

**FORT MYERS BEACH  
TOWN COUNCIL**

**Town Hall- Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
August 14, 2006**

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**Town Council Meeting**

**3:00 PM**

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**I. CALL TO ORDER**

**Members Present:** Mayor Dennis Boback, Vice Mayor Don Massucco, Councilman Charles Meador, Jr., and Councilman Garr Reynolds.

**Absent:** Councilman Shenko, Town Manager Rachel Lambert.

**Town Staff Present:** Town Attorney Anne Dalton, Community Development Director Jerry Murphy, Public Works Director Jack Green.

**II. PLEDGE OF ALLEGIANCE:**

All present stood for the recitation of the Pledge of Allegiance.

**III. INVOCATION:**

**IV. PUBLIC COMMENT:** Please note that public comment will be heard at the time the agenda item is discussed.

**V. ADMINISTRATIVE AGENDA:**

**A. VAR2005-00048- PLAKA RESTAURANT**

Mayor Boback asked if any of the Council members had any ex-parte communications on this issue.

Councilman Meador stated other than being a patron, he has spoken to some of the people there but has not spoken to any of the owners.

Councilman Reynolds stated that he attempted going there but was unable to find the location, and spoke to the assistant manager whom pointed out to him.

Vice Mayor Massucco stated that he had not had any ex-parte communication.

Mayor Boback had visited the site but had no communications with anyone concerning this matter.

- Beverly Grady stated she represents Emmanuel Neskes and Stavros Malakaikas, who owned Plaka Restaurant, located at 1001 Estero Boulevard since September 1980. Ms. Grady stated Plaka being as a family restaurant located at Times Square, which is evolving into divisions of the Ft. Myers Beach Comprehensive Plan, and states their proposed redevelopment is part of achieving that goal. Ms. Grady described the unique size of this lot and states the relief being requested is from what the code defines as a rear-lot line. Ms. Grady stated that Plaka looks as well as functions as a side-lot-line; under the code it is a real lot-line on bare floor with a requirement of a 10-foot set-back which they are requesting zero. Ms. Grady stated the request is to keep the same setback. They are requesting to redevelop the site with a two-story restaurant in Ft. Myers Beach by the owners of Plaka. Ms. Grady stated the previous hearing was before the Local Planning Agency on May 9<sup>th</sup>, who took their role very seriously and diligently going through each criteria for a variance in which they found each criteria was met and recommended unanimous approval of this variance.
- Ms. Grady stated they were asking for a variance for a rear setback.
- Tracy Bean with Whitaker, expert in Land Use Planning mentioned some of the things Town Council should consider in looking at this and approving the request are: how does this comply with the Land Development Code, how does it comply with the Comprehensive Plan, and how does it meet the design standard of Ft. Myers Beach. Ms. Bean stated this is located in the Times Square pedestrian commercial district, and reiterates that Plaka has been in business for at least 26-years, and the building has been in existence for at least 40 to 50 years which is the reason for their proposal. Ms. Bean stated the owners of Plaka see the need to bring this building in compliance with current codes, which is the reason for the variance. Ms. Bean stated by setting back 10-feet from the rear property line, they would be losing approximately 530 sq. feet of their 1<sup>st</sup> floor which would be their kitchen facility. Ms. Bean briefly described Plaka and its surrounding neighboring businesses and stated six of them had similar requests for variances which were approved. Ms. Bean stated their need to update this building is due to past hurricanes, as well as need for additional floor area to accommodate an updated kitchen and restroom facilities. Ms. Bean also stated that by granting this variance it would not be injurious to the neighborhood or detrimental to the public welfare, but would be a rebuilding that would meet current building codes.

Councilman Reynolds referred to page 2 of 2 of the LPA, the variance to the northern rear lot line setback of the subject property, and asked if they meant a zero setback line.

- Ms. Bean replied yes.

Vice Mayor Massucco asked if they will be serving food on both levels of the building.

- Ms. Bean replied yes.

*Mayor Boback opens public comment:* Those testifying were sworn in by Ms. Dalton.

- Norm Primeau owner of the West Coast Surf Shop, states that for the last 25-years he has been going to the Plaka restaurant. Mr. Primeau stated that Plaka is a good restaurant which is a good asset to the community.

*Mayor Boback closes public comment:* Staff was sworn in by Ms. Dalton.

- Lisa Heinz, Senior Planner with Lee County Department of Community Development Zoning Division representing the Town of Ft. Myers Beach. Ms. Heinz referred to the applicant's background and basis for the request of a variance. Ms. Heinz began to review the reasons staff is recommending denial for of the variance request for the rear setback from 10-foot setback to zero-foot setback. Ms. Heinz stated staff has not found that all of the findings set forth in the Land Development Code, Section 34-87 exist or have been met by the applicant; staff recommends denial of the requested variance submitted.

Vice Mayor Massucco asked if this would conform to all flood plain regulations with this new building.

- Ms. Heinz replied yes this would be required to, and it is included in the recommended conditions as well.

Councilman Reynolds asked for clarification if the 10-foot setback for the zero lot was not approved the building would be 10-feet shorter than it is at this time.

- Ms. Heinz replied yes it would, and further stated the building today is nonconforming with no rear setback but possibly 18 inches in one corner at the rear of the building.

Councilman Reynolds asked how close this new wall would go to the Kilwins building.

- Ms. Heinz replied it would be directly adjacent.

Councilman Reynolds asked if the wall would be touching the other building.

- Ms. Heinz stated that would be a building code question, but stated she believes it would touch with the other building because an additional fire wall was recommended.

Councilman Reynolds stated he was not sure where the setback line is.

- Ms. Heinz replied it would be to the property line.

Mr. Murphy clarified that it has been pointed out the other two variances were granted after the Town Incorporated, but no variances have been granted since the Town adopted the Land Development Code Ordinance 0303. The code was intended to address specific requirements for Times Square so there would not be a need to grant additional variances.

Councilman Reynolds asked Mr. Murphy with the zero lot line the building currently has, if he was aware of any problems given the building has been there for over 40-years.

Mr. Murphy replied the problems these building have in Times Square have been accessing to the rear of all of those buildings.

Councilman Reynolds asked if this building is in line with the other buildings.

Mr. Murphy stated they vary.

Vice Mayor Massucco asked if the remaining difference of 18-inches would disappear.

- Ms. Heinz stated it would disappear. Ms. Heinz also stated she spoke to the owner of Kilwins, and they support the variance approval.

Mayor Boback asked how close it would come to the property line.

- Ms. Heinz stated the new structure would setback about 4-inches from the property line.

Mayor Boback asked if Kilwins is on the property line.

- Ms. Heinz replied that on the Estero Boulevard side, the balcony would go into the property line by 3-feet.

Councilman Reynolds asked how many other buildings in the area are two-story.

- Ms. Heinz stated there is a mixture of different level stories in that Times Square area.

Councilman Reynolds asked about the trash and how is it going to be handled.

- Ms. Bean stated during the day it will be taken out to the road, and the garbage men will pick it up.

Mayor Boback asked if this is where the grease trap is going to be located.

- Ms. Bean stated she would refer to Mr. Rockwell, but states the utilities are along Estero and San Carlos.

Mayor Boback wanted an answer as this was something that needed to be cleaned out on a regular basis.

- Mr. Rockwell stated the grease trap will be inside the building, but is going to be cleaned from the outside. This would be located on the San Carlos side and we recommend putting clean out tube, so it can be serviced in one spot.

Councilman Meador referred in terms of the expansion and the seating capacity of the new facility seating's on the roof.

- Tracy Bean stated the proposed seating capacity would be 51-seats on the 1<sup>st</sup> floor, 64-seats on the 2<sup>nd</sup> floor, and 36 seats on the balcony.

Mayor Boback referred to one of the recommendations that the building must be fully sprinkled and monitored by an alarm company, and asked Ms. Dalton what recourse the Town has if they should cancel that agreement.

Ms. Dalton stated they would be in violation of their approvals. Code Enforcement issue.

Mr. Murphy stated that the condition had already been included at the request of the Fire District.

Mayor Boback asked what the current hours of operation were.

- Ms. Grady replied 7: AM through 10:00 PM.

Mayor Boback clarified the hours they were now asking for are 6:00 AM to 2:00 AM

- Ms. Grady stated they are permitted from 6:00 AM to 2:00 AM.

Vice Mayor Massucco asked there are no other requests.

- Ms. Grady stated they would have to come back if they wanted to change the COP.

Mayor Boback stated they would need to have it amended to cover the floor space being covered by that license.

Ms. Dalton clarified what Ms. Grady stated, that this is not covered by this application, as it is a variance request.

**MOTION:** Councilman Reynolds made a motion to accept the variance as approved by LPA.

Ms. Dalton suggested if Councilman Reynolds would consider amending his motion to provide the resolution of the Town Council would be adopted in the affirmative with the addition of the Turtle Addition.

**AMENDED MOTION:** Councilman Reynolds amended his motion to provide the resolution of the Town Council to be adopted with the addition of the Turtle Addition. Vice Mayor Massucco 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Meador stated he is in favor of the motion and states the redevelopment of Times Square is overdue.

Vice Mayor Massucco made no further comments.

Councilman Reynolds complimented the LPA with their research.

Mayor Boback states this would be a tremendous improvement to the area.

**VOTE:** Motion passes 4-0.

**B. DC12005-00066- SNOOK BIGHT MARINA**

Mayor Boback opened the hearing. He asked if any members of the Council had any ex-parte communications with the property owner. Ms. Dalton swore in the witnesses.

Councilman Reynolds stated he had not talked to anyone about the marina.

Vice Mayor Massucco stated he was there today to get another picture in his mind, and he met Mr. Joe Yerkes, they spoke briefly but not in detail about the project.

Councilman Meador stated he had no contact with anyone regarding the project.

Mayor Boback stated he had contact with no one as well, but has been on the property several times as he had his boat there.

- Mr. Yerkes managing partner of Snook Bight Marina. He was thankful for allowing them to come before Council after receiving unanimous approval by the LPA. Mr. Yerkes spoke about the vision they have for the marina and how they plan to redevelop this marina with a design that is functional.
- Beverly Grady with the Firm of Roetzel and Andres who presents to you a request to rezone 3.49 acre parcel located at 4765 Estero Boulevard, from Commercial Marine to Commercial Plan Development ( CPD) for the redevelopment of Snook Bight Marina. Ms. Grady reviewed the request of the applicant and stated its purpose is to redevelop the existing marina which has wet and dry slips, boat sales and repairs, ship store, a restaurant with outdoor seating and consumption on the premises into a clean marina with structures which meet the Towns architectural designs standards and is compatible with the neighborhood. Ms. Grady stated staff has given a positive report, and the LPA has given unanimous recommendation of approval. Ms. Grady stated they have reviewed the conditions recommended by both staff and the LPA and are in agreement with these conditions. Ms. Grady thanked the staff and the LPA for their hard work in the review of this application. Ms. Grady presented to Council the Master Concept Plan.
- Karen Day expert in Land Use Planning presented the Master Concept Plan to Council. Ms. Day reviewed how the rezoning request which includes the deviation and the redevelopment of Snook Bight Marina complies with the Towns Comprehensive Plan and Redevelopment Code, she reviewed with Council her exhibits and conditions. Ms. Day stated she has reviewed the Ft. Myers Beach Comprehensive Plan and the Town Land Development Plan in detail, and stated that the

application is in consistent with the plan meeting criteria for the approval to rezoning to Commercial Plan Development, and approval of the six requested deviations.

- Joe Yerkes announced his background of 15-years in radio broadcast, and was the CEO of a large radio network and founder of INN, the current network radio news organization for the country of Ireland. Mr. Yerkes stated their proposed the architectural feature on the main barn, which will provide significant opportunities to the Town and to the boating community. Mr. Yerkes reviewed the deviations required for this tower height and its justification. He noted the services of this tower would provide a visual clock, a small craft warning flag system, and a 24-hour a day broadcast.
- Greg Deserio who is a registered landscape architect for over 25-years made his presentation. He outlined and reviewed with Council the goals of their proposed Landscape Master Plan. Their intention is to create an immediate tropical environment which would be environmentally sensitive, ecstatically pleasing and compatible with the adjacent residential uses which will complement the architectural details of the building.
- Robert Price, Senior Transportation Consultant with TR Transportation Consultants. Mr. Price reviewed the proposed redevelopment for Snook Bight Marina and stated the redevelopment of the marina meets the criteria of Land Development Code Section-34-85L, which states whether the request places is an undue burden upon existing transportation or other services and facilities, and will be served by streets with the capacity to carry traffic generated by the development. Mr. Price reported that the redevelopment of Snook Bight Marina will not place an undue burden on Estero Boulevard and will be adequately served by the capacity of the existing roadway network.
- Paul Owen, Principal Ecologist with Expende & Associates covered three Comprehensive Plan Policies stated by Ms. Day. Policy 4-A7, benefits Estero provides to the Town. Policy 6-HC, the maintaining and improving the quality of water. Policy 6-C3 which covers the West Indian Manatee Program.
- Joe MacHarras, of MacHarras Planning & Design spoke about the project design and their intentions of improvement.

Mayor Boback asked for staff to present their proposal before they start with their questions.

- Joshua Philpot on behalf of the staff stated this is a request to rezone an existing marina. He mentioned they have prepared the staff report with details and recommendations which they have suggested.

*Mayor Boback opens public comment:* Those testifying were sworn in by Ms. Dalton.

- Michael Ores, Association Manager for Ocean Harbor spoke about the concerns how the project would impact property values, environmental concerns and the community. Mr. Ores stated that Mr. Yerkes has provided in details the goals regarding those issues to the Boards satisfaction, and the Board feels that Snook Bight Marina would be a good asset to the community and are in favor for the project.
- Judy Haataja asked about condition # 8, in regards to the green marine status. She also spoke about the boat docks. She also agreed with staff that the tower would be too high.
- Joseph Boland currently lives at Ocean Harbor stated his anticipation in seeing the project begin.

*Mayor Boback closes to public comment:*

*Discussion:*

Councilman Reynolds had some concerns about the increase of 201 boat storage, which would bring in additional traffic. Mr. Reynolds spoke his concern regarding the COP license, and the hours of the restaurant.

- Mr. Yerkes replied the staff report had limited it to 8:00 PM, and stated the LPA approved until 9:00 PM throughout the winter and 10:00 PM during daylight savings time.

Councilman Reynolds stated he like the hours of 9:00 PM and the adjustment with daylight savings. Mr. Reynolds shared his concerns regarding the tower and suggested 70 feet instead of 80 feet.

- Mr. Yerkes stated that that was not possible as the signal has to be above everything, and further stated they had adjusted the height as low as possible which has been considered with staff as well.

Councilman Reynolds stated Mr. Yerkes made a good presentation and admires the work that was put into this.

Vice Mayor Massucco stated in his two and ½ years, this had been the most detailed Comprehensive presentation he has witnessed, and congratulated Mr. Yerkes and the people involved. Mr. Massucco referred to the resolution on page 2 of 7. Item two of the schedule of uses package sales of consumption on premises.

- Mr. Yerkes stated that means beer and wine can be sold at the ships store. Mr. Yerkes mentioned they can sell wine but they haven't.

Vice Mayor Massucco stated he could not find any faults with the towers height, and believes they would benefit from it. Vice Mayor Massucco also mentioned another point in favor which is the reduction of wet slips from 72 to 54. Vice Mayor Massucco asked about the deviation there would be no need to construct another wall.

- Mr. Yerkes replied they have entered a third party agreement between themselves and Ocean Harbor where they would take responsibility of the maintenance and/or replacement of the wall as it applies to 80 % of their property.

Vice Mayor Massucco asked about the green marine status.

- Mr. Yerkes stated it is Clean Marina Status and explains why they have no problem submitting their application for approval as a Clean Marina within the first year.

Vice Mayor Massucco mentioned the noise from the fork lift.

- Mr. Yerkes stated this would be eliminated once it is enclosed in the barn.

Councilman Meador commended Mr. Yerkes on their presentation and referred his questions to Ms. Grady regarding the conditions 11 and 27 may be in conflict.

- Ms. Grady stated condition 11 dealt with the Ocean Harbor property. Condition 27 would deal with the holiday shores property line.

Councilman Meador stated this would need to be clarified; it sounds as the Ocean Harbor people can get in , but then on 27, they can't get back.

- Mr. Grady agreed that it does sound like that.

Councilman Meador asked which side it would be for condition 27, north, south, east or west.

- Mr. Yerkes stated 27, is the east side of the property.

Mayor Boback apparently was looking at the diagram and stated that he was confused and pointed out which way would be north, south; the Gulf would be west and Estero Boulevard runs north and south.

- Mr. Yerkes stated it is a difficult property to look at, and pointed out to the correct direction.

Councilman Meador asked what it would cost the Town for the broadcasting.

- Mr. Yerkes stated zero, unless you would count the cost of your employees giving us the information.

Councilman Meador replied he doesn't count that.

- Mr. Yerkes stated the Town already has a transmitter, which will be used, but all other equipment necessary will be their own.

Councilman Meador asked there would be no monthly bills for electricity or staff time.

- Mr. Yerkes stated this is there provision, and they will have a generator to keep it running for updates during a storm; He adds there will never be a bill for that.

Mayor Boback also agreed the presentation was impressive. However, Mr. Boback asked about the pool & spa being an outside area with really no buffer. Mr. Boback asked about the hours of operation of the pool.

- Mr. Yerkes replied the LPA asked to limit the hours from 9:00 AM to 7:00 PM which they are in agreement with.

Mayor Boback asked as to its use.

- Mr. Yerkes replied only for use by the people who keep their boats in the marina. This will also have security to ensure the public won't have access.

Mr. Murphy stated this was in condition 28 of the draft Resolution.

Mayor Boback asked about alcohol consumption at the pool area.

- Mr. Yerkes stated this would not be allowed and it is conditioned as well, and referred to Mr. Murphy which number.

Mayor Boback stated it is condition # 30.

- Mr. Yerkes replied that it is stated anywhere outside, which we assume it includes the pool.

Mayor Boback stated his concerns with the hours of operation stating 10:00 during daylight saving, and stated he would be satisfied if it were 9:00 PM throughout the year for the outdoor.

- Mr. Yerkes stated these were conditions that have been approved by the LPA and was submitted. Mr. Yerkes stated this has all been agreed by the neighbors through letters or in public comment they support this as it is.

Mayor Boback stated if they come in knowing the constraints they would be able to adjust to it. Mr. Boback also referred to the traffic and asked what the traffic projections for this project are.

- Robert Price, Traffic Consultant stated that the restaurant use will generate 20 new inbound P & P peak hours trip and 15 new outbound P & P peak hour trips.

Mayor Boback stated that there would be a backup at the driveway trying to exit the Publix because the driveway isn't wide enough, and asked has any thought been given to widening that driveway or marking it.

- Mr. Yerkes stated they would be happy to mark it and stated that is an issue that Publix would have to address. Mr. Yerkes stated they will pursue it and commit to having it done.

Mayor Boback also asked about the top of the roof.

- Joe MacHarras stated if they were to go too low it would look like a flat roof, and stated the current height was specifically set as the right pitch for that roof.
- Mr. Yerkes referred to Councilman Reynolds concern regarding the traffic and stated they have been sensitive to the traffic and to the parking layout.

Mayor Boback if there would be any lighting on the tower.

- Mr. Yerkes stated no, as the condition prohibits any light.

Vice Mayor Massucco asked if the tower would have a requirement to have a beacon at the top of it.

- Mr. Yerkes stated no it would not have a requirement because the condos take care of that.
- Joshua Philpot stated the height minimum to have a beacon would be 150 feet.

- Mr. Yerkes replied to concerns raised regarding the docks, stating that they were not here today to talk about realigning the docks or new docks, as this would be a different project.

Councilman Meador stated in his anticipation to making a motion to approve this project, he suggested some changes. Mr. Meador referred to Clean Marina condition 8, and asked Mr. Yerkes if he would have any objections to a continuing commitment on your behalf to comply with any requirement that may be imposed on you to obtain that Clean Marina Status.

- Mr. Yerkes replied not at all, and asked if they wanted the condition that they will submit their application within one year of completion of construction they would do it as well.

Councilman Meador stated condition 18; to clarify the Town AM radio station would be operated by the applicant at no cost to the Town.

- Mr. Yerkes stated he believes this was already there.

Councilman Meador stated it is not as specific as he would like it to be. Mr. Meador also referred to condition 27, and adding the word single family.

Vice Mayor Massucco announced to the public that Mr. Yerkes is a member of the Marine Resources Task Force.

Mr. Murphy stated that staff will need some exhibits in order to execute the Resolution and the changes that will be made. Mr. Murphy also reported the sign package to be consisting of a total of 793 feet of signage and that would be the limitation. Mr. Murphy referred to condition 18, and it has been suggested to be modified by Councilman Meador and that this was voluntary by the applicant and not a requirement of the zoning request.

Attorney Dalton referred to condition 35 in regards to the developer shall in good faith negotiate with Publix Supermarket to install permanent markings to create outbound left turn lane where the access road intersects with Estero Boulevard.

- Ms. Grady referred to Exhibit one as the architectural rendering, Exhibit two the aerial depicting existing site, Exhibit three as the Master Concept Plan, Exhibit four the Composite for the conditions.
- Mr. Yerkes thanked Council for their time in hearing their presentation for Snook Bight Marina. Mr. Yerkes stated with Council's approval they will begin the project in January, and assured that the project will be built as it was proposed without cutting corners. Mr. Yerkes asked

Council to vote for approval for the redevelopment project as submitted and recommended by the LPA, with the conditions talked about today.

**MOTION:** Councilman Meador made a motion to adopt the proposed Resolution included with materials, with the changes to read as follows:

1. With change to condition 8, the developer will use his best efforts to attempt to acquire Clean Marina Status within one year of completion of construction of this project, and will continue to use its best efforts to comply with any requirements as may be imposed to obtain Clean Marina Status.
2. With the additional sentence added to condition 18, The Towns AM Radio Station will be operated by the applicant at no cost to the Town.
3. With condition 27, Mr. Meador recommends adding the word "Single Family" reading the developer must maintain the barrier/ buffer between the subject property and the adjacent Single Family properties to prevent people from entering those properties by way of the subject's property.
4. With condition 35, the developer shall in good faith negotiate with Publix Supermarket to install permanent markings to create outbound left turn lane where the access road intersects with Estero Boulevard.

Ms. Dalton suggested to Mr. Meador regarding condition 28, no consumption on premises shall be permitted by the developer in the poor area at any time and mirror the same language for condition 30.

Councilman Meador agrees with the exception that developer is changed to applicant.

Ms. Dalton also referenced to condition 5, which references the sign package to be a maximum of 793 sq. feet. Ms. Dalton asked for condition 8 to read again.

Mr. Murphy stated it would help to add it in. Mayor Boback agreed to be more specific.

5. Exhibit C and not to exceed more than 793 sq. feet total.

Vice Mayor 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Reynolds asked Ms. Dalton about the Resolution where the owner is mentioned as the applicant and referred to 26 and 27.

Ms. Dalton recommended using applicant as suggested by Mr. Meador.

**AMENDED MOTION:** Councilman Meador amended his motion to substitute the word applicant in place of the word developer wherever it is written in the Resolution. Vice Mayor Massucco accepts the amendment.

Councilman Reynolds stated the team presented themselves with full cooperation.

Vice Mayor Massucco made no further comments.

Councilman Meador stated they made a very good presentation, and noted concerns about the height deviation and is prepared to approve the project with the height deviation. Mr. Meador explained he had concerns regarding the tower, but having the opportunity to see it presented at scale, he stated it not being what he had pictured it to be.

Mayor Boback also congratulated Mr. Yerkes and his team for their presentation, and commended staff for their time and efforts they put into it as well. Mr. Boback stated he too had some concerns about the height, but is able to accept it as it is. Mr. Boback also mentioned the hours of operation but states he believes it is a good project and will be a benefit to the community.

**VOTE:** The motion passes 4-0

***C. Continuation of First Public Hearing Ordinance 06-14 Changes To Special Magistrate Provisions:***

Ms. Dalton read the Ordinance 06-14 is an ordinance amending regulations in Chapter 1, 2, 10 and 34 of the Town of Ft. Myers Beach Land Development Code providing authority, adopting amendments to Chapter 1, of the Land Development Code titled: General Provisions. Adopting amendments to Chapter 2, of the Land Development Code titled: Administration. Adopting amendments to Chapter 10, of the Land Development Code titled: Development Orders and Engineering Standards. Adopting amendments to Chapter 34, of the Land Development Code titled: Zone Districts, Design Standards & Nonconformities providing severability and establishing an effective date. Ms. Dalton stated on Section of 1-16 Misrepresentation of Application stating it is an umbrella provision that indicates the Town may revoke a permit or approval. Ms. Dalton also reported another section regarding Transfer of

Property to a third party which is a new protection for the Town. Ms. Dalton also reported Section 2-428, Request Rehearing and Appeals provides addition layer of review regarding any code enforcement.

*Mayor Boback opens public comment:*

No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Reynolds made a motion to move forward to the next meeting. Vice Mayor Massucco 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Meador asked a question regarding the misrepresentation of an application stating an example of a property being 50 feet wide and was 49 feet and 11 inches, which could technically serve as a basis for pulling a permit.

Ms. Dalton stated that was correct and said the language states may revoke a permit or approval. Ms. Dalton stated it would be question of material versus non-material and stated it is a policy call.

Mr. Murphy stated the 49-11 would come in to play if the 50 foot was a requirement for the permit being issued. There would be no material misrepresentation.

. Ms. Dalton requested for the first regular meeting on September 5<sup>th</sup> 6:30.

Councilman Meador had no further comments.

Vice Mayor Massucco had no comments.

Mayor Boback questioned on page 2 of 10, regarding the beach impact schedule, and wanted to know what the change was.

Mr. Murphy replied there were four key changes; Regional Parks, Community Parks, Fire Protection and Schools.

Mayor Boback stated they are all going up.

Mr. Murphy replied they will all go up, and stated they adopt what the county adopts.

Mayor Boback mentioned that most impact fees are on the new homes.

Mr. Murphy replied yes.

Mayor Boback clarified that they are not being charged for a change of ownership, hotel or timeshare.

Mr. Murphy stated the hotel would be more complicated in terms of if changing to multi-family residential, there would be potential change in the fee due to the use. Mr. Murphy stated the fractional ownership can sell property as a fractional ownership, and maintain its hotel usage.

Mr. Murphy stated the fees collected would apply to the new construction at Bay Beach.

Councilman Meador referred to the seminar he attended in which the subject of impact fees did come up. Mr. Meador stated they may have been misinformed by Florida League of Cities, stating impact fees cannot be charged if you do not provide the service. Mr. Meador pointed out there are impact fees for schools and for the Fire Dept, which the Town of Ft. Myers Beach does not provide; He asked Mr. Murphy if they were misinformed.

Mr. Murphy replied they do have regional parks within the Town. He mentioned the Fire Dept goes to the District and are not collected by the Town. Mr. Murphy explained they have an interlocal for schools where the county imposes the school impact fees. The Town doesn't see that money.

Ms. Dalton clarified that Council is not making any changes to the Ordinance at this time.

Mayor Boback replied not that it was suggested; we made a motion to move it forward.

**VOTE:** Motion passes 4-0. Ms. Dalton announced it will be on September 5<sup>th</sup> at 6:30 PM.

## **VI. COUNCIL MEMBER ITEMS AND REPORTS**

Vice Mayor Massucco had no comments.

Councilman Reynolds thanked Mr. Tom Merrill and Mr. Frank Shilling on the information the provided regarding the renourishment. Mr. Reynolds referred to the budget and having a discussion. Mr. Reynolds read a statement regarding a procedure in which he had a disagreement with, and requested for it to be at a future agenda for discussion.

Councilman Meador referred to the budget meeting and the role of Town Council in regarding to writing the budget and where the numbers go.

Ms. Dalton asked if it were the will of Council to put in effect a line item veto in a state or federal context, she noted getting more information regarding that.

Mayor Boback stated they need to be careful in the managing of the budget and with the Town Manager. Mr. Boback stated it being the role of Council approving the budget and the Town Manager has to work within the budget.

Ms. Dalton read from the Charter Section 6.03 indicating the Town Manger's responsibilities.

Councilman Meador stated it is the Town Manager's responsibility to prepare and submit a budget, and the responsibility of the Town to decide to adopt a budget.

Ms. Dalton replied correct.

Mayor Boback clarified an issue they had with the county regarding the Town taking over Estero Boulevard was put on the agenda by the Commissioners not by Mayor Boback.

Mayor Boback asked Ms. Dalton if she had done further research with the AG opinion.

Ms. Dalton replied she has it almost in final, and will submit it to each Council member.

Mayor Boback spoke to Council and asked them to consider establishing another Committee and would like it to be on the next agenda for discussion.

Councilman Reynolds stated it is a step in the right direction.

## **VII. TOWN MANAGER'S ITEMS**

None.

## **VIII. TOWN ATTORNEY'S ITEMS**

Ms. Dalton requested an executive session to be held at the next regular meeting on August 21<sup>st</sup> regarding litigation strategies with Utelco, and asked Council for a consensus.

Mayor Boback stated yes. Councilman Meador stated yes. Vice Mayor Massucco stated yes. Councilman Reynolds stated yes.

- IX. **FINAL PUBLIC COMMENT:** Public comment at this time is heard on any item and/or issue of concern.

*Mayor Boback opens public comment:*

No comment was given.

*Mayor Boback closes public comment:*

**X. ADJOURNMENT**

**MOTION:** Vice Mayor made a motion to adjourn the meeting. Councilman Meador 2<sup>nd</sup> the motion.

**VOTE:** The motion passed unanimously.

Mayor Boback adjourned the meeting at 7:18.

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that a verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based. Please note: Agendas will be available on the Friday prior to this meeting at [www.fmbeach.org](http://www.fmbeach.org).

Respectfully submitted,

Debbie Cardoso  
Transcribing Secretary