MINUTES

Tuesday, October 21, 2013

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

I. CALL TO ORDER

Mayor Mandel called to order the October 21, 2013 Regular Meeting of the Town Council at 6:30 p.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Raymond. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, Acting Parks & Recreation Director Norton, and Town Clerk Mayher.

II. INVOCATION – Rev. Gary Bagley, Chapel by the Sea Presbyterian

III. YOUTH COUNCIL – Fort Myers Beach Elementary School

Patrick Walke, Fort Myers Beach Elementary School Youth Council, reported the students were busy preparing for their Dolphin/Gator Alliance event that would take place tomorrow; and described how students would obtain water samples from around the island. He added that MRTF would be covering the cost of the school bus for this project. Students would try to determine the effect of fresh water releases on the surrounding salt water and they hoped to present their findings to Council at a later date.

Angelina Benson, Fort Myers Beach Elementary School Youth Council, reported students received awards last week for meeting their accelerated reading goals for the first quarter of the school year; in a few weeks the school would celebrate "Reading is Fundamental". She announced auditions would take place on Wednesday for the school play entitled *Aladdin*; practice for the play would begin in November; and the play would be held in March.

IV. PLEDGE OF ALLEGIANCE

V. APPROVAL OF FINAL AGENDA

Consensus approved the Agenda as presented.

VI. PUBLIC COMMENT

Mayor Mandel noted Public Comment was a time for the public to discuss Consent Agenda Items and issues currently not on the agenda.

Public Comment opened.

Jim Stevens, resident, discussed how in the past he had sought and supported better communication in order to increase attendance at the Town pool. He reported that he recently visited various Town facilities and felt there was a lack of information for the public regarding the facilities. He stated he spoke with the Town Manager and the President of the Chamber of Commerce about the matter. He suggested an 8.5" X 11" piece of paper listing the Town amenities for the public. He requested to meet with the public relations firm so they did not 'reinvent the wheel'.

Terry Brennen and Barbara Lindstrom, representatives from WGCU – Public Broadcasting Television (a broadcast service of Florida Gulf Coast University), reviewed their request for sponsorship of a public television show. Mr. Brennan gave a brief history and overview of WGCU and the many documentaries they had produced over the years. Barbara Lindstrom explained they were creating a documentary on the Fort Myers Beach Shrimp Fleet entitled "Pink Gold Rush". She reported they had already received a $10,000 grant from the VCB through the TDC, and were in partnership with the Lee County Natural Resources Division for a $10,000 production grant through WCIND. She added that they were seeking another $30,000 to complete production (played a 2-minute clip of the proposed documentary). It was noted that the film was being considered to be the opening film at the Fort Myers Beach Film Festival.

Don Ryan of Boca Raton, representing "Surfers for Autism", explained how the organization held grand-scale beach festivals for special needs children and their families all over the world. He reported on Saturday they would be holding their 3rd Annual Beach Festival at Crescent Beach Park and he invited the Town to the party. He stated he did the event permitting through the County since it would take place on County property; and that he was not asking the Town for anything other than taking 'ownership' of the event; noted the many local hotel rooms booked for the event; and gave the Council a packet of information about the organization and the event. He invited the Council to the reception/party on Friday evening. He announced they would be presenting the Fort Myers Beach Fire Control District with an award of excellence.

Public Comment closed.

VII. IMAGE OF FORT MYERS BEACH

Vice Mayor Kosinski thanked the Town Attorney, Town Manager, and Town staff for having the Town flag displayed outside Town Hall tonight.

Council Member List reported that on Saturday there was a rally at Crescent Beach Park to raise awareness regarding fresh water releases and the salt water quality issues in southwest and southeast Florida; and she thanked Mayor Mandel, Council Member Andre, and the people who came from the east coast for attending the rally. She noted the importance of this issue.

Council Member Andre thanked Council Member List for her rendition of America the Beautiful she performed at the rally on Saturday.

Mayor Mandel told of the discussion about fresh water releases at the Florida League of Cities; a bipartisan bill for funding of infrastructure that would help to resolve the fresh water releases issue; and his suggestion for all of the area residents and 'snowbird' friends to contact their congressional representatives from where they live to support the two bills regarding water releases and the FEMA flood insurance rates.

VIII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Mayor Mandel congratulated Acting Parks & Recreation Director Norton on the BORC membership - 1,537 members as of October 18th.

Town Manager Stewart reported that staff was working on a map of the island that would indicate the location of the various Town facilities, facility information, parks and recreation, and bicycle/pedestrian safety. He noted where the information would be distributed throughout the Town.

Council Member Raymond suggested the informational brochure be given to rental agencies.

IX. ADVISORY COMMITTEES ITEMS AND REPORTS

No speakers.

X. CONSENT AGENDA

A. Special Event Permit Application – 27th American Sand Sculpting Championship
A request to approve the 27th Annual Sand Sculpting Championship scheduled to open to the public from November 22-December 1, 2013, and lift the open container ordinance pursuant to Ordinance #99-15 for the duration of the event, conditioned on approval and receipt of the extension of premises.

B. Special Event Permit Application – Santini Tuesday Fresh Market
A request to approve the recurring special event permit application to Santini Marina Plaza for the "Santini Tuesday Fresh Market" each Tuesday from October 22, 2013 through April 29, 2014 and authorize the Town manager to sign the permit on the Town's behalf.

MOTION: Council Member List moved to approve Consent Agenda Items A and B; second by Council Member Andre.

VOTE: Motion approved; 5-0.

XI. PUBLIC HEARING

Mayor Mandel opened the Public Hearing.

A. Quasi-Judicial Hearing: SEZ2013-0003 Beach Bums
A request for a special exception in the Downtown zoning district to allow outdoor consumption of alcoholic beverages (2COP) on premises.

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

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Dulmer presented comments for SEZ2013-0003, Special Exception for Beach Bums, on behalf of the Town of Fort Myers Beach. She reported she received a letter of objection on September 12, 2013 from adjacent property owner George Ganim, owner of the Beacon Motel, which she read into the record as follows:

LAW OFFICES
GANIM, GANIM &GANIM, P.C.
4666 M(lin Street, P. O. Box 1739

Bricl geport, Connecticut 06606

TELEPHONE (203) 372-7772
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GEORGE W. GANIM, SR.*
(lqutq@gqnimlegql.com)
THOMAS G. GANIM
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MARY G. KOLESNIK
6/14/65 -10/30/08
*ALSO ADMITTED IN MA

PARALEGAL LOISA. PAYNE

BOOKKEEPER
IAVRA BORGER

September 9, 2013

Ms. Leslee Dulmer Zoning Coordinator Town Hall

2523 Estero Boulevard
Fort Myers Beach, FL 33931

Dear Ms. Dulmer:

RE: Case No. SEZ2013-0003
Beach Bums Special Exception

As owner of the Beacon Motel at 1240 Estero Boulevard, I am informing you that our motel will be affected by the granting of this special exception. Guests of the motel have been subjected to ever increasing loud noise and music, quite into the evening hours, from a number of bars in the area that interfere with their sleep. The growing proliferation of loud music and noise has discouraged guests from staying at the motel, especially families. The liberal granting of special exceptions in recent years has greatly continued to the growing negative reputation of Fort Myers Beach.

The request for outdoor consumption of alcoholic beverages in close proximity of the motel is not compatible and runs counter to the standard set in Sec. 34-88h of the regulations.

Very truly yours,

GEORGE W. GANIM, SR.

Thanking you, I am

GWG, SR.
/ljb

She displayed an aerial photograph of the site and noted the location of the subject property was at 1188-1190 Estero Boulevard. She reviewed the Applicant's request for a special exception in the Downtown zoning district to allow outdoor consumption on premises (COP) on the subject property (Zoning: Downtown; Future Land Use: Pedestrian Commercial). She displayed depictions (2) of the Proposed Site Plan which indicated the designated consumption area of the subject property; and noted the subject property had little to no indoor seating. She reviewed the supporting regulations:

- Section 34-88 Special Exceptions
  - Function – the Town Council shall hear and decide all applications for special exceptions permitted by the district use regulations.
  - Considerations – In reaching its decision, the Town Council shall consider the following whenever applicable:
    - Section 34-88(2)(a) – *Whether there exist changed or changing conditions [that] make approval of the request appropriate.* As contemplated in the Comprehensive Plan, the Times Square area has continued to emerge as a vibrant

urban core for the Town, and as such the area can support an intensive variety of uses that is consistent with the Applicant's request. The Applicant has stated that the existing restaurant already had outdoor seating at the time the business was purchased. The Applicant has already installed rope and posts on the subject property to delineate the area for consumption and is also willing to install a shrub bordering to further designate the consumption along with signs. While there are not changing conditions at the subject property, the request remains consistent with the intended use of the area.

- Section 34-88(2)(e) – *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.* The subject property is located in the Downtown Core area. The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings'. The Applicant's request for outdoor COP certainly could further this goal. The Applicant's request is consistent with the Estero Boulevard vision and contributes to the pedestrian scale and casual ambiance set forth by the goals of the Comprehensive Plan. Again, the Applicant's request is in keeping with this vision, by providing an additional venue for the enjoyment of the unique outdoor environment of Fort Myers Beach.
- Section 34-88(2)(f) – *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.* The request of outdoor consumption on premises is not an allowable use by right on the subject property. It is however, a use permitted by special exception. The Applicant's request is appropriate in this location because the subject property is located in the Downtown Core Area. The requested COP is consistent with the goals, objectives, policies, and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown core.
- Section 34-88(2)(g) – *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.* The proposed special exception will have no negative effect on the environmentally critical areas and natural resources of Fort Myers Beach since the subject property's location is landward of the 1978 Coastal Construction Control Line (CCCL), provided that the sea turtle lighting standards are complied with.
- Section 34-88(2)(h) - *Whether the request would be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.* The subject property and the area immediately surrounding it, is within the Pedestrian Commercial Future Land Use category and the Comprehensive Plan's vision of this area does not require that it be transformed from the established intensively commercial area. It possesses a vibrant mix of uses. The existing use is another outdoor café surrounded by many pedestrian-friendly shops and restaurants. Staff feels the Applicant's request is generally compatible and appropriate within this area.
- Section 34-88(2)(i) – *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.* Staff recommends finding that the requested

use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34 for the Downtown district.

She reported that staff recommended **approval with conditions** of the requested special exception in the Downtown zoning district to allow outdoor consumption of premises on the subject property. She noted the conditions were as follows:

1. Legible signs will be clearly posted at each entrance to the seating area for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point".
2. The COP area must be restricted by rope and posts.
3. Lighting on the outdoor seating areas must be shuttered and shielded from the surrounding properties and must comply with sea turtle lighting provisions.
4. The hours of alcohol service shall be from 11:00 a.m. to 1:45 a.m., Monday through Saturday and 11:00 a.m. to 11:00 p.m. on Sunday.
5. The outdoor seating area cannot exceed current building, fire, and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
6. The approved area is limited to the attached Site Plan Exhibit 'B'.

She reported the request was heard at the September 17, 2013 LPA meeting, where there was no public comment, and the LPA voted 5-0 for approval with conditions (LPA Members Shamp and Plummer were excused). She added at the LPA meeting there was some discussion about landscaping as a condition, and the Applicant indicated at the meeting that they were willing to install landscape material but no specifics were ever decided.

Council Member Andre questioned Condition #6 with regard to ending alcohol service at 1:45 a.m.

Zoning Coordinator Dulmer reported that was a request of the Applicant; and noted that most special exception hours of service in the Town varied.

Mayor Mandel asked if there was a request for any outdoor music/entertainment.

Zoning Coordinator Dulmer responded in the negative.

Cindy Bonsignori, representing the Applicant, noted they had already addressed landscaping and placed potted plants and planted boxwood shrubs around the perimeter of the consumption area and installed post and rope on the subject property. She added that the signage was on order; and she questioned if they could amend the Sunday hours of service for during season.

Town Attorney Miller stated the application would have to go back before the LPA if they wished to change the hours of service they had already requested.

Mayor Mandel explained that the Applicant would either have to go through with what was presented tonight, or they would have to go back through the LPA process with a request for the change in hours of service.

Ms. Bonsignori stated that she would prefer to leave the request before Council as submitted (11:00 a.m. to 11:00 p.m. for Sundays).

Vice Mayor Kosinski asked if the consumption area would extend to the shop next door.

Ms. Bonsignori responded in the negative; and showed a photograph on her phone of the subject site.

Town Attorney Miller asked Ms. Bonsignori to email the photograph she showed Council to the Town Clerk for the record.

Mayor Mandel asked if there was a representative from the LPA for comment.

No representative from the LPA was present.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member Raymond noted his concern with the lateness of ending service at 1:45 a.m.

Discussion ensued regarding the hours of service requested by the Applicant and the hours of service for surrounding establishments.

MOTION: Vice Mayor Kosinski moved to approve the Applicant's requested special exception in the Downtown zoning district to allow outdoor consumption of alcoholic beverages (2COP) on premises with the following conditions:

1. Legible signs will be clearly posted at each entrance to the seating area for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point".
2. The COP area must be restricted by rope and posts.
3. Lighting on the outdoor seating areas must be shuttered and shielded from the surrounding properties and must comply with sea turtle lighting provisions.
4. The hours of alcohol service shall be from 11:00 a.m. to 1:45 a.m., Monday through Saturday and 11:00 a.m. to 11:00 p.m. on Sunday.
5. The outdoor seating area cannot exceed current building, fire, and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
6. The approved area is limited to the attached Site Plan Exhibit 'B'.
7. The present landscaping shall be maintained as a minimum buffer to designate the COP area along with the rope and post.

<u>Findings and Conclusions</u> as follows:

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 conditioned, 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 of 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: Council Member List.

VOTE: Motion approved; 5-0.

Public Hearing closed.

B. Quasi-Judicial Hearing: SEZ2013-0002 Yucatan Special Exception
A request for a special exception in the Downtown zoning district to expand the area where outdoor consumption on premises is permitted to include 190± square feet of new deck at the side of the existing building.

Mayor Mandel opened the Public Hearing.

Mayor Mandel asked if any Town Council Member had ex-parte communication regarding this item. Council Member Andre – none; Council Member List – general conversations with the Applicants; Council Member Raymond - none; Mayor Mandel – none; Vice Mayor Kosinski – stated he would abstain because he drew the set of plans submitted by the Applicant.

Vice Mayor Kosinski completed Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers, and submitted the form to the Town Clerk which listed Disclosure of the Local Officer's Interest:

> I, Joseph C. Kosinski, hereby disclose that on October 21, 2013; a measure came or will come before my agency which inured to my special private gain or loss; the SEZ2013-0002 Yucatan COP; and I must abstain from this issue due to me being the Engineer of Record for the outside deck in question.

LPA Attorney Miller swore in the witnesses.

Attorney Grady, authorized agent for the Stingray's Raw Bar, Inc., presented comments on the Special Exception for the Yucatan Beach Stand on behalf of the Applicant. She explained the request was for an extension of the deck at the Yucatan Beach Stand at 250 Old San Carlos Boulevard for a special exception COP amendment. She described the subject property and some of the surrounding

commercial properties; and noted the site was in the Pedestrian Commercial area. She reported the COP was granted to the Applicant by the Town Council by Resolution 07-29. She noted the request to be consistent with the Comprehensive Plan and Land Development Code. She noted there was a minor revision which was made with the LPA to amend that they could serve earlier because they did serve breakfast: "The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of ~~11:00 a.m.~~ 7:00 a.m. and 12:00 midnight; between ~~11:00 a.m.~~ 7:00 a.m. and 1:00 a.m. on Friday and Saturday; and between ~~11:00 a.m.~~ 7:00 a.m. and 10:00 p.m. on Sunday". She noted there was a staff recommendation with conditions, an LPA recommendation for approval with conditions, and that there had not been any public comment at the LPA meeting. She stated the Yucatan Beach Stand was an asset to the Town and had been developed consistent with the Town's design criteria. She requested Council approve the request with the conditions and revision to Condition #4 approved by the LPA regarding hours of service.

Zoning Coordinator Dulmer presented comments for SEZ2013-0002, Special Exception for the Yucatan Beach Stand, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 250 Old San Carlos Boulevard. She reviewed the Applicant's request for a special exception to expand the outdoor consumption on premises (4COP) approval to include an additional 190 square feet on a proposed new deck in the Downtown zoning district on the subject property (Zoning: Downtown; Future Land Use: Pedestrian Commercial). She displayed the Proposed Site Plan and briefly discussed the case history:

- Original Special Exception granted via Resolution 07-29 – approving outdoor COP with 4COP license
- Applied for building permit COM12-0088 – scope listed on permit: 'build deck area for smoking'; permit issued 9/5/12; final inspection revealed additional work and additional uses, i.e. alcohol consumption
- Notice of Violation issued 3/16/13 – CE13-0139
- Contractor submitted amended building plans, revising scope of work
- Property owner applied for Special Exception on 5/3/13 to correct the COP issue

She utilized a PowerPoint presentation and displayed slides that included information on the supporting regulations as follows:

- Section 34-88 Special Exceptions
    - Section 34-88(2)(a) – *Whether there exist changed or changing conditions [that] make approval of the request appropriate.*
    - Section 34-88(2)(e) – *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*
    - Section 34-88(2)(f) – *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
    - Section 34-88(2)(g) – *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*
    - Section 34-88(2)(h) - *Whether the request would be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.*
    - Section 34-88(2)(i) – *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

She reported that staff recommended approval with conditions of the requested special exception in the Downtown zoning district to expand the area where outdoor consumption of premises was permitted to include 190± square feet of new deck at the side of the existing building. She noted that staff did not have any concerns with the Applicant's request to change the hours listed in Condition #4 and she pointed out there were recommended conditions for approval as follows:

1. Outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to occur only within the enclosed walls and further restricted to the following hours: 11:00 a.m. to 11:00 p.m. from Monday through Thursday; 11:00 a.m. through 12:00 midnight on Friday and Saturday; and 11:00 a.m. through 10:00 p.m. on Sunday. Live music must be limited to non-amplified music.
2. The special exception is limited to on-premises consumption of alcoholic beverages in a 4,690 square foot area encompassing the indoor areas, both roofed patio/deck areas, and walk-in coolers as shown on the site plan, which is attached to this resolution as Exhibit B and hereby incorporated by reference.
3. The special exception is limited to a 4COP license for on-premise consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic beverages in restaurants. The terms and conditions of this approval as set forth in this resolution shall be deemed to equally apply should the applicant cease operation of a 4COP and operate under the terms of an SRX series license as defined by Florida law.
4. The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of 7:00 a.m. and 12:00 midnight; between 7:00 a.m. and 1:00 a.m. on Friday and Saturday; and between 7:00 a.m. and 10:00 p.m. on Sunday.
5. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.
6. The business must be in full compliance at all times with applicable provisions of State beverage law for the series of beverage license it holds.
7. The use must comply at all times with lighting standards, including the regulations for the protection of sea turtles found in LDC Chapter 14, Article II.
8. This resolution does not grant consent for an awning or overhang proposed in the site plan to be constructed over the public right-of-way. The Town Council must address this matter separately.
9. Condition #8 above does not grant the owner or successor in interest undeniable right to development order approval.

She discussed highlights of the September 17th LPA Hearing and how the discussion centered around the landscaping, and whether or not to require additional landscaping as a condition of approval; and the reporting element of the prior Condition #6 (removed); there was no public comment; and the LPA voted 5-0 to recommend approval (LPA Member Shamp and Plummer were excused).

Mayor Mandel asked if there was a representative from the LPA for comment.

No representative from the LPA was present.

Public Comment opened.

No speakers.

Public Comment closed.

Town Manager Stewart noted originally the request approved by staff was for an open deck, but constructed with a roof over the area.

Discussion was held concerning the location of the deck on the subject property.

Town Attorney Miller noted Condition #8 regarding the deck was not constructed in the public right-of-way.

MOTION: Council Member Andre moved to approve the Applicant's request for a Special Exception in the Downtown zoning district to expand the area where outdoor consumption on premises is permitted to include 190± square feet of new deck at the side of the existing building with the proposed conditions in the Resolution with Condition #9 to reflect "Condition #8 above"; 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 conditioned, 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 of 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: Council Member List.

VOTE: Motion approved; 4-0; Vice Mayor Kosinski abstained.

Public Hearing closed.

C. Quasi-Judicial Hearing: Lighthouse Sign Variance
A request to amend the Lighthouse Resort CPD to add 7 deviations relating to overall sign square footage, sign setbacks, and height.

Mayor Mandel opened the Public Hearing.

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

Vice Mayor Kosinski completed Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers, and submitted the form to the Town Clerk which listed Disclosure of the Local Officer's Interest:

> I, Joseph C. Kosinski, hereby disclose that on October 21, 2013; a measure came or will come before my agency which inured to my special private gain or loss; the Blue Sheet Number 2013-118 Lighthouse Resort Sign Variance. I must abstain from this issue due to my longstanding professional relationship with the owner.

LPA Attorney Miller swore in the witnesses.

Beverly Grady, Attorney with Roetzel and Andress representing the Applicant, who was requesting a deviation to a Planned Development; "*deviations are to allow design flexibility in developing land, deviations from specific provisions of this code may be permitted where it can be demonstrated that the planned development would be enhanced; and the intent was to make sure the health, safety, and welfare will be protected*". She presented comments for the CPD Amendment request for sign deviations and noted the following:

- She reviewed historical photo(s) and the background of the subject property.
- How the location of the Sky Bridge had gone through the resort and had impacted the location of the Lighthouse Resort's office and signage.
- Subject property was a 1.67 acre parcel in the heart of downtown Fort Myers Beach.
- Subject property has been in the 'Russler and Kolar' Family for decades.
- Applicant (Mr. Kolar) remembered his grandfather had been promised a left turn from the Sky Bridge onto Fifth Street.
- The resort was surrounded by a public street on all four sides with no direct access into the resort for check-in; discussed how to enter the subject property and the problems (i.e. visual obstructions) with the current signage on Third Street, Crescent Street, and on Fifth Street.
- Sign code in effect in 1999 when the subject property was rezoned a CPD provided for signage on each street.

She noted that the Council had previously recognized the subject property was in a unique position being a commercial resort surrounded by four streets without direct access to the main arterial road; and that due to their uniqueness they advised the Applicant to proceed with a public hearing for their request. Attorney Grady pointed out that staff had provided photographs indicating the location of each sign. She stated the Applicant removed the 18 square feet sign on the main Lighthouse sign and eliminated that from the request. She added that the Applicant was requesting approval of Sign 'E' (Tiki Bar sign). She explained the Applicant believed the resort was in a unique location with unique circumstances; and when someone looked at the locations of the signs there was a basis for the height. She pointed out that signage referring to WiFi and vacancy had been removed. She distributed copies of the deviations requested and how they were revised (i.e. removed the lower sign on the main sign; deviation #2 for height in order to be seen; deviation #3 for the sign on Third Street; deviation #4 for the sign on Crescent Street; deviation #6 on Third Street for a zero setback; deviation for Sign B). She requested

deviation #8 regarding internally lit signs and wanted to retain the internal illumination for the main sign and the signs on Third Street, Crescent Street, and the office sign.

Planning Coordinator Overmyer presented comments for DCI2012-0003 Lighthouse Resort CPD Amendment (Sign Deviations) on behalf of the Town of Fort Myers Beach. He displayed an aerial photograph of the site noting the location of the subject property which had four street frontages. He noted the existing zoning was CPD and the property was situated in the Pedestrian Commercial Future Land Use Category. He displayed and discussed a historic photograph prior to the Matanzas Pass Bridge of the subject property. He reviewed the Applicant's request to amend the Lighthouse Resort CPD to add deviations from Land Development Code Chapter 30 "Signs" including: numbered beginning from 10, due to nine previous deviations for the Lighthouse Resort CPD. He reviewed the deviations requested:

- Deviation #10 – Relief from LDC Section 30-153(b)(1) allotment of 32 square feet of signage for each of two businesses, for a total of 64 square feet; to allow 126 square feet for the Lighthouse Island Resort.
- Deviation #11 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign; to allow 25' 6" for the Lighthouse "Sign D".
- Deviation #12 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18" for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 8.1' for "Sign A" on Third Street.
- Deviation #13 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18" for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 8.1' for "Sign B" on Crescent Street.
- Deviation #14 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18" for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 8.1' for "Sign C" on Fifth Street.
- Deviation #15 - Relief from LDC Section 30-154(b) which requires a minimum 3' setback from any public right-of-way; to allow a 0' setback for "Sign A" located on Third Street.
- Deviation #16 – Relief from LDC Section 30-154(c) which requires a minimum 3' setback from any public right-of-way; to allow "Sign B" to remain located entirely within the right-of-way at the intersection of Crescent Street and Fifth Street. (This sign was approved in the Master Concept Plan for the sign to be located off the property by a former Council; and staff checked with Public Works and currently there is no Town use of that space.)
- New deviation – he explained the deviation was very recently brought to staff's attention regarding the internal lighting on some of the signage.

Town Attorney Miller noted her concern that the deviation request for the signage internal lighting was not part of the original application. She discussed how the Code addressed "*if the Local Planning Agency concludes that the application omits necessary deviations it may include the necessary deviations in its recommendation without an additional hearing*"; however, there was no similar provision in front of the Town Council. She explained at this point the Council would not be able to approve that particular deviation; and it would have to go back before the LPA.

Planning Coordinator Overmyer stated that without that deviation the Applicant would be required to bring the illuminated signs into compliance (i.e. install externally lighted signs).

Town Attorney Miller explained that the Applicant would not have to remove the sign; they would have to change or remove the internal lighting function.

Planning Coordinator Overmyer suggested the lighting could be changed so that the lighting only emitted through the letters. He briefly mentioned the Lighthouse Resort CPD property details:

- 1.673 Acres
- 1051 Fifth Street; 1041, 1049 and 1067 Fourth Street; 1030 Third Street
- Lighthouse Resort and Tiki Bar
- Current Zoning – Commercial Planned Development (CPD)
- Future Land Use – Pedestrian Commercial

He reported staff recommended approval of the requested Deviations #11-16, but recommended denial of Deviation #10 for 167.25 square feet of overall signage. He added that staff recommended that any signage located on the property in any of the subsequent phases maintain compliance with what was being proposed today. He stated that the LPA heard the case on August 13th at which time there was no public comment; the Applicant amended their request during the hearing to remove the Tiki Bar sign on "Sign D" ad reduce the height of the sign posts on Signs A, B, and C; and the LPA recommended approval (Chair Zuba and LPA Member Shamp dissenting, and LPA Member Steele excused). He noted that in the two months since the LPA meeting the Applicant removed the vinyl Tiki Bar signage on Sign D, and sawed off the posts that extended above the sign face on Signs A, B, and C.

Council Member Raymond noted his understanding that the Code did not allow for internally lit signs.

Town Attorney Miller explained the Code did not allow for internally lit signs; however, it could be argued that with a CPD it could be allowed as a deviation which could set precedent.

Vice Mayor Kosinski questioned if Sign D had gone before the Historical Preservation Board.

Attorney Grady discussed her belief that there was an application under the old Code for that particular sign that was not approved; and noted the old Code had different standards than the current Code. She added the sign was not submitted under the new Code.

Discussion ensued regarding Sign D with respect to the application to the Historic Preservation Board and the decision of the Board at that time; and the possible age/installation date of Sign D.

Mr. Thomas Kolar, Applicant, stated his father installed the sign prior to the bridge construction which he believed to be approximately 1979.

Town Attorney Miller pointed out that if the Applicant wanted the sign to be designated 'historic' they would have to follow the procedure and submit an application.

Mr. Kolar explained discussed lighting issues with Sign D and indicated that it really only appeared lit with back lighting.

Discussion ensued concerning the subject property signage as it related to internal illumination, lighting from the ground, and internal illumination through the letters; the original intent of the sign code; and the requested sign deviations.

Mr. Kolar told of his experience at the LPA and described how he explained to the members that he needed the existing signage; would remove the extending pilings; requested the existing height due to the obstruction by nearby parked cars and equipment (i.e. backflow preventers).

Town Manager Stewart pointed out that the internally lighted sign deviation was not dealt with at the LPA meeting.

Town Attorney Miller explained the internal illumination deviation would have to go back to the LPA similar to the earlier case regarding hours of operation for Beach Bums. She noted the Council could continue the case and send it back to the LPA. She added that if Sign D was to go to the HPB for a historic designation and was given that designation, it would be allowed to be non-conforming which meant it could have internal illumination.

Discussion ensued regarding historic designation for Sign D; the historic designation process; and the deviations requested for Signs A, B, and C.

Council Member List indicated her belief that the signage was not intrusive into the neighborhood; and questioned why the illuminated signage had not been addressed at the LPA meeting. She examined if the Applicant should be sent back to the LPA for the illumination matter on the small signs, and send Sign D to the HPB for a possible historic designation.

Mayor Mandel offered a 10-minute break to allow the Applicant to discuss the matter with his Attorney.

Recessed at 8:17 p.m. – Reconvened at 8:30 p.m.

Attorney Grady stated the Applicant wanted to proceed with their request for deviations #10 through #16 tonight, and then request the Council send only the lighting deviation back to the LPA.

Town Attorney Miller noted the signs that were internally lighted would remain in violation until after it came back to Council from the LPA, if the LPA approved the deviation. She pointed out that any motion should define what was being approved (i.e. height, setbacks, etc.).

Mayor Mandel recapped what Council would consider for approval and how they would leave the lighting of the sign back to the LPA.

Town Attorney Miller reviewed the request was a CPD Amendment and if the lighting issue was recommended for approval, then when it came back to the Council they could have a revised resolution.

Mayor Mandel asked if there was a representative from the LPA for comment.

No representative from the LPA was present.

Public Comment opened.

No speakers.

Public Comment closed.

Planning Coordinator Overmyer stated the resolution, as prepared, was sufficient to deal with the deviations #10 through #16.

MOTION: Council Member List moved to approve the Applicant's request to amend the Lighthouse Resort CPD to add deviations #10 through #16 as noted in the Resolution relating to overall sign square footage, sign setbacks, and height with the Conditions of Approval as in the proposed Resolution 13-24 and approval of the Findings and Conditions 1 through 9: second by Council Member Andre.

VOTE: Motion approved; 4-0; Vice Mayor Kosinski abstained.

MOTION: Council Member List moved that Council send back the issue of the internally lit signs related to the CPD back to the LPA for a recommendation: second by Council Member Andre.

VOTE: Motion approved; 4-0; Vice Mayor Kosinski abstained.

Public Hearing closed.

D. Quasi-Judicial Hearing: DCI2013-0002 Pink Shell CPD
A request for an amendment to an existing Commercial Planned Development to add "Recreation, Commercial with Membership" to the approved schedule of uses and enable the use of the parking areas on Lots 38 and 39 for parking for employees, guests and members.

Mayor Mandel opened the Public Hearing.

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

LPA Attorney Miller swore in the witnesses.

Attorney Grady, authorized agent for the New Pink Shell, LLC, presented comments on the Pink Shell CPD Amendment on behalf of the Applicant. She explained the request was for an amendment to the existing CPD, known as the Pink Shell CPD to add a use to the Schedule of Uses for 'Recreation, Commercial with membership'. She reviewed how the membership would permit the use of the resort accessory uses including but not limited to food, beverage services, personal services, pools, beach access, and docks. She stated the Applicant was in agreement with the staff conditions and the

recommendation of approval; and pointed out the subject property was an asset to the Town. She reported Robert Mulhere, FAICP with Hole Montes and expert in use and site planning; and Ted Treesh of Transportation Consultants, Inc. had appeared before the LPA on the subject request. She noted the General Manager of the Pink Shell was present tonight. Attorney Grady pointed out that the Applicant had added parking in which included but was not limited to Lots 38 and 39 for parking for employees, guests and members. She pointed out the improvements to the marina and the anticipated increase in guests arriving by boat. She reported there had been no public comment at the LPA hearing, and requested approval of the CPD Amendment request.

Ted Treesh of Transportation Consultants, Inc. reviewed his presentation to the LPA and explained his review of the request as it pertained to impact on the transportation network; the membership program and how they would market memberships to the boating community; the new trolley stop; and how they looked at the membership trip generation and current road volumes. He stated the analysis showed that there was available capacity on the roads (i.e. bridge and Estero Boulevard) that met the requirements of the Comp Plan and the Land Development Code.

Zoning Coordinator Dulmer presented comments for the Commercial Planned Development, DCI2013-0001, Pink Shell CPD, (subject property located at 171-191, 200, 251-281, and 275/322 Estero Boulevard) on behalf of the Town of Fort Myers Beach. She reviewed the request for a Commercial Planned Development (CPD) Amendment to expand the existing CPD (known as Pink Shell Resort CPD) to add 'Recreation, Commercial with membership' to the approved schedule of uses; and enable the use of parking areas on Lots 38 and 39 for parking for employees, guests and members. She noted the subject property details to have a current zoning of Commercial Planned Development and Environmentally Critical; Future Land Use of Mixed-Residential and Recreation; and surrounding uses of high-rise condominiums, single-family beach cottages, Pink Shell Resort, and the beach. She noted that a revised Master Concept Plan (Exhibit 'B'). She reported the questions received from surrounding property owners dealt with the location of Lots 38 and 39. She reviewed the Findings & Conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.* No error or ambiguity exists on the subject property; the application is to request amendments to the approved schedule of uses to allow 'Recreation, Commercial with membership' and to allow parking for employees, guests, and members on Lots 38 and 39.
2. *Whether there exist changed or changing conditions which make approval of the request appropriate.* The applicant is requesting a change in the existing schedule of uses for the Pink Shell Resort. Staff had been concerned with the proposed number of memberships but the hearing at the LPA and the presentation tonight had alleviated some of the concerns.
3. *The impact of a proposed change on the intent of this chapter.* The proposed amendment to the CPD will implement the provisions found in Section 34-214.
4. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.* The requested amendment was consistent with the Comp Plan, densities and intensities; and the request was not asking for any new buildings or uses.
5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.* There are no physical changes with the request; therefore, it would be consistent with the standards.

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.* Applicant has indicated that urban serves are available and adequate to serve the proposed changes.
7. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.* The request to amend the schedule of uses and modify parking will have no impact on environmentally critical areas or natural resources; and any lighting visible from the beach and/or included on any future plan development order plans will be required to meet all applicable environmental codes including but not limited to Sea Turtle lighting requirements.
8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.* Request is consistent with the existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property.
9. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.* The existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442.

She pointed out the Applicant was not requesting any deviations and that the history of the subject property was lengthy and involved; and staff was consolidating all previously approved deviations into one document called "Exhibit F" (all deviations approved and in effect from Resolution 01-26, 10-05 and 10-06 remained in full force and effect). She reviewed how staff was recommending approval with conditions of the requested amendments to the CPD zoning on the subject property:

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.
2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit B.
3. The definition of 'Recreational, Commercial with membership' will be as follows: *Includes but not limited to resort accessory uses, subordinate commercial uses including food and beverage services, personal services, fitness facility, pools, beach access, and docks.*
4. The approved Schedule of Uses is limited to those detailed on the attached *Exhibit G.*
5. The total number of commercial memberships was not to exceed 350.

She reported the request was heard by the LPA on September 17th at which time the discussion included traffic and annual memberships (total number and definition); there was no public comment; and the LPA voted 5-0 to recommend approval with conditions as recommended by staff (LPA Member Shamp and Plummer were excused).

Council Member Raymond noted the subject parking had originally been approved for only employee parking and questioned if there would be an impact to nearby property due to the proposed change.

Zoning Coordinator Dulmer indicated there was no real direction in the code as to how to calculate parking requirements for this type of a use. She reported staff advertised the CPD Amendment and sent notices to property owners within 500'; and staff did not receive any phone calls, letters, emails, or walk-ins about the CPD Amendment.

Council Member List questioned how the Applicant would address Council Member Raymond's concern about the neighbor and the parking.

Bill Wauchulis, Pink Shell General Manager, stated there had been an agreement arranged between Pink Shell and the neighbor in question through mediation and a law suit.

Mayor Mandel asked if there was a representative from the LPA for comment.

No representative from the LPA was present.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the Applicant's request for an amendment to an existing Commercial Planned Development to add 'Recreation, Commercial with membership' to the approved schedule of uses and enable the use of the parking areas on Lots 38 and 39 for parking for employees, guests, and members and Conditions of Approval as outlined in Resolution 13-23, and all of the Findings & Conclusions; second by Council Member List.

VOTE: Motion approved; 5-0.

Public Hearing closed.

XII. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 13-08 Mobile Tourist Information

Town Clerk Mayher read the title of Ordinance 13-08:
AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 37, SUBDIVISION II, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AMENDING SECTION 34-3051, TEMPORARY WELCOME STATIONS;" RENAMING THAT SECTION TO "MOBILE TOURIST INFORMATION CENTER;" AMENDING THE PERMITTED ACTIVITIES TO ALLOW THE SALE OF TICKETS FOR LOCAL ATTRACTIONS; AMENDING THE LENGTH OF PERMIT TO ONE (1) YEAR AND LIMITING THE NUMBER OF MOBILE TOURIST INFORMATION CENTERS TO TWO (2) AT ANY ONE TIME; REMOVING SPECIAL EXCEPTION AND LOCATION REQUIREMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Miller recalled that this action was requested by the Chamber of Commerce because the Town did regulate temporary welcome stations. She explained the proposed ordinance would allow for two mobile stations where they may sell tickets to local attractions and events, and would not be

required to obtain a special exception. She pointed out that Council's action tonight would be to schedule a Public Hearing date.

Town Manager Stewart noted that the Chamber of Commerce had invested time and money into refurbishing the 'mobile tourist information centers'; and that staff recommended approval.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member Andre moved to Introduce Ordinance 13-08 to bring forward proposed amendments to Section 34-3051 of the Town of Fort Myers Beach Land Development Code and set a Public Hearing for November 4, 2013 at 9:00 a.m. for a Public Hearing; second by Vice Mayor Kosinski.

VOTE: Motion approved; 5-0.

B. RFQ 13-08-PR, Mound House Restoration Phase II Contract – Guaranteed Maximum Price
A request to approve the Construction Manager at Risk Agreement Amendment No. 2 setting the project Guaranteed Maximum Price between the Town and Fowler Construction and Development.

Town Manager Stewart recalled the lengthy discussion on RFQ 13-08-PR, Mound House Restoration Phase II Contract – Guaranteed Maximum Price at the Council Work Session earlier in the day. He requested Council's approval of the item according to the amended Blue Sheet in the amount of $748,332 which included the Fire Suppression System ($10,839.00) and the Demountable Tensile Fabric Protection System ($9,333 - hurricane protection for the windows).

Town Attorney Miller explained that after the Work Session earlier the Finance Director raised a question about Charter provisions pertaining to the transfer of funds. She recommended a resolution to authorize the transfer of up to $500,000 from General Fund Reserves.

Vice Mayor Kosinski asked if the agreement amount of $748,332 included the two alternates.

Town Manager Stewart responded in the affirmative.

MOTION: Vice Mayor Kosinski moved to approve the Construction Manager at Risk Agreement, RFQ-13-08-PR MH Restoration Phase II, Amendment No 2 between the Town and Fowler Construction and Development (CM) setting the project Guaranteed Maximum Price at $748,332.00 and authorize the Town Manager to execute the documents that include in Amendment No 2. with the GMP that the CM provided, the fire suppression system in the amount of $10,839 and the demountable tensile fabric protective system for all doors and windows in the amount of $9,333; second by Council Member List.

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Kosinski moved to approve a resolution authorizing the transfer of up to $500,000 from the General Fund Reserves to the Mound House line item in the Capital Projects Fund and direct staff to prepare a budget amendment memorializing the transfer; second by Council Member List.

Mayor Mandel questioned if the motion should include direction for staff to include in the CIP $1,000,000-1,500,000 to complete the project.

Consensus agreed that matter should be addressed in a separate motion and the matter should be discussed in a Work Session.

Public Comment opened.

Ceel Spuhler thanked the Council for their actions and support on behalf of the Mound House. She explained that the vision for the Mound House which began in 2000 would now go forward. She noted that the State of Florida must have realized the value of the project for the grants to be awarded to the Town. She discussed her belief that additional grants would be awarded to the project because of the support of the renovation project evidenced by the Town.

Public Comment closed.

Mayor Mandel asked if the calculations regarding what had been expended on the Mound House to date was ready.

Town Manager Stewart reported he anticipated those figures to be ready by Wednesday. He reported staff was ready to finalize all the documents which would be forwarded to the State tomorrow.

VOTE: Motion approved; 5-0.

C. Special Event Permit Application – Fort Myers Beach Marathon
A request to approve a special event scheduled to be held on November 10, 2013 and authorize open containers of alcohol at Bayside Park and designated areas of the event contingent upon receipt of a FDOT permit to close Matanzas Pass Bridge, completion of the application, and receipt of an extension of premise.

Town Manager Stewart explained how the State of Florida wanted first to see if the Town would approve the permit application and give a contingent approval. He reported the other outstanding issue with the event was the notification to surrounding properties within 500' of amplified music (mailed 10/1/13 and recipients had until 10/31/13 to respond – as of today the Town had not received any response). He asked the Council to consider if they wanted the event; and if they were comfortable with the amplified music, closure of the bridge, and extension of premises. He explained if approval was

given for these concepts, the event applicant would still be required to obtain approval from the State of Florida for closure of the bridge; obtain proof of approval from ABT; and obtain copies of other necessary documentation.

Larry Baldwin and John Matthews, event organizers, reported there were 850 people registered for the event from 28 states and 5 countries. Larry Baldwin described highlights of the event as follows:

- Bridge would be cleared at 6:55 a.m.
- Estimate the bridge would re-open by 7:20 a.m.
- Race route which would start at First Street and Old San Carlos in front of Nervous Nellies; the route description that was off-island; and how runners came back over the bridge utilizing the bicycle lane
- Event organizers possessed a letter from the FDOT – preliminary review approved subject to tactical review
- Request to have a sound system to call participants to call for the start of the race, and to acknowledge winners and runners for participation
- Request to use Bayside Park for the award ceremony
- Nervous Nellies was allowing organizers to utilize their parking lot and an area for registration and an expo area
- Extension of consumption area would be temporary and cordoned off
- All departments from Lee County government agencies have signed off on the event

Vice Mayor Kosinski asked whether or not there were other areas in Town would need to be closed at the start of the race (i.e. Fifth Street).

Larry Baldwin responded in the affirmative; described the areas which included but were not limited to Old San Carlos from Second Street until noon, and from Crescent Street and Second Street but at this location there would be a person monitoring traffic.

Public Works Director Lewis reported that in combination with this event the same group was also proposing a 5K obstacle course and beach run for the same weekend. She added most of the permitting for the Saturday event was being done through Lee County because of the location; however, a permit was required from the State of Florida since the organizer would use a portion of the beach.

Larry Baldwin reported they had contracted with LeeTran for trolleys to operate on Saturday and Sunday.

Discussion was held concerning the open container request for the Saturday event.

Council Member Andre questioned where the participants would park.

Larry Baldwin reviewed their plans for event parking which included but was not limited to parking under the bridge and at Nervous Nellies.

Discussion was held concerning potential parking sites for the event; the reduced need for parking due to participants staying at beach hotels; and how runners would come back over the bridge into Town.

Jeff Mielke, Director of Lee County Sports Development Office, noted he was glad to see a working relationship between the Town and the organizers; and explained how the County encouraged and supported the event.

Bud Nocera, President of the Fort Myers Beach Area Chamber of Commerce, stated the Chamber met with the event organizers and believed the event had the potential of growing each year.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the Special Event Permit Application for the "Fort Myers Beach Marathon" scheduled to be held on November 10, 2013 and authorize open containers of alcohol at Bayside Park and designated areas of the event, as provided in Ordinance 99-15, contingent upon receipt of a FDOT permit to close Matanzas Pass Bridge, completion of the application, and receipt of an extension of premise; second by Council Member List.

VOTE: Motion approved; 5-0.

D. Acceptance of the Water Utility Rate Study by GAI Consultants
A letter to accept the Water Utility Rate Study and Management letter prepared by GAI Consultants, Inc. and authorize the staff and attorney to prepare the required documents to implement the recommended rates and the Water Utility policies and procedures.

Town Manager Stewart pointed out that Council had prior extensive discussion on the matter.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion was held concerning the Study and the input received from the Audit Committee on the matter.

Compliments were extended from the Council and Town Manager to Mr. Steele of the Audit Committee for his work on the Study.

Mayor Mandel suggested continuing with the matter of the bulk water rates from the County and the proposal on the management company on Agenda Management.

MOTION: Council Member Andre moved to accept the Water Utility Rate Study and Management letter prepared by GAI Consultants, Inc. and authorize staff and attorney to prepare the required documents to implement the recommended rates and the Water Utility policies and procedures; second by Council Member List.

VOTE: Motion approved; 5-0.

E. Introduction of Ordinance 13-09. Community Redevelopment Agency

Town Clerk Mayher read the title of Ordinance 13-09:
AN ORDINANCE READOPTING AND RECONFIRMING, BY ORDINANCE, ALL PRIOR LEE COUNTY AND TOWN OF FORT MYERS BEACH RESOLUTIONS RELATING TO THE CREATION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE TOWN OF FORT MYERS BEACH, FORMERLY KNOWN AS THE ESTERO ISLAND COMMUNITY REDEVELOPMENT AGENCY; PROVIDING FOR PURPOSE, POWERS, FUNCITIONS AND DUTIES OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE TOWN OF FORT MYERS BEACH; PROVIDING FOR GEOGRAPHIC BOUNDARIES OF THE AGENCY; AUTHORITY OF THE AGENCY; STATEMENT OF WHY THE AGENCY IS THE BEST ALTERNATIVE; GOVERNING BODY MEMBERSHIP, ORGANIZATION, COMPENSATION AND ADMINISTRATIVE DUTIES; FINANCIAL DISCLOSURE, NOTICING AND REPORTING REQUIREMENTS; METHODS OF FINANCING; CONSISTENCY WITH THE ADOPTED COMPREHENSIVE PLAN; SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Miller explained the proposed ordinance was a culmination of extensive research by the Town's consultant and herself that tracked the statutory requirements that would memorialize the creation and history of the CRA that was first created by Lee County. She pointed out that a copy of the adopted ordinance would be forwarded to the State agency that administered all special districts because their current records did not include the CRA's creation documents. She noted the bond validation case in 1998 was included in the proposed ordinance.

Discussion was held concerning the base year and the assessed value based upon the Property Appraiser calculation for 1990; and the stance of the County on CRAs.

Town Manager Stewart pointed out that if the Town decided to create a CRA today; they would be required to perform a 'blight study'.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to Introduce Ordinance 13-09 and set a Public Hearing date for November 4, 2013 at 9:00 a.m.; second by Council Member List.

VOTE: Motion approved; 5-0.

F. Event Sponsorship

Town Manager Stewart explained that Council had discussed the matter previously and again at today's Work Session.

Public Comment opened.

No speakers.

Public Comment closed.

Town Manager Stewart reminded Council that staff would come back to them requesting approval for event sponsorship operational policies.

MOTION: Council Member List moved to approve the Event Sponsorship Package; second by Vice Mayor Kosinski.

VOTE: Motion approved; 5-0.

XIII. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XIV. TOWN MANAGER ITEMS

A. Mound House Update

Town Manager Stewart noted the Mound House was discussed previously.

B. Action Items Recap

Town Manager Stewart explained this was the new item Council requested on the Agenda so there could be a review of prior Action Items; and asked if Council had any questions on the information submitted.

No questions.

XV. TOWN ATTORNEY ITEMS

Town Attorney Miller - no report.

XVI. COUNCILMEMBER ITEMS AND REPORTS

Council Member Raymond – no items or report.

Council Member Andre – questioned the discussion at the earlier Work Session regarding elevated pools.

Town Attorney Miller noted her research and found that Sanibel had a similar problem in 2005; and she recommended the same procedure Sanibel followed on the issue. She explained Sanibel declared a "zoning in process" resolution which would consider until such time as future amendments, the issuance of above-ground pools as prohibited, but it provided for an appeal process. She suggested the Council prohibit the above-ground pools at this time and declare "zoning in process".

Town Manager Stewart explained that if a property owner was granted a permit already, they would be allowed to move forward with the pool.

Discussion ensued concerning permit applications already received and anticipated for elevated above-ground pools.

Town Attorney Miller suggested wording and read into the record a proposed resolution:

> *"A resolution acknowledging that the planning staff, at the direction of the Town Council, is developing proposed land use regulations relating to the prohibition of above-ground pools and that such proposed ordinance will be submitted to the Local Planning Agency for its consideration and recommendation, directing that the LPA provide recommendations after due consideration declaring that the development of such regulations and the zoning process related thereto constitutes "zoning in progress", directing that permits for above-ground pools will not be issued until the "zoning in progress" has been completed by final consideration of such proposed land use and development regulations by Town Council".*

MOTION: Council Member Andre moved to approve a resolution acknowledging that the planning staff, at the direction of the Town Council, is developing proposed land use regulations relating to the prohibition of above-ground pools and that such proposed ordinance will be submitted to the Local Planning Agency for its consideration and recommendation, directing that the LPA provide recommendations after due consideration declaring that the development of such regulations and the zoning process related thereto constitutes "zoning in progress", directing that permits for above-ground pools will not be issued until the "zoning in progress" has been completed by final consideration of such proposed land use and development regulations by Town Council; second by Council Member List.

Discussion was held concerning Council's previous direction on the matter and the proposed action tonight.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

Council Member Andre suggested giving Surfers for Autism a proclamation on the day of their event; and a possibly a resolution for Mr. Sebastian who would be the first retiring Town employee.

Discussion was held regarding a resolution for Mr. Sebastian who would be the first retiring Town employee; and consensus agreed to have a resolution prepared for Mr. Sebastian.

Discussion was held concerning a proclamation for Surfers for Autism; and consensus agreed to have a proclamation prepared for Surfers for Autism.

Council Member List – told of her personal experience with Autism and her grandson's participation in the Surfers for Autism event. She reviewed her hope that Council would consider some type support for the WGCU request (Pink Gold Rush) and noted the importance of the film.

Vice Mayor Kosinski – suggested the WGCU request (Pink Gold Rush) be placed on the next Work Session agenda.

Mayor Mandel – asked if there was a commencement date for the water/utility project.

Town Manager Stewart responded in the negative; and added the contractor had not submitted a date when they would be ready.

Mayor Mandel asked the Town Manager to schedule a meeting with himself and the contractor. He told of comments he heard concerning the County with respect to what they were considering in order to handle drainage on Estero Boulevard.

Town Manager Stewart told of his meeting last Friday with Mr. Loveland of the County about the matter; offered a brief overview of what the County was contemplating; and noted that he would meet on an individual basis with Council on the matter.

XVII. AGENDA MANAGEMENT

Consensus was noted to place the WGCU request (Pink Gold Rush) on Agenda Management.

Discussion was held and consensus approved suggestions to place the County's intention for Estero Boulevard improvements, elevated above-ground pools, the CIP for the Mound House, and bringing the water/utility management in-house on Agenda Management.

Discussion ensued regarding potential meeting dates for the topics and the following was approved:

- County's intention for Estero Boulevard improvements – Work Session November 4, 2013
- WGCU request (Pink Gold Rush) - Work Session November 4, 2013
- Elevated above-ground pool - Work Session November 4, 2013
- CIP for the Mound House - Work Session November 4, 2013
- Bringing the water/utility management in-house - Work Session November 4, 2013

Discussion was held regarding the reaffirmation of the creation of the CRA and the consultant's report.

Discussion was held concerning the five topics Council wanted to place on the Work Session November 4, 2013 and the following changes were made:

- County's intention for Estero Boulevard improvements – Work Session November 4, 2013
- WGCU request (Pink Gold Rush) - Work Session November 4, 2013
- Elevated above-ground pool - ~~Work Session November 4,, 2013~~ To Be Determined
- CIP for the Mound House - Work Session November 18, 2013
- Bringing the water/utility management in-house - Work Session November 4, 2013

XVIII. RECAP OF ACTION ITEMS

Town Manager Stewart recapped the Action Items during the meeting:

- WGCU documentary request – moved to Work Session 11/4/13
- Staff to prepare a proclamation for "Surfers for Autism"
- Staff will place a Town flag in Council Chambers
- Staff to process the Special Exception (SEZ2013-0003) Beach Bums as approved
- Staff to process the Special Exception (SEZ2013-0002) Yucatan as approved
- Staff to process the Lighthouse Sign Variance as approved; and deviation for internally laminated signs back to the LPA
- Staff to process the DCI2013-0002 Pink Shell CPD as approved
- Ordinance 13-08, Mobile Tourist Information, scheduled for Public Hearing on 11/4/13
- Staff would process RFQ 13-08-PR, Mound House Restoration Phase II Contract as approved; staff would forward documents to the State to comply with obligation date; budget amendment to come back before Council
- Staff would process the special event permit for the Fort Myers Beach Marathon as approved with contingency
- Ordinance 13-09, Community Redevelopment Agency, was scheduled for Public Hearing on 11/4/13
- Staff would process the Events Sponsorship as approved and staff to bring back operational policies to Council on 11/18/21
- Staff would continue to work resolution for the "zoning in process", regarding a prohibition on above-ground pools; and an ordinance would be prepared for the LPA and Council

Discussion was held concerning the "zoning in process", regarding a prohibition on above-ground pools, and the potential for an appeal process for applications already received, and consideration of waving the $1,000 fee for appeals to Council.

Town Attorney Miller suggested waiving the appeal fee of $1,000 for the above-ground pool permits that were currently in review.

Discussion ensued regarding including in the resolution the waiver of the appeal fee for the above-ground pool permits that were currently in review.

Consensus agreed to include the waiver of the appeal fee for the above-ground pool permits that were currently in review in the resolution.

MOTION: Council Member Andre moved to include the waiver of the appeal fee in the resolution for the above-ground pool permits currently in the review process (effective today): second by Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

Town Manager Stewart continued the recap of the Action Items during the meeting:

- Staff to prepare a proclamation for the first Town retiree
- County's intention for Estero Boulevard improvements – Work Session November 4, 2013
- WGCU request (Pink Gold Rush) - Work Session November 4, 2013
- Elevated above-ground pool - To Be Determined
- CIP for the Mound House - Work Session November 18, 2013
- Bringing the water/utility management in-house - Work Session November 4, 2013
- Town Manager and Mayor to meet with the water/utility contractor

Mayor Mandel requested designee for the Town representative to the Southwest Florida League of Cities.

MOTION: Council Member List moved to designate Mayor Mandel as the Town representative to the Southwest Florida League of Cities, or his personal designee: second by Vice Mayor Kosinski.

VOTE: Motion approved; 5-0.

Council Member List reminded the Town Manager to add the 'thank you' proclamation to Kiwanis for supporting the swimming lessons.

XIX. ADJOURNMENT

Motion by Council Member Andre; second by Council Member Raymond. Meeting adjourned at 10:25 p.m.

Adopted 11-4-13 With/Without changes. Motion by Kasinski/List

Vote: 5-0

Michelle D. Mayher, Town Clerk

- End of document.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Koinski, Joseph	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Fort Myers Beach Town Council
MAILING ADDRESS 135 Gulfview Ave	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☑ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Ft Myers Beach, FL COUNTY LEE	NAME OF POLITICAL SUBDIVISION: Ft Myers Beach
DATE ON WHICH VOTE OCCURRED October 21, 2013	MY POSITION IS: ☑ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Joseph C. Kosinski, hereby disclose that on October 21, 20 13:

(a) A measure came or will come before my agency which (check one)

☑ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

SEZ2013-0002 Yucatan COP. I must abstain from this issue due to me being the Engineer of Record for the outside deck in question.

10-21-13
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Koinski, Joseph	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Fort Myers Beach Town Council
MAILING ADDRESS 135 Gulfview Ave	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☑ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Ft Myers Beach, FL COUNTY LEE	NAME OF POLITICAL SUBDIVISION: Ft Myers Beach
DATE ON WHICH VOTE OCCURRED October 21, 2013	MY POSITION IS: ☑ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

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IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

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(a) A measure came or will come before my agency which (check one)

☑ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Blue sheet number 2013-118 Lt House resort sign variance. I must abstain from this issue due to my long standing professional relationship with the owner.

10-21-13
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.