



Fort Myers Beach Local Planning Agency

Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Tuesday, December 19, 2023

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Eckmann, LPA Member Safford, LPA Member Sudduth (via phone), LPA Member Plummer and LPA Member Vanasse.

LPA Member Plummer moved to approve LPA Member Sudduth's participation via phone; seconded by LPA Member Vanasse.
The motion carried unanimously.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

- A. Local Planning Agency - November 14, 2023
LPA Member Plummer moved to approve the minutes; seconded by LPA Member Eckmann.
The motion carried unanimously.

V. PUBLIC COMMENT

Dale Bonnema, resident, commented that the Moss Marina application was nothing like Margaritaville because Moss Marina was zoned commercial marina with limited uses. He noted that Moss Marina had been a good neighbor until they allowed the Rude Shrimp to set up on their property and play loud music. He stated that they were deceptive with their application and that the bar included outdoor entertainment. He requested that the LPA oppose any application for consumption on premises and outdoor entertainment.

VI. PUBLIC HEARINGS**A. TPI FMB Ordinance Amendment DCI 202300227****APPROVE/ APPROVE WITH CONDITIONS/ DENY AN APPLICATION FOR 1170 ESTERO BLVD (INCL. ALL ASSOCIATED MARGARITAVILLE CPD PROPERTIES)(DCI-20230227), REQUESTING AN AMENDMENT OF ORD. 18-04 TO CONDITIONS OF APPROVAL' #6; #12 (F) AND (G); AND #18 (A) AND (B).**

LPA Member Safford recused himself due to a conflict and submitted Form 8b to the Town Clerk. Ex parte communications: Chair Cereceda - spoke to John Richard and emailed Tom Torgerson and LPA Member Plummer - spoke to John Richard. No disclosures from other members.

LPA Member Plummer moved to accept Steve Hartsell as an expert; second by LPA Member Eckmann.

The motion carried unanimously.

The applicant confirmed receipt of a copy of the agenda and materials. Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the yellow sheet. The staff did not have a recommendation one way or the other because the restaurant was new, but they felt the request was consistent with the Comprehensive Plan. Staff requested clarification regarding whether there was a difference between the Beach Club and the Aquatic Venue and a new map of the different areas. The applicant also requested extended hours for the COP (Consumption on Premise) areas until 11:00 p.m.

Attorney Steve Hartsell from the Pavese Law Firm represented the applicants. He utilized PowerPoint for his presentation. Slides included a Location Map and Mr. Hartsell explained that the Aquatic Venue was the pool area; Amendments to Condition #7; Amendments to Condition #12 f. and g.; Amendments to Condition #18 b.; MCP Sheet Number Corrections and Conclusion. Attorney Hartsell clarified that the pool part of the Beach Club area was limited to 9:00 p.m. and the amendment would be for days when private events had been scheduled for the Beach Club area and the aquatic venue was closed for those events. Chair Cereceda noted that there could be a private event or multiple private events every day of the year. Mr. Hartsell replied that the idea was with the closure of the aquatic venue, the area was largely unoccupied, and the goal was to allow private events in that area.

LPA Member Eckmann questioned the lighting for sea turtles and wondered if that concern had been addressed. Attorney Hartsell was unaware of anything that would allow light from the area to exceed standards for sea turtles. LPA Member Plummer questioned where the amplified music would be located. Mr. Hartsell responded that speakers were part of the Beach Club deck area for ambient background music.

Planner Propst read the definition of a special event and noted most of the events at the property would be considered private gatherings.

Public comment:

John McClain, resident, was concerned about allowing extended use of the Beach Club. He was not opposed to using that property but felt the request was stretching the original intent.

Public comment closed.

Senior Planner Smalley questioned whether the sand area in Parcel 5 would take on some of the guests during off hours. Mr. Hartsell stated that there was a fence separating Parcel 2 and Parcel 5. He indicated they were asking for an extension of two hours when the aquatic part of the Beach Club area was shut down.

Town Clerk Baker stated that John Richard and Dorie Smith sent a letter that would be entered into the record. She also received an email in opposition from residents Thomas, Christine and Darby Patton, which will be entered into the record.

LPA Member Vanasse questioned whether they would table the issue to come back with a plan for mitigation measures to address some of the concerns regarding music and other matters. Chair Cereceda indicated the concerns were about using the whole Beach Club past 9:00 p.m. LPA Member Plummer shared her positive experiences at the Lah De Dah Bar and Grill.

LPA Member Vanasse noted he would like plans for mitigating the sound. LPA Member Eckmann suggested limiting private events to a specific number of people. LPA Member Sudduth mentioned restricting the use of the pool.

LPA Member Plummer agreed with the mitigation of the location and sound. LPA Member Boan requested clarification of a private event with or without conditions and the use of amplified music related to Parcel 2. Chair Cereceda suggested that it could be continued to a date certain, or they could approve the script errors and then deny or approve the rest with conditions related to stipulations. Attorney Hartsell preferred a recommendation of approval from the LPA with the specific conditions addressed. LPA members Vanasse, Sudduth, Plummer and Boan supported recommending approval with a list of conditions and LPA Member Eckmann preferred to table it for more precise discussions. Chair Cereceda summarized the seven conditions discussed above. LPA Member Vanasse added that John Richard's letter generally supported the request, but Mr.

Richard did not support the extra hour of amplified music and preferred that it end at 9:00 p.m.

Chair Cereceda moved to approve the ordinance amendment with the following conditions: #6 and #18a. are approved as distributed as they are corrections of page numbers and script; #12 f. and g. pertain to the extended hours and amplified music and the conditions are as follows: a mapped plan of how mitigation will occur for special or private events at the venue and define private events, define compliance with the sea turtle ordinance in respect to extended hours and lighting; a clear map identifying the aquatic venue/pool and the beach venue area; create a private event capacity limit;

amplified music would be limited to 10:00 p.m. but the operation may extend to 11:00 p.m.; for #18 a. and b., which is an extension of COP, those would be to approve given the preceding conditions to coincide; seconded by LPA

Public comment:

Sigrid Franz, Secretary of the Sandarac II Association, questioned which side of the building the generator would be located. Ms. Stewart replied that it was on the Sandarac side and approximately 24 feet from the property line. She added that tall landscaping would be planted for screening.

Public comment closed.

LPA Member Vanasse moved to approve the resolution with the finding that it met the criteria, including the conditions recommended by staff; seconded by LPA Member Eckmann.

The motion carried unanimously by roll call vote.

B. VAR20230162, 21391 WIDGEON TERRACE

RESOLUTION NUMBER 24-185: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Chair Cereceda read the title of the resolution. No ex parte communications. Planner Propst reviewed the background of the request as stated on the yellow sheet. After another review before the meeting, she changed the staff position to a recommendation of approval for the water body setback variance request. LPA Member Sudduth owned the property at one point and stated this location was the only place a pool would fit.

The LPA confirmed Planner Propst as an expert.

The applicant received a copy of the agenda and materials.

Attorney Robert Burandt represented the applicant and reviewed the background of the request. He stated they received approval from the EPA (Environmental Protection Agency). Attorney Burandt asked that the approval be granted. The applicant, Don Plaisted, commented that he started the process before the rules changed and hoped the LPA would take that into consideration. Attorney Burandt listed the modifications Mr. Plaisted made as requested by the staff.

No public comment.

LPA Member Vanasse moved to recommend it for approval and it met the variance criteria and inclusive of the two conditions by staff; seconded by LPA Member Plummer.

The motion carried unanimously by roll call vote.

C. VAR20230264 for 5350 Estero Blvd

RESOLUTION NUMBER 23-186: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230264 TO DECREASE THE REQUIRED 15-FOOT SIDE YARD SETBACKS BY 8.5 FEET TO ALLOW 6.5-FOOT SIDE SETBACKS, FOR THE COMMERCIAL RESORT ZONED PROPERTY AT 5350 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. No ex parte communications. Planner Propst reviewed the background of the request as stated on the yellow sheet.

Tyler Knafelc, Pre-construction Project Manager for Homebound, represented the applicant. He stated that the lot was 45 feet and the proposed home was 32 feet wide.

No public comment.

LPA Member Eckmann moved to recommend approval based on compliance with the requirements, it was consistent with the recommendation of staff and the applicant could apply for a rezoning, but it would take a lot of work; seconded by LPA Member Plummer.

The motion carried unanimously by roll call vote.

VII. ADMINISTRATIVE AGENDA

No items.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Vanasse questioned the timing of the light at Margaritaville and LPA Member Safford agreed that something needed to be done with it. Senior Planner Smalley replied that the FDOT (Florida Department of Transportation) was taking the lead on the timing and Town Manager Hyatt would work with them to correct the situation. LPA Member Vanasse thanked Margaritaville for allowing the beach kids to use their facility. He also thanked the Beach Kids Foundation for the ceremony.

Chair Cereceda requested that Items for Next Month's Agenda include agenda management-type items. She proposed adding a comprehensive discussion regarding parking in the downtown core. LPA Member Vanasse agreed. Planner Propst commented that the Town Council requested that she evaluate parking using ITE (International Traffic Engineer) and other communities to determine if the town's parking quantities aligned with the standard. She was still working on the evaluation and felt that a joint meeting would be beneficial.

No items from other members.

IX. LPA ATTORNEY ITEMS/REPORTS

No items.

X. COMMUNITY DEVELOPMENT ITEMS/REPORTS**A. Development Agreements**

LPA Member Vanasse provided a handout of three options for development agreements. Town Attorney Stuparich reviewed Town Attorney Vose's materials beginning on page 219 of the packet. LPA Member Vanasse noted that only a site plan with deviations was addressed in the materials. He had hoped that the site plan with deviations could be streamlined by looking at the variances under the whole project rather than applying for each variance separately. It could be a quick design with variances identified on a graphic site plan and provide a general justification that it was a good design that fits in well with the site. He felt that some of the requirements for a site plan with deviations would be more work than doing the variances.

Town Attorney Stuparich indicated that LPA Member Vanasse's options could be concurrent with SB250 as amended. LPA Member Vanasse responded that it would make sense and would provide a degree of certainty for applicants.

Chair Cereceda suggested defining small hotels. LPA Member Vanasse suggested establishing a cap and felt that small was less than 50 and, in his mind, 30 or less was small. Planner Propst suggested basing it on impact and demand, so anything under a specific traffic impact or sewer demand would be considered small. LPA Member Vanasse mentioned the cost of hiring engineers and consultants for impact studies for small hotels. He intended to create a tool other than a CPD for small property owners.

Town Attorney Stuparich stated that municipalities could enter into development agreements that differed from the state statutes and the site plan with deviations could be a separate process.

LPA Member Vanasse explained that larger commercial entities did not need the development agreement process to make them whole compared to the small hotels that existed before lan.

Chair Cereceda felt they needed clarification on the procedural portion to know what applied to what.

Senior Planner Smalley referred to the third option and questioned what the applicant was entitled to if the plan fell apart, or variances were not granted during the CPD process. LPA Member Vanasse responded that the development agreement was a legal contract and they still had to demonstrate compliance with the code and comprehensive plan through public hearings. Town Attorney Stuparich added that the conceptual agreement had to include specific timelines. LPA Member Vanasse agreed. LPA Member Vanasse summarized the three options and Town Attorney Stuparich asked the LPA to rank them. LPA Member Vanasse explained why he would like all three to move forward. Planner Propst was concerned about not involving engineers or technical staff because they may not know what they had to do. She described an RPD project that requested several

amendments because the details had not been worked out. LPA Member Vanasse did not see anyone doing conceptual approvals without professionals and the requirements for the third option would be greater than the other two options.

XI. ITEMS FOR NEXT MONTHS AGENDA

Town Clerk Baker will send an email regarding the time of the joint meeting with the town council.

XII. ADJOURNMENT

LPA Member Boan moved to adjourn; seconded by LPA Member Plummer. The motion carried unanimously.

The meeting was adjourned at 12:25 p.m.

Minutes adopted as presented, January 9, 2024; Motion by LPA Member Vanasse and seconded by LPA Member Eckmann. Passed 7-0.



Amy Baker, Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Scott W. Safford</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>LPA</i>
MAILING ADDRESS <i>189 Sabal Dr.</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input checked="" type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY <i>FMB LEE</i>	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED <i>12-19-23</i>	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

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, SCOTT M. SAFFORD, hereby disclose that on December 19, 20 23:

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

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of Black Duck Holdings, LLC, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling 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:

I manage the vacation rental lefts directly across the street from the Margaritaville Beach Club. The vote today will have a direct impact on my company's potential future earnings.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

12/19/23
Date Filed

Scott M. Safford
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.

Agenda item A