

**PLANNING & ZONING BOARD  
WORKSHOP MEETING  
MINUTES  
NOVEMBER 7, 2011  
7:30 P.M.  
TOWN OF LAKE PARK**

**CALL TO ORDER**

Due to resignation of P&Z Board Chair Tim Stevens upon his election to the Town Commission, and the absence of Vice-Chair Judith Thomas at the beginning of the meeting, the Planning & Zoning Board Meeting was called to order at 7:30 p.m. by Board Member Robin Maibach.

**ROLL CALL**

Vice-Chair Judith Thomas	Present (arrived late at 7:45 p.m.)
Robin Maibach	Present
Natalie Schneider	Present
Roger Michaud	Present
Eddie McConville	Present
Mason Brown	Excused
Anthony Bontrager	Excused

**APPOINTMENT OF TEMPORARY CHAIR**

Town Attorney Baird stated that the first order of business this evening was to elect a temporary Chair for this Meeting, and also to elect a permanent Chair due to resignation of the Chair Tim Stevens upon his election to the Town Commission. Mr. Baird explained that since the Vice-Chair was not currently present, that the Board could choose either to temporarily appoint a Chair for this meeting, or vote to elect a Chair for the entire term. Since the Vice-Chair was not present, the P&Z Board chose to appoint a temporary Chair for this meeting only. Mr. Baird opened up the floor for nominations. Board Member McConville nominated Board Member Maibach and Board Member Schneider seconded the motion. There being no other nominations, the Town Attorney asked for a show of hands of those in favor of Board Member Maibach as temporary Chair for this meeting only, and the vote was as follows:

	Aye	Nay
Robin Maibach	X	
Natalie Schneider	X	
Roger Michaud	X	
Eddie McConville	X	

41 **The vote was unanimous and Board Member Maibach was appointed as the**  
42 **Temporary Chair.**

43  
44 **APPROVAL OF AGENDA**

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46 Temporary Chair Maibach requested a motion to approve the agenda as submitted. Board  
47 Member McConville made a motion to approve the Agenda as submitted. The motion was  
48 seconded by Board Member Michaud, and the vote was as follows:  
49

	Aye	Nay
Robin Maibach	X	
Natalie Schneider	X	
Roger Michaud	X	
Eddie McConville	X	

50  
51 **The Motion carried 4-0 and the Agenda was unanimously approved.**

52  
53 **APPROVAL OF MINUTES**

54  
55 Temporary Chair Maibach requested a motion to approve the Minutes of the May 2, 2011,  
56 Planning & Zoning Board Meeting as submitted. Board Member McConville asked a  
57 procedural question of the Town Attorney, that is, if it would be appropriate for her to vote  
58 on the approval of the Minutes, considering that she was not serving on the Board at the  
59 time of the May 2, 2011, Planning & Zoning Board Meeting. The Town Attorney indicated  
60 that it would be appropriate for her to vote. Board Member McConville then made a motion  
61 to approve the Minutes as submitted, and the motion was seconded by Board Member  
62 Michaud. The vote was as follows:

63

	Aye	Nay
Robin Maibach	X	
Natalie Schneider	X	
Roger Michaud	X	
Eddie McConville	X	

64  
65 **The Motion carried 4-0 and the Minutes of the May 2, 2011, Planning & Zoning Board**  
66 **Meeting were unanimously approved.**

67  
68 **NEW BUSINESS**

69  
70 **A. REZONING AND SITE PLAN REVIEW FOR MARINA VILLAGE P.U.D.**  
71 **for approximately 5,500 square feet of restaurant, an 18-hole mini-golf course**  
72 **and 7,023 square feet of office space. Applicant: Leasing of South Florida, Inc.**  
73

74 Nadia DiTommaso, Community Development Director, announced that the P&Z Public  
75 Hearing would be a public meeting and allow for public comments, but that staff is  
76 requesting that the meeting be structured as a Workshop for the following reasons:  
77

78 1) In order to have the opportunity to work with the Applicant on outstanding issues in  
79 order for Staff to be able to comfortably render a recommendation to the P&Z Board;  
80 and

81  
82 2) To provide the public and P&Z Board Members with additional time to review and  
83 voice their opinions.  
84

85 Ms. Di Tommaso explained however, that due to the strong public interest in this project  
86 and the fact that it was advertised as a Public Hearing, that members of the public  
87 wishing to address the P&Z Board would be permitted the customary three minutes to  
88 comment. She further explained that at this point, the application is not complete, but  
89 that the Applicant had requested that the Site Plan be presented to the P&Z Board as  
90 submitted. Ms. DiTommaso stated that Staff is requesting that at the conclusion of the  
91 presentations and the public comments, that the P&Z Board continue the Public Hearing  
92 to its regularly scheduled December 5<sup>th</sup> Meeting, so that the Project does not have to be  
93 re-advertised, unless the Board can determine a date and time certain in order to meet  
94 sooner.  
95

96 **Ms. Di Tommaso presented the following facts of the proposed application:**  
97

98 Location: 250' north of Silver Beach Road and between North Federal Highway and Lake  
99 Shore Drive

100 Existing Zoning: Underlying C1 (Commercial) and R2A (Residential)

101 Proposed Zoning: Planned Unit Development (P.U.D.), as outlined in the Town Code, is a  
102 more flexible zoning district which allows for the application of waivers in order to deviate  
103 from the standard property development regulations and allows for the relaxation of the land  
104 development regulations which govern the underlying zoning districts. The P.U.D. can  
105 utilize all of the underlying zoning districts within the P.U.D.

106 Existing Land Use Designation: Commercial/Residential and the application does not  
107 propose to change this land use designation.

108 Size of Property: Approximately 1.97 acres  
109

110 Ms. Di Tommaso explained that there are various aspects to this application - both the uses being  
111 proposed within the P.U.D. boundaries, as well as the uses being proposed outside of the P.U.D.  
112 boundaries within the Town's Right-of-Way.  
113

114 **Included Within the Official PUD Boundaries:**  
115

- 116 • Conversion of a 3,100 square foot home into a 3,100 square foot restaurant, with an  
117 additional 1,200 square foot Tiki Bar, and the rear of the property is proposed as an  
118 18-hole outdoor miniature golf course recreational facility
- 119 • Existing professional and yacht sales offices

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Areas Outside Official P.U.D. Boundaries Within Town Right-of-Way

- The Town Attorney has been asked to opine on these uses within the Town Right-of-Way, and the P&Z Board has been given a memorandum from the Town Attorney in response to this matter. Ultimately, the Town Commission is the governing body of these areas. These areas are platted for the perpetual use of the public, and must show public benefit. This Application is still under review by the Town, but is it ultimately Staff's recommendation to approve these uses due to their satisfactory public benefit and that they will continue to be for the use of the public. The P&Z Board can then make their recommendation to the Town Commission, who will in turn decide whether or not to approve these uses, after which if they are approved the Town Attorney would prepare a License Agreement between the Applicant and the Town for these uses.

Areas in the Right-of-Way

(1) Parking areas in front of 220 Lake Shore Drive and along the south side of 126 Lake Shore Drive

- Contrary to the Staff Report, the Applicant is recommending that these areas be left open to the perpetual use of the public. Staff will be working with the Applicant on the engineering of these spaces and justification of the public benefit.

(2) Fire-Pit and Passenger Drop-Off areas associated with the restaurant use on the western side of the property

- The Applicant explains these areas will be available to the public for extra viewing of the Marina. Staff will be working with the Applicant on this justification in order to incorporate additional pedestrian connectivity throughout the proposed area.

(3) Tiki Bar to be incorporated within the overall pedestrian promenade on the east side of Lake Shore Drive *(WOULD REQUIRE ROAD CLOSURE TO VEHICULAR USE ALONG THE EAST SIDE OF LAKE SHORE DRIVE AND REMAIN OPEN TO PEDESTRIAN TRAFFIC; WEST SIDE PROPOSED TO REMAIN OPEN TO TRAFFIC DRIVING SOUTH)*

- The Applicant explains this will provide an additional gathering area to the public. Staff will be working with the Applicant on this justification in order to incorporate additional pedestrian connectivity throughout the proposed area.

The Applicant is also requesting eight (8) Marina slips on Lake Shore Drive.

- Staff will incorporate this request into the License Agreement should the Town Commission wish to grant this request.

165 Ms. Di Tommaso explained that the Applicant is proposing four (4) waivers within the  
166 P.U.D. Zoning District, as follows:

167  
168 (1) NOISE

169  
170 The Applicant is proposing to maintain 65 decibels until 11:00 p.m. from Sunday through  
171 Thursday, and until 1:00 a.m. on Friday and Saturday evenings on Commercial property.

- 172
- 173 • Staff is working with the Applicant to determine the impacts this will have on  
174 neighboring residential properties, providing the Applicant has included a buffering  
175 wall and landscaping on both sides. Town Code limits the decibel levels on  
176 residential properties to 55 db before 7:00 p.m., and 50 db between 7:00 p.m. - 7 a.m.

177  
178 (2) PARKING

- 179
- 180 • 18 hole mini golf course = 36 spaces (2 spaces per hole). Board Member McConville  
181 questioned if a market study had been conducted to determine whether or not a mini  
182 golf course would be viable in this area. She recommended that a market study be  
183 considered.
  - 184 • 5,500 square foot restaurant & tiki bar = 66 spaces (12 spaces per 1,000 square feet)
  - 185 • 7,023 square foot office space = 36 spaces (5 spaces per 1,000 square feet)
  - 186 • TOTAL PARKING SPACES REQUIRED = 138 SPACES
  - 187 • The Applicant is proposing 71 spaces onsite and 67 spaces (49%) offsite. Town  
188 Code allows for up to 50% to be provided via onsite valet. A waiver is needed to  
189 allow 49% to be offsite valet. *Staff is working with the Applicant to identify valet*  
190 *areas and to define queuing and impacts in the passenger drop-off area in front of*  
191 *the fire-pit area, as well as traffic circulation patterns throughout the area.*

192  
193 (3) SETBACKS (2 WAIVERS)

- 194
- 195 • The side-yard setback on the existing single-family home structure is non-  
196 conforming to current Code. The Code requires a 10 foot setback, and the structure  
197 is set back only 3.23 feet.
  - 198 • The Applicant is also proposing a waiver for the front yard set-back for a Tiki Bar to  
199 be located directly in front of the restaurant, encroaching on to the front-yard setback  
200 and would only leave 10.7 feet, instead of the 30 foot requirement. *A separation side*  
201 *wall with landscaping is being proposed on both sides of the restaurant. These*  
202 *waivers will create additional street connectivity and Staff is working with the*  
203 *Applicant to add additional pedestrian connections in the front area of the proposed*  
204 *tiki bar to satisfy this waiver request.*

205  
206 (4) OPEN SPACE

- 207
- 208 • The P.U.D. Ordinance requires that the Applicant set aside 5% of the gross land area  
209 for public parks and/or recreation. *This project is roughly under 2 acres and given*

210 *the nature of the proposal which identifies several areas that are devoted to*  
211 *recreation, public access and open space, Staff feels this provision can be alternately*  
212 *satisfied and is in favor of this waiver.*  
213

214 In summary, Ms. Di Tommaso stated that Staff feels that this Workshop is highly beneficial  
215 and a work-in-progress, and that we look forward to hearing from the Board Members and  
216 the public on their comments and concerns. She thanked the members of the public who  
217 have contacted her, offering a lot of constructive comments and suggestions which have  
218 been incorporated into this presentation.  
219

220 Staff will continue to work with the Applicant on *pedestrian connectivity; noise waiver*  
221 *justifications; directional signage throughout the site; clearly defined valet areas; revisions*  
222 *to the survey as requested by the Town Engineer; engineering of the proposed "public"*  
223 *parking spaces in front of 220 Lake Shore Drive and on the south side of 126 Lake Shore*  
224 *Drive; detailed FDOT roadway standard information for driveway entrances along North*  
225 *Federal Highway, including access and details to existing parking spaces off of North*  
226 *Federal Highway, as well as other items mentioned throughout this presentation.*  
227

228 In conclusion of her presentation, Ms. Di Tommaso stated that Staff hopes to bring a more  
229 detailed application to the P&Z Board in the near future. Staff is recommending a  
230 continuance of the Application to the next regularly scheduled P&Z Board Meeting on  
231 December 5, 2011, or, Staff is available to meet on either November 21<sup>st</sup> or November 29<sup>th</sup>  
232 if the Board Members and the Town Attorney are available. Ms. Di Tommaso stated that it  
233 is important to schedule a date and time for the next P&Z Board Meeting. Ms. Di Tommaso  
234 stated that she is open for questions and that the Applicant is present.  
235

236 There were several items discussed by Members of the Board, including security measures;  
237 valet off-site; hours of operation of the mini golf course; lighting/foot candles; how the  
238 proposed property will affect residents; outdoor dining at the tiki bar; hedging/landscaping  
239 along both sides of the proposed walls and landscaped parking islands; interior parking; and  
240 thatched roofing.  
241

242 The Town Attorney recommended that, as a point of order, Board Members should hold  
243 their questions until after the Applicant makes their presentation, as many of their questions  
244 would be answered during the presentation. The Town Attorney mentioned that, as a matter  
245 of procedure and with no motion required, Vice-Chair Thomas could take over the meeting  
246 as Chair. Vice-Chair Thomas invited the Applicant to make their presentation to the Board.  
247

248 **PRESENTATION BY APPLICANT**  
249

250 Corey O’Gorman, of Place Planning & Design in North Palm Beach, introduced himself to  
251 the Planning & Zoning Board. He expressed that they have no formal presentation for this  
252 evening, but that they were here to listen to the comments of the P&Z Board and the public.  
253 Mr. O’Gorman stated that Town Staff did a good job of providing an overview of the  
254 proposed Project. Mr. O’Gorman indicated that plans had been submitted to Staff some  
255 time ago, and more recently, in order to complete the application, a justification statement

256 was submitted, which generated comments last week from Staff and Town Consultants. In  
257 response to the comments, they directed their design team to begin making revisions to the  
258 plans which they had hoped would be ready to be presented this evening. Mr. O’Gorman  
259 apologized to the Board that, regrettably, the plans were not completed in time. He  
260 expressed that the Staff comments in Staff Report had been reviewed and that the Applicant  
261 is prepared to work with Staff and Town consultants in order to satisfactorily address the  
262 issues. Tonight, if they can answer questions, they will or bring back answers at a follow-up  
263 meeting. Mr. O’Gorman stated that their hope is to be able to address all comments and  
264 concerns to the satisfaction of Town Staff and the Town Commission, so that they can make  
265 a positive recommendation at an upcoming meeting. He stated that the developer and the  
266 property owner/applicant are both present and are happy to answer questions from the Board  
267 and the public.

268

269 Vice-Chair Thomas requested that comments from the public be heard at this time and that  
270 upon conclusion of the public comments, the P&Z Board will have the opportunity to pose  
271 their questions and comments to the Applicant.

272

273

## 274 PUBLIC COMMENTS

275

276 The following individuals addressed the Planning & Zoning Board:

277

278 Jim Lloyd – 220 Lake Shore Drive

279

280 Mr. Lloyd expressed several concerns, including the fact that there are no plans ready to be  
281 presented by the Applicant is symptomatic of what is going on with the entire project; that it  
282 is interesting that there has been no mention made of an inter-local agreement; that the  
283 purchase of a piece of property, which was in foreclosure and appraised at \$626,000, was  
284 purchased by the Town for \$2.4 million; that the project will bring noise & light to nearby  
285 residents; and that the proposed promenade is going to require a \$5 million grant, and where  
286 is this money going to come from? Mr. Lloyd suggested that the Town needs to take a step  
287 back and look at this more closely.

288

289 John Beall

290

291 Mr. Beall stated that he has been a commercial and residential realtor in the area since 1996.  
292 Mr. Beall expressed that the Town of Lake Park has done a great job with the CRA District  
293 and with the local events held in Kelsey Park and at the Marina. He stated that the Marina is  
294 a commercial entity by nature, and the property owned by the Developer abuts the Marina,  
295 that the project would be a natural tie in and would enhance the Marina area. Mr. Beall does  
296 not believe that the project would hurt the surrounding property values, that the proposed  
297 mini golf course is high end, and would provide good entertainment for local families. He  
298 wholly supports the project and thinks that it will be a great addition to the Town.

299

300

301

302 Brent A. Headberg, PSM

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304 Mr. Brent Headberg stated that he has been a licensed professional surveyor in the State of  
305 Florida for 25 years, working in the engineering, planning & surveying business for over 40  
306 years and has vast experience on these types of projects, both on the private and public side.  
307 Mr. Headberg stated that upon receipt of notification of this Project in the mail, he had  
308 requested the telephone numbers and e-mail addresses of the Board Members and had  
309 written an e-mail expressing his position about the possibility of a private developer building  
310 a structure in the public right-of-way. He stated that subsequently, the Town Attorney had  
311 written a memorandum to the P&Z Board expressing his intent to address the issues that he  
312 has raised in various e-mails and at other meetings regarding the legality of the public right-  
313 of-way on Lake Shore Drive being utilized for private development. Mr. Headberg stated  
314 that he was not copied on this memorandum even though he was referenced within the  
315 document. Mr. Headberg further stated that there are several issues that he disagrees with,  
316 including the Plat of Kelsey City, which was the subdivision map that provided these public  
317 streets and roads for access to the private property owners of the land and was dedicated to  
318 the perpetual use of the public, and not the Town, because the Town was not in existence  
319 when the Plat was recorded. Therefore, the Town, when Incorporated, became the Trustee.  
320 He does agree with the Town Attorney that the Trustee is the Town holding these roads for  
321 purposes of maintenance, but does not believe that the Town has the right to decide what to  
322 do in the public right-of-way without a public hearing and without abandonment procedures  
323 to close the road and become the deed owner of the land, especially when the Town is going  
324 to write a legal document leasing public right-of-way to a private developer. Mr. Headberg  
325 stated that he stands firm in his opinion that it is illegal to lease public right-of-way to a  
326 private developer. He thanked the Board for considering his professional opinion on this  
327 matter.

328

329 Jim Telepman

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331 Mr. Telepman stated that he is a North Palm Beach attorney representing the 84 unit owners  
332 of the Lake Harbor Towers South Condominium Association. Mr. Telepman stated that the  
333 condominium owners in Lake Harbor never envisioned having a tiki bar located in their  
334 backyard. He expressed concern that this development is not a family-friendly proposition,  
335 but will instead be adults eating and drinking into all hours of the nights, making noise,  
336 creating traffic problems and lights a block away from their house. Further, this  
337 development is not compatible with the surrounding use and does not belong in this  
338 community. Mr. Telepman expressed that consideration of this project should not go  
339 beyond this preliminary meeting. He further expressed that clearly the developer was not  
340 ready for the presentation and does not have a plan for the required parking or where the  
341 valet lots will be, etc. He does not understand why there is a need to continue this meeting  
342 beyond tonight - the consideration of placing a commercial development within a residential  
343 area. Also, the proposed development is not consistent or compatible with the Town's  
344 Comprehensive Plan. Mr. Telepman requested, on behalf of the Lake Harbor Towers South  
345 Condominium Association, that the P&Z Board recommend to the Town Commission that  
346 this development be rejected.

347



348 Jorge Quintero

349

350 Mr. Quintero, a 17-year resident of 301 Lake Shore Drive expressed his strong objection to  
351 this proposed project. He stated that the idea of an outdoor tiki bar in a residentially zoned  
352 neighborhood, surrounded by residential property, is hard to fathom how it could even be  
353 considered by the P&Z Board or the Town. He further stated that he doesn't believe the  
354 project is consistent with the Town's Comprehensive Plan and that there are numerous  
355 stated policies within the Comprehensive Plan which specifically address the issue of  
356 protecting neighborhoods from incompatible uses – and that this proposed development is  
357 clearly is an incompatible use. Mr. Quintero stated that he lives 10 feet from the proposed  
358 development and that there would be no amount of walls or landscaping which could protect  
359 neighboring properties from the level of noise from the tiki bar. Please ask yourself if you  
360 would want this development in your backyard or your front yard?

361

362 John Mede

363

364 Mr. Mede, a 10-year resident of 201 Lake Shore Drive addressed the P&Z Board and  
365 expressed that he enjoys the solitude of living on Lake Shore Drive. Mr. Mede stated that he  
366 sees both sides of this issue, and sees the potential economic benefit to the Town to attract  
367 patrons to the Town and to make the Lake Park Marina more viable. Mr. Mede requested  
368 the Board to look at this proposed development from a win-win perspective. He stated that  
369 he has met with both developers and some Town Commissioners and shared his position  
370 with them. He lives less than 100' from this proposed project and it will impact his  
371 everyday life. Mr. Mede requested the P&Z Board to look at it from his perspective – to  
372 maintain the current quality of life and to have the area improved – he wants both. He can  
373 support the project, but not under the conditions submitted by the developer – so, go ahead  
374 with the restaurant, but do not put a tiki bar on the pedestrian promenade. Allow the project  
375 but in a way which makes it more acceptable to the adjacent neighbors. Mr. Mede  
376 suggested that the P&Z Board should recommend to the developer that they modify their  
377 plan in order to eliminate the tiki bar on the promenade, and have the support of the adjacent  
378 neighbors, or ignore their request and anticipate further objection.

379

380 William Rose

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382 Mr. Rose, a 6 year resident of 201 Lake Shore Drive, is on the Board of Directors of Lake  
383 Harbor Towers South Condominium, and is representing himself and other residents. He  
384 believes that he is speaking for the majority of the residents against the noise level  
385 anticipated from the proposed outdoor tiki bar. He stated that he is personally not against  
386 the restaurant, but is against the noise level from a tiki bar on public land and the foot traffic  
387 and car traffic, which could also become a safety issue. Mr. Rose expressed that there is no  
388 amount of landscaping or sound barriers which would prevent the noise from traveling over  
389 to the buildings. Also, the noise/sound levels from a tiki bar would affect potential sales of  
390 the units in the future; make the residents unhappy, make the property values will go down  
391 and the tax base decrease. The development would not be fair to the residents.

392

393

394 Diane Bernhard

395

396 A resident of 301 Lake Shore Drive. Ms. Bernhard expressed that the average income of  
397 most of those who live in Lake Park is under \$35,000 per year, per household. We are  
398 discussing a high end development. She realized that she and some of her neighbors will not  
399 be able to afford to utilize these facilities and will give up their precious property for profit  
400 that they will not be able to share. We are looking to build something that most of the  
401 residents will not be able to go to. The Town of Lake Park squandered their money and now  
402 must include outside developers who are looking to make a profit. Ms. Bernhard expressed  
403 concern regarding the decibel level on the waterway which is delivered on water molecules  
404 to a higher degree than on air molecules, so neighboring communities will also be affected.  
405 She also expressed concern regarding congestion and foot traffic coming from the tiki bar,  
406 creating a safety issue.

407

408 Chair Thomas thanked the public for offering their valuable input and suggestions and  
409 requested comments from the Planning and Zoning Board Members.

410

411 Board Member Michaud's thoughts were regarding how the project might produce revenue  
412 for the Town in a time of economic downturn; that the mini-golf aspect of the project is  
413 appealing, as it would provide a family oriented atmosphere, but expressed that the tiki bar  
414 should be separate from the mini-golf. Board Member Maibach questioned the square  
415 footage of the waterfront Riviera Beach tiki bar.

416

417 Board Member Schneider stated generalized comments since the plans in front of them are  
418 different from the plans which would potentially be brought forward - Staff needs to work  
419 with the developer; that she is glad this is a workshop rather than an actual hearing wherein  
420 they would make a recommendation to the Town Commission; that she is highly  
421 disappointed that these plans were brought forward to the P&Z Board in this state;  
422 questioned whether the developer has met with Board of the condominiums surrounding this  
423 area; concern that the noise and light studies contained within the plans do not address the  
424 spillage onto abutting properties; concern that the noise generated from the tiki bar area  
425 would travel across the water to neighboring condominiums was not addressed; great concern  
426 that there has been no market study for mini-golf; concern regarding the pedestrian access to  
427 the tiki bar across the street; concern that the applicant did not actually have presentation for  
428 tonight; concerned that the plans were brought forward prematurely and that a lot of people  
429 came out and spent their time. Board Member Schneider expressed that there is a wrong  
430 way and right way of creating economic development and this was too soon to bring it  
431 forward to the P&Z Board, that this is not the right way. She further stated that the Town  
432 wants economic development and something that would be compatible to the area; but it  
433 needs to be done in the right way, with sensitivity to the surrounding residential area. A lot  
434 more work needs to be done with the community since they are integrally involved with  
435 what is being done there.

436

437 Board Member McConville expressed she has served on the P&Z Board before and she tries  
438 her best to do her due diligence; but that it was an injustice to her to receive the plans at 4:00  
439 on Friday, and that she had no opportunity to do her homework on a plan of this nature. She

440 requested that the P&Z Board receive their plans at least 5 days prior to a meeting so they  
441 have the opportunity to do the due diligence that the Town Commission and the taxpayers  
442 expect of the Board. She stated that she is adamantly in favor of a development at the  
443 Marina but cannot say at this time that it is this project. The mini golf course does not show  
444 any link to the high end clientele boaters who come in to have something to eat and enjoy  
445 the ambiance of the Marina. She would like to see an aquarium or school of oceanography  
446 or something to educate our children; she has concerns that there were no market studies  
447 done on a miniature golf course and not enough traffic studies or fire department studies  
448 done that would normally come before P&Z. Board Member McConville suggested that  
449 the fire pit and tiki bar be moved to the back of the restaurant, leaving Lake Shore Drive as  
450 it is. She is happy that this is a workshop and there is a lot more work to do and commended  
451 Staff for getting all of this together.

452

453 Chair Thomas apologized for arriving late at the meeting. She stated that she echoes a lot of  
454 the sentiments heard tonight from the Board and the public, and she is encouraged that there  
455 are business owners that want to invest in the Town of Lake Park. She stated that she does  
456 not understand what the applicant actually wants from the Board, as the plans received are  
457 more like conceptual plans - that the P&Z Board duty is to look at site plans which are  
458 complete and prepared in a professional manner so they can make professional comments;  
459 her job is not to design the site plan for the developer, but to ensure that the site plan which  
460 is submitted is consistent with the Town Codes and Comprehensive Plan; she expressed  
461 disappointment that she received the plans which were a lot to review with such a short  
462 period of time to provide educated information; and upon review, she found a lot of  
463 roadblocks: public property which is part of the intricate development with no agreement or  
464 public hearing on the private use of the public property. She questioned what is the public  
465 benefit for closing a public road, what is the public compensation? Board Chair Thomas  
466 also expressed concern there is no traffic circulation plan regarding spillover traffic from  
467 this development onto Silver Beach Road and U.S. One and other roads; and that these plans  
468 are really conceptual, and are you asking the Board to make a recommendation on a  
469 conceptual plan? There are so many deficiencies on the plans that have been presented and  
470 she has many concerns. Chair Thomas requested clarification as to why the performance  
471 standards for noise, which is a general performance standard, would be a P.U.D. rather than  
472 a overall variance by the Board of Adjustment? Ms. Di Tommaso explained that the P.U.D.  
473 allows for the applicant to request a waiver from the noise ordinance, and staff is still  
474 looking for further justification as to the impact of the noise waiver. Chair Thomas stated  
475 that light and noise, which create public nuisances, are issues which should be brought  
476 before the Zoning Board of Adjustment, outside of the P&Z Board, since they are deviating  
477 from the Code. Lastly, Chair Thomas stated she is confused and concerned regarding the  
478 issue of valet parking. There needs to be further clarification on the parking issue and if we  
479 are going to use property for private use that is actually in the public trust there needs to  
480 some type of approval by the Town Commission beforehand, and she does not want to  
481 review something that is arbitrary. The Town Attorney explained that one of the reasons  
482 that the parking and use of public property is being brought at the same time is that the  
483 representation is that there is a public benefit, and there has to be a public benefit in order  
484 for the Commission, who holds that land in trust for the public; to allow it to be used,  
485 whether it is compensation or some other public benefit, there has to be that exchange of

486 benefits between the two. The Town Attorney further stated that, at this point, there is no  
487 identifiable public benefit and thus we do not have an agreement to bring to either the P&Z  
488 Board or the Town Commission and that is one of things that will need to be addressed as  
489 the project moves forward. Chair Thomas suggested to Staff that once that area is  
490 delineated that it be appraised, so there is some value to it.

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492 **APPLICANT COMMENTS**

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494 The Applicant commented that they just received comments from Staff and their consultants  
495 less than a week ago and they were going to pull it off of the agenda for this evening, but it  
496 was recommended that it makes sense for everyone to go ahead this evening in order to get  
497 input from the public and to be sensitive to the neighbors. He further stated that this was  
498 meant to be a simple workshop and they weren't prepared to do a presentation because the  
499 plans changed last week, based on comments requiring a major change, therefore they were  
500 not ready for a presentation.

501

502 Chair Thomas asked the Community Development Director what is the requirement for  
503 deadline submittal for her review so that she can prepare comments and present them back  
504 to the Applicant? Ms. Di Tommaso stated that, typically, they would like to have everything  
505 reviewed and finalized by the time the Public Hearing is scheduled, two (2) weeks prior to a  
506 regularly scheduled meeting. Chair Thomas asked the Town Attorney that, since this was  
507 P&Z Meeting was advertised as a public hearing, but was actually conducted as a public  
508 workshop, should we continue the public hearing to a future date? The Town Attorney  
509 replied that it would be best to continue the public hearing to the next P&Z Hearing on  
510 December 5<sup>th</sup>, which should give the applicant time to address the concerns that have been  
511 expressed, and also to save the Town the cost of re-advertising. Chair Thomas inquired as  
512 to what would happen if the Applicant was not prepared for the December 5<sup>th</sup> Hearing. The  
513 Town Attorney replied that the hearing would need to be cancelled and re-advertised for  
514 another date.

515

516 **COMMENTS FROM THE COMMUNITY DEVELOPMENT DIRECTOR**

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518 Community Development Director Nadia DiTommaso stated that the public reiterated a lot  
519 of the issues that are being addressed and are outstanding on this project. She thanked  
520 everyone for coming out and looks forward to seeing everyone at the next Hearing.

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522 **MOTION TO CONTINUE PUBLIC HEARING**

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524 Board Member Schneider made a motion to continue the Meeting until the next regularly  
525 scheduled December 5<sup>th</sup> P&Z Board Meeting. Board Member McConville seconded the  
526 motion, and the vote was as follows:

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	Aye	Nay
Judith Thomas	X	
Robin Maibach	X	
Natalie Schneider	X	

Roger Michaud	X	
Edie McConville	X	

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**The Motion carried 5-0, and the P&Z Board unanimously agreed to continue the Public Hearing until the next regularly scheduled P&Z Board Meeting on December 5<sup>th</sup>, 2011.**

**APPOINTMENT OF PERMANENT CHAIR**

Board Member McConville questioned whether or not it would be appropriate to make a motion to appoint a Chair now that all Planning & Zoning Board Members were present. The Town Attorney indicated that it would be appropriate. Board Member McConville nominated Judith Thomas as Chair and Board Member Maibach seconded the motion. The Town Attorney asked if there were any other nominations, and there were none. Therefore, the vote to approve Judith Thomas as Chair of the P&Z Board was as follows:

	Aye	Nay
Judith Thomas	X	
Robin Maibach	X	
Natalie Schneider	X	
Roger Michaud	X	
Edie McConville	X	

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**The Motion carried 5-0, and the P&Z Board unanimously appointed Judith Thomas as the Chair of the Planning & Zoning Board.**

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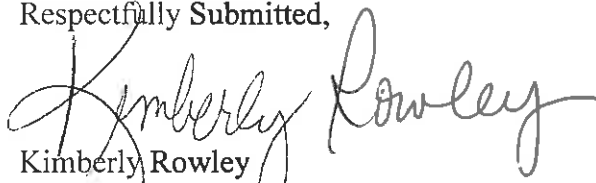
**ADJOURNMENT OF MEETING**

Board Member Schneider made a motion to adjourn the meeting. The motion was seconded by Board Member McConville, and the meeting was adjourned at 8:55 p.m.

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Respectfully Submitted,

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Kimberly Rowley  
Planning & Zoning Board Secretary

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**PLANNING & ZONING BOARD APPROVAL:**

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Planning & Zoning Board Chair

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DATE:

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5/17/2012

Attorneys and Counselors

# Memo

**To:** Planning & Zoning Commission  
**From:** Thomas J. Baird, Town Attorney  
**Date:** November 4, 2011  
**Subject:** Dedication of ROW by Plat of Kelsey City

The Commission has received much email correspondence from Mr. Brent Headberg, including most recently an email dated November 2, 2011 concerning issues associated with Lake Shore Drive. In the November 2, email, Mr. Headberg, who is a licensed Professional Surveyor and Mapper raises some well informed questions regarding legal issues associated with the Plat of Kelsey City. This memo is intended to address the issues Mr. Headberg has raised in his various emails and offer the Planning and Zoning Board (and ultimately the Town Commission) guidance with respect to the legal issues which have been raised. It is not intended to suggest any particular policy that either the Board, or the Commission should adopt.

In the November 2, email, Mr. Headberg notes that the Kelsey City Plat is a legally binding "document," the purpose of which is to transfer title to land. I agree. Next, with respect to the ownership of rights-of-way dedicated to the perpetual use of the public, he notes that "nowhere will you find a deed to the streets that conveys title to the street to the Town of Lake Park." Again, I agree. Nevertheless, a Plat is also a means of transferring ownership of property, and in this case, the dedication language contained in the Plat of Kelsey City **does operate to legally transfer title of the streets** to the Town "for the perpetual use of the public." There is long standing court precedent for this. Once a street or road right-of-way has been dedicated by plat for the public, the local government where it is platted (in this case the Town) becomes the legal owner which is authorized to maintain, widen, alter, change, or discontinue the street or right-of-way. See Roney Inv. Co. v. City of Miami Beach, 127 Fla. 773, 174 So. 26 (Fla. 1937). This is so because "the public" cannot collectively own and maintain roads. Thus, the roads are held "in trust" by the Town for the benefit of the public. The Florida Supreme Court long ago recognized that a municipality holds a street dedicated for the benefit of the public in trust for the public. Accordingly, it is the Town Commission as the governing body of the Town who ultimately makes decisions regarding the maintenance and use of the roadways.

Mr. Headberg has also questioned the Town's authority to restrict, or close a public road. This issue has been the subject of court opinions in Florida since the mid-1900s. The Florida Supreme Courts have consistently opined that the use of public streets is the responsibility of the governing body of the municipality, and that the governing body may allow for the encroachment by private interests on publicly dedicated land. Lincoln Road in Miami Beach is but one example of a decision to close, but not abandon a public street. Lincoln Road is one of the main business streets in the City of Miami Beach. The City decided to close a portion of Lincoln Road (between the Westside of Washington Avenue and the east side of Alton Road) and to convert it into a promenade or mall from which all vehicular traffic is excluded. The City removed the existing sidewalks and the roadway pavement. It replaced these improvements with walks, ramps, landscaped areas, fountains, pools, walls, shelters and seating to create a pedestrian Promenade. In appearance, it is more like a linear park, but remains open and accessible to the public, and there are businesses which are located along the "road." The Court was asked to decide whether the City had the right to construct a promenade and to limit this portion of the road to pedestrians. The Court ruled that the City could "close" the street to vehicular traffic thereby turning a portion of Lincoln Road into a pedestrian Promenade.

The site plan proposed by the developer of the Marina Village PUD proposes that the Town close the eastern lane of Lake Shore Drive to vehicular traffic, and that this lane be used as a pedestrian promenade, and that a Tiki Bar be situated in a portion of the right-of-way. The developer also proposes that a portion of the western right-of way of Lake Shore Drive be used for parking, a "drop off" area, and for a fire pit with seating, all uses associated with the development of a restaurant located on the Developer's property. Given the authority cited above, it is clear that the Town Commission may permit the use of property dedicated for the benefit of the public provided the Commission determines that the use of the public's property is not to benefit purely private interests. In other words, there must be some public benefit associated with the Commission's decision to allow the use of the property it holds "in trust" for the public.