



## **MINUTES**

**FORT MYERS BEACH  
LOCAL PLANNING AGENCY  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

**December 13, 2011**

### **I. CALL TO ORDER**

Meeting was called to order at 9:01 a.m. by Joanne Shamp; other members present:

Alan Smith  
John Kakatsch  
Bill Van Duzer  
Hank Zuba  
Al Durrett  
Jane Plummer

LPA Attorney, Marilyn Miller  
Staff Present: Walter Fluegel, Community Development Director  
Josh Overmyer, Planning Coordinator  
Keith Laakkonen, Environmental Scientist

### **II. PLEDGE OF ALLEGIANCE**

### **III. INVOCATION – Hank Zuba**

Community Development Director Fluegel introduced a new staff member, Josh Overmyer, Planning Coordinator.

### **IV. MINUTES**

#### **A. Minutes of October 11, 2011**

#### **B. Minutes of November 8, 2011**

**MOTION:** Ms. Plummer moved to approve the October 11, 2011 minutes; second by Mr. Smith.

**VOTE:** Motion passed 7-0.

**MOTION:** Mr. Kakatsch moved to approve the November 8, 2011 minutes; second by Mr. Van Duzer.

**VOTE:** Motion passed 7-0.

## **V. PUBLIC HEARINGS**

### **A. LPA Resolution 2011-014 Honoring Bill Van Duzer**

LPA Attorney Miller read the title of the resolution:

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, BILL VAN DUZER was appointed as a member of the LPA from 1996 through 2001; and

WHEREAS, BILL VAN DUZER was elected to and served on Town Council from 2001 through 2005; and

WHEREAS, BILL VAN DUZER served as Mayor in 2005; and

WHEREAS, BILL VAN DUZER was appointed as a member of the LPA from 2005 through 2011; and

WHEREAS, during his membership on the LPA, BILL VAN DUZER, provided exemplary service to the Town of Fort Myers Beach:

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

BILL VAN DUZER IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CONTRIBUTED HIS EXPERTISE IN LAND PLANNING TO BENEFIT THE LOCAL PLANNING AGENCY OF THE TOWN, PROVIDING INSIGHT AND RECOMMENDATIONS TO ADDRESS ISSUES OF CONCERN TO THE WELFARE OF THE RESIDENTS AND VISITORS, AND TO SUPPORT THE LOCAL COMMERCIAL INTERESTS. HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARDS COLLEAGUES, CITIZENS AND STAFF DURING DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATIONS. HIS CONTRIBUTIONS WORKED TO INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.

**MOTION:** The foregoing Resolution was adopted upon a motion by LPA Member Kakatsch and seconded by LPA Member Plummer

Discussion ensued by the LPA Members which recognized the work and dedicated service of Mr. Van Duzer to the Town of Fort Myers Beach.

**VOTE:** Motion passed, 6-0; Mr. Van Duzer abstained.

Mr. Van Duzer addressed the compliments and well wishes from the LPA Members.

## **VI. Workshop Items**

### **A. Consumption on Premises Ordinance**

Ms. Shamp distributed and reviewed a brief record of actions by the LPA and Town Council and a quote from Town Manager Stewart dated May 19, 2011 concerning consumption on premises. She reported that the LPA, historically over the past two years, had expressed considerable opposition to the expansion of COP in the EC Zone and Recreational FLUM category. She also distributed information regarding potential proposed changes to the Land Development Code Section 34-12.64 that would regulate the expansion of COP in an EC Zone and Recreational FLUM category by limiting further expansion. She discussed three pages of interest from the COP Report from 2008 as it pertained to guidance from the Comprehensive Plan on the subject (i.e. *protect natural resources, preserve small town character, and protect residential neighborhoods against commercial intrusions; insure compatibility with surrounding lands and provide proper buffering where needed, further a more stable redevelopment pattern that protects coastal resources, minimize threats to life and property, and limits public expenditures subject to destruction by storm; conserve and enhance the shoreline, insure compatibility with surrounding land, expanded COP uses would contribute to pedestrian-oriented uses in the public realm, COP uses would protect important natural resources, expanded COP uses would not inhibit easy walking access to the Gulf beaches, public facilities to support the demands of impacts associated with an expanded COP should be available concurrently should be considered if necessary, and the LPA should provide clear and consistent rules and processes to govern the expansion of COP uses on the Gulf beaches with the appropriate dimensional requirements; that the plan required the LPA specified in the LDC permitted form and extent for new or expanded COP uses in conjunction with pedestrian-commercial FLUM category; and establish a streamlined approval process; assure that any expansion in mixed-residential FLUM category was sensitive to nearby residential uses, compliments any adjoining uses, contributes to the public realm as described in the Plan and meets the design concepts of the Plan; and the Town must also provide procedural protection comparable to the public hearing process; and assure that any expansion in Boulevard FLUM category is sensitive to nearby residential uses, compliments any adjoining commercial uses...determine the expanded use would prefer residents and overnight guests rather than attract additional day visitors during peak season congestion; assure the expansion will contribute to the pedestrian character of the Town, assure that the expanded will be sensitive to nearby residential areas, and prohibit commercial activities that will intrude into a residential neighborhood because of their type, scale, or orientation).*

Community Development Director Fluegel began the presentation for the Town by displaying an aerial view that would help to demonstrate some of the concepts that would be discussed later. He briefly reviewed the history of staff's work on COP in the EC Zone; noted the need for a real regulatory framework regarding COP; and if COP in the EC Zone was a permissible use, there was a need for regulatory measures to minimize the impact and apply consistency in application for both new, existing, and expansion.

LPA Attorney Miller discussed an overview of how they crafted the proposed ordinance, and policy considerations in the development of regulations for consumption on premises in the EC Zoning district. She noted the uniqueness of the Town as it pertained to regulations prior to the Town incorporation

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when the County had allowed certain establishments to have COP, and that when the Town incorporated then the businesses were in the EC Zone which had not existed previous to incorporation. She explained that if the Town adopted regulations then some of these businesses would be non-conforming uses; how there would be illegal and legal non-conforming uses and she reviewed the definition of the two types of non-conforming uses. She reported that the existing businesses as examined by staff appeared to be legal non-conforming uses. She stated that when adopting regulations that the non-conforming uses would need to be considered. She discussed the list she prepared, Policy Considerations in the Development of Regulations for Consumption on Premises in the EC Zone District:

1. Regulation of existing establishments that are currently serving alcohol in the EC Zoning District.
  - Status as either legal or illegal non-conforming uses – inability to expand without obtaining additional approval
  - Health and safety regulations that can be applied to existing establishments even those that are legal non-conforming uses
  - Approval procedure for non-conforming uses that would permit expansion (special exception vs. administrative approval)
  - Current zoning of existing establishments and whether regulations should be different (i.e. Downtown vs. outside Downtown)
2. Regulation of new establishments desiring to gain approval for serving alcohol in the EC Zoning District.
  - Extent to which the COP area can extend into the EC Zoning District (percentage of width of the beach or uniform number of feet)
  - Permissible methods of delineating and limiting area where service/consumption is permitted (i.e. rope and post, deck area, vegetation)
  - Signage
  - Buffering
  - Parking requirements
  - Requirements for service items (eg., biodegradable cups; name of establishment)
  - Permitted hours of service
  - Permissible accessory beach furniture
  - Entertainment/noise considerations
  - Other considerations designed to mitigate potential adverse effects

Community Development Director Fluegel continued staff's presentation by displaying an outline of COP in EC Standards and Procedures, or "an ordinance in development". He discussed the following elements of the displayed spreadsheets, as well as, the basis of staff's recommendation and recorded the LPA recommended changes (if applicable):

- Procedure
  - Existing establishments (the 12 identified in the October COP Report)
  - Establishment currently approved for COP adjacent to EC, but not approved for service and/or consumption in EC
  - New establishments
- Standard Conditions

- Area of expansion in EC is limited to 1/3 of the distance from the EC Zoning line or rear building/deck line (if the building extends over the EC Zoning line), seaward to the MWH or ECL (whichever is less)
- The area of extension of premises in EC must be enclosed on three sides by rope and post extending from the rear of the building or deck to the seaward allowed distance
- One 6' wide pedestrian access opening is allowed per 100' of the rope and post along the side parallel to the waterline. Each pedestrian access point shall contain 2' by 2' signs that indicate no alcohol is allowed to enter or exit that point
- The area enclosed by rope and post must be buffered by a 10' wide vegetative buffer on the outboard side, comprised of dune vegetation material. For those properties, with an enclosed area that is less than 30' in depth from the rear of the building to the seaward line of the area of expansion, the vegetative buffer shall only be required along the side property lines, adjacent to the rope and post
- Parking requirement for area of expansion in EC surrounded by rope and post
- All beverages served within the area of extended premise in EC, must be served in plastic biodegradable cups, with the establishments name on the cup. All other materials, such as straws, forks, spoons, etc., shall be made of biodegradable materials
- House of service and consumption in EC are limited to between the hours of 11:00 a.m. and 30 minutes after sunset
- Accessory beach furniture in the area of expansion in EC is limited to chairs, tables, and sunbathing chairs
- The area of expansion in EC must be under the same ownership as the licensed premise and under the same property strap number
- Patrons may not bring their own alcohol into the area of expansion in EC
- No entertainment shall be allowed in EC, except for by Special Exception or Special Event Permit
- The area of expansion must be maintained free of litter and debris on a continuous basis
- Non-compliance with any of these provisions may be subject to revocation

Community Development Director Fluegel completed his presentation and indicated the LPA now had a draft framework to consider and give feedback/suggestions to staff.

Ms. Shamp reviewed the similarities between her handout and staff's recommendations contained in the presentation.

Discussion ensued regarding foreseeable operating issues pertaining to resorts and COP; standard conditions; and legal non-conforming uses.

Public Comment opened.

John Callis, owner of the Holiday Inn, reported his business had been able to have events for several years and they managed to have no significant incidents. He discussed what he believed to be the expectation of visitors when they come to resorts on Fort Myers Beach (i.e. drinking alcohol on the beach was permitted). He noted that they have encountered people who brought their own cooler, came

onto the Holiday Inn property, and drank alcohol they brought along with them. He stated he would like to see more restrictions (i.e. how far do they go out to service guests, no service after sundown). He believed the proposed ordinance was an opportunity for fairness along the beach.

Public Comment closed.

Discussion ensued regarding the EC Zoning line and Gulf Shore Grill; and the illegal action by visitors who bring coolers on Fort Myers Beach and the open container law.

Discussion was held and LPA input was given to staff concerning the three elements of "Procedure" as presented by Director Fluegel; "Policy Considerations" submitted by the LPA Attorney as it pertained to whether or not to include licensing and insurance requirements; regulatory aspects of special exception; new establishments and expansion recommendations; structures that were past the EC line and using footage versus percentage as it pertained to going past the line; vegetative buffers; service on the beach after sunset; how people utilize the beach; how the proposed COP ordinance would impact future property sales, renovations, or uses; litter control; use of rope and post; how to bring existing establishments into compliance; resorts outside the downtown; and maintaining accessibility to the water.

Ms. Shamp asked the LPA if they wanted to allow expansion of COP into the EC further than what properties have currently, or did they want to work toward expansion of the COP in the EC Zone.

Consensus was not to answer the question until more detailed information was received (i.e. define properties affected).

Discussion was held regarding the EC line and the Coastal Construction Control line; and the number of existing establishments.

Ms. Shamp asked the Board for a consensus on each of the items listed in staff's document entitled COP in EC Standards and Procedures, and discussion was held and consensus was demonstrated by a show of hands:

- Procedure
  - Existing establishments (the 12 identified in the October COP Report) – **6/Administrative Approval, 1/Special Exception**
  - Establishment currently approved for COP adjacent to EC, but not approved for service and/or consumption in EC - **6/Administrative Approval, 1/Special Exception**
  - New establishments – **Downtown Allowed: 5/Yes, 2/No; If allowed – 3/Administrative Approval; 4/Special Exception; Outside Downtown District (resorts): 5/Administrative Approval, 2/No; Outside Downtown District (regular commercial): 3/Administrative Approval, 4/Special Exception**
- Standard Conditions
  - Area of expansion in EC is limited to 1/3 of the distance from the EC Zoning line or rear building/deck line (if the building extends over the EC Zoning line),

seaward to the MWH or ECL (whichever is less) – **7/0 Approved (no difference between a bar and a restaurant)**

- The area of extension of premises in EC must be enclosed on three sides by rope and post extending from the rear of the building or deck to the seaward allowed distance - **5/2 Approved**
- One 6' wide pedestrian access opening is allowed per 100' of the rope and post along the side parallel to the waterline. Each pedestrian access point shall contain 2' by 2' signs that indicate no alcohol is allowed to enter or exit that point – **Consensus approved.**
- The area enclosed by rope and post must be buffered by a 10' wide vegetative buffer on the outboard side, comprised of dune vegetation material. For those properties, with an enclosed area that is less than 30' in depth from the rear of the building to the seaward line of the area of expansion, the vegetative buffer shall only be required along the side property lines, adjacent to the rope and post – **vegetative/not at all: 1/Yes and 6/No; vegetative/optional: 6/Yes and 1/No**
- Parking requirement for area of expansion in EC surrounded by rope and post – **No additional parking requirements -7/0 Approved**
- All beverages served within the area of extended premise in EC, must be served in plastic biodegradable cups, with the establishments name on the cup. All other materials, such as straws, forks, spoons, etc., shall be made of biodegradable materials – **6/1 Approved for use of biodegradable; 4/3 Approved names on cups**
- Hours of service and consumption in EC are limited to between the hours of 11:00 a.m. and 30 minutes after sunset – **any variance from the standard condition required a special exception.**
- Accessory beach furniture in the area of expansion in EC is limited to chairs, tables, and sunbathing chairs - **Consensus approved.**
- The area of expansion in EC must be under the same ownership as the licensed premise and under the same property strap number - **Consensus approved.**
- Patrons may not bring their own alcohol into the area of expansion in EC – **state law/no vote.**
- No entertainment shall be allowed in EC, except for by Special Exception or Special Event Permit - **6/1 Approved**
- The area of expansion must be maintained free of litter and debris on a continuous basis - **Consensus approved.**
- Non-compliance with any of these provisions may be subject to revocation - **6/1 Approved**

Discussion was held regarding how changes may or may not impact other sections of the code; minimum length of beach necessary (i.e. EC line; mean high water line, etc.).

Public Comment opened.

Tom Dougherty, Attorney, addressed a comment regarding if the State owned the property beyond the EC Line. He stated the property owner still owned the property and it was just a restriction on the

property. He suggested they distinguish between *serve* and *consume* in the ordinance. He added that walking on the beach with a glass of wine was considered an “open container”.

LPA Attorney Miller noted that when there was beach renourishment there was a statute that said property seaward of the Erosion Control Line became State property.

Discussion was held regarding Attorney Dougherty’s comments.

Bob Young, resident, discussed his concerns regarding the use of “administrative approval” as previously discussed by the LPA. He suggested limiting units per years and see what happened; and he noted he was just as confused about the location of the various “lines” as others (i.e. Coastal Construction Control Line). He noted that drinking alcohol did not stop when the sun went down; and discussed why he felt controlling this matter would not be easy to do.

Public Comment closed.

Community Development Director Fluegel noted that after reviewing last month’s minutes the LPA had four members that served on the HAC, and that Mr. Kakatsch was still a member.

**MOTION:** Mr. Zuba moved to adjourn the LPA and reconvene as the HPB; second by Mr. Van Duzer.

**VOTE:** 7-0.

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC  
PRESERVATION BOARD  
11:45 A.M.**

**VII. HISTORIC PRESERVATION**

Ms. Plummer reported the HAC did not have a December meeting and there were no items to report.

**MOTION:** Mr. Van Duzer moved to adjourn the HPB and reconvene as the LPA; second by Mr. Zuba.

**VOTE:** 7-0.

**HISTORIC PRESERVATION BOARD ADJOURNED AND RECONVENED AS THE LOCAL  
PLANNING AGENCY  
11:46 A.M.**

**VIII. LPA MEMBER ITEMS AND REPORTS**

Mr. Smith – no items or reports.



Mr. Durrett – no items or reports.

Mr. Zuba – no items or reports.

Mr. Van Duzer – no items or reports.

Ms. Plummer – no items or reports.

Ms. Shamp – extended appreciation to Mr. Smith for providing the LPA’s ornament for the Town Christmas tree.

Mr. Kakatsch – extended comments to the Town Manager and Community Development Director that the new sign on the Town Hall Building was very nice; and questioned the status of renting the subject premises.

LPA Attorney Miller noted the referendum for Town Hall on January 31, 2012.

Discussion was held regarding the Town Hall referendum.

**IX. LPA ATTORNEY ITEMS**

LPA Attorney Miller had not items or reports.

**X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel had not items or reports.

**XI. LPA/HPB ACTION ITEM LIST REVIEW & ITEMS FOR NEXT MONTH’S AGENDA**

Ms. Shamp noted she would update the Action List on Monday when she met with Community Development Director Fluegel.

**XII. PUBLIC COMMENT**

No comment.

**XIII. ADJOURNMENT**

**MOTION:** Motion by Mr. Van Duzer, seconded by Mr. Zuba to adjourn.

**VOTE:** Motion approved, 7-0.

Meeting adjourned at 11:48 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Signature

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