

MINUTES

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

JULY 13, 2009

9:05 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 9:05 AM. Present with Mayor Kiker was Councilmember Raymond, Councilmember List, Vice Mayor Acken, Councilmember Babcock by phone, Town Manager Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

Deacon Scoop Kiesel, Church of the Ascension led the Invocation.

III. PLEDGE OF ALLEGIANCE

Deacon Scoop Kiesel, Church of the Ascension led the Pledge of Allegiance.

Mayor Kiker indicated that all councilmembers were present and asked for a motion that Councilmember Babcocks presence by phone be accepted.

MOTION: Councilmember List moved to allow Councilmember Babcock to participate phone. Motion was seconded by Vice Mayor Acken

VOTE: Motion passed 5 to 0

IV. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember List acknowledged all those involved in the fireworks display.

Vice Mayor Acken congratulated the Fort Myers Beach Coast Guard for their recent Sumner Kimball Readiness Award.

Mayor Kiker praised the Fort Myers Beach fireworks display and the Simmers as well as the Civic Association and the Fort Myers Beach Chamber for their Taste of the Beach Event.

V. ADVISORY COMMITTEES ITEMS AND REPORTS

Councilmember List asked for the Noise Ad Hoc Committee to be put on a hiatus until after Bay Oaks and Budget workshops. Councilmember List also brought up the subject of committee members for Bay Oaks, 4 of which are County and 4 Town and felt that was an issue to be dealt with. Town Attorney Dalton stated that the County would have to repeal its ordinance. A conversation ensued regarding residency requirements and steps needed to enact a new ordinance.

VI. PUBLIC COMMENT

Opened Public Comment

None

Closed Public Comment

VII. CONSENT AGENDA

A. Approval of Minutes: June 1, 2009

MOTION: Councilmember List moved to approve Consent Agenda with a second by Councilmember Raymond.

VOTE: Motion passed 5 to 0.

VIII. ADMINISTRATIVE AGENDA

A. Resolution 09-17, Acceptance of the Annual Audit,
Year Ending September 30, 2008

MOTION: Councilmember Raymond made a motion to accept Resolution 09-17, Acceptance of the Annual Audit, Year Ending September 30, 2008, with a second by Councilmember List.

VOTE: Motion passed 5 to 0

Recess: 9:20 AM

Reconvene: 9:21 AM

IX. ADMINISTRATIVE AGENDA

B. Resolution 09-16, Adoption of the Tentative Millage Rate, FY 2010

Mayor Kiker and all Councilmembers agreed to move Administrative Agenda B. Resolution 09-16, Adoption of the Tentative Millage Rate, FY 2010 to after Town Manager's Items.

X. TOWN ATTORNEY'S ITEMS

A. Bay Oaks Update

Town Manager Janke indicated staff had been working on an interlocal with both the school district for part of the fields located on their property and with

the County to take over their facilities. Town Manager Janke addressed the memo to Council of July 8th in regards to the building inspection and subsequent findings.

Town Attorney Dalton discussed items on the interlocal with the County. Concerns noted were regarding the deed and deed restrictions, wording regarding financial issues under roof repair and warranty, building inspection, capital contribution as well as operational contribution.

Mayor Kiker stated his desire to keep the the team of Town Manager Janke, Town Attorney Dalton, Councilmember List and Mr. Weimer.

Discussion of the ancillary documents ensued with Vice Mayor Acken suggesting depreciation for equipment in house. Town Finance Director Evelyn Wicks commented on Town's request for a complete inventory of property and condition of same. Town Attorney Dalton addressed the possibility of any additional encumbrances and/or restrictions by the County on the property.

Levels of service and repairs were then discussed with Mayor Kiker reminding all of Commissioner Judah's comment that the County would not allow the Town to fail. It was felt by Mayor Kiker there was a need for a glossary of definitions between the Town and County.

Town Manager Janke indicated the need for the Town to have authority for the type of repair to the roof of Bay Oaks. Mayor Kiker questioned receiving a credit toward the replacement of a new roof, allowing the Town the time to obtain engineering of a long lasting roof design. Town Manager Janke suggested the County provide the Town with engineer estimates of not only the roof but other items in the building in need of repair. Noted by Town Manager Janke was that the \$220,000 capital reserves should be separate from building repairs. Councilmember Babcock discussed maintenance and/or lack of at the facility with Town Manager Janke stating staff discovered there were not clear figures on the county's maintenance allowances. Again there seemed to be discrepancies in the language between the County and Town. Regarding the topic of operational contribution Councilmember Babcock felt it needed to be broken down further.

Vice Mayor Acken than addressed the subject of impact fees as well as the compliance of the County with the Growth Management Act. Vice Mayor Acken stated he felt the Town should be willing to walk away from the table if the County continued to be heavy handed in their negotiations.

Town Manager Janke indicated a business plan was being developed and an M & P on Wednesday July 15 would be about budget issues.

Opened Public Comment

None

Closed Public Comment

B. Beach Nourishment Status

Keith Laakkonen, Environmental Sciences Coordinator addressed Council indicating additional property easements had been acquired and stated there was an upcoming meeting scheduled with Commissioner Judah as well as the workshop planned at Pink Shell on Thursday evening July 16.

Opened Public Comment

None

Closed Public Comment

Councilmember Babcock complimented Keith Laakkonen on all his efforts.

Recess: 10:30 AM

Reconvene: 10:55 AM

C. Water Utility Status

Valve replacement has started and is on going and the Ad Hoc Committee has met and has further meetings scheduled.

Mayor Kiker addressed items requested by Mr. Mandel of the Ad Hoc Committee.

Opened Public Comment

None

Closed

Closed Public Comment

Councilmember Babcock requested additional information on the Ad Hoc Committee. A discussion then ensued as to why there was now a third attorney involved with Council making a decision to hold further discussion until the M&P meeting on Wednesday.

D. Status of North Estero Boulevard Drainage Improvement Project

Jack Green, Public Works Director, updated Council on the North Estero Boulevard Drainage Project Update Newsletter which is to be sent out to all residents along the Boulevard. Mr. Green stated August 5th would be the bid opening and as soon as the successful bidder was known a Town Hall Meeting should be held regarding garbage pickup, mail delivery and the possibility for utility interruptions.

Opened Public Comment

None

Closed Public Comment

E. Status of Newton Park

Town Manager Janke indicated the Newton Park Project was out to bid and would be delayed one meeting and come to Council the first meeting of August for

award of the bid. A review of the July 14 meeting with the Historical Preservation Board ensued. Community Development Director, Frank Shockey reviewed the dates of the upcoming Local Planning Agency meeting as well as the next Council meeting and the time line for available meeting minutes.

F. Status of Mound House

Cultural Resources Director, Theresa Schober, gave an overview of the memo provided to Council on the William H. Case house restoration, Shell Mound Exhibit, Landscape Restoration and Interpretive Materials.

Town Manager Janke stated he had requested an estimate of cost to be able to acquire a certificate of occupancy of the Mound House, not to include historical items but addressing the minimum needed to open the door to the public. Mayor Kiker asked for a complete update on the project and for a meeting to be scheduled to discuss the information and how to proceed.

Open Public Comment

Public Comment Was Heard:

- Ceel Spuhler, Estero Boulevard, spoke in favor of obtaining an occupancy report and getting the facility open so the public could see the importance of using the Connecticut property as a parking area and the importance of the facility to the island.

Closed Public Comment

G. Matanzas Pass Subaqueous Force Main Crossing Project

Jack Green, Public Works Director brought Council up to date on the Matanzas Pass Subaqueous Force Main Crossing Project and indicated that Kraft Construction, who is 4 weeks ahead of schedule, would like permission for extended work hours for two nights. Jack Green asked for this topic to be put on the agenda for July 20th.

Mayor Kiker asked for any information regarding the dredging project and requested an update by email.

XI. TOWN ATTORNEY'S ITEMS

A. Tezak Family Trust vs. Town of Fort Myers Beach

Town Attorney Anne Dalton stated she did not have an update on Tezak Family Trust vs. Town of Fort Myers Beach and had no other items.

XII. COUNCILMEMBERS ITEMS AND REPORTS

A. Master Project Plan – Councilmember Babcock

Councilmember Babcock discussed project management and his memo dated July 3, 2009, Master Project Plan for 2009/10. Councilmember Babcock stressed the need for Council to make decisions, work through the roadblocks, take measure of the situation and follow up in a timely manner and know when

to step aside and out of the way of progress. Vice Mayor Acken questioned who would be responsible for implementing this and if it would move into the Town Manager's field. Mayor Kiker indicated the Town already owned software to do what Councilmember Babcock was interested in doing. Vice Mayor Acken did not feel it was the time to move forward with a project like this, Town Manager Janke welcomed the opportunity to discuss the matter with Councilmember Babcock. All Councilmembers agreed to discuss the subject further after Councilmember Babcock and Town Manager Janke had an opportunity to look into the matter further.

B. Estero Boulevard Discussion – Mayor Kiker

Mayor Kiker voiced his dismay over information he obtained while in a meeting at the County regarding Estero Boulevard. The funds allotted for Estero Boulevard improvements had changed dramatically. Mayor Kiker reviewed items pro and con regarding the Town acquiring Estero Boulevard. A decision was made to look into the matter and bring it back to Council for further discussion.

Recess: 12:48 PM

Reconvene: 1:20 PM

Councilmember List stated Citizen Recognition Program nominations would close out July 31st.

Vice Mayor Acken thanked the Civic Association for the parade.

Councilmember Babcock requested clarification from Town Manager Janke if there would be discussion on Capital Improvement Projects at the M & P Meeting on Wednesday. Councilmember Babcock also commented on the spread sheet on staffing supplied by Town Manager Janke as well as the problem of mold in Town Hall. Attorney Anne Dalton provided additional information regarding the issues with the building's landlord. Councilmember Babcock also requested information regarding Ordinance 09-01 that was to discuss the vacating of Town owned public interest and real property.

Community Development Director Frank Shockey stated Council had asked to schedule the second hearing of the Ordinance to today's meeting but he was unable to provide the additional information in time to go into the meeting's packet.

Mayor Kiker asked for an action item email from Town Manager Janke from the previous Council meeting. Mayor Kiker then questioned the response needed to a Mr. Ganim. Attorney Dalton indicated there was an appeal pending by Mr. Ganim in the Court of Appeals and they were awaiting a ruling from the Court. Mayor Kiker noted a joint meeting in September with the LPA and Town Council

and thanked Town Clerk, Michelle Mayher for setting up the meeting. Mayor Kiker asked for an update on the three additional portable restrooms. Town Manager Janke responded that all of the Town's requests for beach maintenance monies and the three portable restrooms were supported by the Tourism Development Council and were being sent to the County Commissioners for funding.

A discussion regarding raking the beach ensued with Mayor Kiker encouraging a more aggressive approach. Mayor Kiker brought forth the subject of the Historic Society Committee and whether the Town was ready to answer the questions of the three women working on this Committee. Mayor Kiker wanted to see Staff contact these individuals regarding plaques and brochures.

Attorney Dalton brought Council up to date on the Ganim issue.

XIII. AGENDA MANAGEMENT

Town Manager Janke requested a meeting with Council to go over the issue of searching for possible property to house Town Hall. Meeting was scheduled for August 19th.

Town Manager Janke also brought up Emergency Operations Plan coming before Council for amendments August 10th.

Mayor Kiker requested a Town Manager evaluation and a Post Disaster workshop for August 13th at 9 AM.

XIV. RECAP OF ACTION ITEMS

- Council accepted both of the audits, for Public Works and the Town
- Postponed Tentative Mill Rates to the 20th of July
- Lengthy discussions on a number of projects under Town Manager's Items
- Councilmember Babcock gave a discussion on his Master Plan Concept
- Mayor discussed a discovery group for Estero Boulevard
- Scheduled Agenda Management for Post Disaster, Manager Evaluation
- Councilmember Raymond requested ex officio members to advisory boards
- Councilmember List to delay Noise Ordinance Ad Hoc Committee work until after Budget & Bay Oaks is completed
- Team to remain in place for the Bay Oaks Committee
- Cover letter to go out to County Administration and Commissioners regarding the Bay Oaks transfer.
- Keith Laakkonen to provide update on Matanzas Pass dredging
- Contact Historic Society Committee
- Sign Ordinance Compliance

Items from Town Attorney Dalton:

- Vice Mayor Acken requested a depreciation schedule
- Response had been received from County to set next meeting with Councilmember List copied for scheduling

- Preparing a letter to Mr. Ganim responding to his letters

Council discussed the Historic Preservation Board Meeting on the 14th.

XV. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Lee Melsek requested Council give more consideration as to where the Town was going and how fast the Town was going with Bay Oaks. He believed the County was in a much better position to continue operating Bay Oaks for the next year than the Town was.

Closed Public Comment

Resolution 09-16, Adoption of the Tentative Millage Rate, FY 2010

MOTION: Councilmember List moved to continue the adoption of Resolution 09-16, Setting of the Tentative Millage Rate to July 20th at 6:30 PM with a Second by Councilmember Raymond.

VOTE: 4 to 1 Motion passed with Vice Mayor Acken dissenting

Council began discussion on the Budget including topics of:

- parking fee increases
- business license tax
- lobbyist
- Bay Oaks
- millage rates
- town services

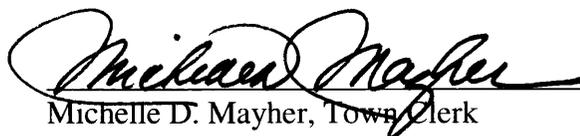
Further discussion set for next Council Meeting, Monday, July 20th at 6:30 PM.

XVI. ADJOURNMENT

The meeting adjourned at 3:40 PM.

Adopted 8-10-09 With ~~Without~~ changes. Motion by List / Babcock

Vote: 5-0


Michelle D. Mayher, Town Clerk

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