

**FORT MYERS BEACH, FLORIDA  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
ZONING STAFF REPORT**

**TYPE OF CASE:** Special Exception

**CASE NUMBER:** SEZ2009-0002 (Taylor Recreation Waterslide)

**LPA HEARING DATE:** December 15, 2009

**TIME:** 9:00 AM

**I. APPLICATION SUMMARY:**

Applicant: Joseph G. Taylor, applicant authorized by Consolidated Realty Holdings (U.S.) Inc., and United Realty Holdings (U.S.) Inc., owners of the subject property.

Request: Special Exception in the DOWNTOWN zoning district to allow a commercial recreation facility, containing an amusement device (inflatable waterslide), on the subject property.

Subject property location: 1100 and 1130 Estero Boulevard. Legal description attached as **Exhibit A**.

Future Land Use designation: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): Vacant. The owner of an amusement device (inflatable waterslide) received a temporary use permit in early 2009 for its operation on the subject property.

Adjacent zoning and land uses:

Adjacent properties are designated as Pedestrian Commercial Future Land Use Map (FLUM) category, except beach, which is designated Recreation FLUM.

North: Estero Boulevard, then Seafarers' Plaza shopping center (zoned CPD)

South: Undeveloped beach (zoned EC).

East: Commercial building formerly housing a restaurant, then the Pierview Hotel, (both zoned DOWNTOWN).

West: Top O' Mast commercial parking lot, then Top O' Mast lounge, (both zoned DOWNTOWN).

## **II. ANALYSIS**

### **Introduction and Background:**

Joseph G. Taylor ("applicant"), with the authorization of Consolidated Realty Holdings (U.S.) Inc. and United Realty Holdings (U.S.) Inc. (owners of the subject property), has requested a special exception to allow a commercial recreation facility, with an amusement device (an inflatable waterslide), on the subject property. A commercial recreation facility may be allowed in the DOWNTOWN zoning district if approved by Town Council through the special exception process, as provided in LDC Tables 34-1 and 34-2. LDC Chapter 34, Article IV, Division 30 contains additional performance and locational requirements for recreation facilities, including amusement devices. The standards for review of special exception requests are provided by LDC Section 34-88.

### **Analysis:**

The subject property consists of two contiguous parcels that are the former site of hotels that were demolished following the damage wrought by Hurricane Charley. A proposal for full-scale redevelopment of this and adjacent vacant property has not been forthcoming and for the last two years the subject property has been vacant. The applicant obtained a temporary use permit, and has now applied for a special exception to allow the recreation facility and its waterslide to continue as a use on the subject property.

Commercial recreation facilities require a special exception to be allowed in the DOWNTOWN zoning district in part because of the wide range of activities and devices that could be involved, and the potential for impacts to neighbors from noise, crowds, and unsightly appearances that could be incongruous with the surrounding neighborhood. The standard requirements for amusement devices in LDC Section 34-2142 and the conditions for accessory uses may not be sufficient to mitigate the impacts of a specific activity at a specific site, and the special exception process allows Town Council to attach additional conditions crafted to address the specific issues at the location in question. This is the nature of a special exception process for zoning approval of a specific use.

In this case the proposed facility includes a large inflatable waterslide which is visible to all and sundry passing the subject property on Estero Boulevard and on the beach. As an amusement device, the waterslide is required by LDC Section 34-2142 to be set back at least 50 feet from any property under separate

ownership, and at least 100 feet from residentially zoned property or existing residential uses. Applicant's scaled site plan indicates that the device will be more than 50 feet from each property line. Residentially zoned property and existing residential uses are considerably more than 100 feet away from the location.

The recommended conditions mirror the conditions that were placed on the temporary use permit, and ensure that any commercial recreation facility that might be included within a future development project involving the subject property will receive the same level of review, and is not "pre-approved." The operating hours are recommended to be limited to the operating hours proposed by the applicant.

A variety of more intense uses of the subject property may be possible through future redevelopment. Regulatory incentives such as the "buildback" policies of the Comprehensive Plan remain in effect. The tacit presumption of the Comprehensive Plan's Community Design Element and the Land Development Code's form-based development standards in this neighborhood is that the potential for profitable redevelopment of the subject property in compliance with those standards will eventually be sufficient to encourage the property owner to pursue such redevelopment. In the mean time allowing this commercial recreation facility to operate, limited to the one requested waterslide, should not deter eventual redevelopment.

Staff's recommended conditions are intended to prevent potentially damaging impacts to the nearby beach and Gulf of Mexico and to limit the level of activity on the subject property. Limiting the level of activity is appropriate because it will prevent undue impacts to neighboring businesses and nearby residential areas, and will not encourage the property owner to continue this use indefinitely without considering potential redevelopment options.

### **III. RECOMMENDATION:**

Staff recommends **APPROVAL** of the requested Special Exception, subject to the following conditions, which are reasonably related to the request:

1. The inflatable slide may operate and be open to the public 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 B**.
7. This special exception will expire upon the adoption of a Town Council resolution or ordinance rezoning the subject property, or upon the issuance of a development order authorizing the construction of a walled and roofed building on the subject property, whichever comes first.

### Recommended Findings and Conclusions

1. Whether there exist changed or changing conditions [that] make approval of the request 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. Staff recommends the finding that, as conditioned, there **are** changed or changing conditions that make approval of the request appropriate.

2. Whether the request 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. Staff suggests that 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. Staff recommends the finding that approval of the request, as conditioned, **is consistent** with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

3. Whether the request 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 B**, 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. Staff recommends the finding that, as conditioned, approval of the request **does meet or exceed** all performance and locational standards set forth for the proposed use.

4. Whether the request 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. Staff recommends the finding that, as conditioned, approval of the request **will protect, conserve, or preserve** environmentally critical areas and natural resources.

5. Whether the request will be compatible with existing or planned uses and 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. Staff recommends the finding that approval of the request, as conditioned, **is compatible** with existing or planned uses and **will not** cause damage, hazard, nuisance, or other detriment to persons or property.

6. Whether the requested use will be in compliance with 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. Staff recommends the finding that, as conditioned, the requested use **will be** in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

#### **IV. CONCLUSION:**

The applicant came to an arrangement for the use of the subject property for this purpose, and the property owners authorized this application.

In the event a property owner chooses to pursue other redevelopment options more in keeping with the Comprehensive Plan's future vision for this area, the inclusion of commercial recreation facilities within such a redevelopment process should be reviewed by the Town Council once more at that time. Staff's recommended condition #7 will ensure this. Staff recommends **APPROVAL** of the request, as conditioned.

#### **Exhibits:**

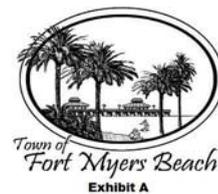
Exhibit A – Legal Description of Subject Property

Exhibit B – Applicant's site plan



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## 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).

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PRINCIPALS:  
WILLIAM E. BEAN, PSM, CHAIRMAN  
SCOTT C. WHITAKER, PSM, PRESIDENT  
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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.

ESTERO BOULEVARD

MCDONALD'S

ASPHALT PARKING

CONCRETE WALL

COASTAL CONTROL SETBACK LINE

INFLATABLE WATER SLIDE

ASPHALT PARKING

COVERED WOOD DECK

VACANT BUILDING

RESTROOMS

DUMPSTER

SUN DECK OVER CANOPY

COVERED WOOD DECK

ASPHALT PARKING

SEASONAL HIGH WATER LINE

CONCRETE STEPS

