

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2009-27

WHEREAS applicant Joseph G. Taylor, as authorized by Consolidated Realty Holdings (U.S.) Inc. and United Realty Holdings (U.S.) Inc., owners of the subject property, has requested a special exception in the DOWNTOWN zoning district to allow a commercial recreation facility, containing an amusement device (inflation waterslide); and

WHEREAS the subject property is located at 1100 and 1130 Estero Boulevard, 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 24-46-23-W3-0014.0000 and the legal description of the subject property is set forth on **Exhibit A**, which is hereby incorporated by reference; 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 "B"** 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 allow the commercial recreation facility, containing an amusement device (inflation waterslide) on the subject property, with such approval subject to the following conditions.

RECOMMENDED CONDITIONS OF APPROVAL:

1. The inflatable slide may operate and be open to the public only between the hours of 10:00 AM and 5:00 PM of each day.
2. The inflatable slide must be promptly deflated and secured during any time when winds within 30 feet of grade at the site exceed twenty (20) miles per hour.
3. Approval of this special exception does not authorize any excavation or filling of the site.

4. Approval of this special exception does not authorize discharge or drainage of any effluent to the seaward side of the existing wall.
5. The area identified as "asphalt parking" on the site plan must be striped in accordance with LDC Section 34-2016 and must provide a minimum of five parking spaces for patrons of the waterslide. Compliance with this condition and approval of this special exception do not guarantee the facility's compliance with the Americans with Disabilities Act.
6. Approval is limited to one inflatable waterslide in the location shown on the site plan attached hereto and incorporated herein by reference as **Exhibit C**.
7. This special exception will expire upon the adoption of a Town Council resolution or ordinance rezoning the subject property, or upon the commencement of construction of a walled and roofed building on the subject property, whichever comes first.
8. **The LPA directs that this matter go forward to hearing before Town Council without the necessity of approved LPA minutes.**

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:

The subject property, 1100 and 1130 Estero Boulevard, consists of the sites of two former hotel/motel buildings. An adjacent lot (1080 Estero Boulevard) was also the site of a former hotel/motel. All three buildings have been removed and the site is vacant except for a remnant of a paved parking area, utility connections, and the existing seawall along the beach. The location of the amusement device is now a sparsely vegetated sand surface, landward of the seawall, in the DOWNTOWN zoning district. The property owner has not initiated development of the subject property with new buildings, either through rezoning or through the development order process. Applicant has provided proof of consent of the property owner to use the property as a site for the inflatable waterslide amusement device as well as proof that he is authorized to apply for this special exception.

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

Community design concepts embodied in Comprehensive Plan Objective 1-A and its supporting policies encourage development of mixed use buildings located near sidewalks in the DOWNTOWN core area along Estero Boulevard, with parking areas either to the rear or screened from

view beneath buildings, except where side-yard parking lots create a view of the Gulf of Mexico. The subject property is vacant and applicant is not proposing to construct a building. Arranging financing for redevelopment of the subject property and other nearby property may take time. Allowing applicant to utilize the subject property for the requested use during that time is unlikely to deter any redevelopment project because of the difference between the probable income to be gleaned from the currently requested use and the potential for a much greater income from redevelopment of the subject property, under the right financial conditions.

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

Specific performance and locational standards apply to amusement devices, under LDC Section 34-2142. The water slide must be fifty feet, or a distance equal to the height of the device, whichever is greater, from any property under separate ownership, and must be 100 feet from an adjacent property with residential zoning or any existing residential use. According to applicant's site plan, attached hereto and incorporated herein as **Exhibit C**, the slide is more than 50 feet from any property line. The nearest residential zoning is on Crescent Street, more than 100 feet away. The nearest residential uses are on Canal Street, also more than 100 feet away. Lighting and noise issues will be addressed by the Town's noise ordinance and by the limitation on hours of operation, as conditioned.

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

As conditioned, drainage of water from the slide to the beach side of the existing seawall, and excavation or filling of the site, will not be allowed in connection with the proposed use. The recommended hours of operation will not necessitate any artificial lighting. If installed, artificial lighting will be required to comply with local and state requirements for the protection of marine turtles.

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:

Other existing uses in the vicinity of the subject property include restaurants, retail stores, and similar commercial activities. In addition to the small paved area of the subject property to be reused as an accessory parking lot, other shared permanent commercial parking lots are located within walking distance. This is the Town's core commercial area and pedestrian traffic along the beach and the sidewalks of Estero Boulevard is voluminous during the busy spring season. An amusement device of the sort proposed is compatible with beach-going pedestrian activity in this vicinity. Approval of the request, as conditioned, is unlikely to deter future development of planned uses in this area, given the value of the subject property, even in a depressed real estate market. Artificial

lighting, if installed, will be required to comply with all applicable requirements. Noise problems will be limited by the hours of operation and the Town's noise ordinance.

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:

General zoning applicable to the subject property in the DOWNTOWN zoning district encourages the development of buildings near Estero Boulevard with parking areas in rear or side yards. A commercial recreation facility can be allowed in the DOWNTOWN zoning district by special exception, however, according to LDC Tables 34-1 and 34-2. No structures are proposed to be constructed at this time so the build-to lines and other form-based requirements of the DOWNTOWN zoning district do not affect the requested amusement device. The recommended conditions ensure that supplemental regulations regarding amusement devices, including setbacks, will be met.

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

Joanne Shamp, Chair <u>aye</u>	Bill Van Duzer, Vice Chair <u>aye</u>
Carleton Ryffel, Member <u>aye</u>	Rochelle Kay, Member <u>aye</u>
Chuck Moorefield, Member <u>aye</u>	Alan Mandel, Member <u>aye</u>

DULY PASSED AND ADOPTED THIS 15TH day of December, 2009

LPA of the Town of Fort Myers Beach

By: Joanne K. 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



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073



Description of a Parcel of Land Lying in Town of Fort Myers Beach, Lee County, Florida (1100 and 1130 Estero Boulevard)

A tract or parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, lying in Section 24, Township 46 South, Range 24 East, as described in Official Records Book 1754 at Page 3049 together with a parcel of land described in Official Records Book 2831 at Page 2208, and more particularly described as follows:

Commencing at the southwest corner of Block "E", Crescent Park Addition, as recorded in Plat Book 4 at Page 46 of Public Records of Lee County, Florida; thence S00°44'25"E along the east line of said Section 24 for 53.24 feet to an intersection with the southerly right-of-way line of Estero Boulevard (50 feet wide); thence N70°35'51"W along said southerly right-of-way line for 157.74 feet to the northeasterly corner of said parcel as described in Official Records Book 1754 at Page 3049 and the Point of Beginning; thence continue N70°35'51"W along said southerly right-of-way line for 300.00 feet to the northwesterly corner of said parcel as described in Official Records Book 2831 at Page 2208; thence S19°24'09"W along the westerly line of said parcel for 242.28 feet to an intersection with the ECL (Erosion Control Line) as recorded in Plat Book 70, Pages 25 through 39; thence S61°47'03"E along said ECL for 102.40 feet; thence S63°02'51"E along said ECL for 199.22 feet; thence S64°56'44"E along said ECL for 1.32 feet to an intersection with the easterly line of said parcel as described in Official Records Book 1754 at Page 3049; thence N19°24'09"E along said easterly line for 284.27 feet to the Point of Beginning.

Bearings are based on Plane Coordinates for the Florida West Zone N.A.D. 1927 (1979 Adjustment) with the southerly line of Estero Boulevard to bear N70°35'51"W.

Parcel contains 1.82 acres (79,216 square feet), more or less.

Subject to easements, restrictions, reservations and rights-of-ways (written and unwritten, recorded and unrecorded).

Sheet 1 of 2

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PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:
TRACY N. BEAN, AICP
JAMES A. HESSLER, PSM
CHARLES D. KNIGHT, PSM
MUNIR R. SULEH, PE, M.S.E.E.

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

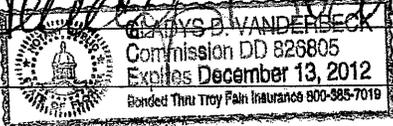
as identification, and who did or did not take an oath.

Notary Public

Print Name

My commission Expires:

Glenn D. Vanderbeck



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: SEZ2009-0001

Case Name: Wicked Wings

Applicant: Waiter

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: SEZ2009-0002

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: 1100 and 1130 Estero Boulevard, Fort Myers Beach, FL