



MINUTES

Wednesday, November 6, 2013

**FORT MYERS BEACH TOWN COUNCIL
WORK SESSION
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931**

I. CALL TO ORDER

Mayor Mandel called to order the November 6, 2013 Work Session of the Town Council at 2:00 p.m. Present along with Mayor Mandel were: Vice Mayor Kosinski, Council Members Andre, List, and Raymond. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Community Development Director Fluegel, and Town Clerk Mayher.

II. PLEDGE OF ALLEGIANCE

Mayor Mandel requested to postpone to a later Work Session date the Affordable Care Act Report, Water Utility Management In-House, and the County Proposal on Estero Boulevard; and it was noted the discussion on the Affordable Care Act was announced earlier today to be withdrawn because the Florida Municipal Insurance Trust representatives were unable to attend the meeting.

Consensus approved the amendment to the agenda.

III. AFFORDABLE CARE ACT REPORT – Withdrawn and postponed.

IV. PINK GOLD

Barbara Lindstrom, Executive Producer from WGCU – Public Broadcasting Television (a broadcast service of Florida Gulf Coast University), reviewed their request for sponsorship of a public television show. She explained they were creating a 1-hour documentary on the Fort Myers Beach Shrimp Fleet entitled “Pink Gold Rush” that traced the evolution of the Fort Myers Beach shrimp industry since 1949. She reported they were seeking production funding from the Town of \$6,000 to complete production. She reported they had already received a \$10,000 grant from the VCB through the TDC, and were in

partnership with the Lee County Natural Resources Division for a \$10,000 production grant through WCIND.

Discussion ensued regarding the funding request; and it was decided to place the item on the next Council Meeting agenda.

Mayor Mandel questioned if any of the 'industry groups' had offered to fund the project.

Ms. Lindstrom responded in the negative; noted that the Town Manager had been in contact with the Chamber of Commerce about the matter; and explained how they could not accept funds from parties involved with the subject matter in order to avoid any type of perceived conflict of interest.

Discussion was held concerning the request to have staff place the funding request on the next agenda with a recommendation for approval of the \$6,000; and it was noted that the funding could come out of reserves or from the cultural funds.

Ms. Lindstrom mentioned that many WGPU documentaries produced over the years had received national attention. She added that in 2003 the Town Council had approved a resolution in support of the shrimping industry.

V. WATER UTILITY MANAGEMENT IN-HOUSE – Withdrawn and postponed.

VI. ENTERTAINMENT DISTRICT PRESENTATION – LaRue Planning & Management Services

Jim LaRue, of LaRue Planning & Management Services, Inc., introduced his staff - Bill Brisson, and Ben Smith. He gave a presentation on "Creating an Entertainment District" (Draft October 2013) ("Report"). Utilizing a PowerPoint presentation he discussed the following information related to the Report:

- How was the project initiated? – the Report represented the follow-up to the Council workshop (4/15/13) where they reviewed a presentation introducing the concept of a Entertainment District(s) with a possible application to the Town since no formalized Entertainment District currently existed.
- Methodology & Approach – business owners were interviewed to gain their perspectives regarding issues involved with entertainment districts. Workshop was conducted with the LPA in October.
- Advantages & Disadvantages of Entertainment Districts –
 - Advantages: formalizing a destination with different types of businesses and entertainment venues in one area; greater impact than scattered businesses/entertainment venues; attracting residents and tourists; walkability, and easier to patrol.
 - Disadvantages: area could be nothing but bars, restaurants, etc., excessive noise, parking and traffic issues, too crowded, and an 'entertainment district' could create a negative image.
- Informal entertainment district currently existed in the Town; and there was a current noise ordinance that was not effective.

- Report Information – included information on alcohol consumption ordinance, understanding possible noise impacts to the community, control of the hours of operation for outside entertainment, special exception approvals, analyzing possible impacts to the Comprehensive Plan, and interviews with area stakeholders, staff, Town Attorney, and LCSO as it pertained to an ‘entertainment district’. The Report also included a proposed boundary for the Entertainment District, creation of a working Entertainment District including an implementing ordinance, and locational separation standards and parking requirements.
- Noise Ordinance – decibel scales, references to free speech, decibel levels, dwelling units and distance requirements as it pertained to different types and sources of noise, review of existing regulations, hours of operation, special exception approval process, indoor and outdoor and amplified/non-amplified music, creation of overlay district as it related to meeting requirements of the Town’s Comprehensive Plan.
- Report Information included creation an overlay district so it would be more ‘zoning’ and not a Comprehensive Plan category; reviewed the walkability, transportation and connectivity, and recreation elements of the Comprehensive Plan.
- Report Information – included a review of entertainment districts in other communities, and concerns of business owners within the potential Entertainment District (i.e. parking, open containers, control of volume of music, consistency in enforcement, no public drunkenness, etc.).
- Proposed zoning map indicating boundaries for the Entertainment District were displayed and reviewed on the projection screen (Map #1, #2, and #3)
- Recommendations – separation requirements for consumption of alcoholic beverages on premises; point of noise measurement; method of noise measurement; and recommendations for noise limitations (i.e. separation requirements for “consumption on premises”, maximum allowable noise levels, noise levels measured from the receiving area, maximum noise levels and hours, points of measurement, method of measurement, limitations on outdoor music and entertainment, comparison of current noise regulations and alternative proposals and recommendations for permitting certain activities, proposed methods of approval for indoor and outdoor activities at entertainment establishments).
- Effects of Proposed Regulations Upon Previously Approved Special Exceptions – probable ‘grandfathering’ of previously approved special exceptions; and prior special exception approvals that prohibit or limited outdoor music or entertainment, or noise limits that are more restrictive than the new regulations and noise limits applicable to the Entertainment District should be superseded by the new regulations.
- Model Ordinance (Page 32)

Mayor Mandel noted the importance of uniformity and control as it pertained to creating an entertainment district.

Council Member Raymond requested to receive copies of the appropriate ordinances from Naples and Sanibel. He suggested requiring noise buffers when entertainment was in close proximity to residential.

Council Member List noted her concerns regarding how to measure loud sounds/noises and enforceability.

Vice Mayor Kosinski asked if one purpose of the entertainment district would be to have uniformity among the businesses as it pertained to hours of operation, types of outdoor entertainment; and asked if it would apply retroactively to all the businesses.

Mr. LaRue responded in the affirmative; and added it would be within the defined area, and special events would still need approval.

Mayor Mandel questioned the uniformity of hours of operation for businesses that were already granted certain hours.

Mr. LaRue explained the 'grandfathering' of these businesses and standardizing new businesses.

Council Member List questioned how would an entertainment district deal with special events.

Mr. LaRue explained that during the interviews they held it was suggested by business owners to 'streamline' the special event process.

Discussion ensued regarding 'grandfathering' existing businesses as it pertained to hours of operation; non-conforming uses as it pertained to hours of operation; existing and potential noise restrictions; and the difference between less restrictive and more restrictive regulations as it related to standard hours of operation.

Council Member Raymond requested to receive the information/comments obtained from the business owner stakeholders from Mr. LaRue.

Council Member Andre pointed out that the proposed entertainment district seemed to only affect a few businesses. He suggested taking the 'noise issue' out of the model ordinance and thought it should be a separate issue.

Discussion ensued concerning noise control and existing conflicts between residential and commercial.

Mayor Mandel had questions concerning some of the terminology used in the Report such as but not limited to multi-family dwelling (included condominiums); amplification (microphone) and requested a legal definition of amplification at the next discussion. He requested comments from Legal pertaining to how it might impact short-term rentals as noted in the section called 'Suggestions'. He reported that the airport sent the aircraft noise issue to Washington DC and they had expected a response from the FAA in approximately February.

Mr. LaRue noted Pages 17 and 18 of the Report as it pertained to amplification and the use of loudspeakers or amplifiers.

Discussion was held concerning the existing noise ordinance and exterior speakers and amplification.

Vice Mayor Kosinski suggested the Council hold a roundtable discussion on the entertainment district in January to allow for public comment from part-time residents.

Public Comment opened.

Allen Dunkin, owner at Marina Village Condominium and Vice President of the Condominium Association, stated he was in possession of over 100 letters submitted by condo owners voicing their concern about the proposed entertainment district. He stated their main concern dealt with noise and their belief that the proposed changes would make it worse than what they had experienced during the past three years. He discussed his prior experience with this type of ordinance on Sanibel (relating to noise and special events); and the importance of the businesses and residents understanding what could happen and enforceability.

Lauren Dillard, owner at Marina Village Condominium and the Community Association Manager, reported she received over 100 letters submitted by condo owners voicing their concern about the proposed entertainment district; and read an excerpt from a letter she had received that noted noise and other issues with nearby Nervous Nellies. She suggested an analysis of the economic benefit versus the true cost to the government of an entertainment district. She discussed examples of problems in upscale mixed-use developments (i.e. Bayfront in Naples) with outdoor noise. She reported the Town was incorporated in order to restrict the intensity of development and the intensity of use.

Paul Rosen stated he had built the Marina Village at Snug Harbor Condominium in 1981 and also operated the adjoining restaurant from 1978 to 1992. He reported he was an owner and board member of the Marina Village Condominium. He discussed problems with Nervous Nellies during the past three years (i.e. outdoor amplified music). He reviewed his belief that the LaRue proposal would cause current noise problems to increase. He stated four requests:

1. Marina Village Condominium wanted to be excluded from the boundaries of any entertainment district.
2. Marina Village Condominium opposed the LaRue changes to our island-wide noise ordinances.
3. Marina Village Condominium wanted a reasonable limit on the number of special events on our street.
4. Marina Village Condominium wanted consistent enforcement of all noise, parking, and public safety ordinances.

Frank Tomaiolo, resident (Third Street & Old San Carlos), discussed his concerns regarding enforceability of noise issues; and recounted his experience with attempting to get assistance from the LCSO with noise problems with surrounding businesses such as but not limited to Nervous Nellies. He explained he did not support a regulation that would allow businesses to stay open later.

Dick Swensen, resident on Primo Drive, made an observation regarding measuring sound at the receiving end and his belief that this was nebulous. He suggested noise should be measured at both the originating point and receiving end.

Tracey Gore, resident, questioned how the noise issue 'morphed' to be 'island-wide'. She discussed her concerns and objections to the information and recommendations presented in the Report. She noted her belief that it would be irresponsible to allow outdoor noise where currently prohibited or limited while the enforceability of the noise ordinance was currently in debate.

Gerry Trantina explained he concurred with all the previous speakers; and mentioned how noise from special events shook his house.

Bud Nocera, President of the Fort Myers Beach Chamber of Commerce, concurred with Mr. Dunkin's comments. He noted the issue would need everyone to work together. He pointed out future development that would come to the Old San Carlos area. He explained that other communities had created an entertainment district for matters such as but not limited to encouragement of pedestrian areas, increase visitors, and increase enjoyment by residents and visitors. He reported the business owners he spoke with encouraged being reasonable and understanding the needs of the residential community.

William Shenko, Jr., resident, discussed noise and decibels; how decibels were deceptive; and how sound doubled every ten decibels and increased by 50% every three decibels. He discussed his concerns regarding the proposals contained within the Report; and questioned the cities cited in the Report (Orlando, Florida and Wilmington, North Carolina). He pointed out that Orlando required an annual renewed permit for outdoor noise from the Police Chief and that Wilmington prohibited "plainly audible" outdoor noise 66' from its source [standard was unenforceable in Florida]. He noted his concern with the proposal redefining short-term residential uses as now being "commercial" for the detrimental effects of noise and proximity to alcohol sales, but remained residential for all other purposes; changing noise to be permitted within 50' of traditional residential uses; and measuring noise 100' from its source. He requested the following:

1. Hire a sound engineer; educate yourselves as to decibel readings.
2. Enforce the zoning and land use restrictions already in place.
3. Compare your proposed plan with Naples, Sarasota, Venice, and Marco.
4. Do not throw away all the hard work, time, money, and sleepless nights spent in adopting the custom-made, property-specific regulations in place now.
5. Closely review the liability of the Town.
6. Think of the residents at 1:00 a.m. and 75 decibels.
7. Think of driving home from the airport very late dodging all the drunks heading straight for you, leaving the entertainment district on our only road.
8. Remember the Downtown Fort Myers entertainment district; late hours, relaxed noise enforcement and a star on the sidewalk for Office Whidman, and question if this is the type of crowd you want to attract to 'enliven' Fort Myers Beach.

Ed Scott, resident, noted his concern about parking and the loss of current parking; and questioned the two currently vacant lots and how they would probably be developed into entertainment if the entertainment district was created. He requested Council not to proceed with the recommendations presented in the Report.

Tom Babcock, resident, stated that Council began the re-write of the noise ordinance four years ago and noted that it had evolved into the creation of an entertainment district as an overlay to the Downtown zoning. He discussed his concerns regarding recommendations within the Report as they pertained to matters such as but not limited to expansion of alcohol consumption, higher noise limits extended into later hours of the night, and less community input for special exceptions. He discussed the uniqueness

of Fort Myers Beach, current zoning restrictions regarding alcohol sale near residential neighborhoods, and proposed higher noise limits. He requested the noise ordinance be fixed to make it enforceable.

Annie Babcock, resident, questioned if the decibel levels noted in the Report were for the entire island. She indicated she had information from the LCSO regarding the un-enforceability of noise levels and the LCSO recommendation to 'fix' the noise ordinance to make it enforceable. She questioned why there were no resident comments or interviews included in the Report. She discussed her concerns regarding the measuring of noise at 50' and 100'.

Public Comment closed.

Mayor Mandel noted Council comments included concerns regarding measurement of noise and uniform hours; a request for copies of the interviews with the business owners, and information on how short-term rentals might be affected. He explained that Council would discuss this topic further and in more detail, and how this was the only time they could discuss the matter which was during a meeting or workshop.

Council Member Andre requested 'noise' to be treated as a separate issue.

Discussion was held concerning the request to treat 'noise' as a separate issue.

VII. COUNTY PROPOSAL ON ESTERO BOULEVARD - Withdrawn and postponed.

VIII. COUNCIL MEMBERS ITEMS

Council Member Andre – no items.

Council Member Raymond – no items.

Council Member List – no items.

Vice Mayor Kosinski – no items.

Mayor Mandel – no items.

IX. ADJOURNMENT

Meeting adjourned at 4:01 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

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