

MINUTES

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

AGENDA

August 10, 2009

9:00 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 9:03 AM. Present with Mayor Kiker was Councilmember Babcock, Vice Mayor Acken, Councilmember List, Councilmember Raymond, Interim Town Manager Green and Town Attorney Anne Dalton.

II. INVOCATION

Councilmember List led the Invocation.

III. PLEDGE OF ALLEGIANCE

All participated in the Pledge of Allegiance.

IV. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Acken thanked Staff for handling business the past few weeks.

V. ADVISORY COMMITTEES ITEMS AND REPORTS

Councilmember List reminded Council and Attorney Dalton the need for action regarding the Ordinance for the Advisory Committee for Bay Oaks.

VI. PUBLIC COMMENT

Opened Public Comment

No Public Comment
Public Comment Closed

VII. PRESENTATIONS

A. Unveiling of Calusa Carts

Theresa Schober, Cultural Resources Director gave an overview of the two new Calusa Carts which provide information on the Mound House and the underground shell mound exhibit. The carts were then unveiled and viewed by Council and residents.

B. Lee County Economic Resources – Ron Inge, Horizon Council of Lee County
Councilmember List introduced Ron Inge and B. Pat O'Rourke from the Horizon Council. Mr. Inge gave a power point presentation for the Horizon Council of Lee County and encouraged everyone to bring business prospects to the Horizon Council to assist in diversifying the Lee County business and job base and grow our economy.

Councilmember Babcock brought up the issue of competing with other areas of Florida and what we need to do within education, healthcare, transportation and inland ports to compete. Councilmember Babcock then asked specifically what Fort Myers Beach can do especially to draw business for the Town's empty beach front lots in the downtown area.

Councilmember List indicated the issue was that the County as a whole needed to be filled with great businesses and jobs and that in turn would bring more people to the beach.

Vice Mayor Acken voiced his desire for the Horizon Council to make note to the County Commissioners that a renourished beach, fixed road and intact water system would certainly be something to help market Lee County. Vice Mayor Acken asked what percentage of the funding was going to the incubation program to keep local talent in Lee County. Mr. Inge did not have those statistics.

VIII. PROCLAMATIONS

A. Industry Appreciation Week

The Town of Fort Myers Beach Proclamation proclaiming September 14th through the 18th, 2009 as Industry Appreciation Week was read and accepted by B. Pat O'Rourke.

IX. CONSENT AGENDA

A. Approval of Minutes: July 13, 2009

- B. Special Event Permit Application: "Art Under the Stars": - Friends of the Mound House
- C. Special Event Permit Application: EASYRIDERS ™ Motorcycle Expo Yucatan Beach Stand
- D. Adoption of Resolution 09-21, Signatory Authority SunTrust Bank Account
- E. Adoption of Resolution 09-22, Signatory Authority Florida Municipal Investment Trust
- F. Adoption of Resolution 09-23, Signatory Authority SunTrust Credit Card

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

VOTE: Motion passed 5 to 0

Recess: 10 AM

Reconvene: (time not stated)

X. PUBLIC HEARING:

A. DC12007-0005, Snug Harbor CPD (*continued*)

Hearing Opened

Mayor Kiker called on Council for any exparte. Councilmember List and Vice Mayor Acken indicated they had spoken with Mr. Gardner during the break and Mayor Kiker stated he had spoken with Mr. Gardner and had spoken with the applicant during the last hearing.

All those intending to speak were sworn in by Attorney Dalton.

Mayor Kiker brought forward that the reason the hearing had been continued was due to discrepancies of neighbors and asked Mr. Green if those issues had been resolved. Mr. Green stated that emails had been received from the attorney of the adjoining property owner and their objections had been satisfied. Richard McDole, Building Consultant for Marina Village at Snug Harbor Condo Association stated the Board was in agreement with this project and wanted to see it go forward and felt it to be an asset to their existing development as well as to the community.

Attorney Cody Vaughan-Burch for the applicant Kiric Investments, Inc. introduced Joe McHarris to give an overview of their presentation. Joe McHarris, of McHarris Planning and Design gave a presentation on Snug Harbor notably the parking garage and fourth story, with all other development being consistent with the downtown development plan.

Councilmember List asked for specific information as to the buffering/vegetation planned. Mr. McHarris indicated a double row tree planting of palms and a mid height planting as well as a low height planting providing a mass of green vegetation. Mr. McHarris noted that is why the building was not pushed to the property line to allow for the plantings.

Councilmember Babcock questioned what space was over Town right of ways. Mr. McHarris indicated balconies and living space were over right of way property providing for an undulating façade.

Frank Shockey, Interim Community Development Director addressed the request to rezone 1.3 acres of downtown to CPD, Commercial Planned Development, and to zone .069 acres of submerged land also to CPD. The project is for redevelopment of property which contains a parking lot and docks on submerged land to include retail, hotel/motel uses, dock rental uses but not marina and a parking garage. The Land Development Code specifically requires rezoning to planned development where a parking garage is proposed. Staff's recommendation was broken down into two parts due to two different future land use map categories and uplands as regards to submerged land Staff recommended approval to rezone the 1.38 acres of upland that is currently zoned downtown and denial to rezone .069 acres of submerged land.

Mr. Shockey addressed the deviations:

- Staff recommended approval of deviation #1 regarding the building height of four stories and 52 feet above base flood elevation in one area limited to 8000 square feet at the northeastern end of the Phase II building.
- Staff recommended approval of deviation #2 from LDC 10-285 to allow minimum connection separation of 28 feet instead of 125 feet for an existing shared access easement connection to Old San Carlos Boulevard.
- Staff recommended approval of deviation #3 from LDC Section 34-675(c)(1) to allow F.A.R. of 1.823 which included the parking garage but leaving out the additional floor area for the submerged land buildings.
- Staff recommended denial of deviation #4 from LDC Section 26-43 since it was also recommending denial of the zoning of the submerged land.

Mr. Shockey indicated that the location of this project was one of the properties highlighted in the Comp Plan for construction of a parking facility and felt it was a good place to start.

Councilmember Babcock asked if there were limits or restrictions on living space

or balconies over Town right of way. Mr. Shockey indicated the LDC encouraged structures to be constructed over the right of way but not over the roadway. The idea being that sidewalks should be shaded and be a refuge for pedestrians.

Vice Mayor Acken questioned if potential businesses would be able to lease space from the Town as those in Times Square have now. Mr. Shockey stated the LDC did not provide for outdoor seating on public property outside of the Times Square pedestrian mall area.

Dennis Weimer, representing the LPA stated application DCI2007-0005 Snug Harbor Commercial Plan Development was reviewed by the Local Planning Agency at their regular scheduled meeting November 12, 2008. Council was provided copies of the LPA Minutes, Resolution Number 2008-42. LPA recommended approval of the rezoning of the 1.38 acres of upland and recommended denial of the rezoning of .069 acres of submerged land with a 5 to 1 vote.

Opened Public Comment

- John Gardner, resident of Third Street abutting one corner of the proposed parking garage. Mr. Gardner noted his disapproval of the proposed parking garage, stating that a row of trees was not going to hide the building and the fact that it was going to devalue his house.
- Doug Speirn-Smith, managing member of the Harbor House across the street from the proposed project. Mr. Speirn-Smith noted his concerns with the 4th floor and the use of covered balconies which could cause a canyon effect on Old San Carlos. He presented the Council with hand drawn façade plans representing his ideas for the project.

Closed Public Comment

Joe McHarris took the podium for rebuttal. Mr. McHarris addressed the concerns of resident John Gardner, assuring those in attendance Mr. Gardner was a nice man; however, Mr. Gardner's house was zoned office commercial and it was the downtown core. Mr. McHarris noted he had done more than was necessary regarding this issue and felt this project would actually increase the value of Mr. Gardner's property.

Responding to Mr. Speirn-Smith's issues, Mr. McHarris did not feel the 4 story building would make the street look cavernous and did not feel the 4th story needed to be set back.

Councilmember List asked if the projected route to Big M would then become 1st Street as opposed to 3rd Street with Mr. McHarris stating that was their plan.

Councilmember Babcock noted that he had issues with the use of the right of way, questioned the parking garage and what the applicant was doing regarding Green Technology.

Jack Green noted in the recommendation from the LPA there was the requirement for the agreement for the use of the right away which the project would be subject to. From a Public Works prospective, the more hardened the overhead is over the sidewalk area the more difficult it may be to access what's under the sidewalk, so that would be a consideration from the Town's prospective.

Mayor Kiker questioned if it was known what was under the sidewalk with Mr. Green indicating at this time it was unknown. Mayor Kiker then asked if there had been a building over the water previously why they would not be allowed to rebuild with Frank Shockey indicating the LDC states no new building over water. Mayor Kiker than asked what they planned to do there since they could not rebuild over water with Mr. McHarris stating he was not sure.

Mayor Kiker questioned the usage of the parking garage.

Vice Mayor Acken asked for the ability to have a Comprehensive Plan Amendment for the owners to have use of the submerged property.

Frank Shockey addressed the easement of property owned by Moss Marine and improvements to that property if it were to be used as a main route to that business. Mr. Shockey also provided additional information regarding building over water as well as living spaces and awnings over right of ways.

Councilmember Babcock questioned the Comp Plan allowing for a greater height with an adjacent building that is higher and how it enhances the objectives. Mr. Shockey felt the objectives of Mr. McHarris was to plan a project that would be successful. The Town's objective was to require them to design the project in accords with the Comprehensive Plan. Councilmember Babcock was concerned with density and intensity, noting the 4th story as well as space over

right of ways.

Jack Green brought forth information that a water line and electrical was in the right of way.

Mayor Kiker continued to question the right to rebuild over the water with Mr. Shockey stating the position of FEMA, Flood Plain and the insurance program.

Dennis Weimer, representing the LPA addressed Council again stating the structure planned for the property over the submerged land was not allowed by the Comp Plan and encouraged the applicant to search out other usages for the property.

5 Minute Recess

Hearing Testimony Closed

Councilmember Raymond stated he was against any 4 story structure including the parking garage and was also against any living space over the sidewalk. Councilmember Raymond was in favor of the structure to be rebuilt over the water.

Councilmember List was happy with the ^{aesthetics} ~~esthetics~~ of the new structure. She also wanted a guarantee of the plantings used for buffering and was in favor of a structure over the water for possibly a water taxi.

Councilmember Babcock noted he was going to go by way of the Land Development Code, to listen to staff, listen to the LPA reports, listen to public comment and to listen to the Comp Plan and Land Development Code. He stated he was uncomfortable with 4 stories and the area extended over the right of way however until a decision is made to change the Comp Plan, it is allowed.

Vice Mayor Acken wanted to see the submerged land portion of the project separated from the remainder of the project.

Mayor Kiker agreed with Councilmember Babcock stating what the Comp Plan allows is not their charge to deny. Mayor Kiker did agree with the transition of the 3 stories to 4 stories next to the taller existing building and did like the tower. Mayor Kiker was not as in favor of the living space over the sidewalk, however, the Comp Plan allowed it and he was still unsure regarding the structure over the

water and was unclear how to address the issue in the hearing.

5 Minute Recess

Hearing Reconvened at 1:10 PM

Attorney Dalton stated that she and Mr. Green had a moment to speak with the applicant and his Council, with the applicant's attorney to make a statement.

Cody Vaughan-Burch representing the applicant after conferring with Mr. Green and Attorney Dalton indicated their willingness to accept a zoning recommendation by staff and the LPA that would not include the buildings over the submerged lands in order to avoid boxing in the Council and being able to move forward.

Attorney Dalton and Frank Shockey clarify the recommendations of the LPA to Council.

MOTION: Councilmember Babcock made a motion to recommend the approval of Resolution Number 09-10 with the following wording: Town Council **approves** the applicant's request to rezone the 1.38 acres of upland from DOWNTOWN to CPD. Town Council **disapproves** the request to zone the 0.069 acres of submerged land.

Floor Area allocations: Phase V and VI denied. Under **Deviations:** 1. approved 2. approved 3. approved 4. does not approve **Findings and conclusions:** 1. does not comply 2. is inappropriate and public interest are not provided 3. does not meet requirements **Regarding the 1.38 acres to CPD:** 1. complies 2. is appropriate 3. are provided 4. are reasonably related 5. meets **(6) Regarding requested Deviation #1, Deviation #2, and Deviation #3** a. enhances b. will be c. operates d. is consistent **(7) Regarding requested Deviation #4 and Deviation #3** a. does not enhance b. will not preserve and promote c. will not operate and may operate to the detriment of the public interest d. is inconsistent

Attorney Dalton suggested a change in the motion.

Councilmember Babcock with suggestion by Attorney Dalton removed Deviation #3 from (7) and included 3 Deviations at the beginning of his motion.

With those changes made Councilmember List seconded.

Vice Mayor Acken voiced his concern with Findings and Conclusions on page

6 of 8 with clarification made.

VOTE: Motion passed 4 to 1 with Councilmember Raymond dissenting.

Hearing is closed at 1:20 PM

Meeting recessed for lunch at 1:20 PM

Meeting reconvened at 1:58PM

XI. ADMINISTRATIVE AGENDA

A. Bid Award for B#09-04-CR, Restoration of Seven Seas at Newton Park
Interim Town Manager Jack Green announced the bid opening occurred on July 29, 2009 with Maddox Construction Company as the lowest responsible bidder with a total price of \$206,272.00.

Ms. Schober indicated Maddox Construction had met all requirements for working on a historic project and expected a final completion time of 120 days.

MOTION: Councilmember List made a motion to approve award of contract 09-04-CR Restoration of Seven Seas at Newton Park to Maddox Construction Company in the amount of \$206,272 and authorize staff to move forward with the project. Councilmember Raymond seconded.

VOTE: Motion passed 5 to 1

XII. TOWN MANAGER'S ITEMS

A. Bay Oaks Update

Interim Town Manager Jack Green provided Council with information regarding his meeting with the County and their offer of \$400,000.00 instead of repairing the roof of the rec center. Mr. Green had spoken with a contractor about the application of a roofing barrier process for \$65,000.00 with a 10 year warranty as well as hiring a structural engineer to come assess the issues with the structure. An estimate of \$10,000.00 for roofing of the outbuildings was also received. As soon as information was received from the engineer staff would provide Council with a recommendation of how to proceed. Mr. Green also indicated the \$400,000.00 was separate from the \$150,000.00 transitional funds.

Councilmember Babcock and Vice Mayor Acken voiced their concerns

with taking over Bay Oaks October 1st. Discussion ensued regarding the inter local, the engineers report, programs provided as well as the public having time to comment. Mr. Green impressed upon Council it was the time to be decisive and move forward.

B. Beach Nourishment Status

Mr. Green noted over 130 DVDs had been sent out along with a letter of request to property owners and staff was awaiting the result of the mailing. A color coded map of the island was given to Council showing the easement results to date.

C. Water Utility Status

Mr. Green recommended a work session needed to be scheduled on this issue.

D. North Estero Boulevard Drainage Project Update

Bids were received and opened on August 5th, 2009. Council would get the award request August 17th.

E. Action Items Report/Agenda Management/Project Management

Mr. Green wanted to try something different and felt these items could be handled better and was working on a new plan of presenting and discussing information.

F. Discussion for upcoming workshop(s) and M & P Work session(s):

1. Mound House Discussion: Certificate of Occupancy/Landscaping/
Parking – August 13 Workshop
2. Additional Revenue Sources – August 19 M & P Work session
3. Project Management Discussion – August 13 Workshop

Council discussed dates and times to reschedule meetings.

XIII. TOWN ATTORNEY'S ITEMS

- Attorney Dalton advised Council she had sent notice to the County regarding their need to sunset their involvement with the Bay Oaks Advisory Committee.
- Attorney Dalton would be sending Council a memo asking them for input regarding referendums.
- Attorney Dalton stated she would be sending Council a memo regarding Councilmember Raymond's request on exaficio membership.

XIV. COUNCILMEMBER'S ITEMS AND REPORTS

A. Tom Babcock – Project Management

Councilmember Babcock noted that he and Jack Green would be discussing the subject and asked Council if they could provide any additional information to the list he provided in the packet.

Vice Mayor Acken addressed the issue of compensation for the Interim Town Manager.

Brief Recess

Decision was made to allow Mr. Green time to discuss the issue with Council.

Councilmember List stated she had visited the PACE Center for Girls in Fort Myers and would be bringing materials to the Council regarding their program. Councilmember List also noted the Lee Education and Employment Program would be making training available for those in need of their services.

Councilmember Raymond thanked the Mayor for all of his hard work the past couple of weeks.

XV. PUBLIC COMMENT

Public Comment Opened

- JoAnn Shamp thanked Jack Green for his dedication to the Town, for stepping in as Interim Town Manager and for the great job he did throughout the meeting.

Public Comment Closed

XVI. AGENDA MANAGEMENT

Councilmember Babcock asked to have the Right of Way Issued added to Agenda Management

XVII. RECAP OF ACTION ITEMS

- Bay Oaks Advisory Committee Ordinance
- Further discussion with Horizon Council
- Bay Oaks roof warranty and possibility of a roof over
- Bay Oaks – Seek County assistance to January 1
- Bay Oak - Public input regarding inter local agreement
- BOCC Calendar
- Additional input from property owners regarding their reason for not signing easement
- Water utility meeting September 2nd at 9 AM
- Right of way back on agenda management list

- Schedule meetings with County Commissioners with Jack Green

XVIII. ADJOURNMENT

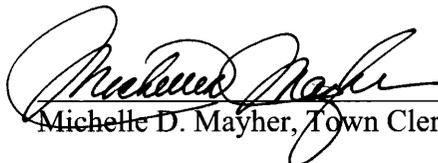
MOTION: Councilmember List made a motion to adjourn with a second by Councilmember Raymond.

VOTE: Motion passed 5 to 0

Meeting adjourned at 3:50 PM

Adopted 9-9-09 With/ Without changes. Motion by List / Acker

Vote: 5-0



Michelle D. Mayher, Town Clerk

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