

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 19, 2004
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER: The regular meeting of the Fort Myers Beach Town Council was called to order on Monday, April 19, 2004 at 3:00 P.M. by Mayor Dan Hughes.

Members present at the meeting: Mayor Dan Hughes, Vice Mayor Terry Cain, Councilman Bill Thomas, Councilman Howard Rynearson, Councilman Bill Van Duzer, and new Councilmen Garr Reynolds and Donald Massucco

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George, Town Attorney Richard Roosa, Nettie Richardson, a Senior Planner with Lee County Division of Zoning, Community Development Director Dan Folke, Deputy Town Manager John Gucciardo

II. PLEDGE OF ALLEGIANCE: All those present assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REV. TOM SNAPP, ST. PETER LUTHERAN: Rev. Snapp was not present; there was no invocation.

IV. RESOLUTION CERTIFYING ELECTION RESULTS:

Mr. Hughes advised that the sole function of the existing Council was to adopt a resolution certifying the results of the runoff election, at which time the successful candidates will be sworn, and Mr. Cain and Mr. Hughes will step down and be replaced by the new Council members. Mayor Hughes read portions of Resolution 04-13 of the Town of Fort Myers Beach and summarized the results of the election.

MOTION: Motion was made by Councilman Thomas and seconded by Councilman Van Duzer to adopt this resolution.

VOTE: Motion was passed by unanimous vote.

V. SWEARING IN OF NEWLY ELECTED COUNCIL MEMBERS:

Mr. Reynolds and Mr. Massucco were sworn in by Town Attorney Richard Roosa.

VI. COUNCIL REORGANIZATION:

Councilman Reynolds nominated Councilman Thomas as Mayor of the Town of Fort Myers Beach.

MOTION: Motion was made by Mr. Massucco and seconded by Mr. Reynolds to close the nominations for Mayor.

VOTE: Motion carried by unanimous vote.

Mayor Thomas gave an acceptance speech expressing his appreciation for the honor.

Councilman Massucco nominated Councilman Reynolds for Vice Mayor. Nomination was seconded by *Councilman Rynearson. *(correction- seconded by Councilman Reynolds)

VOTE: Nomination was carried by unanimous vote.

Vice Mayor Reynolds gave an acceptance speech expressing his appreciation for the honor and inviting input from the public at any time regarding Council actions.

VII. COUNCIL COMMITTEE APPOINTMENTS:

Regional Planning Council – Mayor Thomas, incumbent

Metropolitan Planning Organization – Councilman Van Duzer, incumbent

Tourist Development Council – Councilman Rynearson, incumbent

Traffic Committee – Councilman Rynearson, incumbent

Mr. Reynolds made a motion that these appointments be tabled until the next meeting in order to research term limits and secure rotation of these positions. The motion failed for lack of a second.

Horizon Council -- Mr. Massucco expressed willingness to accept subject to conversation with Mr. Hughes, the previous incumbent regarding the duties and responsibilities.

Coastal Advisory -- There were no volunteers at this time.

Councilman Van Duzer indicated his willingness to continue serving on the MPO.

Councilman Rynearson advised that his appointment to the TDC is for a 4-year term, and he would also like to continue serving on the Traffic Committee.

VIII. PUBLIC COMMENT: Mayor Thomas invited and encouraged members of the public to come forward at this time, stating that this Council always welcomes public comment.

Lyle Dumers came forward and congratulated the new members of the Council and the newly elected Mayor and Vice Mayor. He called attention to an environmental concern in which there are attempts to develop a 3-acre parcel between Mango and Chapel Street, and in which permits have been denied on two previous occasions. He recalled a resolution passed by the previous Council urging the DEP not to allow permits on this land, and he urged the new Council to continue to oppose development of what he described as a mangrove marsh. He presented a letter giving history and background on the issue.

Carol Schardt came forward and advised that the Committee for the old fashioned Town Hall Meeting had originally planned for such a meeting the 26th of April, and asked whether all Council members were agreeable to that date. Mayor Thomas advised that this has already been placed on the calendar.

Terry Cain, an almost 30-year resident of Fort Myers Beach, came forward and addressed the committee appointments on this agenda, specifically, the CAC appointment. She advised that this is a very important monthly meeting and that it requires an elected official who will have a vote in what happens on the Beach. She stressed the importance of Town representation on this committee. She also advised that the National Estuaries Program also has a seat on their Policy Committee that requires an elected official. There are 8 other counties on that committee, and there is valuable information shared by this organization. There is also another committee that has never had Town representation, which is the Waterway Advisory Committee for Lee County and which also required an elected official. She urged the Council members to consider volunteering for these committees. Mr. Reynolds thanked Ms. Cain for her comments and input.

Dan Hughes of 270 Randy Lane came forward and explained that the ordinance which created the Horizon Council provides that the member from each community be the Mayor; however, he believes the individual may recuse himself and appoint a substitute for himself.

Ken Katcko came forward representing the Fort Myers Beach Chamber Council, and congratulated Mayor Thomas, Vice Mayor Reynolds and Councilman Massucco. He said the Fort Myers Beach Chamber of Commerce has always had a good working relationship with the Town and looks forward to working with the new Council.

IX. CONSENT AGENDA:

A. FINANCIALS FOR THE MONTHS OF FEBRUARY AND MARCH

B. APPROVAL OF MINUTES, APRIL 5, 2004

MOTION: Motion to approve the Consent Agenda was made by Councilman Rynearson and seconded by Councilman Van Duzer.

DISCUSSION: Mr. Reynolds expressed reluctance to vote on something for which he was not present and has no knowledge. He asked to be excused from voting on this issue. Mr. Massucco agreed as well. Mr. Roosa advised that by voting on a set of minutes the Council is approving what is written, not what has been done at a particular meeting. Mr. Massucco then said he would change his mind.

VOTE: Motion to approve the Consent Agenda was passed by unanimous vote.

X. ADMINISTRATIVE AGENDA:

A. PUBLIC HEARINGS :

Mayor Thomas advised that a request had been received from the applicant of Case 2, Seafarer's Mall, to continue the public hearing indefinitely.

1. Prismatic Corp., in ref. to Times Square Coffee Shop located at 1035 Estero Blvd. for special exception for consumption on premises of alcoholic beverages with outdoor seating in conjunction with a café.

Herb Atkin, the owner of Times Square Coffee Shop, came forward and congratulated the newly elected officials and thanked them for their service to the community. He explained that this is his family's business, and they are requesting the ability to sell beer and wine in conjunction with a sandwich shop. He described the proposed establishment and its outdoor seating area where they will serve bagels in the morning, sandwiches at lunch, and desserts in the evening. Mr. Massucco referred to the provided diagram and expressed concern with the 18 inch dimension of the toilet area. Mr. Atkin explained that this was due to the ADA approval and that there had been full health department and building inspections, all of which had signed off approving the bathroom. He further explained that the requirements are for 18 inches clearance from the center of the toilet bowl to the grab rail. Mr. Reynolds asked for the overall dimensions of the total space to be occupied. Mr. Atkin explained that the entire space is under 300 sq. ft. He offered to provide these dimensions but did not have them immediately available. He estimated that the back wall is approximately 27 feet, and the long wall approximately 12 feet, the short wall about 7 feet, and the back portion about 4 feet. Mr. Van Duzer pointed out that the drawing being examined was approved by the Lee County Building Department for a remodel of an existing building, and would have to comply with all codes and requirements. He also suggested that Council might wish to hear from Staff prior to discussing the drawing.

Nettie Richardson, a Senior Planner with Lee County Division of Zoning came forward to give the Staff Report. She used a large map showing the area of Times Square and pointed out the location of the proposed café. She advised that the applicant's plan has been approved under a building permit, and explained that the Council members have been provided with a reduced version of the overall plan. The applicant is asking for a 2 COP, which is beer and wine only, for service in conjunction with a small café. She described the character of the applicant's proposed business and compared it with a Paris outdoor café. She also explained the requirements for having outdoor seating approved administratively, with the applicant falling within the 500 square foot radius of Lynn Hall Park, a public park. The remodeling permit, which was approved in March of 2004, is attached as Exhibit C of the Staff Report. The proposal includes 10 to 12 tables of varying sizes but no more than 42 outdoor seats. There will be no indoor seating provided, and hours of operation will be from 8:00 A.M. until midnight, 7 days a week. He would like to have some music and entertainment, however, it will be conversation level mood music. With respect to parking, she explained that because this property is located within the Downtown Zoning District, additional parking spaces are not required. The property owner, Beverly Primeau, entered into an agreement with the Town in September 2001 for 8 on-site parking spaces at this location, which Ms. Richardson specifically described. She stated that the proposal is consistent with the surrounding area, and with the applicable LDC and Comp Plan provisions, and that Staff is recommending approval with conditions, which she explained. At the

LPA meeting of March 23rd, approval of Staff's conditions was recommended, with one change. In Condition Number 4, the LPA included the provision that the signage must be aesthetically pleasing. It was agreed unnecessary to read each of the 8 conditions into the record.

Mr. Reynolds asked why the drawings do not have measurements on them, expressing a preference to have measurements and to personally inspect the site before voting. Ms. Richardson replied that she did not choose to include that, but will do so in the future. Mr. Reynolds asked how many establishments there were in Times Square that serve alcoholic beverages. Mr. Folke replied that he does not have the exact number, but estimates that every restaurant in Times Square does serve alcohol. Mr. Reynolds estimated that there are 9 restaurants and bars serving alcoholic beverages in Times Square, and the applicant will be the 10th if approved, which causes him some concern. He also requested that such statistics be available in the future and asked if a count could be obtained at this time. Mr. Van Duzer stated that he did not understand the significance of the exact number since this use is allowed under applicable regulations regardless of number. He also pointed out that there was no determination prior to discussion of ex parte communications, and he observed that he had received the packet of information with sufficient time to visit the site, which he believes is an obligation of every Council member.

Mayor Thomas asked the members if there had been any ex parte communication. Mr. Van Duzer reported having a minor conversation with the applicant. The other Council members had none. He then asked for public comment on the case, of which there was none.

Mr. Massucco asked what happens to a liquor license when a license holder goes out of business. Mr. Roosa was of the opinion that the license expires and cannot be assigned to another corporation or entity, or transferred to another location. He explained that what is involved in this case is zoning approval to allow them to apply for the license.

MOTION: Motion was made by Mr. Van Duzer to approve the resolution 4-14 including the conditions set forth in the Staff Report and the minor change to Condition Number 4 suggested by the LPA. Motion was seconded by Mayor Thomas for discussion.

DISCUSSION: Mr. Reynolds said he agreed with the idea of a coffee shop but had problems with other alcoholic establishments in that area. He was also concerned with the proposed 42 seats causing congestion in the area. Mr. Rynearson agreed with Mr. Van Duzer that there is no limit in the regulations to the number of establishments serving alcoholic beverages. He suggested that the ordinance be researched for possible future modification, but pointed out that it is difficult to deny an applicant something that he has a legal right to do.

VOTE: Motion was passed on a vote of 3-2, Councilmen Reynolds and Massucco dissenting.

2. Seafarer 1997, Inc., in ref. to Seafarer's Village Mall located at 1113 Estero Blvd., to amend Master Concept Plan.

Continued indefinitely. It was determined that no motion was necessary since there was no date certain for continuance.

XI. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Massucco expressed thanks for his installation.

Councilman Rynearson welcomed both new Council members and expressed the hope that everyone can work together in a positive way.

Councilman Van Duzer also commented on the election results and expressed the desire to move forward in a positive and peaceful manner for the benefit of the Town. He added that on Saturday of this week there will be a Relay for Life golf outing, which has been very important to him as a cancer survivor, and he appreciates the support of the community. The

following weekend, Friday the 30th, there will be an 18-hour Relay for Life walk until noon Saturday, and he asked anyone affected by cancer to support the effort.

Vice Mayor Reynolds again thanked everyone for their active support in the election and expressed the desire to work together in the future. He thanked Staff for the refreshments. He also reported on a recent charity event at the Shamrock with the Lions Club and thanked those who participated. He said he looks forward to working for the public and invited input.

Mayor Thomas said he was proud to become the Mayor of Fort Myers Beach and thanked everyone for their support. He said he looks forward to taking the Town in a new direction with the new Council members and making the Island a better place to live.

XII. TOWN MANAGER'S ITEMS:

Alternating Light:

Ms. Segal-George reported that the Chamber Traffic Committee has passed a motion on the alternating light, and requested that this be connected on demand all year around, so that if there is a particular traffic issues it will be available. They asked that the Town send a letter to the County with this request, and she needs the Council's permission to do so. Mr. Rynearson pointed out that the State requires such a letter also.

MOTION: Motion was made by Councilman Rynearson to accept the Chamber Traffic Committee's recommendation and to send the appropriate letters; seconded by Vice Mayor Reynolds.

DISCUSSION: Mr. Reynolds verified with Ms. Segal-George that there is no additional cost to the Town for operation of these lights. Mr. Reynolds recalled serving on the Traffic Committee for several years and expressed appreciation that the lights were put into operation after all this time.

VOTE: Motion was passed by unanimous vote.

Mr. Gucciardo called attention to the recent weather events last Monday and Tuesday mornings and compared it to the "No-name Storm" of several years ago. He explained that typically when there is advance warning the Town is able to gear up and work along with different local agencies to be in a response mode; however, in this case there was no advance warning. He emphasized that the Town was able to act as a facilitator and work closely with the Sheriff's Office, Fire Department, Lee County Utilities, Beach Water, and the Town's own maintenance personnel and FP&L in an attempt to see that the Town was in a responsive mode and back to normal as quickly as possible. He said his reason for bringing this up was to let Council know that they did follow up with letters thanking those agencies and made note of some of the maintenance crew commending them for early actions that were taken. Mayor Thomas described this as a job well done.

XIII. TOWN ATTORNEY'S ITEMS: None.

XIV. PUBLIC COMMENT:

Herb Ackert again came forward and thanked the Council for approving his application and invited everyone to call on him for assistance.

XV. ADJOURNMENT: Meeting was adjourned at 4:08 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary