



MINUTES

Monday, November 18, 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 18, 2013 Work Session of the Town Council at 10:00 a.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, Parks and Recreation Director Norton, and Town Clerk Mayher.

II. PLEDGE OF ALLEGIANCE

III. CALVIN GIORDANO DOWNTOWN REPORT

Community Development Director Fluegel reviewed the background of the Town hiring the consulting firm of Calvin, Giordano and Associates to work with staff to identify all prior planning studies for the Downtown area.

Shelly Eichner, partner at Giordano & Associates [Consultant], introduced other members of the firm - Jeff Maxwell and Jeff Oris. She presented and reviewed the Downtown Redevelopment Agency and Review of Redevelopment Planning and Activities (dated November 18, 2013 – Draft):

- Identification of prior planning studies for the Downtown area, including planning efforts undertaken as part of the former Estero Island Community Redevelopment Agency that later became the Fort Myers Beach Downtown Redevelopment Agency. Report included analysis of the Town's progress towards goals and projects that were identified in the plans; and analyzed the history of the CRA/DRA and its legal standing.

- Prior studies had recurring themes – inadequacies of parking, need for a pedestrian corridor, need for some urban design and regulation plan, redevelopment strategies, Comp Plan policies, and transportation circulations, etc.
- Potential land use strategies – Estero Boulevard improvements for transportation and pedestrian connectivity and possible expansion of the redevelopment area.

Jeff Maxwell of Calvin Giordano & Associates discussed the difficulties with changing infrastructure:

- Consideration of the attractions as well as the infrastructure; traffic volume; modes of transportation.
- Consideration of a full spectrum of infrastructure improvements; land use and attractions.

Shelly Eichner reviewed their recommendation for the next steps in the redevelopment process:

- Financial analysis from when the CRA was created and project to the future some of the tax increments available to the CRA for funding purposes.
- Update the redevelopment plan and take into account parking, traffic, transportation, and land use issues.
- Investigate the extension of the DRA's life to 2044.
- Possible expansion of the CRA boundary.
- Conduct discussions with the County on common goals (i.e. improvements to Estero Boulevard, supporting tourism and economic development).

She requested discussion and guidance from Council regarding where the Town goes with the Downtown area in the future.

Council Member Raymond questioned the status of the inquiry to the County regarding development rights.

Town Attorney Miller noted there were some legal issues raised by the County Attorney (i.e. could development rights be severed if the property was paid for by tourist development tax funds); and reported her office was researching the matter.

Council Member Raymond discussed his concerns with the possibility of the County keeping the development rights.

Vice Mayor Kosinski discussed his views on the area from the base of the bridge to the Lani Kai as critical for traffic.

Mayor Mandel reviewed, commented, and questioned aspects of the Calvin Giordano & Associates Downtown Redevelopment Agency and Review of Redevelopment Planning Activities (dated 11/18/13 Draft)

- Downtown Redevelopment Plan of 1998 – applicability to today.
- Boundaries of the CRA.
- Validation of the CRA was determined by a Magistrate.
- Settlement agreement between the DRA and the County.

Jeff Oris of Calvin Giordano & Associates stated it was his understanding that the County had paid funds; and that the issue was between the County and the DRA. He added that according to the statutes at that time the DRA did not have the authority to enter into the agreement in the way it was stipulated.

Town Attorney Miller explained that there were many legal issues with this issue; and added that if the Town and the County did not come to an agreement it could be the subject for a Declaratory Judgment.

Discussion ensued regarding the legal issue associated with the validity of the subject agreement.

Mayor Mandel continued to review, comment, and question aspects of the Downtown Redevelopment Agency and Review of Redevelopment Planning Activities (dated 11/18/13 Draft):

- Page 7, incremental taxes based on millage rate – County versus the Town millage rate.
- Funds collected to date – undetermined at this time; Consultant was awaiting direction from Council; data for funding information was outside of the Town (i.e. County Tax Collector and Property Appraiser).

He asked the Consultant for their recommendation as to what would be the next step.

Jeff Oris of Calvin Giordano & Associates noted his opinion was to go forward with “numbers”. He believed that the matter would probably end up with negotiations with the County. He explained this would involve collecting the original data, as well as determining how much has changed in the parcels in the last plan.

Discussion ensued regarding the meticulous information to be gathered in order to determine individual parcel valuations over a 20 year period.

Town Manager Stewart explained two main concepts in dealing with the examination of the CRA:

- 1) Does the CRA continue to exist? – the analysis completed substantiated a strong argument that the CRA did exist; however, he cautioned that the County may have a different perspective on the matter.
- 2) Were there monies owed from the past? – this may create a state of negotiations. He noted the importance determining what the Town could do going forward with the existence of the CRA.

Jeff Oris of Calvin Giordano & Associates stated it was their opinion that the CRA did exist which was based mainly on the bond validation and that the Court said the CRA did exist. He explained that through research the County believed at the time of the Town’s incorporation that the CRA went away. He reported that a well-known CRA attorney at the time, David Cardwell (now deceased), informed the County that the CRA did exist.

Town Attorney Miller reviewed the process to obtain a Declaratory Judgment on the CRA’s existence; and noted that a bond validation was fairly conclusive and significant evidence as to the CRA’s existence.

Town Manager Stewart suggested the Council should decide on how to move the issue forward such as but not limited to preparation of a staff report, a request to County staff or a request to the County Commissioners.

Mayor Mandel explained the basis for his belief that the Town should accept that the CRA did exist until someone else proved otherwise.

Community Development Director Fluegel explained that staff would need to prepare a work order with the Consultant to prepare the financial analysis. He asked if Council wanted the Consultant to include the financial implications of what had already been paid by the County to the Town per the settlement agreement versus the revenue, then that would have to be provided in order to determine potential liability.

Discussion was held concerning the next step for the Consultant; and it was determined that staff would prepare a work order for the Consultant in time for the next Regular Council Meeting.

IV. ELEVATED POOLS

Council Member List requested time for Public Comment on the agenda item.

Consensus approved Council Member List's request and to limit each speaker to three minutes.

Town Manager Stewart offered a brief historical overview of how the topic of elevated pools had progressed during the past year; and the recent Council action declaring 'Zoning in Progress' regarding elevated pools. He discussed 'unintended consequences' such as but not limited to the inability to construct a pool on the roof of a hotel.

Community Development Director Fluegel noted Council had requested to discuss the issue of elevated pools; and that staff had submitted in the agenda packet a copy of the Draft Interim Ordinance regarding Elevated Pools for 11/12/13 LPA Agenda which the LPA had recommended approval.

Town Attorney Miller noted that LPA discussion about ultimately not totally prohibiting elevated pools. She reviewed the determination of a five foot setback from a canal in Chapter 34-1173(b) for accessory structures and the attachment to the principal building, and Chapter 34-1174(c), and Chapter 34-638(d)(3):

Chapter 34-1173(b) - Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- 1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.*
- 2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in §34-1174.*

Chapter 34-1174(c) – No building or structure except marine structures which are subject to the setback requirements set forth in Chapter 26, Article 2, may be located closer to a bay, canal, or other body of water than the minimum setbacks required in 34-638(d)(3).

Chapter 34-638(d)(3) Exceptions for certain accessory structures; non-roofed structures – *Swimming pools, tennis courts, patios, decks, and other non-roofed accessory structures or facilities which are not enclosed except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:*

-a-Five feet from a sea walled canal or sea walled natural body of water;

She explained it was her understanding that the elevated pools were non-roofed and did not have screen enclosures; and at this point in time it had been Council's direction that the Town was not issuing permits for elevated pools and applicants would have to come before Council to request an elevated pool permit.

Council Member Raymond noted his prior comments that if the Town had been in receipt of a permit application for an elevated pool before the 'zoning in progress' took effect, that it should be processed.

Community Development Director Fluegel reported at this time there were three elevated pool permits on Palermo Circle that were either built or under construction. He added that at the time of the 'zoning in progress' ordinance that there were four applications in process and since then staff had received another four permits.

Discussion ensued as to the type of pools (i.e. attached or detached); and setback requirements.

Council Member Andre discussed the sanctity of the setback based on the view corridor analogy:

- Setbacks from riparian lines for boathouses; opacity for boathouses.
- Height and setbacks for fences from a seawall.
- Definition of accessory use structures; incidental and subordinate structures.
- Importance of a sight corridor.

Public Comment opened.

David Hackem, resident, questioned if there were different rules for Gulf bay and canal bay.

Town Attorney Miller responded in the affirmative; and reviewed the appropriate sections of the LDC.

David Hackem, resident, questioned the setbacks for a pool attached to the principal structure if permits were being issued at this time.

Town Attorney Miller reviewed the appropriate setback requirements.

David Hackem, resident, questioned if an applicant could come before Council with a request for an elevated pool permit.

Town Attorney Miller responded in the affirmative.

Morris Curtis, resident, noted he lived on Palermo Circle and that the issue of elevated pools impacted him. He commented that if elevated pools were permitted, then the only time someone could see the

water would be if they were out on their seawall; and discussed his concerns with diminished view corridors due to elevated pools. He noted that elevated pools attached to the residence would be required to have a 25' setback. He discussed his viewpoint on boathouses, vegetation, and other things that impacted a view corridor.

Summer Stockton, resident, discussed 'exceptions for certain accessory structures' in the LDC (i.e. fences, shoreline structures, and non-roofed structures, etc.).

Town Attorney Miller responded by reviewing the appropriate sections of the LDC.

Summer Stockton, resident, reported that currently on Palermo Circle there were two attached elevated pools. She discussed existing boathouses that were pre-FEMA and before the Town's incorporation. She stated that the residents of Palermo Circle and Primo Drive requested that the Town Council base their decision solely on existing Town codes and not on opinions, wants, and convenience.

Diane Ciesinski, resident, stated she opposed elevated pools and noted the adjoining property to her residence was planning an elevated pool which would destroy her view.

Tammy Stockton, resident, expressed that she was appalled that elevated pools were being constructed and that they were blocking views. She reported that mangroves had been removed in the area and she had reported it to the State. She noted how upset she was with elevated pools and the removal of mangroves.

Henry Ciesinski, resident, told of a recent purchase next to his residence that was a 'tear down' and discussed his concerns with the possibility of looking at a 12' wall and a reduction in his view corridor. He suggested that property owners wanting to construct an elevated pool should be required to obtain approval from surrounding neighbors.

Gerry Trantina, resident, expressed his belief that the Town was incorporated on the principle to control unwanted development; and that elevated pools were unwanted development. He stated he lived on Primo Drive and submitted a photograph he took this morning of a house being constructed on Palermo Circle.

Tracey Gore, resident, stated she was there to show support of her neighbors. She discussed older versions of the land development code regarding elevated residential and non-residential buildings. She recounted her experience in trying to extend her residence (12' setback) which was denied by the Town. She discussed real estate in the Town and properties with views. She told of her experience constructing a pool on her residential property.

Tim Newman, resident, discussed Town codes and other potential structures he believed could be constructed (i.e. basketball court or garage) on residential properties.

Joe Orlandini, resident, thanked everyone for attending and voicing their opinion on the matter.

Public Comment closed.

Council Member Andre asked if all accessory structures were not required to be re-constructed to FEMA standards.

Zoning Coordinator Overmyer responded in the affirmative; and added unless it was physically attached to the primary structure and then it would be part of the 50% Rule calculation for substantial damage.

Council Member Andre questioned Chapter 34-638(d)(3) as it pertained to “*enclosures with any two or more sides enclosed by opaque material...*”.

Town Attorney Miller explained that the section in question was (a), (b) or (c).

Discussion ensued regarding the water body setback requirements, enclosures, and view corridors.

Community Development Director Fluegel noted the need for a policy interpretation.

Town Attorney Miller pointed out there were no restrictions for the height of accessory structures.

Council Member Andre expressed his belief that the matter was a policy issue to determine the look of the Beach.

Discussion was held concerning accessory structures and separations from the primary structure.

Council Member Andre read into the record an excerpt from a recent letter he received from Bill Spikowski:

“At first blush the elevated pool discussion sounds like a community character policy issue; in other words, what should be acceptable in neighborhoods that are undergoing natural transitions. However, it’s more complicated than that involving what’s permissible under federally mandated FEMA regulations plus interaction with existing Town regulations or other structures near seawalls. The Town’s existing regulations were written to maintain reasonable views of the water from adjoining homes. If that’s no longer as high a priority than had been, several other regulations should be changed.”

Community Development Director Fluegel requested Zoning Coordinator Overmyer to recall his account of a conversation with Mr. Spikowski.

Zoning Coordinator Overmyer recalled the discussion regarding the MPO Future Land Use visioning scenarios; and how Mr. Spikowski had not envisioned elevated pools years ago and that the Town had been operating under different flood maps at the time.

Mayor Mandel recognized Bill Shenko, Jr. who had previously stepped out of Chambers.

Bill Shenko, Jr., resident, explained his belief that the discussion was regarding setbacks for elevated pools and not prohibiting them. He discussed his past experience serving on Town Council regarding

structure height and setbacks; and his interpretation of the LDC pertaining to pools. He noted how Lee County dealt with elevated pools.

Council Member List discussed how there appeared to be ‘wobble room’ for interpretation of the code regarding the matter; and how Council would have to decide whether or not to allow elevated pools.

Council Member Raymond reviewed his comments he made two weeks ago at a Council Meeting regarding elevated pools; and the reason why he had brought up the matter at that point.

Vice Mayor Kosinski discussed his agreement with the matter of the view corridor; and how he did not agree with leaving the code as presently written.

Town Manager Stewart discussed community expectations; complexity associated with interpreting codes; and noted why this policy matter came before Council last August.

Community Development Director Fluegel pointed out that he had written a memo to Council dated June 14, 2013 while they were on hiatus, and that the first opportunity to have the matter come before Council was in August. He explained his belief that staff exercised due discretion with getting the matter to Council.

Mayor Mandel questioned if an elevated pool permit had been issued before June.

Community Development Director Fluegel responded in the affirmative and reported that three permits had been issued which was why staff sent the memo to Council in June.

Discussion ensued regarding the interpretation of the code as it pertained to elevated pools; discussions at a prior Council meeting; and other code provisions that seemed to be attempting to preserve some type of view corridor.

Town Attorney Miller explained the code needed to be corrected in one way or another.

Discussion ensued regarding setbacks, view corridors and the sanctity of the view corridor, and various types of accessory structures.

Council Member Andre suggested consistency in the code regarding heights and setbacks (i.e. 42” height and 25’ setback).

Discussion was held concerning landscaping as it pertained to the view corridor; dealing with obstructions that already existed; degree angles for view corridors; elevated pool permits currently in review; and administrative variances.

Town Attorney Miller reported that the ‘stop gap’ ordinance had gone before the LPA; that the LPA recommended approval; and it would be scheduled for a hearing before Council.

Discussion ensued regarding the procedure that would be followed if an elevated pool permit came before Town Council.

Recessed at 11:53 a.m. – Reconvened at 12:06 p.m.

V. MOUND HOUSE CIP

Town Manager Stewart reviewed how Council had requested the creation of the Mound House Capital Improvement Plan in order to determine a clear-cut funding path for all Mound House projects; and included in the information submitted to Council a memo summarizing the costs, as well as the Capital Improvement Plan.

Parks and Recreation Director Norton noted there were four projects remaining:

1. SEARCH, Inc.
2. Fowler
3. Observation Pier
4. Orientation Theatre Seating

He explained and discussion was held on the three funding sources to help the projects:

1. Cultural Affairs Grant from the State – must be spent on restoration and exhibits (\$445,000).
2. TDC – must be spent on the observation pier and landscape signage.
3. Florida Historical Commission – grant of \$333,614 for restoration and exhibits pending approval of the Historical Commission’s budget from the State for FY2014-15.

Discussion was held regarding the Capital Projects projected for the completion of the Mound House property in FY2014:

- Restoration Project – to complete the restoration and construction of the Mound House.
- Museum Action Plan – to develop an action plan outlining a clear-cut path forward and milestones for completion of the exhibits.
- Museum Exhibits –design, fabricate, and install the exhibits within the Mound House (only).
- Landscape Signage – SEARCH, Inc. to develop and install interpretive signage throughout the Mound House property.
- Observation Pier – to offer an outside classroom setting for environmental education and programs for visitors to the property; redesign value engineering; amendment to the Army Corps of Engineers permit; and bids to go out on the street.
- Unfunded Capital Improvement Project – remaining amount of \$106,264.24; CIP would come from General Fund; how to replenish reserves; potential future uses for reserves (i.e. Estero Boulevard improvements, beach renourishment, future beach management); and current undesignated reserves and future responsibilities. As the budget is developed, staff was instructed to develop a CIP process that would aim towards replenishing reserves [five years].

VI. PARKS & RECREATION DEPARTMENTAL REPORT

Parks & Recreation Director Norton provided an overview of the monthly Parks & Recreation Departmental Report which included a chart depicting patronage growth for selected programs for from 2011 through 2013 (Fitness Classes, Weight Room, and Youth Programs), activities and participation

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for the Youth and Teen Program, Athletics and Fitness Program, Seniors Program, Aquatics Program, and Cultural Resources:

- BORC New Membership Report
 - As of 11/1 there were 1,582 new members since the ‘Every Resident a Member’ started on 1/1/13.

Discussion was held concerning the positive impact of the ‘Every Resident a Member’ program.

Mayor Mandel questioned the status of the December 2nd groundbreaking ceremony for the utility water.

Parks & Recreation Director Norton reported he had scheduled a meeting for tomorrow with the company regarding the ceremony; and invitations should be sent out this week which would include State representatives and senators.

Mayor Mandel suggested a ‘hold the date’ notice be mailed out today.

VII. COUNCIL MEMBERS ITEMS

Council Member List – reported she participated in a meeting with a private citizens group composed of pilots and residents who monitor aircraft noise data. She suggested the Mayor, Town Manager, and some members of the group meet with the air traffic controllers and station managers regarding the aircraft noise.

Discussion ensued regarding information regarding aircraft noise data.

Council Member Andre – no items.

Council Member Raymond – no items.

Mayor Mandel – recognized Toni Scalero in the audience who wanted to discuss golf carts on the beach.

Toni Scalero, 6660 Estero Boulevard, noted she and her husband were legally handicapped; discussed a golf cart she and her husband had rented; a golf cart they now owned; how they applied and received a permit from the Town on three prior occasions; and that she and her husband would not have purchased a golf cart if they had not received a permit from the Town in the past. She indicated she received a letter from the Town this year that stated they would not be issued a permit. She requested a temporary permit until she could sell the golf cart.

Discussion was held concerning permitted vehicles on the beach (i.e. motorized wheelchairs and other conveyances); and placing the item on Agenda Management.

Council Member List asked for the basis as to why the permit was not granted this year.

Town Manager Stewart explained he was unaware the issue would be discussed at this time and was unprepared to respond.

Toni Scalero spoke but did not use a microphone and her comments were inaudible.

Council Member List stated she would like see Mrs. Scalero's issue addressed as soon as possible.

Discussion continued regarding permitted vehicles on the beach; and types of legal vehicles for street use.

Toni Scalero recalled her experience with Town staff concerning the idea of a shuttle to the beach at the south end for handicapped people living in the condominiums.

Vice Mayor Kosinski – requested approval to make a 10-minute presentation on the parking garage at the next Work Session.

Consensus approved Vice Mayor Kosinski's request.

VIII. ADJOURNMENT

Meeting adjourned at 12:47 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

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