



## **MINUTES**

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

### **AGENDA**

**October 5, 2009**

**9:00 AM**

#### **I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 9:02 a.m. Present with Mayor Kiker was Vice Mayor Acken, Council members Babcock, List and Raymond as well as Interim Town Manager Green, Town Attorney Dalton and Town Clerk Michelle Mayher. .

#### **II. INVOCATION**

Invocation led by Deacon Scoop Kiesel, Church of the Ascension

#### **III. PLEDGE OF ALLEGIANCE**

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

Mayor Kiker sought agreement from Council for a change in sequence of the agenda.

#### **IV. PROCLAMATIONS**

Pride and Patriotism Program-Lee County School Board

Town Clerk, Michelle Mayher read the proclamation stating November 10, 2009 Pride and Patriotism Day in the Town of Fort Myers Beach. Mayor Kiker presented the proclamation to Dr. Elinor Scricca, Lee County School Board.

## **ADMINISTRATIVE AGENDA**

**B. Special Event Permit Application: Art & Pumpkin Festival – Baywalk Group**  
Interim Town Manager Jack Green reviewed information regarding the Pumpkin Festival since it was the first time for this Festival.

**MOTION:** A motion was made by Councilmember List to approve the special event with a second by Councilmember Babcock.

**VOTE:** Motion passed 5 to 0.

Mayor Kiker again sought consensus from Council to bring forward another administrative agenda item.

### **A. Award of Contract for Shell Mound Fabrication Exhibit**

Interim Town Manager Jack Green reviewed the request to award the contract to fabricate the Shell Mound Exhibit to MurphyCatton, Inc in the amount of \$122,807.00.

A discussion ensued about time lines, staffing, completion dates, and grants as well as additional funding. Mayor Kiker asked if the Mound House would be open by the end of the year. Mr. Green stated that the house itself would not be, however the exhibit and grounds would be much further ahead.

Mayor Kiker felt there had been a prior commitment by staff that the exhibit would be open by the end of the year and continued to question where the entire project stood.

Councilmember Raymond noted he was still waiting on a meeting to go over the entire Mound House Project.

Councilmember Babcock recommended Council go forward with option #3, Category 1.

Councilmember List felt there should be no confusion as to the plan for the Mound House as there had been many meetings with information provided in the past and felt Council should go forward at this time with option #3, Category 1.

Mayor Kiker continued to disagree with the recommendation from staff while Vice Mayor Acken felt staff was following Council's direction to get the parks Opened and thanked staff for their efforts. Mayor Kiker indicated he would not support incremental funding to the project until a master plan was presented to Council.

After listening to Mayor Kiker and Councilmember Raymond state there were changes made to the original plan, Councilmember List asked Theresa Schober,

Cultural Resources Director to note changes that had been made in the project plan. Ms. Schober stated there had been no changes made and they were continuing to move forward from 2004 until completion.

Councilmember Babcock noted the pledge from the Friends of the Mound House for \$20,000.00 and he felt Council needed to move forward.

**MOTION:** Vice Mayor Acken made a motion for approval of Category 1 work and approve award of contract 09-06-CR Professional Services to fabricate the Shell Mound Exhibit to MurphyCatton, Inc. in the amount of \$60,870.08.

**VOTE:** Motion passed 4 to 1 with Mayor Kiker dissenting.

Friends of the Mound House representatives presented the Town with a check in the amount of \$10,000.00. Carrie Hill, President of Friends of the Mound House stated an additional \$10,000.00 was pledged toward the project as well as their desire to be trained as volunteers for the property.

**V. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

**A. Recognition of Historic Advisory Committee**

A. J. Bassett and Fran Santini (absent Roxie Smith) of the Historic Advisory Committee displayed the new historic recognition plaques and brochures.

Councilmember Babcock thanked all for the Open House at Bay Oaks October 3<sup>rd</sup>.

**VI. ADVISORY COMMITTEES AND ITEMS REPORTS**

**A. Appointments to Advisory Committees**

Interim Town Manager Green recommended Council approve appointments per memorandum.

Council members Raymond and Babcock requested advertising for applications to committees.

**MOTION:** Councilmember Babcock made a motion to approve all names submitted for the committees with the recommendation for CRAB, the three seats open would be for two year terms and the remaining seats open be advertised for submittal no later than November 1<sup>st</sup>, with a decision by Council at the second Council meeting in November with a second by Councilmember List.

An inclusion to the motion to extend Mr. Weimer's term to the LPA by one month was made by Councilmember Babcock with an amended second by Councilmember List.

**PUBLIC COMMENT OPENED  
NO PUBLIC COMMENT  
PUBLIC COMMENT CLOSED**

**VOTE:** Motion passed 5 to 0

**B. Discussion of Ex-Officio Members**

Councilmember Raymond discussed his thoughts on Council members being a part of committees, noting the pros and cons, and stated he felt it was a good way for the committee to have direct contact with Council.

Councilmember List felt the citizens volunteering on the committees may be inhibited with a Council member at the meeting. Mayor Kiker felt committee members may feel anything said by a Council member may be policy. Councilmember Babcock was afraid the Council member would dominate the meeting and not allow a free flow of conversation for the committee.

Councilmember Babcock felt the key element was the staff member assigned to each committee and wanted to see continued support for staff.

Vice Mayor Acken brought up past conversations, noting committee members felt Council's presence would hinder their meetings. Mayor Kiker suggested asking committees if they required additional assistance, if so in what form and felt each committee would probably want varying degrees of additional input.

**Opened Public Comment**

▪ **Joanne Shamp** – Ms. Shamp voiced her appreciation to Council of wanting to improve communication, stating that is what most committees wanted. Ms. Shamp felt having a Council member present would impact their free flow of conversation but would suggest a liaison that each committee could approach should they want additional input.

▪ **Alan Mandel, Vice Chair of LPA** – Mr. Mandel thanked Council for their discussion.

**Closed Public Comment**

**VII. CONSENT AGENDA**

A. Approval of Minutes: September 9, 2009

B. Lee County Interlocal Agreements for Tourist Tax Funding

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

**VOTE:** Motion passed 5 to 0

**Opened Public Comment**

**No Public Comment**

**Closed Public Comment**

**VIII. ADMINISTRATIVE AGENDA**

**C. Approval of Interlocal Agreement for Bay Oaks with Lee County School District**

Interim Town Manager Green indicated the Town had not received feedback from the School District and noted the interlocal in the Council's packet was probably what the Town would end up with, stating that it was workable.

Mr. Green requested the item be put on the agenda at a later date.

Councilmember Babcock voiced his concerns, which included co-ownership. He wanted to see a long term lease or transfer of ownership of shared properties. Mayor Kiker agreed 100% with Councilmember Babcock's concerns.

A discussion ensued as to whether to have a council member take a lead role in the interlocal with the school district. Attorney Dalton voiced her disapproval of the contract. Mr. Green felt he was going to have to contact someone in a higher position with the district.

**Public Comment Opened**

- **Lee Melsek** – Mr. Melsek stated in 2000 he was President of the Historic Society and dealt with Dr. Browder to lease land, with Dr. Browder being very favorable. However, the school board attorney is in opposition to the school relinquishing any of the property.

**Public Comment Closed**

Interim Town Manager Green indicated to Council his hope staff would have additional information from the school district by the next two Council meetings.

**D. Approval of Right-of-Way Agreement Form**

Interim Town Manager Green noted there were two issues, the term of the agreement and how it would be managed and insurance, the amount of insurance and whether there would be an index.

Attorney Dalton stated the LPA was doing a review of right of way issues pursuant to Council's direction and part of the review dealt with the Right-of-Way Agreement. The agreement was for commercial design standards only. Attorney Dalton noted this was an annual contract, directed by prior Council. The people who were signing the agreements had either structural components in or over the Town right of way and took issue

with an annual contract. The recommendation of the LPA was to make it a perpetual agreement rather than annual.

Attorney Dalton noted the issues with increase of insurance, indexing, and term of license was changed to indefinite.

Mr. Green indicated minimum insurance level was 1 million dollars and indexing not be included.

- **Joanne Shamp, LPA** noted the other issues discussed; one being whether the Town should be compensated when someone builds usable space out over the right of way which is part of the commercial design standard, second issue was regarding the Town access to the right of way, third was any compensation for damage to the right of way.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Vice Mayor Acken's position was to rescind the requirement that qualified applicants execute this agreement, feeling it was a disincentive to build on Fort Myers Beach.

- **Alan Mandel, LPA** explained the positive aspects of the agreement for the developer.

Councilmember Babcock expressed his thoughts on the agreement and his discomfort with the usable space decision.

***Recess: 11:12 AM***

***Reconvene 11:25 AM***

Vice Mayor Acken reviewed his reasons for not approving the agreement.

Councilmember Raymond agreed with the perpetual agreement and felt usable space should be dealt with.

Councilmember List was not in favor of asking for a million dollar insurance policy for an awning, but usable space was different.

Mr. Green reminded Council of the possibility for an awning to fall on a pedestrian.

Mayor Kiker was looking for protection for the Town as well as for the developer and felt there was a need for a standard to be followed. Mayor Kiker was in favor of a simple form and the process should go no higher than the Town Manager. Mayor Kiker then asked if the businesses present in Times Square were required

to carry insurance for their tables and chairs and if so then it would be necessary to make sure all were the same.

Discussion continued regarding who should have to carry insurance, how much the insurance should be and why it was necessary as well as the issues of maintenance and use.

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

Interim Town Manager Green recommended making the document perpetual and allowing the Town to execute the document with insurance but without indexing.

Council discussed if there was a time line for this document, if this document pertained to only Old San Carlos or all areas and whether they needed additional time to discuss the issues and make changes to the document.

A decision was made to bring this item back at a later date.

E. North Estero Drainage Project – Undergrounding of Overhead Electric Crossings

Interim Town Manager Green reviewed the memo in the Council packet stating the additional cost to sleeve the electric under the roadway, eliminating poles would add \$610,000.00 to the project. Mr. Green noted with this additional amount the project was still under budget.

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

Councilmember Babcock asked if easements were necessary since it was underground work and who would be paying for the service to each property owner. Mr. Green stated running the underground service to each property owner's service box was included in the bid. Councilmember Babcock felt each property owner should share in the cost from the right of way to their own hookup.

Discussion continued as to the cost of the hookups from the right of way and whether the Town should pay for the hookups or if the property owner should carry some of the cost.

**MOTION:** Vice Mayor Acken made a motion to proceed with Florida Power and Light to convert the overhead electric wires crossing the roadway to underground crossings on North Estero Boulevard with a second by Councilmember List.

Councilmember Babcock wanted to clarify that Council was voting on proceeding and not hooking up the connections.

Interim Town Manager Green stated that it did intend for the Town to be responsible for the connections, however would take the direction to move forward with the underground work and come back to Council with the expense for the property owner's hookups. Councilmember Babcock wanted to see that included in the motion with Vice Mayor Acken wanting to move forward the way it was originally intended.

Vice Mayor Kiker asked for a cost for the hookups with Councilmember Babcock noting it would be \$160,000.00. Attorney Dalton asked to review the issue to discover if funds could be used for public work. Mayor Kiker reminded Council that the decision for this project would have to continue into the future for the remainder of Estero Boulevard.

**WITHDRAWN:** Councilmember List rescinded her second and Vice Mayor Acken removed his motion. The issue will be brought forward at the next Council meeting.

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

### **A. Update on Beach Renourishment**

Interim Town Manager Jack Green brought Council up to date, noting the Town had received two more no's from property owners regarding easements, with the percentage holding at just over 50%. Mr. Green suggested a meeting regarding the condition of the beach on the north end of the island, feeling a new approach was needed. Mr. Green also stated the county had hired a public relations firm to call the property owners once again to discuss the easement requirements and if they were willing to sign. The Town's lobbyist had contact with FDEP and Mr. Boutelle would be working with him as well.

Mayor Kiker noted there was to be a meeting with the BOCC in December and at that time wanted to know if the project would be starting or if it would be over for the project.

The issue was set to be included in the M & P meeting of the 21<sup>st</sup>.

### **B. Update on North Estero Project**

Mr. Green noted a few minor issues with Embarq and the start point on the Bay side instead of the Gulf side of Estero. A ground breaking was being planned in accordance with Councils' schedules.

### **C. Update on Bay Oaks Recreation Campus**

Mr. Green stated over 500 people came to the open house on October 3<sup>rd</sup> and over 150 people were at the pool. Mr. Green also felt a ribbon cutting for transfer

from the County to the Town would be planned for the near future.

D. Update on Estero Boulevard Pavement Project

Per Mr. Green the paving would start on October 12<sup>th</sup>, with paving to run from Times Square south to approximately Jefferson St. The business area would be paved at night and the residential areas during the day.

E. Lobbyist Topics

Mr. Green stated Mr. Peebles would be coming to town on November 2<sup>nd</sup> and asked Council once again if there were items they wanted presented for conversation.

Additional items from Mr. Green, the Pine Ridge Government Complex Opening on October 22<sup>nd</sup> at 11 a.m.

**X. TOWN ATTORNEY'S ITEMS**

A. Discussion Regarding Senate Bill 360

Attorney Dalton reviewed Senate Bill 360, which is the extension of development orders and building permits for a two-year period under certain circumstances, noting there has been litigation filed regarding this Bill.

Attorney Dalton asked Council if they wanted to charge a fee and if so the amount of said fee and for a resolution to allow Mr. Green to move forward.

**MOTION:** Motion was made by Councilmember Babcock for acceptance of Resolution 09-30 which extends deadlines for building permits and development orders pursuant to the mandates of SB 360 with Section 2 d) 1) in the amount of \$100.00 2) \$100.00 and suggest the fee be refunded if it's determined to be unconstitutional, with a second by Councilmember List.

Attorney Dalton asked for an amendment to unconstitutional by the Florida Courts, with Councilmember Babcock agreeing to the amendment with an amended second by Councilmember List.

**VOTE:** Motion passed 5 to 0

Attorney Dalton voiced a secondary recommendation to hold off on an ordinance in case it is declared unconstitutional.

**XI. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember List stated she attended the Coastal Advisory Committee Meeting on Monday, September 27<sup>th</sup> and noted a resolution was passed against any and all drilling off the coast of Florida. Councilmember List

also noted those who attended her Civics class at the Beach School and thanked the musicians who volunteered their time for the Bay Oaks Open House.

Councilmember Raymond thanked Council for allowing his participation via phone the last few meetings. He then discussed future meetings and dates.

Councilmember Babcock voiced his appreciation to Ms. List and the band for their time at Bay Oaks. Also brought forth was his continued work on the FAA concerns, encompassing flight patterns and altitudes. Councilmember Babcock also wanted to see the Town become an active participant in surrounding environmental issues. Another item from Councilmember Babcock, due to the reduced budget was special events and funding allotments.

Vice Mayor Acken questioned the fee structure for the pool with Mr. Green noting the ad hoc committee would be finished with their 5 year plan soon and that would include all fee structures for Bay Oaks and the pool.

## **XII. AGENDA MANAGEMENT**

Interim Town Manager Green discussed his desire to schedule meetings and agree on priorities for future meetings.

Mayor Kiker wanted to see several items put back on agenda management, signs, parcelization, CIP review, schedule of a formal budget review, Estero Boulevard, licensing, and a joint meeting with BOCC. In action items, Mayor Kiker wanted to see the write up of the 8 action items previously discussed.

## **XIII. RECAP OF ACTION ITEMS**

- Advertise for committee openings with closing date on November 1 to be brought forward to the November 16<sup>th</sup> Town Council Meeting
- Bring back right of way agreement with items for Council's further direction
- North Estero – check into using public funds for private advantage
- Bay Oaks School District Interlocal

## **XIV. PUBLIC COMMENT**

- **JoannE Shamp** – Ms. Shamp wanted to voice her appreciation for the Councils' discussion regarding the underwriting of the underground utilities to the private buildings. Ms. Shamp was favorable toward underground utilities but not using public funds to pay for private hookups feeling it would be improper and possibly illegal.
- **John Poland** – Mr. Poland stated he was the representation to an organization called CAC that studies traffic problems for all of Lee County. He noted we were number one in the nation for accident fatalities for pedestrians and bicycle riders and that it had come to his attention there was no planning for street lights in the North

Estero Project with undergrounding.

- **Alan Mandell** – Mr. Mandell stated that during a recent vacation in Wisconsin he photographed signs that were used regarding pedestrian safety and passed them along to Mr. Green for consideration.

**XV. ADJOURNMENT**

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

**VOTE:** Motion passed 5 to 0

The meeting adjourned at 1:30 PM.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

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