

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, June 8, 2010

I. CALL TO ORDER

Meeting was called to order at 9:05AM by Carleton Ryffel. Other members present:

Joe Kosinski
Rochelle Kay
John Kakatsch
Chuck Moorefield
Joanne Shamp-excused
Bill Van Duzer-excused

Staff present: Dr. Frank Shockey
LPA Attorney, Anne Dalton

II. PLEDGE OF ALLEGIANCE and INVOCATION

Rochelle Kay

The Chair recognized the newest member, Joe Kosinski, who then gave a brief resume to the group.

III. MINUTES

A. Minutes of May 11, 2010

Motion: Ms. Kay moved to accept the minutes, as recorded.

Seconded by Mr. Kosinski;

Vote: Motion passed 5-0

IV. PUBLIC HEARINGS

A. SEZ2010-0007 Nemo's on the Beach COP Special Exception

Ms. Dalton prompted the members to declare any ex parte discussion. Mr. Ryffel noted that he had a brief conversation with the applicants and their representative, Mr. Madden, and said that he was the original planner for a special permit at this location in 1995; however, he has no present connection with this applicant in any way. No other members had any communications.

Ms. Dalton swore in witnesses.

Applicant Testimony

Mr. Madden addressed the meeting for the applicant, Estero Beach Holdings, LLC. He thanked the staff for their report and asked that it be made a part of the record, as the applicant agrees with the findings and conclusions in the report. The intention of the special exception is basically to add liquor to the menu, in addition to beer and wine.

Mr. Moorefield asked the applicant if his statement regarding adding 30 employees was an accurate statement. Mr. Ciniello, one of the owners, responded and said that if the amount of customers increases, the number of jobs would increase but he said it is more his hope than an actual estimate.

Ms. Kay asked if the patio is in an environmentally critical zone. Dr. Shockey addressed her question, explaining that the area now zoned EC, which extends out to the seawall, was included in zoning for the alcoholic beverage use that was allowed in the 1995 special permit. The applicant added that the use of the patio was a pre-existing condition.

Mr. Ryffel recalled the original special permit and asked if the inside still has the same seating in the front porch area. The applicant explained that there had been additions since then and that area has about 40 seats inside the building now. In addition, he said there are about 180 seats total, including the patio, porch and covered area under canvas awnings, in accordance with the current permits. Dr. Shockey said that the recommended conditions would not restrict them to a specific type of license but would require them to comply with the Town's requirements for service in conjunction with the restaurant, similar to but not the same as the state's requirements for an SRX series license.

Mr. Kakatsch asked if it is necessary to start serving at 7:00 AM. The applicant stated that they don't actually open for business until 11:00 AM and this was just added for consistency.

Staff Report

Dr. Shockey corrected a few typographical errors in the address (1054 Estero Boulevard instead of 1600 Estero Boulevard) and the strap number in the report, for the record, and gave an overview of the request. The applicant is seeking a special exception in the DOWNTOWN zoning district that would allow "consumption of alcoholic beverages on the premises in a restaurant that provides outdoor seating within 500 ft. of a dwelling that is under separate ownership." This would include the existing patio area, including the part located in the EC zoning district but landward of the existing retaining wall, and applicant specifically requests that it includes beer, wine and liquor.

Staff recommendation is approval with some conditions. The "Findings and Conclusions" discuss the request in some detail, with some history as to the original

alcoholic beverage use permitted in 1995. The seating was limited to a specific floor area in square feet and number of seats and alcohol was limited to a 2COP state license, which allows only beer and wine service. Additionally, there was a restriction on outdoor entertainment. There were physical changes to the property between 1995 and 2006, as well as an appeal in which the Town Council modified some of these conditions, though not the condition limiting the type of state license.

Dr. Shockey suggested that the only condition the LPA might want to discuss would be hours of operation. He said that the Town has an ordinance that prohibits alcoholic beverage sales, service and consumption between the hours of 2:00 and 7:00 AM of each day. If the hours were to be required to be more limited, evidence to show why the limitation was necessary ought to be introduced and discussed. Dr. Shockey asked that the report be entered into the record as staff's testimony.

A suggestion was made to change the hours of service to limit the allowable hours to the actual hours currently proposed by the applicant for operation of the business. Dr. Shockey commented that the close proximity of a few dwelling units might be a factor the LPA could point to if they wished to recommend such a condition. Ms. Kay had a question about page 8 wherein it states "the immediate vicinity is within the Pedestrian Commercial category, except for the beach..." Dr. Shockey explained the boundary between the Pedestrian Commercial land use category and the Recreation category was set decades ago and partly accounted for the locations of buildings, but not always decks, patios, and other smaller objects that may have been in existence at the time. The County's rules for what could take place near the beach also were not exactly the same as the Town's. In this case, a brick patio exists between the wooden retaining wall and the coastal construction setback line, and the County's original approval of the special permit for this location included that area as outdoor seating.

Another question was raised as to where the 2:00 AM to 7:00 AM guideline came from. Dr. Shockey explained that one of the first ordinances passed by the Town set the external boundaries of hours for alcoholic beverage sales, service, and consumption for all establishments in the Town. In approving individual locations, more limited hours can be set for each location, depending on their zoning of the area and as necessary to mitigate effects of the business on the health, safety and welfare of the immediate community. However, he pointed out, some businesses were "Grandfathered" into their current operating conditions and only have to abide by the ordinance that prevents them from serving between 2 AM and 7 AM. Others have applied for zoning approval under more recent rules and received the special exceptions or administrative approvals that limit them to service during more restricted hours.

Mr. Ryffel asked if there had been any letters of objection and Dr. Shockey could not recall any related to this case or during the Town Council appeal a few years ago. Mr. Ryffel opined generally that it would be good to include a section in the staff report noting any letters of objection from the citizens. Ms. Dalton added that this is a good

idea but that it should include all letters, in support or against.

Mr. Ciniello again spoke and elaborated on the hours of operation, assuring that his business will be responsible and probably not use the earlier hours but wants them included because all other businesses have them and he feels it is only fair to keep this consistent.

Mr. Ryffel asked for public comment, and no one came forward. Ms. Kay commented that she did not approve of expanding alcoholic beverage activities into the EC zoning district. There was LPA discussion including whether to change the hours of operation for all business so that all are serving during the same hours, or to restrict individual businesses piecemeal. Mr. Ryffel commented that he didn't feel the request involved expanding into the EC zoning district since the patio was already included in the licensed area, and the applicant was merely asking to change the type of alcohol they would be able to serve.

Motion: Mr. Kosinski moved to recommend approval of the requested special exception SEZ2010-0007, Nemo's on the Beach, selecting the recommended findings and conclusions as stated in the *"Findings of Facts" in the draft resolution:*

#1. "changed or changing conditions exist that make the request approval, as recommended, appropriate;"

#2. "the request, as conditioned, is consistent with the goals, objectives, policies and intent of the FMB Comp Plan;"

#3. "the request, as conditioned, meets all performance and locational standards set forth for the proposed use;"

#4. "the request, as conditioned, will protect, conserve or preserve environmentally critical areas and natural resources;"

#5. "the request, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;"

#6. "the request, as conditioned, will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC Chapter 34."

Seconded by Mr. Moorefield

Vote: Motion passes 3 to 2, with Mr. Kakatsch and Ms. Kay opposed. Mr. Kakatsch added that he only opposes the hours of operation and it is nothing against this particular applicant, but he would like the times changed for all beach businesses. Ms. Kay feels that this is expansion of alcohol into the EC zone and does not support this.

Hearing closed.

B. Ordinance 10-xx Amending LDC Chapter 34, Article IV, Div. 26 (Parking)

Dr. Shockley referred to the packets given to members which included the draft resolution for recommending the ordinance to Town Council, and an ordinance that references Exhibit A, which is code language that would be adopted. He gave a brief overview of places in the Exhibit A where there are the options regarding different

language for specific sections of the code.

Mr. Ryffel opened the hearing and asked Dr. Shockey to begin with the first recommendation and go through them, with discussion about each. Dr. Shockey began with pg. 2, Parking Plan, and listed the options: “*A parking plan is required for...*” Option #1-“*all uses,*” or Option #2-“*all uses except single family and 2 family dwelling units.*” There was a consensus for Option #2.

Pg. 3, Sec. 34-201-5, Sub.7, Pedestrian System: Option #1: “*Walkways must be provided which accommodate safe and convenient pedestrian movement...*” or Option #2: “*Walkways must be provided which accommodate safe and convenient pedestrian movement from vehicles to building entrances and other walking destinations...*” There was discussion about the differences. There was a consensus for Option #1.

Pg. 4, Sec. 34-201-6, Sub. 4, Delineation of Spaces-sub. 3: “*Parking spaces for the disabled must be...*” Option #1: “*permanently outlined in blue with the outline replenished when necessary...*” or Option #2 contains the same language as Option #1 except that “*permanently outlined in blue with the outline replenished when necessary...*” is removed. There was a consensus for Option #2.

Pg. 10, Requirements for a Seasonal Parking lot that operates for multiple years: “*a total of (insert number of years) consecutive or non-consecutive seasonal parking permits may issued for a parcel without requiring compliance with the requirements below.*” “*The subsequent consecutive permit for the parcel, the permit application must comply with the following...*” The suggested options are 3 years or 5 years, but upon discussion the LPA could recommend some other period. After discussion, there was a consensus for 3 years.

Mr. Ryffel opened the meeting for public comment. Dr. Jean Matthew asked what “Option 3” is and asked if the members could state what Option #3 is in the Disabled Parking section when making the motion to accept the resolution. Ms. Dalton suggested that Dr. Matthew receive a copy of the draft language and the motion maker call out the option being chosen.

Motion: Ms. Kay moved that Resolution 2010-04 be adopted as stated in the “Proposed findings, facts and conclusions of law”:

the proposed amendment is in the best interest of the health, safety and welfare of the citizens...of Ft. Myers Beach; therefore, be it resolved that the LPA does recommend that Town Council approve and adopt the proposed Town Ordinance to amend the regulation of parking within municipal limits as set forth in Div. 26, Article 4 of Chapter 34 of the Town LDC and recommends the following findings of fact: Section 34-2014, Option #2--“all uses except single family and 2 family dwelling units.”

Section 34-2015, Sub.7, Pedestrian System- Option #1: “Walkways must be provided which accommodate safe and convenient passing and movement...”

Section 34-2016, Sub. 4, Delineation of Space-sub. –Option 2- “clearly distinguishable as parking space designated for persons of disabilities and must be

posted with a permanent above grade sign bearing international symbol of accessibility and the caption 'parking by disabled permit only'; signs erected after Oct. 1, 1996 must indicate the penalty for illegal use of these spaces..."
Section 34-2022, Sub. c.- "a total of 3 consecutive or non-consecutive seasonal parking permits may be issued for a parcel without requiring compliance with the requirements below." "The subsequent consecutive permit for the parcel, the permit application must comply with the following requirements..."

Seconded by Mr. Kosinski.

Vote: Motion passed unanimously, with the absence of Mr. Van Duzer and Ms. Shamp.

Hearing closed.

V. ADMINISTRATIVE AGENDA

A. Update on sign regulations development from June 7 Council Meeting (verbal)

Dr. Shockey gave a brief overview of the results from this meeting and said there was an agreement to schedule time at the next meeting on June 21 for further discussion. He said that he had hoped there would be a public joint workshop so that the LPA and Council could all hear the public comments at the same time. Dr. Shockey gave the Council a few suggestions for moving ahead including a workshop for themselves, a joint workshop or sending it to LPA without holding a workshop, but at the June 7 meeting Council chose the first option, in a way, by deciding to discuss the matter again on June 21.

Motion: Mr. Ryffel moved to adjourn as the LPA and reconvene as the HPB.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0.

VI. ADJOURN AS LPA-RECONVENE AS THE HPB

Ms. Kay called the meeting to order at 10:20 AM. She referred to information in the packets regarding the vista signs. She said there was a meeting with the HAC and they discussed the funding for this, as well as discussion about the historic recognition plaques. Dr. Shockey said he spoke to the town manager about the LPA budget for the coming year and he agreed to include the \$2000.00 in a line item for these activities. Dr. Shockey agreed that there should be some work done on developing a concept of where these vistas should be located and what they should be like. He suggested that Theresa Schober be heavily involved since she has a grasp of what would work best as well as a good working relationship with some of the business community.

Motion: Ms. Kay moved that the HPB present their idea to Council to move the project forward.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0, with 2 members absent.

Mr. Kakatsch suggested trying to use concrete benches, like the ones located at bus stops, etc., to advertise the historic sites and projects in town. This will be discussed again at a later date.

Motion: Mr. Ryffel moved to adjourn as the HPB and reconvene as the LPA.

Seconded by Mr. Kosinski;

Vote: Motion passed 5-0, with 2 members absent.

VII. ADJOURN AS HPB AND RECONVENE AS LPA

Reconvene at 10:30 AM with all above members still present.

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch presented a few items of concern that he said he just wanted to bring up for discussion. His first concern is the municipal building and he thinks that this is the time to buy property. He asked if the beach has an “action” plan for the oil spill. Another concern is the Seafarer property at the beach and the tax loss involved if the County buys it. He also wonders about the progress on the north end of Estero Blvd. and beach renourishment. Mr. Ryffel advised that beach renourishment was discussed yesterday at the Council meeting and it is slowly moving forward but will not likely progress until after hurricane season. He said that these items are valid concerns but thought they would be better answered by the Council or the Town Manager. Some discussion ensued regarding the Seafarer property and Ms. Dalton updated the group with information she got during a recent meeting with County and other officials. The town was also asked to suggest uses they would be interested in for that property and she sees these items probably coming up for future discussions by the town. Dr. Shockey also advised that Keith Laakkonen is heavily involved in the town’s participation in the planning for the oil spill response and further detail from the countywide and regional plans would come from him. Lastly, Dr. Shockey said that the Estero Blvd. project is still ongoing but this is a slow process. Ms. Dalton stated that the council just approved night construction to move it along and referred to a “comprehensive” information packet online regarding this. It was suggested that a newsletter of sorts should be published to keep people advised. Ms. Kay reminded the group that there had been a weekly item in the newspaper by the Town Manager and asked if that was still a possibility. Ms. Dalton said it was last year but the current manager hasn’t adopted this practice. The LPA would like to see something like this again and/or ask the town manager to attend the LPA meetings, at least occasionally.

Mr. Ryffel advised that this is Attorney Anne Dalton’s last meeting. Ms. Dalton said that the town will now contract the firm of Fowler White, with attorney Jim Humphrey as the principal, to perform town and LPA services, with Ms. Dalton assisting as Special Counsel to the town to finish some specific projects. Mr. Ryffel read Resolution 2010-05, recognizing Ms. Dalton’s superior service:

“Whereas Anne Dalton has served as served the LPA as LPA Attorney since April 4, 2005, and whereas Anne Dalton has served as served as Attorney to the Historic Preservation Board since April 4, 2005, and whereas during her tenure as LPA and HPB attorney, Anne Dalton has provided exemplary service to the Town of Fort Myers Beach, it is hereby resolved by the LPA of the Town of Fort Myers Beach, FL as follows: Anne Dalton is recognized for her outstanding work, outstanding guidance and dedicated

service to the Town of Fort Myers Beach. She created a positive and highly professional environment for the LPA and HPB while maintaining an attitude towards colleagues, citizens and staff during all discussions and deliberations. She discharged her duties with grace and highest ethical standards while respecting all laws, rules and regulations of the Town and the LPA. Her contribution to the progress, function and efficiency of the LPA has positively impacted the welfare of the Town of Fort Myers Beach and its citizens.”

Mr. Ryffel said that it is well stated, yet understated. Ms. Dalton thanked the members and commended them on their dedication and service to the community.

Motion: Ms. Kay moved to adopt Resolution 2010-05.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0, with 2 members absent.

IX. LPA ATTORNEY ITEMS

Ms. Dalton reported that the new town attorney, Mr. Humphrey may be assisted by Marilyn Miller.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Nothing to report.

XI. LPA ACTION LIST REVIEW

- Shipwreck-Oct. 12, 2010
- ROW-Residential Connection-TBD; Dr. Shockey
- LDC 613-14 10-25 Storm Water; TBD
- HPB Budget request for Town Council-Ms. Kay
- Resolution of HPB budget request-Ms. Dalton
- Post-disaster reconstruction/recovery-Ms. Dalton said she has provided the most recent draft of the ordinance to Council and will meet with the new attorney to make the change over and she will be sure he realizes that this is an urgent issue. She and Mr. Ryffel agree that this is of the utmost importance.

XII. PUBLIC COMMENT

No comment.

XIII. ADJOURNMENT

Motion: Ms. Kay moved to adjourn.

Seconded by Mr. Kosinski;

Vote: Motion passes 5-0.

Meeting adjourned at 11:17 AM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____

- End of document