

MINUTES

Monday, April 1, 2013

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

I. CALL TO ORDER

Mayor Mandel called to order the April 1, 2013 Work Session of the Town Council at 2:00 p.m. Present along with Mayor Mandel were: Vice Mayor Kosinski and Council Members Andre and List; Council Member Raymond arrived at 2:13 p.m. Also Present: Town Manager Stewart, Town Attorney Miller (arrived at approximately 2:30 p.m.), Community Development Director Fluegel, and Town Clerk Mayher.

II. PLEDGE OF ALLEGIANCE

Mayor Mandel reported the Town Attorney was delayed in traffic; and Mayor Mandel requested changing the order of the Agenda so the Town Attorney would be present for the discussion on Short-Term Rentals.

Consensus approved changing the order of the Agenda as requested.

III. DERELICT PROPERTIES

Town Manager Stewart offered a *'thumbnail sketch'* on the actions that had thus far occurred which led Council and staff to the discussion of Derelict Properties today; and the various events and discussions surrounding the lengthy process for the issuance of an unsafe property designation for 4545 Estero Boulevard which ultimately resulted in the demolition of the building by the new owners of the property. He explained the technical relationship between the Town and the Lee County Building Department which deemed the County's Chief Building Official (CBO) to serve as the Town's CBO. He noted that once an *'unsafe building'* designation was given and once a Hearing Officer ruled on an issue, unless the property owners were willing to demolish a building, the responsibility would then move to the Town to complete the demolition. He reported that the Town was currently working on another property located at 80 Avenue E; and announced the Lee County CBO inspected the site and

issued an 'unsafe structure' designation; the property owners were now required to repair the building or demolish it. He added that the issue had not yet been scheduled for the Hearing Officer. He noted the 'Unsafe Building Determination and Disposition Process' outline that was included in the meeting packet.

Community Development Director Fluegel discussed in detail certain elements of the 'Unsafe Building Determination and Disposition Process' outline provided in the meeting packet as follows:

- Unsafe structure process begins with a complaint
- Town staff from the Building Department and Code Enforcement perform site evaluation visit
- Lee County Building Department assessment of the site
- County CBO visits site and issues a report with a determination
- Declaration of 'unsafe structure' from the County
- Notice of Violation to the property owner from the Town
- Hearing by the Magistrate, potential for corrective action by property owner
- Determination of an 'unsafe structure' by Town Council
- Court ruling for demolition of the structure
- Competitive bidding process requirement to obtain a contractor if demolition is to be performed by the Town
- Required assessments of the site (i.e. asbestos)
- Town's ability to lien the subject property

Town Manager Stewart explained that staff did not have the ability to give a hard and fast timeline for each aspect in the process of 'unsafe structure' designation and demolition since each stage evolved on its own; however, he added that the entire process, depending upon many factors (i.e. the property owner's unwillingness to demolish), could take well over one year. He pointed out that during this entire process the Town would encourage the person(s) responsible for the property to take the proper action (i.e. repair or demolition).

Council Member Andre questioned who/how '*reasonable time*' was determined as it pertained to #5 on the 'Unsafe Building Determination and Disposition Process' outline.

Community Development Director Fluegel reported the County CBO would determine the approximate time to repair a structure from a contractor's perspective.

Vice Mayor Kosinski questioned how an '*immediate need*' (i.e. threat to public health, safety, and welfare) would be handled.

Town Manager Stewart explained with regard to the structure at 80 Avenue E that the occupants were ordered out of the building and no one was permitted re-entry; and the property was required to be cordoned off to prevent access. He noted the Town's ability for 'immediate action' on a property was to have a property immediately vacated.

Vice Mayor Kosinski questioned how the 'unsafe structure' determination and demolition process was accomplished by law or procedure.

Town Manager Stewart reviewed how it was a combination of Town code and procedure, and State statute.

Mayor Mandel asked if there were any properties, other than 80 Avenue E, in the 'unsafe building' determination process.

Community Development Director Fluegel responded in the negative.

Discussion ensued regarding agencies that may be involved with an 'unsafe building' determination such as but not limited to the Fire Department; the State statute requirement for a chief building official to make the determination of an 'unsafe structure'; and possible scenarios of what a hearing officer could grant or impose on a property owner of an 'unsafe structure'.

Mayor Mandel asked if the Town was working towards having Town staff take over the responsibility of the County CBO.

Town Manager Stewart explained that could happen if the Town wanted to take all of the building department activities performed by the County in-house.

Council Member Andre reported he was able to access the property at 80 Avenue E.

Community Development Director Fluegel explained that the back staircase at the subject site was cordoned off; and that the two structures in the back of the property did not receive the 'unsafe structure' determination.

Discussion was held concerning an 'unsafe structure' versus properties with code enforcement violations such as but not limited to overgrown vegetation; the use of the IPMC as it related to code enforcement issues; and complaint-driven code enforcement issues.

Town Manager Stewart asked Council's direction regarding the Town's 'unsafe structure' determination and disposition process.

Mayor Mandel explained that he had asked the question concerning the Town's ability to make the 'unsafe structure' determination due to what seemed to be a time delay in the 4545 Estero Boulevard process.

Town Manager Stewart noted some of the delays that occurred with 4545 Estero Boulevard such as but not limited to '*starts and stops*' during the process were due to different potential buyers for the subject property during the process.

IV. DISCUSSION REGARDING SHORT-TERM RENTALS

Town Manager Stewart pointed out that the short-term rental ordinance had been around for many years and created much discussion and concern by the residents. He explained that the State decided to take control of short-term rental issues and did not enable local communities to write ordinances that

interfered with the State's right of control in any way. He added that if a community already had an ordinance in place, they could continue to enforce the ordinance, but were subject to any legal challenges that might arise by the public. He reported there had been some communities that received challenges from property owners within their jurisdiction (i.e. City of Venice). He indicated the Council and staff had received a sizeable amount of communication on short-term rentals from people on both sides of the issue.

Vice Mayor Kosinski asked if the Town could amend the current ordinance on short-term rentals.

Town Attorney Miller explained it would depend upon how the Town wanted to amend the ordinance; State statute pre-empted (as of 6/1/2011) local law, and she read the following into the record:

- *"A local law, ordinance or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use or occupancy. This paragraph does not apply to any local law, ordinance or regulation adopted on or before June 1, 2011".*

She described that the Town could not amend what they currently had if it would significantly change the ordinance. She noted it was unclear as to what would happen if the Town 'tweaked' the ordinance or if they were challenged if it went to court due to the newness of the statute. She stated that the Town's current ordinance could remain as written or it possibly could be 'tweaked' but could not be substantively changed.

Vice Mayor Kosinski asked if there were any challengeable areas in the Town's current ordinance.

Town Attorney Miller reported the current ordinance was presumptively valid; however, she noted her issue with the section dealing with 'family' (i.e. single-family, definition of family).

Council Member Raymond asked what could be added to the current ordinance.

Town Attorney Miller explained that a few years ago an ordinance was prepared that required registration of short-term rentals and allowed the Town to conduct certain annual inspections to insure compliance with building and fire codes, and that could be added to the current code.

Discussion ensued regarding the inclusion of registration of short-term rentals and to allow the Town to conduct certain annual inspections to insure compliance with building and fire codes; and the number of unregistered rentals in the Town.

Council Member List recounted her experience over the past 12 years regarding communications and conversations she had with people on both sides of the short-term rental issue.

Town Manager Stewart pointed out that the short-term rental ordinance seemed to him to arise out of code enforcement issues such as but not limited to noise, trash, and illegal parking. He noted the increased code enforcement ability of the Town due to the adoption of the IPMC.

Council Member List reported that most of the proponents of the short-term rental ordinance have indicated to her that they were concerned mostly with 'zoning expectancy'.

Community Development Director Fluegel reviewed the Town's Zoning Map Legend as it applied to short-term rentals and code enforcement issues and challenges.

Council Member Andre reviewed the current ordinance for sections that could possibly be 'tweaked':

- Update the 3% Tourist Tax to 5%

Town Attorney Miller explained the Council could change anything that would not be construed as restricting use.

Council Member Andre continued to review the current ordinance where it could possibly be 'tweaked':

- Update the definition of 'family'

Discussion was held concerning the purpose of the 'registration' of short-term rentals; minimum rental requirements of one week; and differences in the length of stay for short-term rentals in RS, RC, and RM zoning districts.

Community Development Director Fluegel reviewed the Town's description of the term of 'quiet zone' from the Comprehensive Plan:

"The quiet center of Estero Island remains peacefully between the bustling portions of Estero Boulevard and the hi-rises further down the beach. Some condominiums and resorts co-exist with a predominantly single-family neighborhood. This portion of the island is designed to remain low-rise and residential except for a few existing towers and the Big Island Marina. Estero Boulevard now has continuous sidewalks on both sides and the side streets have become more walkable with maturing of shade trees and links to the Town's hidden path system of neighborhood walkways."

He explained that he believed this talked about density and that this was not an area where the Town wanted to see future additional densities.

Town Manager Stewart pointed out that there was not a specific or separate zone called the 'quiet zone', and rather there was a general concept about the expectation of what people would enjoy.

Council Member List asked if there was a legally accepted concept of a residential zone that would preclude rental business.

Staff responded in the negative.

Council Member List explained her hope that there could be a solution between the opponents and proponents of the short-term rental issue.

Discussion was held concerning 'grandfathered' properties; properties that registered when the ordinance originally took effect; how many properties were registered now; annual registration fee (\$100) and off-setting administrative costs; differences in the length of stay per month for short-term rentals in certain zoning districts.

Recess at 3:10 p.m. – Reconvened at 3:20 p.m.

Public Comment opened.

Bruce Butcher, resident, stated he was President of the Laguna Shores Homeowners' Association; however, today he was not speaking on behalf of the Association. He added that he would be able to poll the Board on the issue, and he believed most of the Board wanted the ordinance to remain in effect. He addressed comments that had been made by opponents of the ordinance and offered his views on why the ordinance should remain in effect.

Bill Veach, resident, reviewed his experience with purchasing property he currently used as an annual rental in an area that permitted short-term rentals; and his belief that short-term rental properties did not help to create a sense of community.

Chuck Bodenhafer, resident, stated he owned a weekly rental and lived next to a weekly rental; and explained he realized there were no easy answers to this issue. He believed the original ordinance was the right action by the Town at that time since there had been nothing in place; however, he felt that now the State had passed an ordinance that could replace the Town's ordinance. He congratulated the Town on their past action, but requested that the residents now live with the State statute.

Jessica Titus, resident, stated that she agreed with Mr. Bodenhafer's comments, and questioned and conjectured as to why the State adopted the new statute. She recounted her experience serving on the LPA as it pertained to the time when they addressed short-term rentals. She discussed her belief that property rights have been violated and people have been harmed financially by the current ordinance.

Don Rollings, resident, recounted his positive experience living on the Island since 1998, and stated he hoped that weekly rentals would not be permissible in his neighborhood. He told of a residence in his neighborhood that recently appeared to be used as a short-term rental. He stated that he did not want the current ordinance changed.

Amy Loughery, resident, explained how she first came to Fort Myers Beach as a 'vacationer' 12 years ago; how she decided to move to Fort Myers Beach; and that she was aware at the time of purchase the Town was a vacation/resort destination. She stated she felt her property rights had been restricted by the current ordinance and property values have decreased. She noted her biggest problem, as a property manager, with the current ordinance was the definition of 'family'; and asked how she could question potential renters of their family relationship without demonstrating discrimination. She added that it was her understanding that the definition of one month was as a calendar month according to a former Town Attorney.

Jane Plummer, resident, stated she was not in the rental business. She discussed why she became a member of the LPA; her belief that her property rights were taken away when this was issued in 2001; her opinion regarding the definitions of 'family' and 'dwelling unit'; the tourism industry on the beach; and rental information requested through the Chamber of Commerce and Visitors and Convention Bureau and the positive economic impact of short-term rentals to the Town.

Tom Babcock, resident, explained his belief that there were two separate issues before Council – 1) the definition of lodging regulations by zoning district, and 2) the issue of registration of short-term rentals which was not incorporated into the land development code. He noted his understanding that rescinding the current ordinance would open up every property for daily rental. He reported that the original ordinance came about due to a hi-rise hotel that wanted to build on the island, and eventually did. He addressed enforcement of the current ordinance; and illegal short-term rentals which resulted in bed and sales taxes and rental fees not being collected.

Annie Babcock, resident, stated she believed that Public Comment should have been indicated on the written agenda and not just mentioned at the meeting earlier today. She discussed how the current ordinance addressed noise; that the short-term rental matter was a zoning issue; how people have corresponded with the Town regarding ordinance violations; and she addressed comments made by other speakers as it pertained to an ‘owners’ association’, and regulations in a residential zone. She questioned the public hearings on Ordinance 11-05.

Public Comment closed.

Council Member Raymond noted that the short-term rental topic would require much more discussion by the Council. He offered his recollection of the public hearings pertaining to Ordinance 11-05. He noted that many of the issues associated with short-term rentals also happened at long-term rental properties. He suggested a sub-committee to review the short-term rental matter further.

Vice Mayor Kosinski expressed his agreement to review the ordinance; however, at this time he did not feel the ordinance should be rescinded.

Council Member Andre asked how much could the ordinance be changed or tweaked.

Council Member List expressed her disagreement with creating a sub-committee to discuss the matter. She reported during recess she was handed a list of questions from the constituents and said they would work to respond to the list of questions. She questioned the ‘legality’ of the ordinance and questioned if the ordinance was actually working and being enforced.

Mayor Mandel requested a report to include the following:

- A review of the Town’s ordinance and have a report prepared by the Town Attorney to include a list of where other short-term rental cases were being addressed in the State;
- A map prepared by Community Development indicating the residences grandfathered in;
- Were there implications according to the ADA requirements to properties if the ordinance was changed as it pertained to condominiums and private residences (i.e. potential costs);
- How do the rules impact condominium by-laws;
- Respond to the questions submitted to Council from the constituents as noted by Council Member List;
- Define ‘family’ and ‘calendar’.

Town Attorney Miller explained that every ordinance the Council adopted was assumed to be valid until it was challenged and found not to be so. She added that she could not offer a definitive response and

noted that it would be difficult to determine cases taken to Circuit Court; however, she would contact the Florida League of Cities about that element. Town Attorney Miller stated it was her opinion that 'calendar' would be a rolling calendar month.

Town Manager Stewart clarified that the Council was seeking the following information:

- A review and assessment of the current ordinance and the Town's legal position regarding the State statute.
- How many properties were currently authorized under the short-term rental ordinance, and indicate the location of the properties.
- ADA requirements for properties if the ordinance was changed as it pertained to condominiums and private residences (i.e. potential costs).
- How do the rules apply to condominium by-laws.
- Question the Florida League of Cities if there were other communities encountering legal action on the matter.

Mayor Mandel noted to also include the following:

- Respond to the questions submitted to Council from the constituents as noted by Council Member List.
- Definition of 'family' and 'calendar'.

Town Manager Stewart reported that the list of questions submitted to Council from the constituents as noted by Council Member List was four pages long and consisted of approximately 60 questions. He requested direction as it pertained to preparing responses for the questions.

Mayor Mandel suggested the Town Manager review the list and then come back to Council with an estimate of how much time it would take to prepare the responses.

V. COUNCIL MEMBERS ITEMS

Council Member List – told the story about how she first came to Fort Myers Beach as a reluctant visitor many years ago and had lived here ever since. She explained that everyone should keep in mind that Fort Myers Beach was a vacation island; and that the Town needed to determine what was legal and factual.

Council Member Andre – asked if staff could determine the number of short-term rental properties in the RS zone. He reported he noticed the new bicycle lanes on Summerlin Road and that there was a nice gateway to Sanibel; however, he noted there were no turn(s) to Fort Myers Beach and the disconnected bicycle paths and sidewalks along Estero Boulevard.

Vice Mayor Kosinski – mentioned that there was talk around the Town concerning Transfer of Development Rights (TDR) and asked if that was a topic of interest for Council.

Mayor Mandel pointed out that TDRs were discussed at the recent Joint Meeting with the County.

Community Development Director Fluegel reported there was an application submitted by a private citizen requesting a Comprehensive Plan Text Amendment to create language for transfer of development rights. He stated staff would be having further discussions with the applicant on the matter.

Town Manager Stewart clarified there was language regarding transfer of development rights in the Comp Plan but it was limited and very narrowly targeted.

Mayor Mandel – reported that he and the Town Attorney Humphrey and Town Manager Stewart met with the County on Estero Boulevard; and assured Council Member Andre that he would include pedestrian and bicycle safety in the Estero Boulevard analysis.

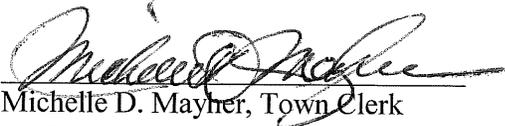
Council Member Raymond – no report or items.

VI. ADJOURNMENT

Meeting adjourned at 4:15 p.m.

Adopted 5-6-13 With/Without changes. Motion by Andre Kosinski

Vote: 5-0



Michelle D. Mayher, Town Clerk

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