

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931
Special Meeting
Tuesday, August 24, 2010

I. CALL TO ORDER

Meeting was called to order at 9:00 AM by Joanne Shamp. Other members present:

Joe Kosinski
Rochelle Kay
John Kakatsch
Carleton Ryffel
Bill Van Duzer
Chuck Moorefield-excused absence

LPA Attorney Marilyn Miller
Staff present: Terry Stewart, Town Manager

II. PLEDGE OF ALLEGIANCE and INVOCATION

Rochelle Kay

III. MINUTES

A. Minutes of August 10, 2010

Motion: Mr. Ryffel moved to accept the minutes, as recorded, with noted clarification.

Seconded by Mr. Kosinski;

Vote: Motion passed 6-0;

IV. PUBLIC HEARING

A. Case #FMBSEZ2010-0002, Special Exception Skye's Restaurant Resolution 2010-08
Ms. Shamp opened the hearing and asked the LPA attorney to swear in the witnesses.

Mr. Stewart was sworn in and the Affidavit of Publication was entered for the record. Ms. Shamp asked if any LPA member had any ex-parte communication regarding this item. Mr. Kosinski offered that he has a business relationship with the firm that prepared Exhibit B, the proposed outdoor seating, and he therefore excused himself from voting and discussion. He will file a conflict form with the clerk. Mr. Ryffel had a site visit; Ms. Shamp had a site visit and a discussion with a neighboring business; Ms. Kay, Mr. Van Duzer and Mr. Kakatsch had site visits.

The applicant, Ms. Silvia Steiger, was sworn in by Ms. Miller and she addressed the LPA. Mr. Kakatsch asked about the proposed timing for the service of liquor.

Terry Stewart presented his comments on behalf of Town staff. He explained that the request from the applicant is for a special exception in the Santini zoning district to allow consumption of on-premises alcoholic beverages and outdoor seating for the restaurant. He added that the research and staff work on this issue was prepared by Dr. Shockey and thus by an AICP Certified Planner.

Mr. Stewart said that the staff recommendation is to approve the special exception and then read the recommendations and conclusions made by staff:

- The first question as to any changed or changing conditions that make approval of the request appropriate; staff recommends the finding that there do not exist changed or changing conditions and that they do make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies and intent of the FMB Comp Plan; staff recommends that the request, as conditioned, is consistent with the goals, objectives, policies and intent of the FMB Comp Plan with regard to this commercial area.
- Whether the request meets or exceeds all performance and locational standards set forth for the proposed use; staff recommends that the finding, as conditioned, meets or exceeds all performance and locational standards.
- Whether the request will protect, conserve or preserve environmentally critical areas; staff recommends the finding of the approval, as conditioned, will protect, conserve or preserve environmentally critical areas or natural resources.
- Whether request will be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property; under current circumstances, the proposed outdoor seating would improve the pedestrian orientation of the existing shopping center. Staff recommends that the requested use, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property.
- Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC, Chapter 34; staff recommends the finding that the requested use, as conditioned, will be in compliance with the general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC, Ch. 34.
- There was an earlier drawing, which was part of the original application, that showed additional seating close to the parking area but staff recommends that that be permitted within this particular use.
- Staff recommends the approval of the requested special exception, as is conditioned and, that the hours of operation for serving of alcoholic beverages are not specifically the hours that the establishment is going to operate.

Ms. Kay asked where the existing outdoor seating is and Mr. Stewart replied that it is in the proposed breezeway area and that is the only area for which approval will be granted. Mr. Ryffel asked who owns the shopping center and Mr. Stewart answered that the owner is in agreement with the proposal. Mr. Stewart added that the Town has not received any letters of opposition, as of this meeting. Ms. Shamp asked if there is any music at any other restaurants along this strip; Mr. Stewart knows of none. Mr. Kakatsch asked that the LPA make a point of asking the Council for this, and all other requests like this, that the hours of operation be specifically addressed. He said that the hours allowed are too open and, even though many businesses would not serve alcoholic beverages during these broad hours, the range allows for them to technically do so. Ms. Shamp asked the attorney for an opinion regarding this and there was a brief discussion.

Public comment was opened and then closed, without comments from the public. With no further comment from the applicant or staff, Ms. Shamp closed the public comment portion of the hearing and opened the meeting for LPA discussion.

Ms. Shamp then turned the LPA's attention to the "Recommended Conditions" for discussion.

1. The subject area, Exhibit B, was reviewed with no discussion.
2. On the subject of entertainment or outside music Mr. Ryffel commented that this proposal was "ideal" in that there are walls and a roof to contain the noise and he supports the recommendation. Mr. Stewart again reminded the LPA that the existing Exhibit B shows some tables in the front area, which staff does not recommend approval of.
3. Sales, service and consumption of alcoholic beverages must not begin earlier than 7:00 am and end no later than 2:00 am. Mr. Ryffel said that this should remain the same and there should be no more restrictions placed on this, adding that if this is not acceptable, the law should be changed and not specific applications. He supports the times shown in item #3. Ms. Shamp agreed with Mr. Ryffel to keep consistency in the applications of all establishments, adding that the changes would come if the ordinance itself was changed. Ms. Kay also agreed, as did Mr. Van Duzer. Mr. Kakatsch disagreed and said he is opposed because he feels the hour issue must be addressed.
4. There was no discussion for this point.
5. No discussion on this point.

Motion: Mr. Van Duzer moved to approve Resolution 2010-08, as conditioned with the correction of Exhibit B; that music and audible entertainment be prohibited before 10:00 am and after 10:00 pm; sales, etc., of alcoholic beverages not begin before 7:00 am and end no later than 2:00 am, and the use must comply at all times with the LDC Section 34-1264K, and must be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509 FS and the use must comply at all times with the lighting standards including the regulations for the protection of sea turtles.

- **The requested special exception as conditioned is consistent with the goals with the goals, objectives, policies and intent of the FMB Comp Plan;**
- **The requested special exception as conditioned meets or exceeds all performance and locational standards set forth for the proposed use;**
- **The requested special exception as conditioned** as conditioned, will protect, conserve or preserve environmentally critical areas or natural resources.
- **The requested special exception as conditioned will be** will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property.
- **The requested special exception as conditioned will be** in compliance with the general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC, Chapter 34.

Seconded by Mr. Ryffel

Mr. Kosinski will file Form 8B, Memorandum of Voting Conflict for County, Municipal and Other Local Public Officers and will abstain from voting. Disclosure of Local Officer's Interest: *I, Joseph C. Kosinski, hereby disclose that on August 24, 2010, a measure came or will come before my agency which inured to the special gain or loss of my business associate, Joe McHarris, MKPD. The measure before my agency and the nature of my conflicting interest in the measure is as follows: FMBSEZ2010-0002, Special Exception Skye's Restaurant, Resolution 2010-08. The firm providing the layout and design of the restaurant seating (inside and outdoor) is "MKPD" in which I, Joseph Kosinski, am in partnership with Joseph McHarris, the design firm owner. Since MKPD was paid for this service, I felt it would be inappropriate to participate, vote or comment on this issue.*

Vote: Motion passed 4-1, with Mr. Kakatsch opposed; Mr. Kosinski abstained (Mr. Moorefield was absent).

Mr. Stewart said he would like to move this to the Council ASAP and requested that the LPA authorize this to be brought up at the meeting of Sept. 7, 2010.

Motion: Mr. Ryffel moved to move this forward to Council on Sept. 7, without approval of minutes.

Seconded by Mr. Van Duzer;

Vote: Motion passed 5-0, with Mr. Kosinski abstaining.

The hearing FMBSEZ2010-0002 was closed at 9:37 am.

V. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch requested that the LPA review the timing of the liquor service for establishments and discuss it at the next regular meeting. Ms. Shamp explained that the LPA has addressed this before with the Council asking for their guidance and they are awaiting some response. Mr. Ryffel said that Council has a reluctance to change this and wanted to discuss further setting precedence. He said that there must be some flexibility to set limits for specific locations due to the individual needs. There was some discussion about this. Mr. Kakatsch asked if the restaurant was permitted to serve alcohol until 2:00

am, would they be willing to drive intoxicated patrons home. Both Ms. Miller and Mr. Stewart agreed that this is not a governmental issue but rather a question of business liability. There was a brief discussion.

Mr. Van Duzer reported that he has been assigned to speak about the right-of-way at the Oct. 4th work session. He wants to copy his previous report on the subject for all the members to review before he goes to the meeting so that he can have everyone's opinions and thoughts.

Ms. Kay said that there is a Walk-ability seminar in Naples and asked if anyone had information about it. Mr. Stewart said that this is \$25.00 per person and he will have the town clerk email this information to LPA members.

Ms. Shamp reminded the members, including herself, who are up for reappointment that they need to be present for the Town Council meeting, for which Mr. Stewart will advise them of the date. Ms. Shamp added that she had presented the LPA-HPB report to Council on the 16th and it was well received. The \$2000.00 discussed will be added to their budget. The LPA can also attend the Oct. work session for the ROW.

Mr. Ryffel said that this "is no such thing" as setting a precedence and said that every case stands on its own as he pointed out in setting hours, etc. for the special exception applications. Ms. Miller agreed and there was a brief discussion about this.

VI. LPA ATTORNEY ITEMS

Ms. Miller said that she is about halfway through the sign ordinance and hopes to have a draft to the LPA before the next meeting.

VII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Nothing further to report.

VIII. LPA ACTION LIST REVIEW

- Resolution 2009-24 COP expansion on the beach; August 16-Shamp
- Amendments to Parking Regulations-August 16-Ms. Kay
- Resolution 2010-08 Skye's-Sept. 7 to Council; Van Duzer

Future Work Activities

- Shipwreck-10/12
- ROW Residential Connection; August 16-Van Duzer
- LDC 613-14 10-25 Storm Water; TBD
- Sign ordinance-Ms. Miller; TBD
- CIP Resolution-Ms. Miller; Sept. 14
- HPB Vistas/Historical Designation Line item-Ms. Kay-TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

IX. PUBLIC COMMENT

No comment.

X. ADJOURNMENT

Motion: Mr. Ryffel moved to adjourn.
Seconded by Ms. Kay;
Vote: Motion passes 6-0.

Meeting adjourned at 10:00 AM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____ Signature: _____

- End of document

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 Aug 24, 20 10:

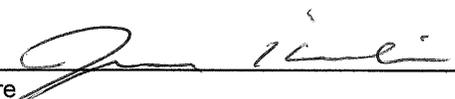
(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, Joe McHarris, MKPD;
- 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:

FMBSEZ 2010-0002, Special Exception Skye's Restaurant Resolution 2010-08. The firm providing the layout and design of the restaurant seating (inside and outdoor) is "MKPD" in which I, Joseph Kosinski, am in partnership with Joseph McHarris, the design firm owner. Since MKPD was paid for this service, I felt it would be inappropriate to participate, vote or comment on this issue.

8-24-10
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.