

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 00-40

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 the building height of 80 feet (as measured from the base flood elevation to the tops of the wall) in Phase IV of Captain's Bay is deemed consistent with the Town's Comprehensive Plan as set forth in Chapter 15; 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 the building height of 80 feet in Phase IV of Captain's Bay is consistent with Chapter 15 of the comprehensive Plan; The LPA recommends the following:

1. That the requested building height of 80 feet as measured from the base flood elevation to the top of the wall in Phase IV of Captain's Bay is deemed inconsistent with the Town's Comprehensive Plan as set forth in Chapter 15 and is not vested based on the information presented and the facts as known at this time. The LPA believes that a height of 79.8 feet NGVD is vested based upon the information presented.

2. That the 2 decisions made by Lee County Staff in March 1999 and December 1999 were made in error and should be held to be invalid.

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:

The 2 decisions made by Lee County Staff in March 1999 and December 1999 were made in error and should be held to be invalid.

Section 2. Conclusions. The Town Council finds that:

That the requested building height of 80 feet as measured from the base flood elevation to the top of the wall in Phase IV of Captain's Bay is deemed inconsistent with the Town's Comprehensive Plan as set forth in Chapter 15 and is not vested but that 5 stories over 1 story of parking with a height not to exceed 79.8 feet NGVD is vested.

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	nay
Ray Murphy	aye
Terry Cain	aye

APPROVED this 13th day of November, 2000.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Marsha Segal-George, Town Clerk

By: 
Daniel Hughes, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney