

MINUTES
FORT MYERS BEACH
Local Planning Agency Meeting

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

Tuesday, March 10, 2009

I. CALL TO ORDER

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

Evie Barnes
Rochelle Kay
Alan Mandel
Bill Van Duzer
Joanne Shamp
Joe Yerkes

Staff present: LPA Attorney Ann Dalton, Dr. Frank Shockey. Members of the community were also present.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION-Mr. Weimer

IV. MINUTES

No minutes to review.

V. TOWN CAPITAL IMPROVEMENT PROGRAM (CIP) ITEMS

Ms. Shamp advised that the LPA attorney checked into the issue of the two-year old presentation by Mr. Small on funding concepts. Ms. Dalton will check with Finance Director for notes on that meeting.

Ms. Shamp also has a meeting upcoming with Mr. Janke prior to the next LPA meeting regarding to beach nourishment funds and the status of that money if it is not used for that purpose.

Motion to adjourn as LPA and reconvene as HPB: Ms. Barnes

Second: Mr. Mandel

Vote: 7-0

VI. ADJOURN AS LPA-RECONVENE AS HPB

A. HPB hearing HDD2008-0007-Seven Seas Historic Designation

Ms. Shamp asked staff for their presentation of the Affidavit of Publication or copy of legal advertisement from the newspaper of record. Dr. Shockey stated that the affidavit was included in the LPA member packets. Ms. Dalton added that this would be attached as Exhibit B to the Resolution and included information regarding certified mail, since this is a special notification requirement.

Ms. Shamp asked if any members have had any ex parte communication regarding this matter. Ms. Barnes, Mr. Mandel and Mr. Van Duzer had site visits only; Ms. Kay had none. Mr. Mandel stated that several of the relatives of the former owners of the property live in the same complex as he does and they've had conversations about this in the past. Mr. Weimer had none and Ms. Shamp has heard people in the Historical Society discuss these buildings and their opinions, in the past.

Ms. Dalton asked those who wished to testify to be sworn in. The applicant was summoned to present its case. Mr. Janke addressed the LPA and reminded them of his earlier desire to move this forward quickly. He advised that the construction documents to rebuild the Seven Seas building were just received and that there is funding in place to do that. He stated that, without this designation, the project cannot be done and open before the end of 2009 because it needs to be built at its current elevation but without designation, it would need to be built twenty feet in the air. He encouraged the LPA to approve the designation so that the project can proceed.

Theresa Schober then addressed the LPA and added that this property also has tremendous historical significance on the island. She reported that the Town acquired the Newton Estate in 2003 with two grant sources. The cost was approximately \$2.6 million; \$1.3 million was granted by the state and \$969,000 was granted by Lee County, both due to the historical components on the property. Ms. Schober gave some details, which are listed in the application, regarding some of the special features of the building: interior of native Florida materials, little wind doors at the eaves that allow air to flow through the building, exposed rafters, and many other features. Ms. Schober continued an historic overview of the property, adding that the Town contracted historic preservation architect John Parks, of St. Petersburg, who produced an in-depth report for the Town, documenting the history of the property. Much of the documentation produced from that report is included in the application. Ms. Schober continued to present her historical account of the social and educational value of the property, referring to photos and interviews included in packets. She added that the reports and materials used for this comprehensive study had been submitted to the state, who also agreed that the property qualifies for the National Registry of Historic Places.

Mr. Weimer asked what modifications are proposed and will those changes deteriorate from the historical significance of the property. Ms. Schober answered that the restoration that is proposed is fully compliant with the Division of Historical Resources standards, governed by the Secretary of Interior Standards. She added that those modifications deal with the interior of buildings and no real modifications are proposed for the exterior of the subject property. Handicapped ramps may be the only exception and those must be complied with. There is a proposal for restoration of the main

Newton home, which was built in 1953, to restore what was original, especially what had been damaged during Hurricane Charlie. The only modernizations will apply to the restrooms, non-working ovens and any handicapped accessibility requirements.

Mr. Mandel asked what historic objects would be kept there. Ms. Schober replied that, according to the Town's grant agreement with FL Communities Trust, there are several objectives; one of these is a staffed museum/community gathering space, so the plan is to utilize the interior of the main home for that purpose, with the placement of some exhibit panels on the walls and the ground. These exhibits would give information regarding vegetation, marine life and sea turtle educational points and things that would involve more than just the Newton family and home. The goal is for mostly open space for community use. Mr. Mandel also asked if there is a plan to get this property into the National Registry. Ms. Schober stated that doing that is important and yet would not take much, mostly it is time consuming.

Ms. Kay asked about the air conditioning proposed for the building and it was pointed out the Newtons already had this under control and there would not be much to keep the building comfortably ventilated.

Mr. Van Duzer had no comment, other than that he is "deeply gratified" that the LPA is finally at this point to move this on.

Mr. Yerkes only commended Ms. Schober on her in-depth, quality response and her unyielding work and knowledge on the subjects she presents to the Town. He also is pleased to see this project finally moving along.

Ms. Barnes asked if the home will be staffed and how it will be protected. Ms. Schober said that the applicant is close to submitting a zoning application that will address the uses of the property, which will include hours of operation, etc. There may be a volunteer-based staff system; there may be special doors to close off certain areas during certain times, etc. Ms. Barnes agreed with the others in that she is happy to see this moving forward as well.

Ms. Shamp also is in agreement with the sentiment of the others in the progress of the project. She questioned the safety issues as it relates to the open, public restrooms. Ms. Schober answered that as this is always a problem, but keeping the active presence on the property is a great deterrent. She said that these issues will be addressed more in-depth as the project progresses.

With nothing further from the applicant, Ms. Shamp asked the staff to present its case.

Dr. Shockey addressed the HPB, reviewing the basic points of the staff report. He said that the owner (applicant's) request was to designate the "Seven Seas" building on the Newton property as a historic resource. All notifications were properly placed and mailed, announcing that this hearing would take place; so, this is the hearing at which the designation of the structure as an historic resource may take place, if voted to do so.

The staff recommendation is that the Seven Seas structure *is eligible for designation, under Town LDC, Chapter 22.* The recommendation is based on a report by an expert and the *structure's architectural or aesthetic significance; that it embodies the characteristics of an architectural style, period or method of construction typical on Estero Island in the 1940s and 1950s; and the cultural significance of the structure, through its association with the Newton family and some of their friends and acquaintances.*

In addition to these cultural and architectural significances, there are guidelines for treatment of distinctive features in the staff report that are recommended to guide future modifications to the building. In summary, the Community Development staff recommends that the property is eligible for designation on the basis of the points in the staff report.

Mr. Weimer asked if there have been any decisions about staff and management in the future. Dr. Shockey stated that this could not be answered until a zoning application is received detailing the proposed uses. He also asked about application for this property into the National Registry and Ms. Dalton suggested that this be a recommendation in the resolution.

Mr. Mandel also expressed his interest and making this a recommendation in the resolution. He also asked if anyone has inquired about moving the building. Dr. Shockey didn't know of any.

Ms. Kay asked about the "open plan" discussed by Ms. Schober and wanted explanation. There was some discussion about this and Dr. Shockey clarified how to address the items regarding space usage. This is partly a zoning issue that is not for this hearing.

Mr. Van Duzer just clarified that the HBP is only to look at the designation of the Seven Seas structure, not future finishes or use of sections of the building, etc. Dr. Shockey cautioned that, although this is not the hearing to get into zoning issues, it is the time to bring forward any guidelines, etc., which the members feel should be mentioned and haven't.

Mr. Yerkes asked Chairperson Shamp for permission to ask the applicant to clarify a point and permission was granted. He asked Ms. Schober if she thought there would be any reason that the structure would not be approved by the National Registry. She said that, of course, she could not guarantee it and explained how the process works. After the long, multi-tiered process, there are still no definite answers. There was brief discussion about the process and the obstacles involved; however, she stressed that some of the things that would seem to make this property more likely to be accepted are the associations of the Newtons with nationally known figures. In addition, some of the correspondence between the Newton and Lindbergh families is housed at Yale University and relationships such as that are the extra significance that will be considered. So, the answer is "no," there should be none.

Ms. Barnes had no questions but wanted to be on record as also wanting to seek that

National Registration.

With no further questions for staff, Ms. Shamp opened the floor for public comment. With no public comment, it was closed.

Ms. Shamp asked for any rebuttal from the applicant. Ms. Schober again addressed the HPB and recommended a few changes to the resolution: (referred to the Resolution):

- Pg. 2 of 4-Finding and Conclusions: the Seven Seas “property *does* qualify for designation...” Under 1a- “its significance in the Town’s history, architecture, and culture” apply here;
- There are seven Integrity Criteria but the criteria of “feeling” is missing; Ms. Dalton stated that “feeling” is not in that section of the LDC. Ms. Schober said that “feeling” would apply whereas “setting” would not;
- Under #2-“the property *does* have architectural or aesthetic significance;”
- Pg. 3 of 4-“the property does have historical or cultural significance;”
- Paragraph B-last sentence, “list of notable people *claimed* to have visited...” to be changed to “people *documented* to have visited at Seven Seas;”
- Under 4-“property does not have archeological significance.”

There was some discussion of the references to the LDC, Sec. 22, 204a and criteria 1 through 5 (see code). Ms. Dalton advised that these points be included in the resolution for signing and therefore included for all time, as this is an important issue for the Town.

Mr. Weimer expressed his concern that under “Integrity Criteria,” the term “feeling” is not listed. He said that it may not be in that section of the LDC but that it is clearly called out in the Comp Plan and in reference, on p. 13-17, under “Architectural Criteria.” He asked if there was any harm in including this as part of the resolution, even though it is not in the LDC. Ms. Dalton said it could be added as a sub paragraph “C,” if passed. Ms. Dalton asked Ms. Schober if she preferred to have the National Registry application be part of this resolution or as a separate one. Ms. Schober preferred that it be in a separate item, since the local designation is a separate entity. She also recommended that the HPB set a policy of submitting all properties which may be eligible in the same fashion in the future. There was discussion of the other beach properties which may be eligible for the Historic Registry and how/when to apply.

Ms. Shamp asked for HPB discussion. Mr. Weimer stated he is in favor of the resolution granting designation, with clearly defining “Item 1” and adding the “feeling” integrity, under a Subsection C. He also agreed to keep the application to National Registry issue as a separate item.

Mr. Mandel commented that it is good to finally get this to a resolution, since it has taken so long. He also feels it is a critical issue to apply to the National Registry.

Ms. Kay just asked for a clarification.

Ms. Shamp stated that she also is thrilled to see this move forward and asked for a motion on the resolution.

Motion by Mr. Weimer: Mr. Weimer recommended the approval of HPB Resolution 2009-07 with the following: Under Findings and Conclusions, under #1: the Seven Seas “property *does* qualify for designation...” Under 1a- “its significance in the Town’s history, architecture, and culture” and archeological is stricken; and for its integrity of location, design, materials, workmanship or associations; under a new sub-section “C” that the designation also applies to the integrity of “feeling” as called out in the Town’s Comp Plan, regarding historical structures; under item 2, same page, “Seven Seas property *has* architectural *and* aesthetic significance; under item 3, the “Seven Seas property *has* historical and cultural significance; under paragraph 3b, adding the words “documented or” prior to the word “claimed;” under item 4, the “Seven Seas property does *not* have archeological significance” and delete paragraph A as a result.

Second: Mr. Mandel

Vote: 7-0

Ms. Shamp closed **Hearing HPB HDD2008-0007-Seven Seas Historic Designation**
Mr. Janke thanked the board for passing the resolution and promised to do everything in the staff’s power to get this renovated and opened to the public.

Ms. Shamp called for a short break before the next hearing.

Reconvene at 11:45 AM and call to open the hearing.

B. Hearing COA 2009-0001 The Cottage Special Certificate of Appropriateness

Ms. Shamp asked staff for their presentation of the Affidavit of Publication or copy of legal advertisement from the newspaper of record. Dr. Shockey stated that the affidavit was included in the LPA member packets. The notice for this hearing was also included in the same affidavit as the notice for the prior hearing.

Ms. Shamp asked if any members have had any ex parte communication regarding this matter. Ms. Barnes, Mr. Yerkes, Mr. Van Duzer, Ms. Shamp had site visits; Ms. Shamp added previous conversations in general; Mr. Mandel and Mr. Weimer admitted same. Ms. Dalton swore in members of the public for testimony.

Ms. Shamp invited the applicant to present its case. Mr. Janke addressed the meeting and referred to the packets wherein there was paperwork showing his attempt about a year ago to get the flexibility to either demolish or move the structure known as the Cottage. He cited financial constraints as the reason for this request that Council be given the power to make this decision.

Ms. Schober reported that special certificate of appropriateness applications for relocation or demolition of the Newton Cottage building were submitted to Community Development, at the request of the Town Council. She said that the goal

is to remove the structure so that the property can be developed as part of Newton Park to gain the additional frontage on the Gulf of Mexico to enhance the setting around Seven Seas structure, which will serve as the community meeting and restroom space for the park. She referred to a copy of the summary report of the structure and advised that there had been some inaccuracies in the original designation report in tying the property to the social connection of the Newtons. She said that the Newton family didn't own the Cottage until 1972, when they used it as a rental property. She clarified that the property was owned by the Newtons since before 1940 when there was no building on it. The property was sold to the Allison family, who relocated the Cottage structure onto that piece of land. Jim and Ellie Newton didn't incorporate that building into their estate until 1972. There is no documented proof that the building was used by the family for anything other than a rental, which is what it was when the Town acquired it in 2003.

Another inaccuracy was the age of the building; 1944 was the year it was moved to the island but the building actually dates back to sometime between 1890 and 1900. All of the accurate information was detailed in the architect's report in 2005.

Ms. Schober pointed out that, as was the case in the previous hearing, the Town is required by its grant agreement with FL Communities Trust to work with the Division of Historical Resources to make modifications to the structure so there has been correspondence between the two regarding both alternatives for removal of the structure (included in the application) to gain tentative approval by the agency before the Town Council approached the issue. Tentative approval has been granted, in both cases, with conditions, but they indicated that they would not deny a demolition or relocation request, pursuant to additional information being supplied to them in the format they require (all included in HPB packets).

Mr. Janke added that the Town's budget is very constrained, so if the Council does not have the flexibility to do this at someone else's expense, we don't have the funds to move or restore it.

Ms. Shamp asked for questions from HPB.

Ms. Barnes assumed there has been no request from anyone outside to move the structure. Ms. Schober advised that they have not moved in that direction yet but said that it would likely be put out in RFP to take over the building.

Mr. Yerkes had no questions at this point; but then, along with Mr. Van Duzer, asked if staff would clarify what is being asked of the HPB.

Mr. Van Duzer asked for clarification of the request for action from the HPB. At this point, after asking the attorney, Ms. Shamp waived the normal procedures and asked for some clarification of the task at hand because some members may be affected by their confusion. Ms. Shamp asked Dr. Shockey to explain the resolution.

Dr. Shockey explained that we have a historically designated resource, the Cottage, owned by the applicant who has requested a special certificate of appropriateness for one thing and another special certificate of appropriateness for something else. One of those things is for the relocation of the historic structure and the other is for the demolition of the historic structure. This board decides whether it is appropriate to allow the applicant to demolish that historic structure, or whether it is appropriate to allow the applicant to relocate the designated historic structure. The task of the board is only to review the requests and either approve or deny them. The applicant can then still decide whether or not to actually move on the decision. Ms. Shamp asked then, on pg. 2 of 4 of the resolution, there is a segment "HPB approves or does not approve issuance of the Certificate of Appropriateness for demolition: and then item 4 of that there is "HPB approves or does not approve issuance of Certificate of Appropriateness for relocation."

Mr. Weimer stated that, under the LDC the HPB can impose a six month moratorium on demolition requiring the applicant to seek to relocate, prior to a demolition, provided they have subsequently approved a demolition. Dr. Shockey agreed that there is a provision in the LDC for that. Ms. Dalton added that Sec. 22-105 requires the HPB to consider various criteria when an application has been made to move the structure and that Dr. Shockey will address these in his report, making this a bit more clear.

Mr. Yerkes asked to be heard. Ms. Shamp first asked if everyone was now more at ease to move on and all agreed. Mr. Yerkes asked Ms. Schober "what do you want to do here? Do you just want the right to do whatever it is, is that what you're asking?"

Ms. Schober agreed that this is what the Town Council request was: to determine "their degree of flexibility with this property."

Mr. Weimer asked if Ms. Schober may answer questions as a professional and not as a representative of the applicant. Ms. Dalton opined that Ms. Schober's personal opinion would be outside the boundary of representing the applicant today.

Mr. Weimer pointed out that this property had been approved by a predecessor HPB as a historically significant or designated property. The applicant agreed but added that, at the time of the purchase of the property with FL Communities Trust assistance, the Town rushed ahead with much of the history of the whole property undocumented and somewhat mistaken information. The Town moved to designate the Cottage building under the misassumption that the Newtons had either constructed or lived in it during the time when the family had significant social relationships in Ft. Myers, with the Firestone, Edison and Ford families. She stated that this social history, most of which was oral and fairly inaccurate, was mostly the reason for the granting of the \$2.3 million for this property, but it was mis-applied to the wrong building. Ms. Schober continued that this was her reason in 2005 for suggesting to the Town that they hire a professional, outside consultant to appropriately document the structures and the histories associated with them, so that

it could unquestionably be decided which of the two buildings is the significant historic structure, and allow the development of Newton Park. Basically, a mistake was made in 2004 as to these properties. She added that the Cottage is not eligible for the National Registry.

Mr. Mandel asked about the ineligibility of this building to the National Registry and Ms. Schober expanded that if a building is relocated, it is almost always automatically not eligible for the Registry. Mr. Mandel asked about funding for this and the Seven Seas projects and Ms. Schober reported the earmarked funds for most of the Seven Seas project and the rest from park impact fees; there is no funding appropriated for the Cottage.

Mr. Weimer asked if the structure had been significantly modified from what would have been created in the 1890s. Ms. Schober said it has not, but upgraded a bit to be used as a rental, and there had been some damage from Hurricane Charlie.

Ms. Shamp asked if it was true that there was a lot of moving around of structures on the island in the past. Ms. Schober stated that she only knew that this was not the only relocated building on the island. Ms. Shamp also asked if the Town was to demolish the structure, was there any consideration given to disposition of the unique materials used in the structure of this building. Ms. Schober was not certain, at this point.

Ms. Barnes again stated that the HPB job is not to decide what the decision will be for this structure, but only to determine the appropriateness of either action requested. Mr. Janke added that the criteria for moving the building cannot be met at this point anyway, so perhaps the request is for actual demolition.

With no further questions from the HPB, Ms. Shamp asked for the staff presentation.

Dr. Shockey again explained that the request is for a special Certificate of Appropriateness, either for relocation or for demolition of the structure known as the Cottage. The criteria to consider the request for demolition are in Chapter 22, sec. 103 and 104; criteria for relocation are in sec. 103 and 105. He stated that the focus here is on demolition since that is what the applicant seems to feel is more feasible. In Chapter 22, sec. 105, are the six criteria the board must consider to move a historic structure, which all have to do with setting; the current setting-the character the building contributes to its current setting; reasons for the proposed move; the proposed new setting and the general environment-need to know the new site first; whether the structure can be moved without significant damage to its integrity; whether the proposed relocation site is compatible with the historic and architectural character of the building-we would need to have a proposed site first; what applicable effects of the move on the visual character of a designated district-there is no district involved. Two of these six criteria require knowing the new location and setting first; so staff recommendation is that the request for relocation be denied at this point because the site for relocation has not been provided. He explained that the applicant

could request the relocation again, with specific location information, in the future. Dr. Shockey referred to the Code standards for demolition and explained that it calls out the rehabilitation standards of the Secretary of the Interior in the Code of Federal Regulations as criteria for a special certificate of appropriateness. The staff report recommends that those standards for rehabilitation are not appropriate when the request is for demolition but the standards that do apply, under the LDC, are under Sec. 22-104. He referred to each of the criteria and answered each, referring to the information contained in the staff report. He also added that the building is not recommended to the National Registry by the representatives of the State. Dr. Shockey reported that the property has always been planned to be used as a park and demolition would enable that project. He gave examples of the other structures on the island that may be compared to this and how they are not the same. He also referred to a provision in the code which states that “demolition has to be ordered by a court of competent jurisdiction or some other governmental body” before actual demolition can take place. To summarize, he said that staff recommendation is “approval with some conditions” relating to documentation that he mentioned to the Division of Historic Resources and/or FL Communities Trust and providing evidence to the Town Dept. of Community Development that the documentation was acceptable to those agencies. The other conditions are all contained in the staff report and draft resolution, in the packets.

Ms. Shamp asked for HPB questions for the staff.

Ms. Kay asked if this was a package deal. Dr. Shockey advised that the HPB may approve one, both, or neither, but cautioned against the approval of the relocation without the necessary criteria regarding the new site, etc. being considered first. Ms. Dalton added that there is a provision within the section for demolition which allows the Town to try to find someone who would be willing to move the structure. Ms. Kay asked if the HPB has the authority to request that certain parts, like a fireplace, be preserved in the case of demolition. Ms. Dalton said that section 22-103, sub. D states: “the HPB shall approve or deny the special Certificate of Appropriateness, or approve with conditions...”

Mr. Van Duzer had no questions but said he is embattled with the issue.

Mr. Yerkes asked if this relocation request was approved, where would it go and what is the purpose? Dr. Shockey tried to explain that this is why the site appropriateness criteria need to be considered, and the new site needs to be identified by the applicant. Ms. Dalton added an example wherein the City of Fort Myers HPB considered relocation of the Langford-Kingston Home, and the structure was literally moved across the street onto a city owned lot, because the church that owned it no longer wanted it, but the City didn't want to demolish it. The Certificate was approved to be sure that the structure wouldn't suffer any harm in moving and that the site would lend the same dignity to the structure once moved.

Mr. Weimer asked if the HPB had options like forcing a six month delay before a

demolition is issued. Dr. Shockey said that was a possibility because there is a provision for that in the code if that is what the HPB chooses. Mr. Weimer asked if he was correct in assuming that the Town owns a piece of property on the street towards the Mound House and that there was discussion about moving the Cottage there. Dr. Shockey said that it is not the applicant's intent expressed in the application, but that it has been discussed publicly in the past.

Mr. Mandel asked how much time it would take to move forward because there may be enough time, during the demolition request process, to have a group identified that may want the building.

Ms. Shamp referred to Section 22-103d, wherein it states that the board may suspend action for a certain period, and she asked if this would be a possibility for the HPB. Ms. Dalton answered that it would be and added a reference to Sec. 22-104,c, which discusses the option of the HPB in granting a Certificate of Appropriateness with a delay of six months to allow the HPB to seek possible alternatives. She opined that since the language uses "may," the HPB could likely shorten or lengthen the timeframe.

Ms. Shamp asked for legal opinion as to the scheduling of Public Comment and its placement before and/or after the lunch break (since the hearing was publicized as 1:00 PM and it is not yet noon).

Ms. Shamp closed HPB and staff comment and asked for Public Comment.

Mr. Dave Churlese?, Ft. Myers Beach, addressed the meeting and was sworn in. He referred to the HPB packets, page 7.7, wherein it states "for this reason staff is recommending that HPB deny the Special Certificate of Appropriateness for relocation at this time." He opined that this states the recommendation of the staff and it should be done now, not in six months. He stated that this meeting was properly noticed and that the "groups" interested in saving this building should be here now if there is a real interest, which he feels there is not. He also feels that the Town does not have the funding to save this structure and that the staff has gone to great lengths to do what they needed to do to be sure this is the right decision. He feels he speaks for much of the community in saying that this project started in 2003 with the hopes of having a beautiful park on that site.

Mr. John Warden of Ft. Myers Beach, addressed the HPB. He talked a bit about the Mound House and that there is a lack of office space there for archeologists who come and others. He recommended using the existing Cottage for office space for the Mound House and that that might help with security there.

**Recess for 5 minutes, with public comment remaining open.
Reconvene-no further public comment.**

Ms. Shamp asked for any rebuttal from the applicant. Ms. Schober referred to the

timeline question that was brought up earlier by Mr. Mandel. She said that the Town has the construction documents to restore the Seven Seas structure and is close to going to bid. She said that the Town is required by the state to upgrade their information supplied to the state about the Newton Cottage, so we'll need to contract for that service, have the service completed, have the state sign off on the information and the provide modifications to the Town's management plans, etc. The goal is to have the park completed by October.

Ms. Schober then referred to page 104 wherein "whereas the Town of Ft. Myers Beach applicant is the owner of the structure called the Cottage..." the strap and address are wrong. On page 204, first two conditions, she noted changes (in packets). She addressed a few other details, noted to be correctly added to the final resolution.

Mr. Weimer asked if the demolition was delayed by six months, would that have a negative effect on the prior hearing on the Seven Seas. Ms. Schober said that it would affect the ability to have the park completed on time. Mr. Weimer also asked if, given the recommendations to seek some alternative use involving potentially relocation, would the applicant pursue that or just go ahead and demolish the structure. Mr. Janke believes that if the HPB gave Council that flexibility with some urging to seek potential new owners, it would be done with vigor; and he added that, if the Council directed them, he and his staff would do everything they could to promote that. Mr. Weimer asked about the Town owned property and the possibility of moving this building to that land and continue to maintain it. Mr. Janke stated that the lot hasn't been zoned for that and that the avenue has not been investigated thoroughly. Mr. Weimer advised that the HPB takes this issue of historic preservation very seriously and, although the budget is a huge concern, it has no bearing on the HPB's decision to destroy a historically designated structure.

There was discussion about the timelines for the Seven Seas and the Cottage structures. Mr. Janke asked if it is possible to do these two things concurrently. Ms. Dalton requested to address his question. She restated the LDC which says that the "HPB may grant a SCA for demolition which may provide for a delayed effective date of six months." If a resolution was passed today, it could have an effective date of six months but it would not allow what Mr. Janke is saying (demolishing the building sooner than six months if relocation is infeasible); however, if the HPB passes a resolution with an effective date of today and suggest to the Town that they take other steps, the Town would not be legally obligated to take those other steps. The applicant needs a finite process today. Mr. Yerkes asked why the resolution today couldn't have an effective date three months from now. Ms. Dalton agreed that this was OK, but the applicant cannot go forward without the finite date when this is effective. Mr. Janke said that the applicant is looking for sign off on the HPB approving the demolition of the building. They all agreed that the best course of action is to set the effective date today in the resolution, but consider relocation sometime in the future, during which time the applicant can complete the paperwork and process to go ahead with the plan.

Mr. Yerkes asked if the Seven Seas project required a development order. Dr. Shockey said that rezoning is required from some of the uses but Mr. Yerkes still wanted to know

why it is required when the documentation says “may or may not be required.” Dr. Shockey advised that the Town manager has the authority to approve public capital improvements without a development order, even where one would otherwise be required for a private party. Mr. Yerkes asked Ms. Schober if the Mound House property option a reasonable one, in her opinion, for the relocation of this structure. Mr. Janke answered for Ms. Schober; he said that the Council hasn’t made a decision on this, but that the property could hold the building but didn’t know if it would be an appropriate use. Mr. Yerkes pointed out that the Mound House property could be a possible location for the Cottage if it were to be used and he asked Ms. Schober again for her opinion as to the possibility of moving the Cottage. There was more tense discussion between the three with not much succinct outcome.

Mr. Van Duzer said he cannot recommend and does not favor demolition of the Cottage. He said it fits the description of an historic structure and does not understand why this is even being considered. He asked if the applicant could move forward, with the structure still on site, to do the rest of the work needed to be done on the site area. Mr. Janke answered the Seven Seas project can but they could complete the landscape of the park with the building still there and the open space wouldn’t be there.

Mr. Mandel asked if one of the uses of the land adjacent to the Mound House be parking. Mr. Janke said that it was the original intent.

Ms. Shamp asked for the staff rebuttal comments. Dr. Shockey referred to the applicant’s comment on page 204 of the resolution, to the phrase “interest or quality” is the actual language in the regulation.

Ms. Shamp asked for questions from the HPB. Mr. Weimer asked for clarification on the address so as not to demolish the wrong parcel. With no further questions, Mr. Weimer suggested that the HPB recess for lunch, anticipating a lengthy upcoming discussion.

1:38 PM LUNCH BREAK
2:08 PM RECONVENE

Ms. Shamp opened HPB discussion. Mr. Weimer began by saying that the Cottage was designated in error, due to misinformation; however, he is uncomfortable in demolishing a hundred year old building which he feels should be saved. He said that he would favor giving the Town Council the flexibility to make the decision to demolish IF it was a necessity and they could find nowhere else to put it. So, his suggestion is to grant the flexibility with the caveat that the Town actively attempt to find someone who may want it.

Mr. Mandel agreed with Mr. Weimer but wants to actively seek a group or organization that has space and has funding to take over the building rather than demolish. He favors charging the applicant or staff to attempt to advertise or attract possible interested parties and then return to the HPB with the results at a later time.

Ms. Kay agrees that such an old building should not be demolished just because there are limited funds and no one interested in taking it over. She added that, IF she agreed with demolition, it would be with a delay in place to find a site or interested party.

Mr. Van Duzer again stated that he will not vote in favor of demolition.

Mr. Yerkes stated that the Town manager asked the HPB about a month ago to act on this urgently, and today the HPB was told the same thing today, including that if the HPB didn't act on this now, they would somehow be failing the public interest. He objected to this approach and the fact that the public has been led to believe that this would be finished by October unless the HPB stands in its way, when it is apparent that it will never be completed by then. He feels that the public interest hasn't been well served in this regard and he feels that the HPB is having "a gun put to their heads" in this decision. The Town should have brought this forward much sooner in order for it to have been handled in a more timely matter. Mr. Yerkes believes that, given the history and age of the Cottage, it is a unique and interesting building, with some parts of special interest, like the shell fireplace, and that the Town should take steps to preserve it. He would not support any demolition until proper steps are taken to try to preserve it, or move it to the Mound House site.

Ms. Barnes agreed with all of Mr. Yerkes points but realizes the problem in finding an interested party, with funding to do what needs to be done.

Ms. Shamp stated that, because of the relationship of this applicant/Town/owner of this property, the HPB has a special obligation to carefully review this decision and be sure that all information and avenues have been researched. She referred to the report, page 3 of 7, under LDC Sec.22-104, item by item, and commented on each (see report) and how this Cottage meets each of those criteria. Furthermore, she pointed out in that section, under "e:" "unless the demolition has been ordered by the court, the Certificate of Appropriateness for Demolition should not be issued until there are definite plans for the re-site of the property and a building permit or development order for the new construction has been applied for." She too could not vote for demolition at this point and asked the attorney for any other options. Both Ms. Dalton and Dr. Shockey responded, referring to Section 22-104c, referring to the delayed effective date of six months; the HPB can deny the Certificate of Appropriateness for Relocation without prejudice, saying that it did not fulfill all the criteria for the HPB to consider and then the applicant could come forward again with another application to relocate. Dr. Shockey wasn't sure that "without prejudice" was necessary since there is no provision preventing the applicant from making a similar request again.

Mr. Mandel asked if the HPB denied both without prejudice, could there still be a resolution that would perhaps urge the studying of the options for alternatives to demolition. Ms. Dalton advised that, in their actions as a quasi-judicial body, their actions can be appealed.

Mr. Weimer asked if there has been anything that has precluded the Town going forward

to look at relocation. Dr. Shockey responded that this was sort of a matter of who goes first, in a way: should the Council spend money to develop a relocation plan, then find out whether HPB would allow relocation, or find out whether the HPB would allow relocation, then spend money to prepare plans. Again, Mr. Weimer asked the same question, adding was there anything that has kept the Town, the applicant or anyone from coming to the HPB and saying “we’d like to move this building?” Dr. Shockey said the Town could have come forward with a request for certificate of appropriateness to relocate the building at any time since the building was designated, if that had been their intention.

Mr. Yerkes stated that he was ready to make a motion to act. Ms. Shamp asked for a pause, to ask one question of the attorney. She referred to “the HPB approves/does not approve the issuance of the SCA for the demolition of the building.” If the HPB does not approve, she asked what recourse the applicant has. Ms. Dalton stated that they can appeal, or come forward with a new request or, under 22-104f, come before the HPB a second time: *“if an undue economic hardship is claimed by the prope owner as the result of a denial of an SCA for demolition, the HPB shall have the power to vary or modify adherence to its original decision, no later than 35 calendar days from the date the original decision is issued..”* There was some discussion to clarify that this section only applies where demolition is requested.

Mr. Weimer asked for clarification about why the part above about “the HPB approves or does not approve the issuance of the SCOA for relocation” when there hasn’t been an application for relocation. Ms. Dalton stated that there has been one and Mr. Weimer asked where it is. Dr. Shockey said that the application contains a request for either/or and the narrative describes “requesting either/or” and the staff report includes the two separate requests. Ms. Dalton stated that there are two different applications, contained within one. Mr. Weimer asked for help in finding where, exactly in the application does it say “either/or.” Dr. Shockey said it doesn’t say “either/or,” but clarified that there are two separate requests, either or both or neither of which could be approved. Mr. Yerkes said “they want both; they’re asking for both, they are not asking for “either/or,” they’re asking for the right to do either one at their own choice. It’s a request for approval of both and we have the option to choose one, or the other, or both, or neither.”

Ms. Barnes asked, no matter what they decide, doesn’t the Council have final word? Ms. Dalton said “no;” however, the HPB makes a decision to allow/not allow the SCA, but then it opens the door for Council to act or not on their decision. It does not mandate them to act. She said that it seems to be staff’s position that HPB does not have enough information to consider the criteria to approve the relocation. Mr. Mandel pointed out that there was no option for leaving the Cottage where it is and finding another use for it there. Dr. Shockey said that could be done at any time, without an SCA. Ms. Dalton once again referred the HPB to Section 22-104c *“refusal by the HPB to grant a SCA for demolition shall be evidenced by a written order detailing the public interest which is sought to be preserved.”*

VII. Mr. Yerkes proposed approval of the HPB of the Town of Ft. Myers Beach Resolution

#2009-06 as amended previously to get the address and strap number correct. It is therefore resolved by this HPB as follows: *“HPB does not approve the issuance of a SCA for demolition of the subject property, subject conditions,...”* so fourth. *The HPB approves the issuance of a SCA for relocation of the subject property for the following reasons: ‘Findings of Fact and Conclusions of Law’: 1-the HPB finds that the building is of such interest or quality that it would reasonably meet at least one of national, state or local criteria for additional designation as an historical or architectural landmark, pursuant to the requirements of the LDC Section 22-104d.” 2-the HPB finds that the building or structure is of such design craftsmanship or material that it could be reproduced only with great difficulty or expense pursuant to the requirements of LDC Section 22-104d; 3- the HPB finds that the building or structure is one of the last remaining examples of its kind in the neighborhood, Town, county or the region, pursuant to the requirements of the LDC Section 22-104d; 4- the HPB finds that the building or structure does not contribute significantly to the historic character of a designated historic district, pursuant to the requirements of the LDC Section 22-104d, because the Town does not have a designated historic district; 5-the HPB finds that retention of the building or structure would promote the general welfare of the Town by providing an opportunity for the study of local history, or prehistory, architecture and design or by developing an understanding of the importance or value of a particular culture and heritage, pursuant to the requirements of the LDC Section 22-104d; 6-the HPB finds that there are definite plans for the reuse of the property if the proposed demolition is carried out pursuant to the requirements of the LDC Section 22-104d; however, it is not satisfied that removal of the Cottage is necessary to achieve the overall plan goals of the property as a community park; 7-the HPB finds that the demolition of the designated building has not been ordered by the appropriate agency due to unsafe conditions pursuant to the requirements of the LDC Section 22-104d; 8- the HPB makes no finding at this time on the criteria for issuance for SCOA pursuant to the requirements of the LDC Section 22-105, have not been met by this application for demolition to the extent that such criteria may apply; 9-the HPB has insufficient information to determine the requirements of LDC Section 22-101e. In accordance with Section 22-104c, the HPB is denying the Application for SCOA for demolition and hereby details the public interest which is sought to be preserved. The HPB finds: that this building is in excess of one-hundred years old; that certain design features in the interior of this building represent historical significance and should be preserved; that this building represents a significant point in history and significant historical events unique to this island.”*

Motion (above) by Mr. Yerkes;

Second (for discussion) by Mr. Weimer.

Open for discussion. Ms. Dalton cautioned the HPB that they needed to comply with Sec. 22-104c, in that the HPB must add a paragraph that the HPB is refusing to grant the SCA for demolition and we are now detailing the public interest which is sought to be preserved (added to end of the resolution above). More re-writing of the above language is suggested in “Findings of Facts” in the beginning of the italicized portion.

(Much discussion ensued regarding the wording in the previous statement and which SCA

is being approved or not approved).

After a long discussion, Ms. Dalton spelled out options for the HPB to move a resolution forward to deal with this. She said they could deny both of these requests and continue the hearing until the applicant can return with more information to address relocation rather than demolition of the structure.

Mr. Yerkes suggested that on page 2 of the resolution, instead of approving the SCA for relocation, the HPB should suspend action on the application for a period not to exceed 35 days in order to meet further with the applicant to revise or modify the application. Mr. Yerkes asked that the remainder of the resolution conform to the necessary findings to deny the request for demolition and to suspend action on the application for relocation.

Due to the problem in wording and the confusion to members, Ms. Shamp asked for a short recess to allow the attorney to craft the proper language to put Mr. Yerkes's request in place. Ms. Shamp decided to continue the hearing until 3:45PM and asked for motions to that affect.

**Motion to continue the HPB Hearing to 3:45 PM: Mr. Yerkes
Seconded by Ms. Kay;
Vote: 7-0**

**Motion to Adjourn as HPB/Reconvene as LPA: Mr. Yerkes;
Seconded by Ms. Barnes;
Vote: 7-0**

VIII. ADJOURN AS HPB-RECONVENE AS LPA

Reconvene at 3:20 PM-Ms. Barnes was excused for an appointment.

IX. PUBLIC HEARING

A. Ordinance 09-01 regarding vacation of Town interests in property (continued from 2/24/09)

After a brief discussion regarding the time remaining for the meeting, Mr. Mandel moved to continue the hearing of Ordinance 09-01 to the next meeting, scheduled for March 24, 2009, at 10:30 AM. Ms. Kay seconded the motion. The LPA voted unanimously (with Ms. Barnes absent) to continue the hearing of Ordinance 09-01 to the meeting scheduled for March 24, 2009 at 10:30 AM.

X. ADMINISTRATIVE AGENDA

A. Interim Report-Private Use of Right-of-Ways

Ms. Shamp and Mr. Van Duzer provided an update on issues of driveway apron design, etc. Mr. Van Duzer said that they are still working diligently on and it is very time consuming. He said they were not very far along. Since this issue seems to be bound to the issue of stormwater management planning, they suggested that real action could not

be taken until the stormwater management plan was closer to completion. An update on the stormwater management planning work should be available in the next several weeks, so Ms. Shamp and Mr. Van Duzer will work on the right-of-way use issue once that update is out and report back afterward.

XI. ADJOURN AS LPA-RECONVENE AS HPB

Reconvene to continue the HPB hearing from above. Mr. Yerkes thanked the attorney for her quick and accurate work on the construction of the resolution. Ms. Dalton warned the HPB to carefully review its Findings of Fact and referred to the 2004 designation resolution, HPB FMB 2004-02, saying that it should support each of the facts. She referred to Exhibit B to the staff report, a copy of the 2004 Resolution, which the then members reviewed and discussed. Once again, adjusted wording for the resolution was suggested, discussed and argued for the Findings of Fact for item #3. Mr. Yerkes asked the attorney to add a reference to 4.3, the paragraph beginning with “the history of the Cottage” from the applicant’s application. It was suggested that the REP Architect’s report from 2007 be included in the resolution by reference, along with the three criteria mentioned by Mr. Yerkes (age of the Cottage, the coquina fireplace and the historic significance of the building’s prior relocation).

Continued discussion regarding different pages and items in the resolution (members had copies to refer to). Ms. Dalton advised the board to look at #6, Findings of Fact, which refer to the restored Seven Seas building. Mr. Yerkes stated that this was not what the HPB is suggesting. Several more changes were made to the resolution to include additional and restated findings for denial of the request for SCA to demolish the building and to suspend action on the request for SCA to relocate the building.

Restatement of motion, as amended, by Mr. Yerkes;

Seconded, as amended, by Mr. Weimer;

Vote: 6-0, with Ms. Barnes absent.

Hearing was continued to April 14, 2009 to complete the hearing on the request for SCA to relocate the building, after extended discussion about times and scheduling issues. The HPB summoned Mr. Janke, stated their feelings against demolition and asked if there was enough time for the applicant to get the additional information for the relocation before the next meeting. Mr. Janke asked for clarification as to what the HPB wants the applicant to do.

Motion by Mr. Yerkes to continue the hearing to April 14, 2009 at 10:30 AM;

Seconded by Mr. Weimer;

Vote-6-0, with Ms. Barnes absent.

HPB Hearing COA2009-0001 Cottage SCA for relocation continued to April 14, 2009 at 10:30AM.

Motion to adjourn by Mr. Mandel;

**Second by Mr. Van Duzer;
Vote-5-0, with Ms. Barnes and Mr. Yerkes absent.**

XII. ADJOURN AS HPB and as LPA

All adjourned at 5:01 PM.

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

Vote: _____
Dennis Weimer, LPA Chair

- End of document