



MINUTES

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

August 17, 2009

6:00 PM

I. CALL TO ORDER

At 6:03 PM Mayor Kiker called to order the Executive Session Tezak Family Trust vs. the Town of Fort Myers Beach. Present: Mayor Kiker, Council members Babcock, List and Raymond, Interim Town Manager Green, Town Attorney Anne Dalton and Town Clerk Michelle Mayher. Absent Vice Mayor Acken.

II. TOWN ATTORNEY ITEMS

A. Request for Executive Session regarding the Case of Tezak Family Trust Vs. The Town of Fort Myers Beach.

Attorney Dalton requested an Executive Session which is a limited exception to the Sunshine Law for the purpose of discussing litigation strategies and other matters. Present at the meeting per Attorney Dalton, were Council members, Interim Town Manager, herself and a court reporter. Attorney Dalton indicated the meeting should last approximately 25 minutes. Attorney Dalton asked for a vote on her request.

MOTION: Councilmember List made a motion to go forward with the hearing with a second by Councilmember Babcock.

VOTE: Motion passed 4 to 0

MOTION: Councilmember List made a motion to continue the meeting with a second by Councilmember Raymond.

VOTE: Motion passed 4 to 0

III. ANNOUNCEMENT OF COMMENCEMENT OF EXECUTIVE SESSION

Time 6:05 PM

Tezak Family Trust vs. Town of Fort Myers Beach, Present were Mayor Kiker, Council members Babcock, List and Raymond. Interim Town Manager Jack Green and Town Attorney Anne Dalton. Absent, Vice Mayor Acken.

EXECUTIVE SESSION CLOSED TO THE PUBLIC

EXECUTIVE SESSION TERMINATED

FORT MYERS BEACH TOWN COUNCIL MEETING RECONVENES

Time 6:30 PM

IV. INVOCATION

Invocation led by Reverend Alice Marcrum of Saint Raphael's Episcopal Church

V. PLEDGE OF ALLEGIANCE

Pledge of Allegiance led by Reverend Alice Marcrum.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember Babcock noted on Saturday, September 19th from 9 AM to noon there would be a coastal cleanup and on October 25th it would be Monofilament Madness with additional information in the local papers.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Report by LPA Regarding LPA Resolution 2009-16, Beach Furniture Licensing

Information and Resolution presented by LPA member Bill Van Duzer. Mr. Van Duzer indicated the LPA recommended this item be left alone with no changes as the Land Development Code covered all issues that were necessary.

Councilmember Babcock asked if a representative of MRTF was present at the meetings as well as Eve Haverfield with Mr. Van Duzer indicating that Mr. Hester was present for MRTF and that Eve Haverfield was not.

Vice Mayor Acken arrived for the meeting.

VIII. PUBLIC COMMENT

**Public Comment Opened
No Public Comment
Public Comment Closed**

IX. CONSENT AGENDA

- A. Approval of Minutes July 20th, 2009
- B. Special Event Permit Application: Shamrock Irish Pub Grand Opening

MOTION: Move Consent Agenda B. Special Event Permit Application: Shamrock Irish Pub Grand Opening by Councilmember Babcock with a second by Councilmember List.

VOTE: Passed 5 to 0

Vice Mayor Acken wanted the Minutes of July 20th, 2009 amended to reflect that former Town Manager Scott Janke was absent.

MOTION: Councilmember List moved to approve the correction of the July 20th, 2009 Minutes with Councilmember Raymond seconding.

VOTE: Motion passed 5 to 0

X. PUBLIC HEARINGS

A. DCI2009-0001, NEWTON PARK CPD

Read by Attorney Dalton: **RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA. RESOLUTION NUMBER 09-24 NEWTON PARK COMMERCIAL PLANNED DEVELOPMENT**

Attorney Dalton swears in all giving testimony.

- Theresa Schober, Cultural Resources Director serving as the applicant gave an overview of the proposed uses and changes to the Newton Park property located at 4600, 4610 and 4650 Estero Boulevard.
- Greg DiSario, Landscape Architect with David M. Jones Jr. And Assoc., Inc. presented their recommendation for the site plan. Providing each Council member with a color layout showing all recommended changes and improvements

Councilmember Raymond leaves the meeting due to illness.

- Frank Shockey, Community Development Director, representing staff provided Council with staff's position regarding rezoning of 4600, 4610, 4650 Estero Boulevard. Mr. Shockey indicated that this was a master concept plan with the ability for slight deviations.

Public Comment Opened

No Public Comment

Public Comment Closed

Councilmember Babcock questioned the applicant regarding the traffic pattern

laid out on the plan followed by Ms. Schober's explanation for the layout. Councilmember Babcock continued with a question regarding dune crossovers or pathways.

Mayor Kiker questioned Mr. Green if it would be needed to have a meeting allowing additional public comment regarding the concept plan.

Vice Mayor Acken questioned adding a vegetative buffer next to the right of way to the South and the adjoining neighbor. Ms. Schober indicated the right of way was not a part of the plan.

Mr. Green stated the public access would be addressed by Public Works and not included in the issue at hand.

Vice Mayor Acken questioned the usage of alcoholic beverages due to the wording of 97-5 as well as the ability to launch small non-motorized watercraft, retail space small and outside vendors.

Ms. Schober stated any outside vendors would have to be Okayed by the State.

Councilmember List felt the issues with the right of way to the South of the Newton property were not at all relevant with the topic at hand.

Mayor Kiker asked about the stairs accessing the beach with Ms. Schober stating it would be a handicapped accessible ramp.

MOTION: Councilmember Babcock made a motion for approval of Resolution Number 09-24, page 1, The Town Council **APPROVES** the Applicant's request with seven (7) conditions and three (3) deviations; on page 3, condition seven (7) add language by the LPA Resolution to read **On-premises consumption of alcoholic beverages is limited to temporary permits issued in accordance with LDC Section 34-1264(d), except that the number of such permits issued per year shall not be limited to twelve (12), or to a membership organization/club in accordance with LDC Section 34-1264(a)(1)c. Any on-premises consumption of alcoholic beverages must comply with all applicable provisions of state law and agency rules, as well as Town Ordinance 97-5. Deviation #1 IS APPROVED; Deviation #2 IS APPROVED; Deviation #3 IS APPROVED.** Findings and Conclusions #1 The requested CPD zoning district, as conditioned, **is consistent with and complies** with all specific requirements; #2 There **is not** an error or ambiguity that must be corrected; #3 There **exists** changed or changing conditions that make approval of the request, as conditioned, appropriate. #4 The proposed use or mix of uses, as conditioned **is** at the subject location; #5 Sufficient safeguards to the public interest **are** provided by the conditions to the master concept plan or by other applicable regulations; #6 All conditions **are reasonably related** to the impacts on the public's interest created by or expected from the

proposed development; #7 The proposed use or mix of uses, as conditioned **meets** all performance and locational standards set forth for the proposed use. #8 a. Each Deviation **does enhance** the achievement of the objectives of the planned Development. b. Through each Deviation the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare **will be** preserved and promoted; c. Each Deviation **does operate** to the benefit, and **does not operate** to the detriment, of the public interest; d. Each Deviation is **consistent** with the Fort Myers Beach Comprehensive Plan.

Councilmember List seconded the motion.

Vice Mayor Acken wanted to add to the schedule of uses, vending machines such as Coke machines, water, etc. Frank Shockey indicated there were no barrier of usages. Vice Mayor Acken then removed this addition to the schedule of uses.

Vice Mayor Acken then moved to add the possibility of subletting to a beach vendor for chair rentals and non-motorized crafts.

Councilmember Babcock seconded the amended motion for discussion.

A discussion ensued as to the need for the above amended motion to be added to the schedule of uses for the CPD or if it could be part of the management plan.

Councilmember Babcock rescinded his second and amended his original motion to include subletting of beach furniture and non-motorized crafts.

Councilmember List agreed and held her second to the motion.

Vice Mayor Acken made a motion to remove the reference to Ordinance 97-5.

No second was made.

Attorney Dalton suggested the wording be changed to rental of beach furniture rather than subletting, with Councilmember Babcock agreeing to the change.

Further discussion on the size and type of non-motorized craft ended in boat rentals of non-motorized crafts up to 16 feet.

VOTE: Motion passed 4 to 0

Recess at 8:15 PM

Reconvene at 8:30 PM

B. Second and Final Public Hearing Ordinance 09-03, 2008-2009
Comprehensive Plan Amendment Adoption

Hearing Opened

Ordinance read by Attorney Dalton:

ORDINANCE NO. 09-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH ENTITLED "SEVENTH AMENDMENT TO THE FORT MYERS BEACH COMPREHENSIVE PLAN", ESTABLISHING PURPOSE AND INTENT; AMENDING CHAPTER 1, INTRODUCTION; AMENDING CHAPTER 4, FUTURE LAND USE ELEMENT; AMENDING CHAPTER 5, COASTAL MANAGEMENT ELEMENT; AMENDING CHAPTER 7, TRANSPORTATION ELEMENT; AMENDING CHAPTER 8, UTILITIES ELEMENT, AMENDING CHAPTER 9, STORMWATER MANAGEMENT ELEMENT, AMENDING CHAPTER 11, CAPITAL IMPROVEMENTS ELEMENT, ADDING CHAPTER 16, PUBLIC SCHOOLS ELEMENT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

- Mr. Bill Spikowski, Planning consultant provided a presentation regarding Ordinance 09-03 with a recommendation to adopt the Ordinance to reflect the changes of the August 6th memo.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember Babcock made a motion to adopt Ordinance 09-03, amending the Fort Myers Beach Comprehensive Plan with the changes included in Mr. Spikowski's memo dated August 6th, 2009 with a second by Councilmember List.

VOTE: Roll call vote read by Town Clerk Michelle Mayher to adopt Ordinance 09-03.

Councilmember Babcock	aye
Councilmember List	aye
Mayor Kiker	aye
Vice Mayor Acken	aye

Motion passed 4 to 0

Hearing is closed at 8:35 PM

XI. ADMINISTRATIVE AGENDA

A. Amendment to Newton Park Management Plan

Town Manager Jack Green outlined the Amendment to the Newton Park Management Plan and indicated it was an instrument to allow the Town to move forward with Newton Park.

Public Comment Opened

No Public Comment

Public Comment Closed

A discussion brought forth by Vice Mayor Acken ensued regarding the demolition of the cottage.

Councilmember Babcock brought up page 20, section D of the Management Plan wanting to strike the first sentence of section D. Theresa Schober indicated the State may have an issue with vendors on the property. Town Manager Jack Green suggested starting the second sentence of Page 20, section D with **If revenue generating** arrangements are considered....etc.

Theresa Schober noted two changes to the document: page 22 to read, **24** Loggerhead sea turtle nests and **120** non-nesting emergencies.....

Page 16: the state would **not allow** the front walkway to be reconstructed and an updated plan would be placed in the document before being sent to the State.

MOTION: Councilmember List moved to approve the revisions to the Management Plan to Newton Beach Park (FCT Project Number 02-098-FF2) As indicated by strikethrough and underline text in the document dated August 17th, 2009 including the change on page 20 as read into record by Interim Town Manager Mr. Green, including the two corrections Miss Schober indicated on page 16 having to do with the walkway and page 22 regarding the number of turtle nesting statistics with a second by Councilmember Babcock.

VOTE: Motion passed 3 to 1 with Vice Mayor Acken dissenting.

B. Award of Bid North Estero Boulevard Drainage Improvement Project
Interim Public Works Director Cathie Lewis recommended the award of the construction contract to Southwest Utility Systems, Inc. in the amount of \$2,975,000.00.

Vice Mayor Acken asked if the Town would have an information officer available for answering residents' questions during the construction. Miss Lewis and Mr. Green stated the Town had already sent out a newsletter and would be updating the Town website and doing everything they could to keep the public up to date on the progress.

Councilmember Babcock queried the change order process on the project.

Opened Public Comment

No Public Comment

Closed Public Comment

MOTION: Councilmember Babcock made the motion to recommend approval of the bid tabulation and ranking of bids submitted in response to BD-09-02-PW and award the construction for the North Estero Drainage Improvements Project to Southwest Utility Systems, Inc. in an amount of \$2,975,000.00.

A second was made by Councilmember List.

VOTE: Motion passed 4 to 0

C. Bay Oaks BOCC Interlocal Agreement

Attorney Dalton reviewed the memorandum for Council and asked Council for approval in concept of the agreement itself but allowing for further discussion with the County regarding the exhibits.

Mayor Kiker questioned the time restraints as well as meetings with the BOCC.

Councilmember Babcock noted Section Three, item D. and wanted to see the actual dates removed. Attorney Dalton recommended: The County shall provide staffing support for a period of 30 days following the transfer of the facility from the County to the Town at no cost to the Town.

A discussion of removing all mention of September 30th throughout the document was noted, the structural engineers report was needed by August 31st, the school district information was needed as well as the guarantee that all services continue during the process.

Councilmember Babcock asked for information on the amount needed to be put aside each year for inventory.

Public Comment Opened

No Public Comment

Public Comment Closed

D. Bay Oaks School District Interlocal Agreement

Attorney Dalton stated emails had been received and that staff was encouraging the School District to move forward with the matter.

Public Comment Opened

No Public Comment

Public Comment Closed

E. Status of Interim Town Manager's Compensation

Mr. Green stated he was comfortable with the compensation noting it was for the period of Interim Town Manager.

Opened Public Comment

No Public Comment

Closed Public Comment

MOTION: Councilmember List made a motion to approve the Employment Agreement dated August 17th, 2009 with Town Manager Jack Green for interim town manager services with a second by Vice Mayor Acken.

VOTE: Motion passed 4 to 0

XII. A. Beach Nourishment Status

Mr. Green indicated 11 responses from the 130 mailings were received with 2 in favor and 9 against. Staff would be following up to find out if there was a particular reason for their decision not to sign.

B. Schedule land use hearing date for DCI2006-0001 and DCI2006-0002 Pink Shell CPD.

Frank Shockey presented the dates available to schedule the meeting with Council. October 16th at 9 AM was set for the hearing.

C. Adoption of Town Council 2010 Meeting Schedule

Council agreed to remove the Wednesday, December 23rd, 2009 M & P meeting and to bring the calendar back at the next meeting for discussion and approval.

Jack Green felt the need to move the Wednesday, August 19th M & P Meeting to 8 a.m. Attorney Dalton recommended the meeting be continued to Wednesday.

XIII. TOWN ATTORNEY'S ITEMS

A. Items for Binding/Non-Binding Referendum Scheduling

Attorney Dalton noted that she had sent out emails to Council asking if they had referendum suggestions and had only received a reply from Councilmember Babcock.

Council members Babcock and List felt a workshop was needed, Vice Mayor Acken did not feel there was a need for referendum or a workshop nor did Mayor Kiker.

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Babcock asked about the committee ordinance and would like to see it moved to November 1st.

XV. AGENDA MANAGEMENT

Added the referendum discussion without a date.

XVI. RECAP OF ACTION ITEMS

- Newton Property
 - Schedule Workshop to discuss access, buffers, parking issues, signage, trolley pull offs
- Add Cottage to Agenda after FCT approval of management plan
- Public information regarding N. Estero Project
- Bay Oaks - Set up meeting with Mayor and BOCC to discuss timing and moving forward
- Bay Oaks to M & P Meeting Wednesday, August 19th, 2009
- Pink Shell Hearing October 16th, 2009 at 9 AM
- Continue Council Meeting on Wednesday, August 19th, 2009
- Add referendum issues to Agenda Management
- Names received for Committee Ordinance

XVII. PUBLIC COMMENT

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember List moved to continue the meeting to August 19th, 2009 at 8 AM with a second by Councilmember Babcock.

VOTE: Motion passed 4 to 0

Adjournment at 10:15 PM

Adopted 9-21-09 With/Without changes. Motion by Liot / Babcock

Vote: 5-0


Michelle D. Mayher, Town Clerk

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