

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 15-05
DCI2013-0002 – Matanzas Inn CPD Amendment

WHEREAS, Jerry Murphy, authorized agent for the owner of property located at 414/416 Crescent Street and 1042/1044 Second Street Fort Myers Beach, Florida has requested to amend a Commercial Planned Development known as the Matanzas Inn CPD; and

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

WHEREAS, the STRAP numbers for the subject property are 19-46-24-W4-0150E.0210, 24-46-26-W3-00202.0130 and 24-46-23-W3-00202.0150 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on March 11, 2014; and

WHEREAS, at the March 11, 2014 LPA meeting, the LPA continued the case to a date certain of June 10, 2014; and

WHEREAS, at the June 10, 2014 hearing the LPA gave full and complete consideration of the request, recommendations by Staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 20, 2014, April 6, 2015, May 4, 2015 and September 9, 2015 at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution 2014-004, the recommendation of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

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

The Town Council **APPROVES** the request to amend the Matanzas Inn CPD, subject to the deviations and conditions set forth with specificity below.

DEVIATIONS:

Deviation #1

Deviation (recast from previously approved deviations) from the requirements of LDC Section 34-953—that the building placement, size, design, and all other property

development regulations in the CPD zoning district must be the same as for the CR or CB zoning district—to allow the dimensions indicated on the MCP.

Deviation #2

Deviation from the LDC Section 34-632(3)c. limitation on combining three (3) or more lots into a development project to allow PARCEL A, PARCEL B, and PARCEL C to include one-half (1/2) of the width of the adjoining street and canals in lot area for the purposes of computing residential densities to allow a total of 36 guest units on PARCEL A.

Deviation #3

Deviation from LDC Section 34-632(4) from the limitation on acreage used primarily for commercial purposes being included in the computation of residential density to allow a total of 36 guest units on PARCEL A.

Deviation #4

Removed.

Deviation #5

Deviation (recast from previously approved deviations) from LDC Section 34-675(b)(2) from the limitation on Crescent Street to building heights no taller than two (2) stories and 30 feet above base flood elevation, to allow 25 percent of the ground floors of the hotel/motel buildings to be enclosed non-living space for office, retail sales, or hotel support services with a maximum building height of 30 feet above base flood elevation with a maximum of two (2) floors total living area over parking or enclosed non-living space.

Deviation #6

Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 34, Division 26, Parking: LDC Sections 34-2015 (location and design) and 34-2016 (dimensional requirements; delineation of parking spaces) to allow the parking plan delineated on the MCP, with dimensional regulations allowing 90° parking spaces 16' deep and 8.5' wide, and a 2-way drive aisle 19' wide.

Deviation #7

Deviation (recast from previously approved deviation) from the provisions of LDC Chapter 10, Article III, Division 2, Transportation, Roadways, Streets, and Sidewalks: LDC Section 10-285(a) from the required connection separation for local roads of 125 feet to allow connection separations as indicated on the MCP.

Deviation #8

Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 10, Article III, Division 6, Open Space, Buffering, and Landscaping: LDC Sections 10-415 (open space) and 10-416 (landscaping standards) to allow the open space and buffers delineated on the MCP.

Deviation #9

Removed. The subject property consists of three (3) businesses, allowed a maximum of 16 square feet of sign area for each business, in addition to the existing 4' x 16', 2-sided projecting landmark rooftop sign previously approved by variance running with the land (all existing non-conforming signs must be removed).

Deviation #10

Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 10, Article III, Division 6, Open Space, Buffering, and Landscaping: LDC Section 10-416 (landscaping standards), subsection (d)(2) and Table 10-8, Buffer Requirements to allow a reduction from the Type D buffer requirements between ROW (rights-of-way) and PRKG (parking and vehicle use areas) to allow the buffer widths delineated on the MCP.

RECOMMENDED CONDITIONS OF APPROVAL:

1. The development of this project must be consistent with the two page master concept plan (MCP) entitled 'Master Concept Plan Matanzas Inn, attached hereto as *Exhibit B*, except as modified by conditions below. This development must comply with all requirements of the Town of Fort Myers Beach Land Development Code (LDC) at time of Development Order amendment, except:

- a. any additional restrictions provided in conditions of this approval; and
- b. any restrictions modified or eliminated by approved deviations.

If changes to the MCP are subsequently sought, appropriate approvals will be required.

2. Allowable uses are limited to the approved Schedule of Uses –

PARCEL A

All principal and accessory uses permitted in the Downtown zoning district.

Plus these additional existing uses:

Bar or cocktail lounge – limited to two.

Consumption on-premises (COP) is limited by Condition #15.

Outdoor entertainment limited to the restaurant premises under roof and eastern rear only; outdoor entertainment at the southern restaurant patio is prohibited.

Restaurant outdoor seating areas as depicted on the MCP.

Boat slips available for public rental/leasing, 18 maximum slips.

Commercial party fishing boats (See Condition 16).

Parking lot, shared permanent.

Ground floor uses of the hotel/motel buildings below flood elevation are limited to office, retail sales, or hotel support services. Ground floor must be flood proofed.

PARCEL B and C

Essential Services.

Parking lots, shared, permanent with valet service.

3. All development, redevelopment, and substantial improvements approved and included in this CPD must meet or exceed the commercial design standards set forth in LDC Section 34-991 through 34-1010.

All outdoor entertainment must cease by 10:00 PM. All ground floor outside entertainment at the existing eastern rear deck must cease by 9:00 PM, outdoor entertainment at the southern restaurant patio is prohibited. All outdoor entertainment, including, but not limited to, vocals, musical instruments, and other equipment generating sound, must comply with the Town's Noise Ordinance and must have its sound regulated and emitted through a fixed internal speaker system managed and controlled by the property owner. Additionally, the property must utilize best management practices that include the following:

- a. all speakers must be pointed away from adjacent residential property owners,
 - b. adopt the mitigation measures identified in the music management plan, *Exhibit D* attached hereto,
 - c. adopt the Environmental Safety Associates March 30, 2004 sound study recommendations for noise mitigation attached as *Exhibit E* attached hereto.
4. All lot area associated with PARCEL B and PARCEL C (upon removal of existing non-conforming residential structure on Lot 15) for density purposes is attributed to PARCEL A as part of the MCP for this CPD district.
5. PARCEL A may be developed in phases in any order, but a certificate of compliance for the initial phase must be reasonably requested no more than 60 months following Town Council approval of this amended CPD. Certificates of compliance for the entire project must be reasonably requested not more than 120 months following Town Council approval of this amended CPD or the undeveloped portion of the MCP will expire and be deemed vacated.
6. Any reconfiguration of the swimming pool located on PARCEL A must not result in an increased elevation of the top surface of the pool deck or the top edge of the pool.
7. The uses listed for PARCEL A are limited to 75,300 square feet of floor area. Of this total floor area, guest units are limited to 36 units; guest unit size is not to exceed a maximum area of 1,200 square feet, not to exceed an average of 750-1000 square feet consistent with Section 34-1803 of the LDC, and not to exceed a total floor area for guest units of 36,000 square feet.
8. An amended Development Order(s) must be obtained to achieve the development that is contemplated by the MCP.

9. Stormwater retention plans and drainage calculations for the project will be required at the time of submission of the Development Order revision.
10. This zoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. A Traffic Impact Statement (TIS) will be required at time of local development order revision and additional conditions may be required at that time.
11. Developer will construct sidewalks acceptable to the Town within or along the rights-of-way of Crescent Street, First Street, and Second Street along the boundary of the subject property. The precise locations, dimensions, and specifications for these sidewalks will be determined in cooperation with the Town Public Works Department, but will not exceed the requirements of LDC Section 10-289. The Developer will construct the sidewalks in conjunction with the Town's construction of other sidewalks along the aforementioned streets—or as part of the construction of Phases B2, C, or D—whichever occurs first.
12. Should the Developer and Town agree to construct all or a portion of the sidewalk on the property owned by the Developer, the elimination of any existing parking and/or buffer or landscaping or portion thereof necessary to complete the sidewalk improvement project will not cause the subject property's CPD/DO/Zoning to become non-compliant with the requirements as provided in the CPD/DO/Zoning.
13. Should it become necessary to utilize a portion of the Developer's property for the construction of the sidewalk, it will be constructed in accordance with the provisions of LDC Sections 2-313 and 10-289.
14. Removed.
15. Consumption on Premises is strictly limited to the existing restaurant, eastern rear deck only, and southern restaurant patio as depicted in the MCP.
16. Commercial boats are limited to utilizing the docks located in Matanzas Pass. The canal dock is limited to ancillary dockage and non-commercial dockage.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for the planned development zoning approval, the LPA recommends that Town Council reaches the following findings and conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*
Staff does not find that any errors or ambiguity exist surrounding the subject property and its zoning category that require correction.

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

The changing condition that exists on the subject property which supports the applicant's request for amending the CPD is the addition and sale of property. The 'Old San Carlos Parcel' was sold to a separate owner in the spring of 2013 and has been rezoned to the "Downtown" zoning category. Additionally the property owner has acquired Lot 15, located immediately adjacent to the current PARCEL C, and is requesting to add that land area into the CPD.

- c. *The impact of a proposed change on the intent of this chapter.*

Amending the existing Matanzas Inn CPD with the specifics of this request will have no impact on the intent of Chapter 34.

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

As discussed in the analysis section of the staff report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within the Pedestrian Commercial future land use category and the Pre-Disaster Buildback, Hazard Mitigation and Floodproofing policies.

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

The request to amend the CPD for the Matanzas Inn meets and exceeds all performance and locational standards for the proposed uses. Removal and addition of parcels are requested, as well as density transfers with the subject property, revisions to the site plan and phasing plans. Furthermore, the proposed amendments are consistent with the Comprehensive Plan, and will be required to comply with the Commercial Design Standards, found in Chapter 34-99, and all applicable building code and FEMA requirements.

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

As the subject property is currently a functioning Inn and restaurant, urban services are available and adequate for the proposed changes.

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

As existing commercially developed land, while located directly adjacent to Matanzas Pass, the subject property does not include any sensitive and/or environmentally critical lands. Nor do the proposed amendments to the existing CPD contemplate any land or use changes that would adversely affect critical or sensitive environmental area. However, all elements included on the revisions to the Development Order plans will be required to meet all applicable environmental codes.

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

The requested CPD amendment will allow the property owner additional flexibility in phasing the project and the construction of new flood compliant buildings. The buildings will be required to meet the commercial design standards and all other applicable codes. The requested uses are those found in the DOWNTOWN zoning district and 'for rent' boat slips are compatible within the existing neighborhood. The property owner has met with Public Works Staff and incorporated Town plans for right-of-way improvements on Crescent Street into their redevelopment plans, allowing for public and private compatibility of enhancements for that section of roadway. Therefore the redevelopment of the subject property will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

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

The impact of the proposed amendments to the transportation network will be evaluated at the time of revision to the Development Order, due to the dynamic nature of roadway capacity.

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

Anita Cereceda, Mayor
Rexann Hosafros
Summer Stockton

NAY
AYE
NAY

Dan Andre, Vice Mayor
Alan Mandel

AYE
AYE

DULY PASSED AND ADOPTED ON THIS 9th day of September, 2015.

By: _____

Anita Cereceda, Mayor

Approved as to legal sufficiency:

By: _____

Gray Robinson
Town Attorney

ATTEST:

By: _____

Michelle Mayher
Town Clerk

Exhibit A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
AND
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(PARCEL A)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, LYING ON ESTERO ISLAND, BEING A PART OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST AND SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 20, BLOCK E, CRESCENT PARK ADDITION AS RECORDED IN PLAT BOOK 4 AT PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N00°43'09"W ALONG THE WESTERLY LINE OF SAID LOT 20 FOR 30.00 FEET; THENCE N89°16'51"E FOR 11.60 FEET TO THE EASTERLY LINE OF A RIGHT-OF-WAY TAKING PARCEL PER SETTLEMENT CASE 93-203-CA-RWP (PARCEL NO. 19) AND THE POINT OF BEGINNING; THENCE N02°09'14"W ALONG SAID TAKING PARCEL FOR 124.21 FEET; THENCE N05°46'55"W ALONG SAID EASTERLY LINE FOR 96.21 FEET TO THE NORTHWEST CORNER OF LOT 24, BLOCK E OF SAID CRESCENT PARK ADDITION; THENCE N00°43'09"W ALONG THE EASTERLY LINE OF CRESCENT STREET (25 FEET WIDE) AND ALONG THE RANGE LINE BETWEEN SAID SECTIONS 24 AND 19 FOR 158.83 FEET TO AN INTERSECTION OF SAID EASTERLY LINE WITH THE NORTHEASTERLY LINE OF FIRST STREET (50.00 FEET WIDE); THENCE N64°00'09"W ALONG SAID NORTHEASTERLY LINE FOR 18.87 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 2904.79 FEET AND TO WHICH POINT A RADIAL LINE BEARS S71°26'08"E; THENCE NORTHEASTERLY ALONG SAID CURVE AND THE SOUTHEASTERLY LINE OF STATE ROAD #865 THROUGH A CENTRAL ANGLE OF 02°17'53.8" FOR 116.52 FEET TO A PK NAIL WITH BRASS DISK STAMPED LB4919 IN A CONCRETE SEAWALL ALONG THE WATERS OF MATANZAS PASS; THENCE S70°18'52"E ALONG SAID WATERS AND SEAWALL FOR 82.79 FEET TO THE BEGINNING OF A CURVE IN SAID SEAWALL, SAID CURVE BEING DESCRIBED WITH THE FOLLOWING CHORD BEARINGS AND DISTANCES; THENCE S59°52'04"E FOR 13.95 FEET; THENCE S47°54'41"E FOR 10.35 FEET; THENCE S36°30'10"E FOR 10.02 FEET; THENCE S25°39'44"E FOR 10.08 FEET; THENCE S14°17'28"E FOR 10.56 FEET; THENCE S07°08'02"E FOR 10.56 FEET TO THE END OF SAID CURVE; THENCE S00°20'42"E ALONG SAID WATERS AND SAID SEAWALL FOR 55.38 FEET TO A STEEL PIN IN SAID SEAWALL; THENCE S83°09'31"E FOR 2.71 FEET TO THE WEST LINE OF A CANAL (60 FOOT RIGHT-OF-WAY) AS SHOWN ON THE RECORD PLAT OF SAID CRESCENT PARK ADDITION; THENCE S00°43'09"E ALONG THE WESTERLY LINE OF SAID PLATTED CANAL FOR 361.22 FEET TO AN INTERSECTION WITH A LINE PERPENDICULAR TO SAID EAST LINE OF SAID CRESCENT STREET PASSING THROUGH THE POINT OF BEGINNING; THENCE DEFLECT 90° TO THE RIGHT AND RUN S89°16'51"W PERPENDICULAR TO SAID EAST LINE OF SAID CRESCENT STREET FOR 121.07 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.41 ACRES (61,404 SQUARE FEET), MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET AS BEARING N00°43'09"W RELATIVE TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS (SECTION 12530-2614).

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

Exhibit A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(PARCEL B)

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 25, BLOCK E, CRESCENT PARK ADDITION, ACCORDING TO A PLAT OR MAP THEREOF RECORDED IN PLAT BOOK 4 AT PAGE 46 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID POINT BEING ON THE EAST LINE OF SAID SECTION 24; THENCE RUN NORTHWESTERLY AT AN ANGLE OF 63°16'50" NORTH TO NORTHWEST WITH SAID SECTION LINE FOR 27.99 FEET TO THE NORTHEASTERLY CORNER OF LANDS DESCRIBED IN DEED BOOK 262 AT PAGE 191 OF THE PUBLIC RECORDS OF LEE COUNTY AND TO THE POINT OF BEGINNING; THENCE RUN N64°00'09"W ALONG THE NORTHWESTERLY LINE OF SAID LANDS DESCRIBED IN SAID DEED BOOK 262 AT PAGE 191 ALONG WITH THE SOUTHWESTERLY LINE OF FIRST STREET DESCRIBED IN DEED BOOK 191 AT PAGE 274 OF SAID PUBLIC RECORDS FOR 9.97 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE FOR MATANZAS PASS BRIDGE RECORDED IN OFFICIAL RECORD BOOK 1167, PAGE 1576, LEE COUNTY, PUBLIC RECORDS; THENCE RUN SOUTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2904.79 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 01°58'53", A CHORD AND CHORD BEARING OF S20°32'55"W, 100.45 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 100.46 FEET TO THE NORTH LINE OF LOT 6, BLOCK 1, BUSINESS CENTER AS RECORDED IN PLAT BOOK 9 AT PAGES 9 AND 10, PUBLIC RECORDS; THENCE RUN S64°00'09"E FOR 50.76 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET; THENCE RUN N00°43'09"W ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 111.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.07 ACRES (3,007 SQUARE FEET), MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET AS BEARING N00°43'09"W RELATIVE TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS (SECTION 12530-2614).

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

Exhibit A

DESCRIPTION OF A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
(PARCEL C)

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, BEING ALL OF LOTS 14 AND 15 AND PART OF LOT 13, BLOCK 2, BUSINESS CENTER ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGES 9 AND 10, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 13; THENCE RUN S00°43'09"E ALONG THE EAST LINE OF SAID LOT 13 FOR 82.62 FEET (82.59 RECORD) TO THE SOUTHEAST CORNER OF SAID LOT 13; THENCE RUN N64°00'09"W ALONG THE SOUTH LINE OF SAID LOT 13 FOR 6.15 FEET TO THE SOUTHWEST CORNER OF A RIGHT-OF-WAY TAKING PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 2311 AT PAGE 2801 AND TO THE POINT OF BEGINNING; THENCE CONTINUE N64°00'09"W ALONG THE SOUTH LINE OF SAID LOTS 13, 14 AND 15 FOR 135.14 FEET TO THE SOUTHWEST CORNER OF SAID LOT 15; THENCE RUN N25°59'51"E ALONG THE WEST LINE OF SAID LOT 15 AND THE EASTERLY LINE OF STATE ROAD 865 FOR 73.80 FEET TO AN INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SECOND STREET (50 FEET WIDE), BEING THE NORTHWEST CORNER OF SAID LOT 15; THENCE RUN S64°00'09"E ALONG THE SOUTH RIGHT-OF-WAY OF SAID SECOND STREET AND THE NORTH LINE OF SAID LOTS 15, 14 AND 13 FOR 89.99 FEET; THENCE RUN S34°44'19"E FOR 9.27 FEET TO THE WEST LINE OF SAID RIGHT-OF-WAY TAKING; THENCE RUN S02°09'05"E ALONG SAID WEST RIGHT-OF-WAY TAKING FOR 78.56 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 0.20 ACRES (8,530 SQUARE FEET), MORE OR LESS.

BEARINGS ARE BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF CRESCENT STREET AS BEARING S00°43'09"E RELATIVE TO THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS (SECTION 12530-2614).

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

Exhibit B

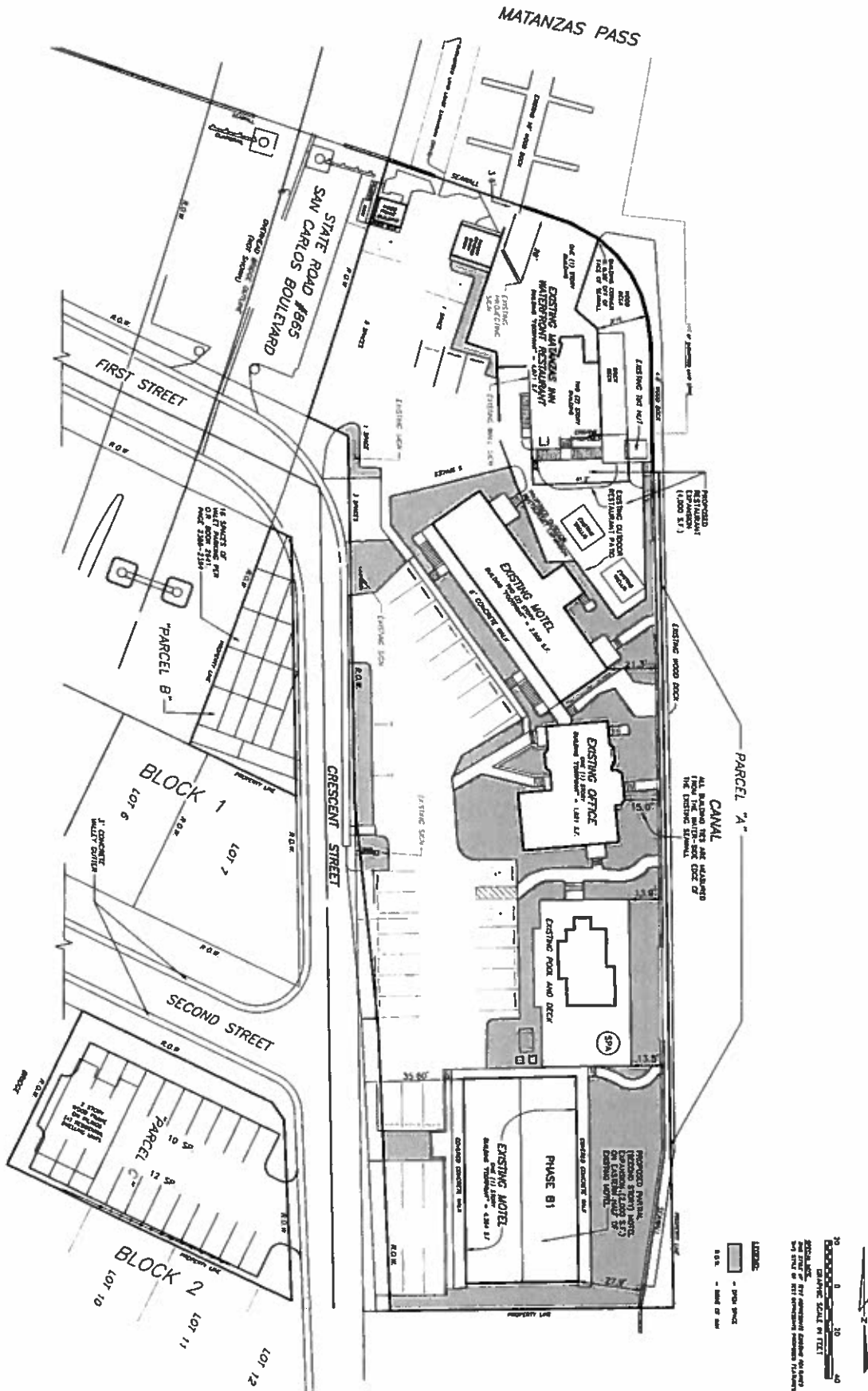
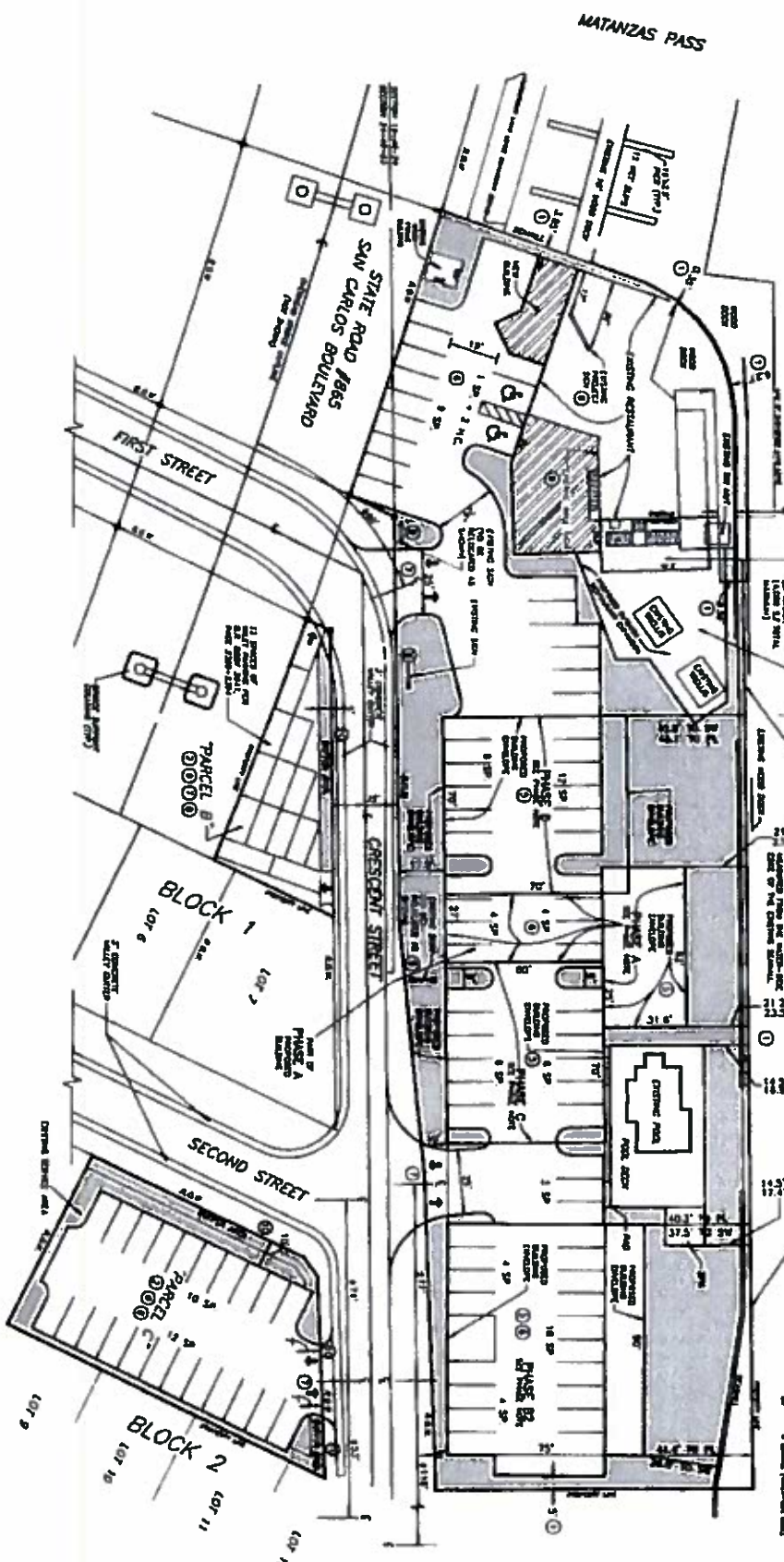


Exhibit B

Not Approved
By Council
10-5-13



PHASE NOTE:
BUILDING HEIGHT MUST NOT EXCEED 30 FEET
ABOVE GRT AND TWO (2) SUBSTANTIAL FLOORS

2 OF 2	MASTER CONCEPT PLAN MURPHY PLANNING 1201 N. W. 12TH AVE. FORT MYERS, FL 33901	DRAWING DATE: 1-17-2013 DRAWN BY: K. O'NEAL COUNTY: LEE SECTION: 19, 46 S., 24 E.	REVISION		DATE
			REVISED TO DEVELOPER	05/15/13	
			REVISED FOR OWNER	05/15/13	
			REVISED FOR OWNER	07/25/13	
			REVISED FOR OWNER-PHASE 2 & 3	08/15/13	
			REVISED FOR OWNER-PHASE 2 & 3	08/23/13	
			MURPHY PLANNING 6000 BROADWAY, SUITE 100 FORT MYERS, FL 33901 PHONE: (888) 888-8888 FAX: (888) 888-8888		

EXHIBIT D

Matanzas CPD Live Music Management Plan- 2015

Background

Several residents have always asked that Matanzas Balance the commercial uses with the nearby residential uses. The entire Crescent Street Downtown plan reflects less height and more modest commercial uses, however the Restaurant Parcel at Matanzas has always had extensive commercial uses including Marina/restaurant/historically a fish packing plant and Marine Industrial.

As the restaurant has evolved, the approvals have been modified a number of times. The current CPD tries to balance these interests by adopting a best sound management practices approach with physical systems designed to provide reasonable outside music at reasonable levels/times for nearby concerned persons. Matanzas has always tried to be supportive of this balance and particularly since further expansion of the restaurant is part of the Current CPD.

Proposed Music Management Plan.

Based on discussions, the previous plan, while well intended, can be improved. Both Matanzas and the residents can both be more pro-active and fact-based to manage this issue in a balanced way for all. Managing reasonable expectations is the goal and perhaps this approach can be useful as a blueprint for similar issues in different locations on the island.

Matanzas feels the downtown resort beach atmosphere for both locals and visitors is generally a strong supporter of live music at reasonable volumes. Realizing that not all residents may feel this way and in specific cases, some residents are concerned about too much and too loud, Matanzas proposes the following:

1. Outside music is permitted under the same provisions of the previous approval with the following changes:
 - i. All speakers pointed 90 degrees to the canal and towards the bay. (current practice with a few exceptions)
 - ii. Where possible all music shall be modest in sound including trying unamplified music when possible. All entertainers will use the Matanzas Sound system with controlled volume monitored by the On-site manager and amplified music will be at a minimum under the circumstances.
 - iii. All entertainers will be oriented 90 degrees to the canal and pointed toward the bay.
 - iv. Any area directly in back of all entertainers shall be enclosed /hardscape in a manner sufficient to help mitigate ambient transmission of entertainment noise. (See diagram of an example).
 - v. Full compliance with the island noise ordinance.

Page two: Matanzas Music Management Plan 2015

- vi. All Upper Deck music shall end by 10 pm. All music is limited only to the restaurant premises.
- vii. Any ground floor music shall end at 9pm and be limited to twelve days per month except for special events.
- viii. Matanzas will install a permanent professional decibel meter in the upper deck in clear view of the on duty staff and do daily monitoring of active noise levels.
- ix. Matanzas will create a new vegetation/sound dampening buffer on the border of the restaurant (see site plan).
- x. Neighborhood Complaints: Matanzas will establish a written log of all complaints. This log will include but not be limited to: time, entertainer playing, person complaining, manager observations on area wide music patterns at the time and recorded decibel readings that night. Where possible, adjustments will be made to solve the issue quickly as needed.
- xi. At any time, the neighborhood can ask for a meeting with Matanzas to specifically discuss music concerns /episodes of dissatisfaction and the parties agree to work in good faith to resolve differences. Whenever possible, all neighborhood complaints should also be emailed to the Matanzas Management team.
- xii. If the parties cannot resolve differences, Matanzas shall hire and independent consultant to monitor the music, verify the magnitude of the issue and to propose possible reasonable solutions. Matanzas agrees to work in good faith to comply with proposed solutions and will agree to mediation if required.
- xiii. Matanzas will share noise information with the town on at least an annual basis or as needed under the circumstances.



**ENVIRONMENTAL SAFETY ASSOCIATES
(ESA Consulting Services)**

P.O. Box 151, Baldwinsville, NY 13027-0151
2600 Kings Lake Blvd., Naples, FL 34112-5409

Tel/Fax: NY 315-635-1929 ~ FL 239-774-5194 ~ Toll-Free 1-888-667-3723 ~ E-Mail: bob@oshex.com

March 30, 2004

Chris Arnberg, Manager
Estero Bay Hotel Company
Matanzas Inn
416 Crescent Street
Fort Myers Beach, FL

Dear Chris:

In response to my earlier report of findings from noise measurements taken in and around your property on March 5, 2004, you asked a simple question: "As a result of actions taken to reduce the sound generated by our entertainment, are we in compliance with the Town of Fort Myers Beach noise ordinance?" The answer is far from simple.

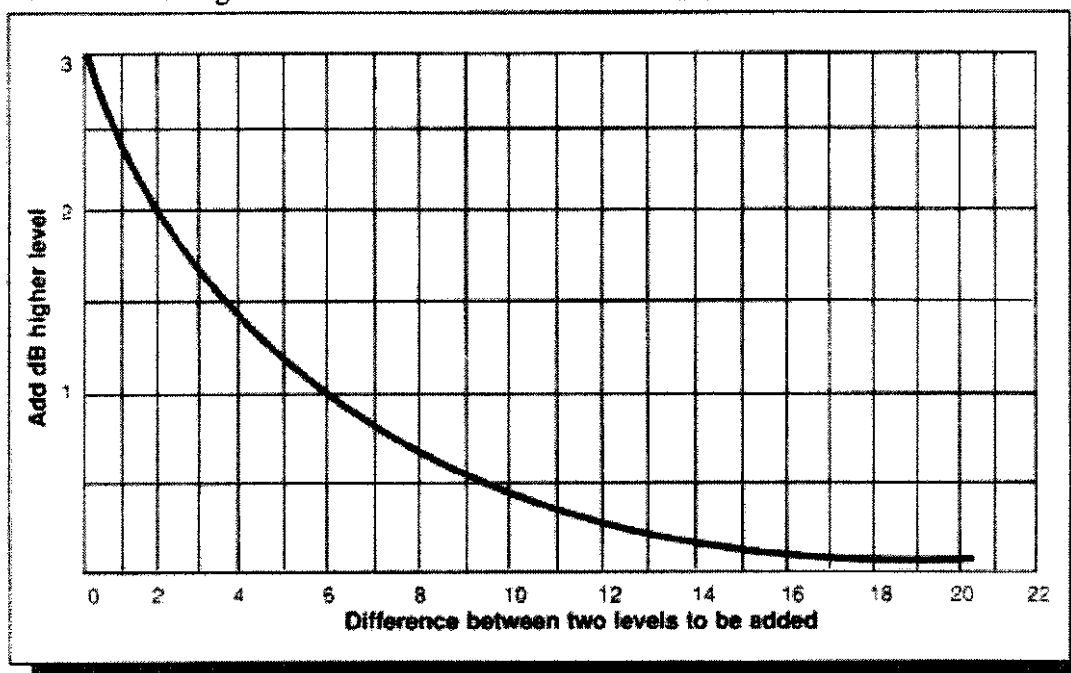
Ordinance 96-24 defines that measurements be taken using a *sound level meter* conforming to ANSI S1.4, Type 2, using slow response and "A" weighting. There is no mention of ANSI E1014-84, the Standard Guide for Measurement of Outdoor A-Weighted Sound Levels. This document provides instructions on how those measurements are to be taken. The ordinance does not.

In our measurements, we recorded RMS *maximum levels* (L_{max}) and *average levels* (L_{eq}) (that equate closely to an L_{10} exceedance level, or level that is exceeded only 10% of the time.) This is the measure typically used to describe environmental noise – because spurious sounds like passing cars or aircraft, people laughing, doors slamming, or an occasional dog bark could cause the sound measurement to easily "exceed" a stated maximum level – particularly one that is so close to the ambient sound level in an area.

The measurements taken during our most recent visit indicate that the changes that you have made have resulted in a decrease of about 3-5dBA in the carryover sound from your entertainment, compared to the previous readings taken in December and earlier this month. The average reading taken at the property directly across the canal, with the entertainment in session, dropped from 59dBA to 54dBA.

Prior and current measurements indicate that the ambient sound level in the area on a typical evening at the time of the measurements is about 53dBA. Correcting for this (see

the chart below), this indicates that the entertainment is contributing less than 50dBA to the total, and is certainly in compliance with the 66dBA allowable maximum for a residential receiving land use defined in Table I of the ordinance.



Going one step further, Section 5B of the ordinance states that, from 7AM until 10PM, the allowable level from impulsive sound is increased by 10dBA. During my observations, it was clear that the sound from your entertainment varied greatly as the singer sang and played. The rise and fall of the singers voice does not meet the criteria of "Continuous Noise" spelled out in Section 3C of the ordinance (as would sound from a running generator or air conditioning unit), but it is also not what we typically call "impulsive" sound (such as a gunshot or door slamming). This adds another element of ambiguity. Because of the way the definition is written, the entertainment may well be considered impulsive sound, thus providing a 10dBA "cushion."

A conflict appears in Section 5C, where the ordinance stipulates that amplified sound that exceeds 60dBA between the hours of 10AM and 10PM is prohibited. If we look at the L_{10} or L_{eq} (average) as the effective maximum, and correct for the background (ambient) in both the Primo Drive and Crescent Street locations, your entertainment is now compliant with the requirements of the ordinance.

If we look at the RMS maximum level, compliance is "borderline." It is clear that your contributed sound level at these property edge locations are *below* that of numerous other sites featuring outdoor entertainment in this commercially-zoned area, as noted in our report dated March 12, 2004.

It is my opinion that, with your current speaker configuration and amplifier settings, the sound from this entertainer complies with the ordinance, insomuch as our measurements

could determine¹, and that no further action is necessary at this time. Under the terms of the ordinance, you are permitted to extend the entertainment until 10PM, if you wish.

Respectfully submitted:
ENVIRONMENTAL SAFETY ASSOCIATES

Robert N. Andres, CSP, DABFE
Principal

¹ We did not have the equipment to measure at the center of the canal at the elevation of the entertainment, nor permission to take readings on the second floor of any residence along Primo Drive.