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## MEMORANDUM

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**TO:** Mayor Jason Haselkorn  
Vice Mayor Jim Lyons  
Members of the Town Council

**FROM:** Leonard G. Rubin, Town Attorney

**RE:** Substance Abuse Treatment Facilities (Beach House Center for Recovery)

**DATE:** May 20, 2016

**CC:** Joseph Lo Bello, Town Manager  
Ruben Cruz, Planning and Zoning Director  
Vanessa Mutchnik, Town Clerk

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The Town Council requested additional information regarding the Beach House Center for Recovery, a residential substance abuse treatment facility located in the former Seminole Plaza. The purpose of this memorandum is to explain the background and methodology leading to the creation of the Medical Commercial Zoning District and the establishment of the facility at this location.

A. Venus Drive Property

For well over two decades, the property located at 461 Venus Drive ("Venus Drive Property") had been utilized as a "halfway house" for persons undergoing treatment for alcohol and substance abuse addiction. Sometime prior to 2006, the Venus Drive Property transitioned to a residential substance abuse treatment facility, where actual treatment services were being performed on site.

In 2013, current Town Staff learned that the Recovery Resources was operating a seventeen bed residential substance abuse treatment center, including residential detoxification services, at the property located at the Venus Drive Property. In response, the Town issued a Notice of Violation alleging that the Property was in violation of Section 34-333 (Permitted Uses in the RMT Zoning District) and Section 34-1221 (Community Residential Homes) of the Town Code of Ordinances. Staff met with representatives of Recovery Resources, who requested that they be permitted to seek a "reasonable accommodation" from the Town's Code for persons with disabilities, as required by both the Fair Housing Act and the Americans with Disabilities Act.



To assist in this process, the Town retained the services of the Weiss Serota law firm, which had represented both the City of Boca Raton and the City of Delray Beach in protracted litigation regarding the establishment of sober homes/recovery residences and residential treatment centers within these municipalities. The Weiss Serota firm drafted a reasonable accommodation procedure (termed a Zoning Relief procedure), and the Town Council adopted the procedure by resolution.

The Town was faced with two primary legal hurdles:

First, the owner of the Venus Drive Property had relied on the prior use of the property for residential substance abuse treatment and residential detoxification treatment when purchasing the property.

Second, the Town did not allow residential substance abuse treatment or residential detoxification treatment in **any** zoning district within the Town. This subjected the entire Zoning Code to challenge, opening the door for any residential treatment provider to establish this use in any location within the Town.

With respect to the Venus Drive Property, Town Staff's primary goal was to eliminate residential substance abuse treatment and residential detoxification treatment, which are essentially commercial enterprises, from the Town's residential zoning districts. Recovery Resources filed an application for Zoning Relief. The Zoning Relief proceeding ultimately concluded with the entry of an Agreed Order approved by the Town Council, allowing sixteen beds of residential treatment on the Venus Drive Property: no more than seven (7) beds utilized for Level I Residential Treatment Services for a period of ten (10) years; and no more than nine (9) beds utilized for Residential Detoxification Services for a period of five (5) years. The continued use of the Venus Drive Property was subject to numerous conditions, including, but not limited to, a restriction that such treatment services must occur within a newly constructed single-family structure.

As the Council is well aware, Recovery Resources subsequently sold the Venus Drive Property, and the Council approved an Agreement with the new owner whereby the property owner waived and disclaimed any right to utilize the Venus Drive Property for any type of substance abuse treatment services.

**Goal One Achieved: The Town eliminated residential substance abuse treatment services from all residential zoning districts.**

B. Code Revisions to Address Substance Abuse Treatment and Sober Homes

As explained above, the Town Code did not allow residential substance abuse treatment services of any type in **any** zoning district, notwithstanding the fact that it allowed Assisted Living Facilities in both the Commercial General ("CG") Zoning District and the Commercial Office ("CO") Zoning District. Town Staff's goal was to prevent any additional challenges to the Zoning Code and retain full control over where such uses could be

established in the future. With the assistance of the Weiss Serota firm, Staff initially identified two locations for such uses, Seminole Plaza and the “point lots” north of the intersection of U.S. Highway One and Ocean Drive. All of the properties were within the CG Zoning District. The Weiss Serota firm also drafted an ordinance providing for the creation of a new Medical Commercial (“MC”) Zoning District, which incorporated all of the CG Zoning District regulations and allowed both residential substance abuse providers and assisted living facilities as permitted uses.

Town Staff brought forward three ordinances for consideration by both the Planning and Zoning Board and the Town Council:

1. An ordinance creating the Medical Commercial Zoning District;
2. An ordinance rezoning Seminole Plaza to the MC Zoning District; and
3. An ordinance rezoning the “point lots” to the MC Zoning District.

The Planning and Zoning Board recommended removing the northernmost parcel (currently occupied by the County Fire Station) from the point lot rezoning ordinance to allow the future rezoning of the property to a governmental use and to provide a buffer from the adjacent residential use. The Town Council ultimately determined that the Seminole Plaza property was the only appropriate location for the newly created MC Zoning District. If the Town Council had not acted proactively, the entire Zoning Code could have been challenged and a residential substance abuse treatment provider could have sought to establish this use in any location within the Town.

**Goal Two Achieved: The Town limited residential substance abuse treatment services to a single commercial property not immediately adjacent to residential uses and located along a major arterial roadway and foreclosed future challenges to its Zoning Code.**

C. Medical Commercial Zoning District Ordinance

Town Ordinance No. 668 codified the previously adopted Zoning Relief Procedure and provided for permitted and special exception uses within the MC Zoning District.

In adopting this Ordinance, Town Staff had a secondary goal of taking whatever action it could to regulate sober homes/recovery residences (where no treatment occurs on site) within its residential zoning districts. Such facilities are protected by both the Fair Housing Act and the Americans with Disabilities Act and municipalities cannot restrict or prohibit them. However, Ordinance No. 668 amended the definition of the term “family” to limit it to a group of related persons or a group of no more than three unrelated persons occupying a dwelling as a single housekeeping unit. Consequently, any potential sober home operator seeking to establish a facility for more than three persons within a single residential dwelling or unit would be required to file an application for Zoning Relief in

accordance with the established procedure, which includes a proceeding before the Town's hearing officer and a public hearing. Additionally, either the potential operator or Town Staff may appeal the hearing officer's decision to the Town Council, which makes the final determination. Unlike most other beachfront communities in the County, Town Staff is not aware of any sober home currently operating within the Town.

**Goal Three Achieved: The Town required any potential sober home/recovery residence operator to apply for zoning relief (or reasonable accommodation) prior to establishing such a facility for more than three unrelated persons in any of the Town's residential zoning districts.**

At its April 25, 2016 Goal Setting Workshop, members of the Council inquired about the "density" for residential substance abuse treatment providers established in Ordinance No. 668.

The Town's goal was to establish a legally defensible standard. Section 34-851(20) of the Town Code provides that a residential substance abuse treatment provider is a permitted use within the MC Zoning District, subject to a maximum density of 18 dwelling units per acre. Eighteen dwelling units per acre is the maximum density under the Zoning Code for residential uses and is the same density applied to Assisted Living Facilities. Therefore, the most legally defensible approach in crafting this Ordinance was to apply that same density to residential substance abuse treatment facilities. Both the Americans with Disabilities Act and the Fair Housing Act prohibit disparate treatment of similar types of uses based on the type of disability. As the Council is well aware, persons undergoing treatment for substance abuse are considered "disabled" pursuant to the Americans with Disabilities Act.

While the Town could have adopted a "number of beds" approach, this was not consistent with the standard set for a similar type of use (Assisted Living Facilities) already permitted within the Town. Furthermore, other municipalities, such as the City of Boca Raton, allowed up to seventy-five beds per acre, which seemed far too intense for the Town. The only other option, as discussed below, was not to adopt any maximum density or number of beds and rely on existing Code requirements, including site development standards, to limit the number of occupants.

**Goal Four Achieved: The Town adopted a legally defensible density standard for residential substance abuse treatment providers.**

D. Beach House Center for Recovery

The operator of the Beach House Center for Recovery purchased Seminole Plaza in 2014. Prior to purchasing the property, the operator sought clarification regarding the number of beds that could be placed on the property for residential substance abuse treatment. As set forth above, residential substance abuse providers are subject to a maximum permitted density of 18 dwelling units per acre.

The Town Code defines a dwelling unit as “a group of rooms designed, used exclusively or occupied as separate living quarters by a single family.” However, the proposed facility would not be divided into separate living quarters; rather, it would consist of sleeping rooms with common living and dining areas. Therefore, the Town was required to convert the maximum number of dwelling units to a maximum number of beds.

According to the definitions set forth in the Town Code, a dwelling unit may only be occupied by a single family, and a family can consist of no more than three unrelated individuals. Therefore, the maximum number of beds for this facility was calculated as follows:

$$\frac{18 \text{ (maximum number of dwelling units per acre)} \times \text{(multiplied by)}}{3 \text{ (maximum number of unrelated individuals per dwelling unit)}} = \text{(equals)}$$

54 individuals or beds per acre

This is still far less than the number of beds per acre permitted by other municipalities.

At 54 beds per acre, the maximum number of individuals or residential beds for a residential substance abuse treatment facility utilizing the entire Seminole Plaza property would be 277 (calculated by multiplying 54 by 5.13, the total number of acres). However, if only a portion of the existing square footage is being utilized by a residential substance abuse provider, the maximum number of beds would be reduced by the percentage devoted to other uses. The facility would also still need to meet all other applicable Zoning Code requirements:

- Setbacks
- Parking
- Lot Coverage
- Landscaped Open Space

Additionally, there are Building Code, Housing Code and Fire Code requirements that limit the occupancy of structures and impose living space requirements. Many other municipalities do not even set a maximum density or maximum number of beds, relying instead on these Code requirements to limit the total occupancy of the facility.

The operator of Beach House Recovery is currently approved by the Department of Children and Families for fifty (50) beds and has no plans to expand the residential substance abuse treatment component of the property beyond 108 beds, representing only 39% of the maximum number of beds for the entire property.

E. Summary of Town's Position

The Town has taken all steps necessary to be in compliance with the current laws governing the regulation of substance abuse treatment facilities, yet offer the most regulatory protection possible for the integrity of its residential single-family neighborhoods.

The Town, through its elected leaders, has responsibly and proactively accomplished each of the following goals without exposing the Town to protracted and costly litigation:

**Goal One: The Town eliminated residential substance abuse treatment services from all residential zoning districts.**

**Goal Two: The Town limited residential substance abuse treatment services to a single commercial property not immediately adjacent to residential uses and located along a major arterial roadway and foreclosed future challenges to its Zoning Code.**

**Goal Three: The Town required any potential sober home/recovery residence operator to apply for zoning relief (or reasonable accommodation) prior to establishing such a facility for more than three unrelated persons in any of the Town's residential zoning districts.**

**Goal Four: The Town adopted a legally defensible density standard for residential substance abuse treatment providers.**

The laws governing the regulation of substance abuse treatment facilities and sober homes/recovery residences, and the application of the Fair Housing Act and the Americans with Disabilities Act to such uses, are constantly changing and evolving. All of the representations set forth herein are based on the codes, statutes, regulations and case law as they exist today.

Should you have any additional questions, please do not hesitate to contact me.