



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
September 11, 2012

I. CALL TO ORDER

Meeting was called to order at 9:03 a.m. by Chair Shamp; other members present:

Dan Andre
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
Alan Smith
Hank Zuba - Excused

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator – Excused
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE – Mr. Kakatsch

III. INVOCATION – Mr. Kakatsch

IV. MINUTES

A. Minutes of August 14, 2012

MOTION: Ms. Plummer moved to approve the August 14, 2012 minutes as presented; second by Mr. Andre.

Mr. Andre requested to correct the duplication of Mr. Owen's name on Page 10, second paragraph.

VOTE: Motion approved 5-0; Mr. Kakatsch excused; Ms. Shamp abstained because she was not present at the August 14, 2012 meeting.

V. PUBLIC HEARING

A. REZ2012-0001, 110 Mango Street Rezoning

Chair Shamp opened the hearing at 9:06 a.m.

Planning Coordinator Overmyer entered the Affidavit of Publication into the record.

Chair Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Planning Coordinator Overmyer presented comments for REZ2012-0001, 110 Mango Street Rezoning on behalf of the Town of Fort Myers Beach. He displayed an aerial photograph of the subject property and described the location of the site. He reported the request was for a conventional rezoning request which dated back to the Lee County zoning of C-1; and after incorporation of the Town the zoning was reclassified to Residential Multifamily (RM) which was determined by the Town in 2006 to be incorrect and an attempt to change the zoning failed. He explained the basis for staff's recommendation of the rezoning to Commercial Boulevard for the subject property; and noted that no conditions could be placed on the approval. He pointed out that the Applicant had requested a fee waiver since the zoning error was created by Town action; and that the subject site was an existing non-conforming commercial use and approval would bring the property into compliance with the use.

Mr. Kakatsch questioned if there was adequate parking.

Planning Coordinator Overmyer relayed that the site plan depicted 5-6 parking spaces; and according to the Land Development Code the property had sufficient parking for what the current use would require.

Mr. Andre queried as to why a previous Town Council would have rejected the request in 2006.

Community Development Director Fluegel offered an explanation of CPD and the CB zoning with respect to intensity of uses, and how that might have influenced the Council's decision at the time.

Mr. Kakatsch questioned if there was a way of having the Applicant make some aesthetic improvements to the site (i.e. paint, gravel, landscaping).

Community Development Director Fluegel explained that conditions could not be placed on the approval.

Discussion ensued regarding how to recommend aesthetic improvements for the site; and the need for improvements to the subject property.

Chair Shamp quizzed, with respect to a rezoning instead of a CPD, whether staff had considered extending the waiver of fees to the CPD.

Community Development Director Fluegel responded in the affirmative; and reviewed considerations discussed as it related to fees for a CPD, the existing circumstances, and the issue created by the Town at the time of incorporation.

Chair Shamp noted her concern regarding hours of operation and potential future impact to the community if the current hours were to change.

Community Development Director Fluegel reported his belief that no greater restrictions could be placed on the site, as a restaurant, than what was historically. He pointed out that the current owner did not have a COP license, nor could they obtain one without having to substantiate intensification.

Chair Shamp questioned if any buffering was required as it related to the Commercial Boulevard (CB) designation.

Community Development Director Fluegel stated staff could look at the CB standards; however, it was his belief that on the residential side it was adequate, but on the commercial side there was not a standard between the two sites.

Ed Czulewicz, spouse of Marylu Czulewicz – Applicant, reported he was representing his wife who was unable to attend the hearing due to illness. He offered a brief history on the zoning and use of the subject site by his wife; and stressed his wife had used the site as commercial since the purchase. He discussed the Applicant's desire to have the property appropriately zoned CB; he acknowledged the aesthetic work requested and reviewed his intention to make improvements (i.e. power wash siding, eradicate weeds/grass in the gravel, etc.).

Chair Shamp pointed out that if the change to CB was approved that the LPA could not condition the approval, and that the Code would identify what would need to be done to the subject property to comply with the zoning designation.

Ms. Plummer stated she was on the LPA in 2006 and was aware of the issues the subject property faced.

Public Comment opened.

No speakers.

Public Comment closed.

Chair Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – site visit; Mr. Durrett –site visit; Chair Shamp – site visit; Ms. Plummer – site visit; Mr. Smith - site visit; Mr. Andre – site visit.

Community Development Director Fluegel discussed how the issue arose out of a code enforcement issue at another property, and how staff was working to correct prior mistakes.

MOTION: Mr. Andre moved that the LPA recommends approval of Resolution 2012-14, REZ2012-0001, 110 Mango Street with the recommended approvals – 1) approved; 2) approved; 3) approved; 4) approved; 5) approved; 6) approved; 7) approved; 8) approved; 9) approved; second by Ms. Plummer.

Chair Shamp discussed that it was her understanding that the normal process would be a CPD; however, at this point it appeared the Land Development Code protected the residential neighborhoods surrounding the site and that CB seemed to be the proper method to correct this problem.

VOTE: Motion approved; 6-0; Mr. Zuba – excused.

Chair Shamp closed the hearing at 9:40 a.m.

Recess at 9:40 a.m. – Reconvened at 9:45 a.m.

B. ORD 12-XX International Property Maintenance Code (IPMC)

Chair Shamp opened the hearing at 9:46 a.m.

Planning Coordinator Overmyer entered the Affidavit of Publication into the record.

LPA Attorney Miller read the title of Ordinance 12-XX:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPEALING CHAPTER 6, ARTICLE I, DIVISION 1, "MAINTENANCE CODE," SECTIONS 6-1 THROUGH 6-15; ADOPTING THE 2009 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, REGULATING AND GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PROPERTY, BUILDINGS AND STRUCTURES WITH SPECIFIC AMENDMENTS AS SET FORTH IN SECTION TWO OF THIS ORDINANCE; PROVIDING FOR SCOPE AND ADMINISTRATION; DEFINITIONS; GENERAL REQUIREMENTS; LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS; PLUMBING FACILITIES AND FIXTURE REQUIREMENTS; MECHANICAL AND ELECTRICAL REQUIREMENTS; FIRE SAFETY REQUIREMENTS; REFERENCED STANDARDS; SAID PROVISIONS BEING ADOPTED TO ENSURE THAT STRUCTURES ARE SAFE, SANITARY AND FIT FOR OCCUPATION AND USE; PROVIDING FOR THE CONDEMNATION OF BUILDINGS AND STRUCTURES UNFIT FOR HUMAN OCCUPANCY

AND USE, AND THE DEMOLITION OF SUCH EXISTING STRUCTURES IN THE TOWN OF FORT MYERS BEACH; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

LPA Attorney Miller discussed the proposed ordinance and noted that the code enforcement process was governed by State Statute (Chapter 162) which could not vary, as well as matters dealing with 'right-of-entry' which could not conflict with Florida law. She reviewed how she prepared the proposed ordinance using State Statutes, the International Property Maintenance Code, and other sources. She suggested beginning with the evaluation of the proposed ordinance using the comments written by Chair Shamp.

Chair Shamp distributed copies of her "*Issues to address prior to adoption of International Property Maintenance Code, LPA Hearing Ord12-XX on September 11, 2012, Prepared by Joanne Shamp*" which listed her areas of concern, and copies of Section 6 of the Land Development Code. She explained that the discussion was basically about deleting Section 6 and substituting it with the proposed ordinance.

LPA Attorney Miller clarified the proposed ordinance would repeal Division 1, Maintenance Code, and that the rest of Chapter 6 would remain.

Chair Shamp reviewed the concerns she had discussed with the LPA Attorney and Community Development Director about the IPMC and the need to address issues that were unique to the Island.

Community Development Director Fluegel discussed his experience about how there were hurdles faced when trying to weave the IPMC into a town's existing code and that the IPMC was not 'one size fits all'.

Chair Shamp suggested the LPA review the section of the code distributed and the proposed ordinance in order to comment on the matter. She noted that if the hearing was continued, then each LPA member could individually speak with the LPA Attorney and/or Community Development Director regarding any concerns.

Discussion ensued regarding Article 1, Division:

- Definition of abandoned property; LPA Attorney Miller noted that was addressed in Florida State Statutes Chapter 705.
- Definition of trash; LPA Attorney Miller noted that in the LDC it was termed 'trash' and in the IPMC it was termed 'rubbish'.
- Nuisance grasses or weeds; covered in IPMC; beach vegetation to be discussed later.
- Exterior surfaces of buildings; covered in IPMC

Community Development Director Fluegel introduced the new Code Enforcement Officer, Robert Mercado.

Ken Miller, Building Safety Services Coordinator for the Town of Fort Myers Beach, reported he had many people who came to his office with complaints about the building code, and noted that the

building code did not cover property maintenance. He explained how the property maintenance code would allow him to address property maintenance issues if approved.

Discussion continued Article 1, Division 1:

- Exterior storage on vacant lots (Section 6-3);
- Public rights-of-way and sidewalks (Section 6-4b); LPA Attorney Miller discussed cross-reference; she hoped the landscaping was consistent, but it may be more appropriate to place in the landscaping.
- Inoperative vehicles on public property (Section 6-6); consideration of inoperative boats, jet skis and concerns related to these types of marine vehicles not anchored down during hurricane season; storage issues listed in Chapter 34.

Ms. Plummer stated her preference when doing a 'total re-vamp' that the LPA should receive documentation that included some type of highlighting or strikethrough in order to see the change/replacement better.

Discussion continued Article 1, Division 1:

- Noise reference to FMB Noise Ordinance (Section 6-7); LPA Attorney Miller explained that everything did not need to be referenced to Chapter 34 which might be a code violation.
- Required landscaping; LPA Attorney Miller noted that if the Town was going to cite a property they would be cited under the landscaping code.
- Larger address numbers required on setback buildings (Section 6-10b); discussion on what was reasonable current code or IPMC.
- In depth regulations for trash (Section 6-11); cross reference to LDC 34-1171 and 34-1744.
- Disposal of swimming pool water prohibiting disposal onto beach (Section 6-12); issue specific to Island.
- Stormwater drainage on beach (Section 6-13) and neighborhood flooding issues (Section 6-14); LPA Attorney cited Chapter 10, Article 3, Division 3 and noted it may be more appropriate to transfer some of the section.

Discussion was held concerning the handout received from Chair Shamp and the IPMC as follows:

- Chapter 2 – 202 Definitions: the following do not match LDC Sec. 34-2: (B) dwelling unit, easement, habitable space, premises, rooming house, and structure. LPA Attorney Miller explained that the definitions variation between Chapter 34 and the IPMC was not a legal issue but could be a practical issue. She discussed an example of what the dwelling unit should contain by the IPMC definition and how Chapter 34 addressed a dwelling unit from the perspective of density.

Mr. Miller explained how he addressed various situations through the Code and the IPMC.

Discussion ensued regarding the difference in definitions between Chapter 34 and the IPMC; definitions included in dwelling unit and rooming house; the IPMC to be used for maintenance purposes; IPMC requirements and how it could affect older residences (i.e. 1950s); right-of-entry issues as it related to

commercial and non-commercial uses, compliance with Florida law; and Section 17 regarding ventilation.

Mr. Andre pointed out that the IPMC would offer Mr. Miller another tool in addition to the Building Code to address certain issues.

Discussion continued concerning the handout received from Chair Shamp and the IPMC as follows:

- Chapter 3, General Requirements, 302.4, Weeds; does not address beachfront plantings taller than 12", and Ms. Shamp suggested including "*this term shall not include cultivated flowers, gardens and native beach vegetation such as sea oats*".
- Section 302.8, Motor Vehicles; did not address outdoor storage of boats, jet skis, etc.; discussion of the permissiveness of storage of motor homes, etc., restrictions on storage of same on vacant lots; preparation of property prior to a storm for both commercial and residential.
- Chapter 4, Section 402.2; Exterior lighting standards may conflict with seasonal sea turtle regulations.
- Section 404.4.1, Room Area
- Section 404.3, Ceiling Height; existing building code used; discussion regarding remodeling.
- Section 404.6, Efficiency Unit; not currently defined in Section 34.
- Chapter 5, Section 507, Storm Drainage; suggested Public Works review section for wording and potential reference to the Storm Water Management Plan. LPA Attorney Miller explained how she wanted to take from wording from existing Section 6, Division 1 and incorporate it into Division 10 which addressed how surface water management was regulated.

Chair Shamp asked if there were other outstanding issues or questions the LPA members wished to bring to staff's attention.

Ms. Plummer questioned the following Sections and discussion ensued:

- IPMC, Page 13, 304.18.1, Doors; deadbolt requirements on new construction and existing dwelling units, and rental units.
- Section 304.14, Screening; discussion regarding ventilation and screened openings for habitable rooms.
- Demolition; the ability to lien properties and to become superior to a mortgage; discussion of Page 5 of the proposed ordinance (Section 111.1) and the ability to appeal to Council; assessment procedures after a storm.

Discussion ensued regarding potentially continuing the matter to the October or November meeting in order for the LPA members to meet/discuss individually with the LPA Attorney and/or Community Development Director.

MOTION: Mr. Andre moved to continue of ORD 12-XX International Property Maintenance Code (IPMC) to the November 13, 2012 LPA meeting; second by Mr. Durrett.

VOTE: Motion approved; 6-0; Mr. Zuba – excused.

Chair Shamp closed the Public Hearing at 11:01 a.m.

MOTION: Mr. Smith moved to adjourn the LPA and reconvene as the HPB; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0; Mr. Zuba - excused.

**ADJOURN AS LPA AND RECONVENE AS HISTORIC PRESERVATION BOARD
11:02 A.M.**

Ms. Plummer reported there had not been a Historic Advisory Committee meeting held; and asked for suggestions regarding the creation of an agenda in order to discuss that there had not been a meeting and how to remedy the situation. She noted that health issues of some of the members were part of the problem with obtaining a quorum.

Discussion was held concerning the potential construction schedule for the Mound House; and if there were other pressing issues the HAC needed to address.

Ms. Plummer suggested waiting until January for an HAC meeting.

Mr. Kakatsch inquired if they needed to address the storm damage in the underground exhibit at the Mound House after Tropical Storm Debby.

LPA Attorney Miller reviewed LDC Chapter 22 as it pertained to the purpose of the HPB to preserve and protect historical and archeological sites and districts. She added that it appears that the HAC does not have a required minimum number of meetings per year.

Discussion ensued regarding the plaques for the Mound House and the vista signs; and placement of plaques during season to create interest.

Ms. Plummer requested Planning Coordinator Overmyer continue to work on scheduling a meeting for this month.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Smith.

VOTE: Motion carried, 6-0; Mr. Zuba - excused.

**ADJOURN AS HISTORIC PRESERVATION BOARD AND RECONVENE AS LPA
AT 11:08 A.M.**

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Durrett – reported he had two signs that were about 12-13 years old that had stickers on them from the County. He mentioned that he had the signs re-done, not changed, and he wanted to know how he and other businesses in the same position, could get new stickers for their permitted signs.

Community Development Director Fluegel explained the Town had eliminated the requirement for decals on the signs.

Discussion ensued regarding evidence to prove the signs were permitted; permits were not necessary when no change of copy; the Town's digital library of the permitted signs; and whether or not to utilize stickers on permitted signs.

Mr. Smith – no items or report.

Ms. Plummer – discussed her concerns regarding the buffering/vegetation at Chuck's Last Stop as it related to vehicular line of sight and the need to keep open a visual view corridor for vehicles, pedestrians, and bicycles.

Community Development Director Fluegel reported he had received a complaint yesterday regarding the same issue. He noted that the Town had not inspected the landscaping yet.

Ms. Plummer requested staff inspect the site now before it is finished. She also questioned the size of the water retention area.

Community Development Director Fluegel stated the property owner's engineer designed the water retention area.

Ms. Plummer prefaced her question stating she would approach the Marine Task Force, but wanted to know if there was anything in the Code that addressed derelict boats (not on Town moorings) that had no motor or came loose and then attached themselves to another dock. She recounted her recent personal experience with this type of situation and questioned liability issues.

Discussion was held concerning derelict boats; property rights and maritime law issues; and maritime jurisdiction.

Ms. Shamp – commented on vegetation on corners that obstructed the line of sight and questioned if the Public Safety Committee or Code Enforcement might investigate the matter.

Mr. Durrett stated the Public Safety Committee had not discussed that matter and he would bring up the problem at the next meeting.

LPA Attorney Miller noted that the Code did address landscaping plantings as it pertained to obstruction of vehicle visibility (10-416.7 on Page 49).

Discussion was held concerning vehicle visibility and Chuck's Last Stop.

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Mr. Kakatsch – questioned the status of the gray houses on Estero Boulevard.

Community Development Director Fluegel reported staff was optimistic that there was a potential buyer and the Town had spoken with the buyer about immediately demolishing the subject buildings after the purchase.

Mr. Andre – suggested a visit to Chuck’s Last Stop should be sooner than later because they were installing the irrigation now. He requested a new LDC book. He stated that in reflection of last month’s meeting he believed the LPA gave away too much on the signs regarding the height (Dolphin and Neptune), and the LPA should have stayed more in line with staff’s recommendation.

Community Development Director Fluegel reported those sign requests would be on the Council agenda on October 1st and 15th and that staff would stay with their recommendations.

Mr. Zuba – no items or report – excused.

Chair Shamp reminded the LPA members whose term was going to expire about reappointment that they may want to attend the meeting when the Council would address reappointments and appointments. She reminded staff about the LPA being listed on the Council’s Agenda Management and the information that was to be included in the LPA agenda packet. She asked if personal watercraft was still with the Marine Task Force.

LPA Attorney Miller stated it there was still a meeting to be scheduled on the personal watercraft.

Chair Shamp briefly reviewed the upcoming cases before Town Council and asked for an LPA representative to attend:

- Beach Shell (October 15th) – Mr. Smith
- Dolphin Inn (October 1st) – Mr. Kakatsch
- Neptune Inn (October 1st) – Mr. Kakatsch
- Matanzas Inn (October 15th) – Mr. Smith
- Seagrape MUD (October 15th) – Mr. Smith
- Moss Marine – continued to October

Mr. Durrett noted that it had been mentioned that marinas might fall under a different sign classification.

Community Development Director Fluegel explained that staff would integrate that into the presentation on Moss Marine.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – no items or report.

IX. LPA ACTION ITEM LIST REVIEW

No comment.

X. ITEMS FOR NEXT MONTH’S AGENDA

Planning Coordinator Overmyer reported he received a re-submittal on the Lighthouse Sign Variance Ordinance which he hoped to have on the next LPA agenda.

Chair Shamp noted that the re-organization of the LPA (Chair and Vice Chair) would be on next month’s agenda.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Mr. Kakatsch, seconded by Mr. Durrett to adjourn.

VOTE: Motion approved, 6-0; Mr. Zuba - excused.

Meeting adjourned at 11:47 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

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