MINUTES

June 11, 2007
Regular Town Council Meeting
Town Hall
Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Mayor Boback called to order the meeting of the Fort Myers Beach Town Council at 3:00 PM. All councilmembers were present. All stood for the pledge of allegiance.
Town Manager Gary Parker brought the Council a request to bring the Sandarac item to the top of the agenda. Council consented.

Opened Public Comment
Steve Strauss spoke to a code enforcement issue.
Closed Public Comment.

Consent Agenda: Approval of minutes May 1, 2007; May 7, 2007; May 14, 2007; May 21, 2007.
Vice Mayor Kiker requested the minutes for all consent agenda items be deferred pending verbatim and near verbatim transcription. Mayor Boback stated the consensus of Council was to postpone approval of the consent agenda pending further information, pending an opinion from the Town Attorney regarding whether the official record is the audio tape or the adopted minutes.

Administrative Agenda
Sandarac

Opened Public Comment
Frank Schilling spoke to a DEP warning notice at the Sandarac condominium.
Michael Ciccarone spoke to his representation of the Sandarac Condo in this action.
Attorney Dalton added for the record that both representations of Sandarac I and II were present at the previously held meeting being mentioned by Attorney Ciccarone.
Closed Public Comment

Public Hearing:
Plaka Restaurant

K'Shana Haynie, Roetzell & Andress, on behalf of the applicant, requested a continuance.

Councilmember Acken moved to accept the request and move the hearing to November 12, 2007 at 3:00 PM.

No Public Comment
No Council discussion.
Motion passed 5-0 in favor.

Mayor Boback closed the public hearing.

Public Hearing:
Wahoo Willies.
Councilmembers reported having no ex-parte communication. Attorney Dalton swore in all those testifying.
Bob Burandt, attorney for the applicant requested a license to upgrade the license to beer, wine and spirits.

Planning and Zoning Technician, Frank Shockey, spoke on behalf of staff, indicating the applicant is requesting a special exception to allow intoxicating liquors of all kinds in conjunction with their food license. Staff recommended approval with conditions, for example, hours of operation, permitting for music and entertainment, for the discretion of the Town Council. Mr. Shockey entered the report as testimony.

Opened Public Comment
Steve Strauss spoke to the law regarding the Department of Business and Professional Regulation.
Closed Public Comment

Councilmember Meador moved to adopt Resolution 07-22, changing the fifth whereas to read June, and approve with conditions as the LPA Resolution 2007-07. Attorney Dalton read the findings and conclusions:

1) changed or changing conditions DO exist;
2) the requested special exception IS consistent;
3) the requested special exception WILL conserve:
4) the requested special exception DOES meet all standards
5) WILL be compatible;
6) WILL NOT cause damage;
7) WILL be in compliance;

In paragraph two;
HAS demonstrated;

Councilmember Meador confirmed this to be correct for his motion.
The motion carried 3-2, with Councilmember Shenko and Mayor Boback dissenting.
Closed Public Hearing.

Recess ten minutes.

Administrative Hearing
Chapter 34, parcelization.

Opened Public Comment
Richard Yavonovich spoke as a representative of DiamondHead Beach Resort.
Tom Babcock spoke representing the LPA with a unanimous recommendation in favor of this ordinance.
Closed Public Comment

Attorney Dalton read **ORDINANCE 07-04, AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES"; AMENDING SECTION 34-2 "DEFINITIONS"; AMENDING SECTION 34-621 "ALLOWABLE USES OF LAND DESCRIBED"; AMENDING SECTION 34-636 "PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS"; AMENDING SECTION 34-1806 "REPLACING A NONCONFORMING HOTEL/MOTEL"; AMENDING SECTION 34-1807 "CONVERSIONS"; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

Vice Mayor Kiker made a motion to move Ordinance 07-04 to the first public hearing.
Motion passed 3-2 with Councilmembers Meador and Shenko dissenting.
Community Development Director Jerry Murphy provided the date for the first public hearing as being July 9, 2007 at 6:30 PM.

Proposed Land Development Code Changes
Councilmember Meador moved to submit the proposed changes to the LPA for consideration with out position.

Opened Public Comment
None
Closed Public Comment
Motion passed 4-1 with Councilmember Acken dissenting.

Newton Park Update
Parks Director Theresa Schober addressed correspondences from FCT, indicating that they have contacted Lee County regarding land management of the property.

Opened Public Comment
None
Closed Public Comment

NO action was taken by the Council at this time.

Appointment to the Marine Resources Task Force

Councilmember Shenko submitted Form 8B, Voting Conflict for Public IOfficers. (attached)

Opened Public Comment
None
Closed Public Comment

Councilmember Acken moved to appoint Jeff Werner to the MRTF.
Motion failed 2-2, with Mayor Boback and Councilmember Meador dissenting, and Councilmember Shenko abstaining.

Recess five minutes.

Change in Election Date

Opened Public Comment
Pat Smith spoke against the proposal.
Tom Babcock sought to correct a misspoken statement in the local paper.
Closed Public Comment

Councilmember Meador moved to instruct the Town Attorney to draft an ordinance to amend the Charter to change the election date to January 29, 2009.
Motion carried 3-2 with Vice Mayor Kiker and Councilmember Acken dissenting.

Dinghy Docks item was postponed.

Disaster Recovery Assistance contract
Public Works Projects Manager, Cathie Lewis said that staff's recommendation was for Crowder Gulf.
Councilmember Shenko moved to approve as proposed.
Motion carried 5-0 in favor.

Town Attorney Items
Councilmember Meador moved to direct the town attorney to file a perfunctory statement amending the existing case (Hattie Fern Bergerler vs. Town of Fort Myers Beach).
Motion carried 5-0 in favor.

Attorney Dalton requested three executive sessions July 16, 2007 starting at 12:30 for the cases of Shenko vs. Werner et al; Payne vs. Town of Fort Myers Beach; Purtell vs. Town of Fort Myers Beach.
Councilmember Shenko filed Form 8B, voting conflict for public officers(attached).
Motion carried 4-0 with Councilmember Shenko abstaining.

Councilmembers Items
There was a consensus among the Council to appoint two staff members and three to five technical advisors to a committee for Information Technology. This will be done at the June 18, 2007 meeting.

The Council adjourned at 8:03 PM

Michelle Mayher
Town Clerk

Approved 7-16-07
as written
Motion by Meador 5-0 in favor

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

LAST NAME—FIRST NAME—MIDDLE NAME Shenk Jr. William E	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council Ft. Myers Beach
MAILING ADDRESS 531 Carlos Cir	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☑ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Ft. Myers Beach COUNTY Lee	NAME OF POLITICAL SUBDIVISION: Town of Ft. Myers Beach
DATE ON WHICH VOTE OCCURRED 6-11-07	MY POSITION IS: ☑ ELECTIVE ☐ 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, William B. Shenko II hereby disclose that on 6/11, 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, ___;

X inured to the special gain or loss of Mr. Patel, 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:

In the matter concerning Payne v Patel I have given advice to Mr. Patel concerning this matter prior to running for Council

6/11/07
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.

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

LAST NAME—FIRST NAME—MIDDLE NAME Shenko, Jr. William E	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council of Ft Myers Bch
MAILING ADDRESS 581 Carlos Cir.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Ft. Myers Bch COUNTY Lee Fl	NAME OF POLITICAL SUBDIVISION: Town Council - Ft. Myers Bch
DATE ON WHICH VOTE OCCURRED 6-11-07	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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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.

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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:

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APPOINTED OFFICERS (continued)

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DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, William E. Shenko Jr. hereby disclose that on 6-11, 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 ___, 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 am the plaintiff in a matter concerning Jeff Neaves.

6-11-07
Date Filed

Signature

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MAILING ADDRESS 581 Carlos Circle	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: XX CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Fort Myers Beach COUNTY: Lee	NAME OF POLITICAL SUBDIVISION: Town of Fort Myers Beach, FL
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

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* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

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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.

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APPOINTED OFFICERS (continued)

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DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, William E. Shenko, Jr., hereby disclose that on June 11, 20 07:

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

X 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 ___, 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:

As to the appointment of Jeff Werner, I am the Plaintiff in an action in which Jeff Werner is the defendant. Upon instruction of the Town Council of Fort Myers Beach, I filed a Motion to Tax Attorney's Fees and Costs against Jeff Werner. The motion is pending further action and/or instruction from the Town Council. Any recovery of fees or costs would be reimbursed to the Town of Fort Myers Beach, copies of the relevant pleadings are attached. I am filing this conflict to avoid the appearance of impropriety.

June 11, 2007
Date Filed

Signature

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