

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2009-29

WHEREAS applicant Atwatter LLC, by and through Walter Simmons, President, has requested a special exception in the DOWNTOWN and EC (Environmentally Critical) zoning districts to allow consumption on premises of beer and wine (2COP) in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, Applicant has indicated its intent to apply for a 2COP State license for the sale of beer and wine for on-premises consumption; and

WHEREAS the subject property is located at 61 Avenue C, Fort Myers Beach, Florida 33931; and

WHEREAS the applicant has indicated that the STRAP number assigned to the subject property by the Lee County Property Appraiser is 19-46-24-W4-0070D-0110 and the legal description of the subject property is LOT 11, BLOCK "D", CRESCENT BEACH SUBDIVISION, as recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida; and

WHEREAS a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on December 15, 2009, as shown by the legal affidavit which is attached hereto as Exhibit "A" and hereby incorporated by reference; and

WHEREAS at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception to permit consumption on premises of beer and wine (2COP) in the DOWNTOWN and EC (Environmentally Critical) zoning districts, with such approval subject to the following conditions

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. The licensed area of the subject establishment must be confined entirely to the building areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**, including the interior of the building, and the two areas of the raised porch labeled "new deck" and "exist. deck." The licensed area, and the area approved for consumption on premises, does not include any area beneath the raised

porch or building, or any portion of the grounds, parking area, or beach and the use of these areas for consumption on premises and food service is prohibited.

2. Music and other audible entertainment must only take place during hours beginning at 10:00 AM and ending at 11:00 PM of each day and must comply at all times with applicable ordinances.

3. Hours of operation for service of alcohol must begin no earlier than 10 am and end no later than 11 pm daily. The hours of service of food and non-alcoholic beverages are not regulated by the Town.

4. The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.

5. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.

6. Approval of this special exception does not create a vested right to reconstruct the structure labeled "exist. deck" on Exhibit B that is located within the EC (Environmentally Critical) zoning district. The existing structure that is within the EC zoning district is limited by LDC Sections 34-3242 and 34-3245. New construction and/or replacement of existing structures in the EC zoning district must comply with all requirements of the LDC and Comprehensive Plan at the time of permitting.

7. At each egress point from the porch, instructional signs visible to restaurant patrons leaving the licensed area must be placed and maintained containing the legible statement "No Alcoholic Beverages Beyond This Point".

#### **RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions exist that make the requested approval, as conditioned, appropriate:

Comprehensive Plan (Comp Plan) Policy 3-D-1 envisions "revitalizing downtown as a lively, inviting, comfortable, and safe public environment." This neighborhood between the Lani Kai resort (1400 Estero Boulevard) and the Estero Island Beach Club condominium (1836 Estero Boulevard) contains a mix of older cottages, mostly used for rentals, and commercial activities such as a retail store with fuel pumps, a seasonal parking lot, a restaurant, a coffee shop, and a few small retail stores. Applicant acquired a development order and building permits to remodel the existing building for reuse as a small restaurant with an outdoor seating area on a raised porch.

2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

The subject property is in the Pedestrian Commercial FLUM category, near Estero Boulevard and the Lani Kai resort. Comp Plan Policy 4-B-6, regarding the Pedestrian Commercial FLUM, states that commercial activities must contribute to the pedestrian-oriented public realm. The beach areas northward from the Diamondhead and Lani Kai to Lynn Hall Park are heavily traveled by pedestrian beachgoers. The proposed restaurant will be oriented toward this foot traffic while providing a controlled area of alcoholic beverage consumption in conjunction with dining on a raised porch that is sequestered from the beach itself by railings and by its elevation above the adjacent grade. The elevation of the porch, the railings, and the recommended signage should help to remove the use of the restaurant from the activity of the public on the public beach.

3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

A restaurant is a use permitted by right in the Downtown zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area. Performance and locational standards for the restaurant use, site development, and remodeling to the building, have already been addressed through the development order process and the requested use meets the applicable parking requirements under LDC Chapter 34, Article IV, Division 19. Whether or not the use of an existing nonconforming structure in the EC zoning district for on premises consumption is appropriate, is a question best answered on a case-by-case basis by Town Council through the special exception process. Adequate provision has been made for solid waste removal from the site using movable containers.

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

The existing structure on the subject property was developed many decades ago. Through the development order and building permit processes existing nonconformities have been removed or mitigated except for the remaining deck that extends into the EC zoning district. Artificial lighting has been required to be brought into compliance with sea turtle protection requirements. Construction of additional structures in environmentally critical areas has not been permitted and appropriate vegetation has been added to the site through the development order process. As conditioned, the existing deck in the EC zoning district cannot be replaced without proper prior approval from the Town Council through the special exception process.

5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:

The existing surrounding uses include dwelling units, the Lani Kai resort, a seasonal parking lot, a convenience food and beverage store with fuel pumps, a restaurant, and some small retail stores. Within the Pedestrian Commercial Future Land Use Map category, adjacent dwelling units and vacant lots could

potentially be redeveloped with commercial or mixed use buildings in accord with the regulations of the DOWNTOWN zoning district or through planned development rezoning. The beach adjacent to the subject property supports personal watercraft and parasailing activities licensed under LDC Chapter 27, and is heavily traveled by the public. The recommended conditions clearly restrict the use to the existing deck and prohibit its expansion to the grounds of the site or the adjacent beach.

6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

The restaurant use complies with parking, lighting, and other similar requirements set forth in LDC Chapter 34. The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license.

7. The LPA directs that this matter go forward to hearing before Town Council without the necessity of approved LPA minutes.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Ryffel and second by LPA Member Van Duzer, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair aye  
Carleton Ryffel, Member aye  
Chuck Moorefield, Member aye

Bill Van Duzer, Vice Chair aye  
Rochelle Kay, Member aye  
Alan Mandel, Member aye

DULY PASSED AND ADOPTED THIS 15<sup>TH</sup> day of December, 2009

LPA of the Town of Fort Myers Beach

By: Joanne Shamp  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Anne Dalton  
Anne Dalton, Esquire  
LPA Attorney

ATTEST:

By: Michelle Mayher  
Michelle Mayher, Town Clerk

EXHIBIT (A)

**NEWS-PRESS**

Published every morning - Daily and Sunday

Fort Myers, Florida

**Affidavit of Publication**

STATE OF FLORIDA  
COUNTY OF LEE

Before the undersigned authority, personally appeared

Kathy Allebach

who on oath says that he/she is the

Legal Assistant

of the News-Press, a

daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of

Hearing on December 15, 2009

In the court was published in said newspaper in the issues of

December 3, 2009

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades

and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

*Kathy Allebach*

Sworn to and subscribed before me this

3rd day of December 2009 by

Kathy Allebach

personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public

Print Name

*Gregory B. Vanderebeck*  
GREGORY B. VANDERBECK  
Commission DD 826805  
Expires December 13, 2012  
Bonded thru Troy Fahn Insurance 800-995-7019

My commission Expires:

Notice of Public Hearing  
Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold public hearings at 9:00 AM on December 15, 2009 regarding the cases listed below. These hearings will take place in the council chambers at Fort Myers Beach Town Hall, 2523 Estero Boulevard, Fort Myers Beach, Florida, 33931.

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence to become a participant in the hearings.

At these hearings the Local Planning Agency of Fort Myers Beach will review the cases and make recommendations to the Town Council. If any person should choose to appeal a decision made at these public hearings, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the staff reports are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM.

Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Frank Shockey at 239-765-0202.

Case Number: SE22009-0001

Case Name: Wicked Wings

Applicant: W a l t e r

Simmons/Atwater, LLC

Request: Special Exception in the DOWNTOWN zoning district to allow consumption on-premises of alcoholic beverages in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership. Applicant indicates the intent to apply for a 2COP State license for the sale of beer and wine for on-premises consumption.

Location: 61 Avenue C, Fort Myers Beach, FL 33931

Staff Report: Inquire at Fort Myers Beach Town Hall, 239-765-0202, 2523 Estero Boulevard, Fort Myers Beach, FL 33931.

Case Number: SE22009-0002

Case Name: Taylor Recreation

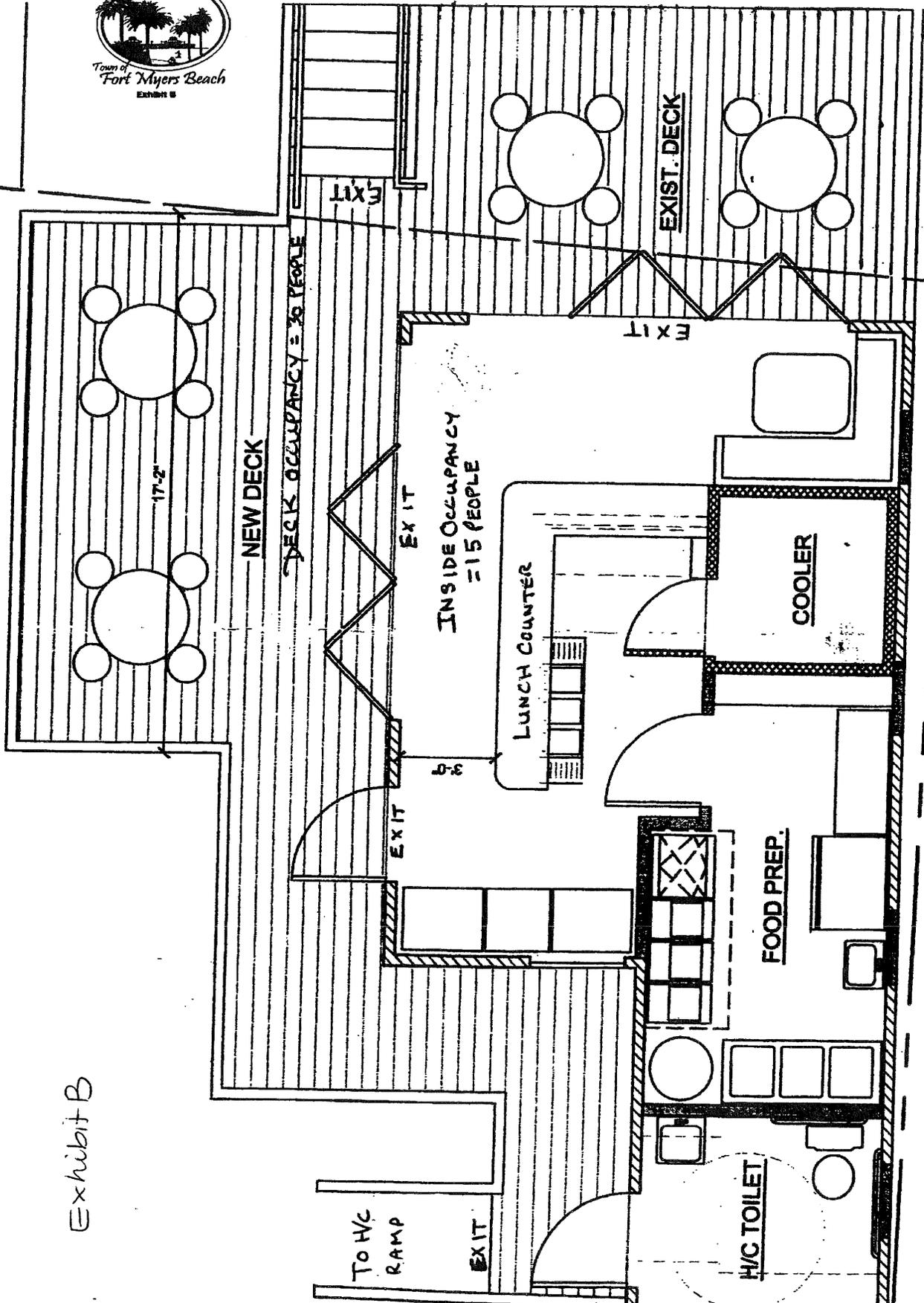
Applicant: Joseph G. Taylor

Request: Special Exception in the DOWNTOWN zoning district to allow a commercial recreation facility containing an amusement device (Inflatable waterslide) on the subject property.  
Location: 1106 and 1130 Estero Boulevard, Fort Myers Beach, FL



ATTACHMENT 3

Exhibit B



RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 10-01

WICKED WINGS COP

WHEREAS applicant Atwatter LLC, by and through Walter Simmons, President, has requested a special exception in the DOWNTOWN and EC (Environmentally Critical) zoning districts to allow consumption on premises of beer and wine (2COP) in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership; and

WHEREAS, Applicant has indicated its intent to apply for a 2COP State license for the sale of beer and wine for on-premises consumption; and

WHEREAS the subject property is located at 61 Avenue C, Fort Myers Beach, Florida 33931; and

WHEREAS the applicant has indicated that the STRAP number assigned to the subject property by the Lee County Property Appraiser is 19-46-24-W4-0070D-0110 and the legal description of the subject property is LOT 11, BLOCK "D", CRESCENT BEACH SUBDIVISION, as recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida; and

WHEREAS a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on December 15, 2009, at which time the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88, and recommended approval of applicant's request, with various recommended conditions of approval, as set forth more fully in LPA Resolution 2009-29; and

WHEREAS, at its meeting of December 15, 2009, the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on January 4, 2010, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA resolution 2009-29, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88 .

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2009-29 and the standards for granting special exceptions, the Town Council makes the following findings of fact and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a special exception to permit consumption on premises of beer and wine (2COP) in the DOWNTOWN and EC (Environmentally Critical) zoning districts, with such approval subject to the following conditions.

**CONDITIONS OF APPROVAL:**

1. The licensed area of the subject establishment must be confined entirely to the building areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit A**, including the interior of the building, and the two areas of the raised porch labeled "new deck" and "exist. deck." The licensed area, and the area approved for consumption on premises, does not include any area beneath the raised porch or building, or any portion of the grounds, parking area, or beach and the use of these areas for consumption on premises and food service is prohibited.

2. Music and other audible entertainment must only take place during hours beginning at 10:00 AM and ending at 11:00 PM of each day and must comply at all times with applicable ordinances.

3. The hours of operation for service of alcohol must not begin earlier than 10:00 AM and must end no later than 11:00 PM daily.

4. The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.

5. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.

6. Approval of this special exception does not create a vested right to reconstruct the structure labeled "exist. deck" on **Exhibit A** that is located within the EC (Environmentally Critical) zoning district. The existing structure that is within the EC zoning district is limited by LDC Sections 34-3242 and 34-3245. New construction and/or replacement of existing structures in the EC zoning district must comply with all requirements of the LDC and Comprehensive Plan at the time of permitting.

7. At each egress point from the porch, instructional signs visible to restaurant patrons leaving the licensed area must be placed and maintained containing the legible statement "No Alcoholic Beverages Beyond This Point".

**FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the Town Council makes the following findings and reaches the following conclusions:

1. Changed or changing conditions **exist** that make the requested approval, as conditioned, appropriate:

*Comprehensive Plan (Comp Plan) Policy 3-D-1 envisions "revitalizing downtown as a lively, inviting, comfortable, and safe public environment." This neighborhood between the Lani Kai resort (1400 Estero Boulevard) and the Estero Island Beach Club condominium (1836 Estero Boulevard) contains a mix of older cottages, mostly used for rentals, and commercial activities such as a retail store with fuel pumps, a seasonal parking lot, a restaurant, a coffee shop, and a few small retail stores. Applicant acquired a development order and building permits to remodel the existing building for reuse as a small restaurant with an outdoor seating area on a raised porch.*

2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

*The subject property is in the Pedestrian Commercial FLUM category, near Estero Boulevard and the Lani Kai resort. Comp Plan Policy 4-B-6, regarding the Pedestrian Commercial FLUM, states that commercial activities must contribute to the pedestrian-oriented public realm. The beach areas northward from the Diamondhead and Lani Kai to Lynn Hall Park are heavily traveled by pedestrian beachgoers. The proposed restaurant will be oriented toward this foot traffic while providing a controlled area of alcoholic beverage consumption in conjunction with dining on a raised porch that is sequestered from the beach itself by railings and by its elevation above the adjacent grade. The elevation of the porch, the railings, and the recommended signage should help to remove the use of the restaurant from the activity of the public on the public beach.*

3. The requested special exception, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use.

*A restaurant is a use permitted by right in the Downtown zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area. Performance and locational standards for the restaurant use, site development, and remodeling to the building, have already been addressed through the development order process and the requested use meets the applicable parking requirements under LDC Chapter 34, Article IV, Division 19. Whether or not the use of an existing nonconforming structure in the EC zoning district for on premises consumption is appropriate, is a question best answered on a case-by-case basis by Town Council through the special exception process. Adequate provision has been made for solid waste removal from the site using movable containers.*

4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources:

*The existing structure on the subject property was developed many decades ago. Through the development order and building permit processes existing nonconformities have been removed or mitigated except for the remaining deck that extends into the EC zoning district. Artificial lighting has been required to be brought into compliance with sea turtle protection requirements. Construction of additional structures in environmentally critical areas has not been permitted and appropriate vegetation has been added to the site through*

*the development order process. As conditioned, the existing deck in the EC zoning district cannot be replaced without proper prior approval from the Town Council through the special exception process.*

5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:

*The existing surrounding uses include dwelling units, the Lani Kai resort, a seasonal parking lot, a convenience food and beverage store with fuel pumps, a restaurant, and some small retail stores. Within the Pedestrian Commercial Future Land Use Map category, adjacent dwelling units and vacant lots could potentially be redeveloped with commercial or mixed use buildings in accord with the regulations of the DOWNTOWN zoning district or through planned development rezoning. The beach adjacent to the subject property supports personal watercraft and parasailing activities licensed under LDC Chapter 27, and is heavily traveled by the public. The recommended conditions clearly restrict the use to the existing deck and prohibit its expansion to the grounds of the site or the adjacent beach.*

6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

*The restaurant use complies with parking, lighting, and other similar requirements set forth in LDC Chapter 34. The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license.*

Upon Motion made by Vice Mayor Herb Acken and seconded by Councilmember Raymond, this Resolution was

DULY PASSED AND ADOPTED ON THIS 4<sup>th</sup> DAY OF JANUARY, 2010.

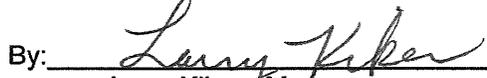
Larry Kiker, Mayor aye  
Tom Babcock, Councilmember aye  
Bob Raymond, Councilmember aye

Herb Acken, Vice Mayor aye  
Jo List, Councilmember aye

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Michelle Mayher, Town Clerk

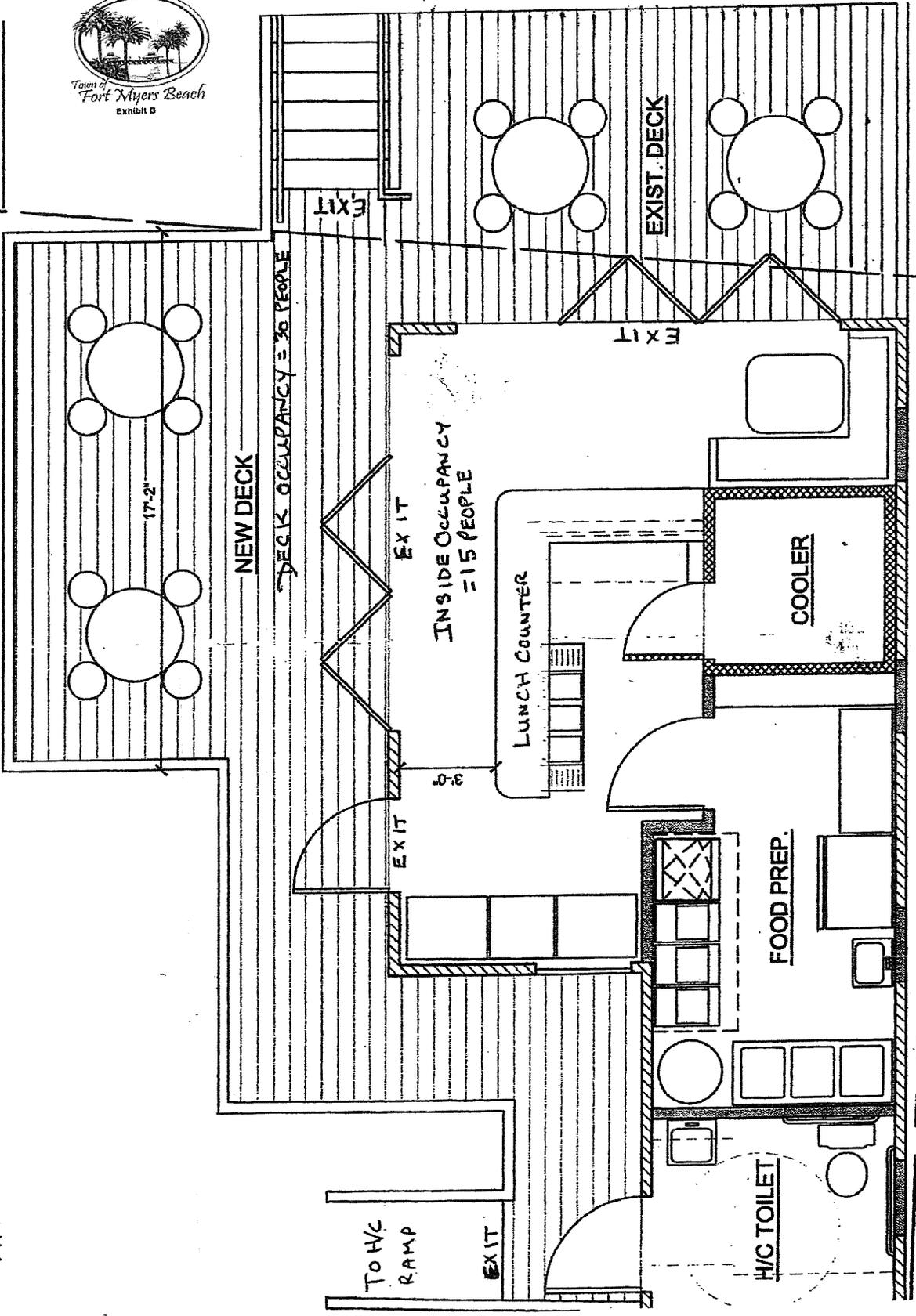
By:   
Larry Kiker, Mayor

Approved as to legal form by:

By:   
Anne Dalton, Esquire, Town Attorney



ATTACHMENT 3



**MINUTES**  
**FORT MYERS BEACH**  
**Local Planning Agency Meeting**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

**Tuesday, December 15, 2009**

**I. CALL TO ORDER**

Meeting was called to order at 9:08 AM by Chairperson Joanne Shamp. All members were present:

Joanne Shamp  
Rochelle Kay  
Alan Mandel  
Bill Van Duzer  
Carleton Ryffel  
Charles Moorefield

Staff present: LPA Attorney Anne Dalton; Community Development Director Dr. Frank Shockey.

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**-Ms. Kay

**IV. WELCOME-NEW LPA MEMBER**

Chair recognized the latest addition, Charles (Chuck) Moorefield, who gave brief background of himself.

**V. MINUTES**

A. Minutes of October 27, 2009

**Motion: Mr. Van Duzer moved to accept the minutes, as recorded;**

**Seconded by Mr. Ryffel.**

**Vote: Motion passes 6-0**

B. Minutes of November 10, 2009

**Motion: Mr. Van Duzer moved to accept the minutes, as recorded;**

**Seconded by Mr. Ryffel.**

**Vote: Motion passes 6-0**

**VI. PUBLIC HEARINGS**

A. SEZ2009-0001 “Wicked Wings” COP – Resolution 2009-29

Ms. Dalton swore in the witnesses. Ms. Shamp called for the Affidavit of

Advertisement and Dr. Shockey confirmed that he was holding an affidavit indicating that the ad for this hearing, and for all of the day's hearings, appeared in the News-Press on 12/3/09. Chair asked for disclosure of any ex-parte communications: Only Ms. Shamp had a site visit.

Mr. Walter Simmons, a physician, addressed the meeting and distributed photos of the property being developed as "Wicked Wings" restaurant (this was a result of the consensus of the members). He stated that his purpose today is to gain the opportunity to serve beer and wine at the restaurant.

Mr. Eric O'Gilvie, Mr. Simmons' partner, then addressed the meeting. He gave examples of the improvements to the property which benefit the community, like new fire hydrants, accessible parking, etc. He added that most of the seating is out on the deck, away from the beach, and they are also seeking a special exception for this so those seated customers can also consume beer and wine.

Mr. Moorefield asked about the applicant's parking provisions. Ms. Kay asked if the stairs lead to the patio from the beach. Mr. O'Gilvie stated that there still is direct access from the patio to the beach but assured that the restaurant would provide appropriate signs warning against taking alcoholic beverages to the beach.

Mr. Ryffel asked if the only reason the applicant was presenting this was due to a residence being within a certain amount of feet. Dr. Shockey answered and stated that the 500 ft. distance requirement is one issue. Mr. Ryffel also commented that the applicant did "a very nice job" with the property.

Ms. Shamp mentioned music and the hours of operation, and asked what the applicant's plans are for these things. The applicant replied that they intend to stay within the requirements of the town and be respectful of their neighbors; he added that the intention is not to be a music establishment but rather provide enjoyable background for guests. Mr. Simmons added that there may be a point in the future when they may serve breakfast, without alcohol, but that it would start earlier than the requested hours for alcoholic beverage service.

Ms. Shamp asked for comment from staff. Dr. Shockey gave a brief overview of the applicant's request and referred to the staff report, which also discusses the improvements that the applicant was required to make. He explained that parking requirements for the floor area of the restaurant are being met. Dr. Shockey reported on the issue of the existing deck which extends a few feet into the environmentally critical zoning district. He said if this was proposed to be newly built today, it could be allowed by special exception. There is an additional question of whether the COP can be expanded to the deck. He added that the deck was in existence prior to the establishment of the coastal setback line of 1978. He said the recommended conditions make it clear that if the deck is removed, it must be replaced in compliance rather than in the same position, even if the COP is allowed on the existing deck. Regarding the outdoor seating for outdoor consumption issue, staff is favorable towards the request. The earlier opening time for the restaurant could be allowed with a clear stipulation for a "dry" breakfast, if the LPA wished to recommend that. He added that condition #7 would require the posting of signs regarding prohibition

of alcoholic beverages on the beach and he referred to the staff report for the detailed staff recommendations. The report was entered as the staff's testimony.

Mr. Mandel asked if the music is in or outdoors and if there is amplification equipment, as well as how the hours of business relate to the noise ordinance. Dr. Shockey stated that the noise ordinance is based on the decibel level, and that the allowable level changes at a particular time of day, but the hours for a restaurant to operate need not be tied to these times. Staff's recommended condition clarifies that the noise ordinance applies.

Ms. Shamp asked if the applicant decided to serve breakfast at a different time than stated, would they need to return to the Council for a change. Dr. Shockey stated that this could be addressed at this point without having to do that, if the LPA wishes, but that the staff report and resolution currently recommend limiting the hours to the hours the applicant requested in the application.

Ms. Shamp asked for public comment. Mr. Steve Hankins, 1511 Estero Blvd., addressed the meeting. He said that he lives across the street from the applicant business and spoke in support of their efforts, saying that he feels they would do a good job with the restaurant.

Public comment closed. The applicant then thanked the LPA for considering the application and requested that the case be heard ASAP, before the approval of the minutes, to Council.

Dr. Shockey restated that the conditions recommended clearly provide that the use needs to operate as a restaurant as provided by the LDC, by definition, as an "institution that provides food service, including full course meals, and derives at least 51% of its income from the sale of food and non-alcoholic beverages." However, staff is not suggesting that they be limited to any specific type or series of state beverage license as long as they operate as a restaurant.

Testimony portion closed; Chair called for LPA comment. Mr. Ryffel referred to his desire to move approval of the staff recommendation. Mr. Mandel asked if the LPA could honor the applicant's request for hold the hearing ASAP, without waiting for minutes approval.

**Motion: Mr. Ryffel moved to approve the recommendation and go forward with the Resolution as follows:**

**1<sup>st</sup> page: *"the LPA recommends Town Council approve the applicant's request for the special exception to permit consumption of beer and wine..."***

**Pg. 2, bottom, *"Findings and Conclusions: 1- changed or changing conditions exist that make the requested approval appropriate;"***

**2- *the requested special exception is consistent with the ....Comp Plan;***

**3- *the requested special exception meets or exceeds all performance standards for proposed use;***

**4 - *the requested special exception will protect and preserve ...natural resources"***

**5 - *the requested special exception will be compatible with existing or planned uses and will not cause damage..."***

*6 - the requested special exception will be in compliance with the applicable general zoning...*

*7 - "the LPA directs that this matter go forward without its approved minutes"*

**Ms. Kay asked if adding the change for hours of operation should be included; Mr. Ryffel agreed about a revision to condition # 3 "Hours of Operation: Must begin no earlier than 7:00 AM and end no later than 11:00 PM daily, with alcohol service from 10:00 AM to 11:00 PM daily."**

**Seconded by Mr. Van Duzer;**

**Vote: Motion passed 6-0.**

Hearing closed.

**B. SEZ2009-0002 Taylor Recreation Facility-Resolution 2009-27**

Ms. Dalton swore in the witnesses and Dr. Shockey confirmed that the affidavit indicated that the public notice was published in the News-Press as in the previous hearing. Mr. Mandel and Ms. Shamp did have site visits but there was no other ex-parte communication.

Applicant, Joe Taylor, addressed the meeting and said that he is requesting a special exception for a water slide on a vacant lot on the beach side of Estero Blvd. He said that the slide is inflatable and lies flat when deflated. He reported that there have been no injuries or complaints about the slide and that it does not detract from the sunset views as it is deflated by that time of the day.

Ms. K'Shana Haynie, of Roetzel and Andress, counsel for the applicant, said that they do recommend a change in Condition #7 to ensure that the slide can continue to operate up until the time a new building is built. Mr. Ryffel commented that he agreed with the applicant's requested change.

Staff report: Dr. Shockey summarized that this is a request for a special exception in the downtown zoning district. Mr. Taylor has proper authorization from interested property owners and he said that this use would comply with setbacks and property lines. Dr. Shockey also agreed with the applicant's concerns involving Condition #7 and said the language could certainly be changed to address those concerns so that there need not be a period of dead time. He asked that the staff report be entered into the record as staff's testimony.

Mr. Mandel asked if there is any correspondence from residents to support that the applicant does in fact have the property owner's permission to do this. Dr. Shockey commented that the letters of authorization and other documents were included with the applicant's application, which was in the LPA's packet materials. Mr. Mandel voiced his concern that there is no specific end to the agreement for this exception and asked if the Town is named on any insurance policy of the applicant. Ms. Dalton stated that this would not be the norm to do this since the activity is on private property but the Town manager could be summoned to address the question.

Ms. Dalton swore in Mr. Green, Town Manager and he was asked if he feels that the Town should be named as an additional insured on the applicant's insurance policy. Mr. Green's opinion is that the liability would be with the owner of the property and the slide, leaving the Town with no fault in any lawsuits. Ms. Dalton agreed that

adding the Town to any policy would actually increase its vulnerability and set a precedent for other businesses to do the same, putting the Town in the line of liability. Mr. Ryffel pointed out that part of the property being discussed was once a parking lot for another business and asked Dr. Shockey if it had changed hands since the names on the application are different. Dr. Shockey pointed out that the names of the corporations owning parts of the subject property remained the same for several years, but the names of the directors and registered agents for the corporations had changed since the time referred to by Mr. Ryffel.

Public comment opened; no comment, public comment closed.

Applicant rebuttal: Ms. Haynie again addressed the LPA and commented regarding the insurance policy requirement. She agreed that this is a private property and that the Town should not be involved in any liability for approval of the slide. In addition, she agreed with Ms. Dalton about language to change Condition #7 regarding the change in ownership; this is just a zoning issue. She said if a future owner no longer desires that use, they do not have to use it that way and they do not have to return to Council to change to a use that is consistent with the zoning. Ms. Haynie also requested any move forward do so without the preapproval of minutes.

LPA questions: Mr. Mandel asked if the applicant actually has current owner permission and Ms. Haynie stated that she does have documentation to support that. No other questions from the LPA. Testimony closed. No discussion from members.

**Motion: Mr. Ryffel moved to approve the request in accord with the staff recommendation, except with item #7 revised as discussed. The LPA recommends that the Council approves applicant's request for special exception to allow the commercial recreation facility (water slide) on the property with the findings:**

- 1- Changed conditions do exist and make the requested approval appropriate;*
- 2- The request is consistent with the goals and policy of the Town...*
- 3- The requested special exception meets all standards set forth for the proposed use;*
- 4- The requested special exception will protect and preserve environmentally critical areas*
- 5- The requested special exception will be compatible with existing and planned uses... and will not caused damage or detriment to the neighborhood...*
- 6- The requested special exception will be in compliance with zoning...in Chapter 34.*

**Seconded by Ms. Kay.**

Mr. VanDuzer commented that these conditions do not change the hours of operation from what the applicant has requested; and there is a stipulation that, in the case of high winds, the slide must be deflated and secured. Ms. Shamp stated that these do become part of the resolution. With no further discussion of the motion, Ms. Shamp called for a vote on the motion.

**Vote: Motion passed 6-0.**

Hearing closed.

C. Ordinance 09-08 Amending LDC Sec. 34-113 (LPA Membership) Resolution #2009-26

Dr. Shockey confirmed that the public notice was published in the News-Press as in the previous hearings. Ms. Dalton read the ordinance into the record: *Ord. #09-08, an ordinance amending Chapter 34 of the FMB LDC, providing authority; amendments to section 34-113 and 34-114, Division 3, LPA, Article 2, Zoning Procedures, which are titled respectively "Composition Appointment and Compensation of Members" and "Members, Terms and Vacancies," providing for change in the terms of LPA members, severability, effect of ordinance and effective date.*

Ms. Dalton gave a brief overview of the ordinance. The new policy direction of the Town Council is basically that a member can belong to multiple committees, if desired, and this would implement that policy decision, if passed. The other advisory committee ordinances have already been changed to reflect this but, as Dr. Shockey pointed out, to change the LPA provisions it takes longer because it must go through LDC change process, which requires a hearing before the LPA.

Public comment was opened. There was no comment. Public comment was closed.

Ms. Kay asked if this would mean that LPA members would now be allowed to serve on other committees. Ms. Dalton agreed that it would and reiterated that the only conflict would be any personal or financial conflict having a personal gain for the member in any way.

**Motion: Mr. Van Duzer moved to adopt Resolution 2009-26 and send to Town Council.**

**Seconded by Mr. Mandel;**

**Vote: Motion passes 5-1, with Ms. Kay opposed.**

Hearing closed.

D. Ordinance 09-09 Amending LDC Sec. 6-11 34-1744 and 34-1745 Refuse Containers Resolution #2009-28

Dr. Shockey confirmed that the public notice was published in the News-Press as in the previous hearings. Ms. Dalton read the ordinance into the record: *Ordinance #09-09, an ordinance amending regulations in Chapter 6 and 34 of the FMB LDC, providing authority, adopting amendments to Article 1 Property Maintenance Code of Chapter 6 entitled "Maintenance Codes, Building Codes and Coastal Regulations;" adopting amendments to Division 17 entitled "Fences, Walls and Entrance Gates" of Article 4, entitled "Supplemental Regulations of Chapter 34-Zoning Districts, Design Standards and Non-Conformities; providing for severability and providing for an effective date.*

Brief overview of the ordinance was given by Dr. Shockey. An ad hoc committee had looked into the general handling/placement of refuse containers and found problems remain with the specific types of container (needing lids) and the fencing to enclose the trash areas so that they are not visible from the street or neighboring properties. The LDC changes would address the requirement for lids and changing the height

requirements for fencing only as it applies to containing/hiding receptacle locations in the town.

Lee Melsek addressed the meeting on behalf of the ad hoc committee. He spoke in support of changing these regulations. He wants to see the trash problems addressed and commented that these changes should help. Mr. Van Duzer noted that agreed whole-heartedly in this case even though he did not always agree with Mr. Melsek's other views. There was discussion about the compliance and enforcement issues as well as how this applies to commercial and private residences.

Mr. Ryffel said that although he is in support of what is trying to be done, he had some questions. He asked about dumpsters needing to be enclosed. Dr. Shockey referred to the current ordinance and how it requires dumpsters to be "screened from view" of adjoining properties and streets. Mr. Ryffel read the proposed amendment and there was confusion about the effect of the change regarding limits to fence heights. Ms. Dalton commented that Mr. Ryffel's confusion is justified and suggested that the language been reworked to be clearer. Mr. Ryffel agrees that the dumpsters need to be enclosed but thought that the proposed amendments, as currently worded, might leave it unclear that the fence or other screening needs to be tall enough to hide the dumpsters. More discussion ensued and there was consensus that the proposed language should be redrafted and presented again, to allow the taller fences while still requiring that the dumpster be screened fully.

**Motion: Mr. Van Duzer moved to continue this hearing to the February 9, 2010 meeting. Seconded by Mr. Mandel.** There was a brief discussion about the nature of the changes to be made to the language for the LPA's future consideration, and Ms. Shamp called for a vote on the motion.

**Vote: Motion passes 6-0.**

Short recess at 11:00 AM.

Reconvene at 11:11 AM

## **VII. ADMINISTRATIVE AGENDA**

### **A. LPA Resolutions of Appreciation Resolution 2009-25**

Appreciation of Dennis Weimer, past chair.

**Motion: Mr. Ryffel moved to approve the resolution.**

**Seconded by Ms. Kay;**

**Vote: Motion passes 6-0.**

Appreciation of Mr. Jack Green, acting Town Manager.

**Motion: Mr. Ryffel moved to approve the resolution.**

**Seconded by Ms. Kay;**

Ms. Kay agrees wholeheartedly with the sentiments of the resolution but is sorry to

see Mr. Green leave. Mr. Van Duzer shares this feeling and said that Mr. Green is leaving for the most noble of reasons, which is his family. (Mr. Green was summoned to join the meeting.) Both Ms. Kay and Mr. Van Duzer extended their deepest appreciation for his service to the town. Mr. Ryffel joined in the praise for Mr. Green's service and commended him on his accessibility, which is unlike any other manager he can recall. Ms. Shamp agreed and commented on his attitude, accessibility and honesty, to name a few. Mr. Green thanked the members and agreed that his time with the town was memorable and he will also miss the people.

**Vote: Motion passes 6-0.**

**B. Designation of an LPA Representative to Town Council for CIP Purposes**

Mr. Mandel had been appointed with Ms. Shamp as the alternate. Mr. Mandel commented that there was a councilperson who had serious concerns about this since Mr. Mandel is running for office, among with his other reasons. Discussion ensued regarding the reasons for such a representative and the Town Council's concerns. There was a consensus that the LPA would like Town Council to make their request with some clarification as to what the purpose and scope of responsibilities of the representative should be. Ms. Dalton stated that the LPA could use a few methods to make their request to the Council and it was decided that one of the members will send a memo requesting further clarification of the Town Council's desire to have an LPA member present at M&P meetings, that Council can see the LPA minutes and that further discussion of the topic can be done at a joint LPA-Town Council meeting. Ms. Shamp will write the memo.

**VIII. ADJOURN- LPA, RECONVENE AS HPB**

**Motion: Mr. Van Duzer moved to adjourn as the LPA and reconvene as the HPB.**

**Seconded by Mr. Ryffel;**

**Vote: Motion passes 6-0.**

Ms. Kay called the HPB meeting to order at 11:40AM.

**Motion: Mr. Mandel moved to accept the October 20, 2009 minutes.**

**Seconded by Ms. Shamp;**

**Vote: Motion passes 6-0**

**IX. HPB MEMBER ITEMS OR REPORTS**

**A. Discussion of the 2010 budget proposal**

Ms. Shamp reported that this item is not ready at this point, as it was put together only for discussion. Ms. Dalton offered that she will bring this back with the resolution at the next meeting. The relationship between the Historic Advisory Committee and the LPA/HPB was explained to Mr. Moorefield as he was not familiar with this committee. Background discussion ensued.

**Motion: Ms. Shamp moved to adjourn the HPB and reconvene as the LPA.**

**Seconded by Mr. Van Duzer;**

**Vote: Motion passes 6-0.**

**X. ADJOURN AS HPB- RECONVENE AS LPA**

Ms. Shamp reconvened the LPA at 11:50 AM, all members still present.

**XI. LPA MEMBER ITEMS AND REPORTS**

**A. Former member Dennis Weimer's email and written report of statements at the December 7, Town Council meeting**

Mr. Weimer sent a message to Dr. Shockey that since he is no longer a member, the LPA needs to assign a new representative to attend the Pink Shell hearings, which have continued past the point in time up to which Mr. Weimer was able to continue. This issue will be addressed under the LPA action list.

Mr. Ryffel suggested that future meetings should not be scheduled to go until 4:00PM as stated on the agendas, since the meetings start earlier now. Ms. Kay believes that the time should remain since meetings were cut from 2 to 1 per month. Discussion took place and there was a consensus to have the agenda reflect no specific time since the reduction to one meeting a month did away with another time conflict related to the 4:00 PM ending time.

Mr. Ryffel asked to be excused from the rest of the meeting.

Ms. Kay asked about the status of the funds that had been reserved for the beach renourishment project, due to the recent decisions made by the County. Mr. Ryffel commented that it is too soon to tell what will happen with this.

Mr. Mandel reminded that there needs to be a new representative for the animal control issue since he cannot participate.

Ms. Shamp thanked Ms. Kay for the Christmas ornament on the tree.

**XII. LPA ATTORNEY ITEMS**

Nothing to report except thanking the chair for an efficient meeting. She welcomed Mr. Moorefield and wished all a happy holiday.

**XIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Nothing to report.

**XIV. LPA ACTION ITEMS**

**Resolutions to Town Council:**

- Animal Control-long term – Ms. Shamp: January 4, 2010
- Gulfview/ Vacation, second hearing on Vacation ordinance-December 21, 2009 at 4:00 PM Ms. Kay/Van Duzer alternate. Gulfview to be scheduled thereafter.
- Pink Shell- expected to be continued to Jan. 19 at 4:00 PM-Ms. Shamp
- Alcoholic beverages-COP expansion on the beach-TBD Ms. Kay
- Weimer resolution-Dec. 21, 2009 4:00PM-Ms. Shamp
- Green resolution Dec. 21 at 4:00 PM- Ms. Shamp
- Water slide-TBD Ryffel
- Wicked Wings-TBD Ryffel

**Continued LPA hearings:**

- Shipwreck - Jan. 12, 2010
- Refuse Containers – February 9, 2010

**Future Work Activities:**

- Present ROW resolution to Council-2/9/2010
- Storm Water-pending; Dr. Shockey/Kay/Van Duzer-TBD
- Seasonal Parking-TBD- final review
- HPB budget-Jan. 12, 2010
- HPB Vistas – Budget Proposal - Ms. Shamp; 1/12/10

**XV. PUBLIC COMMENT**

None.

**XVI. ADJOURNMENT**

**Motion: Mr. Mandel moved to adjourn.**

**Seconded by Mr. Van Duzer;**

**Vote: Motion passes 6-0.**

Adjourned at 12:13 PM.

**Next meeting January 12, 2010 at 9:00 AM**

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_  
(DATE)

Vote: \_\_\_\_\_  
Joanne Shamp, LPA Chair

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