

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2014-003
SMALL-SCALE AMENDMENT TO
TOWN COMPREHENSIVE PLAN FUTURE LAND USE MAP

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on March 11, 2014 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, at the March 11, 2014 LPA meeting, the LPA continued the hearing to a date certain of June 10, 2014; and

WHEREAS, at the June 10, 2014 LPA meeting, the LPA heard case CMP2013-0001 and weighed the testimony of the applicant, staff and the public; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the Town Comprehensive Plan to create a "TDR Sending Overlay" and apply same to the Future Land Use Map (FLUM) onto the subject area, approximately 6.52 acres, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **does not recommend** that Town Council approve and adopt the proposed Town Ordinance to amend the Comprehensive Plan to create a "TDR Sending Area Overlay" and apply to the Future Land Use Map (FLUM) onto the subject area, approximately 6.52 acres, and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendment to the Town Comprehensive Plan DOES NOT qualify as a small scale amendment pursuant to the requirements of Section 163.3187, Florida Statutes, for the following reasons:
 - a. the proposed amendment DOES involve a use of 10 acres or fewer; and
 - b. the cumulative annual effect of the acreage for all small scale developments adopted by the Town of Fort Myers Beach WILL NOT exceed a maximum of 120 acres in a calendar year; and
 - c. the proposed amendment DOES involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a

land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

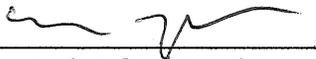
- d. the property that is the subject of the proposed amendment IS NOT located within an area of critical state concern; and
2. It IS NOT in the best interest of the health, safety and welfare of the Town's residents and property owners for the Town Council to make this change to the FLUM and such change IS NOT necessary to provide for orderly future growth of the community, for the following reasons:
- a. The proposed amendment will likely have a NEGATIVE impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional elements: increases impacts in VE flood zone by moving density from AE flood zone; and
 - b. increases intensity in VE flood zone; and
3. It is further recommended that, in accordance with the requirements of Section 163.3187, Florida Statutes, if this proposed change to the FLUM is made by the Town Council, that the Town Council direct the Town Staff to send copies of the notice of hearings and ordinance containing the amendment to the Town Future Land Use Map to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

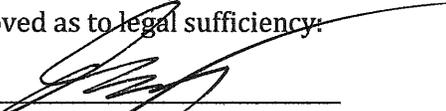
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Bodenhafer** and seconded by LPA Member **Shamp**, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	AYE
Al Durrett	AYE	John Kakatsch	NAY
Jane Plummer	AYE	Jim Steele	EXCUSED
Chuck Bodenhafer	AYE		

DULY PASSED AND ADOPTED THIS **10th** day of **June, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: 
Hank Zuba, LPA Chair

Approved as to legal sufficiency:
By: 
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:
By: 
Michelle Mayher
Town Clerk

ORDINANCE NO. 14-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH APPROVING A SMALL-SCALE AMENDMENT TO THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO CREATE A TDR SENDING AREA OVERLAY AND APPLY A TDR SENDING AREA OVERLAY TO CERTAIN PROPERTY ON THE FUTURE LAND USE MAP; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapters 166 and 163 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Section 163.3187, Florida Statutes, provide that amendments to the Town of Fort Myers Beach Comprehensive Plan (Comp Plan) which are directly related to proposed small scale development activities may approved without regard to statutory limits on the frequency of consideration of amendments to such Comp Plan; and

WHEREAS, a small-scale development amendment may be adopted only under the conditions set forth in Section 163.3187, Florida Statutes and other provisions of State and local law; and

WHEREAS, James J. Jamieson has applied to the Town for an amendment to the Comprehensive Plan to create a TDR Sending Area Overlay on the Future Land Use Map (FLUM) and apply the overlay to 266 Mango Street and 200 Chapel Street (the subject property); and

WHEREAS, the proposed amendment to the Comprehensive Plan to create a TDR Sending Area Overlay on the FLUM and a revision to the Policy on Density Transfers is attached to this Ordinance as Exhibit A and hereby incorporated by reference; and

WHEREAS, in accordance with the requirement that the Town Local Planning Agency (LPA) is required to review all proposed amendments to the Comp Plan, the LPA on June 10, 2014, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2014-03 which was reviewed by the Town Council at hearing; and

WHEREAS, in accordance with the requirements of the Town Charter, the Land Development Code, the Comp Plan, and Florida Statutes, this ordinance was introduced before Town Council on _____, 2014 and the Town Council conducted a duly noticed hearing on this ordinance on _____, 2014, at which time the Town Council considered the documents in the file, the testimony of all interested persons, the application, the LPA resolution and all other relevant matters; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town.

IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The above “whereas” clauses are incorporated herein as though fully set forth.

SECTION 2. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER APPLICATION MEETS CRITERIA TO BE CONSIDERED FOR A SMALL-SCALE AMENDMENT. In accordance with the requirements of Section 163.187(c), Florida Statutes, the Town Council makes the following findings of fact:

- (1) the proposed amendment **DOES/DOES NOT** involve a use of 10 acres or fewer;
- (2) the cumulative annual effect of the acreage of all small scale amendments adopted by the Town of Fort Myers Beach **DOES/DOES NOT** exceed a maximum of 120 acres in a calendar year;
- (3) the proposed amendment **DOES/DOES NOT** involve a text change to the goals, policies, and objectives of the local government’s comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section;
- (4) the property **IS NOT** located in an “area of critical state concern”;
- (5) It **IS/IS NOT** in the best interest of the health, safety and welfare of the Town’s residents and property owners for the Town Council to make this change to the FLUM and such change **IS/IS NOT** necessary to provide for orderly future growth of the community; and
- (6) Applicant’s application **DOES/DOES NOT** meet the statutory requirements to be considered for a small-scale amendment.

SECTION 3. FINDING OF FACT AND CONCLUSIONS OF LAW. The Town Council finds that the proposed FLUM amendment **IS/IS NOT** clearly in the best interest of the health, safety and welfare of the Town’s residents, businesspersons and property owners and such change **IS/IS NOT** necessary to provide for orderly future growth of the community, for the following reasons:

The proposed amendment will likely have a **POSITIVE/NEGATIVE** impact on affected traffic, utilities, other services, and future capital expenditures.

SECTION 4. AMENDMENT OF COMPREHENSIVE PLAN FUTURE LAND USE MAP. The Council hereby **GRANTS/DENIES** applicants’ request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

SECTION 5. DIRECTION TO TOWN MANAGER. The Town Manager is hereby directed to send copies of the public notice for the Council hearing as well as a copy of the amendment as soon as possible following said hearing to the state land planning agency, the regional planning council and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan and shall otherwise comply in all respects to the requirements of Section 163.3187, Florida Statutes. Upon the Ordinance becoming effective as provided in Section 6 below, the Town Manager is directed to take all actions necessary to codify this amendment into the Comprehensive Plan Future Land Use Map.

SECTION 6. EFFECTIVE DATE. In accordance with the requirements of Section 163.3187, Florida Statutes, this ordinance shall become effective upon the expiration of 31 days after its adoption. However, if challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining this Ordinance is in compliance.

SECTION 7. CONFLICTS. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

SECTION 8. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Jo List and seconded by Councilmember Bob Raymond and, upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	<u>AYE/NAY</u>	Dan Andre, Vice Mayor	<u>AYE/NAY</u>
Rexann Hosafros	<u>AYE/NAY</u>	Alan Mandel	<u>AYE/NAY</u>
Summer Stockton	<u>AYE/NAY</u>		

DULY PASSED AND ENACTED this ____ day of ____, 2014.

ATTEST: TOWN OF FORT MYERS BEACH

Michelle D. Mayher, Town Clerk

BY: _____
Anita Cereceda, Mayor

Approved as to legal form by:

Fowler White Boggs
Town Attorney