FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, December 8, 2015

I. CALL TO ORDER

Meeting was called to order at 9:03 a.m. by Chair Zuba. Members present: Al Durrett, Suzanne Katt, Jane Plummer, Joanne Shamp, James Steele and Hank Zuba.
Excused: Bruce Butcher
Town Attorney: Dawn Lehnert
Staff: Matt Noble and Megan Will.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES - November 17, 2015

No minutes.

V. LDC AMENDMENT: Rental of Beach Furniture

Amendments to LDC Ch. 14 & 34 to clarify regulation of the rental of beach furniture and provide regulations for the operations of beach furniture vendors.

Ms. Will distributed a series of maps. She read the following letter from Eric O'Gilvie to Patty Prevost.

Patty Prevost

From: Eric O'Gilvie <labo1998@yahoo.com>
Sent: Monday, December 07, 2015 1:55 PM
To: Patty Prevost
Subject: Beach chair vendor concerns

My name is Eric O'Gilvie, property owner at 61 avenue C, ft Myers beach. I would like to ask that this be read in the LPA meeting(12/8/15) as public comment:

I'm writing to express my concern for the council's direction at their last workshop regarding beach chair rentals on Fort Myers Beach, particularly in the down town district. The town indicated that they had received complaints from some beach goers, stating issues with certain chair vendors while attempting to place their personal beach furniture in certain areas. Additionally, the town expressed concern with the existence of too many chair vendors in the down town district. As a means to address these concerns, the town held a beach furniture workshop with all chair vendors on 9/4/15. At that meeting, we reviewed many issues and provided what we thought were viable solution to these concerns.

With that said, The most recent council work session of 11/16/15 had a very surprising conclusion. The council suggested simply putting all chair vendor locations that are not in front of resorts or multi-family units (10 units or more), out of business. This goes completely against the options and suggestions that were discussed during the workshop with the town representatives and chair vendors. Do keep in mind, that some of these individual chair locations, by way of personal watercraft vendor licenses, have been providing chair rental services for almost 30 YEARS. It is shocking to learn that the town recommends taking such a drastic step as a solution. This action would be devastating to chair vendors. In the case of the Watersport's vendors, it would cripple financially a significant and extremely important aspect of their business. As a member of the Ft Myers Beach business community, I believe a fair solution that will not damage financially, the vendors who have been providing chair services for years, can be achieved.

The main reason these chair businesses have been able to thrive, is because of public demand for this services. If there wasn't a need for chair rentals, vendors simply would not survive. There are many visitors who happily choose to pay $5 for a piece of paradise but do not necessarily want to sit in front of a resort, or have to haul personal chairs from their parked cars. Many people benefitting from chair services are elderly.

Certainly, the concerns posed by members of the public must not be ignored, but the easy solution is not always the right one. I'm certain many members of our community and small business operators would agree, that the right solution is not to put all these operators out of business and simply Move On.

Thank you

Ms. Plummer and Ms. Shamp had conversations with Mr. O'Gilvie and Ms. Katt had a site visit. Ms. Will reviewed the history of the issue. She noted that one of the major revisions was the establishment of a beach furniture permit. She referred to the maps to illustrate locations of chair rentals with and without permits. The first part of the amendment was to establish where beach chair rentals could be permitted, other than resorts. The amendment would allow larger condominium units and multi-family properties with 60+ units to be permitted as an accessory use. It would be removed as a permitted principle use on Downtown properties. The permit would be tied to the property, not the owner. Allowed signage was determined by PAL and PWVL and only one kiosk would be allowed on the property. Storage was to be located behind the permanent dune line, but cabanas would not have to be moved due to size. Staff recommended screening for the storage areas.

Mr. Steele questioned the identity of the Director. Town Attorney Lehnert replied that it was Kara Stewart. Mr. Steele questioned the definition of the word equipment. Ms. Will responded that it was an error and equipment would be removed from the section. Mr. Steele questioned why beach furniture was set back at least 15 feet from the wrack line when it used to be zero feet. Ms. Will noted that the distance was established by the PAL and PWVL ordinances. Mr. Steele questioned the cost of the insurance. Ms. Will was not sure, but it was consistent with what was required for the PAL and PWVL vendor insurance requirements. Mr. Steele questioned the application fee. Ms. Will stated that the fee had not been added to the fee schedule yet. Mr. Steele questioned the number of beach chair permits. Ms. Will referred to the legend on the maps. Item 2 on Page 8 will be combined with Page 6. Mr. Steele questioned deleting water oriented rental establishments on Page 13. Ms. Will indicated that Chapter 34 was contained in the amended beach furniture section and within the existing PAL and PWVL sections. He questioned whether vendors were notified of the meeting. Ms. Will replied that it was posted in the newspaper.

Ms. Plummer felt that the amendments were not what was originally proposed and it seemed over regulated. She referred to Page 59 when discussing taking the little guy out of the picture. She questioned the change that was made to keep a vendor on the beach. Ms. Will stated the change was made for the PAL and PWVL vendors, not beach chair vendors. Ms. Plummer questioned how many jet ski vendors stopped renting chairs. Ms. Will responded that there were three. Ms. Plummer was against taking out three businesses that would be replaced by a hotel. Ms. Will addressed kiosks. She noted that the nonconforming clause provided for a 2 year period to come into compliance.

Mr. Durrett couldn't believe that they were putting people out of business. He was against it and felt it was over regulated. Ms. Will remarked that the affected vendors did not have the ability to be renting chairs under current zoning. Mr. Durrett replied that if those vendors did not have a license or permission from the property owners, it was a different story. Ms. Will discussed requirements for operating a business on the beach. Ms. Will pointed out that the changes were made upon the direction of Council. Mr. Noble suggested hearing from the public.

Ms. Shamp was concerned about the 11 licenses that were 30 years old and 4 that were not at resorts. She brought up grandfathering those 4 and to follow the LDC and stick with 50+ condominium units, not 60+. Ms. Will noted that Council suggested a sunset period, but the LPA could recommend an amendment to the ordinance. Ms. Shamp questioned the difference in vendors when comparing 50+ to 60+. Ms. Will replied that it would create a large number in the south end of the island. The 50+ units was contained in the definition of resort, but there was not a similar definition in the LDC as related to multi-family or condo properties. The number jumped from 19 to 28 when going from 60+ to 50+. Ms. Shamp wondered if dropping to 50+ and following the code was an option. Ms. Will responded that the LPA could recommend an amendment to the ordinance.

Chair Zuba questioned how the ordinance compared to other communities. Ms. Will researched a number of other communities and she felt it was moderate in comparison. Ms. Will stated that Council did not discuss a grandfather provision.
Mr. Steele clarified the legend on the map.

Tina Tomasino, owner of Hurricane Tina's Restaurant, distributed and discussed a pamphlet regarding zoning codes. She stated that adopting the proposal would shut down the chair and umbrella rentals at Action Water Sports. She expressed concern regarding beach furniture vending licenses and she felt that PWVL vendors should be able to rent chairs and umbrellas for their locations.
Chris Schaab stated that he would not be in the Downtown district if the supply and demand wasn't there. He indicated that the Environmentally Critical Area or Erosion Control (EC) zone in the Downtown district was considered Pedestrian Commercial in the future land use map. He could not see why they would take chairs away from a huge property like Junkanoo, especially since they were located in the middle of nowhere. He expressed worry regarding whether his 50 feet would shrink to 30 feet and he mentioned requiring 6 feet between chairs.
Dean Kirkesner, owner of Rebel Water Sports, stated that his family had used the same property for water sports and chair and umbrella rentals for years. He revealed that his current lease at 1010 Estero Blvd. signed 18 months ago clearly states that the lease was for chair and umbrella rentals as well as water sports. He has been renting chairs and umbrellas for 22 years and he asked the LPA to look at the 4 PWVL licenses that were not behind resorts. Mr. Kirkesner informed the LPA that insurance was approximately $5,000.00 for chair and umbrella rentals only. He indicated his jet ski insurance was about $12,000.00.
Joe Stockton, resident, noted that vendors were setting chairs up in the beach access area. He suggested the LPA discuss a setback of 10 feet from each side of the beach access boundary.
Ms. Will stated that Junkanoo was zoned CV and beach chair rental was permitted as a principle use. The 10 foot setback was included in the amendment. The PAL and PWVL licenses were specifically for parasailing and jet ski rentals.
Ms. Shamp commented that if they were to allow chairs on the 3 properties, that the requirement of 20% of the property width be changed to 10% of the property width. She suggested marking Downtown beach accesses.
Ms. Katt liked the 15 foot distance from the wrack line and the 10 foot setback at the beach accesses. Ms. Will explained the different beach licenses in response to Ms. Katt.
Mr. Steele commented that walking on the beach, getting to the beach and beach access were major issues. He felt that, as far as limiting the vendors to 26, supply and demand would limit the number of vendors. He liked the grandfathering suggestion, but he felt the amendment was overkill as far as resolving the issues of walking space, private chairs and beach access. He did not support it in the current form.
Ms. Plummer thought that a lot of the issues were the result of bad manners and she felt that it was ridiculous to limit the number of chairs on the beach.
Ms. Shamp clarified the value for expanding use to 60+ units. Ms. Will stated that it would add areas where it would be permitted. Large condos were not zoned residential accessory use and this would bring the large multi-family condo properties in line with resort properties.
Chair Zuba questioned whether residential use and public access definitions were the reasons why the ordinance was before them. Ms. Will replied that insurance was addressed and designed to bring the vendors in line with parasailing and jet ski vendors.

Ms. Plummer questioned whether the issue was being directed by redevelopment. Town Attorney Lehnert revealed that one reason for the change dealt with enforcement issues.
Ms. Will found that the ordinance was consistent with policies put forth in the comp plan for the recreation area.
Mr. Durrett questioned whether condos on the south end were allowed to set chairs out on their own behalf. Ms. Will replied in the affirmative as long as it was not being done on a commercial basis.
Ms. Katt felt the three businesses should be grandfathered and she liked the set back requirements. Mr. Steele agreed, but he did not like the 26 limit. Ms. Will commented that the limit was suggested by Council.

MOTION: Ms. Shamp moved that the LPA adopt the proposed resolution with the following changes: 50 units or more as currently exists in the resort definition, that the limit of the number be removed, that they grandfather the existing PWVLs and prohibit them from selling or transferring, setbacks be 10 feet on the sidelines except for properties of 75 feet or less, then it would be 10% of the property width, proposed findings of fact and conclusion of law as it was in there and they find it consistent with the comp plan; second by Mr. Steele.

Ms. Plummer had an issue with taking the existing PWVLs away when the need existed. Chair Zuba remarked that the vendors had the opportunity to move their businesses. Ms. Will commented that grandfathering could be specified that they can transfer the permit from the non-conforming locale to a conforming locality.

VOTE: Motion approved; 6-0 with Mr. Butcher excused.

VI. SEZ2015-0002
Modify the approved COP at Nervous Nellie's, which limits outdoor music or other live entertainment to non-amplified music to permit the music to be amplified but limited specifically to the terms and conditions of the recently adopted Noise Control Ordinance (Ordinance No. 15-01).

Chair Zuba requested ex parte communications. Ms. Plummer - conversation with Rob Fowler; Ms. Katt - site visit; Mr. Steele - site visit; Mr. Durrett - site visit; Ms. Shamp - site visit and Chair Zuba - site visit. Witnesses providing testimony were sworn in.
Mr. Fowler requested a modification of an existing COP to change from acoustical music only to permit amplified music. He stated the reason for the modification was a result of the creation of the noise ordinance. He indicated that the new owner, Len Lemmer, had established a better relationship with Marina Village Condominium. The two conditions added were that the amplified music would not be closer than mid-point of the rear line of the patio and that a centralized control system for the speakers be located in the building. He discussed the difference between acoustical and amplified music.
Mr. Steele questioned how much louder they wanted the music. Mr. Fowler responded that he did not believe it would increase the sound and it would not exceed 70 decibels.
Ms. Plummer discussed background noise.

Lauren Dillard, representing the Marina Village Board, distributed and read a letter of unanimous support, subject to conditions, from the Board of Directors. The letter specifically addressed Conditions 2 and 3 from the December 1, 2015 staff Town report.
Bud Nocera, Fort Myers Beach Chamber of Commerce, supported the modification. He stated that when amplified music stopped it hurt Nervous Nellie's and all the businesses on that street.
Mr. Noble assured the LPA that property owners within 500 feet of the site were notified of the hearing. He noted that due to the agreement with Snug Harbor, circumstances had changed since he issued the staff report. He will revisit the report and modify the recommendation to approve the request before going back to Council.
Chair Zuba questioned the public walkway requirement. Mr. Fowler replied that he was waiting for the final permit from the federal government.
Ms. Shamp questioned Mr. Noble regarding the importance of Condition 2 in regard to the guarantee of compatibility. Mr. Noble agreed it was important and that it went beyond the noise ordinance and went to centralized control as well as communication with all parties involved.

MOTION: Ms. Shamp moved to recommend that Council approve the special exception to permit outdoor amplified music SEZ2015-0002 with the three conditions of approval as specified and also a finding that the guarantee of compatibility with adjacent residential and hotel uses is guaranteed through condition of approval number 2 that's specific to the property; second by Ms. Plummer.

VOTE: Motion approved; 6-0 with Mr. Butcher excused.

VII. EAR DISCUSSION
Review Procedures and Monitoring, Mapping

Mr. Noble indicated that the procedures and monitoring section was 20 years old and parts needed to be rewritten. Chair Zuba discussed state statutes overriding the Town. Mr. Noble remarked that administration interpretations would remain the same with slight rewording. He highlighted the single family resident provision and the problematic minimum use determination (MUD) in the Land Development Code (LDC). It put them in the wetland regulation business, which should be a State function, not a Town function. He stated it was not appropriate under current State law and the LDC would have to be amended. In his opinion it was a serious issue.
Ms. Shamp questioned whether the Town had the right to establish stricter regulations than the State. Town Attorney Lehnert replied in the affirmative, but by putting single family residence provisions together with MUD provisions, specifically in wetlands and mangroves, that the Town entered into the arena of potentially taking the property because it could not be developed. Mr. Noble stated the Town had to be granted the authority by the State to regulate the wetland. Town Attorney Lehnert described liability issues. Mapping will be discussed at the next meeting.

VIII. LPA MEMBER ITEMS AND REPORTS

Ms. Shamp questioned Town Attorney Lehnert regarding Council's direction concerning the new development. She replied the first direction was to join in the application to the DEP and FEMA to determine whether it was possible to issue a seawall/boardwalk permit. She will draft a resolution that protected the Town, allowed the developer to submit the permits to the State and Federal agencies, the

Town would receive contemporaneous copies of all paperwork submitted, they had no investment expectations with respect to the Town's approval, it did not approve the development, and if the permit was issued, the Town did not have to approve the project. The second direction was to allow the application for the zoning approval. Ms. Shamp questioned whether the County signed anything. Town Lehnert responded that she thought the County was drafting a resolution. Ms. Shamp commented that she did not want her questions to be construed as having an opinion.
Ms. Plummer thanked Chair Zuba for inviting her son to recite the Pledge of Allegiance.
Chair Zuba complimented Mr. Steele for his stormwater analysis at the recent work session. He stated that developer Tom Torgerson requested to make a presentation to the LPA at today's meeting. Town Attorney Lehnert and Chair Zuba decided that it was too early and it had not been advertised.

IX. LPA ATTORNEY ITEMS

Town Attorney Lehnert recommended that future agenda items flow through staff.

X. COMMUNITY DEVELOPMENT ITEMS

XI. ITEMS FOR NEXT MONTH'S AGENDA

XII. PUBLIC COMMENT

Mr. Schaab thanked the LPA for their time.

XIII. ADJOURNMENT

MOTION: Ms. Plummer moved to adjourn the meeting; second by Mr. Durrett.
VOTE: Motion approved; 6-0 with Mr. Butcher excused.

Meeting adjourned at 11:36 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

- End of document

2-9-16