

MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

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

Tuesday, June 23, 2009

I. CALL TO ORDER

Meeting was called to order at 10:30 AM by Chairperson Weimer. Six members present:

Dennis Weimer
Rochelle Kay
Bill Van Duzer
Joanne Shamp
Joe Yerkes
Carlton Ryffel – New member

Staff present: LPA Attorney Ann Dalton; Staff member Keith Laakonen; Members of the public and press were also present. Mr. Weimer introduced Mr. Carlton Ryffel as the newest member of the LPA and thanked him for joining the members in service to the people of the Town of Fort Myers Beach.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION - Mr. Dennis Weimer

IV. ADJOURN AS LPA/RECONVENE AS HPB

**Motion: Ms. Shamp moved to adjourn as the LPA and reconvene as HPB for hearing;
Seconded by Mr. Mandel;
Vote: Motion passed 6-0**

Ms. Shamp opened the meeting of the HPB at 10:34 AM, with all members present, and opened the hearing.

V. PUBLIC HEARING

A. COA2009-0001 “The Cottage” Special Certificate of Appropriateness (Con’t. at applicant’s request from April 14, 2009)

Ms. Shamp opened the hearing and polled members as to any ex-parte communications regarding this matter. Mr. Weimer stated that he had; no other

members had any communications. Ms. Dalton swore witnesses. Theresa Schober, applicant, addressed the HPB. She gave a summary of the events since the last hearing, including Council's instruction to issue an RFP for relocation of the building from the property. Deadline was June 1, 2009 and no proposals were received so the Council suggested that staff withdraw the application for COA to relocate the cottage.

Mr. Weimer asked if the HPB had actually denied the request for this. Ms. Dalton updated the LPA, referring to prior applications and paperwork included in the packets of information. Ms. Dalton added that the HPB has already denied the application for demolition so this hearing today is only regarding the application for relocation.

Open public comment.

No comments.

Closed public comment.

Mr. Mandel asked what happens next. Ms. Dalton referred to Dr. Shockey's memo from June 18, 2009, in which it is indicated that the applicant may come forward with another COA for an alternative.

Motion: Mr. Van Duzer moved to acknowledge the withdrawal of the application.

Seconded by Mr. Ryffel;

Vote: Motion passed 6-0

Ms. Shamp closed the hearing at 10:43 AM.

VI. ADMINISTRATIVE AGENDA

A. Report on Historic Vistas

Ms. Kay presented photographs from the historic information kiosks projects in Boulder CO for consideration by the HPB. She had talked about these at earlier meetings as being attractive possibilities for displaying information at the historic locations on the beach. Ms. Shamp referred to the HAC meeting and reported that the minutes from that meeting reflect that the Estero Island Historical Society is very concerned about the lack of progress in any historical preservation efforts on the island. They were also concerned that the plaque and brochure program has stopped at staff level and that nothing is being done. Due to that, these members do not want to continue attending HAC meetings until some progress can be made. Ms. Shamp agreed with that feeling and expressed her opinion that preservation efforts should be moving forward.

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

Seconded by Mr. Mandel.

Vote: Motion passed 6-0

VII. ADJOURN AS HPB; RECONVENED AS LPA

Mr. Weimer reconvened the LPA at 10:48 AM.

VIII. TOWN CAPITAL IMPROVEMENT ITEMS

Nothing to report.

IX. ADMINISTRATIVE AGENDA

A. Presentation regarding proposed LDC amendment to add Section 14-12 regarding beach furniture and equipment vendors (Keith Laakkonen, Environmental Science Coordinator and MRTF Staff liaison)

Keith Laakkonen addressed the LPA and presented a review about the issue and referred to the packet of information distributed. Ms. Dalton advised that if the Town moves forward with an agreement between the vendors and the Town, she suggested that the LDC sections be modified to incorporate all the requirements that would be set forth in the agreement, so that all regulatory references match.

Mr. Hester addressed the LPA on behalf of MRTF and referred to the hand-outs. He clarified dune lines on the beach for removing furniture during turtle season and possible vendor exceptions. Ms. Shamp asked about vendor requirements for insurance and asked for a copy of the agreement; Ms. Dalton made copies to distribute.

Ms. Kay asked what was referred to the LPA by Council and Mr. Laakkonen replied that it is actually Sec.14-12, beach furniture and equipment licenses and said that it solidifies certain things required of those holding licenses and limits the number of licenses to 14, requiring a Lee County Occupational License and liability insurance, naming the Town on the insurance as an additional insured. He said it further stipulates how far beach equipment should be from the beach, what should be done with trash receptacles, etc.

Mr. Mandel asked about fees. Mr. Ryffel asked where the number of 14 licenses came from and Mr. Hester responded with the numbers related to the existing vendors. Chris Weber, Mid Island Water Sports, addressed the LPA and said that there are eleven vendors on the island but twenty-five properties. He pointed out that this amendment would require each property to have its own license and that there are only two of them that just rent chairs at this time; others also rent personal watercraft or offer parasailing. Discussion ensued regarding the licenses and insurance, as well as the confusion with proposed Section 14-12 and the relationship between "agreements" and licenses

Mr. Weimer asked if the issue in Section 14-5 was people not having an acceptable place to move their furniture to, why create a licensing law instead of revising the Section 14-5 to make the requirement adjustable to address turtle season. Mr. Hester agreed that it might have been a better idea; however, after reviewing all of these issues, there were too many different circumstances to take into account. More discussion ensued.

Mr. Van Duzer pointed out a conflict in the section dealing with trash receptacles and

suggested this go back to Council and MRTF to clarify.

Open public comment.

Ms. Sharon Faircloth, Holiday Water Sports, addressed the LPA. She has a few locations on the beach which rent furniture, along with other concessions. She referred to Section 14-12 about licenses and expressed her displeasure in having to have another license. She also was not happy with the agreement and said it needs work, pointing out that there is already a stipulation in the ordinance which creates a way for a vendor to obtain an exception. Mr. Ryffel suggested that this be revisited when all documents are available to review.

Ms. Gabrielle Hickey, Gulf Coast Cabana, agreed with Ms. Faircloth that if the LPA is only looking at the proposed language for Section 14-12, they are in agreement. However, the additional documents attached are still troubling to the business owners and, she said, these are the reasons why it was not passed the last time. She agreed that the number 14 was arrived at because there were 14 original vendors at the meeting where the change was discussed; not any of the attached items were discussed at that meeting. Ms. Kay asked which specific parts of the agreement would be offensive to Gabrielle. She responded that she doesn't like the part that says it has to be looked at year to year and photos must be taken at specific sites, etc.

Chris Weber again addressed the LPA and said that he agrees with these other people in agreeing with the initial change but not the attached agreement. He specifically mentioned the trash cans and the setback limit, adding that most businesses comply and respect the restrictions now, especially regarding the sea turtles, but changing to the proposed amendments would add ridiculous restrictions to everyone. He suggested this go back to MRTF and schedule workshops to come up with amicable conditions and changes.

Ms. Shamp asked if putting a limit on licenses is legal. Ms. Dalton agreed that using some random number for limits on licensing is legally dangerous. Mr. Mandel asked if there was some attempt here to form a "line" on the beach during the day, one at night, a safe trash can area for sea turtle times and is the rationale for the license to make vendors have insurance. Mr. Hester agreed that the daytime and night lines are being asked for to make the same guidelines for everyone and protect the sea turtles. In addition, the trash cans are an obstacle for the turtles as well. More discussion ensued.

Mr. Ryffel agreed that limiting licenses to an arbitrary number is dangerous. Mr. Weimer suggested that 14-5 could be modified to satisfy this problem.

Closed public comment.

Motion: Mr. Weimer moved that this issue be placed on the agenda for the second meeting in July with direction to Town staff to include the following items in the LPA packets:

- Updated copy of the LDC Section 14-5
- Workshop notes from MRTF
- Minutes from Town Council meeting at which this was referred to LPA
- Outline of the issues staff feel need to be addressed in modifying 14-5 or 14-12

Seconded by Mr. Van Duzer.

Vote: Motion passed 6-0

B. Resolution 2009-11 LPA Appreciation of Evie Barnes

Motion: Mr. Van Duzer moved to adopt the Resolution.

Seconded by Mr. Mandel.

Vote: Motion passed 6-0 (Mr. Mandel will deliver)

C. Resolution 2009-12 LPA Appreciation of Joe Yerkes

Motion: Mr. Van Duzer moved to adopt the Resolution;

Seconded by Ms. Shamp.

Vote: Motion passed 6-0 (Ms. Kay will deliver)

D. LPA Policies and Procedures Manual Update Proposal

Mr. Weimer pointed out that the prior decision of the LPA to have members meet with staff on a monthly basis about developing items for the Capital Improvements Plan was reversed after the CIP workshop, so he proposed that it was no longer needed and asked that it be removed as a line item on the agenda. He also proposed to change the procedures for land use hearings to have swearing in done at the beginning, before affidavit of publication.

Motion: Ms. Shamp moved that the manual be updated to comply with Mr. Weimer's proposals; Seconded by Mr. Van Duzer.

Vote: Motion passed 6-0

E. Schedule Workshop Date with Town Council (verbal)

No dates set but Mr. Weimer will follow up to schedule this.

RECESS FOR LUNCH

RECONVENE LPA AT 12:47 PM

F. Update on Impervious Connections to the ROW (Shamp/Van Duzer)

Mr. Weimer brought the members up to date about what this is and what has been done then turned it over to Mr. Van Duzer.

Mr. Van Duzer reported that they were mainly focused on residential driveways and how they cross from private property into the ROW to connect to the pavement of the road. He said that they discussed the sizes of driveways and how they affect the ROWs, and the issues involved in setting the maximum sizes. Ms. Shamp's report

suggests the maximum widths of driveways should be limited where they cross the ROWs and determined by percentage of the lot area or length of frontage, etc. Discussion ensued regarding water retention and the ROWs.

Cathie Lewis, public works staff, addressed the LPA and stated that the county has not been consistent in the manner in which they have managed driveway permits at the beach. She agreed that driveway minimums and maximums should be instituted to set limits and drainage at the front of properties. She suggested that there are situations wherein culverts may be necessary under the driveway aprons and not just swales. Mr. Weimer asked what determines the necessity of a swale and Ms. Lewis responded that there are some cases when a swale would need to be so deep to work, it would be better to install a pipe. Discussion ensued regarding changes to the LDC to address these issues. Ms. Lewis advised that the Storm Water Master Plan is nearing completion and, once done, it should give guidance to make these changes easier.

Ms. Shamp asked how swales will impact the areas and bike lanes and other appearance issues. Ms. Lewis said that there are many ways to do this and keep the aesthetics in place while allowing residents to keep more of the storm water on their property.

Mr. Ryffel wondered how the Town will hold water on the properties that are already developed. Ms. Lewis said that the redevelopment of properties would be affected more so than those already established except that this will help those residents who are looking for ways to improve the water retention on their properties. She said that there are two different issues here: one within the public ROW and the other on private property, so that the Town would not be installing swales on private property but residents could come to the Town for help if they wanted to improve their water retention problems on their own properties. Mr. Ryffel argued that certain restrictions should not be made when deciding the width of driveways. Discussion ensued regarding the methods available, etc.

Mr. Mandel asked what happens once the studies are done. Ms. Lewis answered that the Town currently issues about three permits a week and this is an opportunity to institute the new regulations in the LDC. She explained that North Estero Blvd. is a drainage project, to correct the flooring along N. Estero Blvd., so the drainage issues are paramount and the road construction aspect is secondary. She further explained how the drainage projects will work throughout the beach and more discussion continued about this. Mr. Mandel also asked who would be paying for the drainage system as part of the project. Ms. Lewis said mostly, all taxpayers in the town, but 75% of the drainage portion is paid by Hazard Mitigation Program grants through FEMA; the water quality part is funded by the SFL Water Management District. She said this would be the model for other parts of the island. More discussion ensued about driveway aprons and ROWs regarding swales.

Ms. Shamp asked if it would be helpful if the LPA immediately established a basis for restrictions by saying the driveway specification in the ROW is a minimum of twelve

feet and not to exceed 20% of the property width. Ms. Lewis agreed that this would make a difference, with some additional language regarding impervious surfaces. Mr. Weimer concluded that the LPA needed direction from staff in the key points, being only driveway access, in the ROW, and anything else imperative at the moment. Mr. Van Duzer gave an example of how the county used to address this in the past and said that the Town could do this as well. He said that the LPA needs to set the parameters and the staff would need to inspect it before a permit is issued to put in the driveways. Much more discussion ensued about how this will be addressed.

Mr. Weimer stated the consensus that the LPA would like to have staff draft language to use as the change in the LDC and Ms. Lewis and Ms. Dalton agreed that Public Works would get the draft done, specifically addressing only residential at this time. Ms. Kay asked why the new driveways on Estero Blvd. are concrete and the answer was that it had to do with cost and convenience. She pointed out that this contradicts what they are talking about with drainage, pervious and impervious surfaces, and Ms. Lewis said that this is true but that every area is different, especially in situations where the quality of runoff water is an issue.

X. LPA MEMBER ITEMS AND REPORTS

Mr. Mandel reported continued work on the budget.

Ms. Kay asked about the rules for ex-parte communication regarding committees and projects and being approached, outside a meeting, by members of the public. Ms. Dalton explained this briefly, adding that there is no exact provision in the Town for LPA members, but that there are stipulations in the Code of Ethics as well as the county's codes. There was brief discussion about what types of things would not be looked at as ethical and some things to avoid. (NOTE: This subject is later discussed again, started by Mr. Ryffel, close to adjournment.)

No other items to report.

XI. LPA ATTORNEY ITEMS

Nothing to report.

XII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Nothing to report.

XIII. LPA ACTION ITEMS

Resolutions to Town Council

- Snug Harbor-continued to August 10, 2009 at 9:00 AM/Mr. Weimer
- Vacation Ordinance-TBD (Ms. Kay)
- Gulfview-TBD
- National Registry Letter-Ms. Kay reported on her meeting with Town Council wherein they decided that the HPB misperceived the potential to use funds for this and Mr. Weimer added that he researched this and it will again be addressed. Ms.

Kay also stated that there is still no finished brochure product yet.

- Historic Plaque Program-TBD
- Pink Shell Resort CPD to Council-Mr. Weimer

Continued Hearings

- The Cottage-TBD

Future Work Activities

- Rights-of-Way: regarding Impervious Surfaces/Residential-report on July 14th
- Storm Water-TBD
- Seasonal Parking-July 28, 2009
- Animal Control-July 14, 2009-review document
- Alcoholic Beverages-July 14, 2009
- Parcelization-TBD
- Future Review of SO Ordinance-July 14, 2009
- CIP Workshop-TBD
- LDC 14-12-July 14, 2009
- Review CIP-July 14, 2009
- Meeting schedule for the summer months: No meeting on July 28; August 11, 2009-OK; August 25, 2009-OK; September 15, 200-OK and September 29, 2009-OK.

Mr. Ryffel wanted to briefly talk about Ms. Kay’s questions about ex-parte communications and said that the County Commission had a rule, regarding zoning matters, that they will not allow themselves to be lobbied. They do not allow homeowners, etc. to approach them about zoning changes; however, they do have another process, the Lobbyist Reporting Law, which allows them to meet one-on-one with anyone about anything but zoning. He said they keep notebooks, including the dates, times and everything about the meetings. They then turn in the notebooks to be filed and these books are public record at any time. He asked that the LPA consider doing this and said that it would be considered true government in the “sunshine” and true transparency.

Motion: Ms. Kay moved to adjourn;

Seconded by Ms. Shamp.

Vote: Motion passed 6-0

XIV. ADJOURNMENT

Adjourned at 2:27 PM.

Next meeting July 14, 2009 10:30 AM.

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

Vote: _____
Dennis Weimer, LPA Chair

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