

## MINUTES

**Monday, December 17, 2012**

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

### **I. CALL TO ORDER**

Mayor Raymond called to order the December 17, 2012 Regular Meeting of the Town Council at 6:30 p.m. Present along with Mayor Raymond: Vice Mayor Mandel, Council Members Andre, Kosinski, and List. 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. Forrest Critser, First Baptist Church of Fort Myers Beach**

### **III. YOUTH COUNCIL – Fort Myers Beach Elementary School**

Steele Byrne reported the Fort Myers Beach Elementary School would be hosting their Annual Holiday Program; and announced the students would be selling works of art they created to help raise funds to support their art classes.

Juliet Griffith gave an update on the school's Holiday Luncheon held in December which was enjoyed by over 100 family members. She noted that three students from the University of Georgia had lunch with the Beach Elementary students after they had worked at the Matanzas Pass Preserve. She reviewed details of the school's candy-gram sales and anticipated delivery; and a pancake breakfast that was held to raise funds to purchase gifts for needy families.

### **IV. PLEDGE OF ALLEGIANCE**

### **V. APPROVAL OF FINAL AGENDA**

Council Member List pulled Consent Agenda Item C, Resolution 12-32, for discussion.

Vice Mayor Mandel pulled Consent Agenda Item B, Supplemental Task Authorization to Tetrattech, for discussion.

Mayor Raymond requested to move up Administrative Agenda Item E, Resolution 12-28 – Tobacco Prevention Program.

Consensus approved the Agenda as presented and amended.

### **Administrative Agenda**

E. Resolution 12-28, Tobacco Prevention Program

A resolution calling for tobacco retailers within the Town of Fort Myers Beach to cease marketing and selling flavored tobacco products.

Brendan Donahue of the Tobacco-Free Lee County Coalition and also representing Students Working Against Tobacco, reviewed health statistics associated with tobacco use. He recounted highlights of a successful State law suit in 1997 against the tobacco industry which included but was not limited to a restriction that the tobacco companies could not market tobacco products to young people. He discussed how the tobacco industry had violated the restrictions placed on them, and distributed samples of flavored tobacco products and packaging that are marketed and appealed to children. He requested the approval of the proposed resolution that would ask retailers to voluntarily not sell these types of candy-flavored tobacco products.

Kevin Kirkwood of the Tobacco-Free Lee County Coalition echoed Mr. Donahue's comments and stated he supported Mr. Donahue.

Mayor Raymond told of his recent meeting with members of Students Working Against Tobacco and the Tobacco-Free Lee County Coalition.

Discussion was held concerning the marketing and sale of candy-flavored tobacco products.

Town Clerk Mayher read the title of Resolution 12-28:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, URGING TOBACCO RETAILERS TO CEASE MARKETING AND SELLING FLAVORED TOBACCO PRODUCTS WITHIN THE TOWN LIMITS OF THE TOWN OF FORT MYERS BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.

Public Comment opened.

No speakers

Public Comment closed.

**MOTION:** Council Member Andre moved to approve Resolution 12-28, calling for tobacco retailers within the Town of Fort Myers Beach to cease marketing and selling flavored tobacco products; second by Council Member Kosinski.

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

## **VI. PUBLIC COMMENT**

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

Public Comment opened.

No speakers.

Public Comment closed.

## **VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Council Member List described her participation with the Beach Elementary School 3<sup>rd</sup> Grade Art Class trip to the library where they decorated the Christmas tree with the ornaments the students created. She reported she attended a luncheon with the Beach Elementary School 5<sup>th</sup> Grade Council; and noted their work on their holiday event that was to be held tomorrow night; and the students' art sale. She announced an author she knew had donated his latest book to the Beach Elementary School and read it to approximately 90 students.

## **VIII. IMAGE OF FORT MYERS BEACH**

Vice Mayor Mandel reported that Nervous Nellie's was arranging a promotion to have a 'tall ship' which was a privateer replica come to Fort Myers Beach approximately January 3<sup>rd</sup>-17<sup>th</sup>. He added the 'educational' ship would be available for students to tour the ship. He described his efforts with the owner of Nervous Nellie's and the TDC to determine how the ship could be marketed and attract 'educational' vacationers. He noted the ship would be at Nervous Nellie's since it was so tall it could not fit under the bridge. He reported that the people from the ship's organization would be in town January 7<sup>th</sup> and he requested the Council prepare a proclamation welcoming the ship to Fort Myers Beach.

**MOTION:** Vice Mayor Mandel moved that the Council issue a proclamation that would welcome the ship to Fort Myers Beach; second by Council Member List.

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

## **IX. ADVISORY COMMITTEES ITEMS AND REPORTS**

Vice Mayor Mandel reported the Safety Committee had approved a banner which would be put up at various locations around the Town after the holidays. He added that the Safety Committee would be getting a sign for Delmar to slow down vehicles. He announced the County had indicated that in January they would start the two refuge islands on Estero Boulevard.

**X. APPROVAL OF MINUTES**

- A. November 19, 2012 Town Council Meeting
- B. November 19, 2012 Town Council Work Session

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

Council Member Andre requested a grammatical change on Page 5, ~~by~~ examined to be examined.

**AMENDMENT:** Motion maker amended the motion to reflect Council Member Andre's request; second agreed.

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

**XI. CONSENT AGENDA**

- A. New Year's Eve Celebration – Request for Waiver of Open Container  
A request to allow alcohol served within the Times Square areas for New Year's Eve.

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

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

- B. Supplemental Task Authorization to Tetrtech for Consulting Services for Phase I and Phase IA Potable Water Rehabilitation  
Request for approval of supplemental task authorization under the On-Going Professional Services Agreement with consultant firm, Tetrtech, to provide assistance in design and construction of the Phase I and Phase IA Water Distribution System improvements.

Vice Mayor Mandel stated he had no opposition to approving the supplemental authorization as presented; however, he wanted to add a suggested that they also have staff proceed with a preliminary application to the State Revolving Fund (SRF) for public infrastructure. He noted the Town may not need it, but it seemed to make sense to start the preliminary application. He asked for approval to continue conversations with Senator Nelson's Office to determine if federal funding was available.

Town Manager Stewart explained that SRF was a funding mechanism whereby communities could borrow money at a very low, reasonable rate and that it was not a grant. He reviewed the definition of a

‘shovel-ready’ project as it pertained to SRF. He requested that the addition to the motion state the ‘requested amount for approval is \$49,970’.

**MOTION:** Vice Mayor Mandel moved to approve a supplemental task authorization under the On-Going Professional Services Agreement with consultant firm, Tetrattech, to provide assistance in design and construction of the Phase I and Phase IA Water Distribution System improvements and the amount of funding required is \$49,970, and in addition the Town would make a preliminary application to the State Revolving Fund and carry on conversations with Senator Nelson’s Office; second by Council Member Andre.

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

C. Resolution 12-32, Aircraft Noise Over Fort Myers Beach

Mayor Raymond recognized the hard work the Committee had conducted over a number of years on the topic of aircraft noise of Fort Myers Beach, and thanked all of the Committee members.

Council Member List noted it was her understanding that the Committee had four additions they were requesting to be included in the proposed resolution. She requested the four items be restated.

Town Clerk Mayher read the title of the Resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA SUPPORTING THE RECOMMENDATIONS CONTAINED IN THE DOCUMENT TITLED “SOUTHWEST FLORIDA INTERNATIONAL AIRPORT FEDERAL AVIATION REGULATIONS (FAR)” PART 150 OVERVIEW FINAL REPORT SUMMARY DATED NOVEMBER 2012; PROVIDING AN EFFECTIVE DATE.

Public Comment opened.

Tom Babcock distributed copies of the five items the Committee would prefer to see included in the proposed resolution:

1. To make sure the document that was identified as part of the Resolution which would be carried on for approval to the FAA, was the actual document that was being approved.
2. To accurately identify the approving group – the Board of Port Commissioners
3. To approve the recommendation from 2006 which was to keep the aircraft high (at least 3,000 feet over Fort Myers Beach
4. To identify Fort Myers Beach as more than just the shoreline; Appendix R - to increase the waypoint to 3,300 feet
5. To approve the resolution with the recommended changes; attach to it the two previous resolutions that was passed by previous Town Councils and that they be forwarded to the Board of Port Commissioners and to the Port Authority, and insure they were included in the testimony from the hearing

He requested that one member of the Town Council be a representative who would appear at the hearing, and introduce the resolution and ask that it be included in the testimony.

Council Member List recognized the hard work of the Committee over the years, and suggested the Council approve the proposed resolution with the recommended changes by the Committee.

Council Member Andre asked if the Town Attorney had any concerns regarding the recommended changes by the Committee to the proposed resolution.

Town Attorney Miller responded in the negative.

Discussion was held regarding the recommended changes such as but not limited calling the approving group the Board of Port Commissioners and including former approved resolutions.

Council Member Andre asked if the ultimate destination of the proposed resolution the FAA.

Mr. Babcock responded in the affirmative.

Discussion continued regarding the recommended amendments to the proposed resolution by the Committee; the ultimate destination of the resolutions to the FAA; the proposed elevation restrictions over Fort Myers Beach and all of Estero Island; and the new waypoint.

Tom Merrill discussed the waypoint, elevation over Fort Myers Beach and Estero Island, and engine noise.

Discussion continued regarding the recommended amendments to the proposed resolution, the aircraft elevation over the Town, and engine noise.

Town Attorney Miller questioned Section 2 and requested clarification that the correct name of the document was listed.

Discussion was held and consensus was that the document with the November date was correct.

Discussion was held regarding the importance of accuracy within the proposed resolution.

Town Attorney Miller suggested she would contact the County Attorney to verify certain issues.

Mayor Raymond recommended the Town Attorney revise the proposed resolution and the Council could vote on the matter at the first meeting in January.

Council Member Andre noted his view that some of the technical information should be included in the proposed resolution.

Mayor Raymond asked if there was a member of Council who would like to be the Town representative to read the resolution into the record at the Board of Port Commissioners meeting on January 14<sup>th</sup>.

Council Member List volunteered to represent the Town Council at the Board of Port Commissioners meeting on January 14, 2013.

Public Comment closed.

## **XII. ADMINISTRATIVE AGENDA**

### **A. Lee County Animal Control Services Agreement**

Request approval of the Domestic Animal Control contract with Lee County in the amount of \$79,144.

Town Manager Stewart offered a brief update on the matter and noted there was an increase over last year's contract amount. He noted that he had forwarded a memo to the Council this past July which outlined his concerns over the contract methodology. He reported he had been working with other municipalities regarding the allocation methodology used by Lee County Domestic Animal Services, and in particular the City of Cape Coral. He explained that he had not heard back from the previous County Manager on this matter, but did speak recently to the Interim County Manager. He stated he was hopeful that he would be offered the opportunity to meet with Lee County to present the Town's concerns; however, at this time the contract, which should have been approved in October, did need to be approved at this time so a contract would be in place. He stated Town staff would continue to negotiate with the County to work to mitigate the charges within the contract.

Town Attorney Miller noted there was a provision in the proposed contract that the contract could be amended by mutual agreement; and that there was a termination clause with a 60-day notice.

Discussion was held concerning the highlights of the contract regarding extension/renewal and compensation adjustment.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Andre moved to approve the Domestic Animal Control contract with Lee County in the amount of \$79,144; second by Council Member List.

**VOTE:** Motion approved, 4-1; Council Member Mandel dissenting.

Town Manager Stewart indicated that he had forwarded copies of the analysis prepared by the City of Cape Coral's Budget Administrator that showed where charges had been excessive and the methodology formula was not equitable. He pointed out that the unincorporated county areas utilize 60% of the services that Domestic Animal Control provided throughout Lee County, but they charge against themselves only 47% of the personnel costs. He stated there was an article in the newspaper today that indicated he had spoken with the reporter; however, that was incorrect and that the reporter took his comments from his July memo to Town Council.

B. Mound House Parking Agreement

A request to approve an agreement between the Town/Mound House and First Baptist Church for Mound House parking.

Town Manager Stewart reviewed the request by Council for staff to investigate and locate overflow parking for the Mound House visitors; and staff's work to produce a Parking Lease Agreement, which was prepared by the Town Attorney, between the Town and the First Baptist Church in order to use their parking area as overflow parking. He thanked Mayor Raymond for his assistance on this matter. He noted there was no "joint parking agreement" necessary for off-site parking to meet minimum requirements; and that the Mound House had the minimum required parking spaces on-site. Therefore, the Town was not required to have a "joint use agreement" because that would have limited the distance from how far the parking could be away from the Mound House. He added that the lease rate was \$250 per month.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Mandel moved to approve an agreement between the Town/Mound House and the First Baptist Church for Mound House parking; second by Council Member List.

Vice Mayor Mandel requested the Town Attorney to include language in the agreement to clarify that the parking was for cars and buses.

Town Attorney Miller acknowledged the request.

Vice Mayor Mandel questioned appropriate signage to indicate the church's parking lot was available for overflow parking from the Mound House.

Town Manager Stewart stated staff would install the appropriate signage where permitted by the sign ordinance.

Town Attorney Miller stated she would add at the end of Paragraph 1, "*for overflow parking of automobiles and buses for the Mound House*".

**AMENDMENT:** Motion maker amended the motion to include the language stated by the Town Attorney to add the end of Paragraph 1, "*for overflow parking of automobiles and buses for the Mound House*"; Second agreed.

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

C. Introduction of Ordinance 12-10, Amendment to 12-06, Public Safety Committee

Town Clerk Mayher read the title of the Ordinance:

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE IV, DIVISION 7 OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, "PUBLIC SAFETY COMMITTEE;" AMENDING SECTION 2-313 BY ADDING A NEW SUBSECTION (g) RELATING TO THE APPOINTMENT OF *EX OFFICIO* NON-VOTING MEMBERS TO THE COMMITTEE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart reviewed how the Lee County Sheriff's Office had expressed their desire to have a LCSO representative and a representative of the Fort Myers Beach Fire District to remain on the Public Safety Committee. He noted in order to have these two members included in the structure of the Committee as *ex officio* non-voting members that the Ordinance had to be amended. He recommended approval of the proposed ordinance.

Town Attorney Miller mentioned that tonight Council was introducing the ordinance and setting a public hearing date.

Mayor Raymond asked if there was a member of the Local Planning Agency in attendance.

No LPA representative was recognized.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Andre moved to introduce Ordinance 12-10, amending Ordinance 12-06, Public Safety Committee, and set a public hearing date for January 7, 2013 at 9:00 a.m.; second by Vice Mayor Mandel.

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

D. Introduction of Ordinance 12-11, Elections Canvassing Board

Town Clerk Mayher read the title of the Ordinance:

AN ORDINANCE CREATING A NEW DIVISION 12 IN CHAPTER 2, ARTICLE IV OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, "ELECTION CANVASSING BOARD;" CREATING SECTION 2-460, "CREATION AND PURPOSE; COMPOSITION;" CREATING SECTION 2-461, "DUTIES;" PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart explained this was a 'routine' ordinance that must be approved and forwarded to the Supervisor of Elections Office calling for a Canvassing Board for the next election. He noted that tonight Council was introducing the ordinance and setting a public hearing date.

Town Attorney Miller reported this item would normally be in the Town's Charter; however, it was not. She explained at the point when the Town conducts their next Charter review that this would probably be rolled into the Charter at that time.

Mayor Raymond asked if there was a member of the Local Planning Agency in attendance.

No LPA representative was recognized.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Kosinski moved to introduce Ordinance 12-11, Elections Canvassing Board, and set a public hearing date for January 7, 2013 at 9:00 a.m.; second by Council Member Andre.

Council Member List questioned the inclusion of the Town Clerk on the Canvassing Board.

Town Manager Stewart explained that usually it was the Town Clerk who attended; however, if for some reason the Town Clerk was not able to attend another staff member would be designated as the Acting Town Clerk.

Town Clerk Mayher stated that as the Town Clerk she was the Qualifying Officer for elections and it would be appropriate that she was part of the Canvassing Board.

Discussion was held regarding who would serve on the Canvassing Board if the Town Clerk was unable; and it was determined by the Town Attorney the person serving as "Acting Town Clerk" would be able to serve on the Board.

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

E. Resolution 12-28, Tobacco Prevention Program

A resolution calling for tobacco retailers within the Town of Fort Myers Beach to cease marketing and selling flavored tobacco products.

Discussed earlier on the Agenda per Council's approval during Item V – Approval of Final Agenda.

**Recess at 8:02 p.m. – Reconvened at 8:15 p.m.**

**XIII. PUBLIC HEARINGS**

A. Quasi-Judicial Hearing Case SEZ2012-0003, Pete's Time Out Special Exception

A request for a special exception in the Downtown Zoning District to amend zoning approval

for alcohol license type from 2COP to 4COP, hours of operation and live music.

Mayor Raymond opened the Public Hearing.

Town Manager Stewart noted the special exception request dealt with the type of alcohol license from 2COP to 4COP and extend hours of operation.

Mayor Raymond asked if any Council Member had ex-parte communication regarding this item. Council Member Andre – none; Council Member List – site visit, spoke with owner; Vice Mayor Mandel – site visit, spoke with owner; Council Member Kosinski – none; Mayor Raymond – site visit.

Mayor Raymond requested Town Attorney Miller to swear in the witnesses; and the Town Attorney swore in the witnesses.

Zoning Coordinator Chapman presented comments for SEZ2012-0003 Pete's Time Out on behalf of the Town of Fort Myers Beach. She noted the location of the subject property was at 1005 Estero Boulevard; and noted this was a special exception request in the Downtown zoning district to change the alcohol license type from a 2-COP to a 4-COP, to amend the hours of operation for alcohol consumption from 7:00 a.m. to 10:00 p.m. 7-days a week to 7:00 a.m. to 2:00 a.m. 7-days a week. She briefly reviewed the Land Development Code supporting regulations in Chapter 34-88 as they applied to the special exception request. She stated that staff recommended approval of the request to approve a special exception that amends zoning approval for outdoor consumption on premises from 2COP to 4COP and to extend the permitted hours of operation for alcohol consumption to 7:00 a.m. to 2:00 a.m.; and that staff recommended approval with no conditions. She noted the special exception request went before the Local Planning Agency on December 11, 2012 and that they voted 6-1 for approval (Dissenting Ms. Shamp). She added that the dissenting vote requested clarification on the hours of operation versus the hours of operation for alcohol consumption, and that the LPA recommended one condition "*the principle use of the subject property shall remain as restaurant, but incidental package sales shall be permitted*".

Council Member List questioned staff's view of the condition recommended by the LPA.

Zoning Coordinator Chapman felt it was a 'valid' condition.

Council Member Andre requested the definition of 'limited'

Town Attorney Miller the word 'limited' would prevent the business from changing exclusively to a package liquor store.

Council Member List asked if a 4COP license allowed package liquor sales.

Town Attorney Miller responded in the affirmative.

Discussion ensued regarding the 4COP license, permitted package liquor sales, maintaining the principle business as a restaurant, and allowing for incidental sales.

Mayor Raymond questioned the hours of operation for sale of liquor in the Downtown and Times Square.

Zoning Coordinator Chapman stated liquor sales were permitted until 2:00 a.m.

Discussion was held regarding other businesses in Times Square and their hours of operation, and the local ordinance that allowed alcohol consumption until 2:00 a.m.

Mayor Raymond asked if there was a member of the LPA present for comments.

No LPA representative was present.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Kosinski moved in Case SEZ2012-003, Pete's Time Out special exception, to approve the requested Special Exception in the Downtown Zoning District to amend zoning approval for alcohol license type from 2COP to 4COP and extend hours of operation currently approved for 7:00 a.m. to 10:00 p.m. daily to 7:00 a.m. to 2:00 a.m. daily for the subject property located at 1005 Estero Boulevard; and include the condition that *the principle use of the subject property shall remain as restaurant, but incidental package sales shall be permitted*; and the Findings and Conclusions:

1. Changed or changing conditions do exist that make the requested approval, as conditioned, appropriate;
  2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
  3. The requested special exception, as condition, meets or exceeds all performance and locational standards set forth for the proposed use;
  4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources;
  5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;
  6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34;
- Second by Vice Mayor Mandel.

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

Mayor Raymond closed the Public Hearing.

B. Quasi-Judicial Hearing: SEZ2012-0002, La Ola Special Exception

A request for a special exception in the Downtown Zoning District to amend zoning approval for alcohol license type from 2COP to 4COP, hours of operation and live music.

Mayor Raymond opened the Public Hearing.

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

Mayor Raymond requested Town Attorney Miller to swear in the witnesses; and the Town Attorney swore in the witnesses.

Zoning Coordinator Chapman presented comments for SEZ2012-0002 La Ola on behalf of the Town of Fort Myers Beach. She noted the location of the subject property was at 1035 Estero Boulevard; and noted this was a special exception request in the Downtown zoning district to change the alcohol license type from a 2-COP to a 4-COP, to amend the hours of operation, and the hours approved for live music. She briefly reviewed the Land Development Code supporting regulations in Chapter 34-88 as they applied to the special exception request. She stated that staff recommended approval of the request to approve a special exception in the Downtown Zoning District that amended conditions set forth in Resolution 04-14 and 11-21: zoning approval for outdoor license type from 2COP to 4COP; hours of operation from 8:00 a.m. to 12:00 midnight daily to 7:00 a.m. to 2:00 a.m. daily; and extend the hours of live music on the subject property currently approved for 3:00 p.m. to 9:00 p.m. daily, to 1:00 p.m. to 11:00 p.m. daily. She briefly reviewed the Land Development Code supporting regulations in Chapter 34-88 as they applied to the special exception request. She reported that staff was recommending with the approval and conditions that they would be wrapped up with just the one resolution for all the conditions of approval. She reviewed the 8 conditions recommended by staff:

1. Applicant must obtain a yearly lease agreement with Fort Myers Beach to allow the placement of tables and chairs in the Times Square area.
2. Legible signs would be clearly posted for areas not approved for on-premise consumption.
3. Lighting in the outdoor seating would be shielded and shuttered from surrounding properties.
4. Hours of operation are from 7:00 a.m. to 2:00 a.m., 7-days a week.
5. Applicant/property owner must comply with sea turtle protection standards.
6. Outdoor seating must not exceed outdoor current building, fire and life safety codes for tables and chairs.
7. No bars, tables, chairs, speakers or any other item may extend into utility easement adjacent to the property.
8. Live music is only permitted between the hours of 1:00 p.m. and 11:00 p.m., 7-days per week and must comply with all Town noise ordinances.

She noted the Local Planning Agency held a public hearing for the request at their December 11, 2012 meeting, and voted to approve the request with conditions as recommended by staff and added two further conditions of approval (#9 and #10) addressing their concerns over package sales of alcohol and service of food. Conditions #9 and #10 were:

- No package sales of off-premises consumption are permitted.

- Sales and service of food must be available until one hour prior to the restaurant closing.

Council Member Kosinski asked why there were so many conditions for approval.

Zoning Coordinator Chapman noted there were various conditions of approval for the subject property in two prior Resolutions, 04-14 and 11-21.

Town Manager Stewart pointed out that the subject location has no indoor seating.

Discussion was held concerning the proposed condition by the LPA regarding food sales until one hour prior to closing; and consistency with similar previous approvals.

Council Member List asked if staff was also recommending the two additional conditions suggested by the LPA.

Zoning Coordinator Chapman responded in the negative.

Discussion was held concerning the proposed condition by the LPA regarding no package sales for off-premises consumption; and the permitted hours in Times Square for outdoor live music.

Mayor Raymond noted his concern with outdoor music until 11:00 p.m.

Thomas List, owner of La Ola, stated he understood the concern regarding noise; and indicated that he controlled the sound level. He addressed highlights of his request such as but not limited to the hours of operation (February to end of May extended hours); hours of entertainment (one hour longer in summer months); and noted he did not want to be a liquor store, but would want the ability to sell a bottle of wine if the occasion presented itself.

Discussion was held concerning noise levels of music in the downtown area.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Kosinski moved in Case SEZ2012-002, La Ola Restaurant special exception, to approve the requested Special Exception in the Downtown Zoning District to amend zoning approval for alcohol license type from 2COP to 4COP, hours of operation, and live music (amending conditions set forth in Resolution 04-14 and 11-21) on the subject property located at 1035 Estero Boulevard, with the approval subject to the 8 conditions as recommended by staff and the 9<sup>th</sup> condition shall be the same language as the previous case that *“the principle use of the subject property shall remain as restaurant, but incidental package sales shall be permitted”*;

1. The applicant must obtain a yearly lease agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.
2. Legible signs will be clearly posted for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point".
3. Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.
4. The hours of operation will be from 7:00 a.m. to 2:00 a.m., 7-days a week.
5. The applicant and property owners must comply with the provisions of Land Development Code Sections 14-71 through 14-79 relating to the protection of Sea Turtles.
6. The outdoor seating area cannot exceed building, fire and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
7. No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.
8. Live music is permitted only between the hours of 1:00 p.m. and 11:00 p.m., 7-days a week and must comply at all times with applicable Town noise ordinances.
9. The principle use of the subject property shall remain as restaurant, but incidental package sales shall be permitted.

Findings and Conclusions:

1. Changed or changing conditions do exist that make the requested approval, as conditioned, appropriate;
  2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
  3. The requested special exception, as condition, meets or exceeds all performance and locational standards set forth for the proposed use;
  4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources;
  5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;
  6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34;
- Second by Council Member List.

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

C. Quasi-Judicial Hearing: VAR2012-0005, 195 Pearl Street

A request for a variance in the RC Zoning District to allow a 20-foot street setback for the property at 195 Pearl Street.

Mayor Raymond opened the Public Hearing.

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

Mayor Raymond requested Town Attorney Miller to swear in the witnesses; and the Town Attorney swore in the witnesses.

Planning Coordinator Overmyer gave an introduction of the case, and reviewed the description of the property location and the surrounding properties. He described the request was for a variance in the RC Zoning District to allow a 20-foot street setback in order to construct a foyer/entranceway at 195 Pearl Street. He briefly reviewed the supporting regulations in Chapter 34-87, and the determination of the request by the LPA. Mr. Overmyer expressed that staff recommended approval with two conditions: 1) that the approval was limited to the construction of a foyer in accordance with the applicant's site plan; and, 2) that the variance would become null and void if the building was ever removed from the site for any reason. He pointed out that the LPA made a recommendation of approval with staff's two conditions, and added a third condition: *The structure shall only be used as a single-family residence.*

Discussion was held regarding the dimensions of the proposed foyer; and a review of the aerial photograph of other properties with similar issues regarding setbacks.

Bob Moore, representing the Applicant, held a photograph of the subject property/building and explained the need for the variance which would be more conducive to a single-family residence.

Council Member Kosinski asked if the Applicant was in agreement with the condition restricting the site to a single-family residence.

Mr. Moore responded in the affirmative.

Vice Mayor Mandel asked if there had been any public comment received by staff on the variance request.

Planning Coordinator Overmyer responded in the negative; however, he stated the Applicant did submit one letter of approval from a next door neighbor.

Mayor Raymond asked if there was a member of the LPA present for comments.

No LPA representative was present.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Kosinski moved in Case VAR2012-0005, 195 Pearl Street setback variance, to approve the requested Variance in the RC Zoning District to allow a 20 foot street setback for the construction of an entryway/foyer where 25 feet was otherwise required on the subject property located at 195 Pearl Street, with the approved subject to tall three conditions as recommended by staff and the LPA:

1. That the request be approved only for the 5'6" by 8'6" foyer as shown on the applicant's site plan.
2. If the structure is removed for any reason, the property must be rebuilt in accordance with all applicable provisions of the Land Development Code for setbacks and Base Flood Elevation Requirements.
3. The structure shall only be used as a single-family residence.

and the Findings and Conclusions:

A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question;

Second by Council Member List.

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

## **XII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

## **XIV. TOWN MANAGER'S ITEMS**

Town Manager Stewart reported he and the Mayor participated in a marine event over the weekend and that he sang the National Anthem.

### **A. Mound House Update**

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Town of Fort Myers Beach – Public Works Mound House Projects Update Report, dated November 5, 2012, was submitted to Council in the agenda packet.

#### **XVI. TOWN ATTORNEY'S ITEMS**

Town Attorney Miller – wished everyone a Merry Christmas.

#### **XVII. COUNCILMEMBER ITEMS AND REPORTS**

Council Member Kosinski – wished everyone a Merry Christmas.

Vice Mayor Mandel – wished everyone a Happy Holiday.

Council Member List – wished everyone a Merry Christmas.

Council Member Andre – clarified a comment during his discussion of the mooring field at the Work Session earlier in the day which was that it was not a complete fiscal year, so there was no discrepancy.

Mayor Raymond – reported he received a request from the Board of Lee County Commissioners to recommend a person to serve on the Selection Committee for the Paulette Burton Citizens of the Year Award.

Discussion ensued to determine a volunteer to sit on the Selection Committee; and Council Member Andre offered to represent the Town as a member on the Committee.

Mayor Raymond – reported he received a request from the Greyhound Association who was seeking approval for a 'meet and greet' on Fort Myers Beach.

Town Manager Stewart asked the Mayor to forward the Greyhound Association request to the Town staff for processing.

#### **XVIII. AGENDA MANGEMENT**

Town Manager Stewart reported that the Personnel Rules and Regulation would be on the Work Session Agenda on January 7<sup>th</sup>; and the anchorage, mooring field, revenues and expenses would be placed on a Work Session Agenda.

#### **XIX. RECAP OF ACTION ITEMS**

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

- Staff would work to prepare a proclamation related to the 'tall ship' coming to Town
- Correct and publish minutes as requested
- Proceed with the approved open container waiver for New Year's Eve
- Make preliminary applications related to the potable water rehabilitation

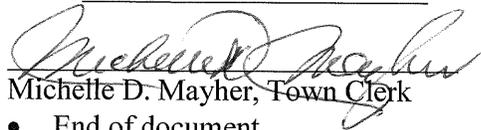
- Resolution 12-32, Aircraft Noise over Fort Myers Beach - Town Attorney to review and make necessary changes; present to Council on January 7, 2013
- Process the Animal Control Contract, forward to Lee County, and continue to work on the issue
- Process the Mound House Parking Agreement with the amendment as approved
- Move Ordinance 12-10 and 12-11 to the Final Public Hearing date
- Process the approved Resolution 12-28 regarding the Tobacco Prevention Program
- Process the approved special exceptions and variance (Pete's Time Out, La Ola, and 195 Pearl Street)

Council Member List reported she would not be able to serve as host at the Town's New Year's Eve event; and suggested the band members may have to perform that duty.

Motion by Council Member Kosinski, seconded Council Member Andre to adjourn. Meeting adjourned at 9:20 p.m.

Adopted 12-13 With/Without changes, Motion by Kosinski/Andre

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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