

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 10-04
ADM2009-01: Appeal of Administrative Action

WHEREAS, the John W. Richard Revocable Trust, Dated May 3, 1995 ("developer"), owns properties located at 201 Old San Carlos Boulevard ("the 201 Property"), 237 Old San Carlos Boulevard ("the 237 Property"), 320 Old San Carlos Boulevard ("the 320 Property"), Fort Myers Beach, Florida, with their respective legal descriptions and STRAP numbers set forth on Exhibit "A"; and

WHEREAS, Joseph McHarris is the authorized agent for the John W. Richard Revocable Trust Dated May 3, 1995; and

WHEREAS, Joseph McHarris requested the Town to issue a limited review development order to allow development at the 201 property, and to issue a building permit in conjunction therewith, which limited review development order was issued on November 5, 2009, as LDO 2007-00038, with issuance of COM 08-0085 on November 9, 2009; and

WHEREAS, in compliance with the requirements of the Town's issuance of LDO 2007-00038, John W. Richard provided the Town with a joint-use parking agreement for location of parking on the 320 Property for the benefit of the 201 Property; and

WHEREAS, on November 30, 2009, SWF Management, Inc. and 151 Old San Carlos, LLC, (collectively "Appellant") by and through Steven Hartsell, Esquire, Agent, filed an Appeal of Administrative Action regarding the Town's issuance of LDO2007-00038 and COM08-0085 and staff's interpretation of LDC Sections 34-220, 34-2018, and 34-2020 as applied to the issuance of the aforesaid approvals; and

WHEREAS, a public hearing for this matter was legally advertised and held before the Town Council of the Town of Fort Myers Beach on January 4, 2010 at which time the Town Council gave full and complete consideration to the request of Appellant, the documents in the file, staff recommendations, the requirements of relevant sections of the Town Land Development Code (LDC) and Comprehensive Plan (Comp Plan), any other relevant Town ordinances or regulations, the testimony of the Appellant and all interested persons and any other issues which are pertinent and reasonable as required by LDC Section 34-86.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

FINDINGS AND CONCLUSIONS

SECTION 1. APPELLATE JURISDICTION OF TOWN COUNCIL

The Town Council finds that LDC Section 34-86 **DOES** allow an entity which does not have an ownership interest in property to appeal an administrative approval regarding such property, for the following reason(s):

- 1) LDC Section 10-112 **IS NOT** the exclusive LDC section for appeal of a decision of the Town director regarding issuance of a development order; and
- 2) LDC Section 34-201 **IS NOT** the exclusive LDC section for appeal of an administrative action regarding property; and
- 3) LDC Section 34-86 **DOES** provide for an appeal to Council for a party who does not have an ownership interest in specific property if such party is appealing an administrative action issued pursuant to LDC Section 10-112 and/or LDC Section 34-201.

SECTION 2. DETERMINATION OF STANDING: "AGGRIEVED PARTY"

The Town Council finds that Appellant **IS NOT** an "aggrieved party" pursuant to LDC Section 34-2 and therefore concludes that Appellant **DOES NOT** have standing to bring this appeal.

SECTION 3. CRITERIA FOR CONSIDERATION BY TOWN COUNCIL IN APPEALS

As required by Section 34-86(2)(a), the Town Council considered the following criteria, as well as any other issues which were pertinent and reasonable, in reaching the conclusion(s) set forth below:

- a. whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process; and
- b. the intent of the ordinance being applied or interpreted; and
- c. the effect the ruling will have when applied generally to the LDC.

SECTION 4. DETERMINATION OF COUNCIL

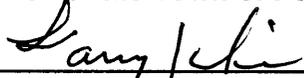
The Town Council determines that Appellant has no standing to bring this appeal and therefore Town Council dismisses the appeal.

Voting on the Resolution was bifurcated. The Motion on Section 1 (Jurisdiction) was made by Councilmember Babcock and seconded by Councilmember Raymond. The vote on this Motion was as follows: Mayor Kiker voted AYE, Councilmember Babcock voted AYE, Councilmember Raymond voted AYE and Vice Mayor Acken voted NAY and Councilmember List voted NAY. This motion passed 3-2.

The Motion on Section 2 (Standing) was made by Councilmember Raymond and seconded by Vice Mayor Acken. The vote on this Motion was as follows: Vice Mayor Acken voted AYE, Councilmember Raymond voted AYE, and Councilmember List voted AYE; Mayor Kiker voted NAY and Councilmember Babcock voted NAY.

DULY ADOPTED THIS 4th DAY OF JANUARY, 2010.

Town Council of the Town of Fort Myers Beach

BY: 
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
Town Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk



EXHIBIT "A" - LEGAL DESCRIPTION

A tract or parcel of land in Government Lot 1, Section 24, Township 48 South, Range 23 East, on Estero Island, Lee County, Florida, described as follows:

From the Northwestern corner of Block 8 of Business Center, as recorded in Plat Book 9 at pages 9 and 10, in public records of Lee County, Florida, run Northwesterly along a prolongation of the northerly line of said Block 8 for 33.22 feet to the centerline of the County Road;

Thence Southwesterly along said centerline for 0.15 feet;

Thence Northwesterly at an angle of 81 degrees 24'20" north to west with said centerline for 33.37 feet to the westerly line of said Road;

Thence Northeasterly along said westerly line of said road (San Carlos Boulevard) for 258.81 feet to the POINT OF BEGINNING.

From said Point of Beginning run Northwesterly at right angles to the westerly line of San Carlos Boulevard for 140.0 feet;

Thence run Northeasterly, parallel to San Carlos Boulevard for 18.0 feet to the Lagoon as shown on the Plat of Island Shores, Unit No. 2, as recorded in Plat Book 9 at Page 25 of said public records;

Thence run Northwesterly along a line perpendicular to San Carlos Boulevard for 3.85 feet to the outer face of a seawall cap on said Lagoon;

Thence run Northeasterly along said seawall for 107.07 feet to an intersection with the Northwesterly prolongation of the Southwesterly line of Lot 12, Block "A" of said Island Shores, Unit No. 2;

Thence run Southeasterly along said prolongation and the Southwesterly line of said Lot 12, Block "A" for 139.85 feet to the Southeasterly corner of said Lot 12, Block "A";

Thence run Southwesterly along the westerly line of San Carlos Boulevard for 125.00 feet to the POINT OF BEGINNING.