



SUNSHINE CITY LAW

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*Via Email and Hand Delivery*  
Mayor and City Commission  
City of St. Pete Beach  
155 Corey Avenue  
St. Pete Beach, FL 33706

February 21, 2024

**Re: Comments in Opposition to Item #3, Resolution 2023-21, Conditional Use Permit Application #23053 for the Sirata St. Pete Beach**

Dear Mayor and City Commission:

I represent Protect St. Pete Beach Advocacy Group (“PSPB”), a St. Pete Beach non-profit organization dedicated to ensuring that development projects in St. Pete Beach beautify the community for the mutual benefit of residents and visitors alike without increasing traffic, congestion, demands on infrastructure, or threatening wildlife and natural resources. PSPB is composed of members who have a substantial interest over and above that of the general community. Membership is limited to residents of St. Pete Beach who live in close vicinity to Gulf Boulevard between 60th and 52nd Avenues who are directly impacted by the potential transformation of the beauty, hotelscape and infrastructure on Gulf Boulevard. My client respectfully requests denial of Resolution 2023-21, Conditional Use Permit Application #23053 for the Sirata St. Pete Beach based on the Application’s failure to meet the land development code and comprehensive plan, particularly with respect to scale, massing, and compatibility with the character of the area.

PSPB hereby adopts the arguments and testimony of Charles Gauthier, AICP in his letter dated February 18, 2024 and of Drew Roark, PE, in his December 4, 2023 letter. In addition, PSPB renews its procedural objections from its January 10, 2024 letter.

This is the first Large Resort redevelopment in the surrounding area and is a key decision which will shape the future of the character, scale, and neighborhood compatibility within the City’s Large Resort district. For the following reasons, PSPB respectfully requests denial of this item.

## **I. Standard of Review**

Section 4.1. St. Pete Beach Land Development Code provides,



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**Conditional use permits are conditional rather than uses by right.** They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, public services, the desired character of an area, or they may create nuisances. A review of these uses is necessary due to the impacts they may have on the surrounding area or neighborhood.

It is Applicant's burden to show that the application complies with the City's Code and Comprehensive Plan. The Third District Court of Appeal in *Alvey v. City of North Miami Beach*, 206 So. 3d 67, 73 (Fla. 3d DCA 2016) explained,

[T]hose who own property and live in a residential area have a legitimate and protectable interest in the preservation of the character of their neighborhood which may not be infringed by an unreasonable or arbitrary act of their government. *Allapattah Cmty. Ass'n*, 379 So.2d at 392. Zoning ordinances are enacted to protect citizens from losing their economic investment or the comfort and enjoyment of their homes by the encroachment of commercial development by an unreasonable or arbitrary act of their government. *Id.* Thus, the burden is upon the landowner who is seeking a rezoning, special exception, conditional use permit, variance, site plan approval, etc. to demonstrate that his petition or application complies with the reasonable procedural requirements of the applicable ordinance and that the use sought is consistent with the applicable comprehensive zoning plan.

## II. Sirata Application is at the Ceiling of Density and Height

You are under no requirement to approve this project, even if it falls within quantitative allowances of the code. This project's density is at the outer limits of what the Comprehensive Plan allows. The maximum density is 75 units per buildable acre, and that is exactly what the Applicant is asking for. As the Second District Court of Appeal in *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1008 (Fla. 2d DCA 1993) explained,

This aspect of the comprehensive plan represents, in effect, a future ceiling above which development should not proceed. It does not give developers *carte blanche* to approach that ceiling immediately, or on their private timetable, any more than a city



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or county is entitled to view its planning and zoning responsibilities as mere make-work.

Maximizing density based on the Applicant's private timetable is not required. Instead, the conditional use permit process and comprehensive plan requires consideration of compatibility, character of the area, infrastructure, and numerous other factors. Section 4.4(a)(2), as well as aesthetic and architectural features of the layout. Section 4.12, LDC.

The Staff Report's General Development Requirements table (depicted below with highlights as Figure One) shows that the density is not to exceed 75 units/buildable acre, and that the proposed is for exactly that, amounting to 626 units. The impervious surface ratio limit of 85% and the proposed is 80% impervious. The required height limit is "not to exceed 116' from the base floor elevation plus 12' for rooftop amenities" and the Northern hotel is 115.5 plus 12' for rooftop amenities.

General Development Requirements			
	Required	Proposed	Requirement Met?
Density (Lodging Units)	Not to exceed 75 units/buildable acre (626 units)	75 units/buildable acre (626 units)	Yes
Impervious Surface Ratio	Not to exceed 85% impervious (7.33 ac)	80% impervious (6.9 ac)	Yes
Vegetative Greenspace Ratio	At least 12% of buildable property acreage (1.03 ac)	19.7% of buildable property acreage (1.7 ac)	Yes
Floor Area Ratio	Not to exceed 2.6 FAR (976,000 SF)	1.53 FAR (574,500 SF)	Yes
Parking spaces	732 spaces (659 spaces with 10% reduction)	827 spaces (750 after discontinuation of off-site lot)	Yes
Loading spaces	One per 10,000 SF of new meeting or conference space, plus food service space (Three spaces)	Three spaces	Yes
Side landscaping buffer	30 feet on each side (15 feet if approved by Commission)	North side – 15 feet  South side – 30 feet	North side – Yes if approved by City Commission  South side – Yes
Height	Not to exceed 116' from BFE, with up to an additional 12' for rooftop amenities	Northern hotel: 115.5' above BFE, with rooftop facilities not to exceed 12'  Southern hotel: 88.5' above BFE, with rooftop facilities not to exceed 12'	Yes

Figure 1



### III. Peculiarity of location within Large Resort District

This is the first attempted resort redevelopment in the immediate area within the Large Resort district. While many hotel properties in the Large Resort District abut hotels or other commercial uses, the Sirata is located both directly south of the Seamark condominium and east of three condominium buildings, as well as in close proximity to single-family home neighborhoods. Because of its unique location, special attention should be given to compatibility because this represents a small subarea within the Large Resort district that requires extra sensitivity to neighborhood protections. *See St. Pete Beach Comprehensive Plan Future Land Use Policy 2.1.5* (“Through the enforcement of the land development regulations, existing residential areas shall be protected from the encroachments of incompatibles uses”); *see also* “Citizen Input on Community Redevelopment, I.3 (“There is a strong desire to protect the quiet character of existing residential neighborhoods from encroachment and overdevelopment of non-residential uses.”) Figure 2 is a Google Earth shot of the Sirata depicting the proximity of residential uses in the area:

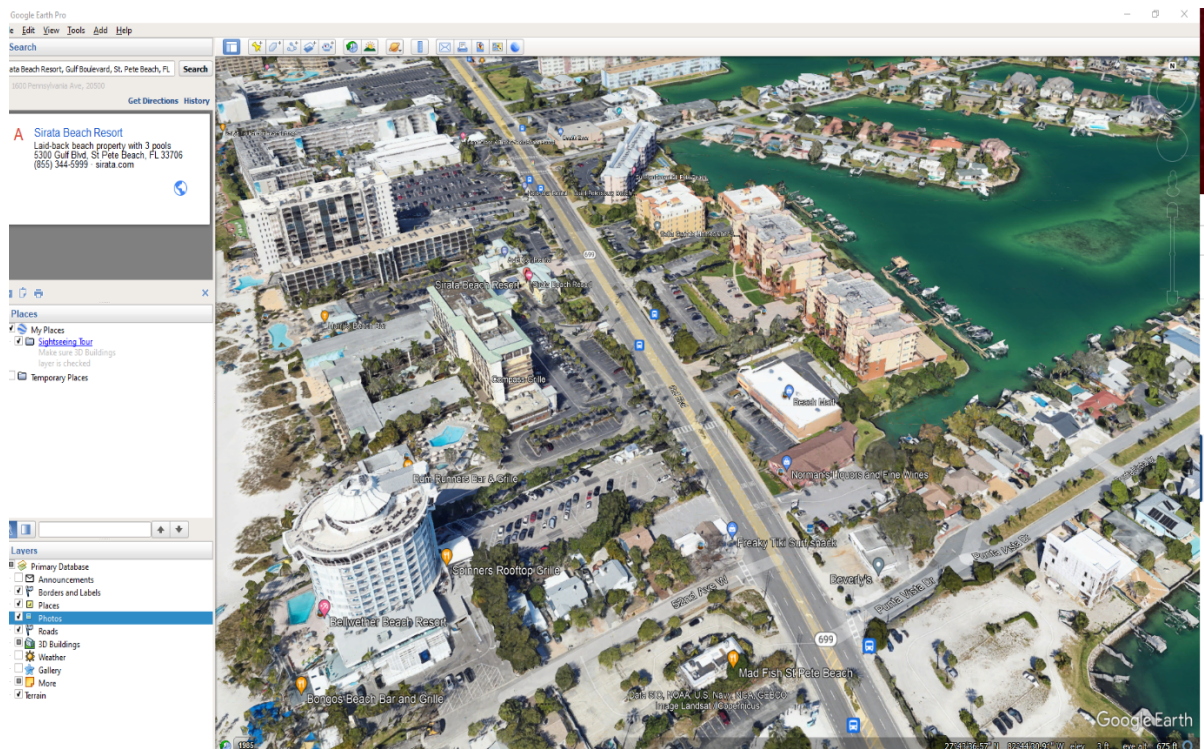


Figure 2



Charles Gauthier opined at pg 3 of his letter,

The redevelopment of aging hotel facilities is an important goal for St. Pete Beach. While redevelopment opportunities are welcome, a balance must be achieved which maintains community character, avoids or minimizes compatibility impacts and protects established community interests. The Sirata proposal maximizes redevelopment to the extent that it is out of balance with community interests.

#### **IV. Failure to Support Criteria under Section 4.4 and 4.12 with Competent Substantial Evidence**

“Competent” evidence must be credible and based on facts, and cannot be bare allegations, speculation, or conjecture. *Dep’t of Highway Safety & Motor Vehicles v. Trimble*, 821 So. 2d 1084, 1086-87 (Fla. 1st DCA 2002). A generalized statement, even from an expert, is not competent substantial evidence. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003). *First Baptist Church of Perrine v. Miami-Dade Cty*, 768 So. 2d 1114, 1116 (Fla. 3d DCA 2000) (zoning board properly denied zoning application where recommendation for approval was based on flawed traffic impact study which did not constitute competent substantial evidence. Applicant has failed to support the following criteria with competent substantial evidence:

##### **Sec. 4.4. Standards for review.**

- (a) *Standards applicable to all conditional uses.* When considering an application for approval of a conditional use, the city commission review shall consider the following standards:
  - (1) **Whether the conditional use is consistent with the goals, objectives, and policies of the Comprehensive Plan, any adopted special area plan and these regulations;**

See above and see Charles Gauthier’s February 18, 2024 letter which detail numerous inconsistencies with the Comprehensive Plan. Other goals, objectives and policies of note include:





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**FLU, Policy 2.7.2:** Unique and/or irreplaceable natural resources such as the City's beaches, shores, dunes and mangroves shall be protected from the adverse effects of development. Sand dunes and mangroves may not be disturbed during development and construction activities.

**FLU, Policy 2.11.3:** The City shall continue to administer the land development regulations in a manner aimed at preserving the access to and view of the beach and other recreational facilities for all residents of and visitors to this community.

**Special Designation- Community Redevelopment District, Large Resort Policies:** Policy 1: Architectural design features that provide visual interest, are aesthetically pleasing and relate to the human scale at ground level are equally important for both the street and water side of buildings.

**(2) Whether the proposed use will be compatible with the character of the existing area, including existing structures and structures under construction, existing public facilities and public facilities under construction, and residential, commercial and/or service facilities available within the existing area. More specifically:**

**a. Whether the overall appearance and function of the area will be significantly affected consideration shall be given to the existence of other uses in the area, based on the number, size, and location of the uses and the intensity and scale of the proposed and existing uses in the area;**

The scale of the proposal is significantly larger than the current Sirata. The site plan adds a ten-story building with dimensions of 430' x 196, and a select service hotel (85,942 sf). The plan also adds a hotel garage that is 165,984 sf. The new square footage dwarfs the existing footprint of the Sirata hotel.

The 1/2/24 staff report points out that "the overall appearance of the area will be moderately affected." It adds,

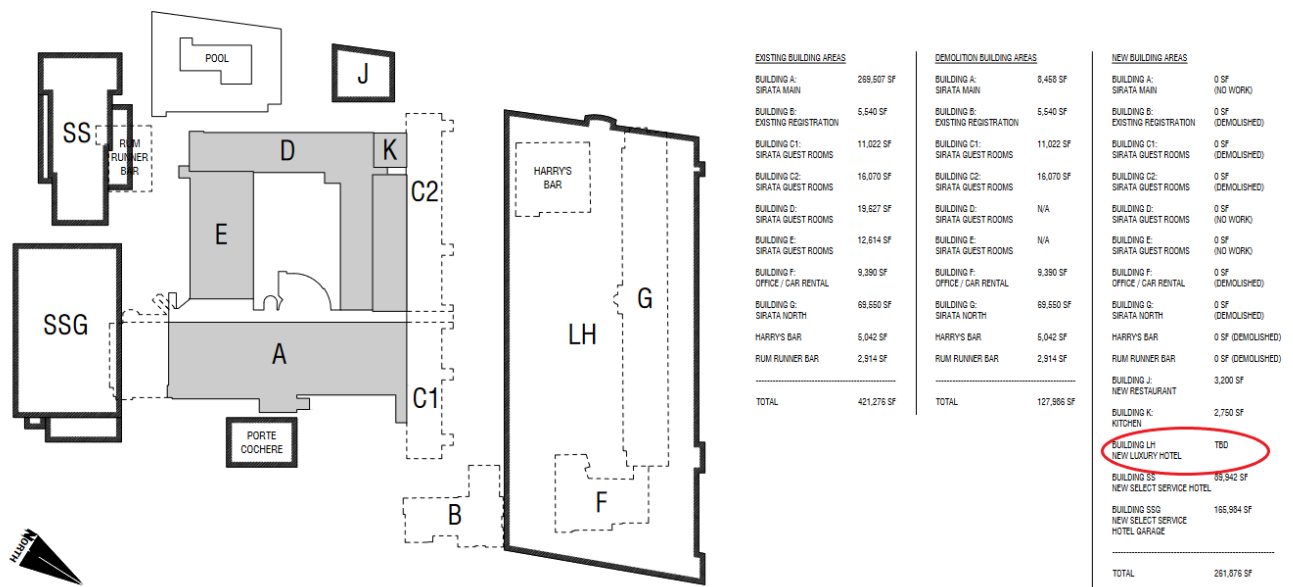
It should be noted that, despite the similar number of floors, the 61-foot portion of the Hotel 1 tower between five and ten stories appears to be over two times larger (approximately 31,500 square feet) than the SeaMark building (approximately 15,000 square feet).



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SITE DEVELOPMENT: diagram



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1"=80'-0" / SAINT PETE RESORT / 30 August 2023

Figure 3



Existing building Area	Demolition Building Area	New Building Area	Proposal's Building Area
421,276 sq ft	127,986 sq ft	(omits JW MARRIOTT!) 261,876 sq ft	563,624 sq ft PLUS JW MARRIOTT (430' x 196, 10 stories, with varied height)  ***if JW Marriott calculated at just 5 stories, would be 421,400 sf, total would be over <b>985,024</b> , more than double the existing building area

SEAMARK CONDO  
ZONING: LARGE RESORT (LR)  
FUTURE LAND USE: LARGE RESORT (LR)  
TAX PARCEL ID: 26-32-10-1434-03-0010  
OWNER: SEAMARK, INC.

PROPERTY LINE

15' LANDSCAPE BUFFER (50% REDUCTION)

30' SIDE YARD SETBACK

28' FRONT YARD SETBACK

15' LANDSCAPE BUFFER

15' BEACH ACCESS

5' REINFORCED GEOBORD

20' OF MOUNTABLE TYPE E CURB FOR EMERGENCY VEHICLE ACCESS

HOTEL 1  
TEMPORARY LODGING UNIT: 290 KEYS  
GFA: 310,575  
OFFICE: 3,500 SF  
RESTAURANT: 11,100 SF  
BALLROOM/CONFERENCE/MEETING: 15,000 SF  
RETAIL: 900 SF

PEDESTRIAN ACCESS FROM PARKING GARAGE TO HOTEL 2

APPROXIMATE BUILDING

KITCHEN

PETE BEACH

8





**b. Whether the application will preserve any city, state or federally designated historic, scenic, archaeological, or cultural resources;**

The staff report states that this criterion does not apply. However, in 2011, Gov. Crist declared St. Pete Beach the Sunset Capital of Florida.

ARCHIVE

## ST. PETE BEACH SET TO SHINE AS THE SUNSET CAPITAL



By **CARLY HART**

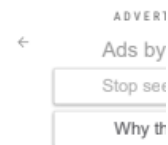
Published Jan. 5, 2011 | Updated Jan. 5, 2011

Gov. Charlie Crist, in one of his last official duties, named this city the "Sunset Capital of Florida."

A gathering Saturday along the shores of Pass-a-Grille celebrated that designation.

Having St. Pete Beach named the Sunset Capital was the idea of Renee Roos, owner and publisher of Paradise News magazine. A St. Pete Beach resident for more than 23 years, Roos saw the opportunity to give St. Pete Beach international recognition by acknowledging one of the features residents and visitors love so much.

"Treasure Island was named the Sand Sculpture Capital of Florida and has parlayed that into a tourist attraction for the city," said Roos. "Our position on the planet, which provides some of the most beautiful sunsets, directly over the gulf, is really something worth celebrating daily."



ADVERTISEMENT



**Figure 5**

The staff report states that the criteria generally promote the maintenance of Gulf views and "development is approximately maintain the same linear footage of openings between Gulf Boulevard frontage and the water. Do you agree? Here is a panoramic shot of the current view from the beach (Figure 6)



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Figure 6

In contrast, here is the Applicant's rendering of a similar view, largely taken up with new buildings.

**HOTEL 1, RENDERING 2:** View from Northwest

3



PIVOTstudio

COLUMBIA SUSSEX | ST. PETE BEACH, FL | 28 DECEMBER 2023

Figure 7

- c. **Whether the application will be compatible with adjacent development, if any, based on characteristics such as size, building style and scale; or whether such incompatibilities are mitigated through such means as screening, landscaping, setbacks, and other design features;**



See above

- d. Whether the application will have significant adverse impacts on the livability and usability of nearby land due to noise, dust, fumes, smoke, glare from lights, late-night operations, odors, vehicular traffic, truck and other delivery trips, the amount, location, and nature of any outside activities, potential for increased litter, or privacy and safety issues.**

Drew Roark's report cites several significant flaws in the Sirata Traffic study which invalidate it as competent substantial evidence and call into question the criteria relating to vehicular traffic above. The Applicant must update their study to correct these mistakes for an accurate accounting of this criteria.

- (3) Whether the transportation system is capable of adequately supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, transit availability, on-street parking impacts, if any, site access requirements, neighborhood impacts, and pedestrian safety;**

Drew Roark's report cites several significant flaws in the Sirata Traffic study which invalidate it as competent substantial evidence and call into question the criteria above. The Applicant must update their study to correct these mistakes for an accurate accounting of this criteria.

- (5) Whether generally, the public health, safety and welfare will be preserved, and any reasonable conditions necessary for such preservation have been made;**

See above.

- (7) Whether the proposed use complies with all additional standards imposed on it by the particular provision of these regulations authorizing such use and by all other applicable requirements of the regulations of the City of St. Pete Beach.**

Sec. 39.8(a) LDC requires, "No plane of a building may continue uninterrupted for greater than 100 linear feet. Hotel 1 has a 196.6 wide plane by 430.5. The parking garage by hotel 3 has a 106' plane by 194.7. The site plan appears to violate section 39.8(a).

The criteria under Section 4.12(a) for conditional use applications in community redevelopment districts also applies. Section 4.12(2) relates to transportation infrastructure and is flawed for the same reasons as stated above from Drew Roark's report. Section 4.12(4) relates to aesthetic and architectural features, massing, design,



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and “the provision and maintenance of Gulf Bay views and vistas,” and is flawed for the same reasons as stated above.

**V. Legal Objections**

PSPB renews its objections stated in its January 10, 2024 letter relating to (1) the lack of authority of the appointed Commission to meet and vote on this item, as further discussed in *Protect St. Pete Beach Advocacy Group, et al v. City of St. Pete Beach* (6th Jud. Cir.), 24-000041-CI; and (2) the requirement under Section 4.2(e), LDC for revised applications with new data or information to be subject to same stages of review as the initial application. Specifically, as of January 10, 2024, the Application now contains:

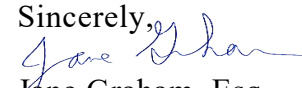
- (1) Updated renderings, dated 12/28/23, received 1/2/23
- (2) A Wind Consultation Letter, CPP Wind Engineering Consultants, 12/19/23
- (3) Bank Credit Letter from Huntington National Bank, dated January 2, 2024
- (4) Applicant’s response to Recommended staff criteria

Based on the foregoing, the revised Sirata application should be evaluated through the same process, including a community meeting, TRC meeting, and Planning Board prior to the City Commission’s review.

Finally, PSPB would like to respond to Applicant’s statement that the Application is not granted, they will pursue affordable housing under the Live Local Act. Section 166.04151, Fla. Stat. applies to areas zoned for commercial, industrial, or mixed use. Here, the property is “Large Resort,” which arguably stands on its own and does not fall under one of these categories. Additionally, this is a quasi-judicial hearing and the finders of fact are limited to evidence presented in front of them. A veiled threat about a non-existent project is not competent substantial evidence or any valid reason to be strong-armed into approving the project in front of you. Additionally, the Applicant is a hotelier and not a developer of affordable housing. We request that you strike from consideration any mention of a potential Live Local Act project in the event of a denial because it is irrelevant and prejudicial.

My client appreciates the opportunity to participate in the process. Please let me know if there is any additional information I can provide.

Sincerely,

  
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