



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

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**Tuesday, November 12, 2013**

**I. CALL TO ORDER**

Meeting was called to order at 9:01 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer  
Al Durrett  
John Kakatsch  
Jane Plummer  
Joanne Shamp  
James Steele  
Hank Zuba

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

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES**

A. Minutes of October 8, 2013

**MOTION:** Ms. Shamp moved to approve the Minutes for October 8, 2013; second by Mr. Bodenhafer.

Vice Chair Shamp requested her comments on Page 5 be changed to: “Vice Chair Shamp explained the basis for her agreement with the concept of an overlay; how she viewed all short-term and long-term rentals as ‘sleeping units’; her belief that noise levels ~~needed~~ should not be elevated ~~to be consistent~~; commented on the compatibility of communities cited in the Review of Various Noise and Entertainment Regulations for other communities and the hours of entertainment, and supported noise measurement from the property line...”

FULL EXCERPT OF OCTOBER 8<sup>TH</sup> COMMENTS BELOW:

SHAMP: “Thank you, um, first of all, uh, with regard to the communities that you; well, let me say I agree with the concept of an overlay because, uh, throughout the Town in our regulations; and many of the complaints have been regarding a level playing field; and I think the district provides that concept of a level playing field, a cult pattern of various special exceptions, um, is not really the proper way to govern or regulate. However, I feel that, uh, not grandfath-, you know not allowing grandfathering of exceptions, defeats the purpose of a level playing field. And I think that if you create reasonable, um, hours and create reasonable decibel levels, uh, it may be one hour this direction or that direction for someone a change in their current regulations, but, or current special exception, but, um, it would be minimal, a minimal change. There’s not a lot going on a 2 AM on Fort Myers Beach, so if it gets pulled back to 1 AM I suspect it’s very insignificant and I see no purpose of doing an overlay if you don’t say “this is how it is,” it’s like the sign ordinance—you can’t do it and then have all these special exceptions, you either have it or you don’t, so, um. Secondly, I, I, take somewhat of a different, uh, feeling about this short-term, long-term, etcetera. To me, any unit that has a bed in it is at some point a sleeping unit (laughs). Most people pack pajamas, some don’t, you can go on a chemically induced bender, but, you know after 48 hours you’re going to sleep; everybody, human beings need to sleep, and if you didn’t need to you wouldn’t have rented a unit. You didn’t get it for the kitchen, ok, so, to me it makes no difference if you rented the darn place for three days or three months, or you’ve lived here 30 years, you’re sleeping there and we need to respect that human beings cannot function without sleep. And I know when I go on the road, we just went recently on a long trip, and the one place we could not sleep, the darn air conditioner came on every 15 minutes—we finally set it at some ridiculous temperature so it’d stay there all night and like tripled up the blankets and that way it didn’t like come off and on at least, but, um, this concept of you know, a maximum noise every 15 minutes or something is ridiculous, you are better off when things are consistent. Say whatever that level is that it stays level you’re used to it and it becomes white noise to your brain. So, I too, object with this, the concept of the, uh this momentary.

Now as far as the decibel levels themselves, I’m not an expert in sound, I did notice you know, that the Town’s that you selected to look at don’t mean a hill of beans to me. Orlando and Wilmington—Wilmington isn’t a year-round destination it gets too darn cold so people aren’t putting up with this year-round. We put up with this 24, 24-7 and 12 months a year. When you look at, um, uh, Ocean City, it’s interesting they would have our similar climate, they are putting this, putting up with this 12 months a year and you’re saying they’re too restrictive. Well, there’s probably a reason why they’re more restrictive because people are there all the time partying. And I, too, like Jane, moved to this island

because I like the restaurants, I like the businesses, I like the bars, my kids like to stay up late and go out late, so um, I want this district to succeed—don't misunderstand—but, um, I also want the sense of community to succeed too. We have a wonderful sense of community—funky, vibrant—very different, oceanic? bubbles is what makes this place special. I noticed that in, um, for instance in Naples, and I know they're stuffy-yeah, Naples is stuffy-but, um, you know for their indoor entertainment they definitely have all doors and windows to remain closed during performances. I mean that's how they control it, and they have a very vibrant 5<sup>th</sup> Avenue—I bet they're earning a lot of money on 5<sup>th</sup> Avenue in Naples. Um, and their hours of outdoor live entertainment are determined by City Council but their, uh, 10 PM, only til 10 PM Sunday through Wednesday and then midnight Thursday through Sunday. This is just, and then, um, what was interesting though they have a very, um, they use 25 feet from the property line for measuring it. My concern about where to measure this from is how does the owner know if they're exceeding it?—they certainly can't go up to the top floor of the Marina Towers and see how many decibels it is there for the receiver or each property line around them. If it's their property line, or 25 feet from their property line, they can have a sound meter, they have some way of knowing if they're being excessive or not. I mean how do you regulate yourself, um, compared to somebody else who's receiving it?—I think you need to be able to regulate yourself.

In Naples they also, um, incorporate in the sound—and once again, I don't know that much about noise—I do know that um, hertz is the, um, vibration-the frequency of vibration, so 500 hertz is 500 oscillations in a minute. Whereas, um, your, um, uh, decibels then is the, uh, a different measurement. And then interestingly enough, I notice in their ordinance they talk about the hertz, the, and then they increase and decrease the decibels according to the hertz. Now I understand that's very complicated but what it means is that there definitely is a difference. When you're playing nice, acoustic music compared to Metallica let's say, there's a different kind of feeling from the music at the same decibel. We've all had a kind of music that we like its changed our heart rate at the same volume. It doesn't matter, you know, to me when you play country western my heart like shuts down (laughs)—I don't like it, but, but, you know that's just me. But, you know taking offense is not just about, you know, the decibel level; it's the type of music and that's a problem too. When you raise the volume of what they play at one place compared to what they play at another place it offends different people in different ways. Um so at any rate, I, I, have some concerns about keeping the measurement at the property line, about raising it very much and I will make one other comment and this is in um, when you look at Bonita their stuff is really nebulous; they just, they call the sheriff and we do have an extensive ordinance but it doesn't come up under MuniCode, but, um, the other place that comes up was, um Sanibel. And of course once again, sleepy, but you know what Sanibel earns more money per year than we do (laughs). And on Sanibel they measure at the real property line where it's created and um, in the residential zone any public space or institutional zone, um, it's, you know in their restrictive hours up til 10 PM let's say, it's 66, uh, decibels and during the night it's, overnight its 60 and in the commercial zone they go only as high as 72 and in the quiet time, 65. Uh, let me see if there was any other comment before I turn over, um, I do think that the district boundary goes a little far south, um I know that when we did things, uh, uh, for instance for the Beached Whale when we did ours the Beacon Hotel says it's already—and I love the Beached Whale, I love the Beached Whale—but, um, the Beacon Motel said you know they have people who are leaving that have reserved for several days and they're leaving because they can't tolerate the sound and we didn't even put the porch outside yet, they didn't put their porch outside yet. And the fact is their comprehensive plan it discusses on, in page, uh, 423, it discusses

the importance of transient tourist housing and says that the Town has to ensure policies and regulations that do not inadvertently contribute to the displacement of existing hotels and motels. And I think that's really important, it's not just Marina Towers, but there's a lot of, there's Sands Motel, there's a lot of hotels and motels as soon as you start down the Boulevard. I personally would not extend beyond Crescent Street, even Crescent Street itself in the comprehensive plan is viewed as a live-work area where people who want to work in the downtown district right there could live there, so I'm concerned about, I would not necessarily accept the boundary the way it is, and also, if you think about the development on Palermo and that canal that goes down there that just sends the music down the canal to some of our, what's becoming some of the most high-priced real estate on our island. We certainly don't want to discourage people from building \$2 million houses on the island either you know, we've got people who can't afford to rent month-to-month and we've got people who are building multimillion dollar houses—that's the beauty of this island. All of them should be able to get a good night's sleep, no matter where they're living. And then finally sorry, um, let me see, I think that's all. And I'd like to commend both Nervous Nellie's and John Richard, I do think that they're, they to try to be, um, good business owners and very community-minded and um, it's good to see them here and concerned and try to um, balance their business interests and not just overrun the uh, interests of the residents and the people around as well, so... ”

Motion maker and second agreed with the amendment.

**VOTE:** Motion approved, 7-0.

## **V. PUBLIC HEARING**

### **A. DCI2012-0003 Lighthouse Resort CPD Amendment**

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Attorney Beverly Grady, authorized agent for Lighthouse Resort, Inc., explained how when the Applicant appeared before Town Council that it was realized there was an additional deviation that needed to come back to the LPA. She requested an additional deviation from LDC Sec. 30-154(a), the requirement for illumination of letters through an opaque background to allow the existing internally illuminated signs to remain (Signs A, B, C, & D). She requested approval of the Applicant's request and staff's recommendation.

Town Attorney Miller pointed out that under the Town's current sign ordinance back-lit signs were not permitted; and that staff was recommending approval. She suggested the LPA might want to consider limiting it to these particular signs and if the signs were replaced, that the back-lit sign would no longer be permitted.

Planning Coordinator Overmyer noted the Town Attorney's suggestion was included in the staff memo as a recommended condition of approval.

Planning Coordinator Overmyer presented comments for DCI2012-0003 Lighthouse Resort CPD Amendment (Sign Deviations), deviation from LDC Sec. 30-154(a), the requirement for illumination of letters through an opaque background to allow the existing internally illuminated signs to remain on behalf of the Town of Fort Myers Beach. He reviewed the deviation requested:

- Deviation #17 – relief from LDC Sec. 34-154(a) for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face; staff recommended **approval** of this deviation.

Vice Chair Shamp did not feel the request was for a *de minimis* variance, and questioned why staff did not recommend that the Applicant “*block out the background and allow light to shine through the letters and the symbols*”.

Planning Coordinator Overmyer explained how the Applicant's request was for a deviation and not a variance.

Chair Zuba questioned if approval would set precedent.

Planning Coordinator Overmyer noted the subject property was a CPD; and that the Town Council had approved all the other requested deviations for the subject property.

Community Development Director Fluegel described what he believed could be one other instance where this had been allowed (i.e. variance at the Beach Theater).

Discussion was held concerning the Applicant's spot-lit and back-lit signage; and problems with lighting shining up.

Mr. Kolar, Applicant, stated if any of the subject signage had lights shining up that he would make sure that was fixed and change them to lights shining downward on the sign.

Public Comment opened.

No speakers.

Public Comment closed.

Vice Chair Shamp discussed her belief that the request was not the *de minimis*.

Ms. Plummer noted the existing signage was part of a CPD.

Town Attorney Miller pointed out the original CPD did not address signage.

Ms. Grady indicated that the original CPD did not depict the height, the area or the back-lit situation, just the location.

**MOTION:** Vice Chair Shamp moved that the LPA recommended denial of the Applicant's request; second by Mr. Kakatsch.

**VOTE:** Motion denied; 2-5. Messrs. Bodenhafer, Durrett, Steele, and Zuba and Ms. Plummer dissenting.

**MOTION:** Mr. Steele moved that the LPA recommend approval of the Applicant's request with Condition #18 made by staff; second Mr. Bodenhafer.

**VOTE:** Motion approved; 5-2. Vice Chair Shamp and Mr. Kakatsch dissenting.

B. Houseboat, LLC

Chair Zuba opened the Public Hearing.

- i. REZ2013-0001
- ii. SEZ2013-0005
- iii. VAR2013-0006

Town Attorney Miller reported she received a communication requesting a continuance of the case.

John Richard, Applicant, requested a continuance to January 14, 2014.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Chair Shamp moved that the LPA approve the Applicant's request to continue the hearing on REZ2013-0001, SEZ2013-0005, and VAR2013-0006 to a date certain of the LPA meeting of January 14, 2014; second Ms. Plummer.

Mr. Steele questioned the Applicant as to why he requested a continuance.

Mr. Richard explained the basis for his request as it pertained to zoning issues.

Discussion was held regarding conventional zoning, CPDs, and master concept plans.

**VOTE:** Motion approved; 7-0.

C. Rusty's Shipwreck

Chair Zuba opened the Public Hearing.

- i. REZ2013-0002
- ii. SEZ2013-0006
- iii. VAR2013-0007

John Richard, Applicant, requested a continuance to January 14, 2014.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Ms. Plummer moved that the LPA approve the Applicant's request to continue the hearing on REZ2013-0002, SEZ2013-0006, and VAR2013-0007 to a date certain of the LPA meeting of January 14, 2014; second Mr. Steele.

**VOTE:** Motion approved; 7-0.

D. Ordinance 13-XX

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Miller described how the Town Council had discussed and taken action on the issue of elevated pools. She reported the Council had approved that no building permits for elevated pools would be issued at this time, and if a person sought an elevated pool permit they would appear before Town Council on a case-by-case basis to request approval. She reviewed the proposed ordinance which was similar to Sanibel's ordinance; and noted how it would prohibit elevated pools until such time when Council had time to review and make a decision on the matter.

Discussion was held concerning the proposed ordinance; 25' waterway setbacks; FEMA regulations; accessory uses and principal structures; 'zoning in progress'; exceptions for certain accessory structures (i.e.

non-roofed structures); swimming pools-at-grade; and setbacks for seawalled, artificial, and natural bodies of water properties as they related to elevated pools.

Community Development Director Fluegel reported Town Council would discuss further the topic of elevated pools at a Work Session on November 18<sup>th</sup>. He explained how staff presented the issue to Council on August 5, 2013, and discussed ‘*elevated scale*’ and view corridors.

Discussion continued regarding the proposed ordinance and FEMA standards related to pools.

Town Attorney suggested the LPA could make a recommendation to Town Council that they consider elevated pools and take into consideration view corridors.

**MOTION:** Mr. Bodenhafer moved to approve the amendment as written; second by Mr. Kakatsch.

Ms. Plummer questioned if the proposed ordinance included patios, porches, and similar structures.

Community Development Director Fluegel explained if a permit was submitted with a substantially elevated deck, staff would probably request that the application go forward to Council for interpretation.

Discussion was held concerning attached and detached accessory structures; and accessory structures accessible from the house.

Town Attorney Miller suggested changing the proposed ordinance to include “*swimming pools, patios, or decks*”.

Discussion continued regarding attached and detached accessory structures and setback requirements.

**VOTE:** Motion approved; 7-0.

Public Comment opened.

Robin Thurston, 1010 Estero, questioned if they would be on an upcoming LPA agenda.

Community Development Director Fluegel reviewed the status of the working group for the matter of outdoor displays; and estimated that the topic may come before the LPA in January or February.

Public Comment closed.

Mr. Steele questioned a 90-day delay as it pertained to permits for outdoor displays.

Community Development Director Fluegel discussed his belief that the outdoor display permit was extended to January 1<sup>st</sup>; and would probably have to go back before Council.

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



Vice Chair Shamp – thanked Mr. Durrett, vendors, and people at Santini Plaza for the Paint the Beach event.

Mr. Durrett – hoped the Friends of the Arts would be able to do more similar events in the future.

Mr. Kakatsch – no items or report.

Mr. Bodenhafer – concurred with Vice Chair Shamp.

Mr. Steele – no items or report.

Ms. Plummer - no items or report.

Chair Zuba – questioned the status of the flood insurance matter and the Biggert-Waters NFIP Reform Act and how the LPA could address the issue.

Community Development Director Fluegel discussed staff's concerns regarding flood insurance issues such as but not limited to rates, community rating system, 50% Rule, etc. He noted that staff thought it might be worth investigating an incentive elevation program, and would be interested in having a working session with the LPA.

Discussion was held concerning flood insurance issues; and consensus approved staff to schedule a working session for the LPA on the matter.

Discussion was held regarding who should attend the work session; and staff would check on the availability of Council Chambers for next Tuesday.

Discussion continued regarding FEMA regulations, flood insurance, and home insurance rates.

Consensus approved to change the Work Session from next week to December 3<sup>rd</sup>.

## **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 discussion.

**X. ITEMS FOR NEXT MONTH'S AGENDA**

No discussion.

**XI. PUBLIC COMMENT**

None – discussed earlier in the meeting.

**XII. ADJOURNMENT**

**MOTION:** Motion by Mr. Kakatsch, seconded by Mr. Steele to adjourn.

**VOTE:** Motion approved, 7-0.

Meeting adjourned at 10:10 a.m.

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

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

\_\_\_\_\_  
Signature

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DRAFT