

MINUTES
FORT MYERS BEACH
Local Planning Agency

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

Tuesday, April 12, 2011

I. CALL TO ORDER

Meeting was called to order at 9:02 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer
John Kakatsch
Hank Zuba
Rochelle Kay
Carleton Ryffel

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator; Keith Laakkonen, Environmental Coordinator

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. MINUTES

A. Minutes of March 8, 2011

Motion: Mr. Ryffel moved to accept the minutes, as corrected.

Seconded by Mr. Kakatsch;

Vote: Motion passed 6-0.

IV. ADMINISTRATIVE AGENDA

A. EAR Report

Ms. Ekblad referred to the information in the member packets and asked for member input as to the timeline and survey included, as well as their opinions regarding the major issues for the town in the Comp Plan. Mr. Fluegel added that they specifically seek the LPA opinions about the survey and how they feel it should be distributed to the community. He also again asked that they consider the need to do a series of public workshops and asked for their help in reaching many different stakeholders for their input.

Mr. Zuba suggested more clearly defining the purpose of the study and Mr. Fluegel said that this is a good idea. He also feels that the terms and verbiage be simplified a

bit for laymen and gave some examples.

Mr. Ryffel stated he would add a glossary to the report and suggested giving the survey to some staff members who are not involved in planning and having them try to fill it out. He agrees that there is too much unnecessary verbiage that may confuse residents. He also suggested that there be a SASE included with each survey to encourage return mail. He also feels that there should be a “cat walk” on the bridge.

Ms. Shamp agreed with the others and feels that mailing the surveys with the water bills, along with newspaper announcements, is a good idea. She wondered why there wasn't anything in the surveys about code enforcement and feels that topic should be included. She suggested some types of stakeholders to include like former LPA and council members, code enforcement people and bike groups. Ms. Shamp made many more suggestions in other areas, including futuristic planning for Bay Oaks and beach nourishment, and feels that those knowledgeable in these areas be surveyed. Overall, she said that that staff has done a good job on the report so far.

Ms. Shamp also suggested perhaps using a tram to transport visitors onto the island from a parking area off island.

Ms. Kay asked about a few points in the survey and commented that there is a great deal that is irrelevant, suggesting that it needs more work.

Mr. Kakatsch said he added some comments regarding code enforcement and likes all of the work that has been done in the north end, hoping that the work continues to the south end.

Mr. Van Duzer feels that the Comp Plan doesn't need to be rewritten only edited and updated. He feels that the most important thing is having code enforcement actually enforce the current rules, especially as regards to rentals, so that the resident's rights are protected and respected.

Mr. Fluegel referred to the topic of architectural theme and said that choosing the wording to be used was challenging but the idea was to ask first if there should be a standard theme, and second, if so, what should it be. He said that the point is to keep open all the possibilities in the respondent's mind and he asked for the LPA's input and suggestions for wording this in a way that would work. He discussed the topic of mixed use and Mr. Ryffel said that this is mute because the island is “built out” and there is no more room for development. He said that there needs to be a better definition of what they feel is to be mixed use. Discussion ensued about the regulations that will apply for expansion and development, including FEMA regulations.

Mr. Kakatsch pointed to the “off island” area of San Carlos Island and wondered if the survey included that. Mr. Fluegel said it does not.

Mr. Zuba suggested bridge tolls as a possibility to consider. Ms. Shamp added that adding another lane to get cars off the island would be helpful to address the growth issue. Mr. Fluegel asked the members if including a question about the impact of short term rentals would be a good addition for the survey; they agreed it is a good idea and discussion took place about the wording of the question.

Ms. Ekblad asked the LPA's opinion about the education or comprehension level of the typical islander in terms of their understanding of regulations for construction in the "V" zone in the event of a natural disaster requiring rebuilding of their homes. Ms. Shamp said that she herself was in this position when she bought her home and feels that there should be a required document or something to be given to anyone who purchases beach property in the "V" zone.

Mr. Kakatsch asked what the FEMA rule is for places that are "grandfathered" on the first floor is there is a flood, etc. He said if I pay for flood insurance, this should be covered. Ms. Ekblad said that there is a review of properties after a storm "and if the cost is over a certain amount, you cannot build back what you have today" referencing construction below base flood elevation.

Mr. Zuba said there are 2 issues: are the residents aware of the flood regulations affecting their homes and do the residents understand the "V" zone implications in the downtown area. He opined that the residents should at least have this information.

Ms. Miller commented about perhaps changing the wording in the architectural section to making it easier to understand.

Short recess (5 minutes).

B. COP Ordinance

Mr. Fluegel referred to the draft he passed out to the members and asked for their thoughts and comments. He said that staff crafted this with an "administrative approval" approach for existing places with COP who may want to expand that just a bit. The applicant would apply and there would be a host of conditions along with the "administrative approval." He said that the other component of this is recognizing future uses. His example is a new restaurant coming onto the beach with a request for COP; this would automatically require that to be a special exception, needing them to request the COP extension at that time, removing the possibility of them doing a future "administrative approval." Mr. Fluegel pointed out a few of the items in the draft and said that there is also the possibility of tables being put on the beach. He asked for LPA opinion of this intrusion as well.

Ms. Shamp reminded the members of their responsibilities according to the Comp Plan and said that they need much more information to review this and the draft is not enough. She said that they would like information on the decision that was made in 1999 regarding this. She also asked what the state regulations are and said that other local beaches don't seem to have alcohol being served there and she wonders if there

are state laws in play here.

Mr. Van Duzer said that he is “thoroughly opposed to further selling of alcoholic beverages on FMB” because it is a family island and he wants to keep it that way.

Mr. Kakatsch seconded that, adding that he feels just as strongly about this subject.

Ms. Kay said that having the option of an administrative approval for COP is an “end runner around the LPA” and she is surprised to see it.

Mr. Ryffel said that he does not like the idea and feels that there would need to be a Comp Plan amendment to what is envisioned for “recreation,” as this is a land use policy. He referred to Policy 4B8 “undevelopable portions of the beach” and said it doesn’t fit into the category. He said if this should go forward, it would need to have some type of geographic limit, basically Times Square, and he thinks it’s just a bad idea.

Mr. Zuba stated that this process is flawed pointing out that there is no section for fees, costs, etc. He also commented that he feels staff is being asked to move this along without taking it back to the LPA.

Ms. Shamp said that the LPA resolution 2009-24 was rejected and it was indicated that the LDC was the more appropriate spot to look for direction for this. Ms. Shamp then referred to Sec. 34-652 d, under districts, and said that in EC districts “no land or water use shall be permitted by right, except for those uses and developments permitted by the FMB Comp Plan in wetland beaches or critical wildlife.” She also pointed out 34-1574 b “except in instances of overriding public interest, new road, private land development or the expansion of existing facilities in wetlands or sandy beaches that are designated in the recreation category in the FMB Comp Plan shall be prohibited.” She pointed out many other sections that apply and are cause for concern, specifically the property rights issues it presents, and feels strongly that this is a huge community welfare item in need of very careful research. Ms. Shamp voiced her strong concern that there is not enough information to support this and she needs to be sure this does not go against the LDC.

Mr. Ryffel said that he would like to have a list of all of her concerns, specifically as they apply or not to the LDC and/or Comp Plan so that he can have the time to actually look into each of her points and make his own decision.

Ms. Kay whole-heartedly agreed and said this is “poor precedence” and not the way the town should be getting things done. Ms. Shamp restated her idea of what the LPA’s job is as far as reviewing these issues and making recommendations. She said they need an “objective evaluation” of the LDC if that is what this is to be based on. Again, she said the “first and foremost role of the LPA” is to make sure these proposals go along with the LDC and the Comp Plan and just to accept that the “Council wants to do it” does not satisfy their rule. She also asked for a written report from Environmental Services, Mr. Laakkonen, to report what the environmental issues associated with these changes would be.

Mr. Fluegel said that the issue of whether or not COP is a permitted use in the recreation future line category has been decided by Town Council and any reconsideration must be in the form of a Comp Plan amendment. Since Council overturned the LPA decision, Fluegel said there will be no analysis as the Comp Plan section is closed. Ms. Shamp said that what Council said was that it wasn't based in the Comp Plan but in the LDC and the LPA never saw that. Mr. Fluegel said that what they have before them is a draft amendment to the LDC to enable the decision that they have made. He said the LPA can comment on this or chose to recommend denial and have no voice going to Council in this ordinance. She asked if he means that the LPA has no right to request further information to see if there is basis in the LDC to support this when it was never asked of the LPA previously. Fluegel answered that "we're not going to reconsider the Comp Plan to the extent that you give us things from the LDC that need to be considered, we'll look at those and evaluate those." Ms. Shamp said that they understand that council rejected the LPA's evaluation based upon the Comp Plan and the request was to base it then on the LDC. She continued that the functions of the LPA include that they need to do this but they have not been the basis within the LDC to show them that it is appropriate. She stated that the LPA has not been afforded the opportunity to decide whether this is an ordinance to be brought forward in accordance with the LDC.

Mr. Fluegel reported that Town Council decided that the LDC was the more appropriate place to deal with this and their determination said it is a permitted use in the future land use code; thus what is before them is how this is dealt with in the LDC. He said it requires no further analysis as to whether it is permitted by the LDC; this has already been decided by council. Ms. Miller interjected that should there be "some current language in there that could be construed as not permitting it, they would want that amended." Fluegel continued that the LPA could give details as to what sections they feel are in conflict but if they are to "collectively recommend denial of this, then what is the purpose of doing the analysis?" Ms. Shamp cited a few of the sections, but Mr. Zuba interrupted to say these have already been outlined. He said that the questions the LPA has are "has Council given us an opinion on this in terms of its consistency with the questions the Chair has raised;" "is staff going to ignore what is being raised on the LDC issues or are you just going to proceed?" Mr. Fluegel said "we'll go back and look at them as to their relevance, but to expect us to come back with a bunch of work product, analysis and work studies...that's already been done in the Comp Plan interpretation and Council has rendered an opinion, I'm not going to tread across the boundaries of that opinion." More discussion took place as Mr. Fluegel gave the LPA their choices: to recommend denial or to recommend specific changes to the ordinance. Mr. Zuba repeated that they cannot make any kind of recommendation without sufficient information, saying that "you're asking us to approve or deny. We're begging for information so that we can make a rational decision and you're saying 'you guys can't have it because the Council's already decided.'" There was some argument as Mr. Zuba and Mr. Fluegel attempted to clarify their positions to each other and Ms. Shamp pointed out several areas where they will make decisions and the conflicts created in comparison to previous special

exceptions. Shamp continued to refer to the document and specific section that will be affected by decisions when Mr. Zuba interrupted with “you’ve reiterated those points very well but I think staff is saying those aren’t relevant.” He said he agrees with her points but feels “what’s being said is ‘you don’t matter.’” Ms. Shamp summarized with the fact that their feeling is the LPA cannot make any decisions without more information. She said the LPA’s concern is that they not go against the LDC so they need certain things to be able to proceed, and she added that their authority gives them the right to ask for these things.

Mr. Fluegel said he would like each member to provide staff with their specific commentary regarding the ordinance for the next meeting. He continued that the code analysis for a recommendation for denial is something he will “tread very carefully on” as it is the authority of the board to come up with that. Staff will look at what sections they are given and make a determination of what is needed to address those sections. He said that the LPA then gets to make their recommendation to Council and staff will remain neutral on that since their job is just to bring it to the board. He said he is looking for constructive input and he is hearing that they are just going to recommend denial. Ms. Shamp argued and said told Mr. Fluegel that “when you’re sitting in that chair at the LPA, you are providing the information that we ask for; when Ms. Miller sits in that chair, she is not the Town attorney, she is the LPA attorney,” and said that according to the LDC, the LPA has the right to ask both of them for the information they need to do their job. She added that for Mr. Fluegel to “say that you cannot provide the LPA the information to show us where it is against the LDC, to me is wrong.” Ms. Miller replied she mentioned this earlier, that if there are areas of concern they may need amendments, like the EC Zone. More discussion ensued about many of the areas in the LDC and how some sections are based on the Comp Plan, as well as proposed changes in uses.

Mr. Ryffel said he agrees with Ms. Shamp that they need certain information and should have, but he realizes that they “are not gonna get it” so he feels that they should all give written comments about the draft to staff and discuss it at the next meeting, in an attempt to work this out.

Mr. Kakatsch suggested that they reject this but would agree to list and present their concerns. Mr. Zuba interjected that they have all asked about and voiced their concerns about these changes and there has been no response. He feels that they are just not going to be heard by Council and “that’s just the way it’s gonna go.” He opined that they consider an ordinance to be brought to the Council that requires a super majority to overturn their opinion so it gets a bit more attention.

Mr. Van Duzer suggested making a recommendation to Council that this is not in the best interests of the citizens of FMB and therefore they cannot recommend approval. Ms. Miller pointed out that this isn’t at that stage yet, as it is only a “very rough draft.” More discussion ensued about making any recommendations or changes without much more information and some research on the part of the LPA.

Mr. Fluegel said that this ordinance will come with a staff report and reminded the members that “there is a boundary here” between the issues with the Comp Plan that have already been decided and the direction that staff has received from Council to “go do this.” He added that “tens of thousands of dollars were spent on a special study that was the basis of your determination that dealt with a lot of the issues that you brought up...to that extent, those are issues that are water under the bridge from our prospective.”

Mr. Ryffel said he intends to respond now whether or not the rest of the members do. He said this is upsetting to everyone and said one of his legal concerns is that most of the COPs were part of a special exception and some as part of a planned development. Mr. Ryffel wonders what the ramifications of expanding this after the fact will be. Mr. Fluegel replied that he has a valid point and staff knows they need to look further into this but he said that in each instance these are in a different district, it’s a continuation of the use across the zoning line. They continued to debate their opinions as more discussion ensued. Ms. Shamp added that she would also like to know the locations of these properties because it is difficult to understand the implications not knowing where they are.

Ms. Kay commented about the “tens-of-thousands of dollars” report that Mr. Fluegel brought up and said that it was not requested by the LPA and they didn’t want it. She said it was done by the former Town manager and she wants to record to be clear that they didn’t need this.

Mr. Fluegel said this will probably be best handled next in the form of a public hearing. Ms. Shamp reminded that they are not well prepared for a public hearing yet since they are not being given sufficient information to make an educated decision, and feels that this type of arguing would not be proper in the public hearing arena. She suggested a second meeting of the LPA to discuss this and then prepare a document to Council that goes forward in the public interest.

Motion: Mr. Kakatsch moved to oppose the amendment.

Ms. Shamp opined that this is not an appropriate motion at this time and asked for direction from the attorney, moving instead that there be another meeting before this moves forward. (More discussion supporting extra time to provide the LPA with information to prepare a well researched document).

Motion failed.

V. ADJOURN AS LPA AND RECONVENE AS THE HPB

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

Seconded by Mr. Zuba;

Vote: Motion passed 5-0 (Mr. Ryffel left).

Meeting commenced at 11:55 AM and Ms. Kay stated that the HAC met on March 22 and they discussed the presentation program. The next one will be the Smith Cottage,

probably in June. Mr. Zuba commented about the process for the historic recognition and has developed an outline for creating a local preservation award for landowners on the beach. He will circulate the document for the members to review at the next meeting.

**Motion: Mr. Kakatsch moved to adjourn as HPB and reconvene as the LPA.
Seconded by Ms. Shamp;
Vote: Motion passed 5-0.**

VI. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 12:00 AM, with the same members still present.

VII. LPA MEMBER ITEMS AND REPORTS

Ms. Shamp thanked everyone for condolences on the passing of her father. She also commended Keith Laakkonen for the recent article in the local newspaper.

Ms. Kay asked about the Connecticut Ave. parking lot item not being on the agenda. Mr. Fluegel said he will advise when it is to come up. She also asked about the Holiday Inn sign and why there is another law firm coming in for the library issue; Ms. Miller explained a possible conflict.

Mr. Zuba said that he drafted an opinion to some council members about taxing incrementing financing and feels this would be a good tool for Seafarer's property. He will send it to Mr. Fluegel for review.

VIII. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. Fluegel referred to Mr. Zuba's request about the Nature Conservancy report card and said it was included in their packets. Mr. Laakkonen addressed the LPA about the subject and talked about the document. Mr. Zuba asked how the town is doing progressively and Mr. Laakkonen said "we are doing worse" and explained why that might be. Mr. Zuba also asked about any other reports that have "red flagged" water quality in Estero Bay. Mr. Laakkonen gave details about that too adding that the Town is in "the same boat" as many other communities, but the releases from Lake Okeechobee make other areas much worse. More discussion ensued about fertilizer runoff and other water quality issues.

Mr. Shane Hidle, Code Enforcement, handed out copies of the International Property Manager's Code. Mr. Fluegel wants to adopt the whole code but realizes there may be some parts that would not apply well to FMB. He asked the members to review it and give their opinions so they may consider those for possible adoption as code. Ms. Miller cautioned that Chpt. 6, Art. 1 of the current LDC, "Maintenance Code" may have some

discrepancies to be considered.

X. LPA ACTION LIST REVIEW

Resolutions to Town Council

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Shipwreck-Continued at LPA request-May 10, 2011
- Sign ordinance-goes to Council on April 18; Van Duzer

Future Work Activities

- ROW Residential Connection; Van Duzer-TBD
- LDC 613-14 10-255 Storm Water-TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller
- IPMC (code enforcement clean-up) possibly April-all LPA
- COP ordinance

XI. ADJOURNMENT

Motion: Mr. Zuba moved to adjourn.

Seconded by Ms. Kay;

Vote: Motion passes 4-0 (Mr. Kakatsch left).

Meeting adjourned at 12:32 PM.

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

Vote: _____ Signature: _____

- End of document