percent.
- (10) Development Standards Ordinance: (O.5.d. Table C-3, Note 3) to delete the requirement for eight foot high visual screen and six foot high concrete block wall where abutting residential development is separated from subject development by navigable waterway.

RECORD VERIFIED - CHARLIE GREEN, CLERK  
BY: H. FRANKLIN, D.C.

3 7: 58  
BILLED

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# EXHIBIT B

- (11) Development Standards Ordinance: (C.5.D. Table C-4) to permit proposed development without minimum required buffers along navigable seawalled waterways.
- (12) Zoning: 202.13.J.1.) & 3.) to reduce the amount of marina parking required from two spaces per three boat slips and one space per four dry storage unit stalls to one space per four wet or dry slips.

WHEREAS, the subject property is located at 7105 Estero Boulevard, Fort Myers Beach, described more particularly as:

LEGAL DESCRIPTION: In Section 03, Township 47 South, Range 24 East, Lee County, Florida:

A tract or parcel of land lying in Government Lot 2, Section 03, Township 47 South, Range 24 East, Estero Island, Lee County Florida, which tract or parcel is described as follows:

### PARCEL "A"

From the concrete post marking the intersection of the Easterly line, forty feet from the centerline of Estero Boulevard, State Road No. 8-865, and the North line of the South sixty feet of Government Lot 1 of said Section 03, run S.18°34'20"E. along said Easterly line for 863.31 feet to a concrete monument; THENCE run N.71°11'00"E. along the Southeastly line of a roadway easement (60 feet wide) for 287.54 feet to a concrete monument and the POINT OF BEGINNING of the herein described parcel.

From said POINT OF BEGINNING run N.18°34'20"W. along the Northeastly end of said roadway easement for 60 feet; THENCE run S.71°11'00"W. along the Northwestly line of said roadway easement for 50.93 feet to a concrete monument; THENCE run N.00°49'00"W. perpendicular to the North line of said Government Lot 2 for 426.92 feet to a concrete monument marking the Northwestly corner of lands conveyed by deed recorded in Official Record Book 561 at page 777 of the Public Records of Lee County; THENCE run N.89°11'00"E. parallel with said North line for 10 feet to the Southwestly corner of lands conveyed by deed recorded in Official Record Book 808 at page 357 of said Public Records; THENCE run N.00°49'00"W. along the Westerly boundary of said lands for 65 feet to the Northwestly corner of said lands; THENCE run S.85°25'40"E. along the Northerly boundary of said lands for 213 feet more or less to the waters of a boat canal and Easterly face of an existing seawall; THENCE run Southwestly, Southerly, and Southeastly along the easterly face of said seawall and along the waters of said boat canal to an intersection with a line bearing N.89°11'00"E. parallel with the North line of said Lot 2 passing through the POINT OF BEGINNING; THENCE run S.89°11'00"W. along said line for 200 feet more or less to the POINT OF BEGINNING.

TOGETHER WITH the hereinabove described roadway easement 60 feet wide and the roadway easement 10 feet wide as described in said deed recorded in Official Record Book 808 at page 357.

### PARCEL "B"

A tract or parcel of land lying in Government Lot 2 in Section 03, Township 47 South, Range 24 East, Estero Island, Lee County, Florida, more particularly described as follows:

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EXHIBIT B

From the intersection of the South line of said Government Lot 2 and the Easterly right-of-way line of State Road 865, Estero Boulevard; THENCE run N.18°34'20"W. for 210.00 feet to the POINT OF BEGINNING; THENCE run N.89°11'00"E. for 69.12 feet; THENCE run N.00°49'00"W. for 327.22 feet; THENCE run N.89°11'00"E. for 460.00 feet; THENCE run N.20°08'40"W. for 160.00 feet; THENCE run S.72°52'10"W for 123.63 feet; THENCE run S.89°11'00"W. for 197.60 feet; THENCE run S.71°11'00"W. for 287.54 feet to the Easterly line of State Road #S-865; THENCE run S.18°34'20"E. along said Easterly line for 372.36 feet to the POINT OF BEGINNING.

PARCEL "C"

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of Government Lot 2, Section 03, Township 47 South, Range 24 East, and further bounded and described as follows:

Starting at the intersection of the South line of said Government Lot 2 and the Easterly right-of-way line of Estero Boulevard (State Road S-865); THENCE N.89°11'00"E. for 730.82 feet; THENCE N.20°08'40"W. for 478.99 feet to the POINT OF BEGINNING of the herein described parcel; THENCE S.87°03'44"W. for 330.72 feet; THENCE S.00°49'00"E. for 239.75 feet; THENCE S.89°11'00"W. for 236.72 feet; THENCE N.00°49'00"W. for 327.22 feet; THENCE N.89°11'00"E. for 460.00 feet; THENCE N.20°08'40"W. for 160.00 feet; THENCE N.72°52'10"E. for 76.38 feet; THENCE S.20°08'40"E. for 262.45 feet to the POINT OF BEGINNING.

Said parcel contains 116,420 square feet, more or less.

Said parcel subject to all easements, rights-of-way and restrictions of record.

Bearings are based on the Easterly right-of-way line of State Road S-865 as bearing S.18°34'20"W.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 03-47-24-00-00011.0010; 03-47-24-00-00011.003B; 03-47-24-00-00011.0030; and

WHEREAS, proper authorization has been given to Spectrum Engineering, Inc., by Michael P. Johnson, Vice President of Stardial Investment Company; Helen Hedwid, Trustee for Bunche Beach Land Trust; and Al Durrett of Fish Tale Marina owners of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Planning and Zoning Commission, with full consideration of all the evidence available to the Planning and Zoning Commission; and

WHEREAS, the Lee County Planning and Zoning Commission fully reviewed the matter in a public hearing held on September 6, 1988; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

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# EXHIBIT B

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Planning and Zoning Commission, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE a rezoning from C-1 and CT to Commercial Planned Development, to permit the expansion of an existing marina not to exceed 55 feet above average grade, on 7.9± total acres of land. The proposed development will also include a maximum of 428 wet and dry slips, as well as accessory uses, and other commercial uses including retail and restaurant use with the following conditions:

1. The Master Concept Plan is a one page plan titled "Fish-Tale Marine, Inc., Master Concept Plan" prepared by Spectrum Engineering, Job No. 21-01, dated March, 1988, and stamped received August 25, 1988, except as modified herein. Approval of this request does not exempt the applicant from compliance with all other zoning and development regulations.
2. The schedule of uses is limited to those indicated on the attachment to the Master Concept Plan (see Attachment D) except as noted below and as further modified by the conditions herein:
  - a. Consumption on premises/bar or cocktail lounge is limited to use in conjunction with a restaurant, (Group III, Standard)
  - b. The following uses are prohibited:
    - Business Services - Group II
    - Cultural Facilities
    - Essential Service Facilities - Group II
    - Household/Office Furnishings - Group III
    - Offices, Medical
    - Package Store
    - Personal Services - Groups II and III
    - Recreational facilities, public and private
    - Restaurants, Standard - Group IV
    - Specialty Retail Shops - Group IV
    - Towers, Communication
  - c. The following uses are approved as limited below:
    - Drive-thru facility-limited to a branch bank only
    - Marina, Class II - the number of live-aboard boats is limited to 20 wet slips; pump out facilities must be provided prior to any live-aboard being allowed.
    - Recreation, Commercial - limited to miniature golf course only
    - Schools, commercial - limited to sailing and marine oriented outdoor life style; e.g., a water skiing school or learn-to-sail school
    - Signs - in compliance with the Lee County Sign Ordinance
    - Storage, indoor, enclosed - limited to boats and associated equipment, but not including commercial mini-warehouses or garages
    - Storage, outdoor - limited to boats
    - Temporary uses; limited to construction trailer and construction equipment

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# EXHIBIT B

3. The maximum square feet of total floor area for retail and/or restaurant use is limited to 15,000 square feet in addition to the existing (approximately 8,700 square feet) commercial uses.
4. The new dry storage building shall be constructed to allow 20-foot-wide access on at least three sides, and the boat storage building shall be sprinklered.
5. Per Lee County DOT&E, the proposed access point onto Estero Boulevard (southwest corner of the subject property) shall not be allowed. The Master Concept Plan shall be revised, prior to final plan approval, deleting the proposed access.
6. The owner/developer shall create an intertidal, littoral shelf between the existing seawall and the proposed docks. The shelf shall be a minimum of five feet wide, and red mangroves (Rhizophora mangle) and white mangroves (Avicennia racemosa) shall be planted on three foot staggered centers (3'0.C.). The applicant shall apply for permission in advance to prune the littoral shelf mangroves once a year in accordance with applicable DER and Lee County ordinances. Smooth cord grass (Spartina Alternifolia) shall also be planted throughout the shelf. The applicant shall submit a three year, 80% survivability maintenance plan. The plan for the littoral shelf shall be submitted on an amended plan prior to final development order issuance and shall be subject to review and approval by the Department of Community Development. The shelf shall be constructed concurrent with the docks.
7. Prior to the issuance of a final development order, the applicants shall submit a spill containment plan and flushing study to the Lee County, Department of Community Development, Department of Public Safety, Department of Environmental Regulation and Department of Natural Resources. Construction shall not begin until the plan has been reviewed and approved. The applicant shall obtain a letter from the review agencies as proof of review and approval.
8. Major maintenance (anti-fouling painting, engine overhauling, fiberglass repair, etc.) is limited to the type of maintenance currently in use. Touch up painting, varnishing, soap and water cleaning, and other minor maintenance is allowed. The applicant shall sign a contract with a hazardous waste hauler prior to final development order approval.
9. The owner/developer shall provide a type C buffer with a six foot high wall along the south side of the subject property where it abuts Santa Maria Condominium. The remainder of the property, where it abuts residential uses shall provide an eight foot, visually opaque screen.
10. The normal hours of operation for the marina shall be limited to dawn through dusk.
11. Prior to leasing any new slips, the owner/developer shall provide, (subject to review and approval by the Lee County Department of Public Safety) a hurricane preparedness plan, including wet slip evacuation procedures. All boat owners shall be made aware of the requirements of the plan.
12. The owner/developer shall provide a 10-foot-wide pedestrian easement between the Santa Maria Condominium and the boat docks owned by Santa Maria.
13. The owner/developer shall reserve twenty percent of the total wet slips for sailboats.

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# EXHIBIT B

14. The owner/developer shall post manatee awareness and idle speed/no wake signs along the canals from the subject property to Ostego Bay.
15. The proposed dry storage building is limited to 55 feet in height and shall be constructed to withstand winds of 140 mph; all other uses are limited to 35 feet in height.
16. The owner/developer shall provide and maintain at the cost of \$2,750.00 per year dry, covered storage for one boat and provide one outdoor storage space for the use of either county or state agencies.
17. The owner/developer shall post "no parking-fire lane" signs along the length of the access road that runs between the subject property and Villa Santini Plaza. The applicant and the owner of Villa Santini Plaza shall construct three-sided barriers around the dumpsters located in the access road for the purpose of keeping the dumpsters flush against the buildings and out of the fire lane.
19. Deviations (1), (2), (3), (4), (5), (7), (9), (10), (11) and (12) are hereby APPROVED as conditioned below; Deviations (6) and (8) have been deleted by the applicant from its request and, therefore, are neither approved nor denied.

Deviation (1) approval is for the existing dry boat storage buildings, provided 20-foot-wide access is provided around all the buildings (to allow fire department access); and

Deviation (2) approval applies only to the southwest corner of the property as shown on the site plan and a type C buffer with a wall is constructed between the property and the Santa Maria Condominiums; and

Deviations (3) and (9) approval is subject to the mitigation provided in condition 6; the open space requirement shall then be considered to have been met; and

Deviations (4), (10), and (11) approval is subject to the condition that plantings (per DSO) are provided; minimum buffer width (per DSO) shall not be required except in areas abutting residential uses where a minimum 5 foot buffer shall be required; and

Deviation (5) approval is subject to review and approval of the alternative materials by Lee County's Department of Transportation and Engineering. Also, prior to issuance of a final development order, the applicant shall execute hold harmless and maintenance agreements; and

Deviation (7) is for the new dry storage building which would be 55 feet high, the same as the other dry storage buildings.

Site Plan 88-268 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval of Commercial Planned Development zoning:

- a. All recommended conditions are reasonably related to the impacts on the public's interest created by, or expected from, the proposed development;
- b. Sufficient safeguards to the public interest are provided by the recommended conditions to the Master Concept Plan and by other applicable regulations;
- c. The general intent of these regulations, to protect the public health, safety, and welfare, is preserved and promoted;

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EXHIBIT B

- d. The deviations recommended for approval as conditioned, will enhance the development and will not negatively affect the public health, safety, and welfare; and
- e. The proposed uses are, as limited by the conditions herein, appropriate at the subject location.

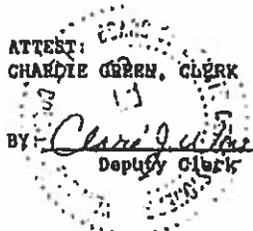
The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Mary Ann Wallace, and seconded by Commissioner Donald D. Slisher and, upon being put to a vote, the result was as follows:

John E. Manning	ABSENT
Charles L. Bigelow, Jr.	AYE
Mary Ann Wallace	AYE
Bill Russell	AYE
Donald D. Slisher	AYE

DULY PASSED AND ADOPTED this 24th day of October, A.D., 1988.

ATTEST:  
 CHANDIE GREEN, CLERK

BY: Cherie J. Witek  
 Deputy Clerk



BOARD OF COUNTY COMMISSIONERS  
 OF LEE COUNTY, FLORIDA

BY: Eric Fessenden  
 Chairman

Approved as to form by:

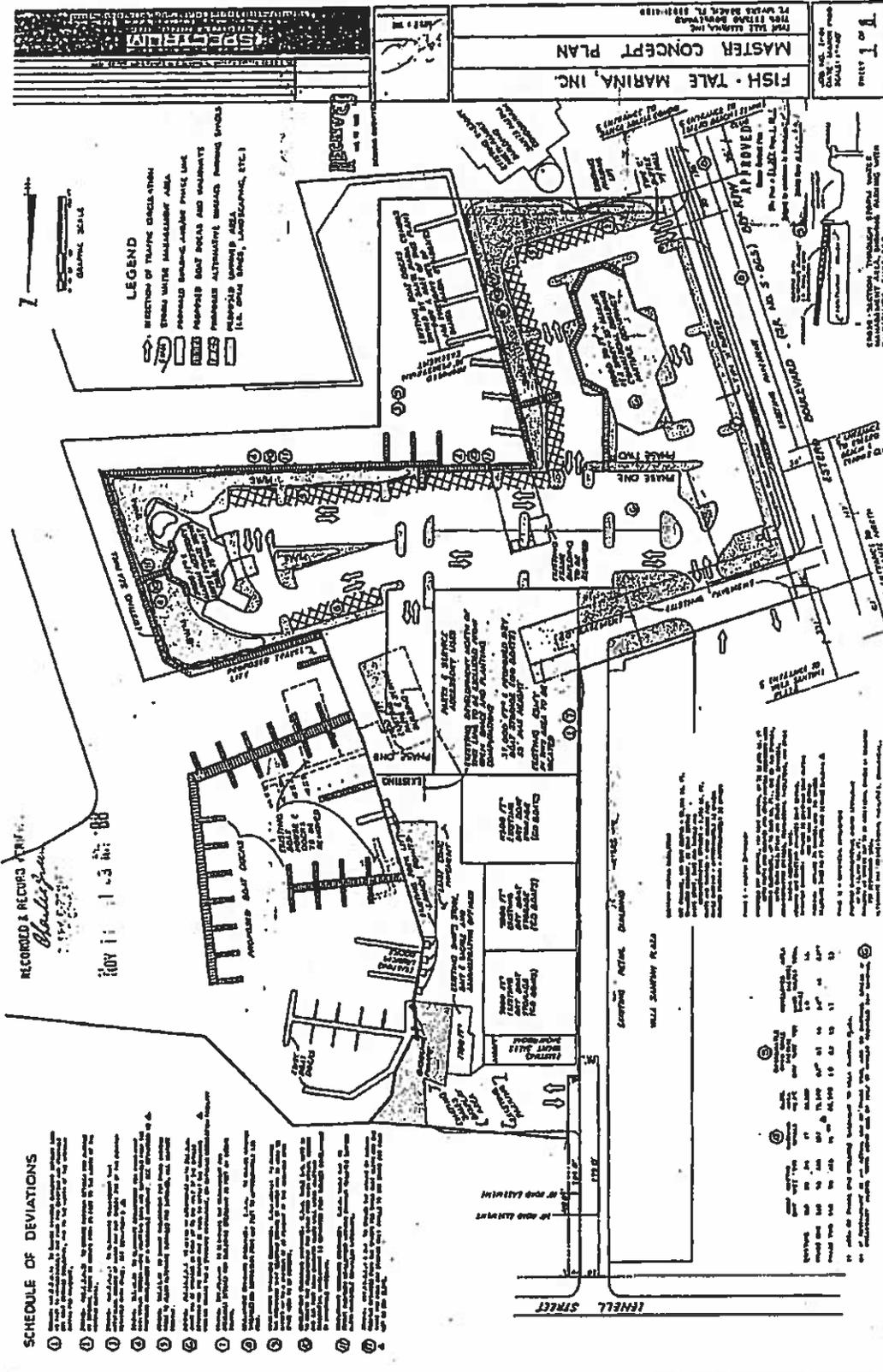
[Signature]  
 County Attorney's Office

OR2030  
 PG0800

**FILED**

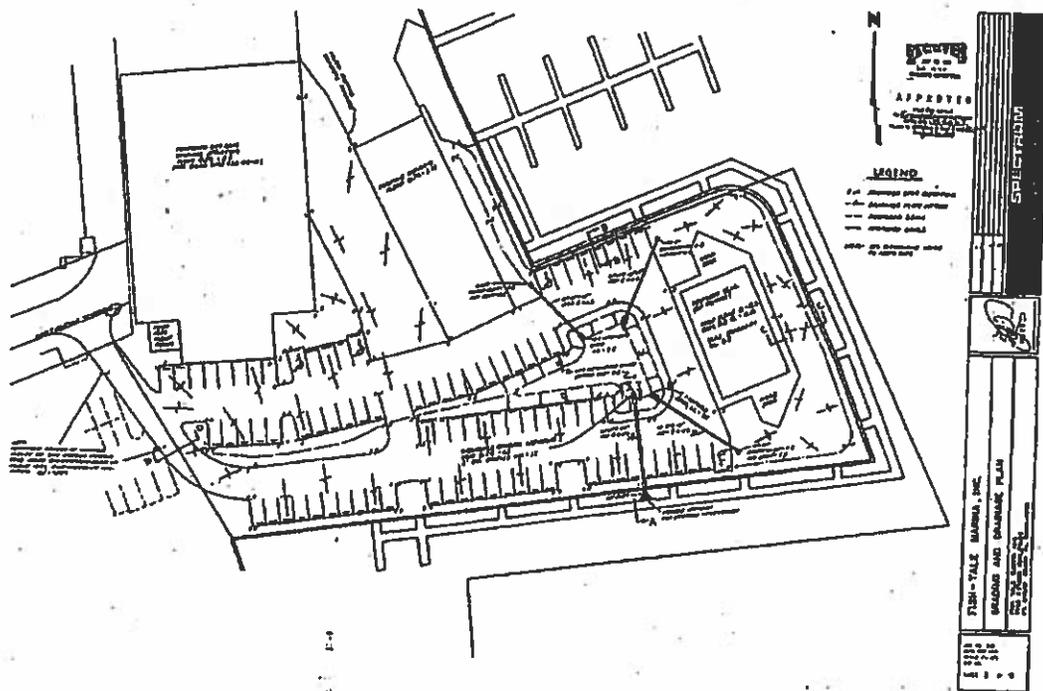
NOV 1 0. 88  
 CLERK CIRCUIT COURT  
 BY [Signature] D.C.

# EXHIBIT B



0R2030  
PG0801

# EXHIBIT B



# EXHIBIT B

## Spatial District Query Report

STRAP Number: 03-47-24-W1-00011.0010

District Name	District Value	Pct of Parcel In District ( If fractional )	Notes
Airport Noise Zone		NOT FOUND	
Airspace Notification		NOT FOUND	
Census Tract	Tract ID 602	100.01%	
Coastal Building Zone	Coastal Bldg Zone Coastal Building Zone (ORD 94-22)		
Coastal High Hazard Area	Coastal High Hazard Zone High hazard		
Fire District	Fire District Fort Myers Beach Taxing Authority 032		
Flood Insurance Zone	Flood Zone AE-EL12	78.37%	
	Flood Zone AE-EL13	16.54%	
	Flood Zone AE-EL11	5.09%	1
FIRM Floodway		NOT FOUND	
Flood Insurance Panel	Community Panel Version Date 120673 FMB Community Panel Version Date 125124 0442 C 072098		
DNR Flood Zones		NOT FOUND	
Flood Insurance Coastal Barrier		NOT FOUND	
Lighting District		NOT FOUND	
Planning Community	ID Plan Community 9 Fort Myers Beach		
Planning Land Use 2010	Landuse Pedestrian Commercial	60.34%	
	Landuse Mixed Residential	0.02%	1
Sanibel/County Agreement		NOT FOUND	
School Board District	District School Board Member 3 Jane E. Kucal, Ph.D.		
School Choice Zone	Choice Zones South Zone Choice Zones South Zone 4		
Solid Waste District	District Area Area 1		
Storm Surge	Category T S		
Subdivisions		NOT FOUND	
Traffic Analysis Zone	TAZ 673	99.97%	
	TAZ 675	0.04%	1
Archaeological Sensitivity		NOT FOUND	
Sea Turtle Lighting Zone	Lighting Zone Estero Island	1.77%	1 2
Watersheds	Shed ID South Fort Myers Beach		
FLUCCS1995	Code 145	60.53%	

# EXHIBIT B

	Landuse	Tourist services		
	Code	816	39.47%	
	Landuse	Canals and locks		
Vegetation Permit Required	Vegetation Permit	Estero Island		3
Soil	Map Symbol	99	35.79%	
	Soil Name	WATER		
	Map Symbol	59	33.6%	
	Soil Name	URBAN LAND		
	Map Symbol	48	29.73%	
	Soil Name	ST. AUGUSTINE SAND		
	Map Symbol	4	0.67%	1
	Soil Name	CANAVERAL-URBAN LAND COMPLEX		
	Map Symbol	89	0.21%	1
	Soil Name	MATLACHA GRAVELLY FINE SAND		
Panther Habitat			NOT FOUND	
Eagle Nesting Site Buffer			NOT FOUND	
Commissioner District	District Commissioner	3 Ray Judah		
Unincorporated Lee County Zoning	Zoning Designation	CPD	65.23%	Zoning Notes
	Zoning Designation	C-1	34.77%	
Development Orders	Development Order	LDO2001-00185		
	Status			
	Wet Season Water Table			
	Development Order	DOS2004-00263	99.72%	
	Status			
	Wet Season Water Table			
	Development Order	89-05-021-00D	23.44%	
	Status			
Wet Season Water Table				
Development Order	98-06-021-00D	2.57%	1	
Status				
Wet Season Water Table				
Development Order	98-05-022-00D	1.79%	1	
Status				
Wet Season Water Table				
Development Order	99-06-220-12L	0.03%	1	
Status				
Wet Season Water Table				
Development Order	89-03-014-00D	0.02%	1	
Status				
Wet Season Water Table				
Fort Myers Beach Interim Zoning	Zoning Abbrev.	SANTINI	80.16%	

# EXHIBIT B

	Zoning Abbrev.	BB	0.19%	1
Road Impact Fee Districts	District	60		
	Tidemark ID	60		
	Name	FortMyersBeach54		
Water Franchise	Franchise Name	Town of Fort Myers Beach		

[ [Modify Report Settings](#) ]

Note	Details
1	Small percentages can result from slight variations in the way lines are drawn or imported into our system. Such values may not accurately reflect an overlap with the subject parcel.
2	Sea Turtle Lighting review REQUIRED, Contact Environmental Sciences (239) 479-8585.
3	Vegetation Removal Permit REQUIRED, Contact Environmental Sciences (239) 479-8585.

Our goal is to provide the most accurate data available, however no warranties, expressed or implied, are provided with this data, its use, or interpretation.  
All information subject to change without notice.

EXHIBIT B

BPR FORM ABT 4000L-001

STATE OF FLORIDA

Rev 4/01

Department of Business & Professional Regulation

Division of Alcoholic Beverages & Tobacco

LICENSE/PERMIT APPLICATION

Please read the instructions before completing this application

SECTION I - LICENSE INFORMATION

BUSINESS TELEPHONE # 941 947 7755

A. TYPE OF LICENSE: Check Appropriate Boxes

<input checked="" type="checkbox"/>	Retail Alcoholic Beverages	<input type="checkbox"/>	Retail Tobacco Products
<input type="checkbox"/>	Beer/Wine/Liquor Wholesaler	<input type="checkbox"/>	Cigarette/Tobacco Wholesaler
<input type="checkbox"/>	Alcoholic Beverage Importer/Exporter	<input type="checkbox"/>	Tobacco Exporter
<input type="checkbox"/>	Alcoholic Beverage Manufacturer	<input type="checkbox"/>	Cigarette Distributing Agent

B. TYPE OF APPLICATION: Check Appropriate Boxes

<input type="checkbox"/>	New	<input type="checkbox"/>	Change in Series
<input checked="" type="checkbox"/>	Transfer	<input type="checkbox"/>	Decrease in Series
<input type="checkbox"/>	Change of Location	<input type="checkbox"/>	Increase in Series
<input type="checkbox"/>	Change of Business Name	<input type="checkbox"/>	Correction
<input type="checkbox"/>	Change of Officers/Stockholders		



Other: \_\_\_\_\_

Series requested: \_\_\_\_\_ Quota \_\_\_\_\_ Type requested: \_\_\_\_\_

Do you wish to purchase a temporary? YES  NO \_\_\_\_\_ Corporate Document # P9500095652

1. Full Name of Applicant: The Fish House of Fort Myers Beach, Inc.  
(If this is a corporation or other legal entity enter the name as registered with Secretary of State) Enter document # above

2. Trade Name (D/B/A): The Fish House

3. Location Address (Street): 7205 Estero Blvd.  
City: Ft. Myers Beach State: FL Zip Code: 33931

4. Mailing Address: 14665 Bonita Beach Rd.  
City: Bonita Springs State: FL Zip Code: 34134

5. Resident Agent/Contact Person: Barry Greenfield Phone Number: 941 947 7755  
Address: 2015 Wild Limu Dr. Sanibel, FL 33957

6. Enter Federal Employer ID #: 65 0652990

If application is for a NEW license/permit, questions 7-9 are not applicable.

7. Current License Number: BEV-4604112 Series: 4COP Type: \_\_\_\_\_

8. Current Business Name: Island Endeavors, Inc.

9. Is the transfer of this license due to revocation proceedings? NO

If yes, is there any personal relationship to the transferor? \_\_\_\_\_

Explain the relationship: \_\_\_\_\_

034724W1 00011 0010

COP 2002-0006de

EXHIBIT B

Ft Myers Beach

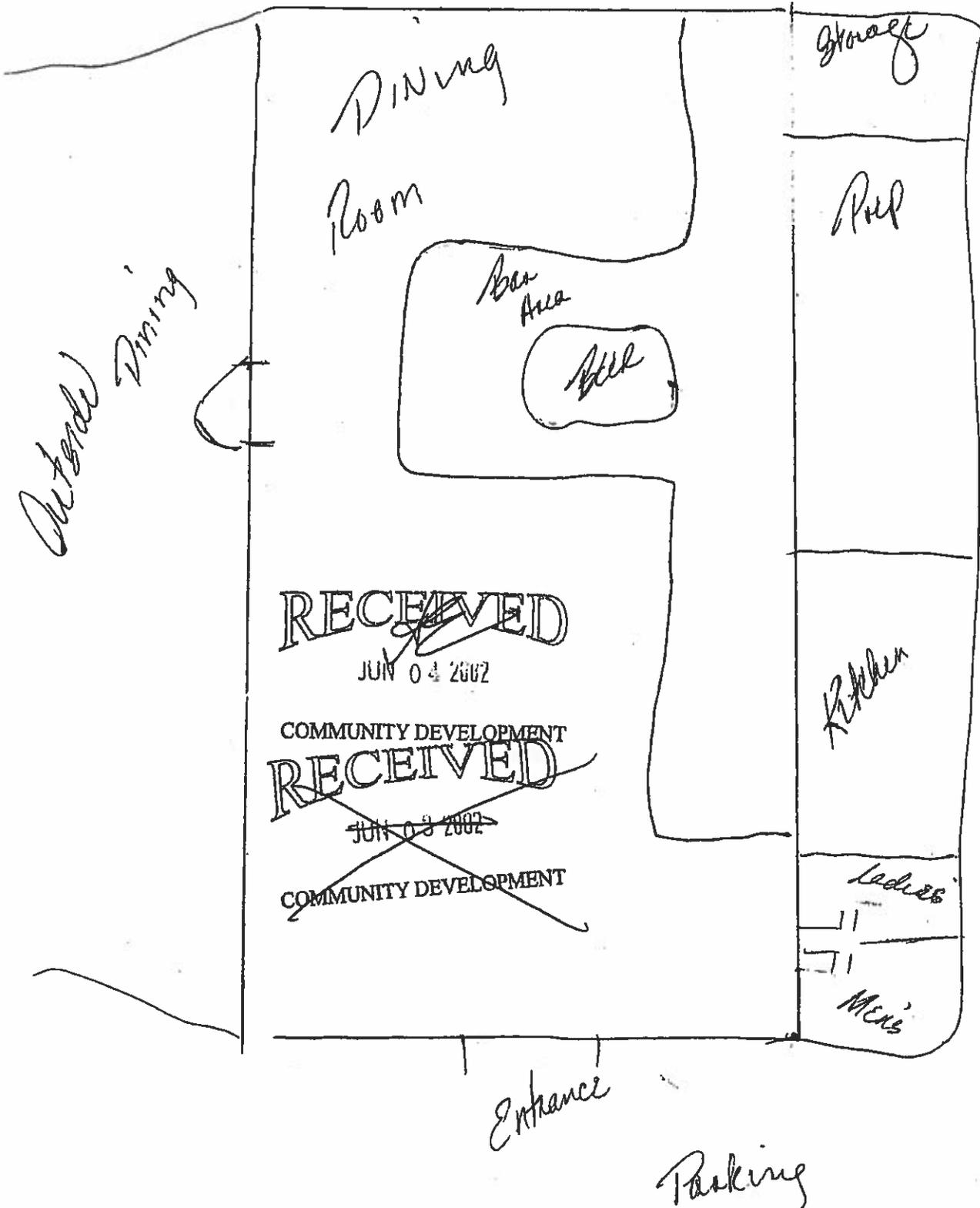


EXHIBIT B

TRADE NAME (D/B/A): The Fish House

SECTION II - DESCRIPTION OF PREMISES TO BE LICENSED

- 1. Is the proposed premises MOVABLE or ABLE TO BE MOVED?..... YES \_\_\_\_\_ NO X
- 2. Is there any access through the premises to any area over which you do not have dominion and control?..... YES \_\_\_\_\_ NO X
- 3. Neatly draw a floor plan of the premises in INK, including sidewalks and other outside areas which are contiguous to the premises, walls, doors, counters, sales areas, storage areas, restrooms, bar locations and any other specific areas which are part of the premises sought to be licensed. A multi-story building where the entire building is to be licensed must show each floor plan. NO ARCHITECTURAL DRAWINGS ACCEPTED.

AB&T Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_ Approved  Disapproved

Comments \_\_\_\_\_

\_\_\_\_\_

EXHIBIT B

TRADE NAME (D/B/A): \_\_\_\_\_

SECTION III - SALES TAX - To be completed by the Department of Revenue.

The named applicant for a license/permit has complied with Florida Statutes concerning registration for Sales and Use Tax.

1. This is to verify that the current owner as named in this application has filed all returns and that all outstanding billings and returns appear to have been paid through the period ending \_\_\_\_\_ or the liability has been acknowledged and agreed to be paid by the applicant. This verification does not constitute a certificate as contained in Section 212.10 (1), F.S. (Not applicable if no transfer involved.)
2. Furthermore, the named applicant for an Alcoholic Beverage License has complied with Florida Statutes concerning registration for Sales and Use Tax, and has paid any applicable taxes due.

Signed: \_\_\_\_\_

Department of Revenue Stamp

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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SECTION IV - ZONING - To be completed by the Zoning Authority governing your business location.

Street Address: 7225 Estero Blvd. 03422401000110010

City: Ft. Myers Beach State: FL Zip Code: 33931

If this application is for the issuance of an alcoholic beverage license where zoning approval is required, the zoning authority must complete "A" and "B". If zoning approval is not required, the applicant must complete section "B".

- A. The location complies with zoning requirements for the sale of alcoholic beverages or ~~wholesale tobacco~~ products pursuant to this application for a Series 4 COP license.

Signed: Judith Ennis Title: Impact Fee Assessor Date: 6-4-02

- B. Is the location within the limits of an "Incorporated City or Town"? YES  NO

If "YES", enter name of City or Town..... Ft. Myers Beach

In conjunction with restaurant E-94-13

SECTION V - HEALTH - To be completed by the Division of Hotels and Restaurants or County Health Authority or Department of Health or the Department of Agriculture & Consumer Services, whichever is applicable.

Address: 7225 Estero Blvd. Ft Myers Bch., FL.

The above establishment Complies with the requirements of the Florida Sanitary Code.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Agency: \_\_\_\_\_

EXHIBIT B

TRADE NAME (D/B/A): The Fish House

SECTION VI - CONTRACTS OR AGREEMENTS

These questions must be answered about this business for every person or entity listed. Copies of agreements must be submitted with this application.

- 1. Is there a management contract, franchise agreement, or service agreement in connection with this business? YES  NO
- 2. Are there any agreements which require a payment of a percentage of gross or net receipts from the business operation? YES  NO
- 3. Have you or anyone listed on this application accepted money, equipment or anything of value in connection with this business from a manufacturer or wholesaler of alcoholic beverages? YES  NO

SECTION VII - CORPORATE FELONY CONVICTION

Has the applicant corporation been convicted of a felony in this state, any other state, or by the United States in the last 15 years? YES  NO

If the answer is "YES", please list all of the particulars including the date of conviction, the crime for which the corporation was convicted, and the City, County, State and Court where the conviction took place.

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Attach extra sheets if necessary

SECTION VIII - SPECIAL LICENSE REQUIREMENTS (Does not apply to beer and wine licenses)

Quota Alcoholic Beverage License  Special Alcoholic Beverage License  Club Alcoholic Beverage License

This license is issued pursuant to 561.29(1)i, Florida Statute or Special Act and as such we acknowledge the following requirements must be met and maintained:

MUST MAINTAIN THE LICENSED PREMISES IN AN ACTIVE MANNER IN WHICH THE PREMISES ARE  
OPEN FOR THE BONA FIDE RETAIL SALE OF ALCOHOLIC BEVERAGES DURING REGULAR AND  
REASONABLE BUSINESS HOURS FOR AT LEAST 8 HOURS A DAY FOR A PERIOD OF 210 DAYS OR  
MORE DURING ANY 12 MONTH PERIOD COMMENCING 6 MONTHS AFTER ACQUISITION OF THE  
LICENSE.

PLEASE INITIAL AND DATE:

Applicant's Initials: AB

Date: 3 June 07

EXHIBIT B

TRADE NAME (D/B/A): The Fish House

SECTION IX - DISCLOSURE OF INTERESTED PARTIES

NOTE: FAILURE TO DISCLOSE AN INTEREST, DIRECT OR INDIRECT, COULD RESULT IN DENIAL, SUSPENSION AND/OR REVOCATION.

A. List below the names, titles and interest for all officers, directors, stockholders, managing members and general partners of the corporation or other legal entity for which this license or permit is being sought. Attach extra sheets if necessary. If the applicant is a limited partnership or limited liability company, attach a list of all limited partners & members.

TITLE/POSITION	NAME	STOCK %
President:	<u>Barry Greenfield</u>	<u>100</u>
Vice President:		
Secretary:	<u>Barry Greenfield</u>	
Treasurer:		
Director(s)		
Stockholder(s):		
Managing Member(s)		
General Partner(s)		
Bar Manager		
(Fraternal Organizations of National Scope ONLY)		

B. Are there any persons not listed above who have guaranteed or co-signed a lease or loan; or any person or entity who has loaned money to the business that is not a traditional lending institution?

Yes  No  If yes, you must list the person(s) or entity and indicate which of the below applies.

Name	Guarantor	Co-signer	Lender (list interest rate)	Interest Rate
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

EXHIBIT B

FLORIDA DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO  
PERSONAL DATA FORM

1. Trade Name (D/B/A): The Fish House  
2. Your Full Name: Barry Leonard Greenfield  
3. Social Security Number: 263-78-1336 Home Phone Number: 941-478-6521

SOCIAL SECURITY NUMBER: Under the Federal Privacy Act, disclosure of Social Security numbers is voluntary unless a Federal statute specifically requires it or allows states to collect the number. In this instance, disclosure of social security numbers is mandatory pursuant to Title 42 United States Code, Sections 653 and 654; and sections 409.2577, 409.2593, and 559.79, Florida Statutes. Social Security numbers are used to allow efficient screening of applicants and licensees by a Title IV-D child support agency to assure compliance with child support obligations. Social Security numbers must also be recorded on all professional and occupational license applications and are used for licensee identification pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), 104 Pub.L. 193, Sec. 317. The State of Florida is authorized to collect the social security number of licensees pursuant to the Social Security Act, 42 U.S.C. 405(c)(2)(C)(i). This information is used to identify licensees for tax administration purposes.

4. Date of Birth: mm/dd/yy: 01-20-50 Place of Birth: Orlando, FL  
Race: C Sex: M Height: 5'7" Weight: 160 Eye Color: Green Hair Color: Brown

5. Are you a U.S. citizen? YES  NO  If NO, immigration card # or passport #

6. Complete home address (City, St., Zip) 2015 Wild Lime Dr Sanibel, FL 33957

7. Do you currently have interest in any business selling alcoholic beverages, wholesale cigarette or tobacco products, or a bottle club? If yes, D/B/A-Business name, location, and license number. Yes  No   
The Fish House BEV 4604112 The Fish House BEV 2102962

8. Have you ever had any type of alcoholic beverage, or bottle club license, or cigarette, or tobacco permit refused, revoked or suspended ANYWHERE in the past 15 years? Yes  No   
If yes, D/B/A-business name, location, and date.

9. Have you been convicted of a felony or an offense involving alcoholic beverages ANYWHERE? Yes  No  If yes, date, location, and type of offense on a separate sheet of paper and provide a CERTIFIED COPY OF DISPOSITION.

If you are a convicted felon and have had your civil rights restored, ATTACH A CERTIFIED COPY

10. Have you ever been arrested, issued a notice to appear, or had any criminal charges filed against you within the past 15 years in any state of the United States or its territories? Yes  No  If yes, date, location, and type of offense on a separate sheet of paper and provide a CERTIFIED COPY OF DISPOSITION.

11. Are you an official with State police powers granted by the Florida Legislature? Yes  No   
If yes, please provide the details.

" I swear under oath or affirmation under penalty of perjury as provided for in 559.791, 562.45 and 837.06, Florida Statutes, that I have fully disclosed any and all parties financially and or contractually interested in this business and that the parties are disclosed on page 5, section IX of this application. I further swear or affirm that the foregoing information is true and correct."

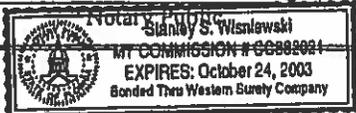
STATE OF Florida  
COUNTY OF Lee

Greenfield  
APPLICANT (Signature must be notarized)

The foregoing was ( ) Sworn to and Subscribed OR (X) Acknowledged Before me this 4<sup>th</sup> Days of JUNE, 2002  
By BARRY GREENFIELD, who is (X) personally known to me OR ( ) who produced \_\_\_\_\_ as identification.

Quirk

Commission Expires: OCT. 24 2003



# EXHIBIT B

**FORT MYERS SALES TAX OFFICE:**

2295 Victoria Ave., Ft. Myers, FL 33901

(941) 338-2400

Directions: North on US41. The light just before crossing the Caloosahatchee River bridge is Victoria Ave. - turn right - "Department of Revenue" is located in the State Building on Victoria Ave. 2nd Floor, Suite 270.,

**NAPLES SALES TAX OFFICE:**

The Wilson Professional Center, 3200 Bailey Lane, #150,  
Naples, 33942

(941) 436-1050

**ZONING DEPARTMENTS:****LEE COUNTY:**

\*If the business is located in the City of Fort Myers:

2285 Union Street, Ft. Myers, FL 33902

(941) 332-6630

\*If the business is located in Lee County:

- 1500 Monroe Street, Ft. Myers, FL 33901

(941) 335-2235

\*If the business is located in Cape Coral:

815 Nicholas Parkway, Cape Coral, FL 33990

(941) 574-0553

\*If the business is located in Sanibel:

800 Dunlop Road, Sanibel, FL 33957

(941) 472-4136

**COLLIER COUNTY:**

\*If the business is located in the City of Naples:

735 8th Street South, Naples, FL 33940

(941) 434-4640

\*If the business is located in Collier County:

- 2800 Horseshoe Drive, Naples, FL 33942

(941) 643-8400

\*If the business is located in Everglades City:

207 Broadway, Everglades City, FL 33929

(941) 695-3781

**CHARLOTTE COUNTY:**

18500 Murdock Circle, Port Charlotte, FL 33948

(941) 743-1240

**GLADES COUNTY:**

Highway 27 and 6th Street, Moorehaven, FL 33471

(941) 946-0533

**HENDRY COUNTY:**

112 Lee Street, LaBelle, FL 33935

(941) 675-5245

**\* HOTELS & RESTAURANTS: (Health Department) (IF FOOD PREPARATION ON PREMISES)**

Lee, Collier, Charlotte, Glades, and Hendry:

4100 Center Pointe Drive, Suite 107, Fort Myers, FL 33916

(941) 278-7355

(Please call for an appointment)

**HEALTH DEPARTMENT: (IF MICROWAVING PACKAGED FOODS)****LEE COUNTY:**

Fort Myers - 3920 Michigan Ave., Fort Myers, FL 33916

(941) 332-9501

Cape Coral - 1039 SE 9th Place, Room 164, Cape Coral, FL

(941) 458-7025

**COLLIER COUNTY:**

2800 N. Horseshoe Drive, Naples, FL 33942

(941) 774-8999

**CHARLOTTE COUNTY:**

1850 Murdock Circle, Port Charlotte, FL 33948

(941) 743-1266

**GLADES COUNTY:**

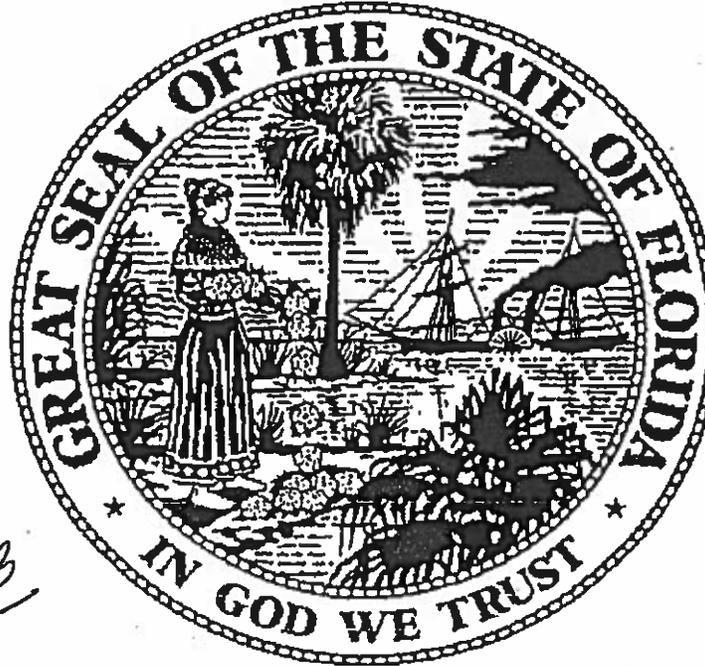
Highway 27, Building 998, Moorehaven, FL 33471

(941) 946-0707

**DEPARTMENT OF AGRICULTURE:**

(850) 488-3951

## EXHIBIT B



FMB

When you have completed the alcoholic beverage license/permit application and obtained all of the required approvals, you will need to do one of the following:

1. Mail in the application.      **\*\*APPOINTMENTS Monday through Thursday\*\***
2. Drop off the application.      **BETWEEN 8:30AM AND 3:00PM**  
4100 Center Point Drive, Suite 101, Fort Myers, Florida 33916
3. Call the Fort Myers District Office to make an appointment at 941-278-7195

### QUOTA LICENSE

QUOTA TRANSFER FEE: PLEASE BE SURE TO INCLUDE THE RECORDS FROM WHICH THE TRANSFER FEE IS TO BE COMPUTED. PLEASE SEE APPLICATION REQUIREMENTS FOR A LIST OF ACCEPTABLE RECORDS.

\*Copies of documents made by this office will result in the following charges:  
.15 for one sided documents  
.20 for two sided documents

WE ENCOURAGE YOU TO MAKE COPIES PRIOR TO SUBMITTING YOUR APPLICATION. FAILURE TO DO SO WILL RESULT IN A DELAY IN THE PROCESSING TIME.

#### PLEASE NOTE:

FEDERAL BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REGISTRATION:

Businesses selling alcoholic beverages are subject to the Federal "Special (Occupational) Tax." This tax is due before the commencement of business. The fee is \$250.00 dollars per year for retail dealers and \$500.00 per year for wholesale dealers. For more information contact BATF regional office at 1(800) 937-8864.

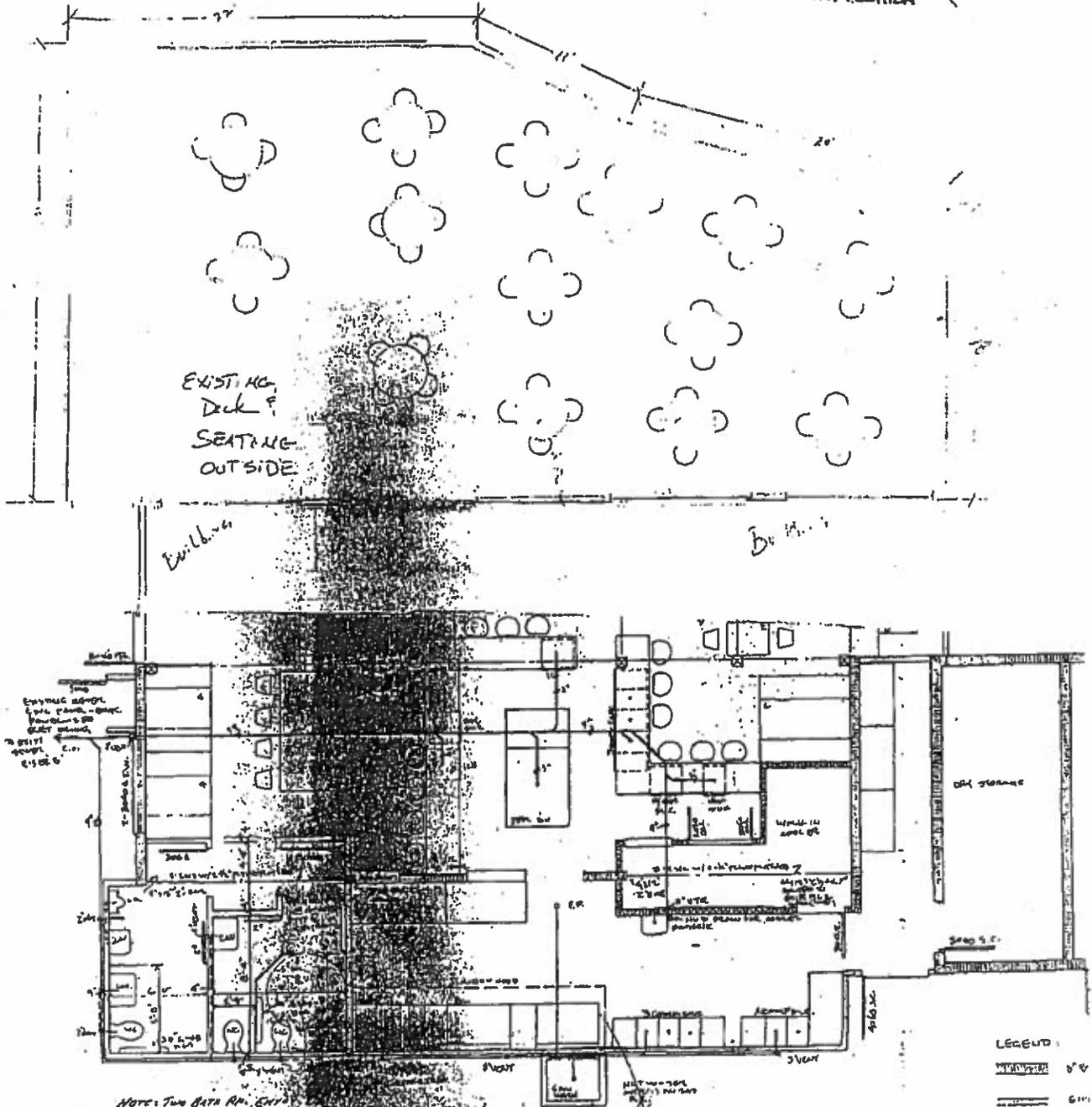
# EXHIBIT B

JUN. 4. 2002 2:23PM DIV. OF ADULT FORT MYERS

**RECEIVED**  
DEPT. OF BUSINESS REGULATIONS

FEB 18, 1996

DIVISION OF BEVERAGE  
FORT MYERS, FLORIDA



*Handwritten signature and date: [Signature] 1/21*

**EXHIBIT B**

JUN 4 2002 2:24PM RECEIVED BY ADRIAN FURI MICRO

NO. 0400

TOTAL TREES REQUIRED = 80  
 TOTAL SHRUBS REQUIRED = 155

**UTILITIES:**

**WATER:**  
 FLORIDA CITIES WATER COMPANY  
 1700 COLLEGE PARKWAY  
 FORT MYERS, FL 33907  
 (813) 936-0217

**SEWER:**  
 LEE COUNTY UTILITIES  
 2170 MCGREGOR BLVD.  
 FORT MYERS, FL 33907  
 (813) 335-2825

**POWER:**  
 FLORIDA POWER AND LIGHT CO.  
 1926 VICTORIA AVENUE  
 FORT MYERS, FL 33901  
 (813) 332-2627

**TELEPHONE:**  
 UNITED TELEPHONE OF FLORIDA  
 POST OFFICE BOX 370  
 FORT MYERS, FL 33902  
 (813) 335-3111

**REFUSE COLLECTION:**  
 (BF)  
 17101 PINE RIDGE ROAD, SW  
 FORT MYERS, FL 33931  
 (813) 466-8800

NO OTHER PUBLIC WATER OR  
 SEWER SYSTEMS ARE LOCATED  
 WITHIN ONE-QUARTER MILE.

*PARKING TO SHARED BY LAZY FLAMINGO  
 FISH TALE MARINA  
 YACHTS OF FLA*

*CHARTER BOAT AREA  
 WILL BE SIGNED AS  
 TO SPECIAL AREA*

EXISTING DOCKS TO REMAIN

11'-4"

RE-STRIPE EXISTING  
 PARKING LOT AS  
 SHOWN ~ 22 SPACES  
 1 ~ HANDICAP @ 12'x20'  
 8 @ 10'x20'  
 13 @ 10'x18'

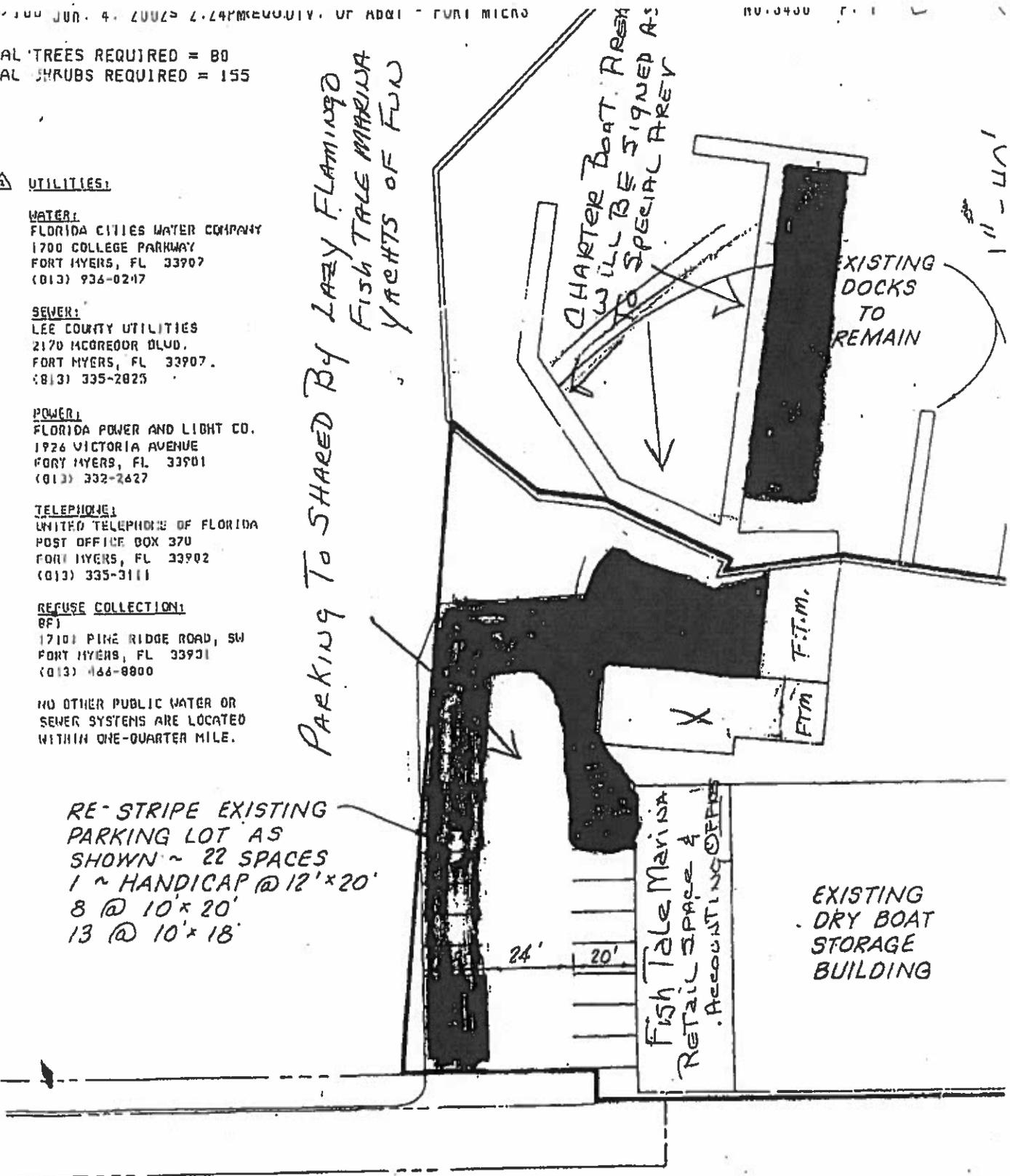
EXISTING DRY BOAT STORAGE BUILDING

Fish Tale Marina  
 Retail Space &  
 Accounting Office

F.T.M.  
 F.T.M.

Fish Tale Marina *cc Durette*  
 Island Endeavors, Inc. *Blumenthal*

EXISTING REI  
 VILLA SANT



## EXHIBIT B

COPY

### GROUND LEASE

THIS LEASE is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between **Palm Harbor Club Condominium Association, Inc.** a Florida not-for-profit Corporation, referred to as "Lessor", and **Fish Tale Marina**, a Florida General Partnership, referred to as "Lessee".

#### ARTICLE 1. DEMISE OF LEASED LAND

1.01 Lessor for and in consideration of the rents, covenants and conditions herein contained to be kept, performed and observed by Lessee, does lease and demise to Lessee, and Lessee does rent and accept from Lessor, the real property, referred to as "Leased Land" described in Exhibit "A", attached hereto and incorporated herein by reference.

1.02 Lessor hereby represents and warrants that all necessary action, if required, has been taken to authorize Lessor to enter into this Lease Agreement. This Lease Agreement has been duly authorized, executed and delivered by Lessor and constitutes the legal, valid and binding obligation of the Lessor enforceable in accordance with the terms contained herein.

1.03 Lessor covenants and agrees that Lessee, on paying the rent and other charges herein provided for and observing and keeping the covenants, conditions and terms of this Lease on Lessee's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Leased Land during the term of this Lease without hindrance or molestation by Lessor or any person claiming under Lessor. Lessor makes no representations that the use of the Leased Land complies with covenants or restrictions of records, including, but not limited to covenants of the Estero Bay Improvement Association ("EBIA Covenants") or deed restrictions attached in connection with the original conveyance of the parcel to the condominium developer ("Stardial Restrictions"). It is agreed that if any party with the right to enforce deed restrictions (including but not limited to EBIA Covenants or Stardial Restrictions) asserts that the Leased Land violates covenants or restrictions, either party will have the option to terminate this Lease without further liability to the other. Additionally, if it is asserted by any governmental entity or agency with jurisdiction that the use of the Leased Land by Lessee as a parking lot violates any laws, codes, ordinances, regulations or development agreements, either party has the authority to cancel this Lease without further liability to the other party. Provided, however, if the Lessee contests the right of any such party to assert that the Leased Land violates covenants or restrictions or violates any laws, codes, ordinances, regulations or development agreements, the Lessee may file a Declaratory Action in Lee County Circuit Court to determine such right, and, in such event, Lessor shall not be entitled to terminate this Lease unless the court enters a final order to enforce a violation of said covenants or restrictions. The prevailing party in any such action shall be entitled to attorneys fees and court costs.

1.04 Lessee will indemnify Lessor and hold Lessor harmless of and from any and all loss, cost, damage, injury or expense arising out of or related to any; claims of injury to or death of any person, or any damage to property, occurring or resulting directly or indirectly from the use or occupancy of the Leased Premises or activities of Lessee in or about the Leased Premises. This indemnity will include, without limitation, the obligation to provide all costs of defense

## EXHIBIT B

against any such claims except that the foregoing indemnity is not applicable to claims arising as a result of the negligence or misconduct of Lessor, its members, employees, guests or invitees.

### ARTICLE 2. LEASE TERM

2.01 This Lease shall be for five years commencing as of January 1, 2003.

2.02 If Lessee shall hold over after the expiration of the Lease Term or any extensions or renewals thereof as more fully set forth below, such tenancy shall be from month to month on all terms, covenants and conditions of this Lease subject, however, to Lessor's right to seek legal relief to eject Lessee from the Leased Land as a holdover.

2.03 Lessee shall have the option to renew this Lease for one (1) additional five (5) year term, upon giving sixty (60) days written notice to Lessor before the expiration of the initial term of this Lease. Lessee shall have the additional option to renew this Lease for a further additional five (5) year term, upon giving sixty (60) days written notice to Lessor before the expiration of the additional term of this Lease. The terms and conditions of said renewal term(s) shall be the same terms and conditions of the initial five year term, however, the rental rate paid hereunder shall be increased by ten per cent (10%) for each five year renewal term. If Lessee exercises it second option, Lessor may at any time during said second option period, terminate said lease on sixty (60) days written notice to Lessee, notifying Lessee that Lessor intends to use the Leased Land for purposes related to Lessor's operations. If said termination by Lessor occurs during said second option period, Lessor agrees that the Leased Land will not be leased to any third party for use as a commercial parking lot for the remainder of what would have otherwise been the Lease Term under the second option.

2003-2007  
2008-2013  
118,350.00  
2014-2019  
9075.00

### ARTICLE 3. RENT

3.01 Lessee agrees to pay to Lessor as rent for the Leased Land the sum of \$7,500.00 per year during the initial five year term hereof, plus sales tax, if applicable. Said rental shall be due on December 1<sup>st</sup> of each year for the following year.

### ARTICLE 4. USE OF PREMISES

4.01 Lessee shall have the non-exclusive right in common with Lessor's Unit Owners, their tenants, guests and invitees only to use the Leased Land during the term of this Lease and any extensions or renewals thereof. Lessee shall use the Leased Land only for a parking lot to be used by Lessee in conjunction with it's business located on the property owned by Lessee adjacent to the Leased Land. Lessee shall not use the Leased Land for long term storage of vehicles.

4.02 If it is or becomes unlawful for Lease to use the Leased Land for its intended purpose, or if any part of the Leased Land or the approaches thereto are condemned or changed by public authority; or if any highway or street change is made diverting or re-routing traffic away from the Leased Land so that it becomes impossible or impracticable to use the Leased Land as

## EXHIBIT B

it was being used at the time, or such use is declared unlawful or such condemnation or change is effected, the Lessee shall have the right at any time thereafter to terminate this Lease by giving Lessor thirty (30) days' notice in writing of such termination.

4.03 If, as a result of causes other than those hereinabove set out, such as fire, flood, strikes, riots, insurrection or other similar or different causes beyond the control of Lessee, the Leased Land shall become unusable from a practical standpoint, for the primary purposes set forth in Article 4.01 above, for a period of thirty (30) consecutive days or longer, then Lessee may, by notice in writing from Lessee to Lessor, at any time prior to the date when this Lease would otherwise terminate, further extend this Lease, without the requirement of the payment of rent, for the period of time which the primary Leased Land was unusable from a practical standpoint for the primary purposes set forth in Article 4.01 above.

### ARTICLE 5. ENCUMBRANCE OF LEASEHOLD ESTATE

5.01 Lessee shall not encumber, by mortgage or other security instrument, or by way of assignment, or otherwise, Lessor's or Lessee's interest under this Lease and the leasehold estate hereby created for any purpose, without the consent of Lessor.

### ARTICLE 6. CONSTRUCTION AND MAINTENANCE OF LEASED LAND

6.01 Lessee has constructed a parking lot consisting of twenty-four spaces with lighting and landscaping on the Leased Land. Lessee represents that such construction is in conformance with Lee County (and all other applicable) Building codes and ordinances. Lessee, at Lessee's own cost and expense at all times during the term of this Lease, agrees to keep and maintain, or cause to be kept and maintained, the Leased Land in a good state of appearance and repair and in compliance with applicable codes and ordinances. Lessee shall not allow trash or other debris to accumulate on the Leased Land. If Lessee should fail to comply with this covenant, without waiving other remedies available to Lessor, Lessor may make such repair or maintenance and look at Lessee for reimbursement of the cost incurred or terminate the Lease. At the end of the Lease Term (or any extensions or renewals thereto), Lessee shall deliver possession of the lands to Lessor, with all improvements thereon, in good working order, reasonable wear and tear accepted. Lessee, as the party who has constructed the improvements, acknowledges that they are suitable for Lessee's purposes, and accept same "as is".

6.02 If the Leased Land, or any part thereof are damaged or destroyed by reason of any cause whatsoever, Lessee may either:

(1) Within thirty (30) days commence and diligently pursue to completion the repair or reconstruction of the Leased Land and this Lease shall remain in full force and effect; or

(2) Terminate this Lease upon thirty (30) days' written notice and return the Leased Land to the condition existing at the time of the commencement of this Lease.

## EXHIBIT B

6.03 Lessee shall keep the Leased Land fully insured. Said insurance shall include, public liability insurance in the amount of \$300,000.00 per person, \$300,000.00 per accident, and \$25,000.00 property damage with both Lessor and Lessee as named insured thereunder, and satisfactory evidence of such coverage shall be furnished to Lessor. Failure of Lessee to maintain insurance shall constitute a default under this Lease.

### ARTICLE 7. MECHANIC'S LIENS

7.01 Lessee shall not suffer or permit any mechanics' liens or other liens to be filed against the fee of the Leased Land nor against Lessee's leasehold interest in the Land.

### ARTICLE 8. ASSIGNMENT AND SUBLEASE

8.01 Lessee shall have the right to assign, convey or transfer Lessee's interest in this Lease and the leasehold estate created hereby only to a transferee of the Lessee of the property owned by Lessee adjacent to the Leased Land.

### ARTICLE 9. DEFAULT AND REMEDIES

9.01 Any of the following shall constitute events of default on the part Lessee:

- (1) Failure of Lessee to pay within five days after same becomes due;
- (2) Failure of Lessee to comply with any other covenant or obligation of Lessee hereunder after twenty days notice of such failure and failure to cure;
- (3) Abandonment of the Premises by Lessee; or
- (4) The filing of a petition in bankruptcy by or against Lessee under the United States Bankruptcy Code or should Lessee make an assignment for the benefit of Lessee's creditors, or should a trustee, receiver, or liquidator of Lessee or Lessee's property be appointed, or should any governmental authority institute any proceeding for the dissolution of Lessee, or should Lessee's interest hereunder pass by operation of law or otherwise and such matter has not been remedied by Lessee as provided for below.

Upon the occurrence of any such event of default, Lessor shall have the option, at any time after such default and without prior notice of Lessee, to declare this Lease terminated, without discharging Lessee's liability hereunder, whereupon unpaid rental for the remainder of the term shall become immediately due and payable. Additionally, upon such occurrence or event of default, Lessor, immediately or at any time thereafter, may re-enter the Premises and remove all persons therefrom with or without legal process and without prejudice to any of its other rights and all claims for damages by reason of such entry are hereby expressly waived by Lessee as also are all claims for damages by reason of such eviction proceedings or any other legal proceedings which Lessor may employ to remove the rentals or possession of the Premises.

## EXHIBIT B

If Lessor fails to perform any of Lessor's covenants hereunder, Lessor shall not be in default unless (i) Lessee gives Lessor written notice thereof setting forth in reasonable detail, the nature and extent of such failure and (ii) such failure by Lessor is not cured or attempted to be cured within thirty (30) days, the length of such period shall be extended for the period reasonable required therefor if Lessor commences curing such failure within the thirty (30) day period and continues the curing thereof with reasonable diligence and continuity.

### ARTICLE 10. GENERAL PROVISIONS

10.01 All of the provisions of this Lease shall be deemed as running with the Land and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

10.02 No failure by either Lessor or Lessee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

10.03 Time is of the essence of this Lease and of each provision.

10.04 Each and all of the covenants, conditions and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of Lessor.

10.05 This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Lease shall be binding or valid.

10.06 All references to the term of this Lease or the Lease Term shall include any extensions of such Term.

10.07 In the event either Lessor or Lessee shall bring any action or proceeding for damages for an alleged breach of any provisions of this Lease, to recover rents, or to enforce, protect or establish any right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings reasonable attorney's fees and court costs.

10.08 Neither this Lease or a memorandum of thereof shall be recorded in the Public Records.

EXHIBIT B

Witnesses:

Lessor  
Palm Harbor Club Condominium Assoc.,  
Inc.

(1) \_\_\_\_\_  
Printed Name \_\_\_\_\_

BY: \_\_\_\_\_

(2) \_\_\_\_\_  
Printed Name \_\_\_\_\_

Lessee  
Fish Tale Marina

(1) Michael Wood  
Printed Name MICHAEL WOOD

BY: Al Durett  
Al Durett, General Partner

(2) Heather K. Meinke  
Printed Name HEATHER K. MEINKE

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 10 day of November 2003  
by \_\_\_\_\_ as \_\_\_\_\_ of Palm Harbor Condominium Association, Inc.,  
He/She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Printed Name \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEE

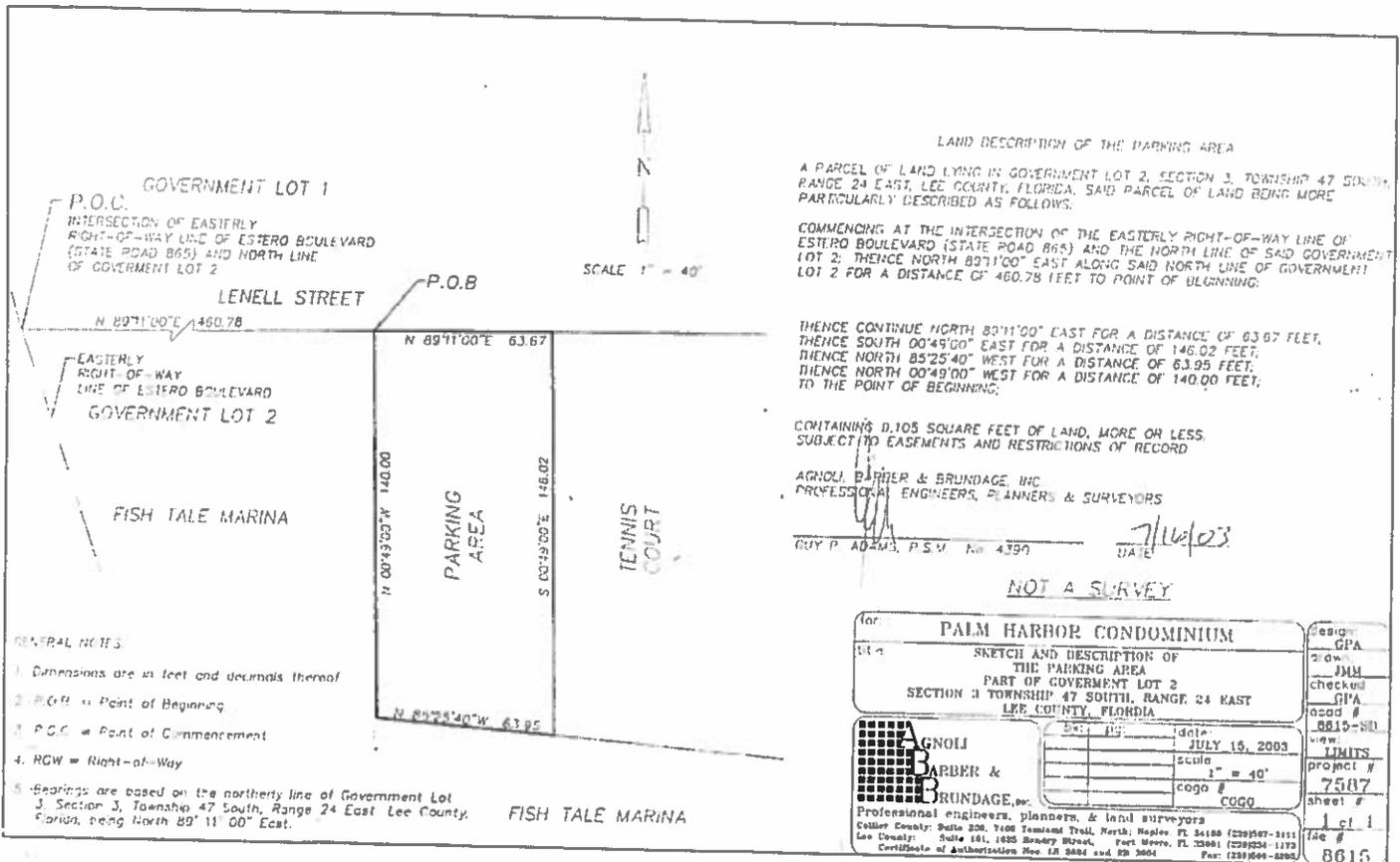
The foregoing instrument was acknowledged before me this 10 day of November 2003  
by Al Durett as General Partner of Fish Tale Marina, a Florida General Partnership. He/She is  
personally known to me or has produced \_\_\_\_\_ as identification.



Jody L Lovejoy  
My Commission DD077105  
Expires December 11, 2005

Jody L Lovejoy  
Notary Public  
Printed Name Jody L Lovejoy

# EXHIBIT B



**LAND DESCRIPTION OF THE PARKING AREA**  
 A PARCEL OF LAND LYING IN GOVERNMENT LOT 2, SECTION 3, TOWNSHIP 47 SOUTH,  
 RANGE 24 EAST, LEE COUNTY, FLORIDA, SAID PARCEL OF LAND BEING MORE  
 PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF  
 ESTERO BOULEVARD (STATE ROAD 865) AND THE NORTH LINE OF SAID GOVERNMENT  
 LOT 2; THENCE NORTH 89°11'00" EAST ALONG SAID NORTH LINE OF GOVERNMENT  
 LOT 2 FOR A DISTANCE OF 460.78 FEET TO POINT OF BEGINNING;

THENCE CONTINUE NORTH 89°11'00" EAST FOR A DISTANCE OF 63.67 FEET,  
 THENCE SOUTH 00°49'00" EAST FOR A DISTANCE OF 146.02 FEET,  
 THENCE NORTH 85°25'40" WEST FOR A DISTANCE OF 63.95 FEET,  
 THENCE NORTH 00°49'00" WEST FOR A DISTANCE OF 140.00 FEET,  
 TO THE POINT OF BEGINNING;

CONTAINING 0.105 SQUARE FEET OF LAND, MORE OR LESS,  
 SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD

AGNOLI, BARBER & BRUNDAGE, INC.  
 PROFESSIONAL ENGINEERS, PLANNERS & SURVEYORS

BUY P. ADAMS, P.S.V. No. 4399 DATE 7/16/03

NOT A SURVEY

- GENERAL NOTES:**
1. Dimensions are in feet and decimals thereof
  2. P.O.B. = Point of Beginning
  3. P.O.C. = Point of Commencement
  4. ROW = Right-of-Way
  5. Bearings are based on the northerly line of Government Lot 1, Section 3, Township 47 South, Range 24 East Lee County, Florida, being North 89° 11' 00" East.

for: <b>PALM HARBOR CONDOMINIUM</b>		design: <b>GPA</b>
title: <b>SKETCH AND DESCRIPTION OF THE PARKING AREA PART OF GOVERNMENT LOT 2 SECTION 3 TOWNSHIP 47 SOUTH, RANGE 24 EAST LEE COUNTY, FLORIDA</b>		drawn: <b>JMM</b>
date: <b>JULY 15, 2003</b>		checked: <b>GPA</b>
scale: <b>1" = 40'</b>		acad #: <b>0810-810</b>
cogo #: <b>COGQ</b>		units: <b>7587</b>
Professional engineers, planners, & land surveyors		sheet #: <b>1 of 1</b>
Lee County: Suite 208, 7408 Tamiami Trail, North Naples, FL 34108 (239)567-5111		file #: <b>8616</b>
Lee County: Suite 101, 1025 Boundary Blvd., Fort Myers, FL 33901 (239)934-1173		
Certificate of Authorization No. LR 2682 and SR 2601		
Fax: (239)566-5283		

EXHIBIT "A"

**EXHIBIT B**

**ADDENDUM TO GROUND LEASE**

WHEREAS, Palm Harbor Club Condominium Association, Inc., a Florida not-for-profit Corporation, referred to as "Lessor," and Fish Tale Marina, a Florida General Partnership, referred to as "Lessee" have entered into a Ground Lease of even date; and,

WHEREAS, the parties wish to amend, supplement, and clarify the Ground Lease by this Addendum to Ground Lease, and,

WHEREAS, in the event of a conflict between the Ground Lease and the Addendum to Ground Lease, this Addendum to Ground Lease shall control.

NOW THEREFORE the Ground Lease is amended, supplemented or clarified as follows:

1. The correct corporate name of the Lessor is Palm Harbor Club at Bay Beach Condominium Association, Inc. and all references in the Ground Lease to Palm Harbor Club Condominium Association, Inc. are corrected accordingly.
2. Paragraph 1.03 of the Ground Lease is amended to provide that in the event legal action ensues regarding the matters set forth therein, each party will bear its own costs and legal fees.
3. Paragraph 3.01 and 6.01 are clarified to reflect that lease payments are due on the first of December for the next year's lease. Fifteen Thousand Dollars (\$15,000.00) (plus sales tax) will be paid upon lease signing for the period of January 1, 2003 through December 31, 2003 and January 1, 2004 through December 31, 2004. Payment for the lease year January 1, 2005 through December 31, 2005 will be due December 1, 2004 and so on. Further, if the first-five year option is exercised, the lease amount for each year will be \$8,250.00 (plus sales tax) and shall be due on December 1 of the year preceding the lease year. If the second renewal option is exercised, the lease amount shall be \$9,075.00 (plus sales tax) for each of the lease years thereunder.
4. Paragraph 6.01 is modified to include the following. The improvements constituting the construction of the parking area were not performed by the Lessor and were undertaken pursuant to an agreement between Lessee and the Developer of the Condominium, Ostego Harbor Club Company, Ltd., a Florida Limited Partnership. Lessee agrees that any issues involving payment for the construction are solely between Lessee and Developer, and Lessee will hold the Lessor harmless for any claims of any nature arising thereunder.

EXHIBIT B

Witnesses:

(1) \_\_\_\_\_  
Printed Name \_\_\_\_\_

(2) \_\_\_\_\_  
Printed Name \_\_\_\_\_

Lessor  
Palm Harbor Club at Bay Beach  
Condominium Association, Inc.

BY: \_\_\_\_\_

Date: \_\_\_\_\_

(1) [Signature]  
Printed Name MICHAEL WOOD

(2) [Signature]  
Printed Name HATHAR K. MEINKE

Lessee  
Fish Tale Marina

BY: [Signature]

Date: 12-3-03

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003 by \_\_\_\_\_ as \_\_\_\_\_ of Palm Harbor Club at Bay Beach Condominium Association, Inc. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Printed Name \_\_\_\_\_

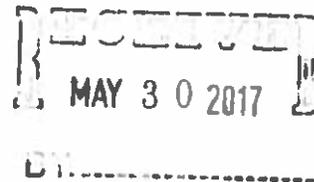
STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 3 day of December, 2003 by AL DURRETT, JR as PARTNER of Fish Tale Marina, a General Partnership. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

 Jody L. Lovejoy  
My Commission DD077105  
Expires December 11, 2005

[Signature]  
Notary Public  
Printed Name JODY L LOVEJOY

## EXHIBIT B



### **SPECTRUM ENGINEERING, INC.**

6244 St. Andrews Cir N  
Fort Myers, FL 33919  
239-277-1182  
*www.SpectrumEngineering.net*

EB4618

April 28, 2017

Town of Fort Myers Beach  
Community Development Department  
2525 Estero Pkwy  
Fort Myers Beach, Florida 33931

Re: Application for Public Hearing for a Special Exception for COP at Fish-Tale Marina

To Whom It May Concern.

Accompanying this letter please find one original of the signed and notarized Application forms and 14 copies of the following:

Application for Public Hearing for Special Exception,

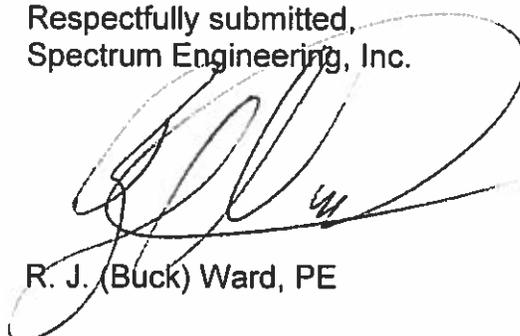
- Disclosure of Ownership Interest: on application form, p.4-7 of 15;
- Affidavit: on application form, p.11 & 12 of 15
- Legal Description - Exhibit 5-1:
- Boundary Survey - Exhibit 5-2:
- Location Map - Exhibit 5-3:
- List of Surrounding Property Owners - Exhibit 5-6:
- Map of Surrounding Property Owners - Exhibit 5-7:
  
- Supplement PH-A Special Exception Application for COP
- Site Plan (including current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening).
- Notarized authorization from the Property Owner to apply for permit
- A statement indicating:
  - the type of establishment,
  - the type of state license to be acquired,
  - and the planned hours of operation.Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.

## EXHIBIT B

- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

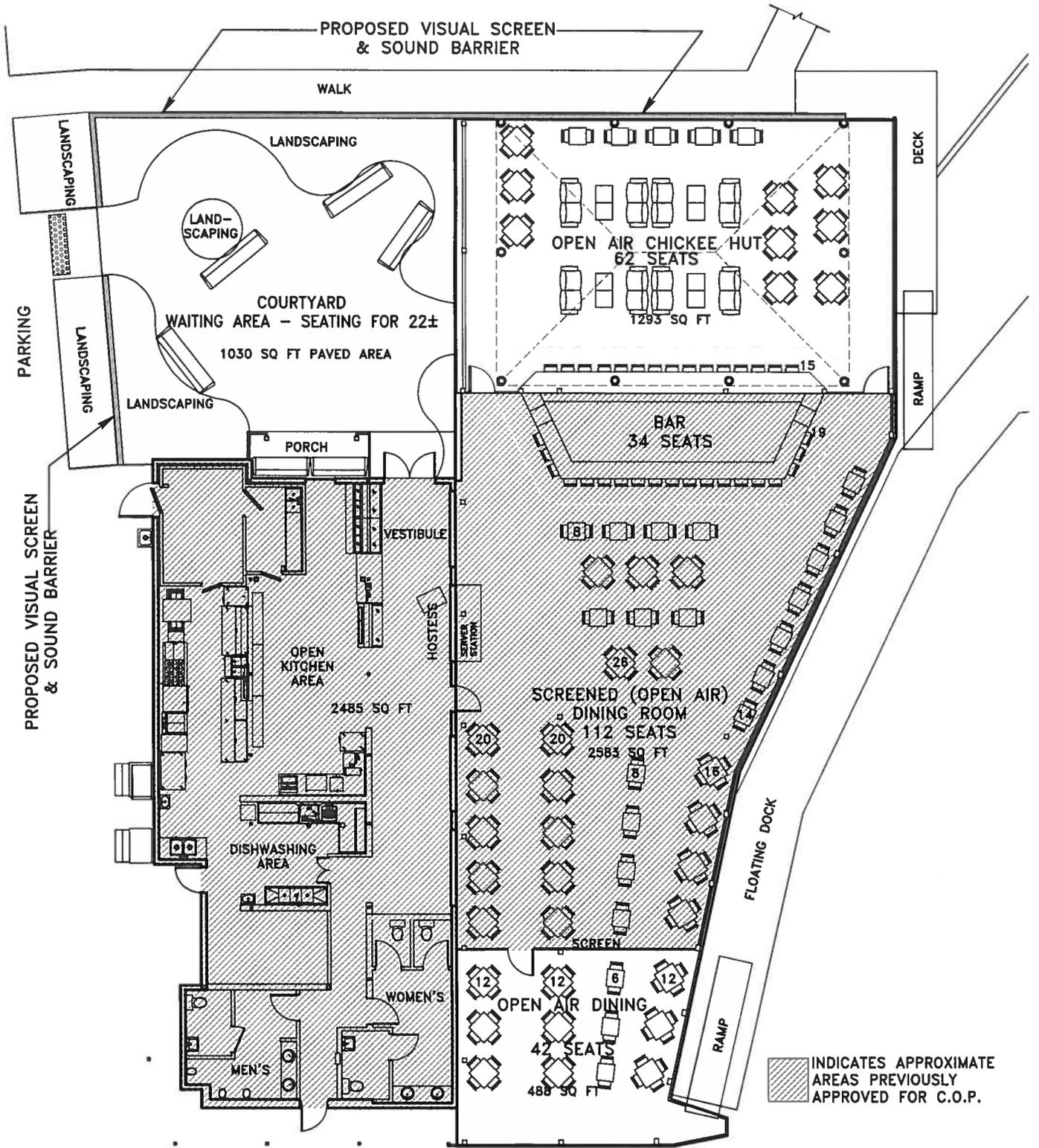
Plus two sets of Mailing Labels of Surrounding Property Owners.

Respectfully submitted,  
Spectrum Engineering, Inc.

A handwritten signature in black ink, appearing to read 'R. J. Ward', with a large, sweeping flourish underneath.

R. J. (Buck) Ward, PE

# EXHIBIT C



INDICATES APPROXIMATE AREAS PREVIOUSLY APPROVED FOR C.O.P.

KITCHEN AND RESTROOMS BUILDING.....	2485 SF	
COVERED DECK SCREENED (OPEN AIR) DINING ROOM.....	2583 SF	112 SEATS
COVERED DECK UNSCREENED (OPEN AIR PET-FRIENDLY) DINING.....	488 SF	42 SEATS
CHICKEE HUT OPEN AIR DINING.....	1293 SF	62 SEATS
OUTDOOR WAITING AREA.....	1030 SF	22 SEATS
BAR.....		34 SEATS
TOTALS.....	7879 SF	272 SEATS

## FISH-TALE MARINA RESTAURANT, SEATING PLAN

SCALE:  
1/16"=1'-0"

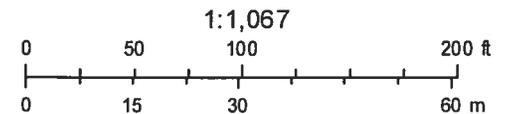
REVISED 6/21/2017  
REVISED 7/18/2017



July 18, 2017

- Lot Lines
- MH Lot Lines
- Countywide Zoning Jan 1
- ⊞ Hospital locations

2007 Aerial

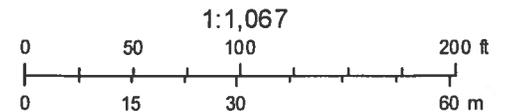




July 18, 2017

- Lot Lines
- MH Lot Lines
- Countywide Zoning Jan 1
- Hospital locations

2002 Aerial

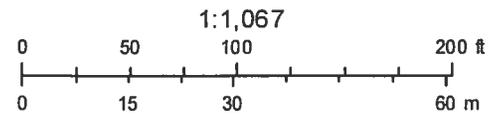




July 18, 2017

2001 Aerial

- Lot Lines
- MH Lot Lines
- Countywide Zoning Jan 1
- Hospital locations

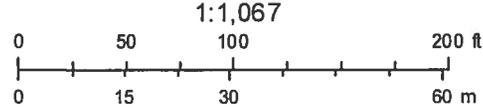




July 18, 2017

1998 Aerial

- Lot Lines
- MH Lot Lines
- Countywide Zoning Jan 1
- Hospital locations



**Palm Harbor Club**  
Condominium Association, Inc.  
150 Lenell Road  
Fort Myers Beach, Florida 33931-5621

June 22, 2017

Mr. Al Durrett  
Fish - Tale Marina  
7225 Estero Blvd.  
Ft. Myers Beach, FL 33931

Dear Mr. Durrett,

On April 20, 2017 the Palm Harbor Club Condo Association Board of Directors and owners were cordially invited to attend a presentation given by you the principle owner of the Fish-Tale Restaurant / Marina located next to the Palm Harbor Condominium property. The purpose of this meeting was to discuss what was taking place in the complete renovation of the previous Fish-Tale restaurant and to answer any and all concerns presented by the members in regard to how the newly constructed business would be operating when completed.

You explained that no loud music/live bands would be present or permitted during the normal hours of operation and that inside the restaurant they would have the normal background music playing at a restricted decibel level. The new Tiki Hut will be allowed to serve alcoholic and sodas along with a variety of new and old menu items. The restaurant will not lose its fish-and-chip platter.

You also mentioned that you were submitting plans to construct a privacy wall six to eight feet in height to further prevent sound from traveling and disturbing the neighbors at Palm Harbor Club. Explaining to us that the walkway would be reconstructed leading to the Palm Harbor side of the parking area. The landscaping plan shows more beautification than we have had in years or ever! Quite frankly "the before" was poorly planned and lacked care.

You conducted a tour of the restaurant explaining that when completed all areas of the business would have the latest equipment in all areas with completely new kitchen, lavatories, floors, ceilings and service bar area. The outside area has been extended to allow more seating and customer comfort.

In closing the consensus from the members present was that this waterfront/road access restaurant would be an asset to have next to the Palm Harbor property. To be able get a first class meal at a fair competitive price within walking distance to the Condominium would be a treasure to the community. Your openness and dedication to being a good neighbor are greatly appreciated by all.

Special Note to the Fort Myers Beach Town Council: Please move forward on the last few variances so that the Fish-Tale Restaurant will be open in the fall for all of us to enjoy.

Sincerely,



Dr. Jean Lee Wahl, Association President

**RESOLUTION NUMBER 2017-0005 OF THE LOCAL PLANNING  
AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
LDC AMENDMENT TO CHAPTER 26, ARTICLE II, SEAWALLS,  
DOCKS, AND OTHER SHORELINE STRUCTURES**

**ORDINANCE AMENDING CHAPTER 26 ARTICLE II IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE "SEAWALLS, DOCKS AND OTHER SHORELINE STRUCTURES," AMENDING SECTION 26-71 "DOCKS AND BOAT RAMPS" AND SECTION 26-73 "FISHING PIERS AND OBSERVATION DECKS" TO PROVIDE MORE CLAIRTY ON WORK THAT CAN BE DONE WITHIN NATURAL AND ARTIFICIAL BODIES OF WATER AND ON CONSTRUCTION OF HANDRAILS.**

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, the purpose of this Ordinance is to amend the current regulations to provide clarity on existing regulations for docks, fishing piers, and observation decks;

WHEREAS, docks and other shoreline structures are regulated by Chapter 26, Article II, of the Land Development Code of the Town of Fort Myers Beach, and

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends/does not recommend** that Town Council approve and adopt the proposed Town Ordinance to amend Chapter 26 Article II, Section 26-71 "Docks And Boat Ramps" and Section 26-73 "Fishing Piers And Observation Decks" of the Town Land Development Code and recommends/does not recommend the following findings of fact and conclusions with regard thereto:

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The proposed ordinance is in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach.
2. The proposed ordinance will promote the safe enjoyment of the town's beaches by residents and visitors.

3. The proposed ordinance will protect the public's right to use and traverse public portions of the beach.

4. The LPA hereby recommends the following revision(s) to the proposed ordinance:

**Section I: Sec. 26-71. - Docks and boat ramps is amended as follows with added language underlined and redacted language as struck-through.**

Docks and boat ramps will be permitted only in accordance with the following regulations:

(1) *Number of docks and slips.*

- a. No more than one, two-slip private single-family dock is permitted to extend from each lot into ~~a natural waterbody~~, except that a shared property line dock can be approved for up to four slips.
- b. Handrails may be required to prohibit the mooring of watercraft in any area not designated as a slip. Handrails must be permanently maintained. Handrails may include, but are not limited to, rope, wood, or composite materials.

(2) Length of docks. No private single-family dock, including its tie-up area, may be permitted or constructed in a natural or artificial waterbody exceeding the following lengths:

- a. Twenty-five percent of the navigable channel width, up to a maximum of 200 feet in length; or up to a maximum of 300 feet in length if the director, in his sole discretion, finds that:
  1. The proposed dock has been approved by all applicable state and federal agencies;
  2. The increased length will not result in a hazard to navigation;
  3. The proposed dock is compatible with docks or other structures and uses on adjoining lots; and
  4. The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.
- b. All measurements are from the mean high-water line seaward. Tie-up areas that are waterward of the dock will be deemed ten feet in width.

(3) *Maximum dimensions of docks.*

- a. Private single-family docks ~~in natural waterbodies~~ must comply with the following maximum dimensional requirements:
  1. Access walkway - Four feet wide;
  2. Terminal platform - 160 square feet;
  3. Finger piers - Three feet wide

The application of these regulations is illustrated in Figure 26-1.

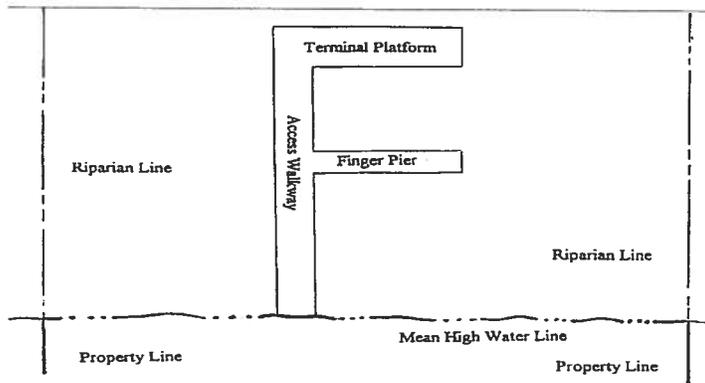


Figure 26-1 Private Single-Family Structure Plan View

(4) Setbacks.

- a. Multi-slip and marina docks, except boat davits, in or adjacent to natural or artificial waterbodies must be set back a minimum of 25 feet from all adjoining side lot lines.
- b. Private single-family docks in natural waterbodies must be set back from all adjoining side lot and side riparian lines as follows:
  1. Marginal docks - At least ten feet.
  2. All other docks - At least 25 feet.
- c. Private single-family docks in artificial waterbodies must be set back at least five feet from all adjoining side lot and side riparian lines.
- d. Side setback requirements for docks can be reduced if:
  1. Adjoining property owners propose a single dock for their joint use, or if they execute a written agreement in recordable form agreeing to a setback less than that required; and
  2. Placement of such dock(s) will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
- e. The director, in his discretion, may permit administrative deviations from the dock setbacks required by this subsection if the structure is located as close to the required setback as possible and:
  1. The width of the subject parcel is not wide enough to permit construction of a single-family dock perpendicular to the shoreline at the midpoint of the shoreline property line without a deviation; or
  2. If moving the structure closer to a property line than normally allowed would minimize damage to wetland vegetation or other environmental resources.

The director's decision under this subsection can be appealed through the procedure set forth in § 34-86 of this LDC or the applicant may seek a variance in accordance with § 34-87 of this LDC.

- f. All boat ramps must set back at least ten feet from all adjoining side lot and side riparian lines.

(5) Location.

- a. Docks, tie-up areas, and moored watercraft cannot be located in a manner that will create a hazard to navigation in natural or artificial waterbodies.
- b. Boat ramps cannot be located in a manner that will result in a horizontal change in the mean high-water line.
- c. The director has the discretion to require reconfiguration of a proposed dock or boat ramp to reduce impacts to the riparian rights of adjacent properties.

(6) Minimum water depths.

- a. There must be a minimum depth of three feet below mean low-water for all slips on private single-family docks in natural waterbodies.
- b. Water depths adjacent to and within a multi-slip dock or a marina must ensure that a minimum one foot clearance is provided between the deepest draft of a vessel and the bottom at mean low-water or the top of marine resources (e.g., seagrasses).

(7) Dock boxes. Dock boxes on private single-family docks may not exceed three feet in height and 100 cubic feet in volume. Such dock boxes do not require building or marine facility permits.

**Section II: Sec. 26-73. - Fishing piers or observation decks is amended as follows with added language underlined and redacted language as struck-through.**

Fishing piers or observation decks may be permitted in areas where water depth is insufficient for mooring. Fishing piers and observation decks must:

- (1) Be designed to prohibit watercraft mooring;
- (2) Be constructed to provide access walkways and terminal platforms at five feet above mean high-water;
- (3) Have fixed handrails, including intermediate rails, installed around the perimeter of the structure, including but not limited to, rope, wood, or composite materials; and
- (4) Have a "no boat mooring" sign placed facing the water on the terminal platform of the structure.

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

Hank Zuba, Chair	AYE/NAY	Suzanne Katt, Vice Chair	AYE/NAY
Scott Safford	AYE/NAY	Jane Plummer	AYE/NAY
Megan Heil	AYE/NAY	Dan Hendrickson	AYE/NAY
Lorrie Wolf	AYE/NAY		

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2017.

LPA of the Town of Fort Myers Beach

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

Approved as to legal sufficiency: ATTEST:

By: \_\_\_\_\_  
LPA Attorney

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

**Town of Fort Myers Beach Local Planning Agency  
Policies and Procedures Manual**

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## **1. Introduction**

This Local Planning Agency (LPA) Policies and Procedures Manual is for the purpose of helping the LPA Members in the discharge of their duties. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of the LPA will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC) and other applicable laws, as necessary.

## **2. Local Planning Agency Mission and Job Description**

**Mission:** To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.

**Functions, Powers and Duties:**

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.
- Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.
- In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.
- Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.
- Serve as the Historic Preservation Board for the Town.
- Establish sub-committees as needed.
- Elect a chair and vice chair for the LPA.
- Elect a chair and vice chair for the Historic Preservation Board
- Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.

**LPA Member Requirements:**

- Be a resident or property owner in the Town of Fort Myers Beach
- File a Statement of Financial Interests (Form 1) with the Lee County Supervisor of Elections every year.
- Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.

**Desired LPA Member Qualities:**

- Analytical – ability to research and analyze information and data
- Decisive
- Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure
- Communication – Listening, Speaking, Writing
- Proactive – identify and seek solutions
- Ethical - open, sincere and truthful

- Ability to work in a team environment
- Ability to work with and listen to people having diverse interests
- Fair with no strong allegiance to any individual or group
- Common sense
- Time to do the job effectively

### **3. Training Materials and First Meeting**

#### **Training Materials**

Each new member of the Local Planning Agency will be provided copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- Policy and Procedures Manual
- Other materials as determined by the LPA Attorney, Community Development Director and LPA members

#### **Election of Officers**

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

#### **Sunshine Issues**

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

This means that any gathering of two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met.

These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor's backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

#### **4. Historic Preservation Board**

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

#### **5. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees**

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

#### **6. Meeting Preparation and Planning**

##### **Meeting Schedule**

Section 34-118 of the Land Development Code (LDC) states: “The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly...” This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.

Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

### **Length of Agenda Items**

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting Administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

### **Public Notice of LPA Quasi-Judicial Hearings**

Except as specifically addressed in the Town Land Development Code, Town Clerk shall advertise all LPA quasi-judicial hearings so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing.

### **Continued Hearings and Legislative Issues**

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes prior to participating in the continued hearing or legislative discussion and resolution.

If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the LPA shall consult with the Director of the Department of Community Development and the LPA Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

### **Meeting Preparation**

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and

noticed meeting. However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting. The Community Development Director or assistant will send an email to the LPA members when the packets are available.

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall. Copies of the agenda are available to the public.

Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

### **Attendance Policy**

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency." This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.

The LPA should be notified of a planned absence as soon as known. It is important that the LPA know that it will have a quorum of its members as soon as possible prior to an LPA meeting. The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than 14 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than 14 days, a request must be forwarded to the Community Development Director with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for regularly scheduled LPA meetings will result in automatic forfeiture of office.

"Chronic" absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Community Development Director will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Community Development Director a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office.

In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town's business.

### **Meetings and Communication between LPA and Town Council**

As agreed at a workshop between LPA and Town Council members in September of 2009, efforts should be made to improve communications between the Local Planning Agency and Town Council. Previous means and those adopted at the above meeting shall be:

- The LPA shall appoint and send a representative to Town council public hearings on land use and proposed ordinances which have been acted upon by the LPA. This representative shall submit brief testimony (Council should have LPA resolution and meeting minutes, unless minutes approval waived by LPA) regarding the LPA hearings on the matter.
- The LPA "Action List" as updated subsequent to LPA meetings shall be submitted to the Director of Community Development, who shall in turn transmit to each Town Council member and the Town Manager and include this list in the next LPA meeting packet.
- A quarterly meeting to be attended by the Town Manager, Town Mayor and Local Planning Agency Chairperson shall take place at 1:00 PM on the third Wednesday of each of the following months; October, January, April and July. The purpose of this meeting will be to discuss current activities of the LPA and assure these are in accordance with direction from Town Staff and Town Council, as well as convey information to Staff and Council regarding the complexities or related issues of those activities.
- Routine workshops (informational meetings) to discuss current LPA activities and Town Council understanding of those activities shall be held between all LPA members, Town Council members, Town Manager, Community Development Director and Town and LPA Attorney starting at 9:00 AM and lasting no later than noon on the first regularly scheduled LPA meeting day of April and September.

## **7. Meeting Procedures**

### **LPA Code of Conduct**

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens of staff.

7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the LPA.

## **LPA Code of Ethics**

Members shall ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the citizens served by the Local Planning Agency and by promoting public confidence in the integrity, independence, ability and impartiality of the LPA.

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the LPA and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with LPA business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by following the requirements of the Land Development Code with regard to ex parte about specific upcoming LPA quasi-judicial hearings. If a Member receives a private written or electronic communication about an upcoming LPA quasi-judicial hearing, the Member will promptly forward the information to the Town Clerk, with a copy to the Director of the Community Development Department and the LPA Attorney so that it may be shared with all other Members as part of the agenda packet for that hearing. Members shall refrain from any private discussion of LPA business with other Members if required by Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during LPA proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. Members should refrain from participation in any proceeding in which their impartiality may reasonably be questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the LPA shall seek the advice and counsel of the LPA Attorney, if such relationship could conceivably influence the Member's impartiality during the LPA's discussion of the subject. The provisions of Chapter 112, Florida Statutes, and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determination.
7. Members shall remain vigilant against deviations from LPA policies and mission statement.

As a legislative and quasi-judicial body, the LPA must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, and apply to legislative and quasi-judicial actions.

The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given

regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, which provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others.

Key overarching principles to keep in mind is that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the LPA provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

### **Order of Agenda Items**

The general order of the agenda will proceed as follows. However, the procedures will differ depending on what type of hearings is being held.

1. Call To Order – Identify for the record the committee that is meeting, the date of the meeting and who is present.
2. Pledge of Allegiance
3. Invocation
4. Approval of Minutes – Requires a motion and vote.
5. Public Hearings – Public Comment will be included as part of the hearing
6. Administrative Agenda – Topics submitted by LPA members, staff, LPA Attorney or items from previous agendas
7. Adjourn as LPA; Reconvene as Historic Preservation Board (HPB)
8. Adjourn as HPB; Reconvene as LPA
9. LPA Members Items and Reports
10. LPA Attorney Items
11. Community Development Director Items
12. Action List Review
13. Public Comment
14. Adjournment – Requires a motion and vote. A privileged motion allowing no discussion before vote.

### **Invocation**

The Chair of the LPA has the discretion of deciding how the Invocation at the beginning of an LPA meeting is handled. However, there is a tradition that has been followed by many LPA's. At the first LPA meeting on April 9, 1996, Chair John Mulholland read an invocation that he had written while Commander of the Power Squadron. Betty Simpson, who was Vice Chair at that time, has carried John's invocation to each subsequent LPA. The Chair has either read the invocation or different LPA members have been asked or volunteered to read the invocation. The invocation reads as follows:

Heavenly Father, we ask that you bless us with your presence here today.  
Grant to us the wisdom to see all things in true perspective.

Grant to us the patience to hear one another with open minds and hearts.  
Grant us the strength to meet all present challenges.  
May all that we do this day, bring honor to you and credit to ourselves. Amen.

## **Conduct of LPA Meetings**

The Chair will conduct the LPA meetings, and in the Chair's absence by the Vice Chair.

Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes. It is not intended that LPA meetings be unnecessarily formalistic, but rather that parliamentary procedure be invoked only when necessary for orderly conduct of the meeting.

The approval of the minutes is intended for LPA members to accurately document the proceedings of the Agency. Before moving approval the minutes should be amended, if necessary, to more accurately portray what occurred at the LPA meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what actually was done. Audiotapes of the proceedings become the official record of what transpired during a meeting.

When the Chair recognizes a speaker during public comment, they will advance to the podium and state their name for the public record. Public comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by majority vote of the LPA. If a special interest group would prefer to have one person speak for a group of individuals in attendance their allotted times can be combined up to a maximum of 15 minutes. This process could save meeting time if the content of what each person of a special interest group intends to say is similar. It could also allow more time for a presentation containing detailed facts and data. If a special interest group chooses to have a spokesperson represent them, request cards having the names and addresses of all individuals present must be provided prior to the meeting. The public comment times are intended as opportunities for interested parties to present their viewpoints to the LPA members; they are not intended as question-and-answer sessions or as dialog with the LPA.

After a proper motion, discussion by the LPA members shall be limited to agenda items. No member will speak twice on the item until all others who want to speak have spoken.

The time period for LPA members' comments is intended as an opportunity for LPA members to share their viewpoints with each other. Since this opportunity does not exist outside of LPA meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Community Development Director or Town Attorney which could be obtained outside of the LPA meeting. While there is no time limit or censorship on comments, LPA members should take into consideration the total time available in the meeting for the published agenda.

## **Legislative Hearing Procedures**

1. The Chair opens the hearing on.....
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
3. The Chair or the LPA Attorney reads the ordinance caption.
4. Staff and/or the LPA attorney present(s) a brief overview of the ordinance.
5. Public input is taken.
6. Public input is closed.
7. LPA members ask questions, if any, of staff/LPA attorney.
8. LPA members discuss ordinance, including changes, deletions, etc.

9. A Motion is made and seconded to either move the Ordinance forward to Town Council as-is or with modifications, or to take some other action. The LPA's recommendation is set forth in an LPA Resolution which is provided to Town Council at the time of Council's consideration of the Ordinance.
10. The Motion is discussed and voted upon. If successful, the Chair declares the hearing on the ordinance to be concluded. If not successful, further motions(s) are made until one passes.

Notes:

- There is no ex parte disclosure requirement for legislative hearings.
- Members of the public are not sworn in.
- Generally there is no discussion between the LPA and public.

**Procedure for Quasi-Judicial Land Use Hearing**

1. The Chair opens the hearing on .....
2. The LPA Attorney swears in all witnesses.
3. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
4. The Chair asks if any LPA member has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record.
5. The applicant presents its case and LPA asks questions.
6. Staff presents its case and LPA asks questions.
7. Public comment/testimony is opened.
  - After public testimony/comment is concluded, the Chair closes public comment/testimony.
8. Applicant presents rebuttal, if any.
9. Staff presents rebuttal, if any.
10. The testimony portion of the hearing is closed.
11. LPA discussion.
12. Request for a motion on the resolution.
13. LPA votes on a resolution regarding the application.

**Voting Conflicts**

Florida Statute has very specific rules regarding voting conflicts and municipal advisory committees, boards and agencies. These rules are different from the rules that apply to the Council.

If an LPA member has a voting conflict, he/she must disclose that conflict in writing to Town staff prior to the meeting in question and this disclosure must be publicly read. A form is available from the Town Clerk. The rules also contain an exception for disclosure at the meeting itself. The committee member is permitted to participate in the discussion and vote on the subject. The specific rules are set out in F.S. 112.3145(4), quoted below:

(4) No **appointed** public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the

special private gain or loss of a relative or business associate of the public officer, **without first disclosing the nature of his or her interest in the matter.**

(a) Such disclosure, indication the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, **prior to** the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally **at the meeting** when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term “participate” means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer’s direction.

Perceived conflicts of interest can be as detrimental to public trust as real conflicts. In an attempt to aid LPA members’ manage such perceptions, the LPA Attorney has prepared advice regarding frequent situations in which LPA members find themselves. These are found in Appendix G.

NOTE: F.S. 112.3143(b) defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

## **8. LPA Meeting Output**

The primary responsibility of the LPA is to provide recommendations to the Town Council regarding comprehensive planning policies, land development code regulations, zoning matters and make decisions regarding historic preservation opportunities.

LPA output to the Town Council will include the following at the discretion of the LPA:

### **A. Quasi-Judicial Hearing:**

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes providing a summary of:
  - a. Testimony by applicants, their attorneys, Town and/or County staff, the LPA attorney, witnesses and people who offer public comment, and
  - b. Issues raised by LPA members with subsequent discussion content including clarifications, conclusions and agreements, and Motions and votes by LPA.
3. One or more members of the LPA will attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

### **B. Legislative Hearing:**

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes.

3. One or more members of the LPA will use best efforts to attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

These LPA outputs must be available before the first Town Council hearing on an issue. However, at the discretion of the LPA exceptions may be made in emergency situations. Minutes from hearings will normally be approved at the subsequent LPA meeting. A “fast-tracked” hearing may have the minutes waived for the Town Council hearing at the discretion of the LPA.

It is noted that audio and /or video recordings of LPA meetings may be available for public, LPA, or Town Council review should clarification, additional understanding of discussions, or for finding errors or omissions.

On a regular basis, as often as monthly, the LPA will submit to the Town Council a synopsis of accomplishments and any issues that might be of interest. As needed, a request will be made to address Town Council.

### **9. LPA’s Role in Initiating Legislative Changes to the Land Development Code**

In the course of performing its duties, the LPA is made aware of legislative issues that could be considered as amendments to the Land Development Code. Before initiating a request for support from Town Staff, the LPA attorney and/or our Planning Consultant to pursue potential LDC amendments, a resolution will be sent to Council requesting their approval to proceed. The format to be used is included in Appendix A and can be modified without re-approving the Policies and Procedure Manual.

The Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual was adopted on February 27, 2007. Revised May 15, 2007. Revised March 18, 2008. Revised September 9, 2008. Revised January 27, 2009. Revised June 23, 2009, Revised September 17, 2009, Revised September 29, 2009.

**Appendix A – Sample Resolution Requesting to Proceed with an LDC Change**

**FORT MYERS BEACH, FLORIDA**

RESOLUTION NUMBER 20\_\_ - \_\_

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council as to the consistency of such proposals with the adopted Comprehensive Plan (Plan); and

WHEREAS, Section 34-120(4) of the Town Land Development Code (LDC) states that the LPA will review proposed LDC amendments and make recommendations to the Town Council regarding their consistency with the Plan, and

WHEREAS, Section 34-120 (12) of the LDC states that the LPA will aid Town officials charged with the direction of projects or improvements embraced within the Plan and generally promote the realization of the Plan; and

WHEREAS, Section 34-120 (14) of the LDC states that the LPA will perform any other duties which lawfully may be assigned to it by Town Council; and

WHEREAS, the Town Council determined at its meeting of October 9, 2006, that prior to the LPA’s initiation of any proposed LDC changes, the LPA must inquire of the Town Council whether the Town Council wished to have such legislative changes initiated by the LPA.

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

1. At its regularly scheduled meeting(s) of \_\_\_\_\_, 20\_\_, the LPA determined that it wishes to initiate legislation on the following subject(s): \_\_\_\_\_

2. The LPA hereby requests direction from the Town Council as to whether the Town Council wishes to have the LPA initiate legislative changes to the LDC on such subjects.

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

Name	_____	Name	_____
Name	_____	Name	_____
Name	_____	Name	_____
Name	_____		

DULY PASSED AND ADOPTED THIS \_\_\_ day of \_\_\_\_\_, 20\_\_.

LPA of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Name, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Name, Esquire, LPA Attorney

By: \_\_\_\_\_  
Name, Town Clerk

**Appendix B - Resolution HPB 2006-03 Establishing the Historic Advisory Committee**

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER HPB 2006-03

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to Section 22-74 of the LDC; and

WHEREAS, the HPB has the power to create an advisory committee to assist the HPB with historic preservation matters and to charge such committee with various and sundry duties; and

WHEREAS, this advisory committee will have no quasi-judicial or legislative powers but rather will function in an informal advisory capacity to the HPB; and

WHEREAS, the advisory committee will be subject to the Sunshine and Public Records Laws of the State of Florida.

NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

The Historic Preservation Board does hereby create the Fort Myers Beach Historical Advisory Committee (FMBHAC), with the following restrictions:

1. The FMBHAC shall be subject to the Sunshine and Public Records Laws of the State of Florida.
2. The FMBHAC will be comprised of seven (7) members appointed by the HPB, all of whom shall be residents, business owners, or property owners within the Town of Fort Myers Beach.
3. Three (3) members of FMBHAC shall be current members of the HPB and four (4) members shall be appointed by the HPB after due consideration of recommendations by the Estero Island Historic Society.

4. The FMBHAC shall meet on an as-needed basis, keep its own minutes, and hold all meetings at Town Hall.
5. The HPB shall appoint all initial members of FMBHAC no later than the first meeting of the HPB in October, 2006. Thereafter, commencing with June, 2007, the HPB shall appoint all members of FMBHAC on an annual basis at the first meeting of the HPB in June.

The foregoing Resolution was adopted by the Historic Preservation Board upon a vote following motion by Board member Tom Babcock and second by Board member Bob Raymond, the result of which was as follows:

Tom Babcock	aye
Randy Brown	aye
Rochelle Kay	absent
Larry Kiker	aye
Alan Mandel	aye
Bob Raymond	aye
Bob Simon	absent

DULY PASSED AND ADOPTED THIS 12<sup>th</sup> day of September, 2006.

HISTORIC PRESERVATION BOARD OF THE  
TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Larry Kiker, Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Anne Dalton, Esquire  
HPB/LPA Attorney

By: \_\_\_\_\_  
Michelle Mayer, Town Clerk

**Appendix C – Recognition Resolutions**

The following Resolution format has been used to recognize past members of the LPA.

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2007-04**

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, Randy Brown has been a member of the LPA from April 2006 to April, 2007; and

WHEREAS, during his membership on the LPA, Randy Brown has provided exemplary service to the Town of Fort Myers Beach.

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

**RANDY BROWN IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING ALL DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATIONS. HIS CONTRIBUTIONS INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.**

The foregoing Resolution was adopted upon a motion by LPA Member Simon and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

Tom Babcock <u>aye</u>	Alan Mandel <u>aye</u>	Dennis Weimer <u>aye</u>
Evie Barnes <u>aye</u>	Bob Raymond <u>aye</u>	
Rochelle Kay <u>aye</u>	Bob Simon <u>aye</u>	
Bob Simon <u>aye</u>		

DULY ADOPTED THIS 10TH day of APRIL 2007.  
LPA of the Town of Fort Myers Beach

BY: \_\_\_\_\_  
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Anne Dalton, Esquire  
LPA Attorney

By: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

## Appendix D - Historic Sign Criteria and Integrity Evaluation

The following is the a form for use by the LPA to evaluate the criteria and integrity of historic sign applications. Staff has documents that were approved by the LPA to be made available to applicants for historic signs that will explain the intent of the Comprehensive Plan and clarify for documentation that would be useful when filing an application.

### Historic Sign Criteria and Integrity Evaluation Town of Fort Myers Beach

**Eligibility Criteria** (select one): \_\_\_Building \_\_\_District \_\_\_Site \_\_\_Structure \_\_\_Object

INTEGRITY CONSIDERATIONS (Review all)	Quality of Significance Criteria (Select one)				
	Events	Persons	Distinctive Characterisitcs	Historical Information	Overall District Significance
Location					
Design					
Setting					
Materials					
Workmanship					
Feeling					
Association					

#### Eligibility Criteria

**Building.** A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

**Structure.** A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

**Object.** An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

**District.** A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

**Site.** A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

#### Quality of Significance Criteria

**Events.** It was associated with events that significantly contributed to broad patterns of our history.

**Persons.** It was associated with the lives of persons significant in our past.

**Distinctive Characteristics.** It embodies the distinctive characteristics of a type period, or method of construction, or possesses high artistic values, or represents a significant distinguishable entity whose components may lack individual distinction.

**Historical Information.** It has yielded (or may yield) information important to prehistory or history.

#### Integrity Considerations

**Location** is the place where significant activities took place. This quality requires that to a large extent the boundaries remain intact.

**Design** is the composition of elements comprising the form, plan, and spatial organization. Design may have resulted from conscious planning decisions set forth in the historic plat, project specifications, building contracts or deed restrictions, or it may be the result of the personal tastes and individual efforts of homeowners to shape their domestic environment. Integrity of design can be affected by changes. Small-scale additions may not detract in a major way from the historic character. Large-scale additions, however, alter the spatial relationship and generally threaten integrity of design.

**Setting** is the physical environment within and surrounding the resource. Integrity of setting requires that a strong sense of historical setting be maintained within the boundaries. This relies to a large extent on the retention of built resources, street plantings, parks and open space. Elements of design greatly affect integrity of setting, and those consistent with the historic character or dating from the period of significance add to integrity. Small-scale elements such as plantings, gateposts, fences, swimming pools, playground equipment, and parking lots detract from the integrity of setting unless they date to the period of significance.

**Materials** include the construction materials of dwellings, garages, roadways, walkways, fences, curbing, and other structures, as well as vegetation planted as lawns, shrubs, trees, and gardens. The presence of particular building materials (e.g., stone, stucco, brick, or horizontal siding) may be important indicators of architectural style and methods of construction that give some neighborhoods a cohesive historic character. Integrity of materials requires that the resource retains the key exterior materials that marked its identity during the historic period. The retention of original materials in individual dwellings may be less important in assessing the integrity of a neighborhood significant for its plan or landscape design. Original plant materials may enhance the integrity, but their loss does not necessarily destroy it. Vegetation similar in historic species, scale, type and visual effect will generally convey integrity of setting although integrity of materials may be lost.

**Workmanship** is evident in the ways materials have been fashioned for functional and decorative purposes to create houses, other buildings and structures, and a landscaped setting. This includes the treatment of materials in design, the planting and maintenance of vegetation, as well as the construction methods of small-scale features such as curbs and walls. Integrity of workmanship requires that architectural features exhibit the artistry or craftsmanship of their builders and that the vegetation historically planted for decorative and aesthetic purposes be maintained in an appropriate fashion and replaced in kind when damaged or destroyed.

**Feeling**, although intangible, is evoked by the presence of physical characteristics that convey the sense of past time and place. Integrity of feeling results from the cumulative effect of setting, design, materials, and workmanship.

**Association** is the direct link between a historic resource and the important events that shaped it. Continued residential use and community traditions, as well as the renewal of design covenants and deed restrictions, help maintain a neighborhood's integrity of association. Additions and alterations that introduce new land uses and erase historic elements of design threaten integrity. Integrity of association requires that a historic resource convey the period when it achieved importance and that, despite changing patterns of ownership, it continues to reflect the design principles and historic associations that shaped it during the historic period.

## Appendix E - Legislative Change Process

The LPA evaluated the process of making legislative changes to the Land Development Code (LDC). The results of the study have been depicted as a flow chart as well as a written description of each sub-process. The arrows in the flow chart represent the direction that work “flows” through the process. Circles are inputs, such as a change request, or outputs, such as a resolution to be sent to Town Council. Rectangle boxes are places where action or work is taking place. A diamond is a decision point that may send the workflow in different directions dependent on the decision made. A “bullet” symbol is where the workflow is on “hold” until the next action can be scheduled. Holds are not necessarily a bad thing, but they can be areas of opportunity for moving change requests through the system faster. Finding ways to reduce the number of steps in a process flow is another way to reduce the time required to make changes to our LDC.

The flow chart also indicates who is “accountable” for each process operation. “Accountability” does not mean that person is “responsible” for doing all the work. It is their job to see that the work gets done.

Future LPAs and Town Councils may want to consider ways that the legislative change process can be altered to improve process time. Until then, performance can start to be measured in order to establish a baseline. One action that has been initiated is to generate a Legislative Change Action List (LCAL). The LCAL will provide clarification of the change requests, the priority and current status. Legislative requests will be categorized into LDC change that:

1. Require policy recommendations from the LPA through workshops or ad hoc committee activities. These changes would be substantive and likely time consuming for staff, consultants and LPA, but not necessarily the highest priority.
2. Are state mandated changes and recommendations of the Evaluation and Analysis Report (EAR) that are time sensitive. These may or may not be complex, but are high priority.
3. May need to be clarified for legal reasons. Complexity and priority must be determined on an individual case.
4. Need staff time. Most of these changes are clerical in nature, but can be time consuming. Priority is often low, but need to be made visible.

The LPA will prioritize, schedule and determine a path forward for legislative change requests that fall into LCAL category 1. Accountability for categories 2 through 4 belongs to the Town Manager, with likely input from the Director of Community Development, the LPA Attorney and the Town’s Planning Consultant.

A regular approach to legislative changes allows interested parties a predictable methodology to participate in the legislative process. For example, the Florida Legislature meets on an annual basis—unless a special session is called—at the same time each year to consider changes to the laws of the State. The effective date of these laws may vary to allow for a phased approach to changes in the law that might best occur if affected parties are afforded a reasonable period of time for adjustment to the change. From time to time, the LPA may wish to establish and refine the timing aspects of its legislative process to improve manageability and predictability.

## Town of Fort Myers Beach Legislative Change Process

### Overarching Principles:

- Trust is placed in the hands of those accountable for each step in the process to do their job to their best of their ability.
- Open, honest and timely communication will be maintained at all times.
- All parties in this process will be treated with respect.

### Sub-Processes

#### A. Request Initiation

Requests to change the Land Development Code (LDC) can be initiated by: the Town Manager, the Town Council, the Local Planning Agency, a group/committee or an individual.

##### Process:

- Requests from the Town Manager and Town Council proceed directly to the “assign action” sub-process.
- LPA change requests are forwarded to Town Council for approval to proceed.
- All individual or group initiated LDC change requests come to the LPA for review and action. Consistency with the Comprehensive Plan will be the criteria for approving or denying requests.
- The Town Clerk handles scheduling functions with direction from the Town Manager or designee (likely the Community Development Director).

#### B. Assign Action

##### Process:

- The Town Manager or designee is accountable for the Legislative Change Action List (LCAL) with input from Planning Consultant, Staff and LPA Attorney.
- Each legislative change request will be put into a category for the purpose of prioritizing and scheduling.
- The LCAL will be reviewed at every LPA meeting.

#### C. Assessment

Assessment of an LDC change request can follow several paths depending on the complexity of the request and the expertise required for making recommendations. The Town Manager or designee, the Planning Consultant and the LPA Attorney, choose the process path.

##### Process:

- Determine whether recommendations are needed from an ad hoc or standing committee.
- Determine whether a workshop is needed.

- Workshops will include: Planning Consultant, appropriate staff, LPA Attorney, LPA members, ad hoc or advisory committees (as needed) and the public.
- Recommendations from committees and/or workshops will be documented by resolution.
- Once all recommendations have been received, drafting of the LDC change can commence and an LPA hearing scheduled.

#### D. LPA Hearing

##### Process:

- The LPA must approve or reject LDC changes or possibly suggest multiple wording options for consideration by Town Council.
- Recommendations must be consistent with the Comprehensive Land Use Plan.
- Explanation of recommendations are forwarded to Town Council by resolution.

#### E. Town Council Hearings

##### Process:

- Introduction of Ordinance
- First Hearing
- Second Hearing. Approved or denied based on consistency with the Comprehensive Land Use Plan.
- At each hearing, Council may choose to deny the change request, return it to the LPA and/or committees and/or workshop participants for rework, or table it.

#### F. Documentation

##### Process:

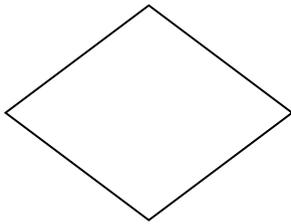
- If the ordinance is approved by Town Council, the Town Manager is accountable for seeing that appropriate steps are taken to codify and distribute changes in the Town of Fort Myers Beach Land Development Code.

Legislative Change Process for the Town of Fort Myers Beach

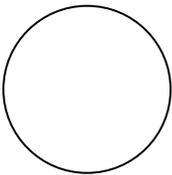
Flow Chart Symbols Used:



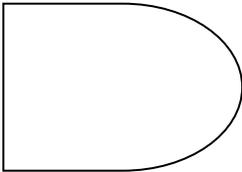
Process Operation



Decision (A Decision will have two or more directions of flow)



Input/Output



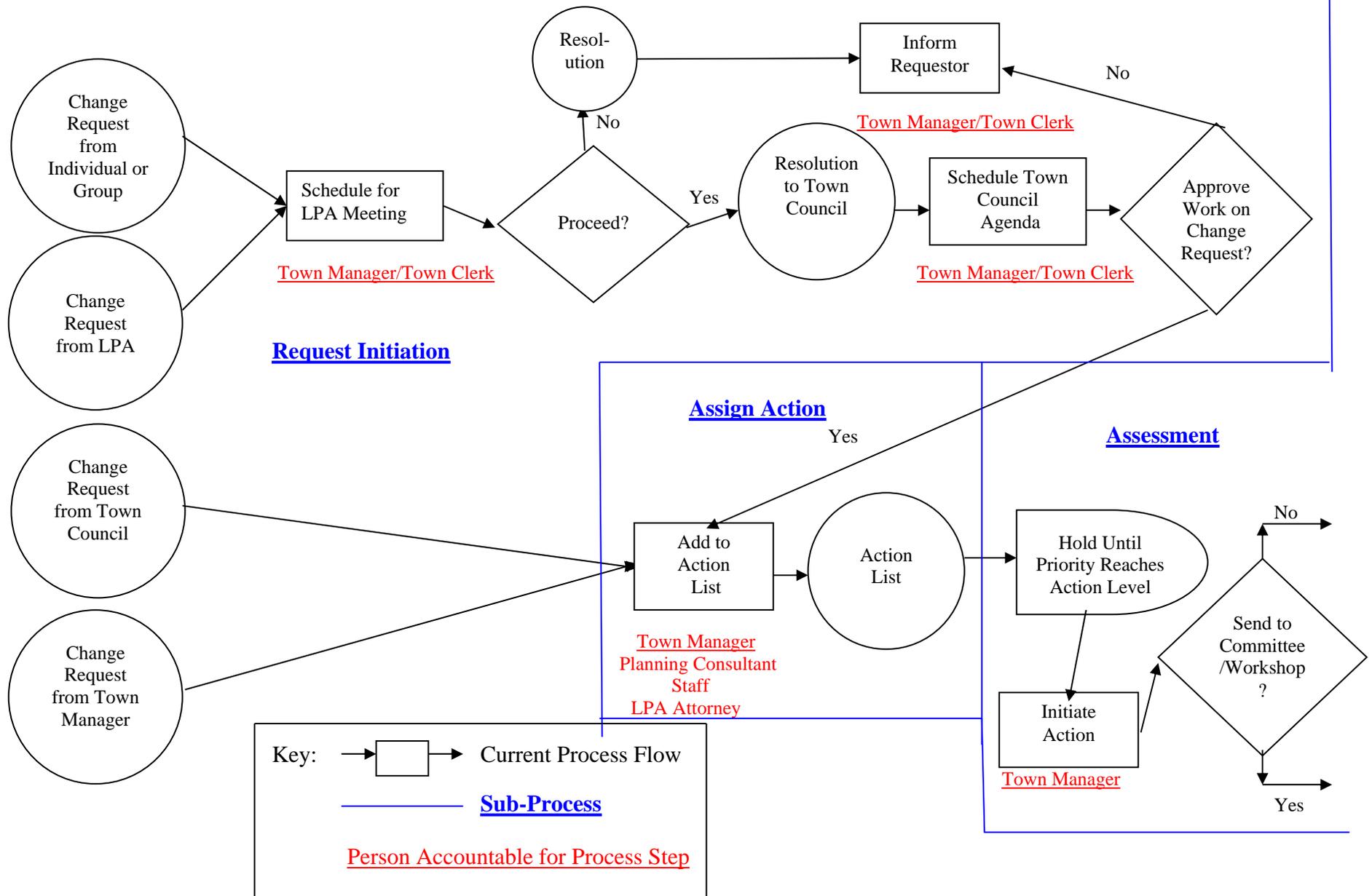
Delay/Wait/Hold



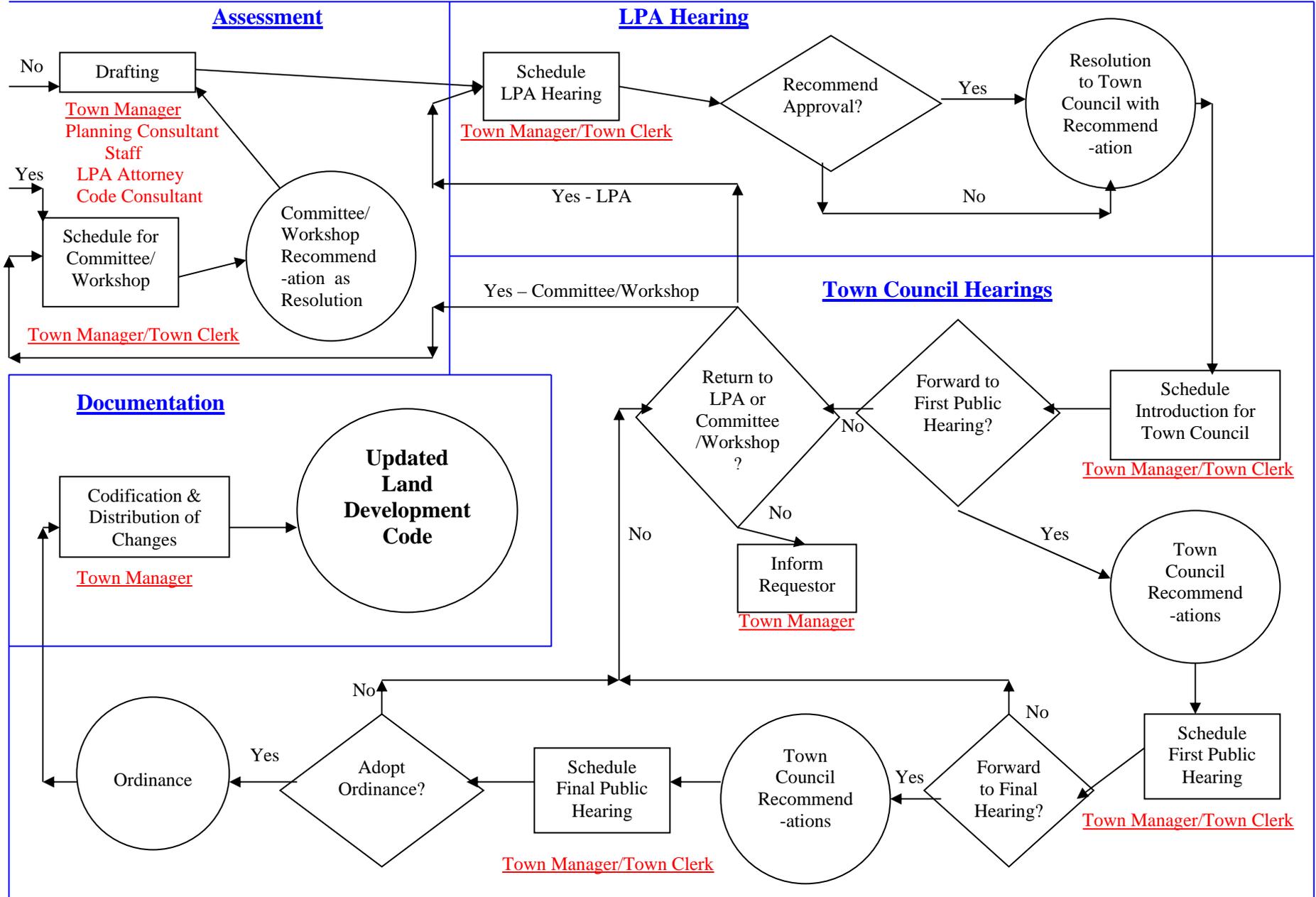
Direction of Flow

The flow chart is a graphic method for displaying a work process and sequence of activities. It graphically shows the process and potential opportunities for improvement within the process. It also identifies starting inputs and ending outputs that establish boundaries of ownership. This sequence of activities is represented by various flow chart symbols, which are connected by a direction of flow arrow.

Legislative Change Process for the Town of Fort Myers Beach



Legislative Change Process for the Town of Fort Myers Beach





**F. Historic Plaque Resolution and Agreement**

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER HPB 2008-01

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH,  
FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to LDC Section 22-74.

NOW THEREFORE, THE HISTORIC PRESERVATION BOARD RESOLVES AS FOLLOWS:

1. The HPB hereby approves the Town of Fort Myers Beach Historic Preservation Board Historic Plaque Agreement for use by the Town in the Historic Plaque Program. A copy of this Agreement is attached to this Resolution as Exhibit "A" and is hereby incorporated by reference.

The foregoing Resolution was adopted by the HPB upon a motion by \_\_\_\_\_ and second by \_\_\_\_\_. Upon being put to a vote, the result was as follows:

Thomas Babcock _____	Bob Raymond _____	Alan Mandel _____
Evie Barnes _____	Bob Simon _____	
Rochelle Kay _____	Dennis Weimer _____	
Alan Mandel _____		

DULY PASSED AND ADOPTED THIS 19<sup>th</sup> day of February, 2008, by the Historic Preservation Board of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Bob Raymond, HPB Chair

Approved as to Legal Sufficiency

ATTEST: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

By: \_\_\_\_\_  
Anne Dalton, LPA/HPB Attorney



## **Appendix G – Conflict of Interest Advice**

Below are several points which may be of interest to the LPA Members:

1. I have an ongoing attorney-client relationship in which the attorney gives legal advice but isn't otherwise involved in my business enterprises. That firm may represent others coming before the LPA in quasi-judicial hearings which are not related to his/her representation of me.

**(a) Can I participate in LPA discussions and decision-making processes where my attorney is representing a different client?**

**ANSWER: yes.** Assuming that this is a traditional attorney-client relationship, there would be no "special private gain or loss" to the LPA member under F.S. 112.3143(4) for his/her attorney to represent someone else before the LPA. An attorney relationship, by itself, does not create a "business associate" relationship under F.S. 112.312(4). If there are other relationships between the firm and the LPA member (joint ventures, employment of a relative, etc.), that would be covered by the conflict statute.

If the attorney provided information which is covered by the ex parte disclosure sections of the Land Development Code, the LPA member would make the same ex parte disclosure as he/she would for anyone else.

Even if this were a conflict of interest, the statute requires written, advance disclosure. It does not prohibit discussion or voting at the advisory committee level.

**(b) Should I disclose the existence of this attorney-client relationship at the time the hearing starts?**

**ANSWER: It's a good idea.** It's not legally required to disclose it since it's not a conflict of interest. However, in ethical matters, it's a good idea to go the extra mile. My suggestion would be to say something like "this law firm has represented me on matters which are not related to this hearing. The LPA attorney has advised me that there's no conflict of interest here but I wanted to disclose this for the record."

2. I have an ongoing relationship with local architects, engineers and other professionals. None of these persons are involved in my business enterprises in any other capacity. Those professionals may represent other persons coming before the LPA in quasi-judicial hearings which are not related to their representation of me. Is there a conflict of interest here?

**ANSWER: See #1 above.**

Excerpted from LPA Attorney Anne Dalton memo dated April 28, 2008.

**Town of Fort Myers Beach Local Planning Agency  
Policies and Procedures Manual**

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- Voting Conflicts

**8. Meeting Output**

**9. LPA's Role in Initiating Legislative Changes to the Land Development Code**

**Appendices:**

- A. Resolution Requesting to Proceed with an LDC Change**
- B. Resolution HPB 2006-03 Establishing the Historic Advisory Committee**
- C. Recognition Resolution**
- D. Historic Sign Criteria and Integrity Evaluation**
- E. Legislative Change Process**
- F. Historic Plaque Resolution and Agreement**
- G. Conflict of Interest Advice**

## 1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is for the purpose of helping the LPA Members in the discharge of their duties. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of the LPA will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC) and other applicable laws, as necessary.

## 2. Local Planning Agency Mission and Job Description

**Mission:** To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.

### Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.
- Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.
- In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.
- Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.
- Serve as the Historic Preservation Board for the Town.
- Establish sub-committees as needed.
- Elect a chair and vice chair for the LPA.
- Elect a chair and vice chair for the Historic Preservation Board
- Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.

### LPA Member Requirements:

- Be a resident or property owner in the Town of Fort Myers Beach
- File a Statement of Financial Interests (Form 1) with the Lee County Supervisor of Elections every year.
- Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.

### Desired LPA Member Qualities:

- Analytical – ability to research and analyze information and data
- Decisive
- Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure
- Communication – Listening, Speaking, Writing
- Proactive – identify and seek solutions
- Ethical - open, sincere and truthful

- Ability to work in a team environment
- Ability to work with and listen to people having diverse interests
- Fair with no strong allegiance to any individual or group
- Common sense
- Time to do the job effectively

### **3. Training Materials and First Meeting**

#### **Training Materials**

Each new member of the Local Planning Agency will be provided copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- Policy and Procedures Manual
- Other materials as determined by the LPA Attorney, Community Development Director and LPA members

#### **Election of Officers**

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

#### **Sunshine Issues**

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

This means that any gathering of two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met.

These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor's backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

#### **4. Historic Preservation Board**

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

#### **5. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees**

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

#### **6. Meeting Preparation and Planning**

##### **Meeting Schedule**

Section 34-118 of the Land Development Code (LDC) states: "The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly..." This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.

Reference Code of

Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

### **Length of Agenda Items**

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting Administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

### **Public Notice of LPA Quasi-Judicial Hearings**

Except as specifically addressed in the Town Land Development Code, Town Clerk shall advertise all LPA quasi-judicial hearings so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing.

### **Continued Hearings and Legislative Issues**

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes prior to participating in the continued hearing or legislative discussion and resolution.

If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the LPA shall consult with the Director of the Department of Community Development and the LPA Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

### **Meeting Preparation**

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and

site code of ordinances

noticed meeting. However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting. The Community Development Director or assistant will send an email to the LPA members when the packets are available.

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

and on the Town's website.

The agenda is posted at Town Hall. Copies of the agenda are available to the public.

Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

### Attendance Policy

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency." This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.

The LPA should be notified of a planned absence as soon as known. It is important that the LPA know that it will have a quorum of its members as soon as possible prior to an LPA meeting. The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than 14 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than 14 days, a request must be forwarded to the Community Development Director with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for regularly scheduled LPA meetings will result in automatic forfeiture of office.

"Chronic" absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Community Development Director will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Community Development Director a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office.

In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town's business.

### Meetings and Communication between LPA and Town Council

As agreed at a workshop between LPA and Town Council members in September of 2009, efforts should be made to improve communications between the Local Planning Agency and Town Council. Previous means and those adopted at the above meeting shall be:

- The LPA shall appoint and send a representative to Town council public hearings on land use and proposed ordinances which have been acted upon by the LPA. This representative shall submit brief testimony (Council should have LPA resolution and meeting minutes, unless minutes approval waived by LPA) regarding the LPA hearings on the matter.
- The LPA "Action List" as updated subsequent to LPA meetings shall be submitted to the Director of Community Development, who shall in turn transmit to each Town Council member and the Town Manager and include this list in the next LPA meeting packet.
- A quarterly meeting to be attended by the Town Manager, Town Mayor and Local Planning Agency Chairperson shall take place at 1:00 PM on the third Wednesday of each of the following months; October, January, April and July. The purpose of this meeting will be to discuss current activities of the LPA and assure these are in accordance with direction from Town Staff and Town Council, as well as convey information to Staff and Council regarding the complexities or related issues of those activities.
- Routine workshops (informational meetings) to discuss current LPA activities and Town Council understanding of those activities shall be held between all LPA members, Town Council members, Town Manager, Community Development Director and Town and LPA Attorney starting at 9:00 AM and lasting no later than noon on the first regularly scheduled LPA meeting day of April and September.

## 7. Meeting Procedures

### LPA Code of Conduct

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens or staff.

7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the LPA.

### **LPA Code of Ethics**

Members shall ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the citizens served by the Local Planning Agency and by promoting public confidence in the integrity, independence, ability and impartiality of the LPA.

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the LPA and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with LPA business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by following the requirements of the Land Development Code with regard to ex parte about specific upcoming LPA quasi-judicial hearings. If a Member receives a private written or electronic communication about an upcoming LPA quasi-judicial hearing, the Member will promptly forward the information to the Town Clerk, with a copy to the Director of the Community Development Department and the LPA Attorney so that it may be shared with all other Members as part of the agenda packet for that hearing. Members shall refrain from any private discussion of LPA business with other Members if required by Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during LPA proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. Members should refrain from participation in any proceeding in which their impartiality may reasonably be questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the LPA shall seek the advice and counsel of the LPA Attorney, if such relationship could conceivably influence the Member's impartiality during the LPA's discussion of the subject. The provisions of Chapter 112, Florida Statutes, and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determination.
7. Members shall remain vigilant against deviations from LPA policies and mission statement.

As a legislative and quasi-judicial body, the LPA must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, and apply to legislative and quasi-judicial actions.

The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given

regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, which provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others.

Key overarching principles to keep in mind <sup>sure</sup> is that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the LPA provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

### Order of Agenda Items

The general order of the agenda will proceed as follows. However, the procedures will differ depending on what type of hearings <sup>are</sup> is being held.

1. Call To Order – Identify for the record the committee that is meeting, the date of the meeting and who is present.
2. Pledge of Allegiance
3. Invocation
4. Approval of Minutes – Requires a motion and vote.
5. Public Hearings – Public Comment will be included as part of the hearing
6. Administrative Agenda – Topics submitted by LPA members, staff, LPA Attorney or items from previous agendas
7. Adjourn as LPA; Reconvene as Historic Preservation Board (HPB)
8. Adjourn as HPB; Reconvene as LPA
9. LPA Members Items and Reports
10. LPA Attorney Items
11. Community Development Director Items
12. Action List Review
13. Public Comment
14. Adjournment – Requires a motion and vote. A privileged motion allowing no discussion before vote.

### Invocation

The Chair of the LPA has the discretion of deciding how the Invocation at the beginning of an LPA meeting is handled. However, there is a tradition that has been followed by many LPA's. At the first LPA meeting on April 9, 1996, Chair John Mulholland read an invocation that he had written while Commander of the Power Squadron. Betty Simpson, who was Vice Chair at that time, has carried John's invocation to each subsequent LPA. The Chair has either read the invocation or different LPA members have been asked or volunteered to read the invocation. The invocation reads as follows:

Heavenly Father, we ask that you bless us with your presence here today.

Grant to us the wisdom to see all things in true perspective.

Should be God Her Country

Grant to us the patience to hear one another with open minds and hearts.  
Grant us the strength to meet all present challenges.  
May all that we do this day, bring honor to you and credit to ourselves. Amen.

### Conduct of LPA Meetings

The Chair will conduct the LPA meetings, and in the Chair's absence by the Vice Chair.

Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes. It is not intended that LPA meetings be unnecessarily formalistic, but rather that parliamentary procedure be invoked only when necessary for orderly conduct of the meeting.

The approval of the minutes is intended for LPA members to accurately document the proceedings of the Agency. Before moving approval the minutes should be amended, if necessary, to more accurately portray what occurred at the LPA meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what actually was done. Audiotapes of the proceedings become the official record of what transpired during a meeting.

When the Chair recognizes a speaker during public comment, they will advance to the podium and state their name for the public record. Public comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by majority vote of the LPA. If a special interest group would prefer to have one person speak for a group of individuals in attendance their allotted times can be combined up to a maximum of 15 minutes. This process could save meeting time if the content of what each person of a special interest group intends to say is similar. It could also allow more time for a presentation containing detailed facts and data. If a special interest group chooses to have a spokesperson represent them, request cards having the names and addresses of all individuals present must be provided prior to the meeting. The public comment times are intended as opportunities for interested parties to present their viewpoints to the LPA members; they are not intended as question-and-answer sessions or as dialog with the LPA.

After a proper motion, discussion by the LPA members shall be limited to agenda items. No member will speak twice on the item until all others who want to speak have spoken.

The time period for LPA members' comments is intended as an opportunity for LPA members to share their viewpoints with each other. Since this opportunity does not exist outside of LPA meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Community Development Director or Town Attorney which could be obtained outside of the LPA meeting. While there is no time limit or censorship on comments, LPA members should take into consideration the total time available in the meeting for the published agenda.

### Legislative Hearing Procedures

1. The Chair opens the hearing on.....
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
3. The Chair or the LPA Attorney reads the ordinance caption.
4. Staff and/or the LPA attorney present(s) a brief overview of the ordinance.
5. Public input is taken.
6. Public input is closed.
7. LPA members ask questions, if any, of staff/LPA attorney.
8. LPA members discuss ordinance, including changes, deletions, etc.

9. A Motion is made and seconded to either move the Ordinance forward to Town Council as-is or with modifications, or to take some other action. The LPA's recommendation is set forth in an LPA Resolution which is provided to Town Council at the time of Council's consideration of the Ordinance.
10. The Motion is discussed and voted upon. If successful, the Chair declares the hearing on the ordinance to be concluded. If not successful, further motions(s) are made until one passes.

Notes:

- There is no ex parte disclosure requirement for legislative hearings.
- Members of the public are not sworn in.
- Generally there is no discussion between the LPA and public.

**Procedure for Quasi-Judicial Land Use Hearing**

1. The Chair opens the hearing on .....
2. The LPA Attorney swears in all witnesses.
3. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
4. The Chair asks if any LPA member has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record.
5. The applicant presents its case and LPA asks questions.
6. Staff presents its case and LPA asks questions.
7. Public comment/testimony is opened.
  - After public testimony/comment is concluded, the Chair closes public comment/testimony.
8. Applicant presents rebuttal, if any.
9. Staff presents rebuttal, if any.
10. The testimony portion of the hearing is closed.
11. LPA discussion.
12. Request for a motion on the resolution.
13. LPA votes on a resolution regarding the application.

**Voting Conflicts**

Florida Statute <sup>statutes have</sup> has very specific rules regarding voting conflicts and municipal advisory committees, boards and agencies. These rules are different from the rules that apply to the Council.

If an LPA member has a voting conflict, he/she must disclose that conflict in writing to Town staff prior to the meeting in question and this disclosure must be publicly read. A form is available from the Town Clerk. The rules also contain an exception for disclosure at the meeting itself. The committee member is permitted to participate in the discussion and vote on the subject. The specific rules are set out in F.S. 112.3145(4), quoted below:

(4) No **appointed** public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the

not all hearings require affidavit

non attached

special private gain or loss of a relative or business associate of the public officer, **without first disclosing the nature of his or her interest in the matter.**

(a) Such disclosure, indication the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, **prior to the meeting** in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally **at the meeting** when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

Perceived conflicts of interest can be as detrimental to public trust as real conflicts. In an attempt to aid LPA members' manage such perceptions, the LPA Attorney has prepared advice regarding frequent situations in which LPA members find themselves. These are found in Appendix G.

NOTE: F.S. 112.3143(b) defines "relative" as follows: "any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law."

## 8. LPA Meeting Output

The primary responsibility of the LPA is to provide recommendations to the Town Council regarding comprehensive planning policies, land development code regulations, zoning matters and make decisions regarding historic preservation opportunities.

LPA output to the Town Council will include the following at the discretion of the LPA:

### A. Quasi-Judicial Hearing:

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes providing a summary of:
  - a. Testimony by applicants, their attorneys, Town and/or County staff, the LPA attorney, witnesses and people who offer public comment, and
  - b. Issues raised by LPA members with subsequent discussion content including clarifications, conclusions and agreements, and Motions and votes by LPA.
3. One or more members of the LPA will attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

### B. Legislative Hearing:

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes.

copy (A) to replace

## Voting Conflicts

Florida Statutes have very specific rules regarding voting conflicts for municipal advisory committees, boards and agencies. These rules are different for appointive offices than the rules that apply to the Town Council (elective offices).

A person holding appointive municipal public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate.

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143, F.S., from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file Form 8B, MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS (available from the Clerk's Office or State Ethics Commission), before making any attempt to influence the decision, with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

**IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:**

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.



3. One or more members of the LPA will use best efforts to attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

These LPA outputs must be available before the first Town Council hearing on an issue. However, at the discretion of the LPA exceptions may be made in emergency situations. Minutes from hearings will normally be approved at the subsequent LPA meeting. A "fast-tracked" hearing may have the minutes waived for the Town Council hearing at the discretion of the LPA.

It is noted that audio and /or video recordings of LPA meetings may be available for public, LPA, or Town Council review should clarification, additional understanding of discussions, or for finding errors or omissions.

On a regular basis, as often as monthly, the LPA will submit to the Town Council a synopsis of accomplishments and any issues that might be of interest. As needed, a request will be made to address Town Council.

### 9. LPA's Role in Initiating Legislative Changes to the Land Development Code

In the course of performing its duties, the LPA is made aware of legislative issues that could be considered as amendments to the Land Development Code. Before initiating a request for support from Town Staff, the LPA attorney and/or our Planning Consultant to pursue potential LDC amendments, a resolution will be sent to Council requesting their approval to proceed. The format to be used is included in Appendix A and can be modified without re-approving the Policies and Procedure Manual.

The Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual was adopted on ~~February 27, 2007. Revised May 15, 2007. Revised March 18, 2008. Revised September 9, 2008. Revised January 27, 2009. Revised June 23, 2009. Revised September 17, 2009. Revised September 29, 2009.~~

was reviewed and reaffirmed on \_\_\_\_\_, Date.

**Appendix A – Sample Resolution Requesting to Proceed with an LDC Change  
FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 20\_\_-\_\_**

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council as to the consistency of such proposals with the adopted Comprehensive Plan (Plan); and

WHEREAS, Section 34-120(4) of the Town Land Development Code (LDC) states that the LPA will review proposed LDC amendments and make recommendations to the Town Council regarding their consistency with the Plan, and

WHEREAS, Section 34-120 (12) of the LDC states that the LPA will aid Town officials charged with the direction of projects or improvements embraced within the Plan and generally promote the realization of the Plan; and

WHEREAS, Section 34-120 (14) of the LDC states that the LPA will perform any other duties which lawfully may be assigned to it by Town Council; and

WHEREAS, the Town Council determined at its meeting of October 9, 2006, that prior to the LPA's initiation of any proposed LDC changes, the LPA must inquire of the Town Council whether the Town Council wished to have such legislative changes initiated by the LPA.

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

1. At its regularly scheduled meeting(s) of \_\_\_\_\_, 20\_\_, the LPA determined that it wishes to initiate legislation on the following subject(s): \_\_\_\_\_

2. The LPA hereby requests direction from the Town Council as to whether the Town Council wishes to have the LPA initiate legislative changes to the LDC on such subjects.

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

Name _____	Name _____

DULY PASSED AND ADOPTED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LPA of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Name, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Name, Esquire, LPA Attorney

By: \_\_\_\_\_  
Name, Town Clerk

**Appendix B - Resolution HPB 2006-03 Establishing the Historic Advisory Committee**

**RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER HPB 2006-03**

**A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:**

**WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and**

**WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and**

**WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to Section 22-74 of the LDC; and**

**WHEREAS, the HPB has the power to create an advisory committee to assist the HPB with historic preservation matters and to charge such committee with various and sundry duties; and**

**WHEREAS, this advisory committee will have no quasi-judicial or legislative powers but rather will function in an informal advisory capacity to the HPB; and**

**WHEREAS, the advisory committee will be subject to the Sunshine and Public Records Laws of the State of Florida.**

**NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

**The Historic Preservation Board does hereby create the Fort Myers Beach Historical Advisory Committee (FMBHAC), with the following restrictions:**

- 1. The FMBHAC shall be subject to the Sunshine and Public Records Laws of the State of Florida.**
- 2. The FMBHAC will be comprised of seven (7) members appointed by the HPB, all of whom shall be residents, business owners, or property owners within the Town of Fort Myers Beach.**
- 3. Three (3) members of FMBHAC shall be current members of the HPB and four (4) members shall be appointed by the HPB after due consideration of recommendations by the Estero Island Historic Society.**

4. The FMBHAC shall meet on an as-needed basis, keep its own minutes, and hold all meetings at Town Hall.
5. The HPB shall appoint all initial members of FMBHAC no later than the first meeting of the HPB in October, 2006. Thereafter, commencing with June, 2007, the HPB shall appoint all members of FMBHAC on an annual basis at the first meeting of the HPB in June.

The foregoing Resolution was adopted by the Historic Preservation Board upon a vote following motion by Board member Tom Babcock and second by Board member Bob Raymond, the result of which was as follows:

Tom Babcock	aye
Randy Brown	aye
Rochelle Kay	absent
Larry Kiker	aye
Alan Mandel	aye
Bob Raymond	aye
Bob Simon	absent

DULY PASSED AND ADOPTED THIS 12<sup>th</sup> day of September, 2006.

HISTORIC PRESERVATION BOARD OF THE  
TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Larry Kiker, Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Anne Dalton, Esquire  
HPB/LPA Attorney

By: \_\_\_\_\_  
Michelle Mayer, Town Clerk

## Appendix E - Legislative Change Process

The LPA evaluated the process of making legislative changes to the Land Development Code (LDC). The results of the study have been depicted as a flow chart as well as a written description of each sub-process. The arrows in the flow chart represent the direction that work “flows” through the process. Circles are inputs, such as a change request, or outputs, such as a resolution to be sent to Town Council. Rectangle boxes are places where action or work is taking place. A diamond is a decision point that may send the workflow in different directions dependent on the decision made. A “bullet” symbol is where the workflow is on “hold” until the next action can be scheduled. Holds are not necessarily a bad thing, but they can be areas of opportunity for moving change requests through the system faster. Finding ways to reduce the number of steps in a process flow is another way to reduce the time required to make changes to our LDC.

The flow chart also indicates who is “accountable” for each process operation. “Accountability” does not mean that person is “responsible” for doing all the work. It is their job to see that the work gets done.

Future LPAs and Town Councils may want to consider ways that the legislative change process can be altered to improve process time. Until then, performance can start to be measured in order to establish a baseline. One action that has been initiated is to generate a Legislative Change Action List (LCAL). The LCAL will provide clarification of the change requests, the priority and current status. Legislative requests will be categorized into LDC change that:

1. Require policy recommendations from the LPA through workshops or ad hoc committee activities. These changes would be substantive and likely time consuming for staff, consultants and LPA, but not necessarily the highest priority.
2. Are state mandated changes and recommendations of the Evaluation and Analysis Report (EAR) that are time sensitive. These may or may not be complex, but are high priority.
3. May need to be clarified for legal reasons. Complexity and priority must be determined on an individual case.
4. Need staff time. Most of these changes are clerical in nature, but can be time consuming. Priority is often low, but need to be made visible.

The LPA will prioritize, schedule and determine a path forward for legislative change requests that fall into LCAL category 1. Accountability for categories 2 through 4 belongs to the Town Manager, with likely input from the Director of Community Development, the LPA Attorney and the Town’s Planning Consultant.

A regular approach to legislative changes allows interested parties a predictable methodology to participate in the legislative process. For example, the Florida Legislature meets on an annual basis—unless a special session is called—at the same time each year to consider changes to the laws of the State. The effective date of these laws may vary to allow for a phased approach to changes in the law that might best occur if affected parties are afforded a reasonable period of time for adjustment to the change. From time to time, the LPA may wish to establish and refine the timing aspects of its legislative process to improve manageability and predictability.

**Design** is the composition of elements comprising the form, plan, and spatial organization. Design may have resulted from conscious planning decisions set forth in the historic plat, project specifications, building contracts or deed restrictions, or it may be the result of the personal tastes and individual efforts of homeowners to shape their domestic environment. Integrity of design can be affected by changes. Small-scale additions may not detract in a major way from the historic character. Large-scale additions, however, alter the spatial relationship and generally threaten integrity of design.

**Setting** is the physical environment within and surrounding the resource. Integrity of setting requires that a strong sense of historical setting be maintained within the boundaries. This relies to a large extent on the retention of built resources, street plantings, parks and open space. Elements of design greatly affect integrity of setting, and those consistent with the historic character or dating from the period of significance add to integrity. Small-scale elements such as plantings, gateposts, fences, swimming pools, playground equipment, and parking lots detract from the integrity of setting unless they date to the period of significance.

**Materials** include the construction materials of dwellings, garages, roadways, walkways, fences, curbing, and other structures, as well as vegetation planted as lawns, shrubs, trees, and gardens. The presence of particular building materials (e.g., stone, stucco, brick, or horizontal siding) may be important indicators of architectural style and methods of construction that give some neighborhoods a cohesive historic character. Integrity of materials requires that the resource retains the key exterior materials that marked its identity during the historic period. The retention of original materials in individual dwellings may be less important in assessing the integrity of a neighborhood significant for its plan or landscape design. Original plant materials may enhance the integrity, but their loss does not necessarily destroy it. Vegetation similar in historic species, scale, type and visual effect will generally convey integrity of setting although integrity of materials may be lost.

**Workmanship** is evident in the ways materials have been fashioned for functional and decorative purposes to create houses, other buildings and structures, and a landscaped setting. This includes the treatment of materials in design, the planting and maintenance of vegetation, as well as the construction methods of small-scale features such as curbs and walls. Integrity of workmanship requires that architectural features exhibit the artistry or craftsmanship of their builders and that the vegetation historically planted for decorative and aesthetic purposes be maintained in an appropriate fashion and replaced in kind when damaged or destroyed.

**Feeling**, although intangible, is evoked by the presence of physical characteristics that convey the sense of past time and place. Integrity of feeling results from the cumulative effect of setting, design, materials, and workmanship.

**Association** is the direct link between a historic resource and the important events that shaped it. Continued residential use and community traditions, as well as the renewal of design covenants and deed restrictions, help maintain a neighborhood's integrity of association. Additions and alterations that introduce new land uses and erase historic elements of design threaten integrity. Integrity of association requires that a historic resource convey the period when it achieved importance and that, despite changing patterns of ownership, it continues to reflect the design principles and historic associations that shaped it during the historic period.

## Appendix D - Historic Sign Criteria and Integrity Evaluation

The following is the a form for use by the LPA to evaluate the criteria and integrity of historic sign applications. Staff has documents that were approved by the LPA to be made available to applicants for historic signs that will explain the intent of the Comprehensive Plan and clarify for documentation that would be useful when filing an application.

### Historic Sign Criteria and Integrity Evaluation Town of Fort Myers Beach

**Eligibility Criteria** (select one):  Building  District  Site  Structure  Object

INTEGRITY CONSIDERATIONS <i>(Review all)</i>	Quality of Significance Criteria <i>(Select one)</i>				
	Events	Persons	Distinctive Characterisitics	Historical Information	Overall District Significance
Location					
Design					
Setting					
Materials					
Workmanship					
Feeling					
Association					

#### Eligibility Criteria

**Building.** A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

**Structure.** A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

**Object.** An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

**District.** A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

**Site.** A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

#### Quality of Significance Criteria

**Events.** It was associated with events that significantly contributed to broad patterns of our history.

**Persons.** It was associated with the lives of persons significant in our past.

**Distinctive Characteristics.** It embodies the distinctive characteristics of a type period, or method of construction, or possesses high artistic values, or represents a significant distinguishable entity whose components may lack individual distinction.

**Historical Information.** It has yielded (or may yield) information important to prehistory or history.

#### Integrity Considerations

**Location** is the place where significant activities took place. This quality requires that to a large extent the boundaries remain intact.

**Appendix C – Recognition Resolutions**

The following Resolution format has been used to recognize past members of the LPA.

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2007-04**

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, Randy Brown has been a member of the LPA from April 2006 to April, 2007; and

WHEREAS, during his membership on the LPA, Randy Brown has provided exemplary service to the Town of Fort Myers Beach.

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

**RANDY BROWN IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING ALL DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATIONS. HIS CONTRIBUTIONS INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.**

The foregoing Resolution was adopted upon a motion by LPA Member Simon and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

Tom Babcock <u>aye</u>	Alan Mandel <u>aye</u>	Dennis Weimer <u>aye</u>
Evie Barnes <u>aye</u>	Bob Raymond <u>aye</u>	
Rochelle Kay <u>aye</u>	Bob Simon <u>aye</u>	
Bob Simon <u>aye</u>		

DULY ADOPTED THIS 10TH day of APRIL 2007.  
LPA of the Town of Fort Myers Beach

BY: \_\_\_\_\_  
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Anne Dalton, Esquire  
LPA Attorney

By: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

## Town of Fort Myers Beach Legislative Change Process

### Overarching Principles:

- Trust is placed in the hands of those accountable for each step in the process to do their job to their best of their ability.
- Open, honest and timely communication will be maintained at all times.
- All parties in this process will be treated with respect.

### Sub-Processes

#### A. Request Initiation

Requests to change the Land Development Code (LDC) can be initiated by: the Town Manager, the Town Council, the Local Planning Agency, a group/committee or an individual.

##### Process:

- Requests from the Town Manager and Town Council proceed directly to the “assign action” sub-process.
- LPA change requests are forwarded to Town Council for approval to proceed.
- All individual or group initiated LDC change requests come to the LPA for review and action. Consistency with the Comprehensive Plan will be the criteria for approving or denying requests.
- The Town Clerk handles scheduling functions with direction from the Town Manager or designee (likely the Community Development Director).

#### B. Assign Action

##### Process:

- The Town Manager or designee is accountable for the Legislative Change Action List (LCAL) with input from Planning Consultant, Staff and LPA Attorney.
- Each legislative change request will be put into a category for the purpose of prioritizing and scheduling.
- The LCAL will be reviewed at every LPA meeting.

#### C. Assessment

Assessment of an LDC change request can follow several paths depending on the complexity of the request and the expertise required for making recommendations. The Town Manager or designee, the Planning Consultant and the LPA Attorney, choose the process path.

##### Process:

- Determine whether recommendations are needed from an ad hoc or standing committee.
- Determine whether a workshop is needed.

- Workshops will include: Planning Consultant, appropriate staff, LPA Attorney, LPA members, ad hoc or advisory committees (as needed) and the public.
- Recommendations from committees and/or workshops will be documented by resolution.
- Once all recommendations have been received, drafting of the LDC change can commence and an LPA hearing scheduled.

#### **D. LPA Hearing**

##### **Process:**

- The LPA must approve or reject LDC changes or possibly suggest multiple wording options for consideration by Town Council.
- Recommendations must be consistent with the Comprehensive Land Use Plan.
- Explanation of recommendations are forwarded to Town Council by resolution.

#### **E. Town Council Hearings**

##### **Process:**

- Introduction of Ordinance
- First Hearing
- Second Hearing. Approved or denied based on consistency with the Comprehensive Land Use Plan.
- At each hearing, Council may choose to deny the change request, return it to the LPA and/or committees and/or workshop participants for rework, or table it.

#### **F. Documentation**

##### **Process:**

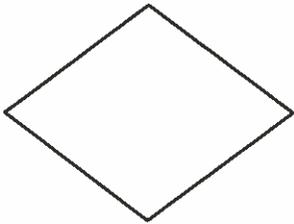
- If the ordinance is approved by Town Council, the Town Manager is accountable for seeing that appropriate steps are taken to codify and distribute changes in the Town of Fort Myers Beach Land Development Code.

## Legislative Change Process for the Town of Fort Myers Beach

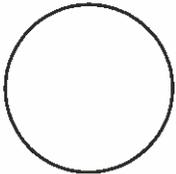
### Flow Chart Symbols Used:



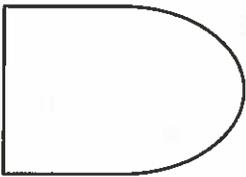
Process Operation



Decision (A Decision will have two or more directions of flow)



Input/Output



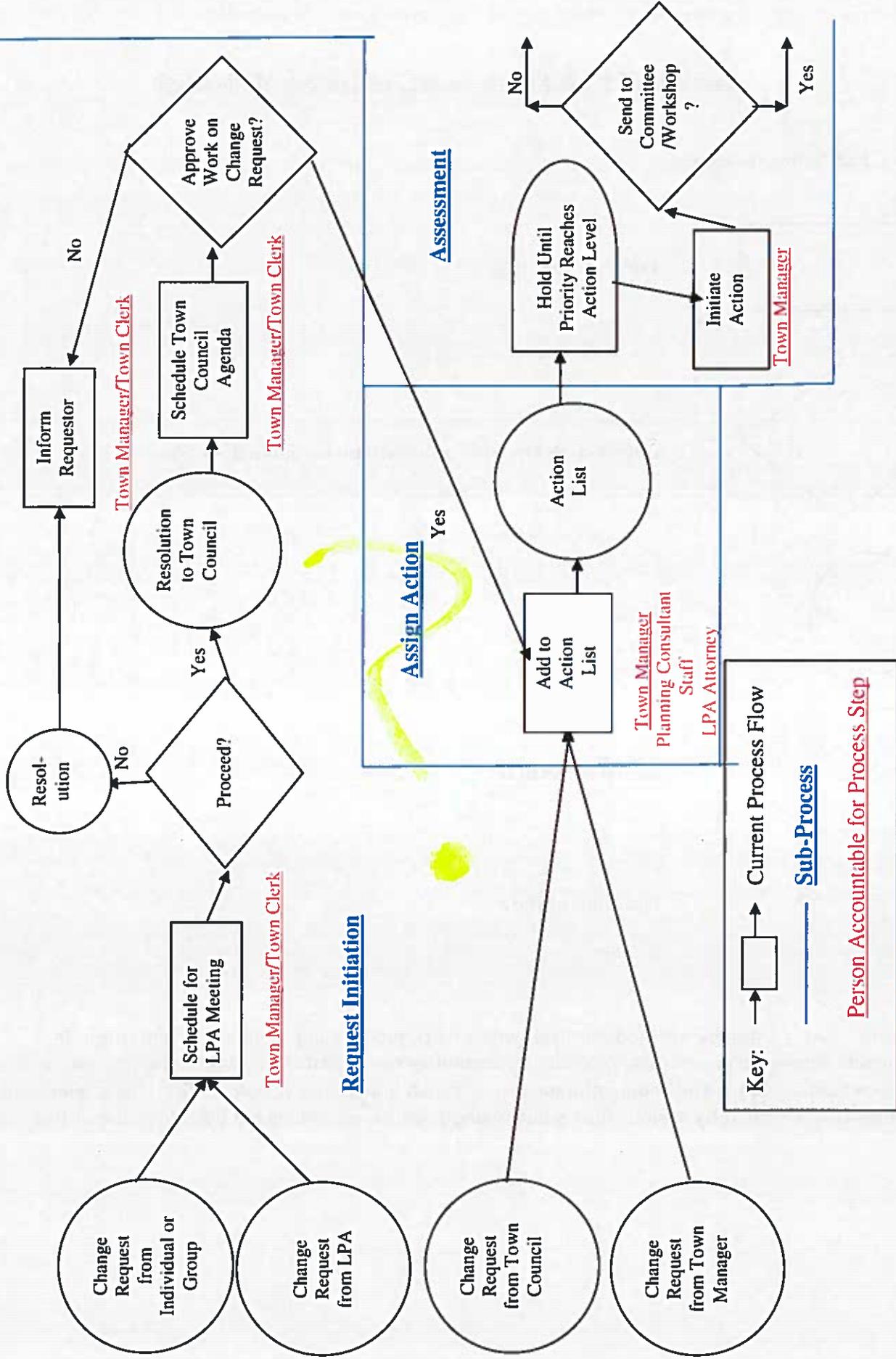
Delay/Wait/Hold



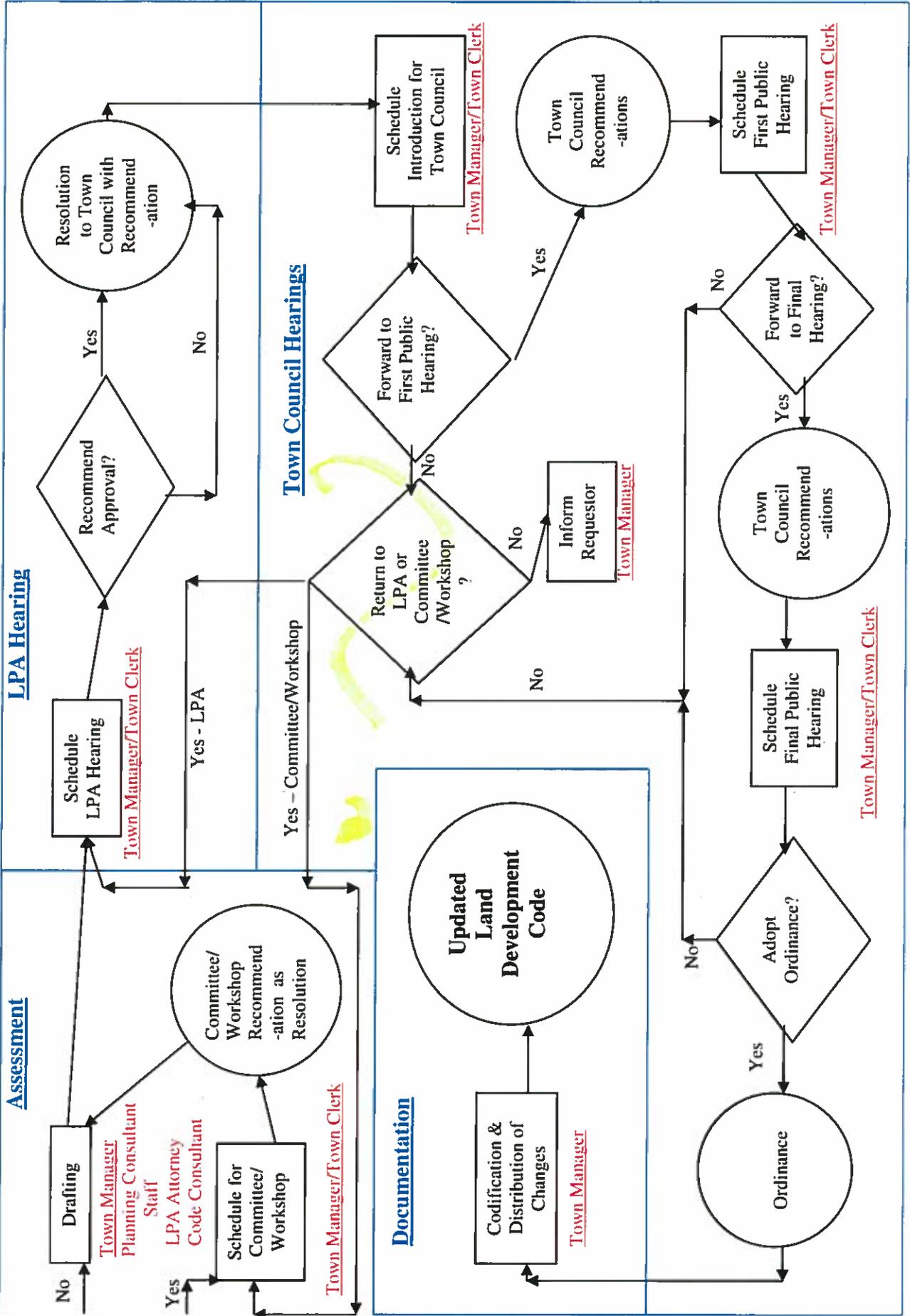
Direction of Flow

The flow chart is a graphic method for displaying a work process and sequence of activities. It graphically shows the process and potential opportunities for improvement within the process. It also identifies starting inputs and ending outputs that establish boundaries of ownership. This sequence of activities is represented by various flow chart symbols, which are connected by a direction of flow arrow.

Legislative Change Process for the Town of Fort Myers Beach



Legislative Change Process for the Town of Fort Myers Beach





**F. Historic Plaque Resolution and Agreement**

**RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER HPB 2008-01**

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to LDC Section 22-74.

NOW THEREFORE, THE HISTORIC PRESERVATION BOARD RESOLVES AS FOLLOWS:

1. The HPB hereby approves the Town of Fort Myers Beach Historic Preservation Board Historic Plaque Agreement for use by the Town in the Historic Plaque Program. A copy of this Agreement is attached to this Resolution as Exhibit "A" and is hereby incorporated by reference.

The foregoing Resolution was adopted by the HPB upon a motion by \_\_\_\_\_ and second by \_\_\_\_\_. Upon being put to a vote, the result was as follows:

Thomas Babcock	_____	Bob Raymond	_____	Alan Mandel	_____
Evie Barnes	_____	Bob Simon	_____		
Rochelle Kay	_____	Dennis Weimer	_____		
Alan Mandel	_____				

DULY PASSED AND ADOPTED THIS 19<sup>th</sup> day of February, 2008, by the Historic Preservation Board of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Bob Raymond, HPB Chair

Approved as to Legal Sufficiency

ATTEST: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

By: \_\_\_\_\_  
Anne Dalton, LPA/HPB Attorney



## **Appendix G – Conflict of Interest Advice**

Below are several points which may be of interest to the LPA Members:

1. I have an ongoing attorney-client relationship in which the attorney gives legal advice but isn't otherwise involved in my business enterprises. That firm may represent others coming before the LPA in quasi-judicial hearings which are not related to his/her representation of me.

**(a) Can I participate in LPA discussions and decision-making processes where my attorney is representing a different client?**

**ANSWER: yes.** Assuming that this is a traditional attorney-client relationship, there would be no "special private gain or loss" to the LPA member under F.S. 112.3143(4) for his/her attorney to represent someone else before the LPA. An attorney relationship, by itself, does not create a "business associate" relationship under F.S. 112.312(4). If there are other relationships between the firm and the LPA member (joint ventures, employment of a relative, etc.), that would be covered by the conflict statute.

If the attorney provided information which is covered by the ex parte disclosure sections of the Land Development Code, the LPA member would make the same ex parte disclosure as he/she would for anyone else.

Even if this were a conflict of interest, the statute requires written, advance disclosure. It does not prohibit discussion or voting at the advisory committee level.

**(b) Should I disclose the existence of this attorney-client relationship at the time the hearing starts?**

**ANSWER: It's a good idea.** It's not legally required to disclose it since it's not a conflict of interest. However, in ethical matters, it's a good idea to go the extra mile. My suggestion would be to say something like "this law firm has represented me on matters which are not related to this hearing. The LPA attorney has advised me that there's no conflict of interest here but I wanted to disclose this for the record."

2. I have an ongoing relationship with local architects, engineers and other professionals. None of these persons are involved in my business enterprises in any other capacity. Those professionals may represent other persons coming before the LPA in quasi-judicial hearings which are not related to their representation of me. Is there a conflict of interest here?

**ANSWER: See #1 above.**

Excerpted from LPA Attorney Anne Dalton memo dated April 28, 2008.



## **Voting Conflicts**

Florida Statutes have very specific rules regarding voting conflicts for municipal advisory committees, boards and agencies. These rules are different for appointive offices than the rules that apply to the Town Council (elective offices).

A person holding appointive municipal public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate.

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143, F.S., from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file Form 8B, MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS (available from the Clerk's Office or State Ethics Commission), before making any attempt to influence the decision, with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

**IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:**

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

LPA ACTION LIST FOR: August 8, 2017

<b>RESOLUTIONS AND RECOMMENDATIONS TO TOWN COUNCIL</b>			
Resolution 2017-004 for SEZ17-0003 Fish Tale Marina Restaurant	Fish Tale Marina Restaurant expansion of COP and outdoor seating		
<b>CONTINUED LPA HEARINGS</b>			
HDD16-0008	Designation of Historic Structure	215 Sterling	
<b>FUTURE WORK ACTIVITIES</b>			
DCI17-0001	TPI	1160 Estero Blvd	2 <sup>nd</sup> Resub
DCI17-0002	Dullard Residence	764 Estero Blvd	Waiting for Resub
SEZ17-0001	Walton parking lot	2440 Estero Blvd	Waiting for Variance submittal
SEZ17-0002 & VAR17-0002	Veg Buffer/ Shared parking lot Fred Paine	821 Estero Blvd	Insufficiency Letter sent
VAR17-0001	Fish Tale Marina Wall	7225 Estero Blvd	Insufficiency Letter sent
DCI17-0004	Casa Bahia	855 Lagoon	Reinstatement of approved PD
VAR17-0003	Tiki Beach Hotel	4360 Estero	
VAR17-0004	Rear Set Back	272 Miramar	Requested info