



**CITY COMMISSION AND PLANNING BOARD
JOINT WORKSHOP
CITY OF ST. PETE BEACH**

155 Corey Avenue
St. Pete Beach, FL 33706

Tuesday, April 25, 2023
3:00 PM

Call to Order
Pledge of Allegiance
Roll Call

WORKSHOP MEETING

1. Audience Comments -

a. Procedure to submit comments and questions prior to the meeting.

The City Commission requests your input on the Comprehensive Plan Joint Commission and Planning Board Workshop for April 25, 2023 at 3:00 P.M. in the Commission Chambers. There will be no open public comment held at the meeting; instead, the City Commission is requesting that comments and questions be submitted at least 24-hours in advance. Please fill out the form, found by clicking the link below, no later than 3:00 P.M. on April 24, 2023; the form will be unavailable after that time. In the drop-down menu of the form below, please select the City Commission as the meeting type.

As always, if you have any questions or concerns, please reach out to the City Clerk's Office.

[Joint Workshop Comment Form](#)

2. Comprehensive Plan Discussion -

a. Comprehensive Plan Presentation

3. Adjournment -

APPEAL: In accordance with 286.0105, Florida Statute (Notices of meetings and hearings must advise that a record is required to appeal), if a person decides to appeal any decision made by this committee, board, agency, or commission with respect to any matter considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AMERICANS WITH DISABILITIES ACT (ADA): In accordance with the Americans with Disabilities Act and Florida Statutes, if any person with a disability defined by the ADA needs special accommodation to participate in this proceeding, then not later than two business days prior to the proceeding, he or she should contact City Hall at (727) 367-2735.

**The public is cordially invited to attend this meeting.
All agenda material is available for review at City Hall or
www.stpetebeach.org.**

City Commission/Planning Board Joint Workshop

APRIL 25, 2023

3:00 PM

Discussion Order

- 1) Workshop area of focus
- 2) Florida Community Planning Act
- 3) 1989-2015 Comprehensive Plans
- 4) 2002-2015 Public Engagement & Settlements
- 5) Conditional Use Permit overview
- 6) Development rights changes over time
- 7) Density pools
- 8) Current & future Equivalent Residential Unit demands
- 9) Where is development most anticipated or viable?
- 10) Population changes
- 11) Demographic and economic changes
- 12) Traffic changes (Average Annual Daily Traffic)
- 13) Moratoriums, takings, Bert J. Harris Act, exactions

Workshop Area of Discussion

Community Redevelopment District

Downtown Redevelopment District

CC-1 Commercial Corridor – Blind Pass Rd

TC-1 Town Center Core

TC-2 Town Center – Coquina West

TC-2 Town Center – Corey Circle

UBV Upham Beach Village

CC-2 Commercial Corridor – Gulf Blvd

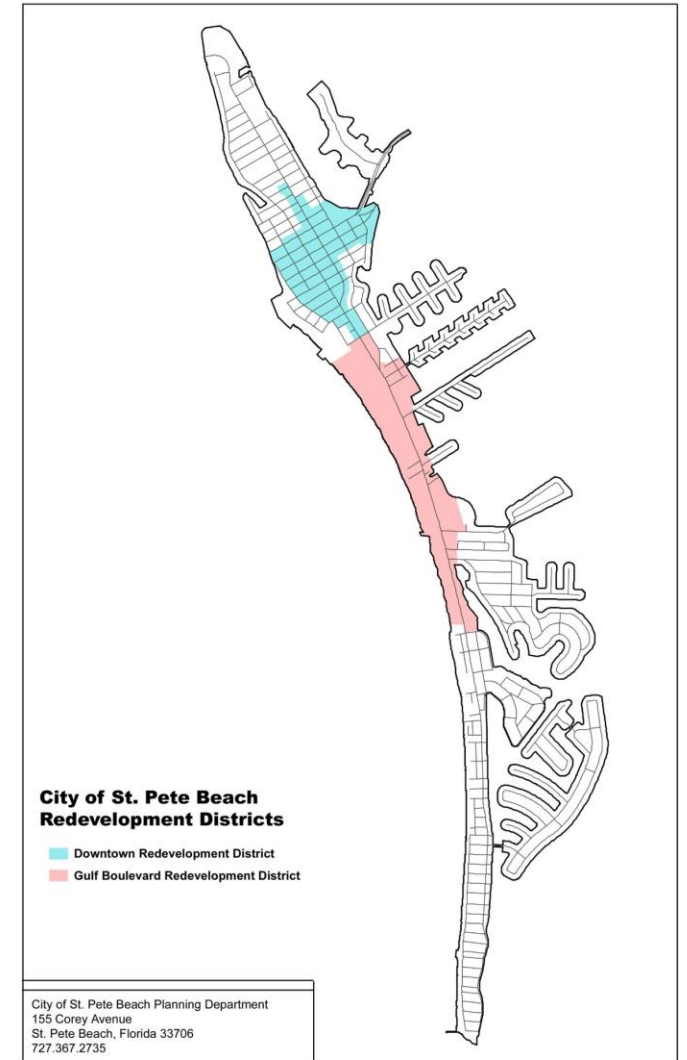
Gulf Blvd Redevelopment District

LR Large Resort

AC Activity Center

BHC Boutique Hotel-Condo

BR Bayou Residential



Florida's "Community Planning Act" – Purpose & Intent:

- to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and manage future development consistent with the proper role of local government. FS 163.3161(2).
- that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act. FS 163.3161(6).
- that provisions of this act in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state. FS 163.3161(8).
- a recognition of broad statutory and constitutional powers to plan for and regulate the use of land. FS 163.3161(9).
- all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. FS 163.3161(10).

Florida's "Community Planning Act" – the Scope:

- The several incorporated municipalities and counties shall have power and responsibility to plan for their future development and growth, to adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth, to implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof, and to establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act. FS 163.3167(1).
- Each local government shall maintain a comprehensive plan of the type and in the manner set out in this part or prepare amendments to its existing comprehensive plan to conform it to the requirements of this part and in the manner set out in this part. FS 163.3167(2).
- An initiative or referendum process in regard to any development order and in regard to any local comprehensive plan amendment or map amendment is prohibited. FS 163.3167(8).

Florida's "Community Planning Act" – The Local Planning Agency (LPA):

- the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan.
- monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required, including the periodic evaluation and appraisal of the comprehensive plan. FS 163.3174(4).
- review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan. FS 163.3174(4).

Florida's "Community Planning Act" - studies and surveys:

- The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations. FS 163.3177(1).
- the comprehensive plan and plan amendments shall be based upon relevant and appropriate data and an analysis by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment. To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue. FS 163.3177(1).
- Data must be taken from professionally accepted sources. FS 163.3177(1).
- The comprehensive plan shall be based upon permanent and seasonal population estimates and projections, which shall either be those published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology. The plan must be based on at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period. FS 163.3177(1).

Florida's "Community Planning Act" - elements of the plan:

- Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent. FS 163.3177(2).
- The comprehensive plan shall contain a capital improvements element, a future land use plan element, a transportation element, a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element, a conservation element, a recreation and open space element, a housing element, a coastal management element, a intergovernmental coordination element, and a property rights element. FS 163.3177(3) & (6).

Florida's "Community Planning Act" – additional requirements:

- 163.3178 Coastal management.— The Legislature recognizes there is significant interest in the resources of the coastal zone of the state.
- 163.3180 Concurrency.— The local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can be reasonably met.
- 163.3181 Public participation in the comprehensive planning process; intent; alternative dispute resolution.— It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible.
- 163.3194 Legal status of comprehensive plan.— After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.
- 163.3201 Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.
- 163.3202 Land development regulations.— each county and each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

St. Pete Beach Recent Comprehensive Planning History

1989, 1998, 2005-2015 Comp Plans
2002-2015 Public Engagement and Settlements

A Brief History of the St. Pete Beach Comp Plan, 2002-2015

- 2002:** HDR of Tampa conduct community visioning workshops
- 2003:** Publication of Master Plan for Resort/Commercial Districts
- 2004:** Publication of Community Redevelopment Plan
- 2005:** Comp Plan amended, creating Community Redevelopment District (repealed 2006)
- 2006:** 2005 amendments repealed by referendum (“ref.”)
Charter amended by ref., requiring ref. for all Comp Plan and major FLUM amendments
- 2008:** Adoption of revised Comp Plan amendments by ref. and Commission (appealed)
- 2011:** Charter and statute amendments eliminating refs. for Comp Plan amendments
- 2013:** Readoption of appealed 2008 Comp Plan (appealed)
- 2015:** Adoption of revised Comp Plan, providing current development standards and procedures

Comp Plan Lawsuits, 2008 - 2015

- 2008:** Challenge filed against adopted Comp Plan amendments (Ord. 2008-15);
- 2009:** Department of Community Affairs finds amendments in compliance;
- 2010:** First District Court of Appeals (DCOA) finds amendments in compliance;
Circuit court determines 2008 referendum (“ref.”) invalid and a new vote is required;
- 2011:** Voters repeal ref. requirements for Comp Plan amendments;
State Growth Management Act amended to prohibit refs. for Comp Plan amendments;
City readopts Ord. 2008-15 amendments (Ord. 2011-19);
Ord. 2011-19 amendments appealed and upheld by circuit court;
- 2012:** Appeal of Ord. 2011-19 plan amendments made to DCOA;
- 2013:** City readopts Ord. 2011-19 amendments as revised (Ord. 2013-13);
Ord. 2013-13 subject to amended administrative hearing petition;
- 2015:** Florida Department of Administrative Hearings and DCOA cases closed/settled;
City adopts Ord. 2015-05 to amend Comp Plan in light of remedial action.

1989 Comprehensive Plan Issues

“The goals, objectives, and policies, and the Future Land Use Map reflect the community's desire to ensure the maintenance and protection of the residential character of the City and promote sound coastal management.”^[1]

“After consideration of the character of the community, the amount and character of vacant land remaining in the City, the desires of the residents to limit population growth, and the distaste for further high density/high rise residential construction, it was determined that for purposes of this comprehensive Plan, the City of St. Petersburg Beach would be identified as a built-out community.”^[2]

1987 Citizen Survey:^[3]

- 1) Citizens had a strong displeasure toward either high density or high rise development (deprives right to sunlight);
- 2) Declining quality of life self-attributed to population growth;
- 3) Problem of finding housing for families (few single-family housing starts).

[1] 1989 City of St. Pete Beach Comprehensive Plan (“1989 Plan”), pg. 7 | [2] 1989 Plan, pg. 21 | [3] 1989 Plan, pg. 19-20

1998 Comprehensive Plan Issues

“Staff determined that, based on the land use categories used in the 1989 plan, over 50 percent of properties within the 19 study areas were non-conforming for one of three reasons: [lot size, density, or use].”^[1]

“The commercial areas all appear to be viable though occasionally there are business failures; however, most of the empty storefronts created by such failures are soon filled with new businesses. There are a few older commercial structures scattered around the City which seem ready for redevelopment; however, the market will dictate the type and timing of such redevelopment.”^[2]

“Because the City is essentially built-out, there are no major problems or issues regarding future development to discuss.”^[3]

“There are no pressing needs for new infrastructure facilities.”^[3]

[1] 1998 City of St. Pete Beach Comprehensive Plan (“1998 Plan”), pg. 2 | [2] 1998 Plan, pg. 4 | [3] 1998 Plan, pg. 7

Community Issues: 2003 Master Plan

Land regulations that favor condominium development or conversion over hotel development [1]

- Econ. parity at 3-5 hotel units per one condo unit [1] where RFM zoning in 2003 permitted two-to-one;
- Condo conversion causes “erosion of the shared vitality of St. Pete Beach as a resort destination” [1];
- Reduces tax base sustained by tourism [2]
 - \$469.36 total was spent in Pinellas County per average occupied hotel room per day in 2021 [3]

Impending functional obsolescence and visual blightedness of existing buildings [4]

- Pre-zoning/older buildings that exceed permitted density [2];
- Functional site problems create challenges for redevelopment. [4]

Poor multimodal connectivity and parking that does not directly serve attractors [5][6]

Platted lot layout/sizes unsupportive of desired commercial development [7]

Automobile dependence on primary thoroughfares, especially Gulf Blvd [8]

[1] 2003 St. Pete Beach Master Plan for the Resort/Commercial Districts (“2003 MP”), pg. 38 | [2] 2003 MP, pg. 6 | [3] Average spending per travel party that stayed in a hotel per day in Pinellas County in 2021. Data obtained from *St. Pete/Clearwater Area Visitor Profile – Final Report of Findings (2021 Calendar Year)*, pg. 49. | [4] 2003 MP, pg. 7 | [5] 2003 MP, pg. 20 | [6] 2003 MP, pg. 33 | [7] 2003 MP, pg. 28 | [8] 2003 MP, pg. 2

Community Issues: 2004 Redevelopment Plan (Repealed)

“This plan reflects St. Pete Beach’s desire to maintain its place as a high quality tourist destination and residential community, to reclaim its downtown as the heart of the City and to enhance the City as a premier shopping, working and living location”^[1]

Gulf Blvd Redevelopment District Concerns^[2]:

- 1) Functional obsolescence of transient accommodation and commercial uses;
- 2) Numerous curb cuts along Gulf Blvd;
- 3) Lack of pedestrian access along and across Gulf Blvd;
- 4) Limited compliance with FEMA guidelines;
- 5) Below-average growth of market property values as zoned.

Downtown Redevelopment District Concerns^[3]:

- 1) Poor lot layout with respect to size, accessibility and use;
- 2) Physical deterioration and obsolete development patterns;
- 3) Inadequate street configuration, transportation, parking;
- 4) Building code violations;
- 5) Limited compliance with FEMA guidelines;
- 6) Below-average growth of market property values as zoned.

[1] 2004 City of St. Pete Beach Community Redevelopment Plan (Ord. 2004-23) (“2004 Plan”), pg. 3 | [2] 2004 Plan, pg. 8 | [3] 1998 Plan, pg. 14

2008 Comp Plan Goals, Objectives and Policies

First Comp Plan amended by referendum following 2006 charter amendments;

Added citizen input summary, visioning statements, and green mission statements as lead-in;

Basis for current Comp Plan, most recently significantly amended in 2015.

Examples of new and expanded Goals, Objectives and Policies compared to 2005 Plan:

- 1) Green practices (environmental sensitivity in site design, energy efficiency, water conservation)^[1];
- 2) Redevelopment encouraged for blighted properties^[2];
- 3) Emphasis on “livable, healthy streets” with reduced curb cuts, shared parking, pedestrian and bicycle accessways, street trees, etc.^[3];
- 4) Affordable housing bonuses^[4];
- 5) Expanded density pools and Large Resort density reduction (80 to 75 units)^{[5][6]};
- 6) Promotion of City Community Improvement Impact Fees^[7].

[1] Ordinance 2008-15 pg. 10, Goal 1 | [2] Ordinance 2008-15 pg. 14, Objective 2.1 | [3] Ordinance 2008-15 pg. 45, Objective 2.1 | [4] Ordinance 2008-15 pg. 51-53 | [5] Ordinance 2008-15 pg. 76, Scenario 2 Large-scale Development | [6] Ordinance 2008-15 pg. 108, Item (e) | [7] Ordinance 2008-15 pg. 63, Item b.

2015 Comp Plan Settlement Outcomes

The most significant changes included:

- 1) Conditional use approval with Planning Board review required for any lodging project over 50 feet in height or 30 units per acre ^{[1][2]};
- 2) Front yard “step-back” requirements for lodging projects over 50 feet in LR District ^[3]
- 3) Increased side yard landscaping in LR District ^[4];
- 4) Reduced focus on lodging redevelopment incentives, including removal of workforce and affordable housing incentives ^[5];
- 5) Addressing compatibility of lodging uses within CRD with adjacent development outside CRD ^[6];
- 6) Required public comment period at redevelopment meetings ^[7].

[1] Ordinance 2015-22, pg. 4 | [2] Ordinance 2015-22, pg. 16 | [3] Ordinance 2015-22, pg. 13 | [4] Ordinance 2015-22, pg. 14 | [5] Ordinance 2015-05, pg. 40-41 | [6] See amendments to LDC Sec. 35.9 and Sec. 35.13 on pg. 13-14 of Ord. 2015-22 as examples | [7] Ordinance 2015-22, pg. 19

How are 2003 Master Plan issues addressed in the current (2015) Comp Plan/LDC?

Resort:multifamily ratio

- Increasing density for resorts up to 70 (BHC) and 75 (LR) per acre
 - Temporary lodging density pools
-

Inadequate lot layout

- Higher density and intensity awarded for lot assembly (LR, CC-1, CC-2, UBV, AC, etc.)
- Minimum lot size requirements for certain high-value mixed development (AC, CC-1, CC-2, TC-2)
- Requirements for commercial uses to front on and be accessed along major corridors
- Promotion of cross-access

How are 2003 Master Plan issues addressed in the current (2015) Comp Plan/LDC? (cont.)

Poor multimodal connectivity

- Required wider public sidewalks during development (Gulf Blvd, Blind Pass, Downtown)
 - Pedestrian frontage features required along major commercial corridors
 - Beach access points and airport circulator required for large resort developments
 - Transportation Management Plan strategies required for all development
 - Internal circulation required for certain mixed uses (AC District)
-

Unattractive building design and site layout

- Significant design requirements
 - Breaks in massing, elimination of blank planes, changes in volume for new development
 - Required integration of interesting design features
 - Promotion of front pedestrian courtyards, rear or hidden parking in downtown
- “Step-back” requirements for new development over 50 feet
- Required masking of parking structures (primary building integration, architectural flourishes) in downtown
- Enhanced landscaping and pedestrian frontage features

How are 2003 Master Plan issues addressed in the current (2015) Comp Plan/LDC? (cont.)

Quality construction

- Current building code and FEMA compliance for new structures
 - Largely a result of redevelopment incentives
- Requirements for compliance with green building standards in new development
- Incentives for high-quality materials, colors, and building facades:
 - Conditional use permit criteria
 - Residential and temporary lodging density pool criteria

Which 2003 Master Plan issues were not adopted in Comp Plan?

A number of items recommended in the 2003 Master Plan or included in the 2005 Comp Plan were not adopted in the current Comprehensive Plan:

1. Minimum condominium room size^[1];
2. Grandfathering of nonconforming densities during elective redevelopment^[1];
3. Development of a Community Redevelopment Agency^[2];
4. “Large redevelopment” projects requiring a complete site demolition and rebuild^[3].

[1] 2003 St. Pete Beach Master Plan for the Resort/Commercial Districts (“2003 MP”), pg. 39 | [2] 2003 MP, pg. 43 | [3] Ordinance 2004-24, pg. 19

Forthcoming Development Impacts

What is a conditional use?

Development rights changes over time

Density pools

Current and future ERU demand estimates

Where and what types of development are possible/anticipated?

What is a conditional use?

Conditional uses are uses that may or may not have significant adverse impacts on the surrounding area, public or natural resources, or may create nuisances, without or despite mitigating conditions.

The Land Development Code requires public hearings before City Commission for all new conditional use permits (CUPs).

- Certain large temporary lodging project requests also require Planning Board review.

CUP requests can ultimately be:

1. Approved;
2. Approved with conditions;
3. Denied.

What is a conditional use?

The initial burden for approval of a CUP is on the applicant to demonstrate that the standards and conditions are met.

Once the applicant claims to make such a demonstration, the City Commission reviews the application to the relevant standards of the Comprehensive Plan and Land Development Code.

Example Standards:

1. Consistency with Comprehensive Plan goals, objectives and policies;
2. Compatibility with adjacent development;
3. Impacts from dust/fumes/noise/operations;
4. Stormwater management;
5. Traffic circulation;
6. Impacts on transportation system.

What is a conditional use not?

A conditional use is not a variance from the Land Development Code.

Variance: Provides relief from a development requirement of the Land Development Code, other than use. St. Pete Beach does not permit use variances or waivers.

Conditional use: Provides a use subject to stricter scrutiny than a permitted use.

Examples

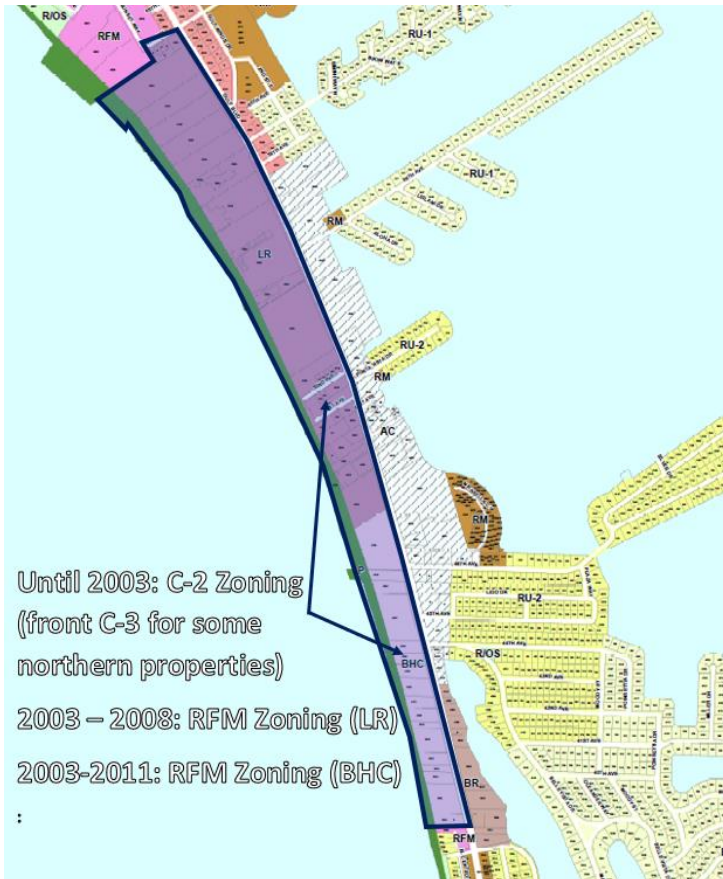
Permitted use: Single-family residence in a single-family zoning district

Conditional use: A large hotel project in a temporary lodging zoning district

Variance: A reduction to a required setback to allow for a pool to be placed closer to a seawall

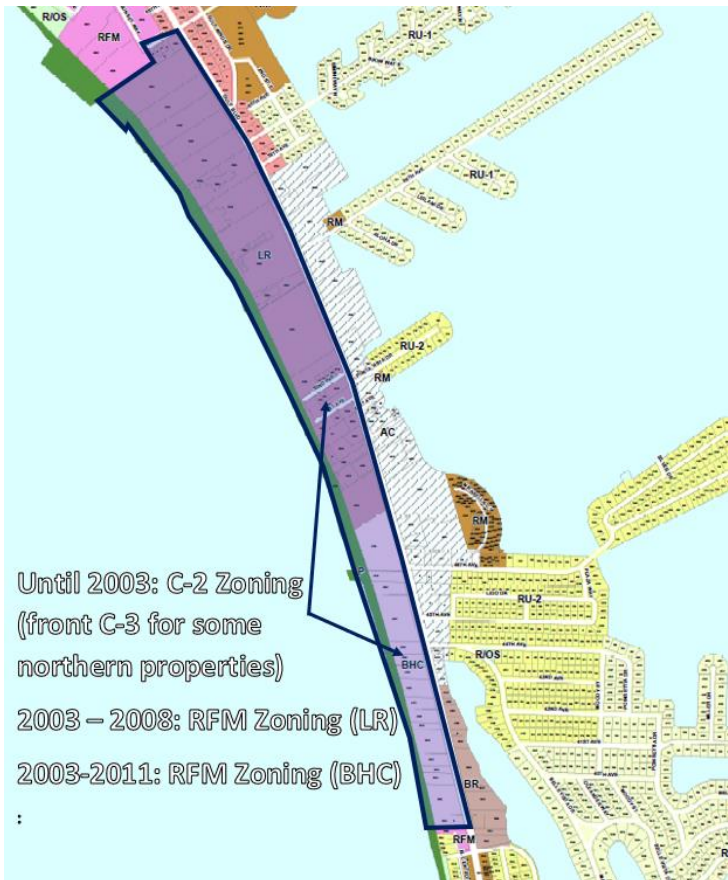
Prohibited: Developing a non-permitted and non-conditional use in a zoning district.

Development Rights Changes Over Time: Beach Resort District(s)



	Prior to 2003	2003-2008	2008 (as amended in 2015)	2011 (as amended in 2015)
Zoning	C-2 Tourist Residential	RFM Resort Facilities Medium	LR Large Resort	BHC Boutique Hotel Condo
Density	30 resort units per acre to MHWL	30 resort units per acre to MHWL	1) 30 per acre to CCCL 2) 50 units with CUP (< 3 acres) 3) 75 units with CUP (≥ 3 acres)	1) 30 units per acre to CCCL 2) 50 units with CUP 3) 70 units with CUP & density pool
Height	50 feet	50 feet	116 feet	76 feet
Maximum Number of Stories	4-5	4-5	10 (recommended 18' tall 1 st and 2 nd stories) to 11 (standard 10-12' tall stories throughout)	7-8
Impervious Surface Ratio	0.75	0.70	0.85	0.85
Floor Area Ratio	0.5	N/A	Existing/small-scale development: 1.8 Large-scale development: 2.6 (2.75 with freestanding commercial)	750 square feet per lodging unit, plus 20% of developable lot area for commercial, not including specified interior public areas like hallways, restrooms, or mechanical rooms.

Development Rights Changes Over Time: Beach Resort District(s)



	Prior to 2003	2003-2008	2008 (as amended in 2015)	2011 (as amended in 2015)
Zoning	C-2 Tourist Residential	RFM Resort Facilities Medium	LR Large Resort	BHC Boutique Hotel Condo
Setback - Front	25 feet	50 feet	1) 25 feet if ≤ 50 feet tall 2) Height of the building for portion > 50 feet tall	1) 50 feet if ≤ 50 feet tall 2) 75 feet if 51-65 feet tall 3) 100 feet if 66-76 feet tall
Setback - Side	1) 10 feet for buildings up to 20 feet tall 2) One foot for each two additional feet of height, up to 30 feet	10% of lot width (min. 10 feet)	1) 10% of lot width (max 30 feet) if not adjoining residential outside of CRD 2) 20% of lot width (max 60 feet) if adjoining residential outside CRD	30% of lot width, with a minimum of 10% and 10 feet on each side.
Setback - Rear	20 feet	20 feet	1) CCCL for beachfront properties not adjacent to residential outside CRD 2) Setback of adjacent residential for beachfront properties adjacent to residential outside CRD 3) 20 feet (all others)	10 feet landward of CCCL

Density Calculation Changes

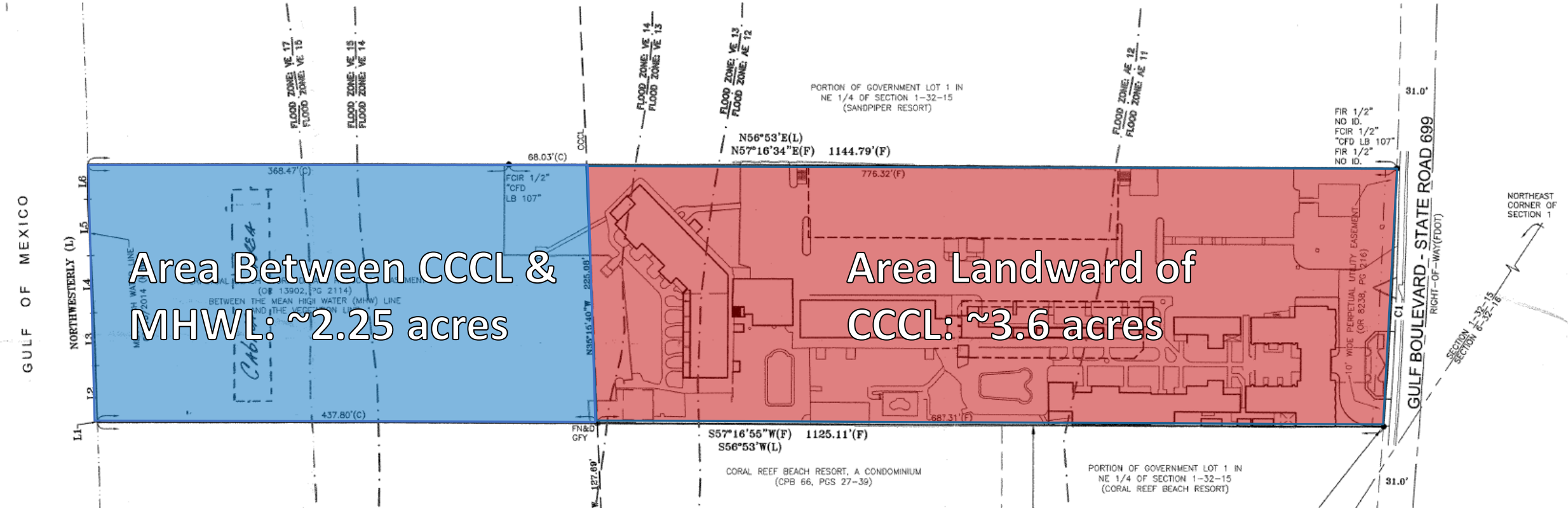
Ordinance 2003-07:

“Density means a measurement (ratio) of the number of dwelling or transient accommodation units allowable to a specified amount of land. As used in this ordinance, **the calculation of density does not include land devoted to public rights-of-way.**”

Ordinance 2008-33:

“Density means a measurement (ratio) of the number of dwelling or transient accommodation units allowable to a specified amount of land. As used in this ordinance, **the calculation of density does not include land devoted to public rights-of-way, submerged lands and lands seaward of the State of Florida Coastal Construction Control Line.**”

Density Calculation Example – Alden Suites



Density permitted between 2003 and 2008:

$$(2.25+3.6) * 30 = \underline{\sim 175 \text{ units}}$$

Density permitted after 2008:

$$3.6 * 30 = \underline{\sim 108 \text{ units}}$$

Density allowable after 2008 (CUP):

$$3.6 * 75 = \underline{\sim 270 \text{ units}}$$

Density pools

Density pool means a finite quantity of temporary lodging or residential units allocated for specified districts in the Comprehensive Plan that may allow a property to be developed with additional units than would be otherwise permitted or conditionally permitted under the property's district regulations.

2020: City amends density pool allocations from a “first come, first serve” to a “case by case” basis, implementing elevated review criteria.

How/why were the various City density pools created?

Residential density pool (195 units): Reducing LR District residential density from 18 to 15

AC/TC-2/BR lodging density pool (325 units): Reducing LR District lodging density from 80 to 75

TC-1 Bed & Breakfast density pool (50 units): Desired to allow for limited lodging in the core downtown

BHC (125 units): Desire to allow existing lodging developments to redevelop with at least their existing density

UBV (175 units): Desire to allow redevelopment of existing lodging uses only (no new lodging uses permitted)

Equivalent Residential Units

Equivalent Residential Unit (ERU): The impact of a certain type and/or size of development, expressed fractionally in relation to a single-family home (1.0 ERU), in terms of sewer demand.

Major ERU equivalents:

Single-family residence:	1.0 ERU
Hotel room:	0.7 ERU
Restaurant (per 1000 SF):	2.0 ERU
Gen Commercial (per 1000 SF):	0.3 ERU
Office (per 1000 SF):	0.2 ERU

Current ERU Totals (2021 Staff Estimates)

	Residential ERUs (% of Citywide Total)	Transient ERUs (% of Citywide Total)	All Commercial ERUs (% of Citywide Total)	Total (% of Citywide Total)
Community Redevelopment District	1668 (21.7%)	2087 (87.1%)	449 (78.2%)	4204 (39.5%)
Outside CRD	6009 (78.3%)	309 (12.9%)	125 (21.8%)	6443 (60.5%)
Citywide Total	7677 (72.1%)	2396 (22.5%)	574 (5.4%)	10,647 (100%)

Completed Development since 2013

The City has seen minimal new development come online since 2013, with most impacts resulting from conversion of existing spaces. An average of 7 ERUs have come online each year since 2013.

Year	Project Name	Development Type	New ERUs*
2013	Hotel Zamora	Lodging – 50 units Restaurant – 3700 SF	35 (Lodging) 7.4 (Restaurant)
	Sherwin Williams	General Commercial – 3400 SF	1.0 (Retail Store)
2015	Mastry's Brewing Co	Bar – 1600 SF	3.2 (Bar/Restaurant)
2020	Slyce Pizza	Restaurant conversion from general commercial – approximately 1500 SF	3.0 (approximate)
	Hilton Garden Inn	Conversion of 8 suites to 16 rooms	5.6 (Lodging)
	Hotel Zamora	Conversion of 14 suites to 28 rooms	9.8 (Lodging)

Total: 65 ERUs
Citywide Change: +0.6%

*Table excludes any single-family residential construction or commercial renovation project with an ERU value of 1.0 or lesser.

Committed Forthcoming Development

The City has four forthcoming, approved projects that will individually have ERUs greater than 1.0:

Project Name	Development Type	Expected ERUs
Corey Landings (Corey East End)	Residential – 243 units Restaurant – 3,500 SF Commercial – 8,300 SF Office – 6,000 SF	243 (Residential) 7 (Restaurant) 2.5 (Commercial) 1.2 (Office)
Emerald Sands (formerly Miramar) Resort	Lodging – 24 (new) Restaurant – 2,200 SF	16.8 (Lodging) 4.4 (Restaurant)
Don CeSar Conference Room	Conference Rooms – 13,000 SF	3.9 (Commercial)
Branzini Restaurant	Restaurant conversion from office – 2100 SF	3.8 (Restaurant)

Total: 282.6 ERUs
Citywide Change: +2.7%

Anticipated ERU Conditions - CRD (2021 Staff Estimates)

In 2021, staff estimated Community Redevelopment District-wide ERU based on maximum possible and expected redevelopment scenarios.

The expected scenario assumed properties were redeveloped to their maximum density and intensity allowed by code, under the following parameters:

- Condominiums would not be redeveloped;
- Properties exceeding the density or intensity allowed under the current code would not be redeveloped;
- Properties that recently underwent multi-million-dollar renovations would not be redeveloped;
- Limited property consolidation (justification varies by zoning district)

Anticipated ERU Conditions – CRD Review (2021 Staff Review)

At **expected buildout**, staff estimate an increase of approximately 3,543 ERUs, to 14,009 ERUs city-wide, or a **34% increase**.

Growth could be most significant in the following areas:

Commercial: 1,659 ERUs

Transient: 1,112 ERUs

Residential: 773 ERUs (inclusive of Corey Landings' 243 ERUs)

The most significant growth is possible in the following areas of the City:

Town Center Core (Downtown): 1,071 ERUs (31% of increase)

Large Resort: 900 ERUs (25.7% of increase)

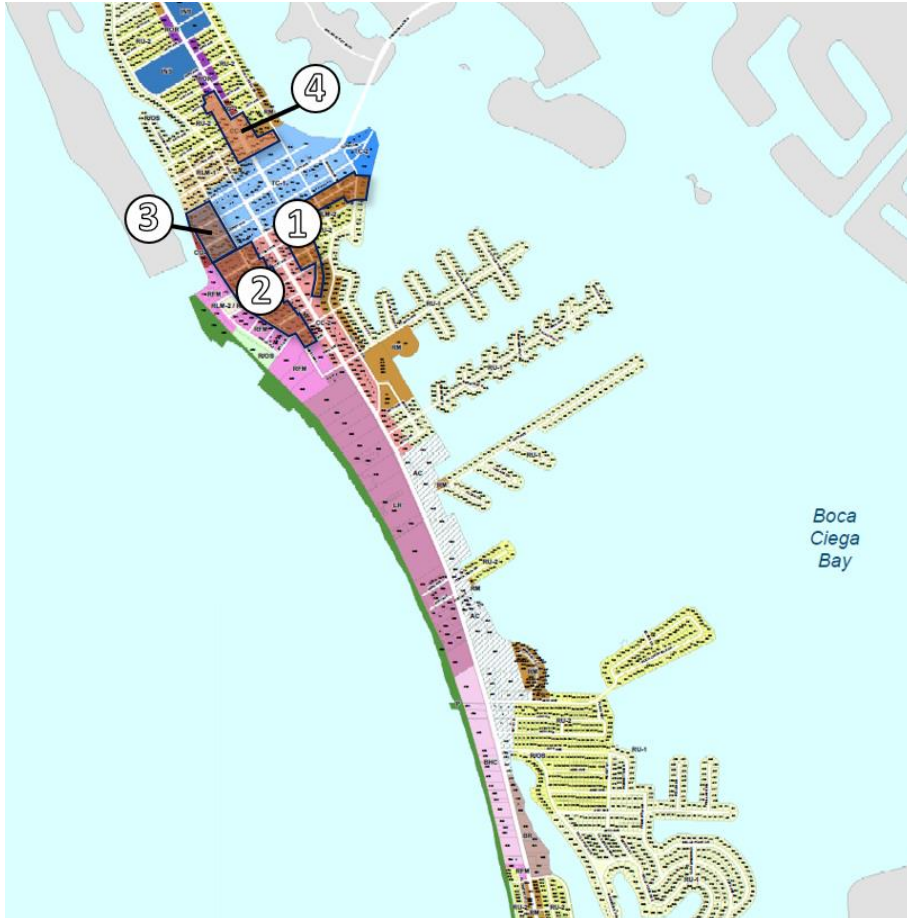
Activity Center: 507 ERUs (14.7% of increase)

Potentially More-Impactful Redevelopment Areas



- 1. Town Center Core:** Substantial potential for additional commercial FAR mixed with upper-story residential provides this district the greatest potential for density and intensity increases in the City.
Potential ERU increase: 1,071 ERUs across 32.5 acres
- 2. Large Resort District:** Due to few independent condos breaking up resort properties of three contiguous developable acres, this district could see an increase in temporary lodging unit count (conditional use permit required) and accessory commercial.
Potential ERU increase: 900 ERUs across 65.2 acres
- 3. Activity Center:** Incentives for property consolidation and mixed-use bonuses provide significant development potential in this district, particularly around Dolphin Village where acreage thresholds have already been met for a mixed-use hotel or residential project.
Potential ERU increase: 507 ERUs across 52.7 acres

Potentially Less-Impactful Redevelopment Areas



- 1. Downtown Core Residential:** This District is already approaching its maximum residential buildout, although the City Commission can raise its permitted residential density from 10 to 12 units per acre in the future.
Potential ERU Increase: 20 ERUs across 11.7 acres
- 2. Upham Beach Village:** Most residential properties in this zoning district are nonconforming to density even when accounting for redevelopment consolidation bonuses. Lodging, while redevelopable, often has little land to expand. Of the 175 UBV district temporary lodging density pool units available to existing motels, only 99 are estimated to be claimable due to distribution limitations.
Potential ERU Increase: 6 to 129 ERUs across 16.1 acres
- 3. Town Center – Coquina West:** The 2003 Master Plan suggested that this district would need apartment densities of 40-100 units per acre to be viable. At 24 units per acre maximum, the redevelopment potential of this district is largely contingent on a developer pulling together at least one block to develop a highly-incentivized mixed-use project.
Potential ERU Increase: 0 to 300+ ERUs across 6.1 acres
- 4. Commercial Corridor – Blind Pass Rd:** One of the smallest commercial CRD Districts, this district's redevelopment potential is contingent on significant property consolidation, as with Town Center - Coquina West.
Potential ERU Increase: 16 to 50+ ERUs across 7.4 acres

Population Changes

St. Pete Beach, 1980-2020
Treasure Island and South Pasadena, 2000-2020

Past and anticipated population changes

Year	Population	Change from Previous	Source
1980	9,354	N/A	1989 Comprehensive Plan (pg. 35)
1990	9,200	-154	1998 Comprehensive Plan (pg. 7)
2000	9,929	+729	U.S. Census Bureau DP1 2000
2010	9,346	-583	U.S. Census Bureau QuickFacts
2020	8,879	-467	U.S. Census Bureau QuickFacts
Citywide Buildout	10,402	+1,523	2021 ERU Analysis (773 additional residential units @ 1.97 residents/household per American Community Survey 2015-2019 estimates)

1989 Comprehensive Plan, pg. 19: “When added to the BEBR 1986 estimated population of 9,976, the city could conceivably support a population of 10,465.”

1998 Comprehensive Plan, pg. 7: “[We] project that the resident population of St. Pete Beach will reach and stabilize at about 10,000 persons in the next ten years.”

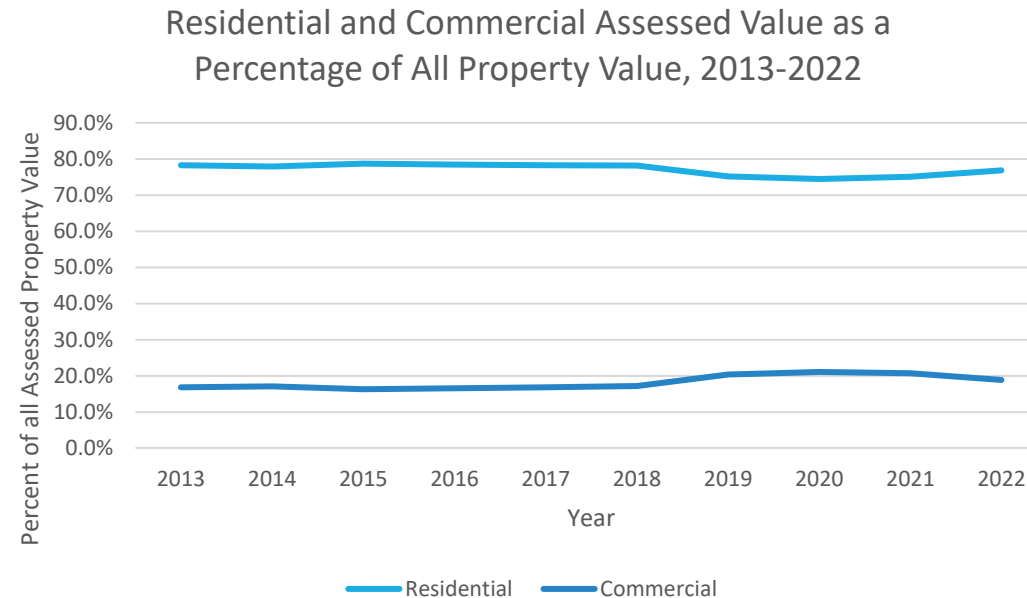
Adjacent Community Population Changes

Year	St. Pete Beach Population	Treasure Island Population	South Pasadena Population	Source
2000	9,929	7,450	5,778	U.S. Census Bureau DP1 2000
2010	9,346	6,705	4,964	U.S. Census Bureau QuickFacts
2020	8,879	6,584	5,353	U.S. Census Bureau QuickFacts
Change (2000-2020)	-1,050 (-10.6%)	-866 (-11.6%)	-425 (-7.4%)	

Demographic and Economic Changes, 2013-2022

Property Actual Value Changes
Demographic and Per Capita Personal Income Changes
Largest Employers

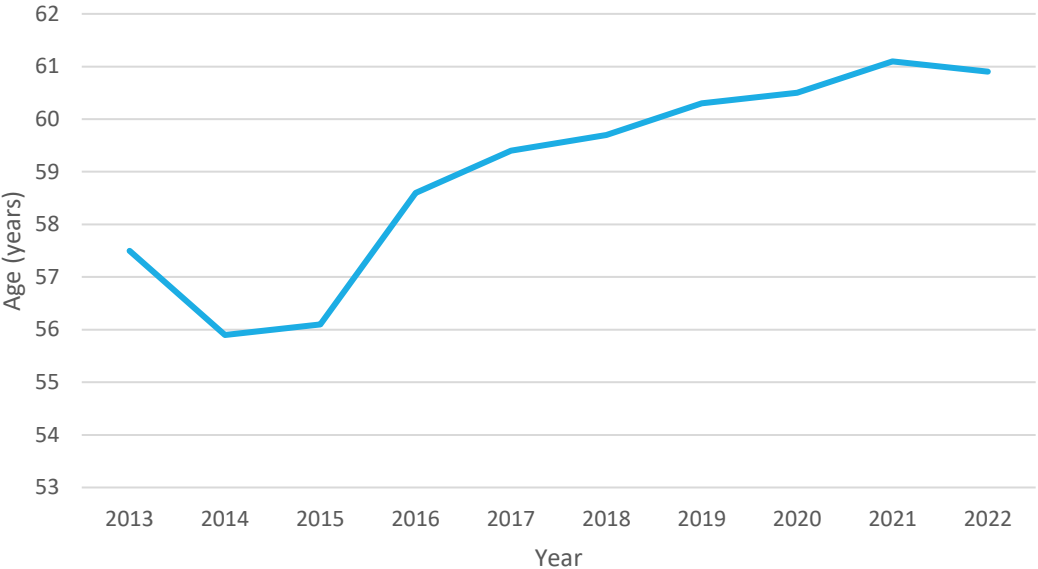
Assessed Values of Residential and Commercial Property, 2013-2022



	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Residential Actual Value (In \$m)	1785.4	1793.9	1920.7	2050.7	2194	2336.7	2492.6	2626.6	2786.7	2998
Residential Actual Value (% of total)	78.3%	78.0%	78.7%	78.5%	78.3%	78.2%	75.2%	74.5%	75.1%	76.9%
Commercial Actual Value (in \$m)	383.5	393.5	398	432.1	471.1	513.2	676.2	743.4	768	735.9
Commercial Actual Value (% of total)	16.8%	17.1%	16.3%	16.5%	16.8%	17.2%	20.4%	21.1%	20.7%	18.9%
Total Actual Value (All Property)	2279	2301.3	2440.1	2613.9	2802.4	2988	3315.7	3524.1	3711.7	3899.2

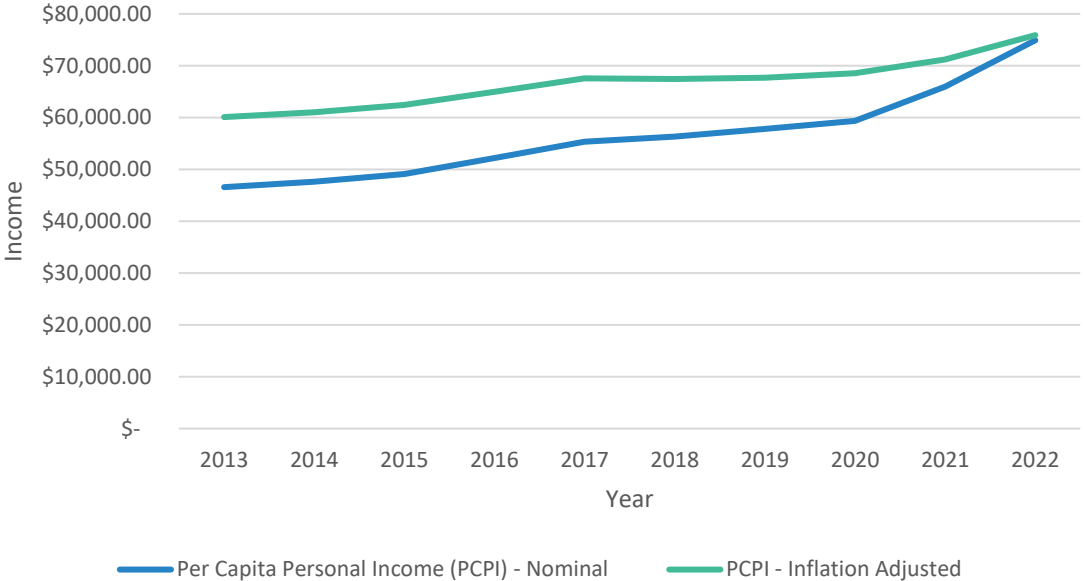
Demographic and Income Changes in St. Pete Beach, 2013-2022

Median Age in St. Pete Beach, 2013-2022



St. Pete Beach (2021): 60.9 years
Pinellas County (2021): 48.5 years
Florida (2021): 42.3 years

Per Capita Personal Income in St. Pete Beach, 2013-2022



St. Pete Beach (2021): \$75,908
Pinellas County (2021): \$42,664
Florida (2021): \$38,000

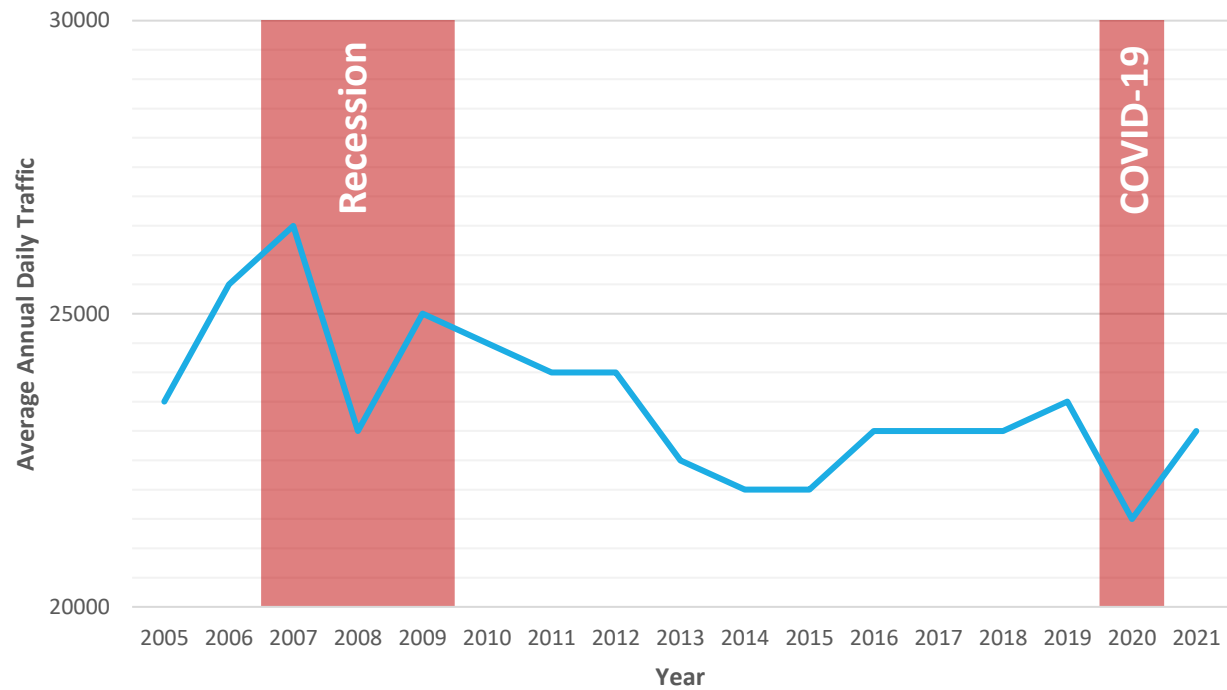
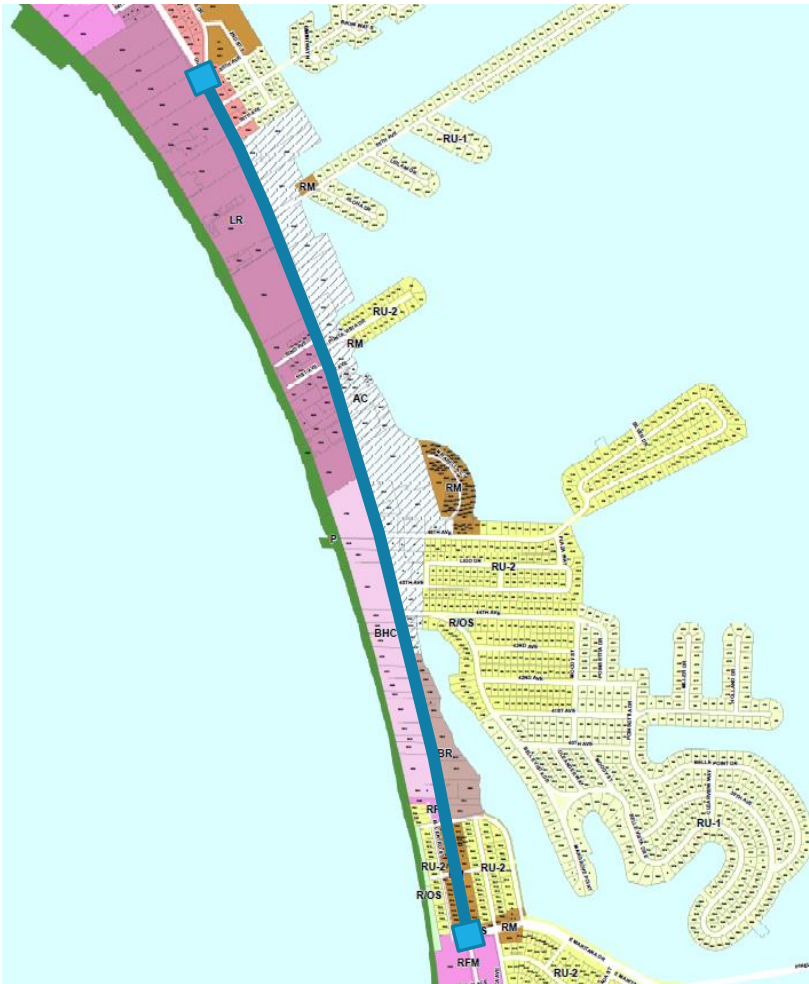
St. Pete Beach – Largest Employers

<u>Company</u>	<u>Employees^[1]</u>	<u>% of Total City Employment^[2]</u>
1. Tradewinds Island Resort	633	11.3%
2. The Don CeSar and Beach House Suites	278	5.0%
3. Grand Plaza & Beachcomber Resorts	223	4.0%
4. Sirata Resort	180	3.2%
5. City of St. Pete Beach	141	2.5%
6. Publix Supermarket	121	2.2%

St. Pete Beach State Road Average Annual Daily Traffic (AADT)

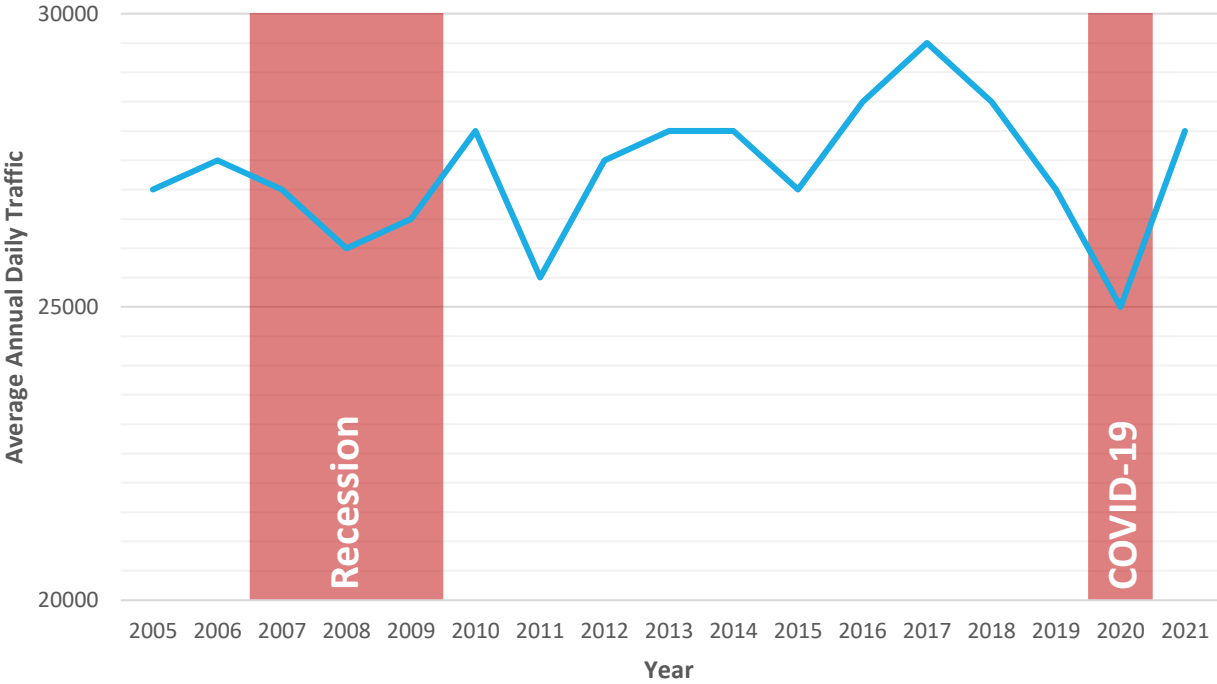
2005-2021

Gulf Blvd from FL 682 (Pinellas Bayway) to Gulf Winds Dr



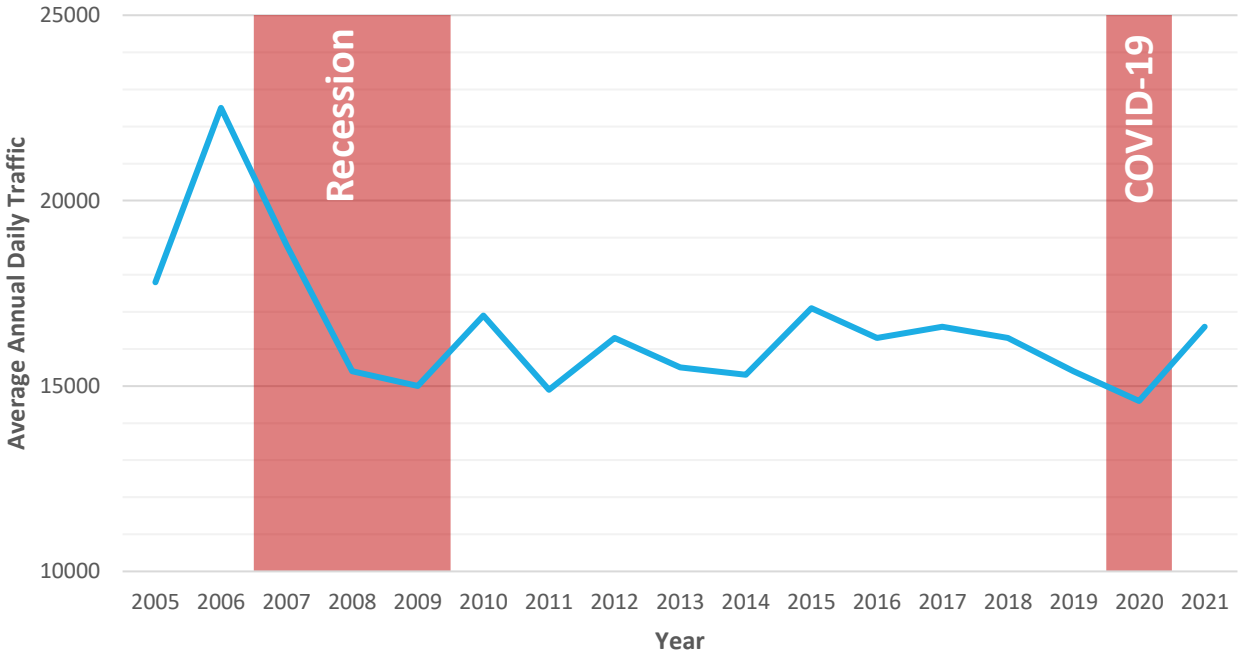
AADT Change, 2005 to 2021:	-2.12%
Highest AADT (2007):	26,500
Lowest AADT (2020):	21,500
Average AADT, 2005 to 2021:	23,500

Gulf Blvd from Gulf Winds Dr to 69th Ave



AADT Change, 2005 to 2021:	+3.7%
Highest AADT (2017):	29,500
Lowest AADT (2020):	25,000
Average AADT, 2005 to 2021:	27,300

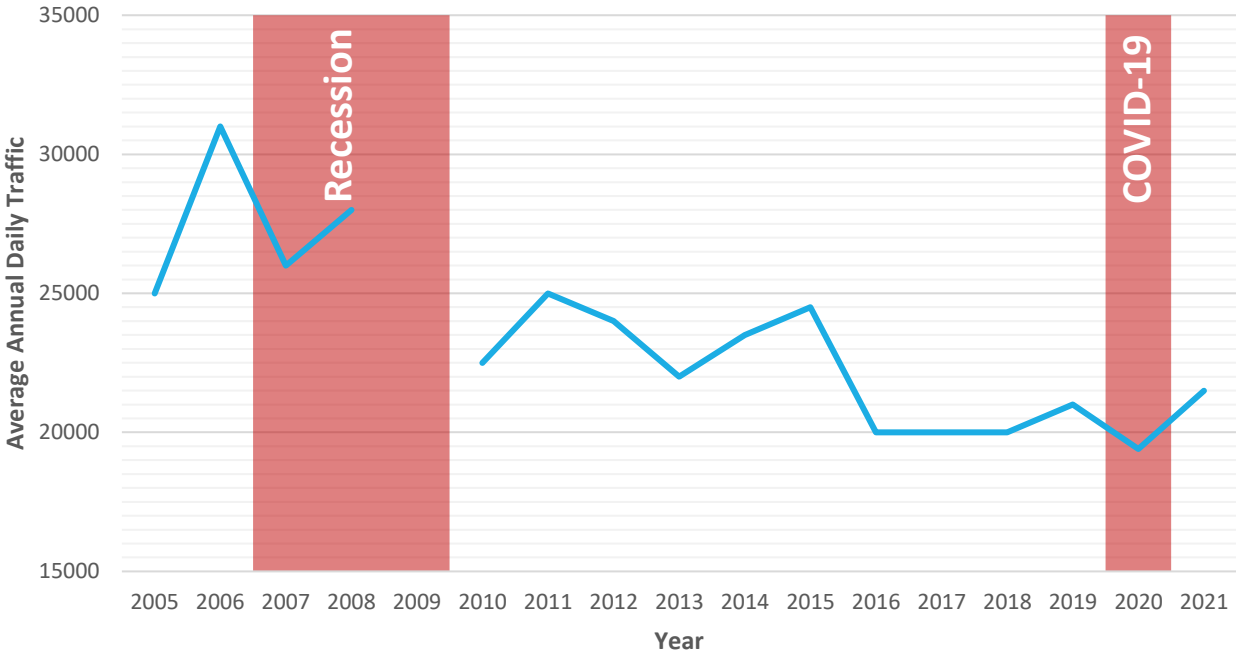
Gulf Blvd/75th Ave/Blind Pass Rd from 69th Ave to Treasure Island



Notes: Treasure Island Causeway was under construction between 2005 and 2008. Count location moved northward along Blind Pass Rd for 2009 count onward.

AADT Change, 2005 to 2021:	-6.7%
AADT Change, 2009 to 2021:	+10.7%
Highest AADT (2006):	22,500
Lowest AADT (2020):	14,600
Average AADT, 2005 to 2021:	16,500
Average AADT, 2009 to 2021:	15,900

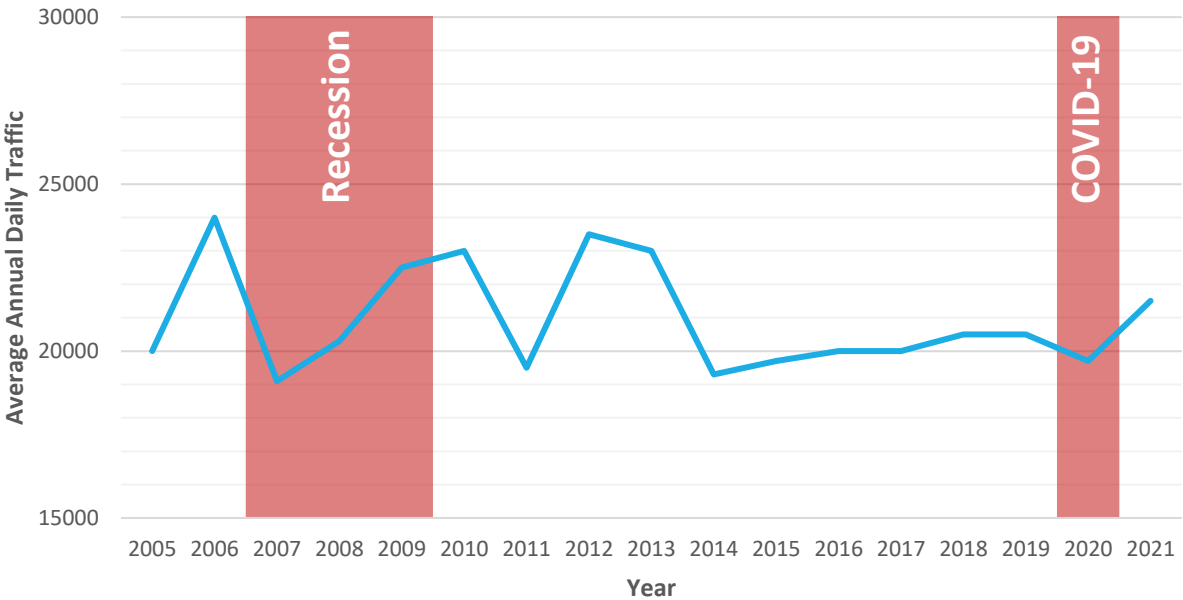
75th Ave from Blind Pass Rd to Sailboat Key Blvd



Notes: Treasure Island Causeway was under construction between 2005 and 2008.
No data point provided for 2009.

AADT Change, 2005 to 2021:	-14.0%
AADT Change, 2010 to 2021:	-4.4%
Highest AADT (2006):	31,000
Lowest AADT (2020):	19,400
Average AADT, 2005 to 2021:	23,300
Average AADT, 2010 to 2021:	21,950

Bayway from FL 579 to Gulf Blvd/Pass-a-Grille Way



Note: Pinellas Bayway was under construction from 2012 to 2014.

AADT Change, 2005 to 2021:	+7.5%
Highest AADT (2006):	24,000
Lowest AADT (2007):	19,100
Average AADT, 2005 to 2021:	20,950

Maintaining Status Quo During the Planning Process & Legal Pitfalls.

- Moratorium - Taking/Substantive Due Process
- US & FL Constitutional Protections from Government “Taking” Private Property
- Bert J. Harris Jr., Private Property Rights Protection Act
- Governmental Exactions

Moratorium/Moratoria

What is a moratorium?

Webster's Dictionary = a temporary prohibition of an activity.

Black's Law Dictionary = a legally authorized period of delay or suspension of an activity.

Cornell University Legal Information Institute = A moratorium is the authorization to either postpone the performance of obligations or to suspend some activity of law for a period of time, until the purpose for which the moratorium was granted is satisfied or resolved.

“Moratoriums may be used to limit problems while an entity is working toward a plan for solving such problems within a municipality.” ***Tahoe-Sierra Preservation Council, Inc. v Tahoe Regional Planning Agency, 535 U.S. 302, 337-38.*** Florida allows municipalities to enact moratoria through their police powers expressed in Florida Statutes Chapter 166 while a municipality works toward protecting its zoning and planning efforts.

Constitutional Protection of Private Property:

- US Constitution - 5th Amendment – Takings Clause = “Nor shall private property be taken for public use, without **just** compensation.”
- US Constitution - 14th Amendment – Equal protection/Substantive Due Process = “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property **without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.”
- The 5th Amendment may be violated by the taking of private property without just compensation and the 14th Amendment may be violated when the private property owners are not provided adequate due process of the law or regulation.
- Florida Constitution - Article X Section 6 states that “no private property shall be taken except for a public purpose and with full compensation therefor paid to each owner....”
- Regulatory Taking v. Direct Taking (AKA Eminent Domain).

Regulatory Taking/Substantive Due Process

- A regulatory taking occurs when the legislation (1) does not advance a legitimate government interest or (2) denies the landowner all or virtually all economically viable use of his or her land.
- A balancing test from the landmark case ***Penn Central Transportation Company v. City of New York***, is used to determine whether there was a “taking” of private property without just compensation by the government. The Penn Central balancing test looks at three factors which include:
 - (i) the character of the state action;
 - (ii) the economic impact of the regulation; and
 - (iii) the regulation’s interference with the owner’s investment-backed expectations.
- Substantive due process challenges to zoning regulations are analyzed under the rational basis test, when they do not target a protected class. ***WCI Communities Inc. v City of Coral Springs*, 885 So. 2d 912 (Fla. App. 2004)**

Rational Basis Test

- Under the rational basis test, a court gives great deference to economic and social legislation. ***WCI Communities Inc. v City of Coral Springs*, 885 So. 2d 912 (Fla. App. 2004)**
- The first step in determining whether legislation survives RBT is identifying a legitimate government purpose which the governing body could have been pursuing; the second step of the RBT asks whether a rational basis exists for the enacting government body to believe that the legislation would further the hypothesized purpose. *Id.*
- The rational basis standard is highly deferential to the local government. The proper inquiry is concerned with the existence of a conceivable rational basis, not whether that basis is actually considered by the legislative body. “The question is only whether a rational relationship exists between the ordinance and a conceivable legitimate governmental objective; if the question is at least debatable, there is no substantive due process violation.” *Id.*
- “Permissible bases for land use restrictions include concern about the effect of the proposed development on traffic, on congestion, on surrounding property values, on demand for city services and on other aspects of the general welfare. It is within the power of the legislature to determine that a community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.” *Id.*
- “A court should not set aside the determination of public officers in land use matters unless it is clear that their action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, and the public safety of the public welfare in its proper sense.” *Id.*

Moratorium/Moratoria Caselaw

***City of Sanibel v. Buntrock*, 409 So. 2d 1073 (Fla. App. 1981).**

- A Developer brought an action against the city for enacting a one-year moratorium on the issuance of permits and approvals for commercial development. The court held that when a moratorium ordinance is enacted that “substantially affects land use, it must be enacted under the procedures which govern zoning and rezoning.”
- The court found that the city’s moratorium ordinance was not enacted pursuant to Section 166.041 (3)(c)(1), Florida Statutes and deemed it invalid.

***City of Miami Beach v. State ex rel. Fontainebleau Hotel Corp.*, 108 So. 2d 614 (Fla. 3d DCA, 1959).**

- The city had enacted an emergency amendment to their building code to establish height restrictions. The court found that amendment to the ordinance was invalid due to the failure of the city to provide its citizens and property owners with notice and an opportunity to be heard. Thus, the citizens were not afforded adequate due process of law.

Moratorium/Moratoria Caselaw

***WCI Communities Inc. v City of Coral Springs*, 885 So. 2d 912 (Fla. App. 2004).**

- WCI filed a complaint against the City of Coral Springs alleging that the nine-month moratorium on the processing of site plan applications for townhouse and multi-family development enacted by the city prevented WCI from using its parcels of land for multi-family residential development. WCI argued that the city's temporary moratorium resulted in a regulatory taking of its private property and that just compensation should be given to WCI. *Id.*
- The court held that “the temporary moratorium was an important land-use tool as a means of preserving the status quo during the planning process to ensure that the community's problems were not exacerbated during the time it takes to formulate a regulatory scheme.” *Id.* Thus, the court found that there was a rational basis in the ordinance and that there was a rational relationship between the moratorium and the city's objectives and goals. *Id.*

Moratorium/Moratoria Caselaw

***Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002).**

- This case involved a 32-month moratorium on development while a preservation plan for Lake Tahoe was being implemented. The Supreme Court rejected the claim that “a moratorium on development imposed during the process of devising a comprehensive land-use plan constitutes a *per se* taking of property requiring compensation under the Takings Clause of the United States Constitution.” The Court held that the affected local governments could temporarily prohibit construction, without compensating affected landowners, while the regional planning agency evaluated the carrying capacity of the area and formulated a regional plan for development. The Court refrained from adopting an absolute rule regarding moratorium and instead, suggested that an ad hoc analysis must be conducted using the *Penn Central* factors to determine whether a taking had occurred.

***Moviematic Industries Corp. v. Board of County Commissioners of Metropolitan Dade County*, 349 So. 2d 667 (Fla. 3d DCA 1977).**

- The county imposed a building moratorium for the purpose of conducting and preparing a comprehensive study directed to the protection of the fresh water supply and the natural ecosystems in that part of the county. The court upheld the moratorium, holding that protection of drinking water supplies and ecological systems are legitimate objectives of zoning resolutions and ordinances.

Moratorium/Moratoria Caselaw

More Cases:

- ***Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (U.S. 1978).** Temporary moratoria that are in effect for a reasonable time period, and are rationally related to a legitimate governmental purpose, are not a taking and thus are adequate remedies to this situation.
- ***Santa Fe Village Venture v. City of Albuquerque*, 914 F. Supp. 478 (D.N.M. 1995).** A 30-month moratorium to protect the status quo in lands within national monument was not a taking.
- ***Woodbury Place Partners v. City of Woodbury*, 492 N.W.2d 258 (Minn. Ct. App. 1992).** A two-year moratorium on development pending traffic flow study was not a taking.
- ***Cappture Realty Corp. v. Bd. of Adjustment of the Borough of Elmwood Park*, 336 A.2d 30 (N.J. Super. App. Div. 1975).** A four-year moratorium prohibiting construction on flood prone lands was not a taking.
- ***Estate of Scott v. Victoria County*, 778 S.W.2d 585 (Tex. App. 1989)** A seven-year moratorium prohibiting the issuance of sewer connection permits was not found to be a taking.
- ***Matter of Rubin v. McAlevey*, 288 N.Y.S.2d 519 (1968).** A two-year interim development ordinance was found to be valid until the enactment of a new comprehensive zoning ordinance.

Moratorium/Moratoria Caselaw

***City of Boca Raton v. Boca Villas Corporation*, 371 So.2d 154 (Fla. 4th DCA 1979) cert. denied, 381 So. 2d 765 (Fla. 1980), cert. denied, 449 U.S. 824 (1980).**

- A city initiated a charter amendment setting a max or “cap”(40k dwelling units) on density in the entire city and it was passed by the city’s electorate. After passage of this charter amendment the city council approved a Planning & Zoning Board recommendation for an across-the-board density reduction of 50% for all multi-family zoning categories. City staff testified to the fact that the city was not going to reach this cap for many years. Therefore, the court found the charter amendment violated due process provisions of the State and Federal Constitutions because the cap did not bear a rational relationship to a permissible municipal objective

“Bert J. Harris Jr., Private Property Rights Protection Act.” (F.S. 70.001)

- In 1995, the State Legislature recognized that some laws, regulations and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking under the State or US Constitution. The legislature declared that there is “an important state interest in protecting the interests of private property owners from those inordinate burdens.” Accordingly, this act was created to allow for a separate and distinct cause of action for governmental action that might not rise to the level of a taking.
- This Act provides relief to private landowners when a law, regulation, or ordinance inordinately burdens, restricts, or limits private property without amounting to a taking under the U.S. Constitution.
- The Act provides a specific process for landowners to seek relief when their property is unfairly affected by governmental action.

“Bert J. Harris Jr., Private Property Rights Protection Act.” (F.S. 70.001)

- Under the Act, a claim exists if a governmental entity inordinately burdens an existing use of real property or a vested right to a specific use of real property.
- Inordinately burdens – means an action by a governmental entity that has directly restricted or limited the use of real property in that:
 - The property owner is permanently unable to attain the reasonable, investment backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
 - The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.
- Under Florida’s **Bert Harris Act** a “temporary impact on development, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an “inordinate burden”....” Section 70.001 (3)(e) 2, Fla. Stat. That means, the moratorium will violate the Act only if it meets the strict test of causing an “inordinately burden” as defined by the Act. §70.001 (4) (d)2, Fla. Stat.

“Bert J. Harris Jr., Private Property Rights Protection Act.” (F.S. 70.001)

Presuit Notice:

A property owner who seeks compensation under Act must present a written claim to the head of the government entity at least 90 days before filing an action. The property owner must also submit a valid appraisal that supports the claim and demonstrates the loss in FMV to the property. The appraisal should contain valuations of the property both before and after the restriction was imposed. If other parties are involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner’s property. Also, they must notify the Department of Legal Affairs within 15 days after the claim is presented.

“Bert J. Harris Jr., Private Property Rights Protection Act.” (F.S. 70.001)

The Government Must make a written settlement offer:

During the 90-day period, the government is required to make a written settlement offer to the claimant. This period can be extended by mutual agreement of all parties. The governmental entity shall make a written settlement offer to effectuate: FS 70.001(4)(c) lists it out.

“Bert J. Harris Jr., Private Property Rights Protection Act.” (F.S. 70.001)

If Government Offer is Rejected:

- If property owner rejects the offer with allowable uses, property owner may file a claim in circuit court and the county where the real property is located. A cause of action may not be filed more than 1 year after a law or regulation is first applied by the government to the property at issue. BIG DISTINCTION...The 1 year begins when the law or regulation, if clear and unequivocal in its terms, is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.
- The court then conducts a bench trial to determine whether an existing use or vested right existed and whether the government burdened the property. If the court determines that a burden was imposed, the court must also determine the percentage of responsibility each entity must bear. The court shall impanel a jury to determine the amount of compensation. The property owner has the option to forego the jury and elect to have the court determine the award of compensation.

Governmental Exactions (F.S. 70.45)

A prohibited exaction is defined by statute and means “any condition imposed by a governmental entity on a property owner’s proposed use of real property **that lacks an essential nexus to a legitimate public purpose** and **is not roughly proportionate** to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.

Governmental Exactions (F.S. 70.45)

Presuit Notice and Prohibition against Waivers:

- A cause of action may not be brought until a prohibited exaction (condition) is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.
- Property owners must provide notice to the GE at least 90 days before filing a cause of action but no later than 180 days after imposition of the prohibited exaction. The written notice must identify the exaction that the property owner believes is prohibited, briefly explain why the property owner believes the exaction is prohibited and provide an estimate of the damages.
- Upon receipt of the written notice, the GE shall review the notice of claim and respond in writing to the property owner by identifying the basis for the exaction and explaining why the GE maintains that the exaction is proportionate to the harm created by the proposed use of real property, or by proposing to remove all or a portion of the exaction.

Governmental Exactions (F.S. 70.45)

Burden of Proof:

The GE has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid. The burden of proving damages that result from the prohibited exaction rests upon the property owner.

Governmental Exactions (F.S. 70.45)

Attorney Fees and Costs:

- The court may award attorney fees and costs to the prevailing party. However, if the court determines that the challenged exaction lacks an essential nexus to a legitimate public purpose, the court shall award attorney fees and costs to the property owner.
- To ensure the court may assess damages for claims filed under this section, the **state waives sovereign immunity for causes of action based upon** the application of this section. Such waiver is limited only to actions brought under this section.
- This section only applied to prohibited exactions imposed or required in writing on or after October 1, 2015 as a final condition of approval for the requested use of real property.