

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-06**

WHEREAS, Michael Barnes, applicant, on behalf of Michael D. and Evie J. Barnes, the property owners, filed Application Numbers MUD 2006-00056 and MUD 2006-00057 for an Administrative Action for Minimum Use Determinations (MUD) pursuant to Chapter 15 of the Town Comprehensive Plan (Plan) and Section 34-3274 of the Town Land Development Code (LDC); and

WHEREAS, the subject property is located at 239 Driftwood Lane, Fort Myers Beach, Florida; is identified as Lots 14 and 15 in the Flamingo Park subdivision, Fort Myers Beach, Florida; and the applicant has indicated the property's current STRAP number is 34-46-24-W4-0010C.0140 and the legal description thereof is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, in accordance with LDC Section 34-3274 (e) the Local Planning Agency (LPA) considered requirements of the Town Comprehensive Plan (Plan) and Land Development Code (LDC), the staff report, applicant's application, other documents submitted, and public input at its meeting of November 28, 2006 in making its administrative determination that the property does not qualify for a Minimum Use Determination; and

WHEREAS, the applicant, through counsel, filed a timely appeal of this determination to the Town Council, which appeal was properly noticed and duly held on January 16, 2007, before the Town Council; and

WHEREAS, the Town Council considered information submitted in the administrative interpretation process and reviewed only whether the proper standards set forth in the Town Comprehensive Plan were applied to the facts presented and did not consider any additional evidence, pursuant to the requirements of the Plan.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS OF FACT

The Town Council makes the following findings of fact:

- a. The subject properties were created prior to November 21, 2000.
- b. The subject properties are approximately 14,000 square feet in the aggregate and neither lot reaches the 10,890 square feet required to qualify for a single dwelling unit in the Low Density Category.
- c. There is a mobile home on each lot. One of the two mobile homes is situated partially across the lot line between lots 14 and 15.
- d. Paragraphs (1) (2) and (3) of Section C Standards for Administrative Interpretations, Procedure and Monitoring, Administrative Interpretations, of Chapter 15 of the Town Comprehensive Plan address issues of density, not encroachment of a structure across a lot line.

- e. The issue in this determination is encroachment of a structure across a lot line where two structures were otherwise existing on two lots.
- f. There will be no increase in density upon granting of the Minimum Use Determinations, as each lot currently contains a structure.

SECTION 2. APPLICATION OF STANDARDS IN COMPREHENSIVE PLAN

The Town Council determines that the LPA did not properly apply the proper standards set forth in the Plan to the facts presented in applicant's request for a Minimum Use Determination, as follows:

- a. The LPA did not properly apply the standards set forth in paragraph (3) of Section E Single Family Residence, of Chapter 15 of the Plan. The LPA interpretation is erroneous because the intention of the Comprehensive Plan provisions is not to increase density, but rather than to address encroachments. This application involves the encroachment of a structure across the property line where two structures were otherwise existing on two lots; and
- b. The LPA did not properly apply the standards set forth in paragraphs (1) (2) and (3) of Section C Standards for Administrative Interpretations, Procedure and Monitoring, Administrative Interpretations, of Chapter 15 of the Plan. The LPA interpretation is erroneous because the intention of the Comprehensive Plan provisions is not to increase density, rather than to address encroachments. This application involves the encroachment of a structure across the property line.

SECTION 3 QUALIFICATION FOR MINIMUM USE DETERMINATION

As a result of the determination set forth in Section 1 above, the Town Council states that the subject property does qualify for a minimum use determination.

THE TOWN COUNCIL hereby overrules the determination by the Local Planning Agency on this 15th day of January, 2007.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Meador and seconded by Councilmember Reynolds, and upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor	aye	Garr Reynolds	aye
Don Massucco, Vice Mayor	aye	William Shenko, Jr.	aye
Charles Meador, Jr.	aye		

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: *Dennis C. Boback*
Dennis C. Boback, Mayor

Approved as to legal sufficiency:
By: *Anne Dalton*
Anne Dalton, Esquire, Town Attorney

ATTEST:
By: *Michelle Mayher*
Michelle Mayher, Town Clerk

Exhibit A

MUD2006-00056 and MUD2006-00057

Property located in Section 34, Township 46 South, Range 24 East, Lee County, Florida, described as follows:

Lot 14, Block C, Flamingo Park Subdivision, as recorded in Plat Book 9, Page 66 of the Public Records of Lee County, Florida;

AND

Lot 15, Block C, Flamingo Park Subdivision, as recorded in Plat Book 9, Page 66, of the Public Records of Lee County, Florida.