



MINUTES

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

January 10, 2012

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
Leslee Chapman, Zoning Coordinator
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

A. Minutes of December 13, 2011

MOTION: Mr. Kakatsch moved to approve the December 13, 2011 minutes; second by Ms. Plummer.

VOTE: Motion passed 6-0.

V. PUBLIC HEARINGS

A. LPA Resolution 2012-001 Honoring Carleton Ryffel

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, Carleton Ryffel was a member of the LPA from June 2009 to June 2011; and WHEREAS, during his membership on the LPA, Carleton Ryffel provided exemplary service to the Town of Fort Myers Beach:

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

CARLETON RYFFEL IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CONTRIBUTED HIS EXPERTISE IN LAND LANNING 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, AS VICE-CHAIRMAN OF THE LPA, HE CREATED A POSITIVE ENCIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATION. 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 Zuba.

Ms. Shamp recognized the work and dedicated service of Vice Chair Ryffel to the LPA and the Town of Fort Myers Beach.

VOTE: Motion passed, 6-0.

B. FMBSEZ2011-0003 Paradise Tropical Wines

Ms. Shamp opened the hearing at 9:10 a.m.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Ms. Shamp asked if any LPA Member had any ex-parte communication regarding this item. Mr. Smith – none; Mr. Zuba – none; Mr. Durrett – none; Ms. Shamp – none; Mr. Kakatsch – none; and Ms. Plummer – none.

Zoning Coordinator Chapman presented comments for FMBSEZ2011-0003, Paradise Tropical Wines, on behalf of the Town of Fort Myers Beach. She displayed a map of the subject property located at 159 Old San Carlos Boulevard. She reported the applicant was requesting the Special Exception in a location that currently had a land use of Pedestrian-Commercial and was in the Downtown zoning district in order to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises and package sales of specialty fruit wines for a retail specialty wine shop in an existing retail location. She added that the only component of the special exception was the request for consumption on premises with wine tastings that involved consumption of one-half to one ounce portions and the package sale of wine in sealed containers of the proposed use. She displayed the applicant's proposed floor plan in a unit known as East Winds, and noted the applicant was not requesting any outdoor consumption and the hours would be 10:00 a.m. to midnight. She explained the special exception request was required because the subject site was located within 500 feet of another site that had consumption on premises. She briefly reviewed the supporting regulations for special exceptions which the Town Council would hear and decide:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate* – no request for a change to the existing property and the request remains consistent with the intended use of the area.
2. *Whether the request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan* – the subject property is located in the Downtown Core and the Comprehensive Plan envisions the area as a vibrant area with a mix of uses.
3. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use* – the special exception request was due to a locational standards and was consistent for request.
4. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources* – proposed use should have no negative effects on the environmentally critical areas or natural resources. She noted the subject property was already located in one of the Town's most highly developed areas and the request was compatible and appropriate within its neighborhood.
5. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property* – staff did not anticipate any damage, hazard or nuisance and the LPA was able to condition the request.
6. *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34* – the consumption on premises of alcoholic beverages on the subject property would be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Chapter 34-671 et seq. and 34-1264. She reported that staff found, with some conditions, would be in compliance with the applicable general zoning codes.

She stated that staff recommended approval of the special exception in the Downtown Zoning District to allow 2-COP [beer and wine] alcoholic beverage license in conjunction with wine tasting and package sales at the location of 159 Old San Carlos Boulevard with six conditions:

1. That the special exception be approved only for a 2-COP [beer and wine] alcoholic beverage permit to allow consumption on premises of specialty fruit wines and the package sales thereof. If an increase in the alcoholic beverage licenses series is sought, a new approval in accordance with the LDC will be required.
2. Consumption on premises is limited to the retail package store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan Exhibit C.
3. The 2-COP for consumption on premises is limited to tastings of one-half [1/2] to one [1] ounce servings to adults age 21 or above, who are interested in purchasing the specialty Florida fruit wines.
4. Sales of specialty wines for consumption off the premises must be in factor-sealed containers. At no time shall alcoholic beverages be sold "by the glass" for consumption on premises.
5. Hours of operation for consumption on premises shall be limited to the hours of 10:00 a.m. to 10:00 p.m., daily. The package store may be open during hours outside of this restriction, but consumption on premises shall be limited to the hours listed herein.
6. The subject application does not include consumption on premises in conjunction with outdoor seating areas. All consumption [tasting] activities must take place inside the retail store.

Eric Malasky, applicant, showed an example of the size of the wine tasting sample cup (1/2 to 1 ounce) that would be used at the tastings. He explained the basis for conducting wine tastings was due to the customers wanting to taste the uniqueness of the fruity Florida wine prior to purchase.

Mr. Smith questioned the 2-COP approval request and if he had any consideration for beer tasting in the future.

Mr. Malasky responded in the negative; and stated it would be for the wine, wine-related items, and gift items.

Mr. Zuba questioned the appearance of staff's proposed restriction to "fruit" wines.

Zoning Coordinator Chapman stated it was not staff's intent to restrict it to fruit wines; however, that was the label the applicant gave to the Town for their product. She explained "fruit" could be removed from the wording.

Mr. Zuba noted it appeared on the drawing that the bathroom had been eliminated from the existing store.

Mr. Malasky explained there would be a public bathroom and it would be maintained.

Ms. Plummer asked the applicant regarding the proposed condition for the hours of operation for the tastings.

Mr. Malasky stated he had no problem with the proposed hours for the tastings.

Discussion was held concerning the wine distributor used; Mr. Malasky's store location in Cape Coral; and selling other items in the subject store such as food.

Ms. Shamp questioned aspects of Chapter 34-1263 and 1264 as it applied to the special exception request and noted that there was one existing package store on Fort Myers Beach with consumption on premises which had a separate door to the bar section from the package store area and on premise consumption; and discussed whether or not this could be approved according to code and would it be setting precedent.

LPA Attorney Miller responded by noting in Chapter 34-1263(d), Location of Package Stores, it stated “*no package store or other establishment primarily engaged in the retail sale of retail liquor*”. She would research in the State statutes the definition of “liquor” since she believed there was a separate definition of liquor, beer, and wine.

Community Development Director Fluegel pointed out that within Chapter 34-1263 the sale for off-premises of consumption it established the permissibility of the use itself.

Discussion was held regarding Chapter 34-1264, sale for off-premise consumption, locational standards as applicable to package stores, and the wine tasting which was on-premise consumption.

Mr. Zuba also questioned if approving the resolution would cause a proliferation of similar matters.

Community Development Director Fluegel noted these types of requests would be handled through a special exception application process.

Discussion ensued regarding the location of the subject property as it pertained to be in the Downtown Core and it was noted that the establishment was within 500’ to a park, and staff noted there were other other establishments within 500’ of the property currently licensed to allow consumption on-premises.

LPA Attorney Miller noted that the sale of liquor and wine were regulated by the State under different chapters - Chapter 565 for liquor and Chapter 564 for wine. It was her opinion that the 2-COP only applied to beer and wine.

Discussion ensued regarding the difference between the State’s definition of beer, wine, and liquor.

Community Development Director Fluegel pointed out that if approved, the LPA would be granting two which would specifically say that the only State liquor license the Town could sign off zoning approval would be for a 2-COP.

Public Comment opened.

John Lallo, Owner of Pete’s Time Out, was sworn in by LPA Attorney Miller. He pointed out the location of his business in Times Square, welcomed Mr. Malasky to the area, and discussed his belief that Mr. Malasky would offer unique items. He suggested the LPA may want to limit how many ounces the attendees could have at a tasting.

Public Comment closed.

Mr. Smith discussed his viewpoint that the subject business would be an appropriate use in the Times Square location.

Mr. Zuba explained why he would be in support of the special exception; questioned why the applicant was being limited to “fruit” wines; and the floor plan should be modified to indicate the bathroom.

Ms. Shamp noted the plan did indicate a half-bath; discussion ensued regarding the location of the bathroom on the floor plan.

Zoning Coordinator Chapman stated staff would obtain a clear floor plan indicating the bathroom.

Messrs. Durrett and Kakatsch welcomed Mr. Malasky and his business to Fort Myers Beach.

Ms. Plummer recounted her experience visiting a similar type of store in St. Augustine.

Ms. Shamp asked if the LPA wanted to consider limiting the number of samples per customer.

Consensus was not place a limit on the number of samples per customer and to remove the word “fruit”.

MOTION: Mr. Smith moved that the LPA recommend to the Town Council to approve the applicant’s request for a special exception in the Downtown Zoning District to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty wines, with any approval subject to the recommended conditions of approval. In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions do not exist that make the request approval, as conditioned appropriate;
2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34;

second by Ms. Plummer.

VOTE: Motion passed, 6-0.

Ms. Shamp closed the hearing at 9:40 a.m.

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C. COP Ordinance

Community Development Director Fluegel reported the proposed ordinance would be assigned a number prior to presentation to Town Council.

Ms. Shamp opened the public hearing on the COP Ordinance at 9:42 a.m.

Community Development Director Fluegel stated the Notice of Public Hearing was posted.

LPA Attorney Miller read the title of the COP Ordinance into the record:

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONING DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BEVERAGES" AS PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES", AMENDING SECTION 34-1261, DEFINITIONS; AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Community Development Director Fluegel recapped staff's presentation of the proposed ordinance at last month's LPA Meeting; pointed out that to facilitate the understanding of the proposed regulatory approach there was an Excel spreadsheet included in the agenda item back-up which broke down the proposed regulatory approach on an issue-by-issue basis; and reported staff would present today their recommendation for the best approach to regulate COP in the EC Zoning District. He thoroughly discussed Exhibit A, Section 34-652. EC, Section 34-1261. Definitions, and Section 34-1264. Sale or Service for On-Premise Consumption:

- As it pertained to establishment of permitted uses;
- Noted that language was added under (d) (8) "*Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in §34-1264(g)(1).*";
- Examined Section 34-1261. Definitions as it pertained to changing definitions so that they were consistent with other chapters as well as the Town Code of Ordinances (i.e. beach, EC Zoning District, Erosion Control Line, etc.
- Reviewed page 10, §(g), Regulations Applicable to Expansion into EC Zoning District, Expansion of area designated for permit, and §(g)(1) Regulations Applicable to Expansion into EC Zoning District and subparagraphs (a) Area of Expansion and (b) Defined Area, (i) Standard conditions of approval (1-7) and ii, iii, iv (1-5);
- Examined page 12 §(2), Procedure for Approval of COP in the EC Zoning District, subparagraphs a, b, c (Commercial Planned Development, 1-2).

Public Comment opened.

John Lallo, Owner of Pete's Time Out in Times Square, reported he spoke last night with John Richard the owner of Shipwreck, and Brad Benson the owner of Wahoo Willie's, and they were both unable to

attend today's LPA meeting. He reported that the three of them agree there should be equal enforcement up and down the beach concerning the subject issue. He stated that the following comments would be his own and he relayed comments he received from tourists who questioned why they could not drink on the beach. He explained why he disagreed with the requirement for plastic cups to have the identity of the bar. He commented on the definition sunset and noted that it lasted for approximately 45 minutes after the sunset and the time usually changed every day.

Lee Melsek, resident and representing the Board of Directors of the Fort Myers Beach Civic Association, stated they opposed the expansion of the sale of alcohol onto the bathing beaches, and it was the Association's intention to challenge the ordinance at the Council level.

Larry Arnold, resident, noted that he received many emails and was contacted by people on the beach who were in favor of the COP. He discussed his views that supported designated areas for COP in the EC Zone which would give the Town the ability to control unwanted and illegal consumption on public beaches and would allow for the protection of environmentally sensitive areas. He discussed his belief on how the designated COP would benefit the businesses and the Town.

John Albion, President of the Fort Myers Beach Chamber of Commerce, stated he was glad to see the matter addressed and an attempt to create a "fairness" doctrine in the area. He noted his concern for the proposal in the ordinance that the Town Manager has the authority to reduce the area of expansion (unless there was a hurricane or other emergency that reduced beach access) and suggested instead it should fall under the elected Town officials. He also addressed his concerns regarding the "rope and post" requirement and discussed the basis for his objection to the business name on the plastic cups as it pertained to business insurance liability issues.

Tom Babcock read his statement into record which questioned if it was the Town's intention to expand the COP into the EC Zone (environmentally critical zone) then the ordinance needed further consideration. He discussed his opinion that proposed ordinance should not be interpreted as though the Town Council wanted to have expansion of the COP in the EC Zone, rather it should be that the Council wanted appropriate and fair regulation of this issue. He felt the LPA was not required to change the LDC to allow the expansion of alcohol sales onto the beach. He suggested that visitors should be informed that they are not permitted to bring coolers with alcohol onto the beach and that the only places to consume alcohol were in the areas designed to allow consumption of alcohol. He noted he believed extra enforcement costs would be incurred and asked if the Town was prepared to pay for that enforcement. He expressed his opinion that allowing expansion of the COP as an administrative approval would eliminate due process (neighbors needed to be informed and permitted time for public comment); and how the wording of the proposed ordinance conflicted with other sections of the LDR (i.e. separating a section with rope and bollards require a special exception). He stressed the importance of the proposed draft ordinance and requested that all the issues be fully researched, discussed, and resolved to the LPA's satisfaction.

Pat Cenello, Owner of Nemo's on the Beach, noted he had seven liquor licenses and had been in existence for 30 years. He applauded the attempt for creating a level playing field through the proposed draft ordinance and stated he would like to see the ordinance approved.

Annie Babcock, resident, explained that she was speaking with the perspective of a resident and not a business owner. She asked the LPA to vision the downtown area in 5 years and in 10 years, and then asked if they saw families, young people, young couples, older couples, “spring breakers”, or people striving to make ends meet on the beach. She discussed how it appeared there was not a notice of today’s meeting in the two newspapers nor was there anything easily visible on the Town of Fort Myers Beach website regarding the meeting or the agenda; however, she did find information on the COP and the meeting in the archives on the website. She recounted how she walked the beach two times a day and noted the differences in attitude and behavior and the difference in ages in the areas as she passes them; the difference between in the level of respect she encountered in each area as she passed (i.e. residential, business area). She reviewed her concerns regarding the proposed draft ordinance and how it would change the character of the beach; she stressed the need for specific enforcement if the ordinance was approved. She asked the LPA to make the ordinance specific for containers to the Downtown area, to consider the effect as it pertained to turtle season; remember additional enforcement costs, **rethink the size of the 1’ X 2’ 1:24:39??**. She discussed the importance of keeping in mind the rights of others.

Maury Gingrich, seasonal resident, questioned the definition of the Downtown Zoning Area.

Community Development Director Fluegel described the boundaries of the Downtown Zoning Area.

Maury Gingrich, seasonal resident, addressed a previous comment to tell visitors not to bring their coolers to Fort Myers Beach was the same as telling visitors not to come to Fort Myers Beach.

Leslee Donovan, bartender and manager at the Gulfshore Grill, explained that her customers consisted of locals and tourists and all they wanted to do is put their feet in the sand and have a beverage. She recounted the Gulfshore Grill’s experience with Lee County prior to the Town’s incorporation as it pertained to COP. She explained how the Gulfshore Grill worked to comply with the Town’s regulations as they currently exist. She noted her objection to having the business name on the beverage cups, and to the rope and post requirement noting potential safety issues to pedestrians/bicyclists since there were no lights on the beach.

Steve Malakaikis, Owner of Plaka Restaurant in Times Square, stated he also spoke for the owner of another Times Square business. He discussed the support of the rope and post requirement; an objection to the business name on the plastic cups; and the support of what staff was trying to accomplish through the proposed ordinance.

Public Comment closed.

Mr. Durrett discussed the rope and post aspect of the proposed ordinance, and suggested there was a better method to define an area such as but not limited to potted plants. He noted the potential for liability issues with the use of rope and post. He also addressed the criteria of “half an hour after sunset” and how it was not fair to the public; and disagreed with the requirement for businesses to have their name on the cups.

Mr. Kakatsch stated he had the same concerns as Mr. Durrett plus he wanted to know the potential cost for enforcement.

Ms. Plummer agreed that having a business name on a cup would probably hurt businesses due to liability issues and be an additional expense. She discussed her objection to rope and posts and how they interfered with the line of vision down the beach and suggested investigating other methods to indicate areas of containment (i.e. uniform signage); how containment of patrons on the business property should be a matter for the business to enforce; that sea oats were as intrusive as rope and post; and that she was appalled regarding the number of flags, chairs, jet skis, and parasails were actually left on the beach overnight. She stated she was in favor of consumption on premise and that the Town needed to provide rules, regulations, and guidelines for the businesses.

Ms. Shamp discussed the purpose and creation of the EC Zone; and explained her belief that the EC Zone was created to protect the Town's greatest asset which was the beach, and how this major expansion of COP onto the beach would be a significantly greater precedent than anything that was previously set. She addressed her belief that the proposed ordinance did not address regulating the few existing businesses which was presented to the LPA a year or two ago, rather it dealt with expanding alcohol consumption in an unprecedented fashion throughout the island. She discussed her beliefs that the LPA historically had not supported expansion of COP; that if the proposed ordinance was approved, the Town could not "backtrack" later; that the purpose of the LPA which included but was not limited to protecting the Town's resources from commercial intrusion; and that the LPA should have an option to send to Council a proposed ordinance that does not allow for expansion but does regulate the existing businesses. She explained how she did not approve of the proposed ordinance; however, she would work to make it the best it could be to present to Town Council. She reviewed her concerns and commented on the following sections in Exhibit "A" Section 34-652.EC (Environmentally Critical) Zoning District:

- Page 3, (d)(8) – expanding the consumption of alcohol in an environmentally critical zone, and questioned if food services would be expanded onto the beach as well.

Community Development Director Fluegel stated the business would be permitted to do food service; however, it was the alcohol license which was the issue.

Discussion ensued regarding the food sale requirement of serving alcohol and serving percentages in conjunction with an SRX rider on licenses.

Ms. Shamp questioned if the proposed ordinance should be changed to include the "service of food" on Page 3, (d)(8).

LPA Attorney Miller recommended adding "and any required food service".

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1261. Definitions:

- Page 4, "beach", addressed consistency throughout the LDC and the word "that" should be included.

LPA Attorney Miller agreed with the recommendation.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1261. Definitions and Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 5, noted a scrivener’s error on the second line from the bottom should be “proposed” and not “proposes”.
- Page 11, (b) Defined Area, “*The area of expansion of a COP licensed premises extending seaward into the E zoning district, shall be limited to no more than 33% of the land area...*” and suggested saying “the distance”.

LPA Attorney Miller noted it stated it was “*limited to no more than 33%*” and gives the option of doing less.

Discussion ensued regarding linear distance measurement, the 33% limitation, and Mean High Water Line.

LPA Attorney Miller concurred that the measurement was a linear distance and not square footage.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 11, (b)(i)(1), questioned if the word “seaward” should be included as follows: “...upland licensed premise must be located immediately seaward adjacent to and contiguous with the EC zoning district.”

LPA Attorney Miller responded in the negative and explained that there was the requirement that it has to be the same ownership.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 11, (b)(i)(3), questioned if the requirement to have the business name on the cups was a liability or a responsibility; and explained her opinion that the purpose was to contain the cups within an area and was essential to enforcement.
- Page 12, (iv), noted she did not like the appearance of rope and post; however, they were probably the lesser of two evils. She commented how she more strongly disliked the proliferation of signs she has seen on current properties that serve alcohol. She described how rope and post would have to be installed as it pertained to turtle season according to the DEP. She discussed her interpretation of the Comp Plan to re-vegetate the beach.

Discussion was held regarding beach furniture and how it was addressed in the Town codes.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 12 and 13, (2), Procedure for Approval of COP in the EC Zoning District, (a) Administrative Approval and (b) Special Exception, she noted her opposition to having the option for an administrative approval and discussed her viewpoint that the administrative approval process would remove the rights of neighboring property owners right to comment on the matter.

- Page 13, (c) Commercial Planned Development, (2), - she questioned how many businesses currently exist outside the Downtown Zoning District with COP permitted in EC.

Community Development Director Fluegel reported there were five such establishments.

Ms. Shamp stated then they would circumvent the Commercial Planned Development for Special Exception.

Community Development Director Fluegel explained that this was to bring the businesses into compliance; they were already approved for COP in the EC.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Discussed her concerns that there was no education provision for residents or visitors so they would know the Town’s alcohol policies.

Discussion ensued regarding the Town’s current open container law, enforcement, practicality of enforcement, and how to educate the public on the topic; and how Council would need to give consideration to these matters.

Community Development Director Fluegel reported the State’s alcohol licensing require dominion and control over the licensed premise; and staff felt that the rope and post method was the best way of dominion and control which was based mostly on observations last year of how the current licensed premises worked. He added there appeared to be three methods to accomplish dominion and control: 1) rope and post, 2) decks, and 3) physical security details; and discussed each method.

Ms. Shamp pointed out that according to code currently no signs were permitted on the beach and in the downtown there was information as to whether signs could advertise alcohol; and asked if any other regulations would be necessary to address signage facing the beach.

Community Development Director Fluegel explained which signage was addressed in the sign ordinance and which was addressed in the proposed COP ordinance.

Mr. Smith discussed the need to address the request from the business owners for a level playing field to attract patrons; the importance of the downtown area to tourism; the need to investigate options to establish dominion for each business; his opposition to the business names on cups; the proposed restriction concerning when to stop serving after “sunset”; and questioned enforcement issues.

Community Development Director Fluegel reported that it would continue to be a Code Enforcement issue, and explained why there needed to be rules in order to enforce.

Mr. Zuba discussed the historical nature of the COP issue and how it related to the urgency of the proposed ordinance. He questioned how staff determined the expansion area should be 1/3.

Community Development Director Fluegel explained how staff determined that it would provide each business with some degree of expansion and provided some degree against erosion and tidal events; but also, recognized the public's right to use the beach.

Mr. Zuba asked what extent (minimum or maximum amount) the establishments had that already had permission to serve on the beach.

Community Development Director Fluegel stated that many of them already go to the water line; and noted that the Beach Pub was at the minimal.

Discussion ensued regarding the degree of expansion permitted; licensing fees which were already set and fees pertaining to administrative approval; what could happen if the draft ordinance was not approved; ways to educate the public and the responsibility of the public to question what the regulations were pertaining to open containers; the use of rope as an alternative to rope and posts; and the State's requirement of dominion and control.

Community Development Director Fluegel explained that outside the Downtown area the ordinance addressed resorts and the definition of resorts.

Discussion continued regarding potential enforcement issues; the use of rope and post; and the use of less intrusive control methods.

Mr. Kakatsch asked if it was staff's opinion that the current Sherriff and Town Code Enforcement staff would be adequate to enforce the proposed ordinance.

Community Development Director Fluegel responded in the affirmative; and he added that he shared a copy of the proposed ordinance with the Sherriff's Office.

Discussion was held concerning the expansion area for areas other than the downtown; and potentially unique variance requests; and potentially different requirements for the south end of the island.

MOTION: Ms. Plummer moved to recess at p.m. and reconvene at 12:30 p.m.; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0.

Recess at 12:10 p.m. – Reconvened at 12:30 p.m.

Ms. Shamp reviewed a list of specific items of interest that was mentioned by LPA Members during the previous discussion period.

1. Considerable discussion regarding the rope and post (bollard) as the means of dominion and control - 4/2 in favor (show of hands)
2. Whether half an hour after "sunset" and "service and consumption" was an appropriate time frame and wording - 3/3 in favor of not changing the wording (show of hands). Discussion was held.
3. Requiring business names on cups – 3/3 in favor (show of hands). Discussion was held.

Community Development Director Fluegel reviewed the basis for staff's recommendation to require business names on the cups.

Ms. Shamp continued to review a list of specific items of interest that was mentioned by LPA Members during the previous discussion period.

4. The 33% or a maximum of "X" linear feet for distance – discussion was held.

Community Development Director Fluegel reviewed the basis for staff's recommendation to as it pertained to recommending "half an hour after sunset" with respect to service and consumption on the beach.

Ms. Shamp continued to review a list of specific items of interest that was mentioned by LPA Members during the previous discussion period and asked for a show of hands regarding the 33% or a maximum of "X" linear feet for distance – 5/1 were in favor of changing half an hour to one hour.

MOTION: Mr. Zuba moved to recommend approval of the proposed ordinance with the change to "one hour after sunset" and suggest that staff define the maximum number of linear feet; second by Mr. Durrett.

Ms. Shamp reiterated her desire to give Town Council an option regarding regulating existing businesses and not include expansion.

LPA Attorney Miller questioned the earlier comments regarding changing language (i.e. scrivener's error, etc.)

Community Development Director Fluegel stated staff would handle those recommended changes/corrections.

Ms. Shamp asked for a show of hands to determine who was in favor of offering a vegetative option to rope and post. The show of hands revealed 5/1 in favor of offering the vegetative option.

Discussion was held concerning a vegetative option; and the food service amount for SRX requirements.

Consensus was that the LPA agreed with the proposed ordinance with a change to "one hour after sunset", and staff acknowledged the other concerns which they would address (i.e. define linear feet).

MOTION: Mr. Zuba restated the motion: that now therefore be it resolved, that the LPA recommends that the Town Council approve and adopt the proposed Town Ordinance to amend Chapter 34, Article IV, Division 5, Alcoholic Beverages, in the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto: Proposed Findings of Fact and Conclusions of Law:

- 1) The proposed amendments are in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development code with changes as noted below.

2. The LPA hereby recommends the following revisions to the proposed amendments:
“one hour after sunset provision versus thirty minutes”
Second by Mr. Smith.

VOTE: Motion approved, 4-2; Ms. Shamp and Mr. Kakatsch dissenting.

Ms. Shamp closed the Public Hearing at 1:05 p.m.

MOTION: Ms. Plummer moved to adjourn the LPA and reconvene as the HPB; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0.

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC
PRESERVATION BOARD
1:06 P.M.**

VI. HISTORIC PRESERVATION

Ms. Plummer stated she had nothing to report since the HAC did not have a meeting and has no meeting planned because they were waiting the re-opening of the Mound House to do a plan for the first visionary sign.

Mr. Durrett requested to be appointed to the Historic Advisory Committee.

Ms. Plummer acknowledged the request.

Ms. Shamp questioned how the meetings were noticed.

Mr. Plummer explained that at the last meeting it was decided not to have another meeting until it was determined when the Mound House would open. She added the Board was contacted to learn if they had any items for an agenda, but until the date was known there was no agenda to set.

Ms. Shamp noted Ms. Plummer was the Chair; however, she asked the status of the Vice Chair.

Discussion was held regarding Chair and Vice Chair of the HAC; and the composition of the HPB's representation on the HAC.

MOTION: Ms. Plummer moved to appoint Mr. Kakatsch as Vice Chair of the HPB; second by Ms. Shamp.

VOTE: Motion carried, 6-0.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Smith.

VOTE: Motion carried, 6-0.

**HISTORIC PRESERVATION BOARD ADJOURNED AND RECONVENED AS THE LOCAL
PLANNING AGENCY
1:12 P.M.**

VII. LPA MEMBER ITEMS AND REPORTS

Mr. Zuba – inquired as to the state of the Seafarer’s planning and organization.

Community Development Director Fluegel reported the County needed to come forward and apply for an amendment to the CPD zoning on the subject property and that the Town staff met with the County regarding the matter.

Mr. Zuba – asked if Community Development Director Fluegel was representing the LPA as it pertained to the subject property development and uses on Estero Boulevard as well as the parking issues.

Community Development Director Fluegel explained staff would review the application and basically informed the County the need to go through the process. He mentioned there would be legal issues to address once the County applied.

Mr. Zuba – encouraged staff to address the issue of traffic.

Community Development Director Fluegel noted that the County had already been informed that when they applied they would need to submit a traffic study too.

Ms. Plummer – stated she wanted to go on record as being concerned about the pond at the north end of the island and the growing bacteria and the related health issues. She added that since it was private property, the Town should address the property owner regarding health and liability issues. She suggested the Town should step-up their enforcement of removing chairs and jet ski equipment at that end of the beach.

Mr. Kakatsch – complimented the Holiday Inn on the new sign. He questioned if the Old Fort Myers Beach Marina had reached as far as they were going towards the water.

Community Development Director Fluegel stated he was under the impression that the property owner had a development order still had some lower profile improvements towards the beach. He explained he would have to pull the development order to remember the specifics.

Ms. Shamp – reported some members of the public requested her to address the lighthouse sign which came before the HPB that had been denied a historic designation. She questioned if the lighthouse sign had been designated as a structure.

LPA Attorney Miller reported they had come in for a variance.

Ms. Shamp – asked since there were new LPA members who had not been through the CIP process if the Community Development Director could explain to the LPA why the Town was having a referendum for the amount of money to be potentially be spent for a Town Hall; and if the referendum passed would there be a role the LPA would play.

Community Development Director Fluegel gave a brief description of the CIP process as it pertained to the referendum for a Town Hall.

LPA Attorney Miller mentioned the various options regarding a Town Hall; and she reported the two informational meetings for the public on the Town Hall would be held tonight at 6:30 p.m. and on January 23, 2012 at 6:30 p.m.

Mr. Durrett – no items or reports.

Mr. Van Duzer – no items or reports.

Mr. Smith – no items or reports.

VIII. LPA ATTORNEY ITEMS

LPA Attorney Miller had no items or reports.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – mentioned the sign ordinance and reported the implementation was going extremely well. He noted all five 7/11 stores came into compliance; staff was working with Holiday Inn; there were approximately 40 signs not in compliance and staff had issued notices.

Ms. Plummer discussed her belief that if there was an identifiable sign that was uniform with size, color, etc. designed by the Town to place on the rope and post regarding alcohol consumption on the beach it would be helpful.

Discussion was briefly held regarding the wording in the proposed ordinance regarding (“no alcohol beyond this point”) and standardized signage.

X. LPA/HPB ACTION ITEM LIST REVIEW

Ms. Shamp thanked Mr. Kakatsch for representing the LPA at Town Council meetings. She reviewed the LPA/HPB Action List from December 13, 2011:

- Beach Raking – remains TBD

- LPA Resolution 2011-XX PWVL – no representation needed; Community Development Director gave a brief update; if comprehensive changes are made it would come back to the LPA.
- 216 Connecticut Street – TBD; discussion was held.
- Sign ordinance - TBD; briefly discussed.

Future Work Activities

- Rights-of-way, residential connection – TBD; briefly discussed.
- Stormwater – TBD; briefly discussed.
- IPMC – staff in the process of finding a replacement for Code Officer.
- COP in EC – to move up to “Resolutions Before Town Council”; staff to transmit memo to Council; Mr. Zuba to represent the LPA at Council.
- EAR – TBD; next step would be stakeholder workshops and analysis. Community Development Director noted they anticipated FEMA asking for a community rating system which would have a profound effect on flood insurance rates; and he noted this would increase staff time on the matter and then the Comp Plan work would be pushed back.
- Post-Disaster Reconstruction & Recovery – requested joint meeting with Town Council; Community Development Director noted how what happened with FEMA would relate to this topic and how the Comp Plan policies tied into this matter.

Ms. Shamp announced the next LPA meeting would be held on February 14, 2012.

XI. PUBLIC COMMENT

Public Comment opened.

Garr Reynolds, resident, commented on how he believed the current LPA members operated differently from past LPA members; recounted his experience on various committees throughout his lifetime; and described his view of an effectively working group. He hoped that the proposed COP ordinance would not be approved.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Durrett, seconded by Mr. Kakatsch
Mr. Smith – no items or reports.
to adjourn.

VOTE: Motion approved, 6-0.

Meeting adjourned at 1:56 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

- End of document.