

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, November 9, 2010

I. CALL TO ORDER

Meeting was called to order at 9:04 AM by Joanne Shamp. Other members present:

Bill Van Duzer
Joe Kosinski
John Kakatsch
Carleton Ryffel
Hank Zuba
Rochelle Kay

LPA Attorney Marilyn Miller

Staff present: Terry Stewart, Town Manager; Community Development Director Walter Fluegel.

II. PLEDGE OF ALLEGIANCE and INVOCATION

Ms. Kay

III. INTRODUCTION

Mr. Stewart introduced the new Community Development Director to the LPA.

IV. MINUTES

A. Minutes of October 12, 2010

Motion: Mr. Kosinski moved to accept the minutes, as recorded.

Seconded by Mr. Ryffel;

A few spelling corrections were noted and corrected.

Vote: Motion passed 7-0.

V. ADMINISTRATIVE AGENDA

A. Draft Information Regarding Signs

Ms. Shamp gave brief synopsis as to the progression of this matter and Ms. Miller addressed the meeting. She said she reviewed this taking extra care in the area of constitutionality as it pertains to signs because it is an expression of speech and there were things in the historical signs area that didn't need to be there. She referred to

other slight changes (see draft) she addressed in the draft and said she tried to keep most of the provisions the same as the original ordinance. She added that it is important to have the Code Enforcement officers give input for this ordinance.

Mr. **Fluegel** said he spent time with Mr. Ryffel and they worked closely on this project to be sure they looked at everything. He asked for the LPA input and discussion.

Mr. Ryffel passed out photos he took to the members. He suggested that the sections dealing with dimensions be deleted and asked the attorney what the term “content neutral” means. Mr. Ryffel then referred to Sec. 5, dealing with “monument signs,” and Sec. 6, “pole signs,” and suggested that Sec. 5 should be taken out or revised. He added that most of the signs in the town are “pole signs” and these are restricted by height and width requirements; this needs to be changed. There were a few spots in the draft that are stricken out and he asked for clarification on these. (Long pause for review of paperwork and photos and to copy/distribute copies).

Mr. Van Duzer suggested that there be more time for all members to thoroughly review the draft before going much further, especially since there were pages missing from the members’ packages. Ms. Shamp agreed and brought up the Christmas tree ornaments, reminding everyone that the newest members are required to create an ornament for the tree.

Mr. Ryffel referred to the section regarding signs painted on structures, asking the attorney for a definition of “structure” since this may be different in the county ordinance. Discussion ensued about billboards and other “off-premise” signs.

Mr. Ryffel asked if there is a provision for a variance for roof signs and, learning that there is not, gave an example of a hardship for which he believes there should be a special exception. There was also discussion about posting of signs and the definition of “posting of property” and requirements for posting numbers on the buildings. Mr. Ryffel also commented on several other sections, asking for clarification of definitions and practicality of certain types of placards and nameplates, with dimensions specified in the proposed ordinance. There was discussion regarding each section with examples for explanation purposes. “No Parking” signs were discussed as to where to place them, how many there should be per property, etc. without the need for extra permitting.

Ms. Shamp continued the discussion and pointed out areas she found problems with, including definitions and dimensions, as well as possible conflicts with other ordinances. Ms. Shamp stated that she does not favor a change in size regulations unless there is an issue with constitutionality. She also commented about the bench signs on the beach and the regulation of those since they are ugly and serve no purpose for the community. Ms. Shamp is opposed to changing the regulations regarding historical signage, unless there is a constitutional issue. She expressed her concern about the liability segment of the section regarding structure overhangs.

Ms. Kay agreed with Ms. Shamp in that there should be no changes unless they are needed to comply with the state statutes or the constitution. She also doesn't agree with changing the criteria for the HPB when dealing with historic designation signage.

Mr. Van Duzer expressed his displeasure in the historical designation criteria as it was applied to the Holiday Inn sign. He feels that there should be a special exception added to the ordinance for existing signs that do not meet the criteria, so the owners can maintain their signs (he gave an example of the Lighthouse Island Resort). He added that he believes the entire sign ordinance may need to be reviewed and rewritten.

Mr. Kakatsch agreed that the changes "should be kept to a minimum" and he is concerned about the cost of this project.

Mr. Kosinski referred to pg. 17, the section on sign permits and asked if there is a mistake wherein the language calls for approval by the Town manager. Ms. Miller agreed that this should be looked at as the old language says "Town manager." There was brief discussion about time limits for permits as well as regulation of non-conforming signs.

Mr. Zuba brought up "grandfathering" and is concerned that the Town has no real control over those older signs. He feels that all new signs be well regulated and that the LPA should have limited concern with the "grandfathered" signage.

Ms. Shamp asked for Public Comment. Mr. **Melsek** referred to Mr. Fluegal's comments on the "community standard" regarding this law. He said that the community had come together in the past to voice their opinions and create that standard for this law. He said that, when the law was passed, the community had eight years to come into compliance and they did it. He believes that "grandfathering" all of these people who had chosen to "thumb their noses at the community standard" and allowing them to keep their non-conforming signs is unfair. Mr. **Melsek** said that Mr. Stewart made a public statement, as did the town attorney, that the proposed changes would not change the size or dimensions but it was all being done to address changes in Supreme Court rulings. He cautioned that the LPA and other board members against being swayed in their decisions (regarding "grandfathering" signage) by friends or associates who have nonconforming signs and insinuated that some members are doing this. Mr. **Melsek** further insisted that the law must be enforced and that the Town has been hesitant to do so, adding that the original ordinance is a good law and its intent was a good one.

With no further public comment, Ms. Shamp stated that the LPA is not ready to go to hearing with this item until there is more review by all parties. Ms. Miller added that the LPA did bring up many areas where there are discrepancies in the language and in different sections and suggested returning next month with more revisions to clear up

inconsistencies for further discussion. Mr. **Fluegel** also agreed that they need more time to review and suggested returning in January to address two main areas, being the content addressing constitutionality and any inconsistencies from that new language, and any older already existing inconsistencies.

Ms. Shamp reminded that there will not be a December meeting and suggested that they schedule a January meeting and think about a workshop to get public opinion and input for the proposal. There was a consensus that this come back to the LPA in January and they will schedule and proceed from there.

Short recess at 11:15 AM-back at 11:20 AM.

Ms. Shamp requested that items of constitutionality be highlighted in a different manner when the draft returns to them so it will be easier to see what needs to be changed and what items may be revised.

Mr. Van Duzer addressed Mr. **Melsek**'s comments regarding favoritism in the sign ordinance matters. He took exception to the insinuation that he is biased in his decisions. Ms. Kay defended and explained the decision regarding the Lighthouse sign.

B. 2011 LPA Meeting Agenda

August is not included for 2011 meetings and there is no December 2010 meeting, since the required meetings have been met. Mr. Zuba was again reminded to create an ornament for the Christmas tree.

Motion: Mr. Van Duzer moved to adopt the 2011 meeting schedule.

Seconded by Mr. Ryffel

Vote: Motion passed 7-0.

VI. ADJOURN AS LPA AND RECONVENE AS THE HPB

Motion: Ms. Kay moved to adjourn as LPA and Reconvene as HPB.

Seconded by Mr. Ryffel;

Vote: Motion passed 7-0.

Meeting commenced at 11:29 AM. Ms. Kay stated that she met with Mr. **Fluegel** to discuss the HPB and wants to start the HAC meetings again.

The HPB needs a new chair and vice chair.

Motion: Ms. Shamp moved to nominate Ms. Kay as Chair of the HPB.

Seconded by Mr. Kosinski;

Vote: Motion passed 7-0.

Motion: Ms. Shamp moved to nominate Mr. Zuba for Vice Chair.

Seconded by Ms. Kay;

Vote: Motion passed 7-0.

Ms. Kay said that “**charette**” means “little cart,” as explained by Mr. **Fluegel**, and the “sharing of design knowledge.” Theresa Schober will lead the “**charette**” in the future.

Motion: Mr. Van Duzer moved to adjourn as HPB and reconvene as the LPA.

Seconded by Mr. Ryffel;

Vote: Motion passed 7-0.

VII. ADJOURN AS HPB AND RECONVENE AS THE LPA

Meeting was reconvened at 11:36 AM, with the same members still present.

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Zuba commented on the minutes from the meeting with Lee Tran, saying that there should be a direct connection from airport to the trolley. In addition, he questioned if the LPA looked carefully enough at the issue of the mobile toilets and suggests that it takes a closer look. Ms. Miller said this will be discussed at the Council meeting next week. Ms. Shamp stated that this can be brought before the board for discussion. Ms. Kay agreed it should come before the LPA for further discussion. Ms. Shamp asked for a show of hands of those interested in pursuing this. There is a consensus (5-2) that this be pursued and Mr. Zuba will lead the group interest in reviewing this and will represent the LPA. More discussion ensued about how to proceed with this and the LPA’s authority in bringing this forward. Mr. Kakatsch supports the installation of these units and feels that the public does too.

Ms. Kay asked about a “franchise fee” she read about on the utilities project and Ms. Miller expanded on that, adding that the Town go to a bond validation proceeding.

Ms. Shamp said that although she had been opposed to the large scale renourishment project and the federal involvement in it, she does support the navigation project and vegetation. She has learned that the easement agreements residents are signing with the government have a requirement for vegetation and asked Mr. **Fluegel** about it. He said there are some issues that are still being worked out with this project. Ms. Shamp pointed out the LDC section where this is addressed and made it clear that this is required and specifically stated. She is concerned that things are not being done properly in this regard. Ms. Miller added that it may be a condition of the permit issued by the DEP for beach renourishment to have some specific type of vegetation. Mr. **Fluegel** said the raking ordinance will be coming before the LPA next and after that, staff can do a presentation on the beach renourishment. Ms. Shamp reminded that this was written by MRTF and never came before the LPA for review. She added that the DEP hasn’t signed off on this yet and she’s concerned that the residents may not realize that this has not gone through the whole, proper process.

IX. LPA ATTORNEY ITEMS

Ms. Miller had nothing to report.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Mr. **Fluegel** passed out a memo for a workshop on the on-premise consumption issue which was sent by Council to have LPA review. He came up with 3 options for Council's consideration: accept the LPA's interpretation that COP is not a permitted use; reject the LPA's interpretation; or determine that the LDC is the more appropriate place to identify these uses. The workshop is on Nov. 15 at 9:00 AM and Ms. Shamp requested that members attend; she and Ms. Kay will attend.

Ms. Kay said that Mr. Stewart had started preparing a list of items ongoing and wondered if this will be continued. She said it would be helpful to keep this going. Mr. **Fluegel** agreed that he will try to do this.

XI. LPA ACTION LIST REVIEW

- Resolution 2009-24 COP expansion on the beach; Mr. **Fluegel**

Future Work Activities

- Shipwreck-Continued at LPA request-May 10, 2011
- ROW Residential Connection; Van Duzer-TBD
- October 4th work session-LDC 613-14 10-25 Storm Water-TBD
- Sign ordinance-Ms. Miller; 2nd presentation Jan. meeting
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

XII. PUBLIC COMMENT

No comment.

XIII. ADJOURNMENT

Motion: Mr. Van Duzer moved to adjourn.

Seconded by Mr. Kakatsch;

Vote: Motion passes 7-0.

Meeting adjourned at 12:17 PM. Next meeting January 11, 2011.

Adopted 1/11/11 with/without changes. Motion by Bill Van Duzer
(DATE)

Vote: 5-0 Signature: Joanie K. Shamp

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