

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

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

**Tuesday, August 11, 2009**

**I. CALL TO ORDER**

Meeting was called to order at 10:31AM by Chairperson Weimer. The following members present:

Dennis Weimer  
Rochelle Kay  
Bill Van Duzer  
Joanne Shamp  
Alan Mandel  
Carleton Ryffel was absent, and provided a reason

Staff present: LPA Attorney Anne Dalton; Community Development Director Dr. Frank Shockey. Members of the public and press were also present.  
Mr. Weimer asked for an acceptance of the excused absence for Mr. Ryffel; all LPA members agreed.

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION-Mr. Dennis Weimer**

**IV. MINUTES**

Acceptance of minutes from June 9, 2009 meeting.

**Motion: Mr. Van Duzer moved that these minutes be approved as written.**

**Seconded by Mr. Mandel**

**Vote: Motion passed 5-0**

Acceptance of minutes from June 23, 2009 meeting.

**Motion: Mr. Mandel moved that these minutes be accepted as written.**

**Seconded by Ms. Kay**

**Vote: Motion passed 5-0**

**V. ADMINISTRATIVE AGENDA**

**A. Review of the FY 2009-2010 CIP for Consistency with the FMB Comp Plan**

Dr. Shockey explained the LPA's responsibility to recommend to the Town Council

annually whether the CIP included in the proposed budget is consistent with the Comp Plan. He referred to the packet, Exhibit A, which is this year's proposed CIP, and the pages following, including the schedule of capital improvements that is included in the Comp Plan's Capital Improvements Element. The LPA is to review the proposed CIP and compare to the schedule, and may advise beyond that by suggesting further options, goals, etc. He also referred to a memo he passed out before the meeting which discussed some of the specific policies from other parts of the Comp Plan that established the desire for these capital improvement projects. Dr. Shockey recommended approval of the 2009-2010 capital improvements program, as it is, in his opinion, consistent with the comprehensive plan.

Mr. Weimer asked for member discussion of the proposed resolution.

**Motion: Mr. Van Duzer moved to adopt Resolution 2009-17  
Seconded by Mr. Mandel**

Ms. Shamp commented that she did not see any reference to adding public restrooms at the beach accesses and felt that this is a cost, safety and welfare issue for the Town. She personally objected to the fact that there does not seem to be support for these in the Comp Plan. Mr. Weimer did not agree that this would mean that it is inconsistent with the Comp Plan. Ms. Kay expressed her concern about the security of the restrooms and the expense in keeping these "comfort stations" safe and working. There was discussion about the cost and number of stations or restrooms proposed, and whether they would be comparable to the one at Newton Park. Mr. Weimer asked Ms. Shamp to explain why she felt that this particular item was not supported in the Comp Plan. She stated that the only reference to these "comfort stations" is in the reference to the Newton Park oasis and that there should be support for all of the proposed stations in the Comp Plan due to the other problems created by the restrooms. Mr. Weimer suggested that although the Comp Plan does not address each item exactly and specifically, it does not mean that these items are inconsistent. Ms. Shamp insisted that there are big enough concerns surrounding these facilities that they should be specifically named in the Comp Plan so that there is a system in place to deal with any issues that may arise. She is in agreement that these facilities are needed, but unless they are addressed in the Comp Plan, there is no manner in place by which to handle their supervision.

Mr. Mandel likes the proposal because it invites more tourism but also hopes that the Tourist Development Council would have some financial input to keep these facilities up and running. Ms. Kay agreed but commented that the residents living nearby these facilities are ultimately going to end up policing them. Mr. Van Duzer said he is in favor of giving this a "trial run," so to speak, because there are presently no facilities at the beach accesses anywhere on the beach and it is detrimental to tourism. Both he and Mr. Weimer agreed that the Comp Plan does not limit the number of facilities and they agree that these facilities are needed, so they do not feel it is inconsistent with the Plan.

Mr. Mandel asked Dr. Shockey about \$4,159,000 proposed for North Estero improvements and pointed out a discrepancy in amounts in sources of funds in the revenue detail sheet after behind the capital improvement program. The numbers broken out into sources on the revenue detail sheet matched the \$4,159,000 listed in the capital improvement program when added to a total. His concern was regarding funds moved from water management purpose and Dr. Shockey stated that he didn't believe that funds were being redirected from any other planned project in order to fund the North Estero improvements. Ms. Dalton added that there will be a transfer from the water corporation to the Town of funds to assist with the improvements, to take place at the next Council meeting.

Ms. Shamp addressed beach renourishment, stating that it is supported in the Comp Plan, but on pg. 517, she pointed out what she felt were inconsistencies regarding the phrase "critically eroded" and "and therefore, when necessary," as to when this task gets done. She claimed that the engineering studies do not show this as a "critically eroded" area and it would then not be a priority. She asked Dr. Shockey about a comment on pg. 517 of the Comp Plan, regarding the renourishment, wherein it states "the report indicates that maintenance renourishment would be needed every ten years in an annualized cost of \$546,000.00 per year. She asked where these funds will come from in the future, pointing out that she finds funds included for beach renourishment only for year #1. Dr. Shockey said that this item is there as informational and that it would be up to the Town in the future as to whether or not they chose to maintain the renourished beach. Some discussion ensued about whether this meant there would be a need to spend \$546,000 a year on annual maintenance or a need to set aside \$546,000 per year for maintenance to take place less frequently than annually. Ms. Dalton commented that "O and M" is not usually considered part of the capital expenditures (operations and management) and this may explain why funds to maintain the renourished beach were not planned as capital improvements.

Mr. Weimer recapitulated the motion on the floor, which was that the LPA recommends that the Town Council find that all the items on the attached proposed 2009-2010 CIP, is consistent with the Town of Fort Myers Beach Comp Plan, eliminating statements 2 and 3, and is consistent with Dr. Shockey's memo of Aug. 11, also attached.

**Amended Motion: Mr. Van Duzer moved to adopt Resolution 2009-17, as stated above.  
Seconded by Mr. Mandel**

**Vote: Motion passed 3-2, with Ms. Shamp and Ms. Kay opposed and Mr. Ryffel absent**

**B. Discussion of Draft Language for LDC Chapter 34, Article IV, Divisions 3 and 5  
(carry over from July 14 LPA)**

Mr. Weimer asked Dr. Shockey for a quick review of the goals being sought for this item, since he was not present for the earlier discussion on this topic. Dr. Shockey explained that it stemmed from the Council's suggestion that the alcoholic beverage regulations in the chapter be considered to come up with a way to establish some

consistency in the restrictions placed on individual licensees in that there is a wide variety of time, food, entertainment, etc. constraints dealing with different businesses on the beach. In addition, the present provisions in the code are older and may be a bit outdated, in need of some revision. Then in discussion of the beverage regulations some LPA members became interested in some other regulations that were related indirectly to the beverage regulations and so these had been added to the mix of discussion at LPA request with the permission of the town manager. Mr. Weimer commented that the draft he has seen seems very involved and reaches beyond Town ordinances and he asked Ms. Dalton to comment. She stated that she is obligated to advise the LPA when it may be looking at issues that may involve legal work so involved that it may begin to incur significant fees. She suggested that there are some areas within this item that are very controversial and involve constitutional problems, which will no doubt create legal problems necessitating incurring legal fees.

Mr. Weimer reminded the LPA that, initially, they were trying to address and set forth clear rules for hours of service for alcoholic beverages, so that there would be some alternative wording for different businesses, depending on the situation. He added that, with this new memo and proposed changes to several subjects at once, he is afraid that there is so much more involved, he doubts they will get anything cleared up. He suggested that the LPA only concentrate on those initial hours of service and similar issues for alcoholic beverages for now and not get involved in anything bigger. Mr. Mandel agreed and added that the major issue in the licensing is consistency, or lack thereof, stemming from so many individualized approval resolutions. He also added that the noise problems associated with the service of alcoholic beverages is one that should still be addressed. He suggested that they discuss the matter with the Town Council at their joint meeting and decide together what is most important. Ms. Shamp agreed that this is getting out of hand and cautioned that before moving forward and incurring huge legal fees, the LPA should be clear as to what the Council wants them to address; she suggested postponing this until they've had an opportunity to meet with the Council and clarify the issues. Mr. Van Duzer and Weimer concurred.

**Motion:** Mr. Mandel moved that agenda items B and C (draft language for alcoholic beverage service, stand alone liquor licensing, open container ordinance and SOB provisions) be tabled until after a workshop discussion with Town Council.

**Seconded by Mr. Van Duzer.**

**Vote:** Motion carried 5-0; Mr. Ryffel being absent.

C. Proposed Concepts for Residential Driveway ROW Connection Standards

New information was presented to the LPA members and a ten minute recess was called for to review the documents.

***Recess: 11:20 AM Reconvene: 11:30 AM***

Cathie Lewis was present to answer questions regarding the document, which she prepared. Mr. Mandel asked for clarification regarding the dimensions of the

driveway aprons. Mr. Van Duzer said that he put this in because he was thinking about commercial areas where other widths are required. Mr. Weimer gave an example of a driveway that would conflict with these restrictions. Discussion ensued about the different sizes and dimensions. Ms. Lewis explained her guidelines in preparing this and that this document is only a starting point for the LPA to look at the whole issue.

Ms. Kay referred to the design specifications and asked about “circular driveways.” Ms. Lewis explained that this suggests the language be more specific than what is in the code to make it clear that new circular driveways would not be allowed. Ms. Shamp thanked Ms. Lewis for her work on this study. She asked how feasible some of the language in the document is regarding drainage, etc., when the Town does not yet have a storm water system in place. Ms. Lewis said that is why the language is somewhat vague at this point.

Mr. Green further explained the items in the report, regarding the drainage and storm water runoff, adding that this is mainly for new construction and reconstruction. Mr. Weimer asked if there are specific design standards which must be incorporated into the LDC on these driveways. Mr. Green replied that this is one of the problems, in that there are no consistencies in the county doing this job. Dr. Shockey added that there are other problems that having no specific guidelines creates regarding swales, culverts, etc. Ms. Shamp asked Ms. Lewis about pervious vs. impervious surfaces and whether this needs to be addressed at this point. Ms. Lewis said they could include a list of acceptable surfaces but that this should be done later, further into the project. Dr. Shockey added that the county presently has some limitations on types of materials, but if the county’s standards are repealed they would need to be replaced with something.

Mr. Van Duzer expressed his satisfaction with the segment that addresses “Permitting Process.” He said that this is what involves everyone and that the guidelines start here. Mr. Mandel asked if there was a decision about the fee. Ms. Lewis said the current fee for a driveway permit is \$75.00 and could go up to \$120.00 or more depending on the need for particular kinds of inspections and plan reviews. Mr. Weimer also praised Ms. Lewis for her thorough job on the document. He also asked about item “G” which regards the “hold harmless” clause. Ms. Dalton said that some of this would be better covered in the general sections of the code and not sprinkled throughout. More discussion ensued about the distances and other specifications for driveways.

Ms. Dalton brought up the ROW agreements issue and said it is coming forward. She said that if the LPA wants to offer an opinion on this, they should decide at this time and said she could bring it to the next meeting for their review. Ms. Shamp said that she prefers to avoid extra layers of requirements and wanted to know if this ROW agreement form is necessary for the residential permits. Mr. Weimer suggested holding off this discussion for later in the meeting and added that there will be a need for this agreement for residential but wanted to return to the topic at hand.

Mr. Weimer said the driveway document presented by Ms. Lewis is a good starting point and asked Ms. Dalton for guidance as to the process to move it along. Ms. Dalton suggested that the LPA allow staff to assign it to a staff member and direct her to work with that person to get something with legal review. Mr. Weimer requested that this document be incorporated into the minutes and asked that Mr. Van Duzer and Ms. Shamp review it, bring out the questions/concerns and present it to the LPA at the meeting on September 17, after which time staff could prepare the document for a hearing. Discussion ensued about the process to follow.

**D. LPA Policies and Procedures discussion on “Code of Ethics”**

Mr. Weimer reviewed sub paragraph 4 of the Code of Ethics and found two areas that were of concern. Ms. Dalton agreed with Mr. Weimer’s interpretation of the area dealing with “prohibition,” in that members are required to refrain from engaging in private discussions with applicants or representatives. She said that Town staff would not be part of this rule. Mr. Weimer asked her about the second point, formal notification. Ms. Dalton said the LDC addresses the Council and the LPA’s obligation in ex parte matters and said that the LPA does not have the ability to vary from that obligation. She added that, as it is written, should there be an email, a letter or even a phone call from a member of the public, etc., regarding a quasi-judicial item, the email should go to the Town Clerk for inclusion in the meeting agenda packets.

Mr. Van Duzer said he had not been clear on this before and is satisfied with the wording. Ms. Dalton referred to the LDC dealing with the prohibited communications, saying that LPA members may engage in these ex parte communications but are required to disclose the information discussed in that communication as a matter of clearing up any issues of prejudice (she read the section for the meeting). More discussion ensued about types of ex parte communications and differences between the LPA code of ethics and the LDC requirements.

Ms. Shamp referred to Section 34-52, which defines unrestricted communication as “any communication, by the public, with public officials which are specifically allowed and encouraged...” Ms. Dalton pointed out that the problem is the LPA’s PnP code of ethics is not so specific, and may need to be tweaked. She added that the LPA needs to decide how specific they wish to be in reporting this type of communication, how quickly and by what method. Her concerns were basically about the inconsistencies in this ethics policy and the actual requirements of the LDC concerning this subject.

The general consensus was to refer the whole policy back to “be in accordance with the guidelines of the LDC.” Mr. Weimer asked that paragraph to be revised to just say “in compliance with the LDC.”

**RECESS FOR LUNCH-12:50 PM**  
**RECONVENE-1:18 PM**

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

**Vote: Motion carried 5-0; with Mr. Ryffel being absent**

**VI. ADJOURN AS LPA/RECONVENE AS HPB**

Ms. Shamp called the meeting to order at 1:18PM and Dr. Shockey exhibited one of the long-awaited historic recognition plaques. Ms. Shamp also asked if Dr. Shockey could get the brochures for the same time as the presentation of the plaques.

Ms. Shamp announced that the Seven Seas renovation contract was awarded to Maddox Construction at the recent council meeting.

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

**Vote: Motion carried 5-0; with Mr. Ryffel being absent**

Meeting adjourned at 1:25 PM

**VII. ADJOURN AS HPB/RECONVENE AS LPA**

Meeting reconvened at 1:25 PM

**VIII. LPA MEMBER ITEMS**

Mr. Van Duzer—nothing to report

Ms. Shamp reported that Mr. Weimer was commended at the Town Council meeting for his extraordinary job with the Bay Oaks project.

Ms. Kay—nothing to report

Mr. Mandel reported that the water utility project is coming along.

Mr. Weimer invited the public to look at his front porch with reconstructed with a new durable material. He reported on his participation in a temporary committee to look at the Mound House and Newton properties' future public display and use. They had submitted reports to the Town Manager for review. In addition, the Snug Harbor CPD was heard, finally, by the Council at a recent meeting, who commended the LPA's work. This led to brief discussion about the ROW agreement and building canopies.

Ms. Dalton will prepare a document and packet, to be sent to each member before the next meeting, for their discussion of the ROW agreement agenda item discussed earlier.

Mr. Weimer added that the mayor wanted to discuss the Action List/Agenda Management at the joint meeting. He said the Council wants to see if there is a way to bring the LPA and Council together on the items on agenda.

**IX. LPA ATTORNEY ITEMS**

Nothing to report.

**X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Nothing to report.

Request for review of the upcoming meeting dates: Sept. 15, 2009 was cancelled and

instead scheduled for the Sept. 17<sup>th</sup> workshop meeting, immediately after. Sept. 29, 2009 regular meeting.

**XI. LPA ACTION ITEM REVIEW**

Resolutions to Council

Snug Harbor CPD removed because it is complete; Mr. Weimer  
135 Gulfview and Property Vacation Ordinance-TBD; Mr. Van Duzer/Ms. Kay  
Historic Plaque and Brochures—Oct. 5, 2009; Ms. Shamp  
2009-13-Pink Shell—8/17 discussion will set future meeting date; Mr. Weimer  
2009-16-Newton Park and 2009-16 Beach Furniture; Mr. Van Duzer

Future Work Activities

ROW--9/17; Mr. Van Duzer/Ms. Shamp  
Storm Water—awaiting input from staff; Ms. Kay/Mr. Van Duzer  
Seasonal Parking—9/29; Ms. Dalton/Dr. Shockey  
Long term Animal Control—10/27/09; Dr. Shockey/Ms. Dalton  
Alcoholic Beverages—9/17/09; Dr. Shockey and discuss at joint meeting  
Parcelization—add to agenda to discuss at joint meeting with Council;  
Future review of Ordinance 96-04—TBD; discuss at joint meeting with Council  
Code of Ethics point #4—8/25/09; Ms. Dalton

**XII. PUBLIC COMMENT**

No comment.

**Motion: Mr. Van Duzer moved to adjourn.**

**Seconded by Mr. Mandel;**

**Vote: Motion carried 5-0; with Mr. Ryffel absent.**

**XIII. ADJOURNMENT**

Adjourned at 1:57 PM.

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_

(DATE)

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

Dennis Weimer, LPA Chair

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