

Town of Fort Myers Beach
Public Works Services, Inc.
Agenda Item Summary

Blue Sheet Number: **2011-130**

1. Requested Motion: Motion to approve a Waiver for relief from the Maximum allowable noise level limits in Section 14-21 of the Town Code of Ordinances.

Meeting Date: 11/07/11

Why the action is necessary: The Town noise ordinance provides that waivers from the maximum allowable noise level limits can be granted by the Town Council.

What the action accomplishes: Permits the applicant property owner to exceed the noise level limits under specified conditions.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background: The Publix store is going to be undergoing extensive renovation to upgrade and/or repair various parts of the store. The work is being planned for nighttime hours so that the store can remain open during the remodel. Some of the activities that will be necessary will utilize equipment that will exceed the maximum decibel levels provided in the Town's noise ordinance. Such equipment includes jack hammers, saws, concrete mixers, forklifts, transport equipment, and beepers and buzzers required by OSHA for the safety of workers and others. The applicant has indicated that they are taking precautions to minimize the noise level, but are in need of the waiver to perform this work. See attached application for further information.

6. Alternative Action: Decline to approve a waiver.

7. Management Recommendations:

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

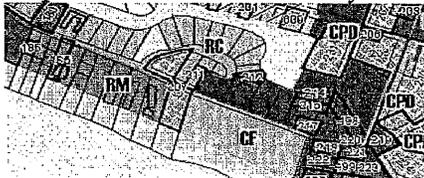
9. Council Action:

Approved Denied Deferred Other

Case # FMB APL 2011-0001
 Planner hl

Date Received 10/19/11
 Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
 Department of Community Development



Zoning Division

Application for Public Hearing

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name: PUBLIX #740 REMODEL
Authorized Applicant:
LeePA STRAP Number(s): 28-46-24-W4-00001.0040

Current Property Status: PUBLIX SUPER MARKET
Current Zoning: CPD
Future Land Use Map (FLUM) Category: BOULEVARD
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no FLUM Density Range: N/A

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input checked="" type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

Town of Fort Myers Beach
Department of Community Development
 2523 Estero Boulevard
 Fort Myers Beach, FL 33931
 (239) 765-0202

Case # _____
Planner _____

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Date of Sufficiency/Completeness _____

PART I – General Information

A. Applicant:

Name(s):	MCINTYRE ELWELL & STRAMMER GENERAL CONTRACTORS, INC. C/O GREG SCHLABACH		
Address: Street:	1645 BARBER ROAD		
City:	SARASOTA	State:	FL Zip Code: 34240
Phone:	(941) 377-6800		
Fax:	(941) 378-2296		
E-mail address:	GREG-SCHLABACH@MESGC.COM		

B. Relationship of applicant to property (check appropriate response)

<input type="checkbox"/> Owner (indicate form of ownership below)
<input type="checkbox"/> Individual (or husband/wife) <input type="checkbox"/> Partnership
<input type="checkbox"/> Land Trust <input type="checkbox"/> Association
<input type="checkbox"/> Corporation <input type="checkbox"/> Condominium
<input type="checkbox"/> Subdivision <input type="checkbox"/> Timeshare Condo
<input checked="" type="checkbox"/> Authorized representative (attach authorization(s) as Exhibit AA-1) PG 6 OF 14
<input type="checkbox"/> Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)
<input type="checkbox"/> Town of Fort Myers Beach (Date of Authorization: _____)

C. Agent authorized to receive all correspondence:

Name:	GREG SCHLABACH AND/OR PATRICE ARMSTRONG		
Mailing address: Street:	1645 BARBER ROAD		
City:	SARASOTA	State:	FL Zip Code: 34240
Contact Person:	GREG SCHLABACH AND/OR PATRICE ARMSTRONG		
Phone:	(941) 377-6800	Fax:	(941) 378-2296
E-mail address:	GREG-SCHLABACH@MESGC.COM	PATRICE-ARMSTRONG@MESGC.COM	

D. Other agents:

Name(s):	LISA VELAZQUEZ		
Mailing address: Street:	1645 BARBER ROAD		
City:	SARASOTA	State:	FL Zip Code: 34240
Phone:	(941) 377-6800	Fax:	(941) 378-2296
E-mail address:	LISA-VELAZQUEZ@MESGC.COM		

Use additional sheets if necessary, and attach to this page.

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PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/> Special Exception for:
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input checked="" type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director’s approval(s) as Exhibit 3-1.

Code Section Number	Describe Item
N/A	

PART IV – Property Ownership

<input type="checkbox"/> Single owner (individual or husband and wife)			
Name:			
Address:		Street:	
City:		State:	Zip Code:
Phone:		Fax:	
E-mail Address:			

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<input checked="" type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

PART V – Property Information

A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name:
Plat Book Number: Page: Unit: Block: Lot:
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

N/A

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
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C. STRAP Number(s):

28-46-24-W4-00001.0040

D Property Dimensions:

Area: 163,071	square feet	3.74	acres
Width along roadway: 195	feet	Depth: 574	feet

E. Property Street Address:

4791 ESTERO BLVD.

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F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

<input type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

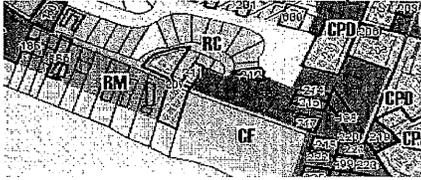
J. Zoning: (see official zoning map, as updated by subsequent actions)

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
<input type="checkbox"/> SANTOS	<input type="checkbox"/> DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

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Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-F

**Additional Required Information for an Appeal of an
Administrative Action**

This is the second part of a two-part application. This part requests specific information for an appeal of an administrative action. Include this form with the Request for Public Hearing form.

Project Name: PUBLIX #740 REMODEL
Authorized Applicant: MCINTYRE ELWELL & STRAMMER GENERAL CONTRACTORS, INC.
LeePA STRAP Number(s): 28-46-24-W4-00001.0040

Current Property Status:
Current Zoning:
Future Land Use Map (FLUM) Category:
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no FLUM Density Range:

Requested Action:

<input type="checkbox"/> Appeal interpretation of LDC Section(s) _____
<input checked="" type="checkbox"/> Appeal other administrative action (Explain: <u>ORD96-24</u>)
<input type="checkbox"/> Appeal development permit (must be authorized by property owner)
<input type="checkbox"/> Appeal decision of LPA (Explain: _____)

Date of decision:

Submittal Requirements

Narratives

On separate sheets, address the following questions as applicable to the specific type of action you are appealing:

LDC Interpretation

1. What is the interpretation that you are appealing?

Also attach copies of the request for an interpretation, and the written response by the Town, as "Exhibit 1."

2. Describe what interpretation, in your opinion, should have been given. Explain the basis for your opinion.

Other administrative action

1. What administrative action are you appealing? (summarize)

Also attached copies of your application for administrative action and the written response by the Town, as "Exhibit 1."

2. Describe what action, in your opinion, should have been taken. Explain the basis for your opinion.

Appeal of development permit

1. What specific development permit application are you appealing?

Include as much information as is necessary to make clear the nature of the proposed development, including site plans, elevations, construction plans, or any other relevant plans or designs. Attach these items and a copy of the written response by the Town or designee as "Exhibit 1"

2. Describe what action should have been taken, in your opinion, on the development permit being appealed. Explain the basis for your opinion.

Appeal of LPA decision

1. What specific LPA decision are you appealing? Indicate the context of the LPA decision (Historic Preservation Board decision, landmark sign request, MUD hearing, Comprehensive Plan interpretation) and attach a copy of the LPA resolution constituting the decision you are appealing.

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2. Describe what decision the LPA (or LPA acting as Historic Preservation Board) should have made, in your opinion. Explain the basis for your opinion.

LDC Section 34-86 governs appeals of administrative actions unless other procedures are specifically provided in the LDC in a particular context. Note that an appeal is appropriate where it is alleged that there is an *error* in the administration and enforcement of the provisions of the LDC or any other ordinance.

Publix #740 Ft. Myers Beach
4791 Estero Boulevard
Ft. Myers Beach, FL 33931

10-21-11

Town of Ft. Myers Beach Permit #COM11-0114

Application for Public Hearing

1. Introduction

- a. Company Name: McIntyre Elwell & Strammer
 - i. In business 24 years
 - ii. Performed over 600 remodels like this one

2. Purpose

- a. Submit an Appeal of Administrative Action (Ordinance #96-24)

Narrative:

In an effort to enhance your shopping experience at the Publix at Ft. Myers Beach, we are performing construction work to upgrade and/ or repair various parts of the Store. The work is performed at night, inside the hours prescribed in the Noise Ordinance, so the Store can remain open during the remodel. During portions of the remodel, the equipment used will exceed the maximum decibel level listed in Ordinance 96-24. This equipment includes demolition equipment, jack-hammers and saws for example, concrete mixers, forklifts, transport equipment, and various other equipment. Some of the noises include beepers and buzzers required per OSHA for the safety of the workers and others. These items are specifically excluded from enforcement, however we understand they may still be disturbing. We are taking precautions to minimize the noise level and possible disturbances caused by our work. We have performed over 600 remodels, many of which were in Lee and Collier Counties.

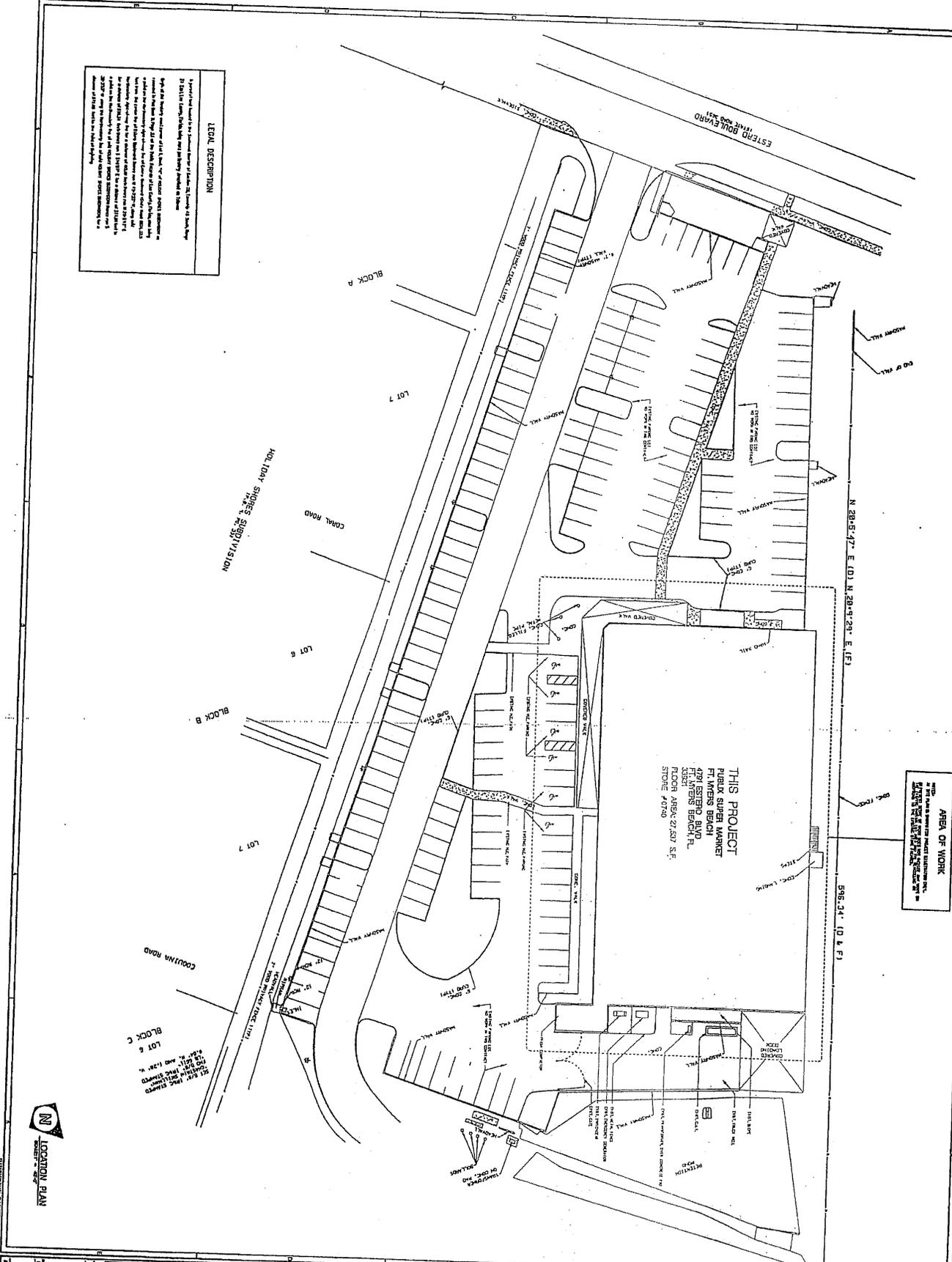
3. Questions

LEGAL DESCRIPTION

A portion of the land is the former portion of Block 20, Lots 7, 8 and 9, of the 100,000 sq. ft. Supermarket, located at the intersection of E. 1st St. and N. 28th St., City of Fort Myers, Florida, as shown on the plat of Block 20, Lots 7, 8 and 9, recorded in Public Records of Lee County, Florida, at Book 10, Page 10,000.

The portion of the land shown on this plat is the former portion of Block 20, Lots 7, 8 and 9, of the 100,000 sq. ft. Supermarket, located at the intersection of E. 1st St. and N. 28th St., City of Fort Myers, Florida, as shown on the plat of Block 20, Lots 7, 8 and 9, recorded in Public Records of Lee County, Florida, at Book 10, Page 10,000.

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AREA OF WORK

THIS PROJECT IS THE AREA OF WORK FOR THE INTERIOR REMODEL OF THE PUBLIC SUPER MARKET STORE # 4791B, AS SHOWN ON THIS PLAN.



<p>Publix Super Markets, Inc. 6000 W. US HWY 90, SUITE 100 FORT MYERS, FL 33907 TEL: 888-284-2842</p>	<p>PROJECT NAME: STORE No. 0740 (INTERIOR REMODEL) Publix at Fort Myers Beach 4791 Estero Blvd. Fort Myers Beach, FL 33901</p>	<p>ATKINS 2815 NW 17TH AVE, SUITE 200, FORT MYERS, FL 33911 TEL: 941-336-1111</p>
	<p>DATE: 11/11/11 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]</p>	