

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 02- 17

WHEREAS, Lawrence & Karen Drebes, the property owner, filed an appeal of an administrative interpretation that the floor plan of the proposed single-family dwelling to be constructed at 5850 Estero Blvd. represents the layout of a bed and breakfast; and,

WHEREAS, the applicant has indicated the property's current STRAP number is: 33-46-24-W2-0030C.0050; 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 recommends that the Town Council uphold the Staff's finding that the proposed building design could represent the layout of a bed and breakfast but acknowledges the applicant's intent to build a single family home according to the design that has been marked as Exhibit 1 and which is attached hereto and incorporated herein by reference. The LPA also accepts the statement of intent made by the applicant that the structure to be built has been designed to serve the needs of a large family but its intended use is as a single family home. The LPA further acknowledges and supports the applicant's offer to record a covenant that would run with the land in the public record that would state the applicant's recognition that the property is zoned RS-1 and that as long as it is zoned RS-1, the applicant acknowledges that it is therefore restricted to a conventional single family residence and may not be used as a bed and breakfast or other commercial motel/hotel purpose; and,

WHEREAS, the Town Council in reviewing such an appeal 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 such as:

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,

with no additional evidence to be considered by the Town Council; and,

WHEREAS, 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.

IT IS THE FINDING of this council that this appeal is of a nature properly brought to the Council for decision and considering the intent of the ordinance being interpreted and the effect the ruling will have when applied generally, the Council in reviewing the interpretation finds:

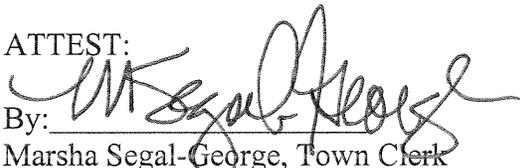
The Staff's finding that the proposed building design could represent the layout of a bed and breakfast is justified, but acknowledges the applicant's intent to build a single family home and offer to record a covenant that would run with the land in the public record that would state the applicant's recognition that the property is zoned RS-1 and that as long as it is zoned RS-1, the applicant acknowledges that it is restricted to a conventional single family residence and may not be used as a bed and breakfast or other commercial motel/hotel purpose; the plans are approved subject to the Town Attorney's acknowledgment of a properly recorded covenant.

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

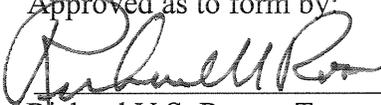
Howard Rynearson	<u>aye</u>
Daniel Hughes	<u>aye</u>
Bill Thomas	<u>aye</u>
W. H. "Bill" Van Duzer	<u>aye</u>
Terry Cain	<u>aye</u>

APPROVED this 8th day of April, 2002.

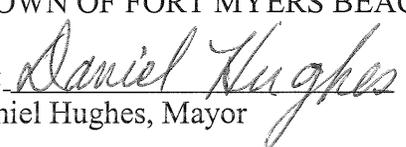
ATTEST:

By:   
Marsha Segal-George, Town Clerk

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

By:   
Daniel Hughes, Mayor

Recording of approved covenant  
on 9-17, 2002. 2003

  
Richard V.S. Roosa, Town Attorney

11/00/00 00:00:00 00:00:00 00:00:00 00:00:00

INSTR. # 5528558  
OR BK 03700 DE 4739  
RECORDED 08/07/2002 09:41:27 AM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 15.00  
DEPUTY CLERK L. Parant

(THE ABOVE PROVIDED SPACE IS FOR RECORDING PURPOSES ONLY)

Return to and prepared by  
Mark A. Ebelini, Esquire  
Knott, Consoer, Ebelini, Hart & Swett, P.A.  
1625 Hendry Street, Third Floor  
Fort Myers, Florida 33901  
Telephone: (941) 334-7722  
Property ID# 33-46-24-W2-0030C.0050

**COVENANT REGARDING EXISTING PERMITTED USE  
OF REAL PROPERTY**

This COVENANT REGARDING EXISTING PERMITTED USE OF REAL PROPERTY is made this 5<sup>th</sup> day of August, 2002, by Lawrence T. Drabes, Jr., and Karen M. Drabes, Trustees under the Drabes Family Trust dated March 6, 1998 (the "Drabes Trust"), as follows:

WHEREAS, the Drabes Trust is the owner of property with an address of 5850 Estero Boulevard, Fort Myers, Florida, 33931, more particularly described as Lot 5, Block C, McPhie Park Unit No. 1, according to Plat Book 8, Page 52 of the Public Records of Lee County, Florida (the "Subject Property"); and

WHEREAS, the Drabes Trust has applied to the Town of Fort Myers Beach for a permit to construct a new single family residence, replacing the existing structure on the Subject Property; and

WHEREAS, the Lee County Department of Development Services, as the permitting agency for the Town of Fort Myers Beach, rejected the Drabes Trust's building plans alleging that, "the second floor plan layout appears to be more of a layout for a bed and breakfast than a single family residence."

WHEREAS, the Drabes Trust recognizes that the Subject Property is currently zoned RS-1, which does not permit a bed and breakfast establishment on the Subject Property; and

WHEREAS, the Town Council of the Town of Fort Myers Beach has adopted Resolution Number 02-17 permitting the Drabes Trust to construct the new single family residence on the Subject Property based upon the Drabes Trust's representations that the new single family residence will be utilized consistent with the current RS-1 zoning of the Subject Property, and conditioned upon the Drabes Trust recording this Covenant acknowledging that, in accordance with the current RS-1 zoning, use of the structure is restricted to the uses specified in the RS-1 district, which do not permit bed and breakfast establishments.

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NOW THEREFORE, to fulfill a condition of the approval of the plans for their new single family home as required by the aforesaid Resolution of the Town Council of the Town of Fort Myers Beach, the Drebes Trust states as follows:

1. The foregoing recitals are true and correct.
2. The Drebes Trust hereby agrees that as long as the Subject Property is zoned RS-1, the new single family residence the Drebes Trust will construct on the Subject Property will be used for only such purposes as are permitted in the current RS-1 zoning of the Subject Property, which do not include a bed and breakfast establishment.
3. This Covenant is executed as required by the Town in Resolution Number 02-17 approving the Drebes Trust's administrative appeal, but it does not preclude any future change in zoning of the Subject Property, if such change is ever requested by the Drebes Trust, or its successors and assigns, and approved by the Town of Fort Myers Beach, or any successor local governing authority.
4. This Covenant shall be enforceable by the Town of Fort Myers Beach.

IN WITNESS WHEREOF the Drebes Trust sets its hand and seal on the date first above written.

Witnesses as to Both Trustees:

Drebes Family Trust dated March 6, 1988

Josephine H. Dwyer  
1st Witness

Josephine H. Dwyer  
Printed Name

Kelly Allen  
2nd Witness

KELLY ALLEN  
Printed Name

By: [Signature]  
LAWRENCE T. DREBES,  
DR., Trustee

By: [Signature]  
KAREN M. DREBES,  
Trustee

(Notaries on following page)

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STATE OF OREGON )  
 ) SS.  
COUNTY OF CLATSOP )

The foregoing instrument was acknowledged before me on this 5<sup>th</sup> day of AUGUST, 2002, by LAWRENCE T. DREBES, JR., as Trustee of the Drebes Family Trust dated March 6, 1989. He is personally known to me or who has produced OREGON DRIVER'S LICENCE as identification and who did not take an oath.

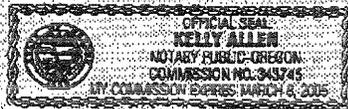


(SEAL/STAMP)

*Kelly Allen*  
NOTARY PUBLIC  
KELLY ALLEN  
PRINTED NOTARY NAME  
343745 MARCH 8, 2005  
COMMISSION NUMBER & EXPIRATION DATE

STATE OF OREGON )  
 ) SS.  
COUNTY OF CLATSOP )

The foregoing instrument was acknowledged before me on this 5<sup>th</sup> day of AUGUST, 2002, by KAREN M. DREBES, as Trustee of the Drebes Family Trust dated March 6, 1989. She is personally known to me or who has produced OREGON DRIVER'S LICENCE as identification and who did not take an oath.



(SEAL/STAMP)

*Kelly Allen*  
NOTARY PUBLIC  
KELLY ALLEN  
PRINTED NOTARY NAME  
343745 MARCH 8, 2005  
COMMISSION NUMBER & EXPIRATION DATE