

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE  
TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2010-03  
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 23, 2010 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the Town Comprehensive Plan Future Land Use Map (FLUM) to reclassify the subject area, approximately 0.33 acres, from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends** that Town Council approve and adopt the proposed Town Ordinance to amend the Comprehensive Plan Future Land Use Map (FLUM) so as to reclassify the subject area, approximately 0.33 acres, from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM, 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** 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 as provided in F.S. 163.3187(1)(c)(1)(a)(I); and

c. the proposed FLUM amendment **DOES NOT** involve the same property granted a change within the prior 12 months; and

d. the proposed amendment **DOES NOT** involve the same owner's property within 200 feet of property granted a change within the prior 12 months; and

e. The proposed amendment **DOES NOT** involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, and **DOES** only propose a land use change to the future land use map for a site-specific small scale development activity; and

f. The property that is the subject of the proposed amendment **IS NOT** located within an area of critical state concern; and

g. If the proposed amendment involves a residential land use, the residential land use **DOES HAVE** a density of 10 units or less per acre or the proposed future land use category **DOES** allow a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category.

h. The proposed small scale amendment **DOES NOT** involve a site which is designated by the Governor as a rural area of critical economic concern.

2. It **IS** 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** necessary to provide for orderly future growth of the community, for the following reasons:

a. The proposed amendment will likely have **NO IMPACT** on affected traffic, utilities, other services, and future capital expenditures; and

b. the proposed amendment will likely have a **POSITIVE IMPACT** of possible additional uses which would likely contribute to the walkability of that area and the pedestrian-oriented public realm; and

c. the proposed amendment will likely have a **POSITIVE IMPACT** of allowing future rezoning(s) to consider a mix of uses that would complement the current mix of residential, commercial and civic uses in the immediate vicinity.

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 Ryffel** and seconded by **LPA Member Kay** and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair <u>nay</u>	Bill Van Duzer, Vice Chair <u>absent</u>	Rochelle Kay <u>aye</u>
Chuck Moorefield <u>aye</u>	Carleton Ryffel <u>aye</u>	John Kakatsch <u>aye</u>

DULY PASSED AND ADOPTED THIS 23<sup>rd</sup> day of March, 2010.

LPA of the Town of Fort Myers Beach

By: Joanne K Shamp  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: [Signature]  
Anne Dalton, Esquire  
LPA Attorney

By: [Signature]  
Michelle Mayher, Town Clerk



**ORDINANCE NO. 10-xx**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROVIDING FOR A SMALL-SCALE AMENDMENT TO THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO RECLASSIFY CERTAIN PROPERTY FROM THE MIXED RESIDENTIAL CATEGORY TO THE PEDESTRIAN COMMERCIAL CATEGORY ON THE FUTURE LAND USE MAP; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING 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 F. Purtell, Patrick Purtell, and Fred Paine have applied to the Town for an amendment to the Comp Plan Future Land Use Map (FLUM) to reclassify property located at 821 Estero Boulevard and 831 Estero Boulevard (the subject property) from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM category, with the legal description, STRAP number and other relevant information regarding the subject property and proposed amendment to the FLUM being 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 \_\_\_\_\_, 2010, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2010-XX 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 statute, this ordinance was introduced before Town Council on \_\_\_\_\_, 2010 and the Town Council conducted a duly noticed hearing on this ordinance on \_\_\_\_\_, 2010, 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 OF FORT MYERS BEACH 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 **DOES/DOES NOT** exceed certain the statutory threshold of 80 acres;
- (3) the proposed amendment **DOES/DOES NOT** involve the same property granted a change within the previous 12 months;
- (4) the proposed amendment **DOES/DOES NOT** involve the same owner's property within 200 feet of a property granted a change within the previous 12 months;
- (5) the proposed amendment **DOES/DOES NOT** involve a text change to the goals, policies and objectives of the Town's Comprehensive Plan and **DOES/DOES NOT** only involve a change to the FLUM;
- (6) the property **IS/IS NOT** located in an "area of critical state concern";
- (7) any proposed residential use involved **DOES/DOES NOT** have a density of 10 units or less per acre, or the proposed category **DOES/DOES NOT** allow a maximum density of the same or less than is allowed by the current category.
- (8) Applicants' 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 AS TO WHETHER THIS.** 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:

- (1). The proposed amendment will likely have **POSITIVE/NEGATIVE/NO** impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional elements: \_\_\_\_\_; and
- (2) \_\_\_\_\_; and
- (3) \_\_\_\_\_  
(etc. - as many as needed)

**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 until 31 days after 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 \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	_____	Bob Raymond, Vice Mayor	_____
Tom Babcock	_____	Jo List	_____
Alan Mandel	_____		

DULY PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_, 2010.

ATTEST:

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

BY: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal form by:

\_\_\_\_\_  
Anne Dalton, Esquire  
Town Attorney