

MINUTES
FORT MYERS BEACH TOWN COUNCIL

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

July 16, 2007

3:00 PM

Mayor Boback called the meeting to order. All Councilmembers were present, along with the Town Attorney, Anne Dalton; Town Manager, Gary Parker; Town Clerk, Michelle Mayher; Community Development Director, Jerry Murphy; and Planning and Zoning Technician, Frank Shockey.

All stood for the pledge of allegiance and the invocation delivered by the Reverend Forrest Critser, 1st Baptist Church.

Opened Public Comment:

Lou Marrone spoke on the Laguna Shores Dredging Program.

Closed Public Comment.

Vice Mayor Kiker pulled B., June 18, 2007 minutes.

Councilmember Meador moved to adopt the consent agenda. Motion passed 5-0.

Vice Mayor Kiker moved to amend the June 18, 2007 minutes as follows: page 3 of 4, correct the date January 29, 2007 election date to read January 29, 2008. On page 4 of 4, under Councilmembers Items, add that Councilmember Acken directed the Town Attorney for an Attorney General opinion regarding elections.
Motion passed 5-0.

PUBLIC HEARING, SEZ2006-00002, Creciente Condo.

Attorney Dalton swore in all persons intending to testify. Marybeth Marino spoke as applicant, and is in agreement with the LPA recommendations.

Frank Shockey, Planning and Zoning Technician, spoke on behalf of staff, and submitted the staff report as testimony.

Councilmember Meador called a point of order: Mr. Murphy needs to be sworn in, in order to testify.

Attorney Dalton swore in Mr. Murphy.

Town Attorney Dalton read Resolution **07-19, RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 07-19**

WHEREAS, a public hearing was properly noticed and duly held on July 16, 2007 before the Town Council of the Town of Fort Myers Beach;

Councilmember Acken moved to approve the application with the amendment to allow the petitioner the right to have or not have dune plantings. Attorney Dalton assisted the motion by reading the following:

Regarding Conditions of Approval, number 2: A stormwater drainage plan for stormwater and pool discharge in conjunction with the outfall of at the existing wall in accordance with the Land Development Code of the Town of Fort Myers Beach (LDC) Section 6-13, at the time a storm water management system is operational and tie in; Delete number four, dune restoration plan;

Under findings and conclusions:

1. There exists changed or changing conditions;
2. The requested special exception as conditioned:
 - a) **is** consistent with goals,
 - b) **does meet or exceed** all performance and locational standards...
 - c) **does** protect,
 - d) **will** be compatible with existing or planned uses
 - e) **will not** cause damage, hazard, nuisance...
 - f) **will be** in compliance with all general zoning provisions

Councilmember Acken concurred with conditions, findings and conclusions as stated accepting as his motion.

Motion carried 5-0 in favor.

PUBLIC HEARING: FMBADM2007-00002 Cheryl Martin Parcelization appeal
Attorney Dalton swore in all those intending to testify. Attorney David Cook, from the firm Henderson Franklin spoke on behalf of the applicant.

Councilmember Meador called a point of order to follow procedure and finish questions of the applicant before questioning staff.

Councilmember Acken proceeded to speak to the point of order.

Councilmember Meador called a point of order; only the chairperson addresses points of order.

Attorney Dalton asked the record to reflect that the letter to which Mr. Cook made mention was received by Council with their packet last Thursday, and received by Ms. Dalton today.

Recess: 4:30 PM Reconvene 4:50 PM

Frank Shockey spoke on behalf of staff. Staff's position is that parcelization and conversion of the form of ownership are not synonymous. The staff report speaks for itself and is being entered as testimony.

Opened public comment.

None

Closed public comment.

Discussion ensued regarding whether the applicant's property is considered multifamily, a two family building on one lot or a condominium with four units.

The applicant indicated the intent would be to sell as four separate units.

Attorney Dalton offered to Council Resolution 07-25 FMBADM2007-00002 CHERYL MARTIN

Councilmember Meador moved to adopt resolution 07-25, RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FOR MYERS BEACH, FLORIDA, FMBADM2007-00002, as presented in the materials with the following changes and/ or additions:

Indicating Bobby Myers as owner of the property;

As to section two, under findings of fact and conclusions, Save paragraph one, reword paragraph two; to pick the third alternative, to read:

The Town Council hereby overrules the administrative interpretation of the Town Community Development department and grants the requested appeal as follows: The Town Council finds that the proposed conversion of the subject property to condominium to be in compliance with the provisions of LDC Sec 34-636 sub section B in as much as the grandfathered structure is grandfathered as to density, therefore being in compliance with subsection 1 of section B; is grandfathered as to its current elevation, is in compliance with subsection 2, of subsection B; the property is landward of the 1978 coastal control line; and in connection with limited development review, the Community Development Department does verify that the individual dwelling units are separated by walls of not less one hour, are fire resistant, proposed development meets all other requirements of this code; that the requirements of the said section are met; strike current subsection 3 and replace it with a subsection whereby the Department of Community Development is directed to issue a ZVL to applicant which is consistent with this resolution.

Attorney Dalton offered a clarification to show Ms. Martin as appellant, as owner of record, along with Bobby Myers.

Motion passes 5-0 in favor.

TOWN ATTORNEY ITEMS:

Attorney Dalton spoke to the case of Shenko vs. Werner, et al, Case # 06-CA-4759

going forward. Councilmember Shenko provided Form 8B Memorandum of Voting Conflict; Attorney Dalton read it into the record. Councilmember Acken filed Form 8B, Memorandum of Voting Conflict; Town Clerk Michelle Mayher read it into the record.

Vice Mayor Kiker moved to instruct the Town Attorney to request of Mr. Tripp, Attorney for Mr. Shenko, to withdraw his motion.

Motion passes three to zero with Councilmembers Shenko and Acken abstaining.

Attorney Dalton withdrew the other three requests on the agenda.

Councilmember Meador made a motion to allow council to bring forward requests for drafting items to the town attorney at public meetings verbally, or as written by the requestor to the town attorney.

Councilmember Meador moved to remove from the table the ordinance 07-04, parcelization to continuance.

Motion passed 5-0.

Mayor Boback requested an agenda item to deal with speed limits on side streets on the August 6, 2007 agenda.

The meeting adjourned at 6:15 PM

Adopted 8-6-07 With/Without Changes. Motion by Meador/Shenko
(Date)

Vote: 4-1, Kiker dissent


Michelle Mayher
Town Clerk

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