



MINUTES
FORT MYERS BEACH TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931
November 19, 2007

REGULAR TOWN COUNCIL MEETING
3:00 PM

Mayor Boback called to order the meeting of the Town Council. Present with Mayor Boback was Vice Mayor Kiker, Councilmember Acken, Councilmember Meador and Councilmember Shenko, Town Attorney Anne Dalton, Town Manager Gary Parker, Town Clerk Michelle Mayher, Community Development Director Jerry Murphy, and Public Works Director Jack Green. All stood for the pledge of allegiance.

TOWN ATTORNEY ITEMS

Attorney Dalton informed Council that Attorney Denise Wheeler was present to update the Council on the case of Czulewicz vs. Town of Fort Myers Beach, Case No. 06-CV-576-Ftm-99DNF with a proposed settlement agreement. The agreement contains the terms that could resolve the case, and if the settlement is satisfactory, then the case can be resolved with prejudice.

3:08 PM - 3:10 PM

Council took a brief recess to read the agreement.

Attorney Wheeler detailed the agreement, a payment of \$8500.00 to plaintiff, waiver of fees associated with the CPD, property owner has 6 months to apply for the CPD, the waiver of fees associated cannot be assigned by the plaintiff, waiver of fees is only associated with the CPD if applied for limited uses which presently exist on the property. If application terms are broader, the Town does not agree to waive those fees.

Attorney Dalton added that this litigation would be voluntarily dismissed with prejudice, a total amount, of \$8500.00, no acknowledgement of responsibility or liability on the part of the Town, that the agreement allows the plaintiff the opportunity to apply, but does not affect the quasi judicial capacity of the Town's LDC process.

MOTION: Councilmember Shenko moved to accept the agreement as prepared by Attorney Denise Wheeler. Vice Mayor Kiker seconded the motion.

Councilmember Meador filed a Voting Conflict of Interest Form 8B, as he is an adjacent property owner to this subject property and voting could inure to his special private gain or loss, and will abstain.

VOTE: Motion passed 4-0, with Councilmember Meador abstaining.

PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

Mr. Jack Underhill asked for a reconsideration of the open house sign restrictions.

Closed Public Comment

CONSENT AGENDA

MOTION: Councilmember Shenko moved approval of the Consent Agenda. Councilmember Meador seconded the motion.

VOTE: Motion passed 5-0.

PUBLIC HEARINGS:

A. Bella Beach Villas, Case Number DCI2006-0006

Mayor Boback opened the public hearing, and Council stated whether there had been any ex-parte communication. Councilmember Shenko declared having handled the transaction prior, and having had conversations with the property owner. No other councilmembers had ex-parte communication to declare.

Attorney Dalton swore in all those intending to testify.

Matthew Speath for Speath Engineering indicated that the applicant is requesting the 9800 square feet, ten two-bedroom units, and that they are asking for either denial or withdrawal if not approval, as the proposal as written by staff is not acceptable.

Mr. Derrick Christy stated that he purchased the property and has a vested interest as property owner, and that he did not want the property rezoned, and not approved at a lesser square footage than the 9800 square feet.

Nettie Richardson, Principle Planner for Lee County Community Development was present on behalf of the Town of Fort Myers Beach, and had prepared the staff report for this case. Ms. Richardson clarified that the actual square footage on the Master Concept Plan is 9,602 square feet, not the 9800 square feet that is currently requested. The application is coming in under the pre-disaster build back policies, and the Town's comprehensive plan is very specific on what can and cannot be done. They have demonstrated and are entitled to the ten units. The property appraiser identifies 4,920 square feet, and that is what they are entitled to build back. Staff recommended a rezoning to an RPD, it is consistent with the comprehensive plan and is compatible with the surrounding area.

Opened Public Comment

Public Comment was heard:

- Tom Babcock, chair of the LPA was present representing the LPA on this case. He indicated that instead of denying the application, the LPA chose alternative 2.

Closed Public Comment

Ellis Speath, Speath Engineering stated that the issue comes down to the Council's flexibility in the interpretation of intensity. Mr. Speath is of the opinion that by having the parking underneath, would make it less intense.

MOTION: Councilmember Meador moved to approve Resolution 07-43, that the Town Council APPROVES the Applicant's request; APPROVES redevelopment of the subject property with residential multi-family units not to exceed a maximum of 10 units and not to exceed a total of 9800 square feet; as to deviation #3, APPROVES; as to deviation #4, APPROVES; as to Findings and Conclusions, the requested rezoning DOES COMPLY; 3) ARE PROVIDED; 4) ARE; 5) MEET; 6) a) WILL; b) WILL; c) WILL; d) IS CONSISTANT; as to deviation #4 paragraph 7, a) WILL; b) WILL; c) WILL; d) IS CONSISTANT. Vice Mayor Kiker seconded the motion.

Councilmember Meador referenced the LDC and the pre-disaster build back policy, which states that owners of buildings or groups of buildings that exceed the density, intensity or height limitations for new buildings may seek permission from the Town Council to voluntarily replace those buildings at up to the existing lawful density or intensity; sub para 4 states the replacement building cannot exceed the lawful density and intensity of the existing building. These replacement buildings do not exceed the lawful density and intensity; they do not exceed BOTH of those.

Attorney Dalton asked if, in order to be consistent with the motion, if on the resolution, page 2 of 5, we would change 4920 to 4900. Councilmember Meador concurred.

VOTE: Motion failed 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Acken dissenting.

Matthew Speath indicated they would like to withdraw anything else having to do with the application.

Councilmember Meador stated that the application was for 9800 square feet, and that has been denied and asked if there was another application. Being none, Councilmember Meador indicated that there was nothing left to withdraw.

Recess: 4:30 PM – Reconvene 4:50 PM

B. Stetter Residence Special Exception, Case Number FMBSEZ2007-00003

Mayor Boback opened the public hearing. Mayor Boback stated having visited the property, and having spoken to the property owner. No other councilmembers had ex-parte communication. Attorney Dalton swore in those intending to testify.

Community Development Director, Jerry Murphy indicated that there did not appear to be anyone present for the applicant.

Frank Shockey, Planning and Zoning Coordinator for the Town, presented the staff report. The request is for a special exception to permit a placement of a fence in the EC zoning district to provide a pool barrier. Staff recommends approval with the conditions that the fence comply with any permitting conditions required by the Florida DEP, that it be limited to the fence; no further seaward than the edge of the area labeled as existing pool on the site plan; that no artificial lighting be approved; and that if the existing swimming pool is removed or located outside the EC zoning district, that the fence also be removed from the EC zoning district.

Opened Public Comment

Public Comment was heard:

- Bob Raymond, LPA representative was present should the council have questions.

Closed Public Comment

MOTION: Councilmember Acken moved approval of Resolution 07-44, that the Council APPROVES; As to Findings and Conclusions, 1) EXIST; 2) a) IS; b) MEETS; C) DOES; e) WILL NOT; e) WILL. Councilmember Meador seconded the motion.

VOTE: Motion passed 5-0.

Mayor Boback closed the public hearing.

C. Mizwa Residence, Case Number FMBDCI20067-00006

Mayor Boback opened the public hearing. Vice Mayor Kiker declared having talked to the owner before, but nothing to do with this case. Mayor Boback declared having visited the property, but did not speak to anyone.

Attorney Dalton swore in all those intending to testify.

Sarah Specter, with Henderson, Franklin, Starnes and Holt on behalf of the property owners, Tom and Robin Mizwa, 95 Mound Road and 21650 Widgeon Terrace handed the Council a request for a rezoning from residential multi-family to residential planned development. There are two important conditions of approval, the first being prior to a lot split, the applicant agree to raise the home to meet current FEMA flood standards, and the second is to grant an easement for drainage over a portion of the property, and have prepared the sketch and description of the easement and have provided it.

Planning Coordinator, Frank Shockey presented the staff report. The request is to rezone approximately .35 acres from Residential Multifamily to Residential Planned Development to allow the property to be recombined and re-subdivided into two single family lots with deviations that would allow that lot division to take place, and single family residents on each lot.

Opened Public Comment

Public Comment was heard:

- Dennis Weimer, representing the LPA , stated that there were two issues that moved in the favor of the applicant, those being the applicant’s commitment to bring the current resident’s homes into compliance with current building codes, and the applicant’s willingness to grant two easements that will help with storm water management.

Closed Public Comment

MOTION: Councilmember Shenko moved approval of Resolution 07-45, with the following; APPROVES; 1) DOES; 2) DOES APPROVE; 3) DOES APPROVE; 4) DOES APPROVE; 5) DOES APPROVE; II: 1) DOES; 2) IS; 3) ARE; 4) ARE; 5) MEET; 6) WILL; 7) a) WILL b) WILL c) WILL; 8) WILL; WILL; WILL.
Councilmember Acken seconded the motion.

VOTE: Motion passed 5-0.

SECOND PUBLIC HEARING: Ordinance 07-04

Mayor Boback opened the public hearing. Attorney Dalton read the title.
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” INCLUDING AMENDMENTS TO TABLE 1 “LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS”; AMENDING SECTION 34-1801 “DEFINITIONS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1807 “CONVERSIONS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Opened Public Comment

Public Comment was heard:

- Dennis Weimer expressed concerns about changes to the land development code and changes in property use.

- Tom Boback spoke about resort communities' needs to address parcelization, and the LPA's recommendations which passed unanimously.

Closed Public Comment

Mr. Bill Spikowski, Planning Consultant for the Town spoke to this ordinance, stating that the genesis was with the Town's Evaluation and Appraisal Report. After the August 13, 2007 first public hearing on this ordinance, Mr. Spikowski took the Council's recommendations and organized them into three groups as outlined in his memo dated October 11, 2007.

MOTION: Councilmember Acken moved to accept Ordinance 07-04, including alternative 1 c, and if needing to choose between 60 days and 120 days, to choose 120 days. Vice Mayor Kiker seconded the motion.

Town Clerk Michelle Mayher called the roll of the vote.

Councilmember Acken	aye
Vice Mayor Kiker	nay
Councilmember Meador	nay
Councilmember Shenko	nay
Mayor Boback	nay

VOTE: Motion failed 4-1, with Vice Mayor Kiker, Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Vice Mayor Kiker moved to send this ordinance back to Spikowski Planning Consultants and use the LPA at staff discretion. This motion died for lack of a second.

MOTION: Councilmember Meador moved to send this back to staff and the consultant, to clarify the LDC; parcelization will not be defined as a simple change of ownership, as to sub paragraph C as it pertains to hotels and motels be deleted entirely, reference to compliance with flood plain requirements is not compliance for new construction, and other changes consistent with the foregoing. Councilmember Shenko seconded the motion.

Town Clerk Michelle Mayher called the roll of the vote.

Councilmember Acken	nay
Vice Mayor Kiker	aye
Councilmember Meador	aye
Councilmember Shenko	aye
Mayor Boback	aye

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

Recess: 6:00 PM – Reconvene 6:10 PM

ADMINISTRATIVE AGENDA

A. Interlocal Agreement with Lee County for Enhanced Trolley Service

Jack Green, Public Works Director indicated that Mr. Steve Myers, Lee Transit Director, was in attendance and available for any questions.

Opened Public Comment

Public Comment was heard:

- Tom Babcock spoke to the benefit of a free trolley as a means of mitigating traffic.

Closed Public Comment

Transit Director Steve Myers outlined the changes in the interlocal agreement to meet the requests from the Council at a previous meeting.

MOTION: Councilmember Acken moved to accept the interlocal agreement with Lee County for enhanced trolley service and an on-island fare of twenty-five cents.

VOTE: Motion passed 3-2 with Mayor Boback and Councilmember Shenko dissenting.

B. Procedure for Town Manager Search – Colin Baenziger & Associates

Mr. Baenziger addressed the Council, indicating he would like to do a search with a focus on Florida, with a target for a decision from the Council in mid-January. Mr. Baenziger indicated he would use an e-mail database his firm has retained, stating that he would prefer to stay away from using the ICMA. He detailed the process step by step, including the background checks, reference checks the interview process and selection.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Acken moved to advertise immediately the vacancy on the Town's website that the Town is accepting applications and to begin interviewing immediately. Vice Mayor Kiker seconded the motion.

VOTE: Motion failed 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Councilmember Acken moved to allow for expediting any applications received by the Town.

Motion failed for lack of a second.

MOTION: Councilmember Shenko moved to go forward with the process as outlined by Mr. Baenziger. Councilmember Meador seconded the motion.

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

C. Update on Signs Compliance:

Community Development Director Jerry Murphy indicated that he is prepared to seek direction to continue with community outreach through season to allow an extension, to provide Council with periodic updates, and come back with a status about April 1st, 2008.

Opened Public Comment

None

Closed Public Comment

D. Barking Shark

Opened Public Comment

- Richard McDole spoke contesting staff's determination as to the need for a special exception to change from beer and wine to liquor.
- Bill Keith concurred with Mr. McDole.
- Tom Babcock spoke to following the advice of the Town Attorney and cancel this item.

Closed Public Comment

MOTION: Councilmember Meador moved to take no action until the applicant avails himself of an appropriate process. Councilmember Shenko seconded the motion.

VOTE: Motion passed 5-0.

E. Discussion Regarding a Petition Requesting Modification of Sign Ordinance

Opened Public Comment

None

Closed Public Comment

Councilmember Meador spoke to this item, referencing petitions from citizens, residents and realtors on Fort Myers Beach, stating that he would like council to consider a moratorium of enforcement of the off-site open house real estate signs restrictions, and that this amendment be sent to the LPA being given the highest priority.

MOTION: Councilmember Meador indicated that is his motion. Councilmember Shenko seconded the motion.

AMENDED MOTION: Councilmember Meador amended his motion to include, "and occupied by the owner or authorized representative, and that signs are permitted only during the hours of 7:00 AM and 7:00 PM. Councilmember Shenko amended his second.

MOTION: Councilmember Acken made a secondary motion to remove the LPA priority designation.

Motion failed for lack of a second.

VOTE: Motion passed 5-0.

Recess – 8:04 PM - Reconvene 8:15 PM

F. Discussion of Zoning and Building Department RFP or Competitive Bidding

Opened Public Comment

None

Closed Public Comment

Councilmember Meador inquired of the Town Manager for an update on the RFP for the building department, on what direction the Town is going and at what speed.

Community Development Director Jerry Murphy indicated that his goal is to bring development review in house on or about December 1st, 2007 and to bring building permitting in about the second fiscal quarter.

G. Discussion Regarding the Process for “Unscheduled” Meetings.

Opened Public Comment

None

Closed Public Comment

Mayor Boback read a response to the letter from Vice Mayor read at the special meeting of November 8, 2007. Mayor Boback stated his duty as mayor and councilmember is to make decisions in the best interest of the Town. Stating that the Mayor was overstepping his bounds when he called the special meeting was inappropriate.

Vice Mayor Kiker clarified the Council’s Policies and Procedures Manual as to calling special meetings. Attorney Dalton indicated that at the next regular council meeting, as an agenda item, is taking the prior council vote regarding special meetings and putting it in the policies and procedures manual. Vice Mayor Kiker stated it is his understanding that the council had decided as a body that all special meetings would be held directly before, or directly after regular meetings. Attorney Dalton stated that as a matter of policy, special meetings would be scheduled prior to or subsequent to general town council meetings. There is an additional provision that nothing would be in contravention of the charter.

TOWN MANAGER’S ITEMS

Town Manager Gary Parker indicated that staff is seeking direction regarding the parking on fifth street. Public Works Director Jack Green referenced a letter from the Traffic Mitigation Agency addressing parking on fifth street, and wanted to be sure that staff acted in accordance with original direction from the Council. Town Council had no further direction.

TOWN ATTORNEY’S ITEMS

Attorney Anne Dalton referenced a memo regarding the County Municipal meeting of November 2, 2007.

Attorney Dalton requested an executive session at 5:45 PM on December 3, 2007 to discuss litigation strategy in the case of PAINE/PURTELL BURT J. HARRIS PRIVATE PROPERTY RIGHTS ACT.

Attorney Dalton s provided to Council a memo stating that the Town is legally required to provide Publication of Notice of referendum, bringing this to Council's attention if they desire additional advertising.

Attorney Dalton mentioned that during the discussion with Mr. Baenziger, the salary range had not been mentioned. Mayor Boback mentioned that the range set when Mr. Parker was hired was \$90,000. to \$140,000. Council agreed to stay with that range.

COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Acken thanked the youth soccer league, would like to introduce an ordinance in recognition of Mr. Parker.

Councilmember Acken spoke to several meetings in January 2008, and thinks it would be a disservice to hold the town hall meeting scheduled for January 14, 2008.

MOTION: Councilmember Acken moved that the January 14, 2008 town hall meeting date be cancelled at this time. Vice Mayor Kiker seconded the motion.

VOTE: Motion failed 4-1, with Vice Mayor Kiker, Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Councilmember Acken moved to allow the use town council chambers for PAPO to meet on January 17, 2008. Motion died for lack of a second.

Councilmember Acken inquired regarding the issuance of street performers' permits, and Public Works director Jack Green indicated he was unaware of any lapse in their issuance.

Councilmember Acken inquired about the permits for temporary parking lots, and Community Development Director Jerry Murphy stated that they become available November 15th, and if they have applied, and provided all the material, it should be issued.

Councilmember Acken mentioned the information booth in the square, wanting to put the contract out for bid.

Vice Mayor Kiker had an item for discussion, and that being to ask Mr. Parker to stay for the duration of his contract. Mr. Parker stated he considered to have a verbal agreement that he would overlap with Mr. Sallee the week of November 26, 2007.

Councilmember Shenko had no items.

Councilmember Meador referenced a memorandum from the Town Attorney vis a vis unincorporation, being concerned about having to make a decision on a time table without an AGO opinion, regarding the 10% issue or 25% issue. Council concurred not to move forward on this item.

Councilmember Meador referenced advisory committee membership, and striking a middle ground between residents and non-residents, and a matter for consideration when it does come before Council.

Councilmember Meador asked of Community Development as to the beach-side development parcel, whether there has been a seasonal parking lot application. Community Development Director Jerry Murphy stated that an application has been submitted, and would like to hear Council discussion regarding this matter.

Council expressed concerns regarding traffic congestion and safety concerns.

Mayor Boback indicated he has received many calls from residents concerned about the congestion in the area, should parking be permitted.

MOTION: Councilmember Acken moved that the temporary parking lot issue be handled administratively. Vice Mayor Kiker seconded the motion.

VOTE: Motion passed 3-2, with Mayor Boback and Councilmember Meador dissenting.

Mayor Boback asked for the next agenda to have the appointment to the Anchorage Advisory Committee, Mayor asked the status of the joint meeting with the City of Sanibel, and Town Clerk Michelle Mayor responded that the City of Sanibel would come back to the Town with additional dates for consideration.

Mayor Boback commented that there are no items scheduled for the December 17, 2007 meeting, and would council consider canceling.

MOTION: Vice Mayor Kiker moved to cancel the December 17, 2007 town council meeting. Councilmember Shenko seconded the motion.

VOTE: Motion passed 5-0.

ADJOURNMENT

The meeting adjourned at 9:46 PM

Adopted 12-03-07 With ~~Without~~ Changes. Motion by Stenko/Mador
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

- End of Document