

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 8, 2004
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER: A Land Use meeting of the Fort Myers Beach Town Council was called to order on Monday, November 8, 2004 at 9:00 a.m. by Mayor Bill Thomas.

Members present at the meeting: Mayor Bill Thomas, Vice Mayor Garr Reynolds, Councilman Don Massucco, Councilman Howard Rynearson, Councilman Bill Van Duzer.

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George

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

III. INVOCATION: The invocation was given by Mayor Thomas.

IV. PUBLIC COMMENT: None.

V. PROCLAMATION – VETERAN’S DAY:
Councilman Massucco was asked by Mayor Thomas to read the proclamation, and he proceeded to do so.

VI. PUBLIC HEARING:

Peter and Susan Lisich in ref. to Abaco Beach Villas:

The interested parties came forward and were sworn. Peter Lisich, owner of the subject property at 131 Estero Blvd., came forward. Ms. Segal-George reminded Mayor Thomas to ask if there had been any ex parte communications, which he then did. Councilman Van Duzer reported that he had spoken with Mr. Lisich in the past prior to the previous hearing which he declared at that time, but he has had no additional conversations in the past several months.

Mr. Lisich thanked the Council members individually as well as Staff and those attending. He advised that their situation has changed dramatically since initiating this zoning request due to the storms. Their building appears to have experienced irreparable damage so extensive that they have not found a solution, so they will be proceeding, if successful, with a post-disaster buildback request. He noted that the building is their primary source of income as well as their residence, and he and his family have been both homeless and income-less since the storm.

He stated that the purpose of today’s hearing is a request to re-zone the property from its current commercial planned development to a residential planned development under the provisions of Section 34.941 and Section 34.943-2, copies of which he provided for review and from which he read and summarized. He also summarized some of the changes that have taken place on the Island since he moved here in 1987. He provided an unretouched aerial photograph of the north end of the Island and described his property as the only developable site in the area. Mr. Lisich proceeded to describe the structure which is currently 3 stories containing 2 1 BR 1 Bath apartments on the ground level with concrete patios facing Matanzas Pass, 2 larger 2 BR 2 Bath units on the middle level with full width wooden deck across the water side of the building, and the top floor, which is the Lisich residence, a 3 BR 3 Bath with a work area, storage area and office. The docking facility can accommodate up to 6 boats, and there is a substantial area of naturally occurring white sand private beach. He produced additional photographs showing the building and area, and described the methods of construction and style of the building. There are 8 pull-out parking spaces with a driveway in the front, which he described as a dangerous

situation. He described the current flood elevation. Mr. Lisich included mention of the history and evolution of the Pink Shell property in his descriptions of the area surrounding his property and in pointing out the changes that have taken place in the neighborhood over the years. He also provided a pre-storm color photo taken from the bayside, showing Pink Shell structures.

Mr. Lisich referred to a handout summarizing 3 situations with respect to his property. He called attention to an issue that has been raised in previous hearings concerning the bulk of the proposed new building and said that this results from meeting current code requirements. He made particular reference to "public space" including stairways and elevators, a mandatory fire suppression system and utilities which do not exist in the present building. He said the architect's estimate of public space for such a building will be an additional 1,000 to 1,200 square feet per floor.

Mr. Lisich made reference to the number of stories in the proposed building, explaining that it is intended to be no less than 3 and no more than 6 depending on interpretation of setback requirements. They hope to maintain the height at 4 stories, no more than 5. The proposed rezoning is a 5-story building, which is equal or less than any surrounding buildings in the neighborhood. He also made reference to the proposed parking and the "vernacular" style of the existing structure and parking facilities and described the design they intend. The request is for 5 units at 3,000 square feet each. Reference was also made to setback requirements under post-disaster buildback provisions. He said they are attempting to make the new building proportionately pleasing.

He made reference to a November 4, 2004 memo from Jerry Murphy which he summarized in another handout, pointing out that from the initial request there have been significant changes made. The current FAR is 1.54. The request for air conditioned square footage has been reduced from 4,250 to 3,000 per unit, or total 21,250 to 15,000. He referred to Page 5 of the current Staff Report. He also described the other changes in square footage and expressed a hope that mutual satisfaction can be reached for approval.

He made reference to issues of concern in previous hearings and commented on specific deviations. Mr. Lisich provided another handout included a lengthy list of public benefits that will be derived from approval. He noted that this project has neighbor support, pointing out that in previous hearings some neighbors had independently attended and spoken in favor of the project, and had also circulated a petition recommending approval.

Mr. Lisich referred to the Master Concept Plan, which he said does not reflect the current changes. He produced a rendering showing 5 stories over parking, which he said the Code requires them to call a 6-story building. He explained the reasons for selecting Joe McHarris as the architect for the project and described the design.

At this time the applicant requested and was granted permission to pause and allow the Staff Report to be presented, with the ability to return and provide additional information later.

Nettie Richardson, a principal planner with Lee County Zoning, came forward and was sworn as Town representative. She explained the details of the request, referring to Comp Plan Policy 4.E.1. She discussed the pre-disaster buildback policy and acknowledged that Mr. Lisich's current request refers to the post-disaster buildback policy, which she said she is not addressing at this point. She recalled that the LPA had recommended disapproval under the pre-disaster provisions, and that Council had briefly addressed the request in March but continued the case to allow the applicant to redesign and come back with another plan, which is before Council today. She referred to the previous Staff Report as applicable, noting that the applicant had made some reductions for which Staff has received no plans. She said that Staff is still consistently recommending denial because the buildback policy specifically states that they can build back up to the existing and lawful density and intensity prior to the natural disaster. Staff considers the proposed building to be a definite increase in density and intensity. Current regulations would permit 2 dwelling units on the property up to 14,113 interior space each, so Staff believes the applicant is proposing too large a building for the lot size, based on the Comp Plan, Policies 4.B.1 and 4.B.4 as well as Policy 4.C.5. and also specifically Policy 4.E.1.

Councilman Van Duzer referred to Policy 4.C.4 concerning building heights and asked whether it would be appropriate to raise the height of the building in consideration of its being surrounded by taller structures. Ms. Richardson said this would be something to consider, but

again referred to Policy 4.E.1 as more restrictive. Mr. Van Duzer verified with Ms. Richardson that 4.C.4 does not include the pre-disaster buildback, which she said was intended to allow only the replacement of what was existing. Mr. Van Duzer recalled having been one of the authors of this section and said he took exception to her interpretation. He referred to the word "intensity" and verified her definition of this provision. He pointed out an error in her presentation concerning the total square footage and the square footage of each unit. Up to 14,113 total square footage would be allowed with 2 units.

Pam Houck, Director of Zoning with Community Development, came forward and explained that intensity, density, and height must all be considered. Under existing zoning they could build 2 units at 14,113. Under planned development at 5 units they are limited.

Mr. Van Duzer noted that once again Council is dealing with density and intensity and expressed displeasure at the use of the word "intensity." He expressed the opinion that private property rights are being violated by permitting only the same square footage to be built back. He also noted that times change, and people no longer want to live in a 200 square foot motel room. He recalled his significant efforts to get this pre-disaster buildback clause included in the Comp Plan and stressed that the word "intensity" was never intended to refer to square footage or height of a structure, but rather to utility and traffic use. He expressed the opinion that people should be permitted to do what they want on their property that is not injurious to their neighbors or the public and observed that there have been decisions that injured people on the Island because of the terminology that had been put into the Town's Land Development Code and Comprehensive Land Use Plan. Ms. Houck said she does not disagree, but noted that the Code does include those stipulations, and as Staff they cannot ignore it. She said the Staff Report and their position implement the Land Development Code and the Comp Plan. She added that after hearing Mr. Lisich's presentation she has a better understanding of what is intended under the post-disaster provisions.

Vice Mayor Reynolds observed that there are guidelines to go by that have been approved by the residents, the State and the LPA and Council. He took exception to the discussion on 4.C.4 which he did not feel pertains to this case. He expressed displeasure with continual requests by developers to deviate from the guidelines of the Comp Plan and LDC. He pointed out that developers have the opportunity to read the Code and to meet with the Town Manager and Community Development Director before coming before Council with inconsistent requests, which he considers unfair. He thanked Staff for their efforts.

Councilman Rynearson (inaudible.)

Councilman Van Duzer disagreed with Vice Mayor Reynolds' objection to 4.C.4 and read the provision, noting that there are higher structures across the street from the subject property.

Vice Mayor Reynolds said he would stand by his statements. He added that his argument was not with any Council member, but rather an attempt to get those who come before Council to comply with the guidelines.

Mayor Thomas remarked that anyone has the right to come before Council with a request to waive some of the rules in the Comprehensive Plan, but noted that the Town has an award-winning Plan, and asking for 6 stories in lieu of the 3 stories permitted is quite a departure. He asked why have a Comprehensive Plan if anyone is allowed to build what they want, adding that the LPA denying the request, including the several variances, by unanimous 7-0 vote. He also noted that Staff personnel are trained professionals and he did not feel it appropriate to supersede their advice and ignore the Comprehensive Plan.

Councilman Massucco noted that there are 9 deviations in the request. He agreed with Mayor Thomas and Vice Mayor Reynolds that it is not advisable to deviate from the Comprehensive Plan to this extent because it could set a precedent. He also suggested that "intensity" should be clarified with Mr. Spikowski's input. Ms. Segal-George observed that the LPA is going through the State-required EAR process at the present time and is looking into this and are addressing definitions of both density and intensity.

Mr. Lisich was given the opportunity to respond. He said that there were some issues to be corrected for the public record. Ms. Richardson had told him she was going to let the Staff Report stand as it was, but he noted that it contains some errors. He said it appeared there was some "overzealous planner activity" that went on in this Staff Report. In particular, Exhibit B is the

zoning resolution that allows his current use on his property, and he asked Ms. Houck to review this. He noted that Ms. Richardson in the Staff Report calls the building "guest units," which he said is in error. He referenced Exhibit B, Resolution 99-7, Page 2, paragraph 2 which he proceeded to read and which he says applies. Ms. Houck advised that she did not write this resolution, but agreed that the resolution approved dwelling units. However, she said that in finalizing the Staff Report it was unclear. Mr. Lisich referred to the Staff Report as biased, incorrect and inaccurate. He also addressed the intensity and density issue. He read from Chapter 34 Page 16 Section 34-2 which he said refers to intensity as a non-residential measure of use, while density is a count of units. He said he had raised a question during the approval hearings of Chapter 34 but recalled that the contested issue of single-family rentals took focus away from the rest of this Chapter. He pointed out that although award winning, little of the Code has been tested, and there remain unresolved issues.

Mr. Lisich referred to Policy 4.E.1 and read from the pre-disaster buildback. He said he has complied with this with his Planned Development Zoning process, pointing out that the Code allows Council to give deviations. He said the Code cannot anticipate every possible situation that will arise in land use, emphasizing that every piece of property on the Island is unique, including the subject.

Vice Mayor Reynolds took exception to the applicant's reference to him personally in his presentation, and Mayor Thomas asked Mr. Lisich not to direct his remarks to individual Council members.

Mr. Lisich recalled that during the hearings when Chapter 34 was approved he had addressed the pre- and post-disaster buildback questions, at which time Mr. Spikowski mentioned that the zoning process was the place to request deviations and that the Council would see many requests for deviations as a result, knowing that much of the housing stock on the Island was sub-standard and not to current code. This is what the current request was based on. He said that additionally, the State requires periodic review of the Code, which is not static and cannot be all-encompassing. He noted that each plan is unique to the site and does not set a precedent.

He pointed out that whether or not the RPD is approved, he intends to hire an architect and begin rebuilding because he presently has no home or business. He expressed the opinion that his proposed building is the best option for the Island, pointing out that the post-disaster buildback that he is allowed will not be attractive and is not his preferred alternative because he is going to live there. He stressed that this would be a residential development, whereas the post-disaster version will be a commercial development. He emphasized the personal nature of his request and his longevity on the Island and asked for approval.

Mayor Thomas commented about density and intensity, noting that increased building height will affect drainage. He quoted a section of the Burt-Harris Act, which he said should not be used to change the existing density. He asked for public comment at this time. Hearing none, he recognized Councilman Van Duzer.

Mr. Van Duzer agreed that he was not in favor of increasing the density of FMB, but emphasized that if Council does not approve what is requested, the density on this site will be increased, because it will go from 5 units to a possible 8 or 9 units. By approving the requested high end residential units, rather than guest or multifamily units, the traffic would be less than what is approved on that site. He agrees that density is the Town's biggest problem, and recalled that in writing these regulations it was a major concern. By voting against the request, his alternate plan will increase the density. He referred to Staff interpretation as the most restrictive and the most critical of recent projects and felt that Council is overlooking its job in protecting the residents of the Island.

Councilman Rynearson (inaudible.) His comments concerned traffic, but his microphone was not working.

Councilman Massucco asked how many parking spaces were allocated. Mr. Lisich said that post-disaster allows him to build up to 10 guest units, but he and his family are unable to live in a guest unit. The parking calculations under Section 18 were discussed. Mr. Massucco expressed the opinion that the size of the units would encourage guests, increasing traffic. Mr. Lisich described the situation in Gulf Harbor, where he is renting, is the opposite.

Mayor Thomas stressed that the people have continually expressed their mandate not to allow any more tall buildings.

Councilman Rynearson described his own experience with respect to auto trips and stressed that a motel will generate more traffic than residential units.

MOTION: Motion was made by Vice Mayor Reynolds and seconded by Councilman Massucco to deny the request.

VOTE: Motion to deny the request passed by a vote of 3-2, with Councilman Van Duzer and Councilman Rynearson voting opposed.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Vice Mayor Reynolds reported attending the legislative meeting of the Board of Education at Riverside Community Center, which Mr. Van Duzer also attended. He encouraged everyone to visit the building, which he said is very attractive.

Councilman Don Massucco referred to the proclamation of Veteran's Day that he had read at the beginning of the meeting and said it was an excellent thing to do, noting that recognizing veterans is one way of supporting our troops. He commended Ms. Segal-George for preparing this and said that as a veteran he appreciated it.

Mayor Bill Thomas addressed the subject of meeting times for Council meetings. The land use meetings take place at 9:00 a.m., and there are also some meetings at 3:00 p.m. and some at 6:30 p.m. He does not agree with so many different meeting times and suggested it should be decided by a majority of Council what time to hold meetings. He noted that there are many people who wish to attend meetings who will be excluded if they are held during daily working hours. Mayor Thomas suggested holding all meetings at 6:30 p.m. and asked for Council's opinions.

Ms. Segal-George recalled that this had been discussed at the retreat, and that it was her interpretation that Council wanted the 1st meeting of the month at 6:30 p.m.; the 2nd is land use which has always been at 9:00 a.m. partly due to County Staff participation which would require payment of overtime in the evening; and she thought it was the desire of Council that the 3rd meeting start at 3:00 p.m. There have been 3:00 p.m. meetings in the past, and when there are such lengthy agendas that the evening meeting would run too late they have been scheduled this way. This was the reason she set the November 15th meeting for 3:00 p.m. and it has already been advertised.

Councilman Massucco said he leans toward 6:30 p.m. meetings but acknowledged that land use cases, such as this one, can run 2 hours or more. He suggested keeping those at 9:00 a.m.

Councilman Rynearson agreed with Ms. Segal-George's recollection of the retreat and expressed the opinion that one meeting be scheduled at 3:00 p.m. when there is an overload of agenda items to address. He noted that the LPA meets at noon, and everyone who needs to be there attends. He also suggested leaving land use at 9:00 a.m.

Vice Mayor Reynolds said he personally does not like night meetings, and unless there is legislative requirement for evenings, he would like to see all Council meetings at 9:00 a.m. He added that he would be amenable to 3:00 p.m. and 5:00 or 6:30 p.m. if Council so wishes.

Councilman Van Duzer stated that the land use meetings should remain during the day to avoid paying Staff overtime. He suggested changing from 9:00 a.m. to 10:00 a.m. for personal business reasons, but has no problems with 3:00 p.m. and 6:30 p.m. which he said gives the public the opportunity to attend. He noted that when there are heavy agendas, by starting at 3:00 p.m. the non-public portion of the agenda can be addressed early, with the remainder beginning at 6:30 p.m.

Ms. Segal-George pointed out that the law says 5:00 p.m. or later, so when entertaining ordinances, one meeting must be in the evening.

Mayor Thomas agreed with 9:00 a.m. for land use and 6:30 p.m. unless there is a very heavy agenda, when they will start at 3:00 p.m.

MOTION: Motion was made by Councilman Rynearson to keep land use meetings at 9:00 a.m., and one meeting for heavy agendas to be at 3:00 p.m. and the other at 5:00 p.m. Motion was seconded by Vice Mayor Reynolds with possible amendment.

DISCUSSION: Mr. Reynolds said he thought Council members' needs should be considered, and since Councilman Van Duzer has indicated that 10:00 a.m. would be beneficial, he asked if Mr. Rynearson would amend his motion to 10:00 a.m., 3:00 p.m. and 5:00 p.m. Mr. Rynearson agreed with this amendment.

Mr. Massucco said the reason he favored 6:30 p.m. was to give working people a chance to attend, especially when there are controversial issues.

Mayor Thomas agreed with Councilman Massucco and noted that there would be all kinds of accusations if people perceive that they are being excluded. He supports 6:30 p.m.

Councilman Rynearson noted that other municipalities and governmental entities begin at 5:00 p.m. He pointed out that if people are involved, they will attend, and they can also watch on TV.

VOTE: Motion failed by a vote of 3-2.

MOTION: Motion was made by Mayor Thomas to have land use meetings at 10:00 a.m., and Council meetings at 6:30 p.m., unless there is an overload of items as reported by the Town Manager, in which case these meetings would be scheduled at 3:30 p.m. with a break for dinner and continue at 6:30 p.m. Motion was seconded by Councilman Massucco.

DISCUSSION: Mr. Van Duzer verified with Mayor Thomas that he had intended to say 3:00 p.m. instead of 3:30 p.m. He also verified with Ms. Segal-George that this would be acceptable for advertising purposes.

VOTE: Motion was passed 4-1. Member casting the dissenting vote was not identified.

Ms. Segal-George summarized:

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| 1 st meeting of the month: | 6:30 p.m. |
| 2 nd meeting, Land Use: | 10:00 a.m. |
| 2 nd meeting of the month: | 6:30 p.m. |

VIII. TOWN MANAGER'S ITEMS: No items.

IX. TOWN ATTORNEY'S ITEMS: Vice Mayor Reynolds noted that Mr. Keith Grossman was filling in for Mr. Roosa at this meeting. There were no Town Attorney's items.

X. PUBLIC COMMENT: None.

XI. ADJOURNMENT: Motion to adjourn was made by Councilman Massucco and seconded by Vice Mayor Reynolds. Meeting was adjourned at 11:20 a.m.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary