



MINUTES
FORT MYERS BEACH TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

April 21, 2008

3:00 PM

I. CALL TO ORDER

Mayor Kiker called to order the meeting of the Town Council of Fort Myers Beach at 3:00 PM. Present was Mayor Kiker, Vice Mayor Acken Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton, and Town Clerk Michelle Mayher.

II. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

PUBLIC COMMENT:

Opened Public Comment

None

Closed Public Comment

III. CONSENT AGENDA:

Approval of Minutes April 7, 2008.

MOTION: Councilmember List moved to approved the minutes of April 7, 2008 as presented. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

IV. PROCLAMATIONS:

A. In Appreciation of Judge Gagliardi

B. Therapy Dog Awareness Day

Town Clerk Michelle Mayher read the proclamations into the record.

V. ADVISORY COMMITTEES ITEMS AND REPORTS:

Council indicated that they have received a total of six letters of interest for the appointment to the Local Planning Agency, five from residents (or real property owners) and one from a citizen who does not live within the Town (or own real property within the Town) who asked the Council to reconsider their policy as it

relates to appointments. Three vacancies exist; one seat expires October 2009, and the other two seats expire October 2008. Council agreed to appoint the highest vote getter to the October 2009 seat, and the next two highest vote – getters for the remaining seats. Ballots were distributed, votes were taken and tallied with the following results:

Joe Yerkes	Appointed until October 2009
Joanne Shamp	Appointed until October 2008
Bill Van Duzer	Appointed until October 2008

Council discussed vacancies on other advisory committees, particularly on the Marine Resources Task Force, as letters of interest for appointment to MRTF have been submitted.

MOTION: Vice Mayor Acken moved to appoint Jeff Werner and Jay Light to the Marine Resources Task Force. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

VI. PUBLIC HEARINGS:

A. Continuation of Public hearing on Topps CPD, FMBDCI2007-0003

Mayor Kiker opened the public hearing. Attorney Dalton swore in all those testifying and asked for ex-parte communication. All councilmembers indicated having none.

Joe McHarris, of McHarris Planning and Design, as applicant recapped his request to rezone 2.15± acres from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow phased redevelopment of the subject property with a mixed-use complex to include a variety of commercial and residential uses (total floor area 85,000 square feet).

Frank Shockey, Zoning Coordinator for the Town of Fort Myers Beach presented the staff report, with staff's recommendation for approval of the request for redevelopment, with approval of deviations 1, 3, 4 & 5 as conditioned, and denial of deviation number 2. Mr. Shockey indicated that essentially the question is to evaluate the specific proposal as to its appropriateness under the comp plan. For this particular location the general nature of this request is for the development of this property which would involve three new buildings, a total floor area of 85,000 square feet. The applicable conditions are relatively standard, such as compliance with MCP providing a schedule of uses. There was an accessory use under retail drive-thru. The type one drive-thru is for uses of lesser volume such as a bank or pharmacy, whereas a type two is for such uses as a fast food restaurant or car wash drive thru. The LDC singles out type two for much harsher treatment as it were for where it's allowed. A type one was included in the request and included in the schedule of uses in condition number two.

The schedule of uses also singles out the lot size, essentially that the lot cannot be sub-divided into smaller lots. The floor area ratio is set by code. The updated MCP

suggests that the building height requested at this point is 30 feet above base flood elevation which is what is allowed by code and is not a deviation, however would be a deviation to allow three stories of space including enclosed commercial space on the ground floor, captured in condition number two of the staff report. Mr. Shockey reviewed the conditions as detailed in the staff report, adding that there are two new conditions, number nine which clarifies that the deviation for the parking does not grant a variance if the redevelopment does not proceed, and condition number ten clarifies deviation from height that specifies that they can have ground floor commercial is not a variance from flood regulations.

Staff recommends approval of deviation number one, but denial of deviation number two. Deviation number two regards the density. This property qualifies for approximately 12.91 units; there are some circumstances under the LDC where density is computed by rounding up to the next whole number, instead of rounding down. This property does not meet any of those requirements therefore staff recommends denial. Staff recommends approval of deviations three, four and five.

The proposed five foot donation of easement along the easterly right-of-way along Estero Blvd. to be used as roadway in the event of Estero Boulevard improvements and the provision for that parking could still be provided by the applicant's agent and could potentially and still be a condition requiring that but not directly related to parking. The portions on the paved areas of the MCP do not show as being pervious Pavement, and would like the applicant to consider doing that as much as possible.

Opened Public Comment

None

Closed Public Comment

Councilmember List asked about the parking spaces on Tropical Shores Way. Mr. McHarris indicated a willingness to work something out with the Town if so desired. Ms. List inquired about the shortage for 13 units. Mr. McHarris indicated it was a deficit of 400 square feet of earth, according to code.

Councilmember Raymond asked about the reduced number of phases. The initial application had too many phases, and has now been reworked to four phases. At completion the parking will be over the required number.

Vice Mayor Acken expressed concern about the height - concerns about the view of the back bay for the condo owners across the street. Mr. McHarris indicated the tower is forty-feet. Mr. Acken referenced the water taxi feasibility on the canal behind the property, expressing his wish that the people living on the canal be considered when providing such a water access. Mr. Acken asked where a drive-thru would be placed, and Mr. McHarris responded that there is no plan for that use.

Mayor Kiker asked where the crosswalk would be located. Mr. McHarris responded that there is an existing crosswalk at the SW corner of this location. Mayor Kiker

stated his discomfort with stormwater management on the project, particularly the lack of pervious pavement. Community Development Director Gerry Murphy indicated he will condition that.

Councilmember Babcock clarified 17 parking spaces on Tropical Shores Way, and asked if they would be added into phase one. Mr. McHarris agreed. Mr. Babcock asked for a clear understanding as to what the code provides if the entire lower level is dry flood proofed, you can only add one floor above that. Mr. Shockey confirmed that is what the code provides. Mr. Babcock asked if this was an issue that should be revisited in the town's comp plan. Mr. Murphy responded that it is a deviation that council could choose to grant or not, on a case by case basis.

In response to a question from Community Development Director Gerry Murphy, Mr. McHarris responded that if the 13th building is not approved, it would be subtracted from either A or C.

Mr. Murphy offered to the Council a list of conditions that he has drafted:

- 1) First, related to the reduction in parking, in conjunction with the site work of the first constructed phase, prior to the issuance of any certificate of compliance or certificate of occupancy the developer must construct metered parking spaces acceptable to the town in the right of way of Tropical Shores Way adjacent to the property and donate to the town a five foot wide easement for public purposes along the easterly, that is bay side right of way line of Estero Boulevard.
- 2) All paved surfaces must be porous pavements to the greatest extent possible. This condition will be reviewed by the Town at the time of flood plain development review to determine substantial compliance.
- 3) Developer agrees to provide a trolley pull-off and appropriate shelter acceptable to the Town at the time of flood plain development review.
- 4) Developer agrees to pursue leadership in energy in environmental design that is LED standards to the greatest extend possible in the development of the project.

Mr. Murphy requested that the Council put in a condition that would require that the applicant revise the master concept plan to reflect the conditions and the revised schedule of uses in the staff report.

Mr. McHarris commented that should the parking spaces be metered, that the Town be responsible for the installation of the meters.

MOTION: Vice Mayor Acken moved that the town council approve the applicants request to rezone from CB to CPD subject to the twelve conditions, and in addition to the twelve conditions, three of the conditions recommended by Mr. Murphy, and those conditions would be conditions number two, three and four. Number two referring to

as much porous pavement as possible, number three referring to the trolley pull-off, and number four referring to LED standards, and the five deviations as set forth in the specificity below. Regarding deviations number one, APPROVES; number two, APPROVES; number three, APPROVES; number four APPROVES; number five APPROVES. As to the findings and conclusions: the requested rezoning DOES comply, with items a, b, c and d; The proposed use or mix of uses IS; Sufficient safeguards to the public interest ARE; All recommended conditions ARE; As to deviations #1, 2, 3, 4, and 5, as conditioned: a) Each item DOES enhance the achievement of the objectives of the planned development; and b) The general intent of LDC Chapter 34 to protect the public health, safety, and welfare WILL be preserved and promoted; c) Each deviation DOES operate to the benefit, or at least not to the detriment, of the public interest; and d) Each deviation IS consistent with the Fort Myers Beach Comprehensive Plan. Number six would be no longer relevant. Councilmember Raymond seconded the motion .

VOTE: Motion passed 4-1, with Councilmember Babcock dissenting.

B. Resolution 08-22, Local Mitigation Strategy

Attorney Dalton read the title:

RESOLUTION 08-22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RESCINDING RESOLUTION 99-45 WHICH ADOPTED THE INITIAL EDITION OF THE LOCAL MITIGATION STRATEGY; ADOPTING THE UPDATED JOINT UNIFIED LOCAL MITIGATION STRATEGY FOR LEE COUNTY, FLORIDA AS THE FORMAL GUIDE FOR THE TOWN OF FORT MYERS BEACH HAZARD MITIGATION ACTIVITIES; AND PROVIDING AN EFFECTIVE DATE.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Babcock moved to adopt resolution 08-22. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

VII. ADMINISTRATIVE AGENDA

A. Stormwater Master Plan Ranking – CCNA

Town Manager Janke indicated staff is looking for council to accept the selection committee's ranking of the firms responding to the solicitation for the Development of a Stormwater Master Plan and authorize staff to begin negotiations with the top ranked firm moving down the list until negotiations are successful.

MOTION: Councilmember Babcock moved authorized staff to begin negotiations according to the provided materials. Councilmember List seconded the motion.

VOTE: Motion passed 4-1, with Vice Mayor Acken dissenting.

B. Introduction Of Ordinance 08-06, Reduction in Town / Corporation Notice of Bulk Water Rate Adjustment

Attorney Dalton read the title:

ORDINANCE 08-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, AMENDING ORDINANCE 01-03 REGARDING THE WATER UTILITY FRANCHISE AGREEMENT WITH THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.; PROVIDING FOR MODIFICATION OF NOTICE FOR FILING PETITION FOR RATE ADJUSTMENT; PROVIDING AUTHORITY; SEVERABILITY; CONFLICTS, EFFECTIVE DATE.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Babcock moved to set public hearing of Ordinance 08-06 to public hearing on May 12, 2008 at 6:30 PM. Councilmember List seconded the motion.

VOTE: Motion passed 4-1, with Vice Mayor Acken dissenting.

C. Award of Contract for Classification Pay Plan

Town Manager Janke requested that Council award the contract to develop a Position Classification & Compensation Study.

MOTION: Councilmember Babcock moved to award the position classification & compensation study to Cody and Associates, Inc. at a cost not to exceed \$6,500. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

D. Adoption of a Budget Calendar

Town Manager Scott Janke offered to postpone the adoption of the calendar until after the workshop scheduled for Tuesday April 22, 2008. It was the consensus of the Council to pick this item up at the workshop, and adopt at a later regular meeting.

VIII. TOWN MANAGER'S ITEMS:

A. Interlocal Agreement:

- 1) County / Town Notice of Bulk Water Rate Increase
- 2) Billing Service Fee to Lee County

Town Manager Scott Janke indicated that the County has a copy of this agreement and this item is informational.

Town Manager Janke reminded the Council to provide the Town with a copy of the completed certification.

IX. TOWN ATTORNEY'S ITEMS:

A. Tezak Family Trust versus Town of Fort Myers Beach
No items.

X. COUNCILMEMBERS ITEMS AND REPORTS:

Councilmember Raymond referenced his recent attendance at the MPO. He mentioned the desire for the MPO to come and do a presentation before the Town Council regarding Lee County Transit, and possibly the Transit Authority. Councilmember Raymond indicated a desire from the City of Bonita to meet with the Town Council, and perhaps include the City of Sanibel.

Councilmember List mentioned the celebration of Arbor Day, and the book, "Shades" that the Town has put out and the Town's tree program.

Vice Mayor Acken added his commendations to staff and for the Shades book, and the program.

Vice Mayor Acken also added support to increase communication and areas of support between the neighboring municipalities.

Mr. Acken also thanked the Pilot Club for their recent beach cleanup.

Mr. Acken addressed the substance of the minutes, that they are quite sparse, and that more detail would be of benefit. Councilmember List added her opinion as to the time-consuming work for the transcription of minutes. Mayor Kiker agreed that this item needs further discussion.

Councilmember Babcock supported the comments regarding minutes.

Councilmember Babcock believed in the importance of having action items, and reviewed a few items. Animal Control workshop had a lot of citizen input, the workshop was handled well, and people came with solutions.

Councilmember Babcock spoke in favor of the Arbor Day celebration.

Councilmember Babcock mentioned the workshop, PRISM, being sponsored by the Town's MRTF, PRISM being an acronym for Personal Responsibility In Stormwater Management.

Councilmember Babcock spoke of his first attendance to the Southwest Florida Regional Planning Council.

Councilmember Babcock suggested the Town incorporate s "Speakers' Series".

Mayor Kiker mentioned charges he has incurred on his personal cellular phone, and requested to get the process in to the Town Council's policies and procedures manual.

Mayor Kiker asked to have the discussion of this policy on a future agenda.

Mayor Kiker mentioned a fundraiser for the Beach School PTO.

XI. PUBLIC COMMENT
Opened Public Comment
None
Closed Public Comment

ADJOURNMENT:

The meeting adjourned at 6:24 PM.

Adopted 5-5-08 With ~~Without~~ Changes. Motion by Babeock / List
(Date)

Vote: 5-0



Michelle D. Mayher
Town Clerk

- End of Document