

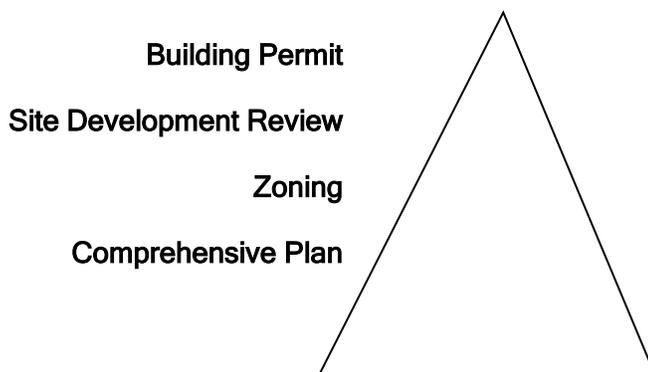
MEMO

TO: Connie Ramos-Williams
FROM: Beverly Grady
DATE: February 26, 2016
RE: Voice of FMB – Grand Resorts Land Use Review and Lee County Land Use Review

You have requested a land use review of the current 15 parcels that have been proposed in the plan by Grand Resorts LLC including the Lee County parcels included in the Grand Resorts’ plan (“Subject Property”). Since Lee County has not authorized any development, the parcels are treated separately. This memorandum sets forth the current limitations and obligations of the Town of Fort Myers Beach Comprehensive Plan (“Town Plan”) and the current Land Development Code (“LDC”) zoning restrictions that are adopted and applicable to the Subject Property. There is no opinion expressed that the Subject Property is entitled to this intensity or density but rather provides a foundation to understand the maximum that could be arguably approved without amending the Town Plan or LDC.

A land use analysis in Florida recognizes that there are tiers of review as a prerequisite to actually developing or redeveloping property. The growth management pyramid reflects that the review commences with the comprehensive plan (Town Plan), followed by zoning, then the site development review process (which can include state agencies) and ends at the building permit process. This memorandum is limited to the Town Plan and current zoning designations of the Subject Property.

GROWTH MANAGEMENT PYRAMID



There will be a brief overview of the Town Plan and the zoning that is applicable for the Future Land Use of “Pedestrian Commercial” and the “Downtown” and “Commercial Planned Development” (CPD) zoning categories. There will be an analysis of each of

the 15 parcels. Attached is (1) an aerial that marks the location of the 15 parcels that one can match with the individual parcel analysis, and (2) a summary land use chart regarding potential density.

Comprehensive Plan. The Florida legislature adopted a requirement in the Florida Statutes which mandates that each county and municipality prepare a comprehensive plan in compliance with Chapter 163, Florida Statutes. The effect of the adopted comprehensive plan is to preclude any development which is not consistent with the comprehensive plan. Case law in Florida has evolved to require strict compliance with the community's comprehensive plan as a prerequisite and foundation to any redevelopment or development.

The design principles of the Town Plan were adopted in the January 1, 1999 Comprehensive Plan and include

- Rejuvenate the existing fabric of the community, encouraging its special character without being stuffy, and treasuring the eclectic nature of the town's physical structures through such means as: ...
 - ... designed to promote compatibility of mixed land uses ...
 - Changing the behavior of motorists through traffic calming ...
 - Planning for interconnected streets and pedestrian paths ...
- Encourage private investment in the economic life, physical form, and natural amenities of the town, directing infill change and redevelopment toward the town's vision through such means as: ...
 - Strengthen views to the waterfront to promote a feel of shared use of these irreplaceable amenities. (emphasis supplied)
- Establish clear and consistent rules governing both public and private sector development to integrate all of the pieces.

These design concepts were developed by a planning firm retained by the Town in conjunction with extensive public input of the residents and business owners and workshops attended by the public in "Designing Our Town" (emphasis supplied).

Regarding development along Estero Boulevard, the Comprehensive Plan provides in Policy 1-A-3 that the Town's regulations should accomplish the following design goals to include ...

- (v) adopting design guidelines that encourage architecture and urbanism along Estero Boulevard that contributes to the human scale and the “beach cottage character” ...

The 15 subject parcels are located in the Pedestrian Commercial Future Land Use category which is the category which allows the highest intensity of residential, retail, office, and hotel/motel compared to other designations but significantly reduced when compared to the original Lee County Comprehensive Plan. In addition, those parcels along the Gulf are designated “Recreation” by the Future Land Use Map which is a very restrictive designation.

For dwelling units in the Pedestrian Commercial designation, one must have 7,260 square feet of land per dwelling unit unless the parcel is vested or “deemed consistent” with the Town Plan due to past approvals, which will be discussed in more detail. Pedestrian Commercial land use designation which applies to the Subject Property is defined as follows:

“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. When 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. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.”

The Recreation land use designation which applies to some of the Subject Property (land seaward of the 1978 coastal construction control line) is defined as follows:

“Recreation: applied to public parks, schools, undeveloped portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is one dwelling units per 20 acres, with all dwelling units

to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.”

A major change by the Town of Fort Myers Beach was to designate all property seaward of the 1978 coastal construction control line from an intense development designation to the “Recreation” Future Land Use Map designation and the corresponding zoning district of Environmentally Critical (EC). The EC zoning district is very limited and the section of the Code that sets forth those limited uses in EC is included in Tab B.

Without surveys or an application being filed, one cannot calculate the actual square footage that is in the Pedestrian Commercial and within the Downtown zoning district to determine the square footage of developable property for the properties having two designations.

The Pedestrian Commercial designation allows the maximum floor area ratio (FAR) and allows one to calculate the residential density and develop the commercial uses at the full FAR without deduction for the residential component. Typically, one would develop the first floor with commercial uses and the residential on the upper floor.

Density for dwelling units and motel densities are clearly regulated and defined in the Town Plan. Policy 4-C-5, Density, states that the Town Plan establishes density levels as to the maximum number of residential dwelling units allowed per acre (DU/acre). Policy 4-C-6, Motel Densities, provides that the Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units (which is limited to a maximum of six DUs). The only conversion of commercial square footage to hotel units without regard to the strict limit on the number of guest units is set forth in Policy 4-C-6 with regard to Old San Carlos Boulevard where Old San Carlos Boulevard hotel rooms may be substituted for otherwise allowable office space without using the equivalency factors that apply everywhere else in the Town. This alternate method for capping the number of guest rooms applies “only to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard.” Guest rooms built under this alternate method must have at least 250 square feet per rentable unit and under no circumstances shall those buildings exceed four stories (with the ground level counted as the first story). It is a mandatory provision that all other guest units in the Town of Fort Myers Beach are limited to the conversion of dwelling units set forth in Policy 4-C-6 unless otherwise vested or deemed consistent.

To convert commercial square footage as proposed by Grand Resorts to guest units without complying with the Land Development Code conversion of dwelling units to

guest units would require a major amendment to increase the density in Pedestrian Commercial.

In the Pedestrian Commercial designation the LDC provides conversion of dwelling units into guest units at the highest ratio based on the following:

- One dwelling unit can be converted into three guest units if each unit is less than 450 square feet
- One dwelling unit can be converted into 2.5 guest units if the unit is between 450-750 square feet
- One can convert 1 dwelling unit into 2 guest units if the unit is between 750 to 1,000 square feet. Guest units in excess of 1,000 square feet may be developed with the approval of the Town Council in conjunction with a planned development rezoning.

The FAR for parcels fronting on Estero Boulevard is 1.4 FAR, which means that the full square footage of the parcel less any wetlands or less any area designated Recreation (is multiplied x 1.4 which equals the square footage that may be developed on the site). The parcels that front Estero Boulevard include the following: Parcels 1, 2, 3, 4, 5, 6, 10, 11, and 12 (it is not clear whether Parcel 15 qualifies as fronting on Estero). The parcels that do not front on Estero Boulevard are Parcels 7, 8, 13, and 14, (perhaps 15), which would be limited to a FAR of 1.0. There is a question with Parcel 9 because it was developed in conjunction with Parcel 4 which has frontage on Estero Boulevard. So it is unclear how the Town will apply the LDC to Parcel 9 limiting it to a FAR of 1.0 or permitting it to have a FAR of 1.4.

As an alternative to complying with the current provisions of the Town Plan (including density), certain parcels have a claim to legal rights pursuant to Chapter 15 of the Town Plan. Chapter 15 recognizes that certain identified approvals render those parcels as “deemed consistent” with the Town Plan (even though the density of the proposed or existing development exceeds what would be permitted in developing vacant property today). Those parcels with a claim to vested or “deemed consistent” status include the following: Parcels 2, 3, 4, 9, and 10, and Parcels 11, 12, 13, and 14. Parcels 2 and 12 are owned by Lee County. Parcels 3, 4, 9, 11, 13, and 14 are owned by Grand Resorts. Therefore, redevelopment of property must be consistent with the current provisions of the Town Plan or establish that the parcel has rights pursuant to Chapter 15 of the Town Plan which permit it to be redeveloped at a density or intensity higher than the current regulations.

Vested or “deemed consistent” approvals pursuant to the Town Plan. In the narrative in the Town Plan it lists parcels that are over-intensity or density and which may claim protection by Chapter 15 of the Town Plan. Chapter 15, Section B provides that the

following categories of approvals, projects and developments shall be deemed to be consistent with this plan ... (emphasis supplied). The listed approvals include but are not limited to:

1. a development or project that has a building permit issued by the Town of Fort Myers Beach that is valid on the effective date of this plan and has not expired;
5. “planned development” zoning approvals granted by the Town Council since incorporation.

Examples of over-density hotel/motel parcels are listed in Town Plan Table 4-2 which is attached as Tab C. In addition, the Town Plan recognizes parcels that are lawfully over-density/intensity have their legal status protected. Specific examples are the Days Inn with 33 guest units (located on Lee County Parcel 2); and the Ramada Inn with 70 guest units (located on Grand Resorts’ Parcels 4 and 9). Another example includes Parcels 11, 13 and 14 owned by Grand Resorts and Parcel 12 owned by Lee County which has Commercial Planned Development zoning granted by the Town Council since incorporation. Parcels 11, 13, and 14 were rezoned to CPD in 2002, and Lee County Parcel 12 was part of that CPD zoning. The LDC contains a particular section that permits over-density/intensity parcels to protect that density/intensity under the pre-disaster build-back policy if the property is approved by rezoning to planned development district at that intensity/density by the Town Council.

Summary - GRAND RESORTS. As to guest units and dwelling units, it would appear that the maximum number that may be claimed if the applicant can establish its rights under the current application of the Town Plan policies and the LDC is approximately one hundred thirty-five (135) guest units and seven (7) dwelling units. As to Parcels 4 and 9, owned by the Grand Resorts, the Town Plan recognizes that the combined property may be appropriately found to be “deemed consistent” for seventy (70) guest units pursuant to the Town Plan. Grand Resorts Parcels 11, 13, and 14 have the zoning designation of CPD granted by the Town Council and has a claim shared with Lee County to sixty-five (65) guest units granted by the CPD.

It appears that Parcels 1, 3, 5, 6, 7, 8 and 10 may be entitled to seven dwelling units which could be converted into 14 to 21 guest units depending upon the guest unit square footage. Therefore, the maximum number of guest units would be approximately 156 (135-if Grand Resorts can claim all 65 units in the CPD plus a conversion of the 7 dwelling units to 21 guest units) depending on the size of the motel room. There is no conversion from guest units into dwelling units so there has been no effort to calculate that number.

Summary - LEE COUNTY. As to Lee County Parcel 2, the Director of Zoning in the Division of Community Development has opined that Parcel 2 is entitled to 57 guest

units based upon the former Days Inn (33) and the former Howard Johnson (24). However the chart prepared by Lee County Community Development also recognized the Sandman which was located on Parcel 2 with nine (9) units. If the Sandman nine units are recognized that would be a total of 66 guest units on Parcel 2.

Lee County also owns a portion of the CPD, which was granted 65 units. The allocation of the 65 guest units should the Town recognize the prior CPD will be up to the Town Council to allocate between Grand Resorts and Lee County parcels. For purposes of the attached chart, none of the 65 units are shown in the Lee County numbers as the location of the hotel uses on the master concept plan are on the Grand Resorts parcel.

Therefore, the total maximum guest units on the combined Subject Property is approximately 228 guest units.

Before addressing the individual analysis of each parcel, it is important to recognize that the citizens of Estero Island formed the Town of Fort Myers Beach. It is the citizens who came together to form a comprehensive plan to create and adopt a vision for the Town of Fort Myers Beach and to provide for community design and livability. From the inception of the Town, it has been recognized that transportation (traffic impact) is a major issue that affects the quality of life of the residents and also affects the business owners in the Town of Fort Myers Beach. Transportation will be a major consideration in any review of the impact of the proposed Grand Resorts plan. It appears from the publicly held meetings that Grand Resorts is proposing in excess of 500 guest units where today there exists 70 guest units (Pier View Hotel) and a handful of dwelling units. It appears that the Grand Resorts plan will include unquantified but substantial retail, restaurant, a 30,000 square foot conference center, and other commercial uses which would increase traffic impact. This land use analysis does not address transportation but recognizes that upon filing the application it will be a central issue to understand the impact being proposed by the Grand Resorts plan.

Issue: Sale of public park for private commercial development. How can the County provide an authorization to a single developer to obtain unknown but substantial development entitlements to the public property without significant public discussion and discourse as a prerequisite to contemplating that request. The Florida Statutes govern the process for the sale of public property. That process has been set forth in a memorandum prepared by the Lee County Assistant County Attorney in 2013 in response to the Town's 2013 request to transfer the density from the Lee County Property to the Town of Fort Myers Beach (see Parcel 2 information). To our knowledge, Lee County has taken no steps to comply with that statutory process which would appear to also be a prerequisite to the determination of a sale of the actual property or transfer its units to Grand Resorts. Or is Lee County proposing to lease the property to a private developer for private development?

Transfer of density issue. It should be recognized that another mechanism to increase density would be to proceed through the Town Plan and the Land Development Code to transfer density from one parcel to another. Transfer of density was the question asked by the Town staff in 2013 to Lee County. One alternative would be to transfer the guest units that the Town finds to be lawfully “deemed consistent” with the Plan from the Lee County property to another parcel. That alternative would allow Crescent Beach Family Park to remain. The process for Lee County to transfer such rights is set forth in Tab 2.

Issue-hardened shoreline. This land use analysis does not take a position on the proposed hardened shoreline. However, the determination of whether proposed additional hardened shoreline is contemplated is set forth in the Town Plan. Any permit from the Florida Department of Environmental Protection (FDEP) requires the applicant to obtain from the local government (Town of Fort Myers Beach) a confirmation that the application for the harden shoreline is consistent with its Town Plan. Town Plan Objective 5-D, Beaches and Dunes provides

Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing man-made impacts on beaches and dunes. (emphasis supplied)

Policy 5-D-1(vii) provides

The absolute last resort for shoreline protection is the use of hardened structures. (except that terminal groins may be permitted at inlets if acceptance to state and federal permitting agencies). New beachfront buildings requiring seawalls for protection from coastal erosion shall not be permitted. (emphases supplied).

Also, the conservation element of the Town Plan set forth in Chapter 6 will have to be addressed.

Issue-height. Height has been carefully regulated by the Town through its adoption of a 1997 interim ordinance followed by preparation of a height inventory map and ultimately the adoption of the Town Plan. Policy 4-C-4 provides for height limitations which have been implemented in the LDC.

When an application for redevelopment of the Subject Property is filed the Town Plan provides the following land use goal:

Goal 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach-resort environment and minimizing the damage that a hurricane could inflict. ...

Objective 4-A Small-Town Character - ...

Policy 4-A-1 Maintaining the town's current "human scale" is a fundamental redevelopment principle. ...

Policy 4-A-5 The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan. (emphasis supplied)

Policy 4-A-6 The beaches provide incomparable recreational and environmental benefits to the town; ...

Removal of a public beach park raises the issue of consistency with the above policies.

The following is a review of each of the 15 parcels depicted on the attached aerial.

Summary of potential development rights for each parcel depicted on the Grand Resorts' redevelopment plan.

Parcel 1: Strap No. 24-46-23-W3-00016.0000, 1046 Estero Boulevard: The appendix contains the Lee County Property Appraiser (LeePA) data for this parcel. This parcel is designated as Pedestrian Commercial and Recreation by the Future Land Use Map of the Town Plan. Based solely upon the LeePA information it appears that the parcel is approximately 20,000 square feet. It also appears that there is no permitting history other than repaving of the parking lot and a lighting permit. This parcel has the zoning designation of Downtown and Environmentally Critical (EC). The permitted uses in the Downtown are attached as Tab K, and are applicable to each parcel zoned Downtown where the matrix for Downtown permits the following uses: Residential, Lodging, Office, Retail, Marine, and Civic. L means only uses under R and L (Limited) are permitted.

Therefore all permitted uses listed in Residential, Lodging, Office, Retail and Civic are permitted and all uses listed under restricted and limited in the Marine category are permitted in the Downtown district. This will be applicable to all parcels zoned Downtown.

Parcel 3. Strap No. 24-46-23-W3-00011.0000, 1154 Estero Boulevard. This parcel is designated Pedestrian Commercial and Recreation. This parcel has the zoning designation of Downtown and EC. This is the site of the restaurant formerly known as the Barking Shark. Based solely upon the LeePA records, it appears it was built in 1958. There is a zoning verification letter ZVL2004-00220 which was issued and is attached in the Parcel 3 information. This ZVL dated November 1, 2004 states that the property based upon its size could not build more than one dwelling unit. Remember that in the zoning district one can have commercial use with the full FAR and without deduction for the residential use. The ZVL references Case 95-07-161-02S and 95-07-161-05V, which are set forth in the Parcel 3 information.

Parcel 4 and Parcel 9. Parcel 4 is Strap No. 24-46-23-W3-00009.0000, 1160 Estero Boulevard, and Parcel 9 is Strap No. 19-46-24-W4-0140B.0074, 211 Canal Street. This parcel is designated Pedestrian Commercial and Recreation. This parcel has the zoning designation of Downtown and EC. 1160 Estero is listed in the Comprehensive Plan Chapter 4, page 19 and 20 as the Ramada Inn motel with 70 units in the Parcel 4 information. Pursuant solely upon the LeePA records, it was built in 1971. There was zoning verification letter provided in 1997 by Lee County on behalf of the Town. The letter does not confirm a specific number of guest units, only confirmation that the site is non-conforming and would be allowed to rebuild in accordance with the regulations in effect as of May 8, 1997. Although a zoning verification letter was requested in 2006 regarding confirmation of specific density allocated to the above-referenced Strap Nos. for Parcel 4 and Parcel 9, there were no specific findings in that letter as to the density but the ZVL provided that it appears that guest units for all the parcels requested in the zoning verification letter exceed the current density and that the appropriate way for redevelopment is to use the planned development rezoning process.

Parcel 5: Strap No. 19-46-24-W4-0140B.0020, 1172 Estero Boulevard. This parcel is designated Pedestrian Commercial with the zoning district of Downtown. Based on the LeePA records, it appears there are two buildings on this parcel. The parcel consists of platted lots 2, 3, and 6 of Blk B, Plat Book 4, Page 39. The front structure is commercial and appears to have three tenant spaces and the rear structure is listed as single-family on LeePA. According to the LeePA, the structures were built in 1951. Based solely upon LeePA, there is one dwelling unit on this parcel. Although there is a zoning verification letter request, there is no confirmation of specific intensity in ZVL2006-00103. ZVL2004-00221 is discussed in Parcel 8 below.*

Parcel 6: Strap No. 19-46-24-W4-0140B.0010, 1188/1190 Estero Boulevard, Lot 1, Blk B, Plat Book 4, Page 39. This parcel is designated Pedestrian Commercial with the zoning district of Downtown. This appears to be a 2-story structure with commercial on the first floor and one dwelling unit on the second floor. Under the permitting history there is very little information. Although a zoning verification letter ZVL2006-00103 was requested, this parcel was included with a number of other parcels and no response was given by the Town as to specific density or intensity on this parcel.*

Parcel 7: Strap No. 19-46-24-W4-0140B.0040, 231 Canal Street, Lot 4, Blk B, Plat Book 4, Page 39. This parcel is designated Pedestrian Commercial with the zoning district of Downtown. Based solely upon LeePA information, this structure was built in 1945 and it appears to be single-family residence (one apartment elevated). It has a very abbreviated permitting history. ZVL2006-00103 is discussed below.*

Parcel 8: Strap No. 19-46-24-W4-0140B.0050, 221 Canal Street. Lot 5, Blk B, Plat Book 4, Page 39. This parcel is designated Pedestrian Commercial with the zoning district of Downtown. Based solely upon LeePA, there is one single-family residence. The ZVL2004-00221 was submitted for two parcels, Parcel 5 (three platted lots) and Parcel 8

(one platted lot). The ZVL states that on a per-lot basis a single-family dwelling requires each lot to be 7,260 square feet, “it does not appear that you have the lot size to comply with the Comprehensive Plan regulations to build a dwelling unit on each lot.” The ZVL fails to discuss the applicability of the minimum use determination available in Chapter 15 of the Town Plan, which considers when lots were created because lots created in 1940s, 1950s, 1960s, and earlier, were of a smaller size. The minimum use determination is a process to recognize a single dwelling unit on a lot depending on when it was created and if it was lawfully created. Plat Book 4, Page 39 was recorded in July, 1921. One unit was allocated in the attached chart. This property was also discussed in ZVL2006-00103 below.*

*ZVL2006-00103 requested confirmation of a total of six dwelling units on Parcels 5, 6, 7, and 8. The ZVL did not confirm any specific density on those parcels. LeePA provides that there are four total dwelling units which is the number that was used in chart. One dwelling unit for each parcel.

Parcel 10: Strap No. 19-46-24-W4-0140A.0030, 1204-1206 Estero Boulevard. This parcel consists of Lots 3-7, Block A, Plat 4, Page 39. This parcel is designated Pedestrian Commercial with the zoning district of Downtown. Based upon the LeePA records there are two structures. The first structure is commercial and LeePA labels it as “nightclub bar lounge”, with an apartment on the second floor. The second structure is single-family residence, so it appears there may be two dwelling units with a commercial use on first floor of the commercial building. The residential building was built in 1959. The commercial building was built in 1954 and addition added in 1990. The chart allocates two dwelling units to this parcel. A limited development order for pavers is included under Parcel 10 for LDO2009-00196. There are no zoning verification letters discussing existing or permitted uses.

Parcels 11, 12, 13 and 14 are subject to the same CPD Resolution and are addressed in the same zoning verification letter, ZVL2006-00102, which was issued on October 4, 2006. The ZVL is attached as Tab L for Parcels 11, 12, 13 and 14. The Town Council Resolution 02-07 rezoned 3.64 acres to CPD, permitting 90,455 square feet of commercial space and 65 hotel guest units, with the height not to exceed 40 feet above base flood elevation (see Tab G). Town Council Resolution 04-08 amended the CPD for an extra 260 square feet of outdoor seating, increasing the commercial square footage to 90,715 square feet (see Tab H). Also included in the Appendix are Administrative Amendments that permitted removal of structures to add 53 parking spaces and to reconfigure parking and allow gated parking areas (see Tabs I and J). The property had a 3PS alcoholic beverage license. Also included is a Development Agreement between the Town and the developer (see Parcel 11 information). It would appear that the CPD will need to be reviewed to determine whether the Town considers it vacated. A public hearing will be required to reinstate or to amend and adopt new master concept plan.

It is interesting to note that the number of guest units permitted under Downtown zoning for the combined parcels or as approved under the original commercial planned development yields approximately the same number - 65 guest units. Under the Downtown zoning a 3.64-acre parcel would be entitled to six dwelling units per acre, or 21.84 total dwelling units, which would then be entitled to convert to a maximum of three guest units if the units were less than 450 square feet, which is 65.52 guest units. This is basically the same that was granted in the CPD. Since 3.64 acres supported the intensity/density of the 65 guest units and a portion of that acreage is now owned by Lee County some allocation of the guest units may be allocated to the Lee County Parcel 12 which is a determination that needs to be made by the Town. However, with the adoption of the Land Development Code which provides a FAR of 1.4 along Estero Boulevard, 1.4 multiplied x 3.64 acres would be significantly more commercial square footage allowed under the conventional Downtown zoning, than was permitted under the CPD.

Parcel 15. Strap No. 24-46-23-W3-00206.0050, 1054 Fifth Street. This is Lot 5, Blk 6, Plat Book 9, Page 9, is located in the Downtown zoning district with Pedestrian Commercial Future Land Use designation. Based upon the LeePA information, the single commercial structure was built in 1951 and was recently renovated. The parcel contains 2,987 square feet.

Lee County Parcels

Parcel 2: Strap No. 24-46-23-W3-00013.0000, 1100-1130 Estero Boulevard. This discussion will recognize that prior to 2010 (when the County acquired this property), this property contained three separate parcel numbers with three separate developments. Now this Strap No. applies to the consolidated property. Note that there is a 2006 ZVL request for Parcels 2-A, 2-B, and 2-C that requested confirmation of the specific densities to each of those parcels but the Town's response failed to acknowledge those densities at that time. The property is designated Pedestrian Commercial within the Downtown zoning district.

Based upon a public records request, the County provided documentation that in 2013 the Town of Fort Myers Beach made a request to Lee County to transfer and acquire the density attached to the County-owned parcels. As part of the response, Assistant County Attorney Michael Jacobs prepared a response on the method for counties to convey or transfer property and a specific response on the request for transfer of the development rights from the County-acquired property 2-A, 2-B and 2-C, which is set forth in the Parcel 2 information.

- a) 2-A: Strap No. 24-46-23-W3-00015.0000 was the Sandman Motel with nine guest units. Nine units were recognized in the County research requested in 2013 regarding the number of units for this parcel in a County-prepared site plan. However, the nine units were not recognized in the Director of

Zoning's memorandum. See notation under Parcel 2-C regarding the County Attorney's Office memorandum on the process to sell County rights.

b) 2-B: Strap No. 24-46-23-W3-00014.0000 was known as the Howard Johnson with 24 guest units located at 1100 Estero Boulevard. It was built in 1968 based on the LeePA records. Again, the 2013 County research reflects this parcel is allocated 24 guest units pursuant to the Lee County Director of Zoning memorandum and the Lee County-prepared site plan (see Parcel 2 information).

c) 2-C: Strap No. 24-46-23-W3-00013.0000, 1130 Estero Boulevard. This property was the site of the Days Inn and of Jimmy B's bar. The Inn was built in 1965 according to the LeePA. The 2013 County research reflects that this parcel is allocated 33 guest units. In addition, the Town Plan provides in Chapter 4, page 20 (Tab C) that the Days Inn contained 33 rental units on 0.98 acres, which was 34 units per acre. Land use cases referencing this parcel include Case 91-8-8-SP-1 and Case 95-05-101-02S (see Parcel 11 information).

Parcel 12: Strap No. 24-46-23-W3-00206.0010, 1113 Estero Boulevard (formerly the Seafarer shopping center parcel). This parcel is designated Pedestrian Commercial. As discussed under Parcels 11, 13, and 14, this parcel is subject to the same CPD zoning resolutions as amended and the development agreement. The Town would need to make a determination of the intensity and density allocated to this ownership and the intensity and density allocated to Parcels 11, 13, and 14.

Attached is the chart reflecting the total potential density of existing unit allocation for Grand Resorts parcels and the total potential density of existing unit allocation for Lee County parcels.

BG/ro

Attachments:

- Appendix
- Potential density chart
- Aerial with location of 15 parcels

This memorandum is for informational purposes only to the Voice of FMB and not for the purpose of providing legal advice to others. You should not rely on this memorandum for legal advice, and you should contact an attorney to obtain advice with respect to any particular issue or problem regarding the matters addressed herein.

APPENDIX

Parcel Number/Tab Number

1.	24-46-23-W3-00016.0000	1046 Estero Blvd
2.	24-46-23-W3-00013.0000	1100 - 1130 Estero Blvd.
	24-46-23-W3-00014.0000	
	24-46-23-W3-00015.0000	
3.	24-46-23-W3-00011.0000	1154 Estero Blvd.
4.	24-46-23-W3-00009.0000	1160 Estero Blvd.
5.	19-46-24-W4-0140B.0020	1172 Estero Blvd.
6.	19-46-24-W4-0140B.0010	1188-1190 Estero Blvd.
7.	19-46-24-W4-0140B.0040	231 Canal Street
8.	19-46-24-W4-0140B.0050	221 Canal Street
9.	19-46-24-W4-0140B.0070	211 Canal Street
10.	19-46-24-W4-0140A.0030	1204 - 1206 Estero Blvd.
11.	24-46-23-W3-00006.0000	1133 Estero Blvd.
12.	24-46-23-W3-00206.0010	1113 Estero Blvd.
13.	24-46-23-W3-00206.0060	1150-1180 Fifth Street
14.	24-46-23-W3-00205.0070	Fifth Street
15.	24-46-23-W3-00206.0050	1054 Fifth Street

General

- A: Future Land Use Map
- B: Fort Myers Beach Land Development Code Sec. 34-652 EC Zoning District
- C: Town Plan Page 4-20, Table 4-2 Hotel/Motel Densities
- D: Zoning Map
- E: LDC Sec. 34-620 Allowable Uses of Land, Table 34-1 and Table 34-2
- F: ZVL 2006-00103
- G: Town Council Resolution 02-07 *with Seafarer's Plaza Approved Master Concept Plan*
- H: Town Council Resolution 04-08
- I: ADD2000-00138
- J: ADD2002-00130
- K: LDC Sec. 34-671 Downtown Zoning District
- L: ZVL2006-00102