# MINUTES

## Monday, October 1, 2012

## FORT MYERS BEACH TOWN COUNCIL
**TOWN HALL – COUNCIL CHAMBERS**
**2523 ESTERO BOULEVARD**
**FORT MYERS BEACH, FLORIDA 33931**

## I. CALL TO ORDER

Mayor Kiker called to order the October 1, 2012 Regular Meeting of the Town Council at 9:02 a.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

## II. INVOCATION - Rev. Jeanne Davis, Beach United Methodist Church

## III. PLEDGE OF ALLEGIANCE

Town Clerk Mayher read the Proclamation in Recognition of Mayor Larry Kiker which highlighted his service to the community and expressed appreciation for his distinguished service to the Town of Fort Myers Beach.

Vice Mayor Raymond, Council Members, and the Town Manager presented Mayor Kiker with a plaque in recognition of his service to the community as a member on the Local Planning Agency and as Mayor of the Town.

Mayor Kiker expressed his appreciation for the kind words and gifts presented in honor of his last Council Meeting.

Recess at 9:10 a.m. – Reconvened at 9:45 a.m.

## IV. APPROVAL OF FINAL AGENDA

Consensus approved the Agenda as presented.

## V. PUBLIC COMMENT

Mayor Kiker noted Public Comment time was scheduled for discussion of items that were not on the agenda.

Public Comment opened.

Roy Hinkleman, President of the Laguna Shores Homeowners' Association, thanked Mayor Kiker for his many years of service to the Town and for doing a great job.

Richard Russell stated he was a 'snowbird' and that this was the first time he attended a Town Council Meeting. He reported he lived at Leonardo Arms and recounted his experience visiting the Town since his first visit in 1981 as it pertained to Little Estero Island and dredging. He requested the large white bags stay where they were currently located until after hurricane season. He requested the signage about 'no dogs allowed on the beach' be replaced as some appeared to be missing.

Jan Lee resident of Leonardo Arms, reported the beach at the south end needed some improvements to bring it back to the pristine appearance prior to Tropical Storm Isaac.

Public Comment closed.

Mayor Kiker noted to the Town Manager the requests to reinstall the signage regarding 'no dogs on the beach'; and to leave the 'bags' until the end of hurricane season.

Town Manager Stewart explained whether or not the 'bags' remained were up to the DEP under the Shoreline Declaration of Emergency. He noted that he would contact the DEP, but noted the condominium would have to come up with a long-term solution for that particular issue. He pointed out that the beach area described by Ms. Lee had a wildlife preserve designation and the DEP would not allow the Town to do as she requested.

## VI. IMAGE OF FORT MYERS BEACH

No speakers.

## VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Mandel expressed the appreciation from the Horizon Council for the Town's support. He reviewed his discussions with the DEP, Army Corps of Engineers, and NEPA regarding the dredging project; and he offered thanks to Jacqueline Kaiser of the Army Corps of Engineers, Danielle from the DEP, and Lisa of Senator Nelson's Office for their efforts on behalf of the Town as it pertained to beach renourishment.

## VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Jim Rodwell, Audit Committee Chair, recapped highlights from the Committee's September meeting and noted the Town did not have a formal investment policy and was not required to do so. However, he explained the Committee believed it would be beneficial to the Town to have a policy and requested approval from the Town Council to review and make recommendations to the Town for a formal investment policy.

Council Member Mandel discussed the Committee's request and his support of the request.

Town Manager Stewart reviewed his support of the Town having a formal investment policy in addition to the State guidelines. He recommended approval of the Committee's request.

Town Attorney Miller explained that if the Town does not have a formal investment policy adopted, then the Town was limited as to where they may invest funds.

Consensus approved the Audit Committee request to investigate and make a recommendation to the Council for a formal investment policy.

A. Presentation by the Public Safety Task Force

Mayor Kiker briefly reviewed the creation and purpose of the Public Safety Task Force which was different and separate from the Public Safety Committee. He noted there was now a formal Public Safety Task Force Committee that would be organized on October 15th and they would work on some of the results to be reported in this presentation.

Town Manager Stewart read the following statement concerning the Public Safety Task Force presentation: Motion to approve the expenditure of up to $30,000 for pedestrian and cyclist safety enhancements as presented to the Public Safety Task Force recommendations and to authorize transfer of funds to cover those costs from the Town's financial reserves. He pointed out that he had prepared a motion for Council's consideration and mentioned that Lee County was prepared to spend funds (approximately $120,000) for safety enhancements. He reported that various members of the Public Safety Task Force would each give a portion of the Task Force presentation.

Jean Webb, Town employee, gave the lighting aspects of the report using a PowerPoint presentation which included photographs, discussion, and information regarding the following:

- Estero Boulevard and Lennell – proposed railing, sidewalk, and crosswalk.
- Crosswalk lighting – 14 crosswalks with sub-standard lighting; lighting survey confirmed that 8 of the crosswalks had an average illumination of less than 1-foot candle; photometric analysis was recommended for 7 of the crosswalks; and proposed improvement to increase illumination to 1-foot candle. Crosswalks and recommendations reviewed were for Primo/Palmero, Miramar, Donora/Red Coconut, Lennell, Estero Beach and Tennis Club, Delmar, Buccaneer, Bahia Via, and Santini Plaza.

Mayor Kiker described the extensive research and site visits conducted by the Task Force members.

Jean Webb stated that as a result of the work by the Task Force over 30 lights had been reported to Florida Power & Light for repair.

Discussion ensued regarding photometric illumination; and crosswalks and missing pedestrian signage at Lennell.

Rob Phelan, Lee County Department of Transportation, gave the transportation aspects of the report using a PowerPoint presentation which included photographs, discussion, and information regarding the following:

- Crosswalks – adding crosswalks on Estero Boulevard; the need to provide ADA compliant crosswalks.
- Three identified improvements were a pedestrian median refuge, Rectangular Rapid Flashing Beacons (RRFB), and lighting at crosswalks. Sites reviewed and discussed included Estero Beach and Tennis Club, Estero Cove/Holiday Inn, Santini Plaza, Lenell, , and Red Coconut.
- The County was committed to improvements at the Estero Beach and Tennis Club and Estero Cove/Holiday Inn intersections and was seeking support from the Town for the proposed improvements to both locations (median refuge and RRFB).

He stated the County was requesting a letter or incorporation into the Council's motion approval for the recommendations (median refuge and RRFB) to the subject locations he outlined. He reported the County already had one RRFB in their possession and did support a second RRFB.

Consensus approved sending a letter to Lee County as requested.

John Pohland gave the signage aspects of the report which included photographs, discussion, and information regarding the following:

- Existing signage –
    - Removal of all 'no parking' signs on Estero Boulevard;
    - Add two signs with one at each end of the Island that says 'no parking in the right-of-way';
    - Removal of a temporary additional sign at the south end of the Island 'contractor violation sign';
    - Removal of all crosswalk signs that were not located at the actual crosswalk;
    - Removal of the ineffective 'no littering' signs;
    - Removal of two signs 'tune into 1640 radio';
    - Removal of the signs from the Matanzas bridge that were not permitted by FDOT as depicted in the presentation such as but not limited to 'beach parking', 'Pink Shell', 'farmers market';
    - Relocation of certain signs at the library.

He reported the Task Force intended to investigate the 'board signs'.

Town Manager Stewart explained that the Task Force had investigated signs as it related to safety in order to reduce the visual clutter and to help focus the driver's attention on the road.

Lt. Ron Martin, Fort Myers Beach Fire Department, gave the education and awareness initiative aspects of the report using a PowerPoint presentation which included photographs, discussion, and information regarding the following:

- Making the community aware of pedestrian safety; roadway signage/banners during 'season' at three locations (north, center, and south sections of the Island – approximate cost $1,200); public education to help change risk-taking behavior at hotels, bike rentals, and community shopping centers; community outreach for an 'awareness day' in January/February 2013 in Santini Plaza; and help to increase visibility of pedestrians with the use of glow-in-the-dark bracelets in evening hours.

Mayor Kiker discussed the information gained from the Task Force such as but not limited to the need for a street light maintenance program and noted that there were 19 lights turned off during 'turtle time'.

Town Manager Stewart requested Council approval to petition Lee County to remove certain signage since it was in the County's right-of-way.

**MOTION:** Council Member Mandel moved to accept the report of the Public Safety Task Force that the Town Council approve $30,000 for the pedestrian and cyclist safety enhancements, that the Town inform Lee County that the Town wanted two median refuges and two median refuge flashing signs; and that the signs as designated in the presentation should be taken down by the County; seconded by Council Member List.

Miffie Greer, resident, thanked the Task Force and Council for their work on public safety. She suggested that the informational pamphlet be given to the condominiums as it pertained to public education efforts, as well as the glow-in-the-dark bracelets.

Al Durrett, Public Safety Task Force member, expressed his pleasure with serving on the Task Force and noted how their work had positively impacted the Town.

Joanne Shamp, Chair of the LPA, noted the LPA had also discussed the problems with sign blight in the rights-of-way and that the LPA supported the proposed motion. She mentioned that public safety had been an issue of concern for Council Member Mandel since he was on the LPA many years ago. She reported that recently the owner/manager of 5580 Estero Boulevard informed her that several people had been hit at that site and that the resort was situated on both sides of the street. She recounted how New York City was placing the word 'Look' painted in the crosswalk.

Captain Powell, Lee County Sheriff's Office, mentioned that removing 'no parking' signs from the Island was not a good idea, especially as it pertained to special events and suggested further review.

Town Manager Stewart noted that during special events small 2' X 2' no parking signs were required to be placed on both sides of the roadway.

Mayor Kiker explained that the signs, if removed, could be reinstalled, if needed; and that the public safety work would be on-going through the Public Safety Committee.

Vice Mayor Raymond expressed his concern about public safety at 5580 Estero Boulevard.

**VOTE:** Motion approved, 5-0.

Recess at 11:10 a.m. – Reconvened at 11:30 a.m.

## IX. APPROVAL OF MINUTES

A. September 4, 2012 Town Council Meeting
B. September 4, 2012 Downtown Redevelopment Agency

**MOTION:** Council Member List moved to approve the minutes of as presented; second by Council Member Mandel.

**VOTE:** Motion approved, 5-0.

## X. CONSENT AGENDA

**A.** Retainer Increase for Legal Services, Fowler White Boggs
A request for Council approval of a retainer increase to $10,000/month

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member List moved to approve Consent Agenda Item A; second by Council Member Mandel.

**VOTE:** Motion approved, 5-0.

## XI. PUBLIC HEARINGS

A. Quasi-Judicial Hearing: VAR2012-0002, Dolphin Inn Sign Variance
B. Quasi-Judicial Hearing: VAR2012-001, Neptune Inn Sign Variance
C. Quasi-Judicial Hearing: VAC2012-001, Windover Petition to Vacate
D. Legislative Hearing: First and Only Public Hearing, Ordinance 12-07, Amendment of Chapter 10, LDC, Vacation of Plats

Mayor Kiker opened the Public Hearing at 11:32 a.m. for VAR2012-0002, Dolphin Inn Sign Variance.

Mayor Kiker asked if any Council Member had ex-parte communication regarding this item. Council Member Mandel – drove past the site; Council Member List – drove past the site; Mayor Kiker – drove

past the site; Council Member Kosinski – drove past the site; Vice Mayor Raymond – drove past the site.

Mayor Kiker asked the Town Attorney to swear in the witnesses; and Town Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman stated the Applicant requested staff present first. She presented comments for VAR2012-0002 Dolphin Inn sign variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph indicating the location of the subject property. She reported the applicant was requesting a variance from Sections 30-93(b), which required a 3' setback from any street right-of-way to allow a 0' street setback, and a variance from 30-154(c), which limited the height of a monument sign to be elevated no more than 18" above grade and 5' overall to allow 6'-7' for the monument supports and an overall height of 11'. She displayed a site map and photograph depicting the existing conditions and noted the distinct parking layout of the site. An artist's rendering of the proposed sign which was 6'-7' to the bottom of the sign and 11' overall in height. She reviewed the supporting Regulations of Section 34-87, Sections 34-87(3)(a), 34-87(3)(b), 34-87(3)(c), 34-87(3)(d), and 34-87(3)(e):

- There were exceptional or extraordinary conditions or circumstances that were inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy. The building was setback not only far from the property line but also from the edge of the pavement.
- Applicant did not provide analysis of alternative sign types of locations and addressed the parking.
- Staff recommended finding that there **are not** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that it does not justify the variance requested.
- That the conditions justifying the variance **are not** the result of actions of the applicant after the adoption of the regulation in question. The subject property was developed prior to the incorporation of the Town.
- That the variance granted **is** the minimum variance that will relieve the applicant of the regulation in question to his property.
- The Applicant **did not** provide discussion or analysis as to why other sign types or locations on the subject property could not meet requirements of Chapter 30.
- Applicant did not completely address the details of the height; therefore, staff found that the variance requested and as depicted in Exhibit C **was not** the minimum variance necessary to relieve an undue burden.
- That granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; however, the proposed sign is only minimally smaller than the current sign. With little to no justification provided by the applicant as the necessity of the request or the hardship on the subject property, staff found that granting the variance as requested **would** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- That the condition or circumstances on the specific piece of property for which the variance was sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question. The subject property did have a unique feature with the access driveway; however, staff found that the circumstances of this specific property on which the

variance was sought **is not** general in nature and could, therefore, justify the granting of the setback variance **only** and not the height variance.

She reported staff's recommendation as follows:

- **Approval** of the requested **setback variance** (Section 30-93(b)), based upon the requisite findings and conclusions for granting a variance under Section 34-87.
- **Denial** of the requested **height variance** (Section 30-154(c)), because the requisite findings and conclusions for granting a variance contained in LDC Section 34-87 have not been met.

She noted staff recognized that the condition of Estero Boulevard and proposed an alternative recommendation for consideration:

- Staff recommends that the height necessary to clear an average car was no more than 36".
- Section 30-154(9)(c) allowed for a base or support for a monument sign that extends no higher than 18" above adjacent grade. This 18" included in the overall sign height maximum of 60", which would leave 42" for the actual sign face.
- Staff suggested that the minimum variance necessary for the subject property would be a proposed sign modified to show a 3' hedge/planter combination base and a sign height of 3'6" for an overall height of 6'6". (This is a minimum variance staff recommended for the subject property.)

Zoning Coordinator Chapman reported staff an alternate recommendation as a viable option to recommend to Town Council, and staff recommended **approval** subject to the following conditions:

- Approval of the variance does not exempt the subject property from the LDC Section 30-55 permit requirements for signs.
- The overall height of the sign, measured from the elevation of the existing grade of the parking lot was not to exceed 6'6".
- Construction and/or remodeling of the sign must comply with all applicable codes and regulations, including building codes and lighting standards.
- If the principal on the subject property was removed or replaced for any reason, the variance would expire. The sign allowed by the variance must be removed within 30 days of the issuance of any demolition permit for the principal building. If the building is destroyed or damaged by natural disaster to the extent that it is rendered uninhabitable, then the sign must be removed within 30 days of the issuance of a demolition permit or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever occurs first. Placement of regulations in effect at the time of application for a permit.

She reported the Public Hearing before the LPA was heard on August 13, 2012 at which time there was a vote of 5-0 (Chair Shamp excused absence) in favor of approval with a proposed revision to the overall height allowanced from 6'6" to 9'.

Discussion ensued regarding the existing conditions at the subject property - grass area indicated on the site plan displayed.

Mr. Travis Owen, Applicant - Dolphin Inn, stated he agreed with the LPA's recommendation of a height allowance of 9'. He explained that on the south end of the subject property it went up to the Sea Watch property; and on the north end was the dumpster.

Discussion was held concerning the height consideration due to parked cars; potential restrictions for parking vans or trucks near the subject sign and the inability to control the type of vehicle parking;

minimal parking requirements at the site; relocation of the subject sign to other locations on the property and issues with sign visibility; signage dimensions and height as it related to the new sign ordinance.

Mr. Owen reported that he had examined his parking lot and explained how he was restricted as to where to place the sign.

Discussion continued regarding the height of the proposed sign as it related to visibility; vehicle obstruction to the current and proposed signage; and signage height and setback as it related to Exhibits D and E.

Mayor Kiker asked if there was a member of the LPA present for comment.

Al Durrett, LPA member, explained that the LPA had asked all of the same similar questions of the Applicant as Town Council and they came up with a vote to approve what the Applicant requested at 9' high.

Mayor Kiker asked if the LPA considered what would happen with future variance application as it pertained to a similar height request.

Al Durrett stated they looked at the subject application on an individual basis and decided that the Applicant should have the right to advertise his business since he was limited on parking.

Town Manager Stewart discussed how everyone wanted to have a business advertise with a sign that, in general, people could see. He noted that Council would look at what the Town's current regulations were and how they allowed for variances when there were certain existing conditions on-site that would not allow the regulations to fit. He pointed out that staff had recommended the minimum variance to be 6'6".

Discussion ensued regarding the requested variance and existing code; options for sign type, location, and size as discussed between staff and the Applicant.

Council Member List indicated her preference to actually view a 'visual' as it pertained to vehicle height and sign height.

Discussion was held concerning visual aide for the proposed request as it pertained to sign height; location of the current sign as it related to the County and adjoining property lines; and the potential for precedence.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion was held regarding parking spaces at the subject property.

Town Manager Stewart noted that the Applicant could place their business sign on their wall; however, the Applicant was not receptive to the alternative. He discussed alternative solutions and minimal variance and how it would relate to precedence.

Mayor Kiker suggested the Council individually make a site visit to the subject property.

Discussion ensued regarding continuing the matter.

Mr. Owen agreed to a continuance.

**MOTION:** Council Member List moved to continue the Public Hearing on Resolution 12-19 variance to November 5, 2012 at 9:00 a.m.; second by Council Member Kosinski.

**VOTE:** Motion approved; 5-0;

Public Hearing continued at 12:25 p.m.

Mayor Kiker opened the Public Hearing at 12:26 p.m. for VAR2012-0001, Neptune Inn Sign Variance.

Mayor Kiker asked if any Council Member had ex-parte communication regarding this item. Council Member Mandel – none; Council Member List – none; Mayor Kiker – none; Council Member Kosinski – none; Vice Mayor Raymond – none.

Mayor Kiker asked the Town Attorney to swear in the witnesses; and Town Attorney Miller swore in the witnesses.

Mayor Kiker noted the Applicant requests Town staff to present first.

Zoning Coordinator Chapman presented comments for VAR2012-0001 Neptune Inn sign variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph and indicated the location of the subject property. She reported the Applicant was seeking a variance form 30-154(c), which limited the height of a monument sign to be elevated no more than 18" above grade and 5' overall to allow 4'3" for the monument supports and an overall height of 8'10". Photographs of the sign's existing location and condition at the subject property were displayed. She showed photographs of a planted hedge (at grade) maintained at 48" which the Applicant had reported had been in place for decades and was the basis for the requested variance. She stated staff conducted research on the hedge and showed aerial photographs of the subject site which indicated the first section of hedge did not appear until the third quarter of 2007. She displayed the rendering of the proposed sign which was 4'3" to the bottom of the sign and 8'10" overall in height, and sign face a little over 31 square feet. Zoning Coordinator Chapman reviewed the supporting regulations, Sections 34-87(3)(a), 34-87(3)(b), 34-87(3)(c), 34-87(3)(d), and 34-87(3)(e) and discussed the following:

- The exceptional or extraordinary conditions indicated on the application was the hedge location on the subject property, and staff found upon research that was not exceptional or extraordinary condition as it had only been fully planted within the last two years; therefore staff recommended

this **was not** an exceptional or extraordinary condition or circumstance and did not justify the variance requested.

- *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.* The hedge was more recently planted than indicated; and staff, therefore, finds that the conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.
- *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.* With little to no justification provided by the Applicant as to the necessity of the request or the hardship on the subject property; therefore, staff found that the granting of the variance as requested **is not** the minimum variance necessary to relieve an undue burden.
- *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.* That the application was proposing a new monument sign that was smaller than the existing sign; however, it continued to be non-conforming with Chapter 30 of the LDC.
- Staff recommended the finding that the circumstances of the subject property for which the variance was sought are of so general or recurrent a nature as to make it more reasonable or practical to amend the regulation.

She stated staff made a recommendation of **denial** of the requested variance because the property does not meet the requirements for granting a variance under LDC Section 34-87. She noted that staff proposed an alternative recommendation to consider and discussed the following aspects of the alternative:

- The Applicant's proposed sign (Exhibit C) showed a height of 4'3" to the bottom of the sign and a sign height of 4'7" for an overall height of 8'10" measured from the adjacent grade.
- Staff recommended that the hedge and planter, combined, be maintained at no more than 36" tall.
- Section 34-1549(c) allowed for a base or support, for a monument sign, that extended no higher than 18" above adjacent grade. The 18" was included in the overall sign height maximum of 5', which would leave 3.5' for the actual sign face.
- Staff suggested that the minimum variance necessary for the subject property would be a proposed sign modified to show a 3' hedge/planter combination base and a sign height of 3'6" for an overall height of 6'6".

She displayed the 'Alternative Recommendation" should Town Council find the alternate recommendation as a viable option; staff would recommend **approval** subject to the following conditions:

1. Approval of this variance does not exempt the subject property from the LDC Section 30-55 permit requirements for signs.
2. The height of the sign, measured from the elevation of the existing grade of the parking lot to the base of the sign is not to exceed 6'6".
3. Construction and/or remodeling of the sign must comply with all applicable codes and regulations, including building codes and lighting standards.
4. The hedge and planter combination must be maintained at a height of no more than 36". Should the planter and/or hedge be removed for any reason, this variance will expire and the sign allowed by this variance must be removed within 30 days. Placement in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.

5. If the principal building on the subject property is removed or replaced for any reason, this variance will expire. The sign allowed by this variance must be removed within 30 days of the issuance of any demolition permit for the principal building. If the building is destroyed or damaged by a natural disaster to the extent that it is rendered uninhabitable, then the sign must be removed within 30 days of the issuance of a demolition permit or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever occurs first. Placement signage in conjunction with redevelopment of the site must comply with all regulations in effect at the time of application for a permit.

She reported that the request was heard by the LPA on August 14, 2012 at which time they recommended approval (5-0 with Chair Shamp excused absence) with the revised overall height allowance from staff s recommendation of 6'6" to 8'7".

Discussion ensued regarding the new buffering requirements as it pertained to the subject property; the existing conditions; the height and benefits of the existing hedge on the subject property; the dimension/measurement of the proposed sign and the overall height as described in the Code.

Casey Williams, representing Blue Vista Capital and the Neptune Inn, reported that he did not physically meet with staff on the site. He reported the Applicant agreed with Ms. Chapman's information about the longevity of the hedge. He stated the Applicant did evaluate other locations for the sign on the property and a wall sign, and reviewed the reasons they believed other locations on the property were not suitable (i.e. location of a fire hydrant, homes, and the main driveway). He displayed an artist's rendering of the proposed sign which depicted an average compact car behind the sign and explained that keeping the original height request was mainly due to the height of certain vehicles such as but not limited to vans and SUVs that would block the line of sight. He explained that each unit had an assigned parking space (71 rooms and 75 spaces, and needed spaces for employee parking) which would make it difficult to assign spaces on either side of the sign for compact cars. He stated the hedge would be trimmed to approximately 36 inches. He requested approval of the variance at the height recommended by the LPA which was 3 inches less than what the Applicant had originally requested.

Discussion ensued regarding the setback and property line of the subject property; dimension/height and location of the proposed sign; the existing hedge and proposed height reduction.

Zoning Coordinator Chapman clarified that the existing Code allowed for an 18 inch base in a monument sign height within the overall 5 feet.

Town Manager Stewart reviewed variance granted for Diamond Head.

Town Attorney Miller clarified that the Diamond Head variance involved a height variance because of the underground County-required retention which involved a fence and that the situation was completely beyond the control of the Applicant. She noted the other variance was Pierview which was also totally beyond their control due to the location of a utility pole and standpipe.

Town Manager Stewart noted that the extra little semi-circle at the top of the proposed sign was an extra 1.75 feet.

No comment was offered by the LPA representative present.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding the semi-circle at the top of the proposed sign.

Public Comment re-opened.

Ed Scott, resident, discussed his belief that the Diamond Head lowered their sign.

Public Comment closed.

Community Development Director Fluegel reported that the small 'pineapple articulation' at the top of the Diamond Head sign was 25 inches.

Council Member List discussed her concerns regarding the variance request as it pertained to using the 'hedges and cars' as the basis for granting the request.

Town Manager Stewart explained that palm trees were not a site impediment or part of the elevation or configuration of the site that would prevent moving the sign to another location.

Town Attorney Miller noted a prior comment about moving the sign to zero setback and noted that if that was an option the Council would have to amend it.

Mayor Kiker discussed his views that he was not comfortable with the options mentioned tonight and how the options should have already been discussed with the Applicant.

Council Member List explained what additional information she would prefer to receive about the variance request before making a decision.

Discussion was held concerning variance requests and the basis for variance requests; the hedge height; and the setback.

Casey Williams stated he would agree to a continuance with the stipulation that staff visit his site tomorrow morning at 8:30 a.m. when his sign contractor was on-site.

Town Manager Stewart reported that staff was able to meet with Mr. Williams and his sign contractor tomorrow morning.

**MOTION:** Council Member List moved to continue the Public Hearing on VAR2012-0001, Neptune Inn, to November 5, 2012 at 9:00 a.m.; second by Council Member Kosinski.

**VOTE:** Motion approved, 5-0.

Public Hearing continued at 1:10 p.m.

Recess at 1:10 p.m. – Reconvened at 1:25 p.m.

Mayor Kiker opened the Public Hearing at 1:25 p.m. for VAC2012-0001, Windover Petition to Vacate.

Town Clerk Mayher read the title of Resolution 12-21:
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, PROVIDING FOR THE VACATION OF PLAT FOR AN EIGHT FOOT (8') WIDE PLATTED STRIP LOCATED ADJACENT TO LOTS 19, 19A, AND 19B, BLOCK 6 GULF HEIGHTS SUBDIVISION, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED IN THE VICINITY OF 5200 ESTERO BOULEVARD; PROVIDING AN EFFECTIVE DATE.

Town Attorney Miller explained the request was for a vacation of plat under the current procedures and the Council would need to make a finding that the request was a *de minimus* vacation of which staff supported.

Beverly Grady, Roetzel & Andress, stated she was representing the Applicant and filed a petition to request a vacation for a plat filed in 1925. She displayed the plat and the aerial photograph of the subject site. She explained the subject site was a grassy, undeveloped strip of land. She reported the various utilities and the County were contacted, and no objections were received; and that she knew of no public use or claim to the subject property. She reported that Town staff has recommended approval of the *de minimus* request.

Public Comment opened.

No speakers.

Public Comment closed.

Town Manager Stewart pointed out that the various properties indicated were strapped under one number.

**MOTION:** Council Member Mandel moved to approve Resolution 12-21 vacating an eight foot strip of land located in Block 6 of Gulf Heights Subdivision as more particularly described in the Resolution; second by Council Member List.

**VOTE:** Motion approved, 5-0.

Public Hearing closed at 1:32 p.m.

Mayor Kiker opened the Public Hearing at 1:33 p.m. for Legislative Hearing: First and Only Public Hearing, Ordinance 12-07, Amendment of Chapter 10, LDC, Vacation of Plats.

Town Clerk Mayher read the title of Ordinance 12-07:
AN ORDINANCE AMENDING CHAPTER 10, ARTICLE II, DIVISION 5, SUBDIVISION II. OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "VACATIONS;" AMENDING THE TITLE TO "VACATION OF PLATTED RIGHTS-OF-WAY AND EASEMENTS; AMENDING SECTION 10-218, PURPOSE AND INTENT, BY CHANGING THE WORDING TO REFLECT THE CHANGE IN TITLE; AMENDING SECTION 10-219, BY REVISING THE REQUIREMENTS FOR PETITIONS TO VACATE PLATTED RIGHTS-OF-WAY AND EASEMENTS; AMENDING SECTION 10-220, "PROCEDURE" BY REVISING THE PROCEDURE TO OBTAIN A VACATION OF A PLATTED RIGHT-OF-WAY OR EASEMENT, REVISING THE CRITERIA TO BE CONSIDERED FOR A PETITION TO VACATE, PROVIDING FOR THE RECORDING OF A RESOLUTION VACATING A PLATTED RIGHT-OF-WAY OR EASEMENT, AND PROVIDING FOR RESERVATION, IN CERTAIN INSTANCES, OF A UTILITY EASEMENT OVER A VACATED RIGHT-OF-WAY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart announced a request to reschedule the Resolution to October 15, 2012.

Discussion ensued as to whether or not to continue Resolution 12-07 to a date certain.

Town Attorney Miller reviewed the changes to the vacation of plat procedure to more accurately reflect State law requirements and to make the process less cumbersome. She noted the amendments would streamline the process while still assuring that vacations of rights-of-way and easements are only approved where it has been determined by Town Council that the right-of-way or easement was no longer needed. She explained that a person would seek to vacate a plat which was a dedicated area that was usually an easement or a road; people are required to go to the utilities to obtain Letters of No Objection; and that the proposed resolution allowed for the Town to preserve a utility easement and required the action be recorded in the public records. She reported that the LPA recommended approval of the resolution.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Mandel moved to adopt Ordinance 12-07, Vacation of Plats; second by Council Member Kosinski.

**VOTE:** Motion approved, 5-0.

Public Hearing closed 1:40 p.m.

## XII. ADMINISTRATIVE AGENDA

A. Appeal of Community Development Administrative Action, 2500 Estero Boulevard
A request for the Town Council to reconsider an Administrative Action regarding a property owner's request to build according to the base flood elevation that was in effect when the building permit was issued.

Town Manager Stewart reported the Town issued a permit a number of years ago to a site at a time when FEMA was preparing to change some regulations; at the same time the economy declined; and the viability for the financing of the project came into jeopardy. He added that the State required counties and cities/towns to extend permits for two years past when the permits were originally effective and then decided to extend the permits again. He recapped the property owner's actions to build according to the base flood elevation that was in effect at the time the building permit was issued; the appeal to the Community Development Director's Administrative Action extending the building permit but that the property had to comply with the current Town Floodplain Ordinance; and the direction to the Town Attorney from Council to seek an opinion from the State of Florida Attorney General concerning which legislation prevailed.

Town Attorney Miller reported the Attorney General responded and stated that due to the speculative nature of the question involved, that is, whether compliance with the special act which would require non-compliance with the flood plain ordinance could result in action by FEMA to disqualify the Town from the National Flood Insurance Program, they would not be rendering an opinion. She added that Attorney Pritt, representing the Applicant, has requested that this matter be brought back before the Town Council for a final determination of his appeal in light of the recent action by the Attorney General.

Attorney Pritt, representing the Applicant, reviewed action by the State Legislature to provide a means of relief when permits were issued and the building could not be done - "*Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued, except if is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health*". He noted he researched the definition of 'immediate threat to public safety or health' and reported there were 78 cases in the State of Florida where the courts interpreted 'immediate threat' as something that was going to happen right away. He argued his position that the case at hand did not have an 'immediate threat', and recapped his work as it pertained to the appeal. He stated he offered on behalf of his client that if the Town gets into a problem with FEMA over granting what was clearly allowed under State law (overriding the decision) that the Mr. Shockey would defend the Town. He stated his belief that this was the one and only permit that the Town had which would qualify under the subject provision.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member Mandel noted that the last time this subject was discussed there were a number of residents present who expressed concerns about potential insurance rate increases and loss of the flood insurance program by FEMA as it pertained to the subject appeal. He questioned how the matter could be addressed by Council without having a letter from FEMA.

Town Manager Stewart stated that the Town asked FEMA for such a letter and they declined.

Town Attorney Miller explained the concern that the local floodplain ordinance was a federally-mandated ordinance in order to participate in the Flood Insurance Program.

Discussion was held regarding whether or not there was a timing issue involved in the matter and how the appeal process related to the permit extension.

Town Attorney Miller stated she would rather see a Federal Court tell the Town that they had to permit the Applicant to build below floodplain base elevation, and that she was not comfortable with the Town allowing the Applicant to build.

Town Manager Stewart recommended that Council deny the appeal.

Discussion ensued regarding the potential construction project; FEMA requirements; the Town's Comp Plan; and federal law.

Attorney Pritt discussed his views on taking the matter to a federal court and potential risks to the Town by taking the action to court.

Discussion was held regarding the Applicant's prior actions and decisions regarding whether or not to build; dates for permits issued for the subject property, extensions by the State, and FEMA regulations.

Council Member List discussed the basis for her support to deny the appeal.

Council Member Kosinski discussed his belief that the Applicant did not provide enough justification for the Council to consider their request.

Mayor Kiker noted the legal opinion offered by Town Attorney Miller.

Discussion ensued regarding whether or not the permit was expired.

Town Attorney Miller noted that the current State legislation stated that 'in no event shall a permit extend longer than four years'; and explained her belief that the permit was expired and the Council did not have the authority to extend it because of changes in building codes.

**MOTION:** Council Member Kosinski moved to deny the appeal and not allow the property owner to build according to the base flood elevation that was in effect when the building permit was issued; second by Council Member List.

**VOTE:** Motion approved, 4-1; Mayor Kiker dissenting.

B. Resolution 12-18, Joint Unified Local Mitigation Strategy
FEMA Community Rating System requires the Flood Mitigation Plan to be updated every 5 years.

Town Clerk Mayher read the title of Resolution 12-18:
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RESCINDING RESOLUTION 08-22 WHICH ADOPTED THE JOINT UNIFIED LOCAL MITIGATION STRATEGY FOR LEE COUNTY; ADOPTING THE UPDATED LOCAL MITIGATION STRATEGY, PREPARED BY THE LOCAL MITIGATION STRATEGY WORKING GROUP OF LEE COUNTY, AS THE FORMAL GUIDE FOR THE TOWN OF FORT MYERS BEACH HAZARD MITIGATION ACTIVITIES; AND PROVIDING AN EFFECTIVE DATE.

Planning Coordinator Josh Overmyer reported the Joint Unified Local Mitigation Strategy was required to be updated every five years that all the communities in Lee County have worked together to keep updated; and it also qualified as the Town's Floodplain Management Plan.

Council Member Mandel asked if there were any historic Fort Myers Beach structures included.

Community Development Director Fluegel stated based upon the map it appeared there were historic structures included.

**MOTION:** Council Member Mandel moved to adopt the Unified Local Mitigation Strategy; second by Council Member Kosinski.

Public Comment opened.

No speakers.

Public Comment closed.

**VOTE:** Motion approved, 5-0.

## XIII. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

## XIV. TOWN MANAGER'S ITEMS

A. Mound House Update

Town Manager Stewart stated the Council was provided with a copy of the Public Works Mound House Projects Update Report; and that the Request for Proposals for the Mound House restoration has gone out and there had already been two meetings with potential construction firms.

He thanked the Mayor for the opportunity to work with him for the past two and a half years.

## XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Miller – no items or reports; and echoed the Town Manager's comments regarding working with the Mayor.

## XVII. COUNCILMEMBER ITEMS AND REPORTS

Council Member Mandel – no items or reports.

Council Member List – reported the first session of the Fifth Grade Council will be held on Thursday at 8:00 a.m. She added that retired Federal Supreme Court Judge O'Connor was working on a program to increase Civics in schools across the country.

Vice Mayor Raymond – suggested if they could invite the people who would be at the Council Meeting to be interviewed by the Council to the Work Session on October 15th, and then the voting would be conducted during the Regular Meeting; and also suggested this be noted somehow in the newspaper. He stated that he would like to apply for the Mayor's position as Liaison on the Public Safety Committee.

Council Member Kosinski – no items or reports.

Mayor Kiker – thanked the Council and staff for sharing their time and lives.

## XVIII. AGENDA MANGEMENT

No items to add.

## XIX. RECAP OF ACTION ITEMS

Town Manager Stewart recapped the Action Items added during the meeting:

- Staff would set aside the $30,000 approved for Public Safety Task Force recommendations
- Staff would prepare a letter to Lee County asking for the two median refuges and RRFBs and to remove the signage as indicated along Estero Boulevard
- Staff would initiate the retainer fee increase for Fowler White Boggs as approved
- Staff would work together with the Neptune Inn and Dolphin Inn as directed
- Staff would take the appropriate actions regarding the Petition to Vacate
- Staff would forward the notice of approval for the Joint Unified Mitigation Strategy as approved

Mayor Kiker passed the gavel to Vice Mayor Raymond.

Motion by Mayor Kiker, seconded Council Member List to adjourn. Meeting adjourned at 2:35 p.m.

Adopted 11-5-12 With (Without changes.) Motion by Kosinski / List

Vote: 5-0

Michelle D. Mayher, Town Clerk

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