

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 00-39

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADDRESSING ADMINISTRATIVE INTERPRETATION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN; PROVIDING FINDINGS; CONCLUSIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Captain Investments, Inc., in reference to Captain's Bay East has requested administrative interpretations of the Town of Fort Myers Beach Comprehensive Plan, as to whether Phase IV of Captain's Bay has been (or should have been) designated "Wetlands" on the basis of a clear factual error as set forth in Chapter 15, page 3, Section A.1; and,

WHEREAS, persons whose interests are directly affected by the Town Plan have the right to an administrative interpretation under the following procedure:

A. *Subject Matter of Administrative Interpretations.* Administrative interpretations shall be provided only as to the following matters:

1. Whether an area has been (or should have been) designated "Wetlands" on the basis of a clear factual error. A field check shall be made prior to the issuance of such an interpretation.
2. Clarification of Future Land Use Map boundaries as to a specific parcel of property.
3. Conflicts between pre-existing land development regulations and this comprehensive plan during the first year after its adoption (until those conflicts are resolved through amendments to the Land Development Code).

B. *Procedures for Administrative Interpretations.*

1. Anyone seeking an administrative interpretation shall submit an application to the Town Clerk with requested information, and shall have the burden of demonstrating compliance with the standards set forth below.
2. The Local Planning Agency's attorney shall review each application and request additional information or conduct research as necessary. The Local Planning Agency's attorney may issue a written administrative interpretation or may, at the attorney's sole discretion, refer the request to the Local Planning Agency which will then make the administrative interpretation.

C. *Standards for Administrative Interpretations.* Administrative interpretations of this plan shall be determined under the following standards:

1. Interpretations which would be confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property shall be avoided;
2. Interpretations should be consistent with background data, other policies, and objectives of the plan as a whole; and

3. Interpretations should, to the extent practical, be consistent with comparable prior interpretations.

D. Appeals of Administrative Interpretations. The following procedures shall apply in appealing administrative interpretations:

1. An administrative interpretation may be appealed to the Town Council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the Town Council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in this plan have been applied to the facts presented. No additional evidence shall be considered by the Town Council.

2. The Council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The Council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the Town Clerk in writing within thirty days after the date of the hearing.

WHEREAS, the subject property is located at 22676 Island Pines Way, Ft. Myers Beach, in S03-T47S-R24E, Lee County, FL.; and

WHEREAS, the applicant has indicated the property's current STRAP number is: 03-47-24-W1-00002.0040; and,

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on October 10, 2000; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and found as follows:

That as to whether Phase IV of Captain's Bay has been or should have been designated "Wetlands"; The LPA recommends the following:

1. That the property be designated Mixed Residential and deemed consistent with the Plan to complete the development of the project with 64 units for a total of 193 units pursuant to the F-0015 site plan approved in Exemption 83-09-120.00E with the following conditions;

- a. Phase IV must be reviewed by the south Florida Water Management District or Florida
- b. The development approval should be amended to require stabilization of the fill slope.

2. Pursuant to this recommendation, the LPA finds the following:

- a. A designation of Wetland would be confiscatory, arbitrary, capricious, unreasonable or would deny all economically viable use of property.

- b. A change to Mixed Residential is consistent with background data, other policies, and objectives of the plan as a whole.
- c. The interpretation is the first requested and therefore cannot be compared with prior interpretations.
- d. The project is deemed consistent with the Town's Comprehensive Plan for 193 dwelling units to be developed in compliance with the F-0015 site plan approved in Exemption #83-09-120.00E.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

Section 1. Findings. It is the finding of the Town Council that:

- a. A designation of Wetland would be confiscatory, arbitrary, capricious, unreasonable or would deny all economically viable use of property.
- b. A change to Mixed Residential is consistent with background data, other policies, and objectives of the plan as a whole.
- c. The interpretation is the first requested and therefore cannot be compared with prior interpretations.
- d. The project is deemed consistent with the Town's Comprehensive Plan for 193 dwelling units to be developed in compliance with the F-0015 site plan approved in Exemption #83-09-120.00E.

Section 2. Conclusions. The Town Council determines that:

The property be designated Mixed Residential and deemed consistent with the Plan to complete the development of the project with 64 units for a total of 193 units pursuant to the F-0015 site plan approved in Exemption 83-09-120.00E with the following conditions;

- c. Phase IV must be reviewed by the south Florida Water Management District or Florida
- d. The development approval should be amended to require stabilization of the fill slope.

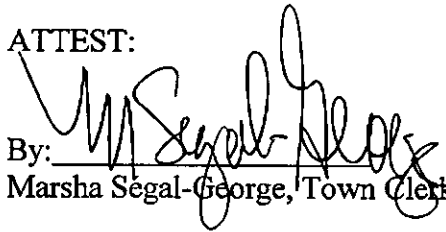
Section 3. Effective Date. This resolution shall take effect immediately upon its adoption by the Fort Myers Beach Town Council.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Anita T. Cereceda	aye
Daniel Hughes	aye
Garr Reynolds	aye
Ray Murphy	aye
Terry Cain	aye

APPROVED this 13th day of November, 2000.

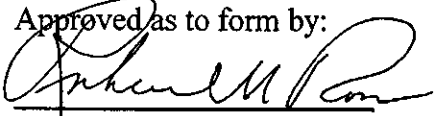
ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Daniel Hughes, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney