

**MINUTES**  
**FORT MYERS BEACH**  
**Local Planning Agency**

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

**Tuesday, February 8, 2011**

**I. CALL TO ORDER**

Meeting was called to order at 9:03 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer  
Joe Kosinski  
John Kakatsch  
Hank Zuba  
Rochelle Kay  
Carleton Ryffel-excused

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator, Leslee Chapman, Zoning Coordinator

**II. PLEDGE OF ALLEGIANCE and INVOCATION**

Ms. Kay

**III. MINUTES**

A. Minutes of January 11, 2011

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

**Seconded by Mr. Kakatsch;**

**A few name spelling corrections were noted and corrected.**

**Vote: Motion passed 6-0.**

**IV. ADMINISTRATIVE AGENDA**

A. Rezoning 216 Connecticut St.-DCI2011-0001

Staff confirmed the Affidavit of Advertising publication and Ms. Shamp polled members for ex-parte communications, adding that she had a site visit only. There were no other declarations.

Applicant testimony:

Ms. Ekblad represented the Town for this rezoning for parking at the Mound House.

She testified that this was approved by Council at the December work session and she gave a brief history of the property, including current zoning and future land uses. Ms. Ekblad said the request is to rezone .42 acres from residential conservation to commercial planned development to allow a 27 space parking lot with an information kiosk and storage, which the current zoning does not allow for. Parking lots can only be permitted by special exception or planned development rezoning. Ms. Ekblad referred to a document showing the proposed rezoning area and said that staff has added a condition to limit the sizes and location of the storage areas. Staff is recommending the rezoning with the following condition: a gate is to be included to secure the property at the front entrance.

Ms. Kay asked how they will keep beach goers from parking there and Ekblad said that staff has suggested that the lot be monitored by staff whenever possible.

Mr. Kakatsch suggested there be a charge for parking along with some type of validation program so that beach goers may not use the lot for free beach parking. Mr. Fluegel suggested that Ms. Schober answer any operational questions and issues since she knows those procedures the best. Ms. Shamp asked Ms. Miller for authorization to change the hearing procedures slightly to allow Ms. Schober to give her presentation at this time and then return to the discussion.

Mr. Zuba asked for clarification from Mr. Fluegel regarding the waiving of the traffic impact study. Mr. Fluegel said he waived this one because all of the parking generation for this lot is generated by the Mound House and controlled by the Mound House CPD. He said that these are 2 separate CPDs and wants to keep it clear that the Mound House is the trip generator and they are not contemplating any principal uses on this property. He said the uses are all ancillary and relate back to the Mound House, and staff will control that and not allow any other principal use. Mr. Zuba said that the parking is directly related to the host business and he wanted to know how much parking is currently available under the Mound House CPD, how is it used and what will this add. He said the proposed 27 spaces do not currently exist. Mr. Fluegel said that the entire reason for the parking lot is due to the added underground exhibit and existing displays inside the house.

Ms. Shamp reminded that the LPA is mandated to monitor sufficient safeguards to public interest and she is concerned that they remain aware of their responsibility to the neighborhood and what the traffic and parking may do to the community. She said that the location of the lot creates an impact of its own in that it is beside the Mound House and this puts any pedestrians walking from the lot to the house in possible jeopardy. She asked how they intend to address this safety issue. Mr. Fluegel said that one of the reasons for the kiosk is to have a kind of gathering station where visitors can wait for staff to assist them, perhaps with a golf cart. Ms. Schober added that this is one of the uses intended for having a kiosk and staff will be able to guide patrons to the attractions safely. In addition, she explained that they intentionally placed the lot at the existing 3-way stop to make it less of a hazard. She said that from the public input sessions during the plan development, there was resistance to a

sidewalk being installed so they needed an alternative. Ms. Shamp said that she is also concerned about the need for extra signage for parking in the area and Ms. Schober agreed that this has been a problem since they acquired the property, but there remains a need for some signs. Existing signs in the area are not all from or for the Mound House and some are outside the gates. Ms. Schober said that the property is posted to be open from sunrise to sunset, as a park, and therefore some parking is still open to the public. Ms. Shamp asked Ms. Schober to discuss the storage shed and give details about why it is located in this area, what it will be used for, etc. Schober said it's a small (75 sf) shed and will hold lawn maintenance equipment for the property.

Mr. Kakatsch asked for the proposed hours and Ms. Schober said there aren't specific ones set yet but they are now open from 8:30 AM-4:30 PM M-Sat. and there is limited evening programming anticipated. She said that night lighting is required by code and will be done by special permit for those events, being sure that they follow restrictions like sea turtle season.

Mr. Zuba asked about "Note 3" in the Master Concept Plan which states that "detailed alternative landscape plan will be submitted at the time of the development order." He said that this has happened in the past and not been acceptable so he would like to see what is being proposed as well as the Mound House proposed budget. Mr. Fluegel replied and referred to the statement of "alternative betterment plan" which means the requirement for what will go in there is greater than a normal buffer. Ms. Ekblad expanded that the design of the lot was chosen through the public process and it doesn't technically meet the guidelines of a traditional buffer, so they tried to incorporate any area not being used otherwise, into the buffer. The plan exceeds normal requirements in order to accommodate the interested public and comply with resident's concerns. Ms. Schober said that the landscape architect's preferred plan was estimated at \$188,649.00-\$211,000.00 and about 36,000.00 is for plantings alone. There was more discussion about the proposed plan and what will be installed.

Mr. Kosinski disclosed that he had no involvement in the lot but he is directly involved in the restoration of the Mound House and feels he can be objective on this issue. He said that their function is to recommend approval of the entire plan to Council but he feels they cannot do that without all of the information before them; he opined that this should come back before them at a time when the whole package is available. However, Mr. Fluegel reminded that the "missing parts," the landscape and lighting plan are not required as part of the CPD process. Mr. Kosinski stated that he is aware that these aren't required but insists that they should be part of the proposal so that they know the totality of what they have passed along for approval. Mr. Fluegel said that it is not part of the package at this point and would hold up the entire project to wait for that. As an alternative, he offered the possibility of other restrictions to be put in place by the board, referring to the back of the report where there is a cost estimate. Mr. Kosinski asked about consideration of area home values being impacted and Mr. Fluegel again repeated that these things are not within the scope of what staff can consider and it is not part of the criteria. There was brief

discussion about the bus parking and handicapped parking spaces and Ms. Schober gave a history of the development of parking areas at the property.

Ms. Shamp asked what material the lot would be constructed with and Ms. Ekblad replied that they need to comply with the code, which may include “stabilized surfaces of grass or clean-washed angular gravel or other similar porous materials.” Ekblad went on to cite the code and said that the lot would need to be impervious, by code standards.

Ms. Kay pointed out that there are 2 letters in their packets from neighbors who oppose the lot and asked if there were any comments supporting the lot. Ms. Schober said that there were 3 meetings held by CELCAB which brought much support for the project from some residents. Mr. Fluegel also referred to the comments from some residents in the report.

Public comment:

Ms. Shamp asked for public comment and noted that they received some letters from the public, which she opined should be partially read into the record. Ms. Ekblad read from the first letter, signed by James and Nancy HARNER, on behalf of the Horner family trust whose property at 119 Andre Mar Drive is adjacent to the Mound House property and it is opposed to the rezoning and use of the lot for parking vehicles.

The next letter is from Robin Driskill at 365 Connecticut St. who could not attend but wanted to express that “a zoning change in the middle of a residential neighborhood is not appropriate.” She feels that this poses a danger to residents and does not understand the need for an educational kiosk within feet of the historical Mound House and feels that there are other options for parking. In addition, this letter includes a portion the writer said was taken from the FMB LDC online she feels says it all: *“Maintaining and improving the quality of life on FMB by restricting commercial activities from intruding into residential neighborhoods are public efforts. The success of these efforts will be proportionate to the degree of participation of the residents, property owners and the professionals who assist them.”* The writer continued on to say “your continued cooperation is appreciated by your neighbors and encourages a pleasant residential environment where permanent and seasonal visitors can enjoy life together on Estero Island...”

The third letter is from Jim and Barbara Higgins at 121 Andre Mar and it simply states their objection to the rezoning and they fear the change will lead to negative impact to their property.

At this point Ms. Shamp realized her neglect to swear any previous witnesses and the attorney did so here.

Nancy Harner spoke on behalf of their trust and said they live in a stilt house at the rear of the property, which they purchased many years ago. She again pointed out that

the LPA's job is to protect their residents and they do not want this lot in their neighborhood. She pleaded that the LPA not approve this project.

Mr. ??? of 364 Connecticut St. addressed the meeting and said he's lived there for 25 years. He said that this is the first time he has been aware of any public meetings regarding this lot and he and several neighbors came to voice their objections. He said the street is already a very busy one and signs don't help to keep extra traffic out. He objects to the lot and said that there is already a "commercial" building in this area (church) and the Mound House adds a second commercial property here even without the lot. He is also disturbed by the lack of a bicycle park on Estero "but we are willing to spend half a million dollars on (a) parking lot for 20 cars!" He added that "we already spend \$250,000.00 to purchase the property and now we have to spend \$300,000.00 to improve the property and we have to maintain that property with our taxpayer's money." He cannot agree with the cost or the project itself.

Ms. Barbara Hill said she lives in Shell Mound park, a permanent resident, and is a board member of CELCAB and a member of the Friend's of the Mound House. She voiced her support for the project and said that there were a few public meetings held for the project and residents came out in support of the plan. Ms. Hill said that the Mound House project as a whole is an exciting addition to the beach and the parking area is critical to its success.

Mr. Mike ??? of 159 Connecticut St. addressed the meeting and said he has been here for 21 years. He said it is a residential neighborhood and the church only has a full lot 1 day a week. He said through the years, there have been expansions and improvements as the Town grew and they were in favor of most of these projects, even the Mound House. Now, the church has opened a "day care" which he feels has turned into a playground and he doesn't want to live next to a playground, saying the kids are "screaming and yelling" everyday and they cannot do anything about it. He said that he was never notified about any meetings wherein he could voice opinions about these projects or he would have done so even with the church daycare. He heard about this meeting from his neighbor and said that he is very opposed to this project and doesn't want it. He said that the Town put in speed bumps on his street and now he hears the constant "boom boom" of cars driving over them. He also complained about the Town allowing the church to add a building to their property and now there are "2 houses over there and they put their garbage dumpster as close as possible" to his property. Now, he said, there is more noise at 5:00 AM when they pick up the trash and he doesn't "want anymore aggravation!" He feels his property value is going down more every day with all of these projects. He objected to terms in development plans like "it could...it would...it's contemplated..." and said that there needs to be concrete facts no matter how much time someone had to get the plans done.

Steve Stanley of 250 Connecticut St. spoke next and said he did attend the prior public meetings and was initially "for it but now I'm (he's) against it." He said that some people have been parking there "for quite some time" and people are walking

back and forth, putting people in harm's way. He said that Ms. Schober has reported that about 50,000 people have visited the Mound House and said most of those people are going to walk to and from the lot, not be escorted or driven. He said that when the traffic backs up on Estero Blvd. people already cut around to the Red Coconut to beat traffic and this will make that much worse. He also objected to extra lighting at night shining into his property and the added noise and activity making this area a serious problem. Mr. Stanley said that once this "goes commercial" there are no limits to what the residents will have to face. He feels that there needs to be a study to determine the effect of this on property values, adding that he bought his property based on the area, quiet neighborhood, etc. He added for the record, that even though he is within 50 ft. of the property, he received no notice of this hearing and he recommends that the LPA reject this proposal.

Shirley ???, 131 Connecticut St. spoke and said that she bought her property 19 years ago and feels that the Town should open the Mound House and see what happens first with the spaces they already have and decide later whether they need the additional parking or if some other option can be developed.

Ms. Ceil Spuhler addressed the board and said she is a member of the Friend's of the Mound House and CELCAB. She said knowing what she does through being part of process, she can understand what the neighbors are feeling. She gave a short history about how this was developed and said asked that the public imagine how the parking situation will take shape if this plan is not put into place. She talked about nights in the past when there were holiday events, etc. taking place there and said that this will continue but by parking the cars in a lot, there will be less chaos and less danger. She said 2 things to weigh here are is the parking around the Mound House going to be less of an impact than the parking lot because people are going to visit the property no matter...it is a museum.

Carol Geison, 421 Connecticut St. said that people do not obey and they ignore the signs that tell them where to park. She agrees with her neighbors who oppose the lot.

Mr. Norbert Demars, 125 Connecticut St. repeated again what others have referred to in the LDC that the LPA is to protect the residents and he feels that the Mound House was a "mistake 10-11 years ago." He said that Council has had many opportunities to correct this mistake but they continue to support this property. He said that it was commercial intrusion into residential neighborhoods that formed the basis for incorporation several years ago and now "the people that we authorized to represent us want to ruin our neighborhood." Mr. Demars also wondered if the LPA has asked the developers "what would happen if we don't approve this?"

Mr. Lee Melsick addressed the meeting and said that he thinks that more important than the LPA dealing with 27 parking spaces is the subject of single-family neighborhoods on the island. He said that there is more and more intrusion into those residential areas and it needs to be controlled. He agreed that the purchase of the Mound House property was a mistake years ago and said that the LPA can change this

pattern starting with opposing this parking lot in the middle of a residential neighborhood.

LPA testimony and questions for staff:

Town attorney asked staff for acknowledgement as to affirmation of truth in testimony; all staff acknowledged same.

Ms. Shamp asked if letters were mailed out in notice of this meeting and whether they are required by the LDC. Mr. Fluegel said that letters were mailed and provided copies of the labels, although some may have been sent to wrong addresses. The code does not require that. Shamp also asked if the church lot has lighting but no one knows for sure. She also asked if there is room for additional parking on the Mound House property. Ms. Schober said there are 2 areas that are not archeologically or historically sensitive where parking could be installed but she doesn't know how many spaces it could provide until an engineering report is done. She added that the original plan, with parking in the right-of-way, went to Council a few years ago but the Council removed those spaces. And Ms. Shamp asked the suggested question "what will happen if the LPA does not approve this parking lot?" Mr. Fluegel said their recommendation would go to Council who has the final say, but with the LPA's opinion.

Mr. Kakatsch asked if there is a possibility of widening Connecticut St. and Ms. Schober said the documents regarding this are in their packets. He asked if there will be a walkway added and, since Ms. Ekblad said the residents didn't want one, he assumed that means people will walk in the street, which he pointed out is narrow in that area and dangerous. He recommended that all of the members, and staff present, actually go to the property and walk in this area to experience the danger.

Mr. Fluegel clarified for the record that this is not a commercial rezoning and added some comments for further explanation. He said that the CPD process allows for the LPA to look at this property and add restrictions to the proposal which would provide a more controllable rezoning or special exception of the property.

Testimony portion closed; LPA discussion opened:

Mr. Kosinski said he is in full support of the Mound House, in general but feels they should proceed cautiously before changing this neighborhood. He added that they should have the property opened for a time first to see how it operates and then revisit this issue at a later time.

Mr. Zuba agreed and wants a more complete picture of the finished package from the developer, as well as a more precise look at the budgetary concerns to be sure there is funding to complete the project rather than starting it only to run out of money before completion.

Ms. Kay also agreed and said that the Town incorporated basically to protect the residents and she also feels that the whole project should be completed before they

consider the parking lot area.

Mr. Kakatsch also agrees and said that there should be an inquiry to the church to see if it is possible for the Town to rent some of their lot space. He also agrees that the walkway issue is extremely dangerous.

Mr. Van Duzer agreed with comments by one of the earlier speakers in the audience and said that this agency cannot evade the Comp Plan to approve this. He said there are other options, including the right of way on Connecticut St. which he feels can be used to sidewalks. He admired what CELCAB has done with the project but he cannot recommend approval of the plan as it stands now.

Ms. Shamp reminded that the task before them is not how they personally feel about the Mound House, but it is about the rezoning plan for the parking lot. She said that there is difficulty in just defining what type of rezoning this is because it is tourism, which is a commercial interest, and this is trying to put that commercial interest into a residential neighborhood. She also agreed with the other members in that this is a conflict with the rezoning, and referred to the report itself, wherein the conclusion states *“if the request is in conflict with the criteria in LDC Sec. 34-8 regarding zoning exception,”* and asks if there are conflicts. She feels that there are conflicts, such as with policy 4c3-#6, which points out in the ending quote *“commercial activities that will intrude into residential communities because of their type, scale or orientation, shall not be approved.”* Additionally, Sec 34-85, which staff has used as basis, she refers to “K” which directs considering *“whether the request is compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or properties.”* Ms. Shamp feels that this proposal poses many risks and used another example, referring to “L” which covers considering if the location will pose an undue burden on existing transportation or services and there is discussion of a trolley of some type. Ms Shamp went on to read the other sections to be considered and feels that each creates a conflict; thus, she cannot support this proposal.

**Motion: Mr. Zuba moved the LPA deny the request for rezoning due to the inconsistency of rezoning a residential area to commercial, the incompleteness of the plan and the lack of connection between the pedestrian walkway and addressing the potential population usage of the Mound House by occupants of the parking lot. Ms. Shamp added references to 4c3 and Sec. 34-85 that the request is in conflict with LDC 34-85 regarding zoning.**

**Seconded by Mr. Kakatsch;**

**Vote: Motion passed 6-0.**

Hearing closed at 11:16 AM.

Short recess.

Meeting resumed at 11:27 AM, without Mr. Kosinski who was excused due to illness.

B. LPA Membership Requirements Workshop

Mr. Fluegel said that Council directed staff to address a code amendment regarding LPA members serving on other committees and is asking for the board's thoughts and recommendations for this. He gave recommendations as to possible criteria for future members.

Mr. Zuba feels that membership in too many committees takes away from other people serving and puts too much weight on the member in terms of commitment. He feels also that residency is important.

Ms. Kay agrees with Mr. Zuba's opinions.

Mr. Kakatsch said that he applied to serve on the MRTF and doesn't see a problem with serving on that and the LPA. In addition, he owns "quite a bit of property on this island" and even though he lives in Ft. Myers, he feels he is a resident. Mr. Kakatsch feels that this workshop is directed at him because he chose to homestead his Ft. Myers residence and he was upset that he is being made an example of. Debate took place between Mr. Fluegel and Mr. Kakatsch about the residency issue.

Mr. Van Duzer opined that anyone who owns property on the island should be allowed to serve.

Ms. Shamp read the residential requirement, Sec. 34-13, as it is currently written "all members must be residents, or owners of real property located within the territorial limits of the Town of FMB at the time of membership on the LPA and during the period of service on the LPA. She asked for a show of hands for those interested in changing that. Mr. Zuba interrupted and referred to Ord. 08-11, passed on Sept. 15, 2008, which amended FMB LDC Ch. 34 regarding the conditions for membership on the LPA. He said it reads "*if otherwise qualified, a member may be repeatedly appointed to an additional term by Town Council and may serve on other committees.*" He pointed out that the word "resident" is not defined specifically and he feels this could include renters. There was a consensus of the 5 members that this should remain the same.

No members were interested in the makeup of the board. The last point of discussion was the topic of membership on other committees. Ms. Shamp said she does not agree that LPA members may not serve on other boards but does believe that LPA membership is much more demanding. Discussion ensued.

Ms. Kay supports members not being allowed to serve on other committees. Of the members present 4 feel members should not be allowed to serve on other committees.

C. EAR Process Review

This is the Evaluation and Appraisal Report which is a 5 year assessment of the Comp Plan, mandated by the state. This is due in April 2012 so there will likely be a more in depth presentation next month, according to Mr. Fluegel and he said it is a very

important tool for them. He would provide a copy of the Comp Plan to each member during the lunch break.

**V. ADJOURN AS LPA AND RECONVENE AS THE HPB**

**Motion: Mr. Van Duzer moved to adjourn as LPA and Reconvene as HPB.**

**Seconded by Ms. Kay;**

**Vote: Motion passed 5-0.**

Meeting commenced at 12:10 PM. Ms. Kay stated that the HAC did not meet this month but will meet later this month. Mr. Fluegal said that he met with Russ Carter to discuss the presentation ceremony, suggesting scheduling something at the end of the month or early March at his home so attendees can tour the house. He again reminded the members to email Ms. Ekblad with their suggestions for invitees.

Ms. Shamp asked about the status of the sign ordinance and Ms. Kay reported that the first hearing was yesterday when Council decided to take over the issue. They suggested that the LPA would look over the criteria and decide whether a sign should be historically designated and then send it to Council who will do the same thing. Ms. Kay feels this is redundant and was not happy with the suggested process but it will come up again at their next meeting.

**Motion: Mr. Van Duzer moved to adjourn as HPB and reconvene as the LPA.**

**Seconded by Mr. Kakatsch;**

**Vote: Motion passed 5-0.**

**VI. ADJOURN AS HPB AND RECONVENE AS THE LPA**

Meeting was reconvened at 12:15 PM, with the same members still present.

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

Mr. Zuba asked Mr. Fluegel for a status report on the Seafarer's project and said he asked this earlier in the week in an email as well. In addition, he would like to have the environmental officer give some analysis of the Nature Conservancy report on water quality in Estero Bay. Mr. Fluegel said that there is "a dialogue that is ongoing" on the Seafarer's property but there is no decision as of yet but the property across the street, beachfront, is moving forward through the permitting process. Ms. Shamp asked what kind of permits are being issued since this is a CPD. Mr. Fluegel said this is just going to be a "beach park at this point" including some landscaping and some handicapped parking, etc. More discussion took place about the planning and the problems that may come up.

Ms. Kay commented about the Seafarer's property and said it's going on too long. Mr. Kakatsch agreed and said this is a "disgrace" property for the beach the way it stands. He also asked for a status for the port-a-potties for the beach and Mr. Fluegel gave a few of the locations he thought were being picked for these, but he wasn't sure. He was frustrated that the LPA was not involved in the placing of these units and wants to ask the Council to allow them to give some input into placing these.

Ms. Shamp discussed her concern with the section in the LDC regarding public hearings, 34-216b1 "after the LPA's hearing, an application for a planned development together with all information and staff reports, LPA's minutes and resolution of recommendation..." and said that the LPA is still not having resolutions. She said they should have had a resolution, to which Mr. Fluegel commented "it's in your back-up on this..." and pointed it out to Ms. Shamp asked where it is. Mr. Fluegel said the one in the packet will need to be modified based upon their vote; it is Resolution #11-003.

Mr. Kakatsch also commented about the Farmer's Market location and feels there is a liability issue with holes in the ground, etc. He recommended a "general spruce-up" on the property and "regular maintenance." Mr. Fluegel said he would pass those comments along.

## **VIII. LPA ATTORNEY ITEMS**

Ms. Miller had nothing to report.

## **IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Mr. Fluegel gave his comments regarding the following segment, adding that the Surf Club and Mermaid topics will be coming back with modified applications for the COP to cover their entire properties. These applicants said they did not intend to limit consumption to their deck. Ms. Shamp asked for a description of "their entire property," for the Mermaid Club. Mr. Fluegel said this is an interesting point because he is not sure what that includes. Ms. Chapman opined that their strap number does not go all the way to the beach and Ms. Shamp said she feels that if one of these comes before them and it

does go to the beach, the LPA will need a very lengthy report to properly consider it.

**X. LPA ACTION LIST REVIEW**

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Shipwreck-Continued at LPA request-May 10, 2011

**Future Work Activities**

- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-25 Storm Water-TBD
- Parasail, jet ski ordinances-TBD; Fluegal
- IPMC (code enforcement clean-up)
- Post-disaster reconstruction/recovery-TBD; Ms. Miller
- ISO (relates to FEMA)
- Connecticut St. resolution-March meeting; Mr. Zuba

**XI. PUBLIC COMMENT**

No comment.

**XII. ADJOURNMENT**

**Motion: Mr. Kakatsch moved to adjourn.**

**Seconded by Ms. Kay;**

**Vote: Motion passes 5-0.**

Meeting adjourned at 12:42 PM.

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_  
(DATE)

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

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