



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES**
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, May 13, 2014

I. CALL TO ORDER

Meeting was called to order at 9:08 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch – excused.
Jane Plummer
Joanne Shamp – arrived at approximately 9:17 a.m.
James Steele
Hank Zuba

LPA Attorney: Derek Rooney
Staff Present: Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of April 8, 2014

MOTION: Mr. Bodenhafer moved to approve the Minutes for April 8, 2014 as presented; second by Ms. Plummer.

VOTE: Motion approved; 5-0 (Mr. Kakatsch was excused; Vice Chair Shamp was not present at the time of the vote.)

PUBLIC HEARING

A. DCI2014-0001 – Publix CPD Amendment

Chair Zuba opened the Public Hearing.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – excused; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – site visit; Vice Chair Shamp – not present at this time; Mr. Bodenhafer – site visit.

LPA Attorney Rooney swore in the witnesses.

Planning Coordinator Overmyer presented comments on behalf of the Town of Fort Myers Beach for the request to amend the schedule of uses of the Publix CPD Amendment, DCI2014-0001, at 4791 Estero Boulevard to allow outdoor display of merchandise and to allow a temporary sign to be used during emergencies. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- Existing Conditions - subject property was 3.736 acres; property rezoned CPD in 1998 (amended CPD, sign, in 2001); developed as Publix in 2000; Code Enforcement CE13-0262 (excessive outdoor display and no permit, removed outdoor display to abate, and requested this amendment to allow outdoor display to resume)
- Request – to allow a temporary sign for use after emergencies or for posting of reduced/special holiday hours

He reported that staff recommended approval of both requests: 1) to amend the schedule of uses of the Publix CPD to allow outdoor display of merchandise; and 2) to allow a temporary sign for use during emergencies.

Discussion was held concerning outdoor displays at a hardware store; the abatement of the Code Enforcement Case CE13-0262; and the potential timeline for the CPD amendment request if approved by the LPA and Town Council.

(Vice Chair Shamp arrived at approximately 9:17 a.m.)

Martin McNeil, Publix representative, stated the sooner the amendment was approved the better it would be for the store.

Ms. Plummer asked if the outdoor display containers were on rollers; and if they stayed outside overnight.

Mr. McNeil explained the containers were on rollers; nothing remained outside overnight; the items were under the roof cover; and nothing was visible from the boulevard. He added there was adequate space for people to maneuver around the containers.

Vice Chair Shamp noted her concern about the display of inflated inner-tubes.

Mr. McNeil reported they would no longer have that display.

Planning Coordinator Overmyer reported he received a few phone calls about the request; however, the callers were not against the request rather they were seeking additional information on the amendment request.

Public Comment opened.

No speakers.

Public Comment closed.

Vice Chair Shamp noted she was “*comfortable*” with the CPD amendment request; and her view that Publix was a “*great community servant*”.

Chair Zuba questioned the dimensions of the proposed sign.

Mr. McNeil indicated the approximate dimensions of the sign (inaudible) on the front of the podium and explained the sign would be used for holidays and during a hurricane to list the closing time of the store.

MOTION: Vice Chair Shamp moved that it was hereby resolved by the LPA of the Town of Fort Myers Beach to recommend approval of Resolution 2014-008, DCI2014-0001, Publix CPD Amendment, for 4791 Estero Boulevard to the Town Council subject to the

Recommended Findings and Conclusions:

1. Approve
2. Approve
3. Approve
4. Approve
5. Approve
6. Approve
7. Approve
8. Approve
9. Approve
10. Approve

SECOND: Ms. Plummer.

Chair Zuba questioned if the LPA could add to request “prompt consideration and an expedited process for implementation”.

Planning Coordinator Overmyer stated staff took note of Chair Zuba’s request and would do everything possible to move the matter forward.

AMENDMENT: Motion maker added Recommended Findings and Conclusions #11: “The LPA recommended expedition of the Resolution to Council”; second agreed.

VOTE: Motion approved; 6-0 (Mr. Kakatsch was excused.)

Public Hearing closed.

Chair Zuba questioned if there was a report from the HPB.

Vice Chair Shamp reported there was not report from the HPB; however, she noted Council had set the Public Hearing date for Ordinance 14-03 Historic Preservation Ordinance Amendments.

Public Comment opened.

Dean Kerkesner, owner of Rebel Water Sports, thanked the LPA for their support to increase the PWVL cap to 11 licenses. He discussed an issue regarding the relocation of his PWVL business to another site as it pertained to the proximity of his new location to an existing PAL business.

LPA Attorney Rooney explained how at the last Town Council meeting an outside attorney brought up the matter concerning the ordinance language that applied to the location of a PWVL or PAL business to another PWVL or PAL business. He pointed out that at the last Council meeting new language was suggested to address the matter and that the matter would be coming back to the LPA. He noted staff was working to resolve the issue prior to Council’s hiatus and it might require a special meeting of the LPA and/or Town Council.

Discussion was held regarding the ‘dual language’ in the subject ordinance; how the issue impacted Mr. Kerkesner and his business (financially and personally); and the potential timeline for bringing forth the matter at the upcoming Town Council and LPA meetings.

Public Comment closed.

A. Workshop Discussion on FEMA 50% Rule

Planning Coordinator Overmyer offered an overview and discussed the FEMA 50% Rule and provisions of the Rule:

- Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a 5-year period, the cumulative cost of which equals or exceeds 50% of the market value of the building or structure before the improvement or repair is started, of if the structure has been damaged, and is being restored, before the damage occurred.
- Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- Costs of alternations or improvements whose express purpose is the mitigation of future storm damage, provided the costs of such measures, plus the costs of any other improvements, do not exceed 50% of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or impact resistant glass, strengthening of roof attachments, floors, or walls, and minor measures to reduce flood damage.

He explained the underlying principal for counting the extra costs associated with the more expensive materials, labor, or design is the added real property that would be located in a special flood hazard area and that would be at risk to flood damage. He displayed and discussed diagrams of:

- Pre-Flood Insurance Rate Map (Pre-Firm): built before Lee County joined the National Flood Insurance Program (NFIP) in 1984 and substantial damage.
- Elevation: to Base Flood Elevation (BFE) and two foot “freeboard” above BFE.

He reported staff was trying to work with property owners and noted the five existing Town Community Development staffers had received their Certified Floodplain Manager designation.

Discussion ensued regarding construction/addition at the BFE and the 50% Rule; value of structures and ‘substantial improvements’; requirements to meet the 50% Rule; value attached/assigned to per square foot for construction; calculation of enclosed air-conditioned space; guest houses/accessory space, livable space, and development rights; density associated with guest houses; elevation to the BFE; elevation to the same setback; hardening improvements; Lee County substantial damage list (exclusions) and non-insurable structures; establishment of initial value of an existing structure (Lee County Property Appraiser); Biggert-Waters NFIP Reform Act (non-primary residential structures and non-residential structures – 25% increase per year in the NFIP premium until it reached the actuarial rate); the Homeowner Flood Insurance Affordability Act (changed Section 207 of the Biggert-Waters Act); if there was potential for financing improvements through state housing finance agencies or any other form; and the annual grant program available through FEMA and administered through the Florida Department of Emergency Management (Flood Mitigation Assistance Grant Program).

Ms. Plummer told of her experience in the field of real estate as it pertained to people moving to a ‘non-conforming FEMA height’ home and how they decide to eliminate financing in order not to have the flood insurance requirement for the mortgage; and explained how this would eventually impact insurance rates for people required to have flood insurance for their mortgage.

Discussion ensued regarding NFIP rates; the Homeowner Flood Insurance Affordability Act; resale of ‘ground-level’ residences as it pertained to flood insurance rates; the Community Rating System as it pertained to the provision in the new CRS Manual regarding flood insurance rates and transfer of density from a low area to a high velocity area; and independent appraisals as it related to the tax base.

Ms. Plummer questioned the information concerning 'repetitive loss'.

Planning Coordinator Overmyer explained he needed to update the document Ms. Plummer was referencing.

Discussion was held regarding the two flood zones in the Town; examples of flood and wind damage; use of an appraiser (i.e. MAI or others).

Adjourn as LPA and reconvened as Historic Preservation Board – Withdrawn.

Adjourn as Historic Preservation Board and reconvene as the LPA – Withdrawn.

V. LPA MEMBER ITEMS AND REPORTS

Mr. Steele – requested an excused absence for the June meeting.

Vice Chair Shamp – noted she had been excused from last month's meeting and mentioned a letter she received dated April 5th regarding a right-of-way near Newton Park.

Planning Coordinator Overmyer offered an overview of the right-of-way matter which Council discussed at their last Work Session and reported Council had assigned the issue to CRAB.

Vice Chair Shamp – questioned if there was an 'error or omission' regarding the ordinance that was just passed on PWVL and PAL.

LPA Attorney Rooney responded in the negative; and added the Town Council adopted half of Ordinance 14-02 and the sections of the subject ordinance that pertained to Mr. Kerkesner's relocation had not been adopted by Council. He reported Council placed the matter on a Work Session agenda and there was new language that should address this type of issue. He stated he intended to bring the matter to Council at their meeting next week and if the LPA was amenable, and if the necessary advertising was completed, they would schedule a special meeting for the LPA during the last week of May.

Discussion was held concerning the timeline for adoption of the potential language amendments to Ordinance 14-02 [Amendment to Chapter 27 - PAL, PWVL] as it pertained to Mr. Kerkesner's relocation issue.

Vice Chair Shamp – questioned LPA Attorney Rooney if it was appropriate for her to discuss an email she sent to Town Council with the LPA at this time.

LPA Attorney Rooney stated he would forward the LPA her email and his email to Council; and added that she could discuss the matter now.

Vice Chair Shamp – reported she sent an email to the Town Council, Town Attorneys, and Town Manager regarding her concern that in 2012 the LPA had denied a MUD determination which was a Comprehensive Plan Administrative Interpretation; however, it had not been brought forward to Town Council. She explained her concern with compliance of Land Development Codes and the Comprehensive Plan.

LPA Attorney Rooney explained the concern was regarding the Seagrape Subdivision; and that the MUD Determination was not regarding density or transferrable rights but was for whether or not a single-family home could be built on a conforming lot which had been denied. The subject property owner had now requested a Comprehensive Plan amendment to allow the creation of an ^{a sending} ascending area from the Seagrape Subdivision that would not add any density and did not indicate where any units would be located.

Vice Chair Shamp – noted an article in a planning magazine about form-based codes as compared to traditional land planning. She questioned if there was anything of value to the Town regarding form-based codes.

Planning Coordinator Overmyer explained the Town already had form-based code in the Redevelopment Zoning Districts (i.e. Downtown, etc.).

Mr. Durrett – no items or reports.

Mr. Bodenhafer – questioned if the LPA could vote or make a recommendation to Council that they consider giving Mr. Kerkesner a reprieve for a period of time.

Planning Coordinator Overmyer noted Section 34-267 regarding the ‘forced relocation of business’.

LPA Attorney Rooney explained that particular section of the code addressed a zoning code and the subject matter was a permit issue. He added the Town was working to do everything possible to assist Mr. Kerkesner with his dilemma.

Discussion was held.

Mr. Bodenhafer – questioned, when making motions for approval or denial, if there was an easier way for the LPA to make the motion.

LPA Attorney Rooney explained how, if the LPA was in agreement with all the findings, they could word a motion. He added that he could provide the LPA with sample wording for motions.

Vice Chair Shamp suggested, if approved, the LPA could add the sample wording to their Policy & Procedures.

Ms. Plummer – reported she had attended the Joint Meeting the Town Council held with the Town’s advisory committee chairs in the absence of the LPA Chair and Vice Chair. She gave a brief overview of the Joint Meeting.

Vice Chair Shamp noted that more often applicants were requesting to meet with LPA members prior to the applicant’s hearing and requested input on the matter from the LPA Attorney.

LPA Attorney Rooney indicated the Town did not restrict conversations with applicants and noted the ex-parte declaration at the public hearings. He explained some communities in Florida prohibited conversations with applicants outside of the public hearings and even staff and noted the difficulties with that policy. He suggested the LPA keep notes on any ex-parte communications with applicants.

Discussion was held regarding ex-parte communications, site visits, and receiving information from applicants.

LPA Attorney Rooney offered to put together information or have a workshop discussion on ex-parte communication. He suggested the LPA members keep notes on ex-parte conversations. He noted that if someone was to make a decision based on information received outside of the public hearing that it was clearly stated on the record at the public hearing.

Discussion continued regarding ex-parte communication and ex-parte communication forms.

LPA Attorney Rooney recommended the LPA members forward to Town staff any emails received from applicants.

Chair Zuba – no items or reports.

Mr. Kakatsch – was excused.

VI. LPA ATTORNEY ITEMS

LPA Attorney Rooney – no items or reports.

VII. COMMUNITY DEVELOPMENT ITEMS

Planning Coordinator Overmyer introduced Town Community Development Department staff member Belinda Smith and department intern Emily Bradshaw; and each briefly gave an overview of their experience and education, as well as their position responsibilities.

Chair Zuba recognized former Mayor Raymond in the audience.

VIII. ITEMS FOR NEXT MONTH'S AGENDA

No discussion.

IX. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

X. ADJOURNMENT

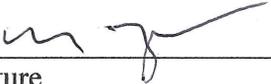
MOTION: Motion by Mr. Bodenhafer, seconded by Vice Chair Shamp to adjourn.

VOTE: Motion approved; 6-0 (Member Kakatsch excused).

Meeting adjourned at 10:49 a.m.

Adopted 6-10-14 With/Without changes. Motion by Shamp / Kakatsch

Vote: 6-0, Steele excused



Signature

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