

MINUTES
FORT MYERS BEACH TOWN COUNCIL

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

August 13, 2007
3:00 PM

Mayor Boback called the meeting to order. Present at the meeting was Mayor Dennis Boback, Vice Mayor Larry Kiker, Councilmember Acken, Councilmember Meador, Councilmember Shenko, Town Manager Gary Parker, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Community Development Director Jerry Murphy.

All present stood and recited the pledge to the flag.

Opened Public Comment

Public Comment was heard:

Kathleen Smith asked the Council to remove from the table the consideration of the special event permit application for a concert over Labor Day.

Alan Mandel, member of the LPA was present to represent the LPA for the discussion of the 2500 Estero Place.

Closed Public Comment

CONSENT AGENDA: Councilmember Meador pulled item B. from the Consent Agenda. Councilmember Acken moved to pass the balance of the consent agenda. Councilmember Shenko seconded the motion. Motion passed 5-0.

Councilmember Meador moved to approve the minutes from August 1, 2007 with the following change: on page 1 of 2, add the word “dissenting” following the record of the motion on COLA and merit increases in the budget, so as to read: Motion fails 3-2 with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting. Councilmember Meador further requested that the next sentence be stricken, that being: Councilmember Acken clarified to allow budgeting in the 07-08 budget to allow for COLA and merit increases. Vice Mayor Kiker seconded the motion. Motion passed 4-1 with Councilmember Acken dissenting.

PUBLIC HEARING:

Attorney Dalton read the title of **Ordinance 07-04:**

AN ORDINANCE AMENDNG CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STRANDARDS, AND

NONCONFORMITTEES”; AMENDING SECTION 34-2 “DEFNITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDNGS”; AMENDING SECTION 34-1801 “DEFINITIONS AND GENERAL REQUIREMENTS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1806 “CONVERSIONS OF EXISTING BUILDINGS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Opened Public Comment:

Public Comment was heard:

Richard Yovanovich asked Council to determine that time shares should be an allowable form of ownership for Fort Myers Beach and that DiamondHead Resort be allowed to go forward.

Closed Public Comment

Councilmember Meador moved to adopt ordinance 07-04, with the term “parcelization” be deleted, and in Article 1, definitions, without the strikethrough, “and a kitchen” in a dwelling unit; striking 34-636 in its entirety; striking 34-1801 in its entirety; striking 34-1807 in its entirety; and striking 34-1806 in its entirety. Councilmember Shenko seconded the motion.

Motion failed 3-2, with Mayor Boback Vice Mayor Kiker and Councilmember Acken dissenting.

Vice Mayor Kiker moved to send ordinance 07-04 back to the LPA and for Spikowski Planning to re-work it with new direction.

After some discussion regarding what direction to give to the LPA and to staff, Vice Mayor Kiker withdrew his motion.

Councilmember Acken moved to have the ordinance go forward wit the language to allow the alternate of 120 days and easing the restrictions on the flood plain build back requirements.

Motion failed for lack of a second.

Mayor Boback made a motion to move ordinance 07-04 to the second public hearing. Vice Mayor Kiker seconded the motion.

Councilmember Acken made a secondary motion to allow public comment from someone who had already spoken at public comment and on this item.

Councilmember Meador asked to amend the motion to allow only 2 minutes for the speaker. The motion passed 4-1 to allow the speaker.

Richard Yavanovich spoke again to the Council regarding the DiamondHead Beach Resort.

As to the primary motion to move this ordinance to the second public hearing, the motion passed 3-2 with Councilmember Meador and Councilmember Shenko dissenting.

Mayor Boback opened the public hearing, DCI2006-00033 2500 Estero Place. Council reported not having any ex-parte communication.

Attorney Dalton read **Resolution 07-28,**
RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS
BEACH, FLORIDA RESOLUTION NUMBER 07-28

Attorney Dalton swore in all those intending to testify.

Joe McHarris, McHarris Planning and Design came forward as applicant. Mr. McHarris presented models and displays for two options. He expressed a preference for approval of Option A. He spoke to the concerns of the neighboring condominium, Pelican Watch, whereby a "NO OUTLET SIGN" or similar signage could be installed.

Lee County Community Development staff member, Nettie Richardson, Senior Planner indicated that staff recommends option A, as it is consistent with the Town's Comprehensive Plan; it provides shopping services for overnight guests, as well as affording a pedestrian character. It is also in compliance as to height.

Opened Public Comment

Public Comment was heard:

Town Clerk Michelle Mayher read a letter from NancyLynn Van Oyen in favor of the project, preferring option B.

Thomas Van Oyen spoke in favor of the project.

Closed Public Comment

Responding to a question by the Council, Community Development Director Jerry Murphy stated the Residential Conversation language in the draft resolution should be stricken. Mr. Murphy further explained that a required traffic study has been waived, as the applicant is replacing a restaurant, and there is no expected greater impact to traffic.

Councilmember Meador made a motion to approve Resolution 07-28, with the following changes: strike the language referencing Residential Conservation, (RC); as to option "A", the maximum building height be amended to 35'; to hereby approve Option "A" and disapprove Option "B"; as to Conditions, the maximum height be amended to 35'; on page 4 of 5, approves with the property owner donating 5 feet of additional right of way; under Findings, 1. DOES comply with, 2. IS appropriate, 3. ARE provided, 4. ARE

reasonably related, 5. As to the requested deviation, a.) DOES enhance, b.) WILL be preserved, c.) DOES operate to the benefit, and d) IS consistent with the Fort Myers Beach Comprehensive Plan. Councilmember Shenko seconded the motion.

Motion amended to determine the easement would be for roadway, public utility and drainage issues, and also amended to have the height be taken to 40 feet.

Motion passed 5-0.

Mayor Boback closed the public hearing.

Recess 5:00 PM

Reconvene 5:15 PM

Mayor Boback opened the public hearing for the Yucatan Beach Stand, FMBSEZ2007-00001

Attorney Dalton read the title to **Resolution 07-29, RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 07-29.**

Councilmembers declared ex-parte communication: Councilmember Meador had none; Councilmember Shenko stated no ex-parte communications however did have a rather lengthy conversation with Mr. Van Duzer who reported to represent the owner; Vice Mayor Kiker and Mayor Boback stated knowing the Kolars and had visited the property and Councilmember Acken had none.

Attorney Dalton swore in all those intending to testify.

Attorney Beverly Grady represented the applicant. The applicant is requesting a special exception to convert the former Pizza Hut to a restaurant that will be known as the Yucatan Beach Stand.

Attorney Grady reviewed the conditions as set forth by the LPA. As to the third condition, she asked to clarify the hours of operation which relate to the COP, and felt it would be appropriate to insert in condition three: the hours are limited for the COP; i.e., should they serve breakfast without alcohol, they would not want this condition to impede that activity. Ms. Grady requested approval of this request.

Council discussed at length the wording in the conditions with regard to amplified music, which indicated that live music be limited to non-amplified music until a noise buffer is installed that ...adequately protects the residential area from noise impacts. There was concern as to how this buffering would be accomplished. How this could be enforced was a concern, and the hours of entertainment were considered.

Frank Shockey, Planning and Zoning Technician, spoke on behalf of staff for the Town of Fort Myers Beach, whose recommendation is approval of the request with a series of conditions which may differ from the LPA's recommendations, however are an attempt to be reasonable. Mr. Shockey submitted the staff report as testimony.

Responding to a question, Attorney Dalton indicated that the easement agreement will come forward separately, and is not part of this application. The liability issue will be transferred to the applicant.

Opened Public Comment

None

Closed Public Comment

Councilmember Acken moved for approval with resolution 07-29 modified to strike sections 1, 3 and 6, and the rest of the resolution to reflect in the affirmative.

Motion died for lack of second.

Councilmember Acken moved for approval of resolution 07-29, with section 6 struck and condition 3, for the COP added hours of operation are limited to read Monday through Thursday between the hours of 11 am and 12 midnite, 11 am to 1 am on Friday, and Saturday, and 11 am and midnite on Sunday.

Motion died for lack of a second.

Councilmember Meador moved to adopt resolution 07-29 with the first selection starting with the paragraph that begins with the word "Based", hat Town Council hereby APPROVES the request; on the Conditions of Approval, that condition #1, be reworded - outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to within the enclosed walls and to the following hours, and to strike the provision that provides "until a noise buffer is installed that, in the determination of the Town Community Development Director, adequately protects the residential area from noise impact"; Paragraph three on page two, hours of operation condition three, alcoholic beverages served on the premises are to be limited to; paragraph 6, the Town manager may require the audit of the records of the business to verify compliance, which said audit shall be conducted at the cost of the applicant by an independent CPA selected by the Town; under findings and conclusions, 1. select the word EXIST and DOES; 2. a) IS; b) WILL; c) DOES, WILL; d) WILL/WILL NOT, WILL; e) WILL, WILL, WILL, WILL; and the Town Council finds that the Applicant HAS.

Councilmember Shenko seconded the motion.

Councilmember Meador amended the motion to add that this approval equally applies should the applicant cease operation of a 4-COP and operate under the terms of an SRX

license as defined by Florida law; condition number 9 be deleted and be replaced with, this resolution does not grant consent for the awning/ overhang proposed in the site plan; Town Council must address the matter separately; as to findings and conclusions, 2 c) be deleted and not be addressed at this time. Councilmember Shenko amended the second.

The motion was further amended to retain the last two sentences of the second paragraph under 2 c): “requested use requires a special exception because the outdoor seating area is within 500 feet of a park, dwelling units under separate ownership, and other establishments primarily engaged in the sale of alcoholic beverages for consumption on premises, but otherwise the Town Council finds that all locational standards for alcoholic beverage service will be met according to the applicant’s site plan.

Motion passed 4-1, with Vice Mayor Kiker dissenting.

Mayor Boback closed the public hearing.

Mayor Boback opened the Public Hearing for FMBDC12007-00001, Fort Myers Beach Fire Control District Station 33.

Councilmembers expressed having had several and frequent communications with the Fire Control District, Chief Becker and his staff, but no communications concerning the project.

Attorney Dalton swore in all those intending to testify.

Attorney Dalton read the Title to **Resolution 07-30, RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 07-30**

Chief Becker gave an overview of the Fort Myers Beach Fire Control District. Richard Pringle, representing the applicant, presented the application for the building on Lenell Road. The location is a commercial strip center where the CPD had been amended once before, indicating that there are no tenants, and is currently vacant.

Mr. Pringle presented the request as it pertains to the findings and conclusions in the draft resolution, 07-30, the requested rezoning, as conditioned DOES comply with; the proposed use IS appropriate; that safeguards ARE provided; recommended conditions ARE reasonably related; as to the requested deviations, each item DOES enhance; the general intent WILL be preserved; the deviation DOES operate to the benefit of the public interest, and each deviation IS consistent wit the Fort Myers Beach Comprehensive Plan.

Mr. Pringle has reviewed the LPA resolution and proposed Town Council resolution 07-30, the conditions are acceptable as written, however noted a change in the fourth whereas, which references LPA resolution 2007-15, and it should be 2007-14 .

Frank Shockey, Planning Coordinator for the Town of Fort Myers Beach submitted the staff report. The request is to rezone from existing commercial plan development at 120 Lenell Road between the Town's water tower and the CVS retail store behind Santini Plaza. Conditions are standard, which capture requirements provided by LDC. Mr. Shockey submitted the staff report as testimony.

Opened Public Comment

None

Closed Public Comment

Councilmember Acken made a motion to approve the resolution as presented by Mr. Pringle. Vice Mayor Kiker seconded the motion.
Motion passed 5-0.

Mayor Boback closed the public hearing.

ADMINISTRATIVE AGENDA:

A. Historic Preservation Board Resolution HPB 2007-01 Budget Request.

Attorney Dalton read the title of Resolution 2007-01,
RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER HPB 2007-01

Rochelle Kay spoke on behalf of the Historic Preservation Board, where by the resolution is submitting a request to the Town Council for approved funding in the amount of \$8,500.

Councilmember Meador moved to accept the resolution of the Historic Preservation Board, but to consider the funding request in connection with Town Council budget discussions. Councilmember Shenko seconded the motion.

Opened Public Comment

None

Closed Public Comment

Motion passed 4-1, with Councilmember Acken dissenting.

B. LPA Resolution on pedestrian stop light at Lenell Road, LPA 2007-15

Attorney Dalton read the title of LPA Resolution 2007-15
RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER LPA 2007-15

Alan Mandel spoke on behalf of the LPA as to resolution 2007-15, requesting the Town Council to urge the Lee County Department of Transportation and the Fort Myers Beach Fire Control District to jointly consider the instillation of a blinking yellow "caution" light at the corner of Estero Boulevard and Lenell Road, with a safety option for pedestrians to convert it to a red light via push-button.

Councilmember Meador moved to direct the Town Attorney to prepare a Town Council resolution in support of the Fort Myers Beach fire district's flashing yellow signal at the intersection of Estero Boulevard and Lenell Road; and to task the TMA and the PSTF to have a joint committee to put together statistics as to crosswalks and accidents, for all of Estero Boulevard, not just pertaining to the crosswalk at Lenell Road. Councilmember Shenko seconded the motion.

Motion passed 3-2, with Councilmember Acken and Vice Mayor Kiker dissenting.

C. LPA Resolution LPA 2007-16, Budget Request

Alan Mandel spoke on behalf of the LPA as to resolution 2007-16, requesting the Town Council to allocate the sum of fifty thousand dollars for the services of professional engineering firms who are technically proficient in matters involving coastal engineering to study issues related to hardened surfaces for protection property at Fort Myers Beach, included but not limited to seawalls and similar structures and then to provide such studies to the LPA and the Town for further consideration.

Council indicated that this matter had previously been referred to the MRTF, and would prefer to see the LPA focus on other issues, and Council will await a report from the MRTF.

D. Sign Compliance

Community Development Director Gerald Murphy spoke to this issue, that he is doing an outreach for education as to the sunseting sign ordinance on September 13, 2007. Mr. Murphy sought direction from Council as to how to tackle this issue.

Opened Public Comment

None

Closed Public Comment

Mayor Boback inquired of Attorney Dalton whether Council would have a conflict of interest as it pertains to voting on the sign ordinance. Attorney Dalton referenced a previously provided memo that indicated any conflict of interest as to voting, because it is an ethical issue, that each councilmember would have to decide for oneself whether they have an ethical conflict, and that the ethical conflict is dependent upon whether there is a specific pecuniary gain or loss to that person regarding the issue in question.

Community Development Director Jerry Murphy recapped what he understood the Council's direction to be. He will come back to council at the November 14, 2007 land use meeting with a progress report as to education and specific numbers as to compliance and this businesses that are in and out of the process, and what will then be the next steps. Town Council can initiate an interpretation to hear and schedule for consideration. The outcome would be a resolution.

Town Manager's Items: Mr. Parker referenced a letter from Sanibel City Manager, Judie Zimomra, about a joint study by the city with Lee County regarding local algae, the exact dollar amount is yet to be determined. Councilmember Acken moved to issue a statement of support for the study to the City of Sanibel to go forth with a joint study. Councilmember Meador seconded the motion, adding his caution that "support" not be spelled with a dollar sign. Motion passed 5-0.

Town Attorney's Items: As to the item of the Wilker Foreclosure, Attorney Dalton requested instruction to draft and file documents to lift the lis pendens and dismiss the lawsuit, and such other matters to bring the matter to a final conclusion. Councilmember Meador moved to direct the town attorney as such. Councilmember Shenko seconded the motion. Motion passed 5-0.

Attorney Dalton referenced the case of U.S. Bank National Association v. Noda, case number 07-CA-7672 the Town being named as a defendant as a result of outstanding code enforcement liens. Ms. Dalton requested direction from council to file an answer or other response or pleading. Councilmember Meador moved to direct the Town Attorney to file the simple answer. Councilmember Shenko seconded the motion. Motion passed 5-0.

Attorney Dalton referenced Florida statue 166.0413C2 sub paragraph a, which requires that whenever there is a prospective change of use, Florida statute requires that hearings be after 5:00 PM. Ms. Dalton indicated that no hearing date was set for Ordinance 07-04. Council set the public hearing on ordinance 07-04 for September 24, 2007 at 6:30 PM. Motion by Councilmember Acken, seconded by Vice Mayor Kiker. Motion passed 5-0.

Opened Public Comment

Public Comment was heard:

Kathleen Smith spoke regarding a special event permit application for a concert at the Lani Kai.

Tony Blake identified himself as the entertainment director for the Lani Kai.

Closed Public Comment

Councilmember Acken moved to hear the special event permit application request at the August 20, 2007 Town Council meeting. Vice Mayor Kiker seconded the motion. Motion passed 4-1, with Councilmember Shenko dissenting.

Councilmembers Items, Councilmember Meador referenced an editorial that appeared in the August 10, 2007 edition of the Island Sand Paper, and the editor's quote from a Shakespeare play, "Beware the Ides of March, Dictators". Mr. Meador stated that he felt this was a death threat, and asked Council to consider metal detectors and security at further council meetings.

Councilmember Shenko mentioned an upcoming meeting of the MPO whose agenda listed eighteen, of which one is Coconut Road.

Vice Mayor Kiker mentioned a Southwest Florida Planning Committee meeting that he will be unable to attend, and asked if anyone else could attend in his stead.

Mr. Kiker also referenced a joint meeting with the Board of County Commission regarding a study to redo Estero Boulevard, and also a desire to have another joint meeting with the Commissioners.

Councilmember Acken mentioned a website, www.ourfortmyersbeach.com and encouraged citizens to visit it.

Attorney Dalton requested the Council call an executive session for 5:30 on August 20, 2007 to hear the case of Paine/Purtell – Burt Harris Act versus the Town of Fort Myers Beach.

The meeting adjourned at 9:57 PM

Adopted 9-10-07 With/ Without Changes. Motion by Shenko
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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