

MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

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

Tuesday, June 9, 2009

I. CALL TO ORDER

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

Dennis Weimer
Rochelle Kay
Bill Van Duzer
Joanne Shamp
Alan Mandel

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

II. PLEDGE OF ALLEGIANCE

III. INVOCATION-Mr. Dennis Weimer

IV. MINUTES

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

Motion: Mr. Van Duzer moved that all minutes be accepted as written. Second by Ms. Shamp.

Vote: Motion carried 5-0

V. TOWN CAPITAL IMPROVEMENT PROGRAM (CIP) ITEMS

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

VI. PUBLIC HEARING

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

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

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

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

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

other properties were all built and found to be in compliance with the Comp Plan, the Plan Development Zoning Resolutions, Chapter 10 Dev Orders; however, she stated, that the current staff report conditions place uncertainty and threatens those entitlements. She continued that Pink Shell has spent millions in reliance on the Council's approvals to arrive at the resort that exists today. Ms. Grady said that the applicant is suggesting minor changes, such as:

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

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

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

A concern of the applicant involving the staff report is the calculation of required parking. Mr. Mulhere said that the LDC allows for "subordinate uses," as defined in Section 3430-21 and pointed out that the applicant is proposing more specific and restrictive uses so

that there are no abuses of the property. He discussed the need for some additional parking but also that the increase in amenities would not necessarily create a need for more parking. He then turned over the floor to Mr. Ted Treesh to address transportation.

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

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

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

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

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

regulations applicable to the RM zoning district at the time of development order approval, except where otherwise allowed by LDC Chapter 34, Article 5.” Ms. Grady said that this is very unclear and the language needs to be eliminated. She also referred to condition #16, pg. 6, and said that the applicant proposed certain language (read from the mentioned section). She further pointed out that there are conditions 16 through 31 which she feels each take a previous resolution and repeals it.

Ms. Shamp also asked how the beach access being proposed to move relates to beach access 41, advertised as a public access. The applicant explained, using visual aids. Ms. Shamp also had some questions about the trash compactor, external advertising, and extra parking for events. There was also some discussion about the boat ramp and the dimensions being changed.

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

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

Staff Comments: Dr. Shockey referred to the packets and an additional memo. He

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

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

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

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

spaces, is recommended for denial also because staff feels that the applicant could provide more spaces, or reduce the intensity of activities on the property.

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

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

Ms. Shamp referred to parking and LDC 34-2020, and a public comment document wherein the number of spaces was different, and she wondered how the number of parking spaces was calculated. Dr. Shockey wasn't sure but assumed that the difference between them had to do with square footage measurements and where they came from, or classifying the use of floor areas in one way rather than another. He is satisfied that the number of spaces noted as the requirement matches the use of the floor areas. Ms. Shamp also referred to the sign package and Sec. 30-153, which reads "in order to provide fair, equal and adequate exposure to public and prevent businesses from visually dominating neighborhood properties." they should be regulated and she asked why then

shouldn't the applicant be held to the same rules as other businesses on the island. Dr. Shockey stated that the criteria for granting deviations from the LDC are different from the requirements for a variance. Planned development zoning allows the property to be considered as a single unified resort. Under the sign ordinance each business would have been looked at separately and been allotted a specific maximum number of square feet of sign area. Many more things can be taken into consideration for granting a deviation to allow a sign package in the planned development context. Ms. Shamp also asked if there are other trash compactors on the island and how they are regulated in the LDC. Dr. Shockey stated that there is no specific regulation for these in the LDC but his opinion is that the proposed location is not a good one for the compactor. Discussion ensued about the current use regulations in effect for the property and the temporary use parking permit and disposition of the tennis courts.

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

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

in the planned development context a sign package can be related to on the size and type of businesses involved; discussion about the requested signs ensued.

RECESS FOR LUNCH-1:45 PM

RECONVENE-2:20 PM

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

Public comment opened.

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

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

Mr. John Boucher addressed the meeting and said that he owns a condo in Estero Island Beach Villas, which is totally fenced off from Pink Shell. He said that he and the other residents oppose these changes for several reasons. He stated that this applicant was given height, density and setback variances and agreed to certain conditions which would preserve the quiet, peaceful enjoyment on the north end of the island. The staff recommends rescinding Town Council conditions and creating new ones but he feels that they are dealing with an applicant that does not comply with conditions. He gave

examples of the applicant's non-compliance, i.e. advertising to be open to the public, hosting public functions and advertising meeting rooms, etc. even on the internet. He said that one of the existing conditions is no live loud music yet he and neighbors have called police because of several loud bands at late hours on the property. Alcohol consumption off premises is another problem there, according to Mr. Boucher, who witnessed a vehicle being driven around on the beach there and selling beer. He also pointed out that there was to be a "Beach Public Access" sign on the property which was never installed. He gave several more examples about the non-compliance of this applicant again asked that the LPA not approve any of these changes requested by the applicant. He added that there is no way to police the specific request asking for housing for employees and the residents are afraid that these will become overcrowded migrant worker units, since there is no way to regulate how many people these house. Mr. Boucher warned that this applicant has a history of non-compliance and these changes will not help the applicant suddenly get better about compliance. He also discussed his objection to the proposed parking arrangements.

Public comment closed.

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

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

Ms. Grady again discussed the requests, beginning with the boat ramps. She said that she is not aware of an actual request to fill in the boat ramp, as stated by Mr. Ryffel. She added that the boat ramp would not be used by outsiders bringing a trailer to the site and parking there and, she added that Pink Shell is willing to limit the use of the ramp. She said that the valet parking is something that is permitted and that it does need to be available to meet parking requirements of prior resolutions. Pink Shell wants to retain that permitted ability to use it. She said that the extra spaces are 57 are in addition to what is considered adequate by the code, established by Mr. Mulhere's testimony. The signage idea was developed in meetings with staff as a good thing for the north end of the

island to have one unified set of signs for the resort. Most of the signs, she said, are directional and for the convenience of the guests to find parts of the resort. Ms. Grady discussed the trash compactor and the fact that no one came up with an alternative, so at this point the request remains to just replace the existing dumpster with a trash compactor, adding that applicant felt this was a positive move.

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

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

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

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

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

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

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

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

Staff Rebuttal: Dr. Shockey clarified that nothing in this application, including any of

the entrance gates shown on the plan presented by the applicant, has to do with the Sanibel View property. He also referred to Mr. Lisich's phase "existing only" with reference to the dockage. He said that this term is defined in the Town and the county's LDC to a use permitted because it is "existing only" as of a specific date in the past. He read the Town's definition and said that a use that is "existing only" is treated the same as a "permitted use" and may be expanded or reconstructed on the same parcel, in accordance with all applicable regulations. Dr. Shockey again addressed the items that are being requested and argued subordinate uses and conditions. He suggested that some lessened deviation from the parking requirement, to require more parking to be provided than proposed but less than the LDC might otherwise require, may be appropriate but that it is up to the LPA to decide if they wish to recommend that.

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

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

Short recess-15 minutes

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

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

Conditions:

LPA recommends APPROVAL OF Condition #1.

LPA recommends APPROVAL of Condition #2, as written.

LPA recommends APPROVAL of Condition #3, as written.

LPA recommends DENIAL of Condition #4, as written; With the change “*Refuse containers on the subject property must comply with LDC Section 6-11 and all applicable buffer requirements*” the LPA would recommend APPROVAL of Condition #4.

LPA recommends APPROVAL of Condition #5, as written.

LPA recommends APPROVAL of Condition #6, as written.

LPA recommends APPROVAL of Condition #7, as written.

LPA recommends APPROVAL of Condition #8, as written.

LPA recommends DENIAL of Condition #9, as written.

LPA recommends APPROVAL of Condition #10, as written and not as suggested in Dr. Shockey’s report.

LPA recommends APPROVAL of Condition #11, with the change “*a maximum of [forty-one 41], boat slips were approved by that lease.*”

LPA recommends APPROVAL of Condition #12, with the change: “*Use of this building is limited to accessory administrative offices for the management of water related activities and leasing of boats and boat slips*” etc.

LPA recommends APPROVAL of Condition #13, as written.

LPA recommends APPROVAL of Condition #14, as written.

LPA recommends APPROVAL of Condition #15, as written.

LPA recommends APPROVAL of Condition #16, as written.

LPA recommends APPROVAL of Condition 17, as written.

LPA recommends APPROVAL of Condition #18, as written.

LPA recommends APPROVAL of Condition #19, with corrections on a, b, c and d; also conditions 1-8 and condition 10 are repealed, but condition 9 remains in force.

LPA recommends APPROVAL of Condition #20, as written.

LPA recommends APPROVAL of Condition #21, with correction on a.

LPA recommends APPROVAL of Condition #22, as written.

LPA recommends APPROVAL of Condition #23, as written.

LPA recommends APPROVAL of Condition #24, as written.

LPA recommends APPROVAL of Condition #25, with corrections conditions 1-5 and 8 and 9 (inclusive) of Resolution Z-8295-017 are repealed; condition 6 is modified to conform to the uses and s/f stated in Condition #2 of this Resolution; condition 7 is modified as follows: a-signage indicating that the services are for guests of the hotel/motel only must be prominently displayed; b-advertising of the commercial uses is prohibited except in connection with advertising for the hotel/motel operation, and such advertising must reasonably indicate that such uses are for hotel/motel guests only; c-outdoor entertainment must be limited to the hours between 7:00 AM and 10:00 PM; d-this condition is repealed; but otherwise continues in full force and effect.

LPA recommends APPROVAL of Condition #26, as written.

LPA recommends APPROVAL of Condition #27, as written.

LPA recommends APPROVAL of Condition #28, as written.

LPA recommends APPROVAL of Condition #29, as written.

LPA recommends APPROVAL of Condition #30, as written.

LPA recommends APPROVAL of Condition #31, as written.

Deviations:

LPA recommends DENIAL of Deviation #1.

LPA recommends DENIAL of Deviation #2.

(Lengthy discussion ensued about adding spaces and the Code requirements for parking.)

LPA recommends ELIMINATION of Deviation #3.

Recommended findings and conclusions:

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

2 MINUTE RECESS

MOTION SECONDED-by Mr. Mandel;

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

VOTE: Motion carried 5-0.

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

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

VII. ADJOURNMENT
Adjourned at 6:31 PM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____
Dennis Weimer, LPA Chair

- End of document