



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

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida 33931  
**Friday, November 14, 2014**

**I. CALL TO ORDER**

Meeting was called to order at 9:00 a.m. by Chair Zuba. Other members present:

Chuck Bodenhafer, Jane Plummer, Joanne Shamp, James Steele, and Hank Zuba.

Excused: Al Durrett and John Kakatsch.

LPA Attorney: Derek Rooney

Staff Present: Principal Planner Josh Overmyer and Belinda Smith, Development Services Manager.

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION - Chair Zuba**

**IV. MINUTES - October 14, 2014**

**MOTION:** Vice Chair Shamp moved to approve the minutes; second by Mr. Bodenhafer.

Under LPA Member Items & Reports, Mr. Steele and Vice Chair Shamp thanked **Council** members. Change the following sentence on page 3 to read: Vice Chair Shamp discussed the comp plan ~~on~~ 418 4-C-8 and the concept of density transfers.

**VOTE:** Motion approved; 5-0 (Mr. Durrett and Mr. Kakatsch excused).

**V. PUBLIC HEARING**

**A. DCI2014-0005 Olde Seaport CPD**

Town Attorney Rooney swore in those providing testimony.

Chair Zuba requested ex-parte communication. Mr. Bodenhafer - site visit; Ms. Plummer - site visit; Chair Zuba - site visit and email from the Snug Harbor Condominium Association; Vice Chair Shamp - site visit, conversation with someone from Snug Harbor, and an email from a resident; Mr. Steele - site visit.

Rob Fowler discussed the history of Snug Harbor with photographs and illustrations. He stated the concept was close to a 90% reduction in the density of use and their intention was to create an atmosphere similar to the waterfront in Charleston, SC. Dave McKee, McKee Engineering Consultants, identified four properties covered by their application, which included two water areas and two upland portions. Mr. McKee noted that all property was owned by Mr. DeGennaro including three units in the bottom of the Snug Harbor Condominium. He stated that the three units were not included in the application, but they would be related to the project. Mr. McKee noted that Mr. DeGennaro owned the bottom lands and they were not typically subjected to DEP rules and regulations. The submerged land lease was currently in a permitting process with DEP to expand the docks. He stated that a generic schedule of uses for each parcel was included in the staff report. Mr. McKee discussed the projected parking calculations in the report and he noted there was more than adequate parking available. Mr. McKee referred to the notes in the left side of the master concept plan for a summary of development standards and the capacity for each of the uses requested.

Rob DeGennaro displayed an artist's rendering of what the completed project would look like. He discussed the Lynx and other tall ships. He reiterated that he was not interested in building a regional mall and he had support from the Lee County Visitor and Convention Bureau and the TDC. Mr. DeGennaro described possible uses for the Snug Harbor marina and the bottom floor of Marina Village, which included a bakery/deli, restaurant, museum, storage facility, restrooms, an area for first responders, and Harbormaster. He remarked that the retail area would be an open market style.

Vice Chair Shamp asked the following questions:

- 1) Was there a density transfer from the original Snug Harbor Restaurant? Mr. Fowler replied in the negative.
- 2) Have they considered adding a second story to the parking? Mr. DeGennaro responded that a second story may be considered in the future, but he did not feel it was necessary at this point.
- 3) Was a water taxi being considered and where would parking be located? Mr. DeGennaro replied in the affirmative and he stated a lot was available on the other side of the bridge.
- 4) What were the hours of operation, type of music, and hours for COP? Mr. DeGennaro responded that acoustic music would end between 9:30-10:00 p.m. and COP would be from 11:00 a.m. to 9:30-10:00 p.m. when the restaurant closed.
- 5) Are live-aboards allowed? Mr. DeGennaro replied in the negative.
- 6) Have they met with the Anchorage Advisory Committee regarding the mooring field? Mr. Fowler stated that he recently met with town staff.
- 7) How many bathrooms would be provided and what were the hours? Mr. Fowler replied that they would comply with code.

Chair Zuba questioned the difference in the rules for the submerged use of land and land lease. Mr. Fowler explained that the Butler Act was a provision within state law that if one could document previous use back to the mid-50's of a specific use over submerged land, one had the right to go to the Governor of the Board to request ownership rather than a submerged land lease. Mr. DeGennaro stated that the submerged land lease was renewable every 10 years and they just renewed it. He stated they were in the process of building wood docks. Chair Zuba questioned the schedule for the redevelopment. Mr. Fowler indicated that they were waiting for approval of the re-survey, but the Town would decide when the project would begin.

Mr. Overmyer reviewed the request. He stated that staff recommended approval with nine conditions. Mr. Overmyer stated that the applicant designed the project to make sure that the uses they proposed on the docks were consistent with the tidal water future uses category and he read the applicable section of the comprehensive plan.

Vice Chair Shamp questioned the dimensions of the parking lot. Mr. Overmyer responded that restaurants were required to provide eight spaces per 1,000 square feet and accessory parking was an additional five spaces per 1,000 of square footage allocated to the bar or lounge.

Vice Chair Shamp questioned whether the dead end in the parking lot would be eliminated. Mr. DeGennaro replied that they would look into that. Mr. Overmyer pointed out that the parking lot was an existing non-conforming lot and it would be reviewed at the time of the local development order. Vice Chair Shamp questioned whether open retail markets were in the land development code. Mr. Overmyer replied that the land development code did not address details for uses. Vice Chair Shamp asked whether the retail shops would be closed off-season. Mr. DeGennaro stated they would be year-round, open-air structures and that FEMA would ultimately decide what would be allowed. Vice Chair Shamp questioned trash removal. Mr. DeGennaro replied that trash pickup would be increased to six days per week. Vice Chair Shamp questioned whether uses in the condo association bylaws permitted the request and if the condo association had the right to vote on the requested use. Mr. DeGennaro explained that he purchased the property up to the building and he did not have any association with the condo association. He stated that he would be continuing the use that had been there for over 30 years.

Chair Zuba questioned condition #9 regarding dock uses. Mr. Overmyer replied that future separate commercial businesses would not be allowed.

Robert Pritt from Roetzel & Andress, represented the condominium association. He questioned the date of the parking analysis and where the restrooms were located. Mr. Overmyer replied the date of the staff report was 9-30-14, but the data was changed on 10-4-14 to include the cruise ship parking. Mr. McKee responded that restrooms would be located in the front of Unit C and would comply with all required standards. Mr. Pritt stated that those two items were not available to the public earlier, and he asked that the LPA continue the matter so all parties could meet to discuss options. Mr. Pritt suggested that the condo association be given the opportunity to respond to issues. He remarked that almost everything that was being proposed around the building had a significant effect within the condominium building. Mr. Pritt noted that there was an opportunity to make sure that the project was done right, but he did not feel the proposed plan was doing it right. Mr. Pritt identified two problems: He did not think the original lot split was done correctly and he was not in favor of planned development when it was for

parcels as small as a quarter acre, because he said it was spot zoning in another context. He commented that minimum acreage should be stated for planned development and that it was a legal point. Mr. Pritt provided an analysis to LPA member from Noel Davies of Roetzel & Andress.

Paul Rosen, member of Marina Village Snug Harbor Board of Directors, revealed that an email was sent to owners with a link to the LPA website to review the project and comment. He presented the emails to Mr. Overmyer for the record. Mr. Rosen remarked that most of the project would be a great enhancement and an improvement, but he had some issues.

Mr. Rosen distributed a copy of the first floor building plan permitted in 1982. He described the planned uses of five units in the condominium. Mr. Rosen stated they found out about the project and the extensiveness of it last month. He addressed two inconsistencies in the staff report and the application. The bay marked kitchen on page 2 of the staff report was originally a prep room, not a kitchen; the main kitchen was located in the restaurant. On page 2 of the application, it states full kitchen facilities in unit C or B. Mr. Rosen reiterated that the kitchen was originally only a prep room. He discussed allowing a full kitchen inside the building. Mr. Rosen stated that it was not a 90% reduction in intensity, but might be a 90% reduction in density. He remarked that it was a multiple increase in intensity, which could be great if handled correctly. Mr. Rosen commented that they would work with Mr. DeGennaro.

Lauren Dillard, owner, realtor, and licensed CAM for the condo association, pointed out that the floor of her unit 304 was the ceiling of the middle bay. She reviewed the project and stated the condo was a big part of the proposal. She stated owners had concerns regarding parking, noise, smells, and traffic in the neighborhood. She discussed the pitfalls of transient boat docks without proper conditions.

Tom Easton, Snug Harbor employee since 1979, stated that smells from the previous kitchen were never a problem.

Maude Kasmer, owner for 30 years, was concerned about parking, smells, baking at 2:00 a.m., promises made in the presentation, and plans regarding the open market shops were not clear.

Valerie Solona, employee of Marina Village Snug Harbor Condominium Association, stated that out-of-state owners also made phone calls with concerns about parking.

Marty Burke, owner for 30 years, stated that parking was an issue and needed to be addressed. He had concerns regarding the restrooms, noise, alcohol, and cooking odors.

Bud Nocera, president of the Fort Myers Beach Chamber of Commerce, supported the concept of the Olde Seaport CPD. Reasons cited were: more residents at that part of Old San Carlos would benefit the community, the reconstruction of the dangerous docks would be good for the tourism industry, and the reduction in the development density was a benefit. He stated they believed it was worthy of moving forward and felt that it would bring the original concept of Baywalk into reality.

George Freeland, owner of Moss Marina, generally supported the plan and felt it would be an asset to the beach. He stated that new docks would provide better access.

Monty Harrison, owner for 15 years from Suffolk UK, was concerned regarding smells and parking. He stated that the condo unit was a major part of the development and considerations needed to be taken into account with any decisions made.

Dr. Wayne Edson, owner at Marina Village since 1985, stated parking was an issue on the whole island and always would be an issue. He stated that the condo had its own parking spots, but overflow parking had been allowed at Snug Harbor. He felt that overflow parking might impact the condo, but Mr. DeGennaro indicated he would work with residents. He stated the smells could be a problem, but an exhaust above the building would be a feasible alternative. Mr. Edson indicated that communication was an issue and a meeting should be scheduled with all interested parties to address the problems and to forge a conclusion.

Mr. Fowler responded to issues raised. He stated the kitchen had not changed from what was there before and it was a permitted use. He indicated steamers were located outside. The current CPD did have a restaurant and the intensity of use was built into what was there today. There had not been any code violations cited for noise or public intoxication. As far as deliveries, Mr. DeGennaro stated that staff arrived at 2:00 a.m. to bake bread, not to deliver it. Mr. Fowler pointed out that shops would be designed with the development order. He commented on parking concerns and pointed out that they exceeded requirements. He pointed out that smells fell under the EPA, and they would comply with the EPA.

Mr. McKee stated that the project complied with all rules and regulations put forth by the Town of Fort Myers Beach.

Ms. Plummer stated the request was a zoning question, not a development order and she felt there was plenty of time for the owners and developer to get together and discuss details. She remarked that the reduction in density was an asset.

Mr. Bodenhafer commented that they were there to determine whether the applicant met their requirements and he was happy with the reduction in the footprint.

Mr. Steele asked Mr. DeGennaro what harm would a delay cause. Mr. DeGennaro stated he didn't think they could do anything different, but he did not want to see it delayed.

Vice Chair Shamp reiterated that the concept was fully supported by the community and it was a matter of details. She felt strongly regarding the unique situation and felt they should address some conditions.

Vice Chair Shamp listed the following conditions:

- hours of operation and music. The pirate museum from 11:00-6:00 p.m., deli from 7:30-3:00 p.m., the service area on the dock 11:00-10:00 p.m., unamplified acoustic music would be inside the building and end at 9:30-10:00 p.m.
- steamers would be outside the building.
- no deliveries in the middle of the night.
- trash pickup six days a week.

- the parking lot become a conforming permanent parking lot to the standards of the LDC.
- new restrooms be located in unit C and the existing restrooms would remain for the use of Marina Towers.

Vice Chair Shamp commented that she was concerned about legal issues regarding ownership and co-ownership.

Chair Zuba commented that objections on lack of information with regard to restrooms, parking, and parking count were not materially relevant. He stated he had not seen such a complete and descriptive application in terms of how it was in compliance with code, LDC, and comp plan. He felt that it was a remarkable reduction and it would be a plus to the downtown.

Mr. Steele questioned the nonconformity of the parking lot. Mr. Overmyer replied that he did not know the existing dimensions.

Mr. McKee stated that all conditions listed by Vice Chair Shamp were fine except the parking lot condition. He stated they would lose parking if they had to bring it into compliance. He suggested they fix the flow-through traffic issue. Vice Chair Shamp agreed to change the conforming condition to provide a flow-through of the parking to make sure it functions as efficiently as possible. Vice Chair Shamp questioned fueling and suggested it be made a condition.

Mr. Bodenhafer did not think fueling should be a condition.

**MOTION:** Vice Chair Shamp moved LPA recommends Town Council approve the applicants request for rezoning to allow outdoor seating, retail, and marine educational facility at the Olde Seaport CPD subject to all the conditions listed plus those added: Hours of operation for the pirate museum from 11:00-6:00 p.m., deli from 7:30-3:00 p.m., the seating area on the dock 11:00-10:00 p.m., unamplified acoustic music inside the building to end at 9:30-10:00 p.m.; steamers would be outside the building; no deliveries in the middle of the night; trash pickup six days a week; the parking lot to provide flow-through to avoid the dead end situation; and new restrooms be located in unit C and the existing restrooms would remain for the use of Marina Towers. Recommended findings and conclusions would be in support; second by Ms. Plummer.

Mr. Steele stated that specifying the hours of operation for the museum and the deli was overkill. Mr. Overmyer stated that specifying hours helped turn over parking.

**VOTE:** Motion approved, 4-1 (Mr. Steele opposed, Mr. Durrett and Mr. Kakatsch excused).

### **B. Ordinance 14-xx, Permitting Survey Requirements (continued)**

Chair Zuba noted the main issue was whether to require an as-built survey. Mr. Steele questioned #4 regarding the Town's liability. Town Attorney Rooney explained the reason for \$2,500 and under was 1) where the cost of the survey would not replace the cost of the work being done and 2) the cost of an error would not cost the Town too much. Mr. Steele questioned whether the applicant could get a

signoff from the adjacent property owner that the location was okay. Town Attorney Rooney replied in the affirmative. Ms. Plummer discussed possible waivers for projects up to \$10,000. Town Attorney Rooney suggested changing the language to read: if the value of the permitted construction is less than \$2,500 and where the work is likely not to encroach upon some setback or limitation. Ms. Plummer suggested increasing \$2,500 to \$5,000. Vice Chair Shamp commented on whether the director "will" or "may" review the waiver. Town Attorney Rooney changed the language to "the Director has discretion to review." Discussion was held concerning the survey height. Consensus was reached to use 5 feet.

**MOTION:** Mr. Bodenhafer moved approval of the permitting survey requirements of the land development code chapter 34 be changed with taking A-4 to state 5 feet; item C director has discretion to review waiver request; and C-4 the dollar amount should be \$5,000 in where work is unlikely to encroach outside the buildable envelope; second by Chair Zuba.

**VOTE:** Motion approved, 5-0 (Mr. Durrett and Mr. Kakatsch excused).

### **C. Post-disaster Recovery and Reconstruction Workshop**

Vice Chair Shamp distributed a document to members for their comments. Chair Zuba stated he would put the issue on the next agenda.

## **VI. AGENDA FOR WORK SESSION WITH TOWN COUNCIL**

Move to next agenda.

## **VII. LPA MEMBER ITEMS AND REPORTS**

No items.

## **VIII. LPA ATTORNEY ITEMS**

No items.

## **IX. COMMUNITY DEVELOPMENT ITEMS**

No items.

## **X. LPA ACTION ITEM LIST REVIEW**

No review.

## **XI. ITEMS FOR NEXT MONTH'S AGENDA**

Post-disaster Recovery and Reconstruction Workshop and Agenda for Work Session with Town Council.

**XII. PUBLIC COMMENT**

No public comment.

**XIII. ADJOURNMENT**

**MOTION:** Vice Chair Champ moved to adjourn the meeting; second by Mr. Steele

**VOTE:** Motion approved; 5-0 (Mr. Durrett and Mr. Kakatsch excused).

Meeting adjourned at 12:25 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

- End of document

A handwritten signature in black ink, appearing to read "Champ", is written over the "Vote:" line.