



# AGENDA ITEM REQUEST FORM

## Development Services

Department Submitting Request

## Jeff Bowman

Code/Zoning Supervisor 

**REGULAR**  
**COMMISSION MTG**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

**ROUNDTABLE/**  
**SPECIAL MEETING**  
**Meeting Dates / TIME**

**DEADLINE TO**  
**Town Clerk**  
**7 Days Prior (noon)**

- July 12, 2011
- July 26, 2011 SPECIAL BUDGET 5:30 PM
- July 26, 2011

- July 01 (5:00 pm)
- July 15 (5:00 pm)
- July 15 (5:00 pm)

- Insert Date/Time
- Insert Date/Time
- Insert Date/Time

\*Subject to Change

- |                                       |   |                                       |   |
|---------------------------------------|---|---------------------------------------|---|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports        | <input type="checkbox"/> Consent      | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution   | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business         |

**FY2011 DESIGNATED HIGH PRIORITY ITEM**  
**PRIORITY TOPIC:**

**SUBJECT TITLE: First Reading of Ordinance 2011-14 (Exhibit 1), Amendments to Notice of Intent (NOI) Procedures**

**EXPLANATION:** This item was discussed by the Town Commission on three (3) separate occasions (December 14, 2010 / January 25, 2011 / June 14, 2011) with direction that Staff and the Town Attorney look at options for modifying the NOI procedure to shorten the process. Because the NOI procedure is itself a Land Development Regulation, an NOI for possible modifications to the process was approved at the January 25, 2011 Commission meeting. Resolution 2011-01 (**Exhibit 2**) approving the NOI and authorizing the drafting of proposed changes to Chapter 30-531 is attached.

Under the current process, enacting a change to our Land Development Regulations takes an additional two (2) to three (3) months over what the statutory procedures provides. Amending Land Development Regulations pursuant to state statute involves a minimum of a public hearing, a recommendation by the Planning and Zoning Board, and two readings of an Ordinance by the Town Commission, at least one of which must involve a public hearing. Thus, the statutory process allows the public the opportunity to learn about the change and provide their input at three (3) public meetings. The NOI process allows for public input at an earlier point in the process than does the statutory procedure but, at that stage, the proposed change is not normally well-defined.

We looked at several alternatives to the current NOI process, including exempting minor changes from the NOI process. We propose keeping all Land Development Regulation changes in the NOI process but recommend:

1. Altering the process to save one month in the process. This is accomplished by the Commission holding a public hearing on the proposed resolution at the same time as it adopts the resolution, rather than adopting the resolution and then holding a later public hearing.
2. Adding language clarifying that multiple ordinances can be adopted to address an issue under a single NOI.
3. That the Commission would determine at what date development applications must conform to pending changes in regulations.
4. That the Commission may extend the time frame of the NOI and may amend the resolution authorizing the NOI, provided the total time frame does not exceed one year.



**BOARD RECOMMENDATION:** At its meeting on July 20, 2011, the Planning and Zoning Board recommended approval, with one recommendation which has been incorporated into the attached Ordinance. The Board recommended the Ordinance be revised to clarify to read that applications for development approvals that had been submitted prior to the effective date of the NOI, or the date otherwise established by the Town Commission, would not be subject to the new regulations of the NOI. This was accomplished by amending section 30-531(h)(1), lines 163-168.

**RECOMMENDATION:** We recommend approval of the proposed ordinance on first reading.

**EXHIBITS:** Exhibit 1 – Ordinance 2011-14  
Exhibit 2 – Resolution 2011-01  
Exhibit 3 – Minutes of the Planning and Zoning Meeting

Reviewed by Town Attorney  
 Yes  No

Town Manager Initials CH

# Exhibit 1

## ORDINANCE 2011-\_\_\_

1           **AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-**  
2           **THE SEA, AMENDING SECTION 30-531, OF THE CODE**  
3           **OF ORDINANCES TO AMEND REQUIREMENTS**  
4           **RELATED TO NOTICE OF INTENT PROCEDURES;**  
5           **PROVIDING FOR CODIFICATION, SEVERABILITY,**  
6           **CONFLICTS AND AN EFFECTIVE DATE**

7  
8  
9           **WHEREAS**, the Town Commission recognizes that changes to the adopted Code of  
10 Ordinances (the “Code”) are periodically necessary in order to ensure that the Town’s land  
11 development regulations are current and consistent with the Town’s planning and regulatory  
12 needs; and

13           **WHEREAS**, Section 30-531 “Notice of Intent”, of the Code, provides an administrative  
14 procedure for notifying the public and the development community when the Town undertakes  
15 changes in the land development regulations, and for assuring that those development  
16 applications filed during the time that such regulations are being developed will have to comply  
17 with the eventually adopted regulations; and

18           **WHEREAS**, the Town Commission desires to revise the Notice of Intent provisions to  
19 streamline them and provide greater flexibility in the timing of the adoption process for land  
20 development regulations so that the Town Commission and/or Planning and Zoning Board can  
21 accommodate additional research and community input without violating or needing to modify  
22 the Notice of Intent; and

23           **WHEREAS**, Section 30-531 of the Code requires issuance of a Notice of Intent prior to  
24 the processing of any amendment to the land development regulations in Chapter 30 of the Code,  
25 and such notice was given of this amendment on January 25, 2011; and

# Exhibit 1

## ORDINANCE 2011-\_\_\_

26           WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has  
27 reviewed this Ordinance at a duly noticed hearing on May 18, 2011 and recommended its  
28 adoption; and

29           WHEREAS, the Town Commission conducted a first and second reading of this Ordinance  
30 at duly noticed public hearings, as required by law, and after having received input from and  
31 participation by interested members of the public and staff, the Town Commission has determined  
32 that this Ordinance is consistent with the Town's Comprehensive Plan and in the best interest of the  
33 Town, its residents, and its visitors.

34           **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**  
35 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:**

36           **SECTION 1. Recitals.** The foregoing "Whereas" clauses are ratified and confirmed as  
37 being true, correct and reflective of the legislative intent underlying this Ordinance and are  
38 hereby made a specific part of this Ordinance.

39           **SECTION 2. Amendment.** Section 30-531, Notice of Intent, of Chapter 30, Unified  
40 Land Development Code, is hereby amended<sup>1</sup> as follows:

41           **Section 30-531. Issuance of notice of intent; effect on proposed development.**

42           (a)     *Statement of intent.*

43           (1)     The Town, from time to time, will propose changes to the Land  
44 Development Code of the Code of Ordinances ~~of the Town of Lauderdale-~~  
45 ~~By-The-Sea.~~

46           (2)     The purpose of this section is to provide an administrative procedure for  
47 the public and the development community to be notified of certain  
48 changes in the land development regulations, as defined herein, which  
49 may impact proposed plans for development within the Town of  
50 Lauderdale-By-The-Sea as early in the Code revision process as possible.  
51 This will ~~to~~ best ensure that affected parties do not unnecessarily expend  
52 time, money and resources on any proposed development projects which  
53

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<sup>1</sup> Words in ~~strike through~~ type are deletions; words in underlined type are additions.

# Exhibit 1

## ORDINANCE 2011-\_\_\_

54 will be subject to but in conflict with such amendments to land  
55 development regulations.

56 (3) It is further the purpose of this section to ensure that ~~upon the issuance of~~  
57 ~~the notice of intent, as hereinafter provided~~ subsequent to the date or point  
58 in the development approval process at which the proposed development  
59 regulations apply as designated in the Notice of Intent, no proposed land  
60 development project affected by a pending regulatory change shall be  
61 approved by any Town Officer, Official, Commission, Board, Agency or  
62 Body, whether elected or appointed, unless it said proposed land  
63 ~~development project~~ (i) conforms with the pending regulatory change  
64 and/or (ii) the proposed land development project approval is conditioned  
65 on such conformance pursuant to the pending regulatory change as  
66 currently drafted or as finally approved, whichever is appropriate.

67

68 (b) *Regulations subject to notice of intent.*

69 (1) Pending regulations subject to the notice of intent procedure, as provided  
70 within this section, shall include development regulations as defined by  
71 F.S. § 163.3213, as amended from time to time, and comprehensive plan  
72 amendments which are a condition precedent to land development  
73 regulatory changes.

74 (2) Land development regulations which provide only for regulations of  
75 residential accessory uses shall not be subject to this section.

76

77 (c) *Definitions.* As used in this section:

78 *Affected parties* includes persons owning property or persons owning or operating  
79 a business within the boundaries of the Town of ~~Lauderdale By The Sea~~ whose  
80 development application or application for a permit or license is pending.

81 *Development activity* means application for a master plan, site plan, rezoning,  
82 building permit, variance, or business tax receipt.

83 (d) *Notice of intent authorization/effective date/ratification by Town Commission.*

84 (1) The Town Commission shall conduct a public hearing regarding the  
85 investigation, study, development, drafting or consideration of changes to  
86 any land development regulation and shall, by resolution, either approve  
87 or disapprove, the further processing of the proposed regulation which is  
88 the subject matter of the notice of intent.

89 (2) At the time the Town Commission approves the resolution, authorizes, by  
90 resolution, the investigation, study, development, drafting or consideration  
91 of a changes to any land development regulation that requires issuance of  
92 a notice of intent, a notice of intent of the pending regulatory change shall  
93 be issued. The effective date of the notice of intent shall be deemed to be  
94 the date of said authorization approval by the Town Commission.

# Exhibit 1

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- 95                   (3) Changes to the Code which implement the authorized changes may be  
96                   adopted in a single ordinance or multiple ordinances during the effective  
97                   period, including any time extensions, of the notice of intent.
- 98                   (2) ~~At the next Commission meeting following the notice of intent, members~~  
99                   ~~of the public shall have the opportunity to address the Town Commission~~  
100                   ~~in a public hearing format relative to a filed notice of intent. After the~~  
101                   ~~public hearing the Town Commission by majority vote shall either~~  
102                   ~~approve or disapprove the further processing of the proposed regulation~~  
103                   ~~which is the subject matter of the notice of intent.~~
- 104
- 105                   (e) *Statement of purpose.* The notice of intent shall include:
- 106                   (1) A statement of purpose;
- 107                   (2) A brief description of the pending regulatory change which shall include  
108                   as much specificity as possible including an indication of the provisions of  
109                   the existing code that may require modification; recognizing however, that  
110                   changes may occur as the pending regulation proceeds through the  
111                   drafting, review, public meeting and public hearing process;- ~~The~~  
112                   ~~description shall include a statement of the possible effect that the pending~~  
113                   ~~regulation may have on development. In addition, the description shall~~  
114                   ~~provide an indication of the provisions of the existing code that may~~  
115                   ~~require modification;~~
- 116                   (3) A statement of the projected time frame for the adoption of any  
117                   ordinance(s) addressing the pending regulation(s), which shall be within  
118                   one year from the date of approval of the notice of intent if not specified  
119                   by the Commission;
- 120                   (4) A statement specifying the date (the “Conformance Date”), or point in the  
121                   development approval process, at which, of the point in the development  
122                   ~~approval process at which~~ all applications must either i) conform to the  
123                   pending regulation(s), or ii) be conditioned upon future compliance with  
124                   the pending regulation(s). ~~the pending regulation would apply.~~
- 125
- 126                   (f) *Posting of notice.*
- 127                   (1) The notice of intent shall be posted, on the Town’s website, and in a  
128                   conspicuous location in the development services department, and ~~in a~~  
129                   ~~conspicuous location in~~ Town Hall.
- 130                   (2) From and after the issuance of the notice of intent, applicants for  
131                   appropriate licenses, permits, and other applicable development  
132                   applications, including but not limited to plats, site plans, rezonings,  
133                   variances, business tax receipts, and building permits, ~~shall be provided~~  
134                   ~~written notice of the pending land development regulatory changes which~~  
135                   ~~may potentially affect the applicant. Applicants shall~~ shall be notified of  
136                   notices of intent relevant to their application ~~be provided written notice by~~  
137                   ~~certified or regular mail and through the availability of notices in the~~

# Exhibit 1

## ORDINANCE 2011-\_\_

138 development services department, posting of notices on the Town's  
139 website, and the by posting of the notices of intent as prescribed herein.  
140 To the extent that affected parties have comments, they may ~~shall~~ be  
141 ~~afforded the opportunity to~~ file written opinions or objections with the  
142 Development Services Director.

143 (3) Neither the failure of the Town to provide ~~written-posted~~ notice nor the  
144 failure of an applicant for development to observe the posted notice ~~nor~~  
145 ~~the failure of the Town to provide posted notice~~ shall invalidate the  
146 applicability of this article to said applicant for development approval.

147  
148 (g) *Implementation time frame.*

149 (1) A pending regulatory change that is subject to the notice of intent  
150 procedure shall be considered by the Town Commission at a public  
151 hearing within a the time period(s) prescribed ~~in by the Town at the time~~  
152 ~~of the filing of the notice of intent.~~

153 (2) If additional time is required for study and deliberation, ~~due to the scope~~  
154 ~~of the proposed regulatory changes or arising from procedural issues, upon~~  
155 ~~a majority vote of the Town Commission may amend the authorizing~~  
156 resolution, to extend the time prescribed ~~by the Town~~ in the notice of  
157 intent, provided the total implementation time, as extended, does not  
158 exceed one year. ~~may be extended for an additional period of time~~  
159 ~~approved by the Town Commission upon expiration of the initial period of~~  
160 ~~time stated in the notice of intent.~~

161 (3) If no final action has been taken by the Town Commission within the time  
162 limits set forth herein, the notice of intent will expire.

163 (h) *Effect on pending or proposed development permits.*

164 (1) A notice of intent shall have no effect on any application for development  
165 activity (a master plan, site plan, rezoning, variance, building permit, or  
166 business tax receipt) pending for approval on the effective date of a notice  
167 of intent, or the Conformance Date, whichever is later. ~~December 12,~~  
168 ~~2000 or approved on or before December 12, 2000.~~

169 (2) ~~Except as provided in [subsection] (1) above, n~~No application for  
170 development activity (a master plan, site plan, rezoning, variance, building  
171 permit, or business tax receipt) shall be accepted for processing by the  
172 Town following the date specified by the Town Commission in the Notice  
173 of Intent, issuance of a notice of intent unless (i) said application conforms  
174 with the pending regulatory change and/or (ii) the application is  
175 conditioned on such conformance pursuant to the pending regulatory  
176 change as currently drafted or as finally approved, whichever is  
177 appropriate.  
178

# Exhibit 1

## ORDINANCE 2011-\_\_

179 (i) ~~Evidence of general~~ Strict compliance not required. Evidence of general  
180 compliance with the procedures and requirements of this section of the Code shall  
181 be sufficient to ~~preventsustain~~ the land development regulation from being  
182 invalidated for the failure to strictly comply with this section upon adoption.

183  
184 (j) *Copies to Planning and Zoning Board.* The Planning and Zoning Board shall be  
185 provided with a copy of all notices of intent upon issuance.  
186

187 **SECTION 3. Codification.** This Ordinance shall be codified in accordance with the  
188 foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall  
189 become and be made a part of the Town of Lauderdale-by-the-Sea Code of Ordinances; and that the  
190 sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be  
191 changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such  
192 intentions.

193 **SECTION 4. Severability.** If any section, sentence, clause, or phrase of this Ordinance  
194 is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding  
195 shall in no way affect the validity of the remaining portions of this Ordinance.

196 **SECTION 5. Conflicting Ordinances.** All prior ordinances or resolutions or parts thereof  
197 in conflict herewith are hereby repealed to the extent of such conflict.

198 **SECTION 6. Effective Date.** This Ordinance shall become effective immediately upon  
199 passage on second reading.

200 Passed on the first reading, this \_\_\_\_ day of \_\_\_\_\_, 2011.

201 Passed on the second reading, this \_\_\_\_ day of \_\_\_\_\_, 2011.

202  
203  
204  
205

\_\_\_\_\_  
Mayor Roseann Minnet

206

First Reading

Second Reading

# Exhibit 1

## ORDINANCE 2011-\_\_\_

207 Mayor Minnet \_\_\_\_\_  
208 Vice-Mayor Dodd \_\_\_\_\_  
209 Commissioner Clotney \_\_\_\_\_  
210 Commissioner Sasser \_\_\_\_\_  
211 Commissioner Vincent \_\_\_\_\_  
212

213 Attest:

214 \_\_\_\_\_  
215 Town Clerk, June White, CMC

216 (CORPORATE SEAL)

217 Approved as to form:

218 \_\_\_\_\_  
219 \_\_\_\_\_  
220 Town Attorney, Susan L. Trevarthen

RESOLUTION NO. 2011-01

1           **A RESOLUTION OF THE TOWN COMMISSION OF THE**  
2           **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA**  
3           **PROVIDING FOR ISSUANCE OF A NOTICE OF INTENT**  
4           **CONCERNING PENDING LAND DEVELOPMENT**  
5           **REGULATIONS**  
6

7           **WHEREAS**, Section 30-531 of the Code of Ordinances of the Town of Lauderdale-By-  
8           The-Sea (the "Code") provides for a procedure for the public and the development community to  
9           be notified of changes to the Town's land development regulations through the issuance of a  
10          notice of intent of pending land development regulations; and

11          **WHEREAS**, pursuant to Section 30-531(b) of the Code, the Town Commission shall  
12          authorize the investigation, study, development, drafting and consideration of all proposed  
13          amendments to the Town's land development regulations, and related comprehensive plan  
14          amendments; and

15          **WHEREAS**, the Town Commission, in the process of revising the permitted uses in  
16          business districts in Ordinance 2010-15, identified uses for possible inclusion in the business  
17          districts as "Conditional Uses" which require issuance of a notice of intent pursuant to Section  
18          30-531(h) of the Code; and

19          **WHEREAS**, there is a need to provide a uniform approach to Conditional Use  
20          procedures and possibly to revise other development review procedures as needed; and

21          **WHEREAS**, an evaluation of the size of fuel storage tanks for generators within the  
22          Multi-family and Business Districts should be conducted to ensure the ability of facilities to  
23          comply with Florida Statutes; and

24          **WHEREAS**, the Town Commission has directed that the Notice of Intent procedures be  
25          reviewed to provide notice to the public while streamlining the Land Development Code

# Exhibit 2

26 amendment process and providing flexibility in the adoption process to accommodate research  
27 and public input; and

28 **WHEREAS**, the Town Commission has directed a review of regulations addressing  
29 Walls and Fences; and

30 **WHEREAS**, the Town is working with Town residents and businesses and design  
31 professionals to develop a vision for the future of the Town; and

32 **WHEREAS**, revision of the architectural standards and review criteria to address this  
33 vision and achieve consistency between the Town's Master Plan and Land Development  
34 Regulations is being considered; and

35 **WHEREAS**, the Town Commission desires to study the potential for, and impacts of,  
36 providing for wine bar uses in certain zoning districts; and

37 **WHEREAS**, Section 30-531(f) of the Code provides for posted written notice of the  
38 pending amendments; and

39 **WHEREAS**, pursuant to Section 30-531(d) of the Code, the Town Commission shall  
40 hold a public hearing at the next Commission meeting following issuance of a notice of intent,  
41 and by majority vote shall either approve or disapprove the further processing of the proposed  
42 amendments.

43 **NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF**  
44 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

45 **SECTION 1. Authorization.** Pursuant to Section 30-531 of the Code of Ordinances,  
46 the Town Commission authorizes the investigation, study, development, drafting and  
47 consideration of the proposed comprehensive plan amendments, as described in the Notice of  
48 Intent of Pending Comprehensive Plan Amendments attached hereto as Exhibit "A."  
49



Exhibit "A"

**Notice of Intent of Pending Land Development Regulations**  
**Effective January 25, 2011**

**1. Statement of Purpose:** In accordance with Section 30-531 of the Code of Ordinances, the Town hereby issues this **Notice of Intent** to notify the public of proposed changes to the land development regulations of Chapter 30 of the Code of Ordinances ("Code"). Upon Town Commission approval of the further processing of the proposed regulations, the amendments will be scheduled for hearing and adoption by ordinance.

**2. Description of Proposed Amendments to Chapter 30 "Unified Land Development Regulations" of the Code of Ordinances:**

- a. Amending Section 30-261 and Section 30-271 to include Conditional Uses within the Business Districts.
- b. Amending Chapter 30 to address Conditional Use procedures and possibly to revise other development review procedures as needed.
- c. Amending Section 30-313 to increase the allowable size of fuel storage tanks for generators within the Multi-family and Business Districts and address additional regulations related to generators.
- d. Amending Article IX, Notice of Intent of Land Development Regulations, Section 30-531 to streamline the Land Development Code amendment process and provide flexibility in the adoption process.
- e. Amending Section 30-313 regarding fencing and cement or concrete walls.
- f. Amending Section 30-9 and Section 30-124 (15) Architectural Standards and Review Criteria.
- g. Amending Section 30-261 and Section 30-271 to provide for wine bars within the Business Districts.
- h. Amending any code sections relating to the above referenced issues and sections as necessary to address the subject matter.

**3. Projected Time Frame for Adoption of Regulations and Plan Amendments:**

- a. Public Hearing and Town Commission Approval  
to Proceed with Proposed Amendments: February 22, 2011
- b. Planning and Zoning Board Meetings: February, 2011 – September, 2011
- c. Adoption of Ordinances February, 2011 – September, 2011

**4. Application of Pending Regulations:**

The proposed regulations shall become effective and applicable to development within the Town following second reading and adoption by ordinance.

**TOWN OF LAUDERDALE-BY-THE-SEA**  
**PLANNING AND ZONING**  
**REGULAR MEETING MINUTES**  
*Town Commission Meeting Room*  
*Wednesday, July 20, 2011*  
**6:30 P.M.**

**I. CALL TO ORDER**

Chairman Alfred Oldaker called the meeting to order at 6:30 P.M. Members present were Chairman Alfred Oldaker, Vice Chair Yann Brandt, Ben Freeney, Patrick Murphy and First Alternate Eric Yankwitt. Also present were Bud Bentley, Assistant Town Manager, and Town Attorney Kathryn Mehaffey. Board Secretary Colleen Tyrrell was present to record the minutes of the meeting.

**II. PLEDGE OF ALLEGIANCE TO THE FLAG**

The Pledge of Allegiance was recited.

**III. APPROVAL OF MINUTES - Planning and Zoning Meeting of June 15, 2011**

There being no additions, deletions or changes to the minutes, all voted in favor to approve the June 15, 2011 minutes as presented.

**IV. PUBLIC COMMENTS**

There were no public comments.

**V. NEW BUSINESS**

**Item #1: Proposed Amendments to the Notice of Intent Regulations.**

Chairman Oldaker asked Town Attorney Kathy Mehaffey to review the proposed amendments to the Notice of Intent Regulations.

Town Attorney Mehaffey said that the code as it is at this moment, has a provision that essentially provides additional notice for any amendments to the Land Development Code (LDC). Under statutory processes, any amendments to the LDC takes about two to three months with two meetings before the Town Commission and a meeting before the Planning and Zoning Board. The Notice of Intent procedures add additional hearings and notice by currently requiring first a meeting where they present the Resolution and the Notice of Intent followed by another meeting at which they have a public hearing on the Notice of Intent. At that point, then a land development change would move forward. That Notice of Intent procedure adds approximately two months to any amendment to the LDC process. It also has restrictions in terms of the requirement to stay within the confines of what was noticed. This items makes some changes to the Notice of Intent procedures which are intended to shorten and streamline the process to make it more user friendly and more amenable to the actual development of land development regulations. First it provides that the public hearing for the Notice of Intent be held on the same day as the Notice of Intent Resolution that was adopted by the Town Commission. So the primary time savings is by cutting that Notice of Intent process in half. It adds additional language to clarify that a land development regulation proposed for adoption underneath a Notice of Intent can be addressed in multiple ordinances. This helps the public to be more aware of the situation when they are following the Notice of Intent. It allows the Town Commission to provide a date for when those items are going to be heard in terms of a timeline or if the Town Commission does not identify a date, it provides a one year default. The Town Commission may extend the timeframe of an NOI by amending the approving Resolution.

Town Attorney Mehaffey distributed a draft change of the Ordinance beginning on line 156 and noted that the changes were indicated by the red text. Originally, the Town Commission could provide two extensions for six months. This change that was just passed out to the board

# Exhibit 3

Planning & Zoning Minutes – July 20, 2011

eliminates those two extra extensions and puts a maximum timeframe of one year for a Notice of Intent. The reason for this change was due to the recent legislative session that just closed, the legislature amended the Bert Harris Act and changed some of the definitions and provisions such that an inordinate burden is now found to occur as early as one year. Town Attorney Mehaffey said that we do not want this process to extend beyond a year so as to trigger any Bert Harris claims. If the Town Commission sets a six-month timeframe for a development regulation, they could still do an extension provided the extension does not exceed one year. If the default is for one year, then no extension can be granted beyond that year. Town Attorney Mehaffey closed and asked the board for comments.

Ben Freeny asked, with regards to the initial meeting, at that point the Town Commission develops and passes the Resolution and that would also be the public hearing.

Town Attorney Mehaffey confirmed his comments.

Mr. Freeny asked what kind of notification is required and what would be the state requirements for notification that would have to proceed that meeting and how could the commission do that if they don't do the Resolution until that meeting.

Town Attorney Mehaffey said that it would be a regular meeting notice and the Resolution is prepared on the agenda so that the notice of what is going to be at that meeting is in the agenda and the Resolution would be there and the Notice of Intent is attached. Town Attorney Mehaffey said that would put everyone on notice one month before anything starts getting developed with the Planning and Zoning Board.

Chairman Oldaker asked Town Attorney Mehaffey to go through the ordinance draft page by page and give a brief review of the changes.

Mr. Freeny referred to line 137 and said that they were removing the requirements to provide notice to anybody that is involved in the land development process and removing the notice by mail or certified mail and we would be relying strictly on the web-site and posting the notice in Town Hall. Mr. Freeny said that he was uncomfortable with that change and felt that basically everyone would have to stroll by Town Hall once a week or so just to see if they were going to have issues with a permit that has been issued or they may be in the process of negotiating or trying to develop a plan.

Chairman Oldaker asked how many applications would the Town have at any given time that would make it burdensome for the Town to mail a certified letter. Chairman Oldaker asked Mr. Bentley if he knew from his experience, how many applications would the Town have at any one time.

Mr. Bentley, Assistant Town Manager, responded that with the experience the Town has had this past year with this down economy, there were not many applications if any that were in the pipeline.

Town Attorney Mehaffey said that this entire thing requires that from and after the issuance of the Notice of Intent, which means that it applies to everybody that comes in. If something is in the pipeline already, most likely it would not apply. The purpose of the Notice of Intent is to put everyone on notice from that point forward that something was going to change.

Mr. Bentley said that if an application has been submitted, it would be processed according to the rules that are in place at the time of submission. So, if someone submitted a site plan application, they would not be affected by a Notice of Intent.

Mr. Freeny said that when he reads this, he could interpret it either way. For example, if yesterday he applied for a permit to put up a new roof, he would be an applicant. And, if today we have a meeting and he lives out of the country and his builder is going to take care of the roof for him, Mr. Freeny doubts that he would ever see a Notice of Intent at Town Hall. Mr. Freeny suggested that the language be made clearer that it's the applicants after that point in time from when we would have that initial meeting.

Town Attorney Mehaffey said that the language could be clarified but said just for the record, to go back and apply it retroactively creates significant legal impositions to the point that normal interpretation would not support that interpretation. Town Attorney Mehaffey said that she could make those changes as long as staff had no objection.

Town Attorney Mehaffey said that f.(2) could be reworded to say, "applicants making application from and after the issuance of the Notice of Intent".

Mr. Freeny said that he would prefer that change because when you read through the code there are a lot of unclear statements.

# Exhibit 3

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Mr. Bentley directed the board's attention to the first line that states "From and after the issuance of the Notice of Intent" and then the whole paragraph flows from that.

Mr. Freeny said that is why he could read it both ways. He could understand that angle but from and after that point in time, there is no definition on what the applicant is. Is the applicant someone that has an application that they just submitted yesterday? Is it someone that walks in tomorrow?

Mr. Bentley said that was an excellent point. Mr. Bentley said that if the application was submitted yesterday, and the Notice of Intent was approved tonight, then this applies the moment the notice is approved and after and would not be retroactive and there is a lot of case law that supports that. Mr. Bentley said that Mr. Freeny's suggestion is that the Town Attorney take a fresh look at this and try to strengthen on when the Notice of Intent would apply. Mr. Bentley said that staff is very supportive of doing that and asked that this be included in the board's motion.

Town Attorney Mehaffey continued to review changes page by page.

Mr. Brandt asked if we were afraid that a Notice of Intent is going to impose a yet-to-be finalized land development change on an existing application that came before the date of the Notice of Intent.

Town Attorney Mehaffey said that she believed that was the concern.

Mr. Brandt said that he sees words in the code that pieced together would get to that affect but it is definitely not the intent and he did not see how anyone would read it or any court would agree with that. Mr. Brandt did not see how a Notice of Intent by itself would impose rules on an existing application.

Mr. Freeny said that Mr. Brandt mentioned "an existing application" and said that those words were not in the document. Mr. Freeny said that he was leary because several years ago the Town passed height restrictions when we knew there would be legal problems and he is not only looking at today but at the future and if language could be clarified to explain what the code says, it leaves less leeway for interpretation by attorneys.

Mr. Brandt said that he thought in lines 56 through 66 it did say it and it was clear and states that "no proposed land development project affected by a pending regulation change". So no proposed land development means it has been proposed – it's been there and is in existence. Mr. Brandt said that in his opinion the reason why court cases fail in the suits against the Town was because there was nothing proposed and it might have been an idea in their boardroom and the Town was never noticed that a project was coming on. Mr. Brandt again said that this is clear and that really the intent of this whole thing was to just reduce the requirements and reduce the bureaucracy that the Town has to go through for a proposed land development change. Mr. Brandt did not see how anyone would want to impose the new proposed rule on an existing project.

Town Attorney Mehaffey asked if it would be clearer if it read ( line 56 (3) "It is further the purpose of this section to ensure that no land development project proposed subsequent to the date or point of development approval process at which the proposed development regulations apply as designated in the Notice of Intent". Town Attorney Mehaffey said she could talk about this with staff and if this would be something that Mr. Freeny would like to include in his motion as a recommendation.

Mr. Freeny agreed.

Town Attorney Mehaffey continued the page by page review.

Mr. Brandt said for Mr. Freeny's purposes asked if all of the changes and concerns be fixed if line 122 was changed to state "all new applications must either i) conform to the pending regulation(s), or ii) be conditioned upon future compliances with the pending regulation(s). One word would fix it all.

Town Attorney Mehaffey said she did not have a problem with that.

Mr. Bentley said that he was so engrained that anything before this is not part of it and said that new applications would be fine and that is the intent.

# Exhibit 3

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Chairman Oldaker said that everything discussed in the prior pages would be disregarded and asked if Mr. Freeny was okay with adding the word "New" to line 122.

Mr. Freeny referred to paragraph 3 line 56 and said that he would like it noted in that section what this applies to because that is basically what it is telling us that it should apply to subsequent applications after the Resolution for the Notice of Intent.

Mr. Bentley said that when the Town Attorney reviews the document, she would be consistent in adding the word "new" to apply to where it is needed.

Chairman Oldaker said that if the board passes this forward, there would be an addition to add the word "new".

Town Attorney Mehaffey said that it could be passed forward with clarifications to address that this applies to new applications.

Town Attorney Mehaffey continued the page by page review.

Chairman Oldaker referred to (g) implementation timeframe and asked why it was extended from six months.

Town Attorney Mehaffey said that it provided extension periods of six months. So, it actually provided for eighteen months. There is a one year implementation timeframe and then the Town Commission could do two time extensions for a total of an additional six months which would have been eighteen months. Now the total time cannot exceed one year.

Mr. Bentley asked Town Attorney Mehaffey to take a look at lines 164 through 167 in terms of putting back that language and just removing the dates and specify that it has no affect on any application pending approval prior to the Notice of Intent and then we would not have to deal with new applications old or existing throughout the text.

Chairman Oldaker asked the board if a motion was in order.

Mr. Brandt made a motion, seconded by Mr. Yankwitt, to pass this on to the Town Commission with the Board's recommendation to approve the proposed Amendments to the Notice of Intent Regulations as presented by Staff. In addition the Town Attorney would modify the language to show that the Notice of Intent would not apply to existing applications.

In a roll call vote, the motion carried 5 – 0. All voted in favor of the motion.