



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

August 27, 2008

9:00 AM

I. CALL TO ORDER

Mayor Larry Kiker called to order the meeting of the Town Council at 9:00 AM. Present with Mayor Kiker was Vice Mayor Herb Acken, , Councilmember Jo List, Councilmember Bob Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher. Councilmember Babcock was absent.

II. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

Town Manager Scott Janke indicated a conversation with Councilmember Babcock. He would not be participating via telephone, and will go with the consensus of the council regarding the scheduled Budget workshop for today. Mayor Kiker polled the present council members, who agreed to reschedule the budget workshop to Wednesday, September 3, 2008 from 10:00 AM to 12:00 Noon.

IV. PUBLIC HEARINGS:

A. Cabascas SEZ, SEZ2008-0002

Mayor Kiker opened the public hearing. Mayor Kiker asked if any Councilmembers had ex-parte communications to declare. Councilmember List divulged having had several conversations with the Manager of Cabascas about their situation. The manager asked what is the process, and Councilmember List pointed her in the right direction. No other Council had ex-parte to declare.

Attorney Dalton swore in all those intending to testify.

Michelle Thomas, applicant, indicated their request for a 4COP alcoholic beverage licensed for a bar/cocktail lounge. In April, the Division of Alcoholic Beverages and Tobacco audited the establishment based on March revenues, and they failed to meet the required 51% revenue from the sale of food.

Frank Shockey, for Staff presented the staff report. This is a Special Exception in the CPD zoning district for an intensification of beverage service. Staff recommends denial, however should Council chooses to approve the requested special exception, staff recommends certain conditions for approval.

LPA Representative, Joe Yerkes stated that the LPA has taken the position of carefully considering how actions taken by the LPA would affect competitive businesses. If there isn't a food restriction, or food restriction is substantially limited, community ends up with an alcohol consumption place instead of an eating place. Generally the LPA is in support of Cabascas, approved the resolution, but recommended a pull back on the sidewalk to make more passable, to limit hours of operation, and stick with the recommended 49-51% rule in that area.

Applicant answered Council inquiry as to the changes in the easement in front, about the ability to maintain 51% of revenue from food sales, seating capacity and hours of operation and music.

Staff responded to Council questions as it relates to the resolution 02-07 that originally zoned the property and the hours of operation. There was consideration for some consistent regulations throughout the "downtown" district.

Mayor Kiker expressed concerns regarding quality of life in hard economic times. Agreeing that consistency is an issue. Behooves us to substantiate what's the rule. Mayor Kiker is of the opinion that Council shouldn't be in the business of regulating businesses, rather give them goals and let them run their businesses. The Town needs to go back and look at and put in print what the regulations are.

MOTION: Acken: Approve Resolution 08-34, Approves applicants requests for a 4COP. As to Conditions: 5,8, 9 & 10. Striking 1,2 3 4 6 & 7. As to Findings, #1. Changes EXIST making the requested approval appropriate; #2, IS consistent: #3 MEETS OR EXCEEDS; #4, WILL protect conserve; #5 Will be compatible; #5 WILL NOT; #6 WILL be in comp. #7 HAS demonstrated, as conditioned incl LDC ... and any other applicable Town ordinances or codes. Councilmember List seconded the motion.

Council engaged in considerable discussion regarding the conditions of approval on resolution 08-34, specifically hours of operation, hours of entertainment and the percentage of food revenues.

AMENDED MOTION: Vice Mayor Acken amended his motion, to modify #1 as recommended by Councilmember Raymond to reflect out door site plan would reflect the modifications discussed, modify #2 to replace the last line, 'beginning at 11. #3, Hours of Operation of the Patio, no earlier than 11:00 AM and end at 12 midnite, #4, as Councilmember Raymond suggested, #6 & #7 70-30 split, #10 remain as written. Councilmember List seconded the motion.

Attorney Dalton questioned the hours of operation for the establishment. Vice Mayor Acken answered that they should be as the current hours are, 6:00 AM to 2 AM.

VOTE: (as to the amended motion) Motion failed 2-2, with Councilmember Raymond and Mayor Kiker dissenting.

MOTION: Vice Mayor Acken moved to approve Resolution 08-34, with all the modifications as discussed, including Councilmember Raymond's suggestion that the music hours of operation end at midnight. Motion failed for lack of a second.

MOTION: Councilmember Raymond moved to approve Resolution 08-34 with the following conditions:

- #1 – Modify – delete w/in solid walls; delete “canvas”
- #2 – Music confined within exterior walls only within hours of operation
- #3 – Hours of Operation – 7 A – 2 A except patio, midnight
- #4 – Delete “canvas awning”
- #5 – Stet
- #8 - #9 & #10 Stet

Councilmember Raymond indicated #6 & #7, a 51/49 split. Councilmember List seconded the motion.

Councilmember Raymond clarified the hours of operation to be 11:00 A to 2:00 AM, and the music and patio end at midnight.

VOTE: Motion carries 4-0.

Mayor Kiker closed the public hearing at 10:50 AM

Recess: 10:50 AM

Reconvene: 11:05 AM

B. Carousel MCP Extension, MCP2008-0001

Attorney Dalton read Town of Fort Myers Beach Resolution 08-33. Council declared ex-parte communications, having none. Attorney Dalton swore in all those intending to testify.

For the Applicant, Ms. Beverly Grady, Esquire, with the firm Roetzel and Andress indicated a request for an extension of an approved MCP, Extension means no change in MCP, and are requesting a 2 year extension from today's date.

Frank Shockey, representing staff, indicated the Land Development Code of the Town of Fort Myers Beach (LDC) states that an extension of an approved master concept plan for an entire planned development, which may be vacated due to a failure to proceed on the Applicant's part, may be extended by the Town for a period of no more than two years from the date of the extension based on findings of fact as set forth in LDC.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Raymond moved to approve resolution 08-33. Councilmember List seconded the motion.

VOTE: Motion carried 4-0.

C. Goncher RPD, DCI2008-0001

Attorney Dalton read the title of resolution 08-32. Councilmembers declared ex-parte communications, having none. Attorney Dalton swore in all those intending to testify.

Michael Roeder as agent for Marianne Goncher, is requesting to rezone the property at 111 Gulfview Avenue, Fort Myers Beach from RS to RPD. Mr. Roeder gave a brief history of the property, with an appeal of an administrative determination that found the property damaged by Charley. Responding to questions from Council, Mr. Roeder indicated his client has paid \$11,200. to the Town.

Frank Shockey, for staff, indicated the request is to rezone ¼ acre from RSF to RPD, sub divided to two parcels to allow two single homes. This complies with post disaster buildback. The property was substantially damaged post charley. However subject property is not large enough. RPD is requested to adjust minimum lot width. Staff recommends approval. The Staff report was submitted as testimony.

As representative of the Local Planning Agency, Dennis Weimer indicated the LPA recommends approval of the applicant's request.

Opened Public Comment:

None

Closed Public Comment

Council questioned the application process, the costs and the length of time. Staff explained that the application the Council has now was suggested to the applicant in 2003. The chose a series of missteps that were not applicable. They have gone through two appeals with associated fees. \$5000 for the RPD was the fee in 2003. The current application was received by the Town in March 2008.

MOTION: Councilmember Raymond moved to approve 08-32 w conditions: (pg 3) APPROVES; DOES, IS consistent; DOES; ARE or Will be: Will Protect: Will BE compatible: DOES not place, and WILL be served by streets: Conclusions: Complies; IS appropriate: Are proved; are reasonable; does meet; deviation.#1, MCP does enhance: general intent WILL; Does operate: is consistent. Vice Mayor Acken seconded the motion.

VOTE: motion passed 4-0.

Mayor Kiker closed the public hearing at 12:00 Noon

MOTION: Vice Mayor Acken moved for a reduction of 50% of the fees paid by the applicant (Gonchers) out of sympathy for financial hardship, and not any admission of guilt or wrong doing. Councilmember List seconded the motion.

VOTE: Motion fails 2-2, with Councilmember Raymond and Mayor Kiker dissenting.

D. Ordinance 08-11, LPA Membership Terms and Requirements – First
Public Hearing

ORDINANCE 08-11

Attorney Dalton read the title:

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.114, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, COMPENSATION OF MEMBERS”, AND “MEMBERS TERMS AND VACANCIES”, PROVIDING FOR PARTIAL ELIMINATION OF APPLICATION REQUIREMENTS; PROVIDING FOR CHANGE IN DATE OF APPOINTMENT TO THE LPA AND ELIMINATION OF TERM LIMITS FOR LPA MEMBERS; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.

Opened Public Comment

None

Closed Public Comment

Councilmember List mentioned Councilmember Babcock’s comment of application time be changed to October, not September, and appointments would be made in the first available meeting in November not October (move dates back 30 days).

MOTION: Councilmember List moved to forward Ordinance 08-11 which amends various provisions of membership on the Town Local Planning Agency, forward to final hearing on September 15, 2008 at 6:30 PM with the adjustment to timing with an increase of 30 days. Councilmember Raymond seconded the motion.

VOTE: Motion passed 4-0.

V. TOWN MANAGER’S ITEMS

Town Manager Scott Janke spoke to some lessons learned by Tropical Storm Fay. The EOP is good, but needs a tactical plan, and staff will be working on that.

Community Development Director Jerry Murphy introduced a new staff member, Eric Berris. Mr. Berris’ background is in Biology, and for the past two years working Sanibel research on seagrass and fish population.

VI. TOWN ATTORNEY’S ITEMS

Attorney Dalton spoke of a need to review a post disaster recovery ordinance, and will be bringing it forward in the near future.

VII. COUNCILMEMBERS ITEMS AND REPORTS

A. Goals and Objectives

Councilmember Raymond expressed his gratitude for having the agenda and packet on CD.

Vice Mayor Acken would like to have a discussion on Town ordinance 07-04 on a future agenda. Mr. Acken would like to review what was passed and what was presented before it was passed.

Mayor Kiker directed staff to define what are the issues as to liquor licenses: if all are exceptions, exceptions become the rule. Mr. Kiker would like consistent, clearly defined rules, and a set of measurements that are consistent for quality of life for residents and businesses. Staff is to define the issues, to allow the Council for some policy decisions.

Council discussed the development of a local economic council, with Councilmember List and Town Manager Janke or designee as representatives.

Mayor Kiker referenced technology, and expressed a desire to search a laptop on the dais to search the LDC, to have an agenda electronically for the viewing audience. Need to look at requirements and service.

VIII. PUBLIC COMMENT

Opened Public Comment

None

Closed Public Comment

IX. RECAP OF CURRENT AGENDA ACTION ITEMS

X. ADJOURNMENT

The Council adjourned the meeting at 12:50 PM

Adopted 9-15-08 With/Without Changes Motion by List Babcock
(Date)

Vote: 5-0



Michelle D. Mayher
Town Clerk

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