

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2009-126**

1. Requested Motion:

Approve amended Agreement for use of Town Right-of-Way
(Commercial Design Standards)

Meeting Date:

October 5, 2009

Why the action is necessary: This agenda item provides Town Council with the opportunity to review the standard Town right-of-way Agreement used for projects involving the Town Commercial Design Standards

2. Agenda:

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance
☒ Other: Form Agreement

4. Submitter of Information:

☐ Council
☐ Department:
☒ Town Attorney

5. Background:

A former Town Council had previously directed the preparation of an annual right-of-way Agreement for use in conjunction with Town-approved projects utilizing Commercial Design Standards. The current Town Council directed the LPA to review right-of-way issues. As a part of this review, the LPA evaluated the attached annual right-of-way agreement. On September 17, 2009, the LPA passed Resolution 2009-17, which contains its recommended changes to this Agreement. In short, the LPA suggests that (a) the term of the contract be perpetual rather than annual; (b) the amount of insurance required be increased in an amount to be recommended by Town staff; (c) there be an annual automatic indexed increase in such insurance as also recommended by Town staff; and (d) language requiring the applicant's obligations be made more explicit. This matter is before the Town Council for review and potential approval of the changes suggested. At this time, the Council has the discretion to (1) leave the agreement as-is; (2) make some or all of the changes recommended by the LPA; (3) make other changes; or (4) rescind the requirement that qualified applicants execute this agreement.

Attachments: (1) Amended right-of-way agreement; (2) LPA Resolution 2009-19; (3) Staff memo re insurance; (4) approved LPA minutes from September 17, 2009

6. Alternative Action:

Continue with the existing contract, give direction for other changes to the standard contract, or abolish the use of this agreement.

7. Management Recommendations:

8. Recommended Approval:

Finance Director	Public Works Director	Comm. Development Director	Town Clerk	Town Attorney	Town Manager
				AD	

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

THIS INSTRUMENT PREPARED BY
AND, AFTER RECORDING, RETURN TO:
THE TOWN OF FORT MYERS BEACH
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

AGREEMENT FOR USE OF TOWN RIGHT- OF-WAY

COMMERCIAL DESIGN STANDARDS

The Town of Fort Myers Beach, a municipal corporation whose address is 2523 Estero Boulevard, Fort Myers Beach, FL 33931 ("Town") and _____ ("Licensee") a Florida *(Corporation, Partnership, Limited Liability Company, etc.)* whose address is _____ enter into this Agreement ("Agreement") on this ____ day of _____, 200__ for use of portions of Town Right-of-Way on an annual basis, under the following terms and conditions:

1. Town Land Development Code Provisions. The Town Land Development Code (LDC) requires that commercial buildings have traditional pedestrian-oriented exteriors and further requires, pursuant to LDC Section 34-995(e), that commercial buildings located at 450 Old San Carlos Blvd. maintain a continuous awning or canopy unless the sidewalk is shaded by an arcade or colonnade. LDC Section 34-995(e)(6)(a) further states that arcades and colonnades may encroach into a Town Right-of-Way, provided explicit permission is granted by the Town.

2. Licensee's Property. Licensee owns a parcel of real property located at _____ Fort Myers Beach, FL, as is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

3. Licensee's Addition and R-O-W Structure(s). Licensee desires to construct *(name of project)* on the subject property for the purpose of compliance with the Town's Commercial Design Standards and the architectural design thereof has structural and habitable space extending into or over the subject Right-of-Way ("Licensed Area" or "Structure"). Exhibit "B," which is attached hereto and incorporated by reference, sets forth the proposed Structure(s) inclusive of the legal description for the area of the Town Right-of-Way referenced in this Agreement.

4. Term of License. This License will continue indefinitely unless terminated by either party in writing upon sixty (60) days' prior notice or as provided elsewhere herein. ~~be for a twelve (12) month period, commencing on January 1 (with the exception of the initial term, wherein the date of Certificate of Compliance/Certificate of Occupancy (CC/CO) may be the commencement date). It will expire on December 31 of each year, and will be automatically renewed for an additional period of twelve (12) months unless cancelled by either party on or before October 31 of such year.~~ It is the Licensee's sole responsibility to contact the Town for payment of the applicable fee(s) prior to December 31 of each year. The Town assumes no responsibility to notify the Licensee of any obligation hereunder.

5. Grant of License. The Town hereby grants, gives and conveys to Licensee, its successors, and assigns, an annual and non-exclusive license to use the subject right-of way for purposes of placement and the maintenance of the Structure(s) for the subject property, limited to the area described in Exhibit "B."

- a. At the time of mutual execution hereof, Licensee agrees to pay the Town the total sum of (none) per square foot of Licensed Area, at the time this License is issued, as follows:
 - i. The annual base fee of (none); and
 - ii. The annual fee of (none) for use of Town Right-of-Way for habitable space; and
 - iii. The annual fee of (none) for usage of the surface of the Town right-of-way.
 - iv. The License Fee set forth in this paragraph shall be pro-rated from the date of issuance of the Certificate of Compliance/Certificate of Occupancy to December 31.
- b. The fee amount in subparagraph (a) above is subject to modification by the Town on an annual basis, commencing on January 1 of each year. The Town will notify Licensee of such fee modification on or before October 31 of each year this agreement is in effect. If the Town fails to notify the Licensee, the fee(s) set forth in subparagraph (a) above shall remain in full force and effect.

6. Maintenance and Use. Licensee is responsible for all construction costs associated with its use of the subject Right-of-Way and is responsible for all costs associated with the maintenance and repair of the Structure(s). Licensee covenants and agrees to construct, maintain and use the subject Right-of-Way and the Structure(s) in a manner consistent with the depiction in Exhibit "B" and applicable Elevations and as set forth elsewhere in this Agreement.

7. Town Access To Subject Right-of-Way.

(a) From time to time, the Town may require access to a portion or all of the subject Right-of-Way within which Licensee's Structure(s) are located. The Town will endeavor to minimize the impact of such access on Licensee's Structure(s) if possible but Licensee accepts and agrees that (i) the Town has sole discretion as to whether such partial or full access is required by the Town and (ii) the Town's judgment as to the need for and extent of such access shall be final, and (iii) it may be necessary for Licensee to remove and replace the Structure(s) in their entirety at Licensee's sole cost.

(b) As soon as practicable, the Town will notify Licensee of the potential need for use of any or all of the portion of the subject Right-of-Way upon which the Structure(s) are located and/or the necessity of removal of the Structure(s) from the subject Right-of-Way. The Town will not be required to provide advance notice in the event of an emergency, as defined by the Town. In the event that this License is not renewed for any reason, Licensee shall remove any and all structures from the Town Right-of-Way within seven (7) days of expiration hereof.

(c) The cost of Licensee's removing part or all of the Structure(s) from the subject Right-of-Way promptly upon request shall be Licensee's sole responsibility; however in the event of an emergency, as defined by the Town, the Town may remove all or part of such Structure(s), in its sole discretion. The cost of replacement and/or repair of any section of the Structure(s) due to the Town's need for access to the Right-of-Way shall be Licensee's sole

responsibility. If Licensee does not promptly comply with the Town's request for access, or in the event of such emergency, as defined by the Town, the Town may remove the Structure(s) in part or in full and place temporary structural components in their stead, and Licensee shall be required to reimburse the Town for all labor, materials, and other costs to the Town related thereto, within fifteen (15) days of being invoiced.

7. Licensee's Obligation to Repair In the Event of Damage and/or Destruction. In the event the Structure(s), and/or the subject property and/or any part of the Town's Right-of-Way is/are damaged by Licensee or any third party as a result of the use allowed hereunder, or if any of the foregoing is/are destroyed by fire, wind, water or other casualty, Licensee must repair the Structure(s) to comply with the then-current Florida Building Code and Licensee must also repair the Town's Right-of-Way to the satisfaction of the Town. All costs of such repair are at the sole expense of Licensee, and all such repairs must be consistent with Exhibit "B" attached hereto and incorporated herein. This paragraph does not waive Licensee's obligation to comply with the requirements of the LDC.

8. Indemnification and Hold Harmless. The Licensee, its successors, and assigns, agree to defend, indemnify and hold the Town, its employees, contractors and representatives harmless from and against any and all loss, liability, claim, damage and expense (including but not limited to attorney fees and appellate attorney fees) that may result from, arise out of, or concern the subject matter of this Agreement.

9. Insurance. Licensee covenants and agrees to obtain and maintain general liability insurance, property damage insurance, and other insurance for the term of this Agreement in the amount of **\$100,000/\$300,000,*** with a maximum deductible of **\$25,000** **subject to an automatic increase in the amount thereof (but not the deductible) based upon the following index: Municipal Cost Index as determined by American City and County.** *The insurance type, amount, and deductible required herein are subject to reasonable amendment by the Town in the Town's sole discretion. Licensee shall designate the Town as an additional insured and shall deliver to the Town a Certificate of Insurance showing the Town as an additional insured upon mutual execution of this Agreement and provide annual updates of such Certificate of Insurance to the Town Finance Department on January 2 of each year this Agreement is in effect. In the event that Licensee fails to comply with the requirements of this paragraph, the Town shall have the ability, but not the requirement, to force-place such insurance on the property upon thirty (30) days' prior notice to Licensee, and to do any act necessary to create a lien against the property for collection thereof.

***Note: these 2 subjects are addressed in a separate memo from staff per LPA direction.**

10. Successors and Assigns; Transfer of Property. This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns. In the event Licensee shall sell or otherwise transfer its interests in the subject property, such transfer shall be subject to this Agreement and such transferee shall become bound to all terms and obligations accruing subsequent to such transfer.

11. Notices. All notices which may be given or which are required to be given under this Agreement, shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) upon acknowledgment of receipt of certified or registered mail by the recipient or (iii) immediately if sent during regular business hours by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above.

12. Entire Agreement; Modification. This Agreement, with all exhibits referenced herein, contains the entire understanding and agreement between the parties hereto and there are no promises, agreements, conditions, undertaking or warranties or representations, oral or written, expressed or implied, between them except as set forth herein. No change or modification hereto shall be effective unless it is in writing and signed by the parties hereto.

13. Dispute Resolution and Attorneys Fees. Venue for resolution of any disputes arising from this Agreement shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. The prevailing party shall be entitled to an award of attorney's fees up through and including any appeal.

14. Effective Date; Recording. The Effective Date of this Agreement shall be the date when the last party has signed this Agreement. This Agreement shall be recorded in the Public Records of Lee County, Florida by Licensee at Licensee's sole cost and a certified copy shall be provided to the Town within three (3) business days of such recording.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year set forth above.

Licensee:

Witness for Licensee:

(name)

BY: _____

Print name: _____

Print name of person signing:

Title of person signing:

ATTEST:

TOWN OF FORT MYERS BEACH

Michelle D. Mayher, Town Clerk

_____, Town Manager

Approved as to Legal Form and Sufficiency:

By: _____
Anne Dalton, Esquire, Town Attorney

EXHIBIT A:

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B:

DESCRIPTION OF PROPOSED STRUCTURE(S)

(INCLUSIVE OF LEGAL DESCRIPTION FOR AFFECTED AREA OF TOWN RIGHT-OF-WAY)

Town of Fort Myers Beach



Memo

To: Jack Green, Town Manager
From: Evelyn Wicks, Director of Finance
Date: September 29, 2009
Re: Insurance

Evelyn Wicks

Per your request, I contacted the Town's insurance carrier regarding the downtown area of the island. As I understand the issue, the Town requires that certain property owners have an awning that extends over the Town's right of way/sidewalk. The question is whether the Town should require that these property owners provide insurance coverage and whether that coverage should include an automatic CPI increase annually.

I discussed the matter with the Florida League of Cities, Inc. – the Town's insurance carrier. Their recommendation is that the property owners be required to provide a minimum of \$1,000,000 coverage and annually provide the Town with a certificate of insurance naming the Town as additional insured. Rather than an automatic CPI increase, the Town should routinely review the coverage amount to make sure the coverage is adequate and adjust if necessary.

RESOLUTION OF
THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009-19

RECOMMENDATIONS FOR STANDARD TOWN RIGHT-OF-WAY AGREEMENT
(COMMERCIAL DESIGN STANDARDS)

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council as to the consistency of such proposals with the adopted Comprehensive Plan (Plan); and

WHEREAS, Section 34-120(4) of the Town Land Development Code (LDC) states that the LPA will review proposed LDC amendments and make recommendations to the Town Council regarding their consistency with the Plan, and

WHEREAS, Section 34-120 (12) of the LDC states that the LPA will aid Town officials charged with the direction of projects or improvements embraced within the Plan and generally promote the realization of the Plan; and

WHEREAS, Section 34-120 (14) of the LDC states that the LPA will perform any other duties which lawfully may be assigned to it by Town Council; and

WHEREAS, the Town Council has requested the LPA to review various components and facets of Town right-of-way matters, and

WHEREAS, in compliance with the direction from Town Council, the LPA at its meetings of August 25, 2009 and September 17, 2009, reviewed the terms and conditions of the standard Town Agreement for Use of Town Right-of-Way/Commercial Design Standards (hereafter "the ROW Agreement").

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows.

1. The LPA recommends various changes to the standard Town Agreement for Use of Town Right-of-Way/Commercial Design Standards (hereafter "the ROW Agreement"). The LPA request that Town staff provide a recommendation as to two (2) sections of paragraph 9 (insurance): (a) whether \$100,000/300,000 is an appropriate threshold amount to require for insurance purposes and (b) what price index should be used to determine the increase in such insurance over the terms of the Agreement. The LPA requests that such recommendation be provided to Town Council prior to Council's consideration of this matter, and that a copy be provided to the LPA as well.

2. The ROW Agreement showing proposed changes is attached hereto as Exhibit "A" and hereby incorporated by reference into this LPA Resolution.

The foregoing Resolution was adopted upon a motion by LPA Member Ryffel and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

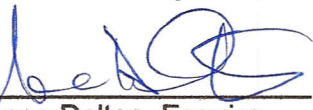
Rochelle Kay	<u>aye</u>	Alan Mandel	<u>aye</u>
Carleton Ryffel	<u>aye</u>	Joanne Shamp	<u>aye</u>
Bill Van Duzer	<u>aye</u>	Dennis Weimer	<u>aye</u>

DULY PASSED AND ADOPTED THIS 17th day of September, 2009.

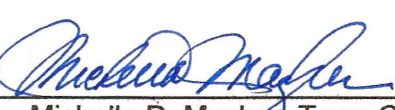
LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk



THIS INSTRUMENT PREPARED BY
AND, AFTER RECORDING, RETURN TO:
THE TOWN OF FORT MYERS BEACH
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

AGREEMENT FOR USE OF TOWN RIGHT- OF-WAY

COMMERCIAL DESIGN STANDARDS

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1. Town Land Development Code Provisions. The Town Land Development Code (LDC) requires that commercial buildings have traditional pedestrian-oriented exteriors and further requires, pursuant to LDC Section 34-995(e), that commercial buildings located at 450 Old San Carlos Blvd. maintain a continuous awning or canopy unless the sidewalk is shaded by an arcade or colonnade. LDC Section 34-995(e)(6)(a) further states that arcades and colonnades may encroach into a Town Right-of-Way, provided explicit permission is granted by the Town.

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5. Grant of License. The Town hereby grants, gives and conveys to Licensee, its successors, and assigns, an annual and non-exclusive license to use the subject right-of way for purposes of placement and the maintenance of the Structure(s) for the subject property, limited to the area described in Exhibit "B."

EXHIBIT "A"

- a. At the time of mutual execution hereof, Licensee agrees to pay the Town the total sum of (none) per square foot of Licensed Area, at the time this License is issued, as follows:
 - i. The annual base fee of (none); and
 - ii. The annual fee of (none) for use of Town Right-of-Way for habitable space; and
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(b) As soon as practicable, the Town will notify Licensee of the potential need for use of any or all of the portion of the subject Right-of-Way upon which the Structure(s) are located and/or the necessity of removal of the Structure(s) from the subject Right-of-Way. The Town will not be required to provide advance notice in the event of an emergency, as defined by the Town. In the event that this License is not renewed for any reason, Licensee shall remove any and all structures from the Town Right-of-Way within seven (7) days of expiration hereof.

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8. Indemnification and Hold Harmless. The Licensee, its successors, and assigns, agree to defend, indemnify and hold the Town, its employees, contractors and representatives harmless from and against any and all loss, liability, claim, damage and expense (including but not limited to attorney fees and appellate attorney fees) that may result from, arise out of, or concern the subject matter of this Agreement.

9. Insurance. Licensee covenants and agrees to obtain and maintain general liability insurance, property damage insurance, and other insurance for the term of this Agreement in the amount of \$100,000/\$300,000, with a maximum deductible of \$25,000 subject to an automatic increase in the amount thereof (but not the deductible) based upon the following index: Municipal Cost Index as determined by American City and County. The insurance type, amount, and deductible required herein are subject to reasonable amendment by the Town in the Town's sole discretion. Licensee shall designate the Town as an additional insured and shall deliver to the Town a Certificate of Insurance showing the Town as an additional insured upon mutual execution of this Agreement and provide annual updates of such Certificate of Insurance to the Town Finance Department on January 2 of each year this Agreement is in effect. In the event that Licensee fails to comply with the requirements of this paragraph, the Town shall have the ability, but not the requirement, to force-place such insurance on the property upon thirty (30) days' prior notice to Licensee, and to do any act necessary to create a lien against the property for collection thereof.

10. Successors and Assigns; Transfer of Property. This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns. In the event Licensee shall sell or otherwise transfer its interests in the subject property, such transfer shall be subject to this Agreement and such transferee shall become bound to all terms and obligations accruing subsequent to such transfer.

11. Notices. All notices which may be given or which are required to be given under this Agreement, shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) upon acknowledgment of receipt of certified or registered mail by the recipient or (iii) immediately if sent during regular business hours by facsimile, provided that receipt for such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above.

12. Entire Agreement; Modification. This Agreement, with all exhibits referenced herein, contains the entire understanding and agreement between the parties hereto and there are no promises, agreements, conditions, undertaking or warranties or representations, oral or written, expressed or implied, between them except as set forth herein. No change or modification hereto shall be effective unless it is in writing and signed by the parties hereto.

13. Dispute Resolution and Attorneys Fees. Venue for resolution of any disputes arising from this Agreement shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. The prevailing party shall be entitled to an award of attorney's fees up through and including any appeal.

14. Effective Date; Recording. The Effective Date of this Agreement shall be the date when the last party has signed this Agreement. This Agreement shall be recorded in the Public Records of Lee County, Florida by Licensee at Licensee's sole cost and a certified copy shall be provided to the Town within three (3) business days of such recording.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year set forth above.

Licensee:

Witness for Licensee:

(name)

BY: _____

Print name: _____

Print name of person signing:

Title of person signing:

ATTEST:

TOWN OF FORT MYERS BEACH

Michelle D. Mayher, Town Clerk

_____, Town Manager

Approved as to Legal Form and Sufficiency:

By: _____
Anne Dalton, Esquire, Town Attorney

EXHIBIT A:

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B:

DESCRIPTION OF PROPOSED STRUCTURE(S)

(INCLUSIVE OF LEGAL DESCRIPTION FOR AFFECTED AREA OF TOWN RIGHT-OF-WAY)

MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Thursday, September 17, 2009

I. CALL TO ORDER

Meeting was called to order at 1:05 PM by Chairperson Dennis Weimer. Six members present:

Dennis Weimer
Rochelle Kay
Alan Mandel
Bill Van Duzer
Joanne Shamp
Carleton Ryffel

Staff present: LPA Attorney Anne Dalton; Community Development Director Dr. Frank Shockey. There were no members of the public present.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION-Mr. Weimer

IV. MINUTES

Motion: Ms. Kay moved to adopt the minutes of July 14, 2009, as presented.

Seconded by Mr. Ryffel, who noted an error in the spelling of his name;

Mr. Yerkes was mistakenly listed in place of Mr. Mandel; Ms. Dalton noticed the “e” missing from her name; Mr. Weimer noted a question regarding a second to a motion on page 14. After some discussion it was determined that Mr. Weimer was looking at a an unedited version of the minutes that had not been corrected for typographical and similar errors, and that the record on page 14 had been corrected in the minutes distributed to the LPA for consideration at this meeting. The minutes presented to the LPA for consideration today indicate Mr. Weimer’s request that the LPA to consent to “move” an item from one part of the agenda to another at the July 14 meeting; there was no “motion.” Ms. Kay and Mr. Ryffel signified their acceptance of the changes.

Vote: Motion passed 6-0

Motion: Mr. Van Duzer moved to approve the minutes of the August 25, 2009.

Seconded by Mr. Ryffel, with note that his name is misspelled; Mr. Van Duzer signified his acceptance of the correction.

Vote: Motion passed 6-0.

V. ADMINISTRATIVE AGENDA

A. Right of Way Resolution Number 2009-19

Ms. Dalton referred to the agreement for the use of the Town ROW incorporating the LPA's suggestions. She also pointed out one addition related to a suggestion that had been made by Mr. Mandel, now spelled out in paragraph 7, regarding damage done to the ROW by others, indicated by shaded areas in that paragraph.

Mr. Weimer asked for LPA comment. Ms. Shamp commented that she liked it with Mr. Mandel's suggested alteration.

Motion: Mr. Ryffel moved to approve the resolution.

Members were satisfied with this agreement and the addition suggested by Mr. Mandel, but there was brief discussion about what price index should be used for the insurance requirement to be included in the resolution. Mr. Mandel suggested the Municipal Cost Index, which shows the effects of inflation on the cost of providing municipal services.

Mr. Mandel seconded the motion.

Mr. Ryffel asked if someone builds out over the ROW and drops something out of a window, hitting someone on the head, is that what this kind of insurance covers? Mr. Mandel answered that this scenario could involve much more than just the litterer in a lawsuit. Ms. Dalton added that these builders/owners would have liability insurance whether or not they were actually over the ROW. Mr. Ryffel asked if that (the amount indicated by the index) would be a sufficient amount of insurance. Ms. Dalton said it is up to the recommendation of the LPA. Ms. Shamp wondered how it would be determined that the indicated insurance amount would be sufficient and who could advise the LPA as to a guideline. Ms. Dalton summoned the Town finance director to the meeting for an educated opinion.

Jack Green, Interim Town Manager, addressed the meeting in the absence of the finance director, and Ms. Dalton advised him that they needed to know if the insurance requirement amount should be indexed and what the amount should the minimum be. Mr. Green said they would need to know what the potential risk would be and said that there are too many types of exposures to possibly consider. There was discussion regarding this and many possible situations which may arise. Ms. Dalton pointed out that there is a requirement within the resolution that those using the ROW carry the required insurance and that they provide the Town a copy of the coverage policy each year when renewing their agreements. The suggestion was to have the finance director ask the FL League of Cities for guidance as to the amount to be carried and necessity to index appropriately.

After this discussion Mr. Weimer asked, and Mr. Ryffel as motion-maker and Mr. Mandel as seconder, assented, to the changes discussed.

Vote: 6-0 in favor.

B. Resolution 2009-20 LPA Policies and Procedures-Manual Amendment

Ms. Dalton printed out a comment from Mr. Mandel and distributed it to the members for discussion regarding emails and phone calls as ex-parte communications. There was discussion about these exchanges and how they are forwarded and recorded. The proper manner to report these communications would be to forward the information about any ex-parte communications to the Town clerk, with copies to the LPA attorney and the Community Development Director. Mr. Van Duzer agreed this would be fine for emails but not efficient for telephone communications, as it would be cumbersome and redundant. Telephone calls should be disclosed during the ex-parte announcements at the beginning of the hearing processes. Other members assented to this viewpoint.

Mr. Ryffel pointed out a part on page 5, under "Public Notice" wherein it states "the Town clerk shall advertise..." He wanted to change the "7 days" to be "10 days."

Ms. Dalton cautioned that this would make the notice even further in advance due to lead time for publishing the advertisement. Dr. Shockey also pointed out advertising items in Chapter 22 that provide minimum and maximum notification periods and said that if the minimum is raised too high the window for publishing a notice could become very small or there could be a conflict. There was discussion as to the requirements, notices, etc. The consensus was to keep the "7 days" but add "except as modified by the LDC."

Motion: Mr. Van Duzer moved to adopt Resolution 2009-20 with the modifications discussed.

Seconded by Mr. Mandel;

Vote: Motion carried 5-1, with Mr. Ryffel dissenting.

Motion: Mr. Ryffel moved to adjourn as the LPA and reconvene as the HPB.

Seconded by Ms. Kay;

Vote: Motion carried 6-0

It was noted that Mr. Mandel was excused for the remainder of this meeting.

VI. ADJOURN AS LPA; RECONVENE AS HPB

Ms. Shamp called the meeting to order at 1:52 PM with all members, except Mr. Mandel, present.

Ms. Shamp opened discussion regarding the concept of a budget, as discussed in the earlier workshop meeting. Mr. Weimer opined that there should be money in the Town's budget earmarked for the HPB and he feels that \$10,000.00 is an appropriate amount at this time. He is concerned that the HPB will be trapped into specific amount for specific line items and not have the flexibility required to fund proper projects. Mr. Van Duzer stated that he understands that there must be a reasonable budget amount spelled out for

Council to appropriate the necessary funds. Ms. Kay asked is the HPB to function as a separate body or be under the thumb of the Council with no certainties involving funds. Mr. Weimer said it is obvious that Council feels this is not the HPB's money and has no intention of allowing the HPB to spend it the way they see fit. There was further discussion about earmarking funds. Ms. Shamp also questioned what authority the HPB actually has regarding the spending of its own money. Mr. Ryffel also questioned why the Council refuses to release certain funds to the HPB when there is specific money budgeted for certain HPB projects. Mr. Weimer explained that the Council just admonished the HPB for asking for funds earmarked for specific projects, suggesting that the HPB shouldn't expect that budgeted money actually all be used for planned projects. Both Ms. Dalton and Mr. Weimer pointed out LDC sections wherein full authority and discretion is given to the LPA to make those decisions. Mr. Van Duzer mentioned that there was other funding that was not specifically earmarked and the HPB was vague about the way to use it, suggesting that money be specifically budgeted for recorded items to ensure they are used for only those projects. More discussion ensued. Mr. Van Duzer will gather information for costs involved with getting signs with everything needed for the display. Dr. Shockey will then get that information together before the next HAC meeting to resemble a budget. Dr. Shockey recalled that the Council had discussed putting some money into the budget for HPB for the coming fiscal year but was not sure if that was still being proposed. Mr. Weimer voiced his concern that funding should be in place or several of these projects, specifically the website design. He said that this is currently being left up to the staff, specifically Dr. Shockey, who he feels will not have the time to set up and keep an additional website running. Mr. Ryffel agreed and said that a committee such as this cannot exist without a budget. Ms. Kay suggested using some volunteers for this purpose and Mr. Ryffel agreed but stated that, for budgetary purpose, they must assume that there are no volunteers. Ms. Kay brought up using the Newton Cottage as an administrative building for the Town. Ms. Dalton advised that the Town did reject the idea of moving this structure to town-owned land to be used for their purposes.

Motion: Mr. Weimer moved to adjourn as the HPB and reconvene as the LPA.

Seconded by Mr. Ryffel;

Vote: Motion carried 5-0, with Mr. Mandel excused.

VII. ADJOURN AS HPB; RECONVENE AS LPA

Reconvened at 2:18 PM.

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Van Duzer only commented that he enjoyed the earlier joint meeting.

Ms. Kay - nothing to report.

Ms. Shamp wished to respond to an email that Mr. Ryffel wrote to County Commissioner Ray Judah. She said she agrees with Mr. Ryffel about renourishment being an issue for the LPA because it is a capital expense. She said she is opposed to this extensive project because the county has not taken responsibility for certain areas. Mr. Ryffel added to her comments and they both believe that this is a long-term and expensive project that may best be replaced by a smaller project to remedy the situation at the north end of the island.

Mr. Weimer added that he feels that the LPA should be able to pull together the expertise to make educated, economically sound suggestions to send to the Council in certain cases.

Mr. Mandel reported on the M&P meeting he attended, wherein Bay Oaks was discussed. He advised that the budget was also discussed and that funds are running low. There will be a presentation regarding the water utilities upcoming.

Mr. Weimer said he would add something back into the PnP manual that established that the Mayor, Town Manager and the LPA Chair will meet the 3rd Wednesday of the month at 1:00 PM in Oct., Jan., April and July and that the LPA and Council will establish a semi-annual workshop to be held in April and September, in keeping with the discussion at the joint meeting earlier.

IX. LPA ATTORNEY ITEMS

Ms. Anne Dalton thanked the LPA for their comments today.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Nothing to report.

XI. LPA ACTION ITEMS

- Gulfview-waiting for the Vacation Issue
- Vacation-TBD
- Historic Plaque Program-Ms. Shamp/Dr. Shockey; 10/5/09
- Pink Shell-10/16/09; Mr. Weimer
- Continued LPA hearings: Shipwreck-Jan. 12, 2010
- Storm Water-still waiting for report; TBD-10/13/09
- Seasonal Parking-9/29 final review before hearings; Dr. Shockey/Ms. Dalton
- Animal Control - Long Term-10/27/09; Dr. Shockey
- Code of Ethics-9/17/09 (with the add-ons)
- Alcoholic Beverages-TBD; 11/10/09
- Parcelization-topic for discussion; Dr. Shockey
- Present ROW resolution to Council-10/19/09; Mr. Van Duzer
- PnP revisions-next meeting

XII. PUBLIC COMMENT

No further comments.

Mr. Weimer asked for a motion to adjourn.

Motion: Mr. Ryffel moved to adjourn.

Seconded by Mr. Van Duzer;

Vote: Motion carried 5-0, with Mr. Mandel excused.

XIII. ADJOURNMENT

Adjourned at 3:02 PM.

Next meeting September 29, 2009

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____
Dennis Weimer, LPA Chair

- End of document

DRAFT - NOT APPROVED