

Note from the Clerk's Office: The minutes from the May 14, 2007 Town Council meeting were presented to the Town Council for adoption at the June 4, 2007 and the June 11, 2007 meetings. The Council deferred these meetings at the request of Vice Mayor Kiker for additional information regarding the Upcoming Comprehensive Plan Amendments. Provided here are the minutes from the May 14, 2007 meeting as previously provided, and an addendum with the requested information.

MINUTES

FORT YEARS BEACH REGULAR TOWN COUNCIL MEETING

2523 Estero Boulevard
Fort Myers Beach, FL 33931

MAY 14, 2007

CALL TO ORDER: Mayor Boback called the regular Town Council meeting to order at 3:00 PM

Present: Mayor Dennis Boback, Vice Mayor Larry Kiker, Councilmember Herb Acken, Councilmember Charles Meador, Councilmember Bill Shenko, Town Manager Gary Parker, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Community Development Director Jerry Murphy, Public Works Director Jack Green.

Absent: None.

PUBLIC COMMENT:

Frank Schilling spoke about permit problems encountered at the Sandarac.
Harold Douglas spoke about permit problems encountered at the Sandarac.

CONSENT AGENDA: Approval of Minutes April 23, 2007

MOTION: Councilmember Shenko moved to approve the Consent Agenda, seconded by Councilmember Meador.

VOTE: 5-0 *in favor of the motion.*

PUBLIC HEARINGS: FMBSEZ2006-00002, WahooWillies

Attorney Dalton indicated that the applicant has requested a continuance.

MOTION: Councilmember Acken moved to accept the request for continuance to June 11, 2007. Seconded by Vice Mayor Kiker.

VOTE: 5-0 in favor of granting the continuance.

PUBLIC HEARINGS: COP 2005-00189, Plaka Restaurant

Mayor Boback opened the public hearing and canvassed the Council as to any ex-parte communication. Members indicated ~~that they have been customers of the restaurant but they had had~~ no ex parte communications ~~regarding this hearing.~~

Attorney Dalton swore in those testifying.

Beverly Grady, with Roetzel and Andress addressed the Council, representing the Plaka restaurant. Ms. Grady introduced Tracy Bean, with Bean Witaker, who is a Certified Planner and expert in land use planning. ~~She will present a request for a 4 COP SRX, which is a restaurant license, in conjunction with the new building which will be a 2-story restaurant in Times Square.~~

~~Ms. Bean handed out a color rendering as it is proposed. This request is for a maximum 256 seats; 136 indoor and 120 outdoor seats which are currently approved by permit agreement with the Town, dated January 30, 2006. The 4 COP requires a minimum of 150 seats, the proposed restaurant expansion will accommodate 150 seats within the proposed walls.~~

~~The restaurant is in the pedestrian commercial land use and downtown zoning, which supports the intensity of use, the mixed use, with the idea of having pedestrian friendly restaurants and retail in the Times Square area. The outdoor seating wraps around two sides, the entrance is on the side adjacent to Lynn Hall, within 500 feet of Lynn Hall and some residential units, and so for this reason the applicant is requesting a special exception.~~

~~Vice Mayor Kiker questioned how the applicant would monitor the percentage of alcohol sales vs. food sales. Ms. Bean replied that monitoring is at the discretion of the Town. He further questioned whether the property has sufficient parking, and if there is a formula that is used. Mr. Murphy responded that it is regulated by what is in the LDC for the Downtown district, and there is a presumption of sufficiency.~~

~~Mayor Boback believes that this license needs 150 seats "under cover" – excluding the balcony- yet the plan he has been presented only has 136 seats inside the restaurant, or, "under cover." He further questioned where they would have room for musicians, and if~~

is his understanding that that the fire marshal and the health department would have to sign off on this. He questioned why we were having this hearing at this time.

Ms. Bean responded that the fire and health department require compliance with zoning code, so the applicant is coming before the Town with a zoning action.

Bev. Grady informed the Council that the Neskes family has made a substantial investment for redevelopment and to continue as a full service restaurant, will need a 4 COP. Ms. Grady is of the opinion that the seating requirement is for 150 seats, and not necessarily seats "under cover." She also spoke that it is the State's requirement that alcohol sales not exceed 49% of total sales, and the State would audit that.

Referencing condition 5 – outdoor music is prohibited, except pre-recorded music at low volume, ending at 9:00 PM, and is consistent with the speaker system that is already there. Indoor music would be limited to 11:00 AM to 11:00 PM., and the owners have one additional request. For private events, they would like to ask permission from the Town Manager to have entertainment extent to midnight not to exceed 15 times a year.

Councilmember Shenko asked Ms. Grady to please describe low volume.

She responded that the applicant is proposing to keep the same existing situation. The speaker system is designed at a volume equal to what is currently in place: back ground, soft, pre- recorded, low volume. It is not distinctive, does not stand out on its own, but is part of the ambience

Lisa Hines, Senior Planner with Lee County representing the Town of Fort Myers Beach presented the staff report.

Staff finds the request consistent with the comprehensive plan for the Town of Fort Myers Beach, and, as conditioned, consistent with the Town LDC. Staff is in agreement with condition number five as recommended by the LPA, and as an additional note, ~~Ms. Hines mentioned that staff had asked the fire department to review the request, which they did, and there were three conditions with the variance request after their review.~~ Staff would be in agreement with an additional condition for the sale of liquor with the issuance of CO with the new building.

Ms. Hines entered the staff report as testimony.

PUBLIC COMMENT:

Tom Babcock, addressed the Council as a representative of the LPA. The LPA was in favor of the staff recommendations, on vote of 6-1 approval of the application, ~~and the dissenting vote was based on a concern of alcohol in any form within the proximity of Lynn Hall. The bulk of the discussion by the LPA was on the issue of outside music.~~

~~Mr. Babcock indicated that the LPA was of the belief that even without the outside seating, they would be able to have the 4-COP inside.~~

~~Mayor Boback closed public comment.~~

~~Councilmember Meador mentioned that the 150 seat requirement was mentioned in the application.~~

~~Councilmember Shenko asked how many square feet of service area?~~

~~Tracy Bean responded that there is 4800 sq. ft. of total floor area, but she would have to calculate the service area.~~

~~Councilmember Shenko commented that he does not have sufficient information to make a decision.~~

~~Mayor Boback questioned the number of seats, and indicated that without the final plans or without the sign off by the fire department and the health department, he feels he does not have necessary information to know whether the applicant is in compliance.~~

Ms. Grady responded that they wanted to make sure that the Town wanted the redevelopment. If the Council is asking to see a layout of the 150 seats, they will need a continuance to bring this back. The owner intended to show a workable layout.

~~Councilmember Shenko questioned whether the applicant wanted to request a continuance, or whether the Council is being asked to decide at this time.~~

Ms. Grady responded that the applicant does not want a denial, and if the Council feels they do not have sufficient information, then they are requesting a continuance.

Staff requests a brief recess to coordinate the date certain.

Recess at 4:20 PM

Convene at 4:30 PM

MOTION: Councilmember Meador made a motion to continue this hearing to June 11, 2007 at 3:00 PM, and make this the number one item on the agenda. Mayor Boback seconded the motion.

VOTE: 5-0. *in favor of the motion.*

A. LPA RESOLUTION 2007-05,

Tom Babcock came forward as a representative of the LPA and read LPA Resolution 2007-05 and presented this to Vice Mayor Kiker.

B. UPCOMING COMPREHENSIVE PLAN AMENDMENTS

Bill Spikowski, Planning Consultant for the Town, came forward and stated that the State DCA has accepted the Evaluation and Appraisal Report. Their letter dated early April triggered an eighteen month period in which the Town considered amendments that were laid out in that report. To Mr. Spikowski's memo is attached a summary of those amendments. He further identified some state mandated amendments that need to be done during the same time period. He asked the Council whether they concur with the approach of doing these as one single cycle, and are there any additional amendments?

Councilmember Meador responded that yes, he agrees to put these amendments together, and to also address the impact of FEMA V-zones. ~~These designations are still coming, they may move 100 feet, yet will be in conflict with our pedestrian friendly environment along Estero per our LDC.~~

Councilmember Shenko agrees with Councilmember Meador. ~~Regarding financial feasibility requirements, Mr. Shenko feels we should have mention of the water system in our comp. plan.~~

PUBLIC COMMENT:

NONE

~~Frank Schilling spoke in favor of a different process, by which the various committees evaluate their section of the plan.~~

~~Mayor Boback closed public comment.~~

C: MPO's TIP AMENDMENT

Councilmember Shenko gave a brief outline of this item, whereas a traffic study was done to determine the feasibility of an additional lane of traffic (trolley only) on Estero. Delays in getting this item through the MPO's budget cycle prompted the Town to enter into an agreement with Lee County, and that the MPO would reimburse the Town. The studies have been done, but now the MPO refuses to reimburse the Town, and are redirecting funds to non-beach projects. Councilmember Shenko would like to use this money to relane Estero Boulevard. Councilmember Shenko is looking for a consensus from the Council to go to the MPO and ask to use this money for alternative funding for Town projects, specifically, the rehab of Estero Boulevard.

PUBLIC COMMENT:

None

D. WORKSHOP FOR ROW ISSUES

Set for June 12, 2007 at 9:00 AM

E. SPECIAL EVENT PERMIT APPLICATION: TASTE OF THE BEACH

Georgia Reinmuth, Fort Myers Beach Chamber of Commerce, presented the Taste of the Beach scheduled for June 3, 2007 11-5:00 PM.

PUBLIC COMMENT:

None

MOTION: Councilmember Acken made a motion to approve as written.
Councilmember Shenko seconded the motion.

VOTE: 5-0 in favor of the motion.

COUNCILMEMBERS ITEMS:

~~Vice Mayor Kiker would like to discuss whether the town should work with Sanibel on areal drift algae study.~~

Councilmember Acken is requesting an agenda item for an appointment to the Marine Resources Task Force. ~~He further requests that public works address speed bumps at beach elementary school, a request from the school principal.~~

Councilmember Meador requested that Sandarac be put on the agenda for the June 11, 2007 meeting.

Councilmember Meador requested scheduling a Town Hall meeting. ~~Attorney Dalton offered to contact the Florida Institute of Government as to a format and will bring this information back to the Town Manager.~~

~~Councilmember Meador announced that he has been rewriting the LDC and has submitted a draft for council's consideration.~~

Vice Mayor Kiker called for a Point of Order, seeking standards by which all councilmembers are treated fairly, as it pertains to a dialogue between members of the audience and councilmember(s).

Councilmember Shenko asked about the report from Tomasello as to V- zones, etc. and whether there has been a response to our inquiry as to charges to do the additional work necessary for an appeal. Mr. Murphy responded that it has not come back, that Mr. Tomasello is conversing with FEMA, and that FEMA has not gotten any further at this point. ~~There is an indication that the deadline will be moved back, based on the extensive number of appeals.~~

Mayor Boback asked about scheduling a workshop with advisory committee chairs?
The Council established this meeting would be held on July 12, 2007 at 6:00 PM

Council recognized the Chairman of the LPA in the audience. Mr. Babcock expressed his opinion that there appeared to be an interest by council for a joint LPA/ Town Council meeting. He recommends a separate workshop for these two bodies. A workshop for Council and LPA was set for June 20, 2007 at 6:30 PM

TOWN MANAGER'S ITEMS:

There is an opportunity for grant funding through the South Florida Water Management District. The Town Manager feels this is worthwhile to apply, and bring it back to Council should the Town be awarded. There is no local match required. Council consensus was to proceed.

TOWN ATTORNEY'S ITEMS:

Human Services Council requires an elected official to sit on their board, and seeks a councilmember to sit in this capacity. Council will consider this and bring it forward at the next meeting.

CONFLICT OF INTEREST OPINION REGARDING SIGN ORDINANCE AMENDMENT.

~~Councilmember Meador stated his instinct is to absent himself if there is an appearance of a conflict, but until there's a proposal, has no way of knowing.~~

~~Councilmember Shenko concurs, and would rather err on the side of caution and would most likely file a conflict of interest.~~

Councilmember Acken would like it as an agenda item.

BRIDGENORTH PROPERTY – There is a code enforcement lien in place, and the Town is a statutory defendant. Prior to this meeting, Councilmember Meador provided to the Town Attorney, Form 8B Memorandum of Voting Conflict for Municipal Officers. Ms. Dalton read the Form: *and a copy is appended to the minutes of this meeting.*

~~I, Charles R. Meador, Jr., hereby disclose that on May 14, 2007, a measure came or will come before my agency which inured to the special gain or loss of a client, Bridgenorth Properties. I actually represent Bridgenorth Properties, LLC. And it's signed Charles R. Meador, dated May 14, 2007.~~

Ms. Dalton requests direction in this matter.

Council's direction is to file a cursory answer and be kept abreast of the matters in the case, and that a mortgage foreclosure is statutory.

PUBLIC COMMENT:

~~Frank Schilling 6672 Estero Blvd., has a question of policy as to customer service.~~ *Council heard public comment.*

Councilmember Meador called for a point of order regarding a dialogue during public comment.

ADJOURNMENT: Motion by Vice Mayor Kiker and seconded by Councilmember Shenko to adjourn.

VOTE: Unanimous. 6:27 PM.

Respectfully Submitted,

Michelle D. Mayher
Town Clerk

ADDENDUM

~~Mr. Bill Spikowski spoke to the State's acceptance of the Evaluation and Appraisal Report. He asked if the Council was in concurrence with the approach of doing these amendments as one single cycle, and asked if there are any other amendments to the Plan that the Council would like to initiate in order to have them done during that same time period.~~

~~Councilmember Meador feels we should approach those amendments together, as well as the impact of the imposition of the FEMA V-zones on the island. The Town is a party to an appeal and have appealed the FEMA determination. It is his understanding that the V-zone designations are still coming, and the best indication is that maybe the V-zone will move 100 feet, but will still be in conflict with everything that our Comprehensive Plan projects in terms of a pedestrian friendly, commercial environment along Estero and beyond. Councilmember Meador feels it's time to take a hard look at what the application of the V-zone will mean to our Comp. Plan.~~

~~Councilmember Shenko agrees with Councilmember Meador as to the V-zone. He also feels the financial feasibility requirements of the water system should be addressed in the Comp. Plan.~~

~~Vice Mayor Kiker would like to ask the LPA to look at the Comp Plan in its entirety. Mr Spikowski indicated that the Town had done that about two years ago, and are in the tail end of it. The Town will be required to do a complete look again in five more years. There are parts that are aging, for example the capital improvement section. The State has redefined what financially feasible means, and has told the Town to go back and amend this section, and is probably the one most needed.~~

Mr. Spikowski inquired if it was a consensus, then of Council to add to the list of evaluation to the Comp Plan and how it might need to be changed to deal with the changing V-zone line and add in the financial feasibility analysis to look at the Town's water system. The Council was in agreement to add those two items.

*adopted
7-9-07* . *Motion by Councilmember Meador
Passed 5-0 in favor.*

Michael Meador

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME W EADON Charles Robert	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE FT MYERS Beach town Council
MAILING ADDRESS 2085 ESTERO Boulevard	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY Port Myers Beach, FL 33931	NAME OF POLITICAL SUBDIVISION: Port Myers Beach, Florida
DATE ON WHICH VOTE OCCURRED MAY 14 2007	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Charles R. Meador Jr, hereby disclose that on May 14, 20 07:

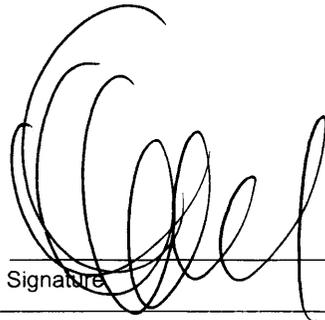
(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of a client, Bridgewater Properties, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I actively represent Bridgewater Properties, LLC

May 14 2007
Date Filed


Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.