



## MINUTES

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

### AGENDA

October 19, 2009

6:30 PM

#### I. CALL TO ORDER

The meeting was called to order by Vice Mayor Herb Acken at 6:30 p.m. Present with Vice Mayor Acken were Council members Babcock, List and Raymond along with Interim Town Manager Green. Attorney Anne Dalton and Town Clerk Michelle Mayher. . Mayor Kiker was absent due to health issues.

#### II. INVOCATION

The invocation was led by Reverend Alice Marcrum, St. Raphael's Episcopal Church.

#### III. YOUTH COUNCIL

Morgan Barris and Steven James from the Beach Elementary School each provided information from the past week's school events.

Principal Wood thanked Council, Staff and all residents of the beach for supporting the beach school.

#### IV. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Morgan Barris and Steven James from Beach Elementary School.

**V. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Councilmember Babcock commented on the paving on Estero Boulevard.

Vice Mayor Acken also thanked all those involved in the paving project.

**VI. ADVISORY COMMITTEES ITEMS AND REPORTS**

**A. Marine Resources Task Force – Brochure**

▪ **Charles Hester** representing the Marine Resources Task Force presented a flyer of ‘Beach Do’s and Don’ts’ which would be distributed throughout the island.

Councilmember Babcock suggested working funding for the brochure and flyer into the new budget.

▪ **Jim Rodwell**, Chairman of the Community Resources Advisory Board  
Mr. Rodwell discussed issues which arose concerning the Founder’s Plaque asking Council to send it back to the committee for further discussion which Council approved of doing.

**B. LPA Resolution 2209-23, Parcelization**

▪ **Joanne Shamp** representing the LPA gave an overview to Council of the LPA’s thoughts and concerns regarding Parcelization noting the LPA chose not to take action without further in depth legal review and investigation.

Interim Town Manager Jack Green stated Parcelization was on Agenda Management for the Wednesday, October 21<sup>st</sup>, M & P Meeting at which time Council could decide how to proceed.

**VII. PUBLIC COMMENT**

**Public Comment Opened**

▪ **Norbert DeMars** stated his disapproval of the proposed dock to be built at the Mound House and the increasing commercial traffic because of the property. He also advised Council for the need for improved policing of the Mound House due to injury and verbal attacks. Mr. Demars wanted to see improved interfacing with the State to control the live aboards in the Bay due to the polluting which is occurring by those same people.

▪ **Vlado Svetliak**, 364 Connecticut Street wanted to second what Mr. Demars said regarding the Mound House. He also felt the Town needed to take action regarding the live-aboards using the Mound House as their residence, creating security issues for the neighborhood.

Interim Town Manager Green indicated to Council that steps were being taken to address the issues just discussed and that staff was aware of the incidents. However, those anchored in the bay are considered to be in an act of navigation and are permitted to be there.

- **W. Charles Ivery**, owner of Nemesis Tattoos and Body Piercings and Nemesis II at the Lani Kai, wanted to propose a referendum to 34-3067 which is in regards to opening up a tattoo shop within a certain distance of another shop. Mr. Ivery wanted to see an adjustment from 2000 feet to 1000 feet.

**Public Comment Closed**

**VIII. CONSENT AGENDA**

- A. Approval of Minutes: September 21, 2009
- B. Special Event Permit Application – Live Art Bay Walk  
“Christmas on the Bay”
- C. Approval of Bay Oaks Recreational Campus Fee Schedule

Interim Town Manager Green pulled item C from the agenda to be brought back on November 2<sup>nd</sup>.

Councilmember Babcock wanted to have the fee schedule discussed at a workshop.

Vice Mayor Acken noted the time sensitivity of the issue so families could begin purchasing memberships.

**MOTION:** Councilmember List moved for approval of the consent agenda with a second by Councilmember Babcock

**VOTE:** Motion passed 4 to 0

**IX. ADMINISTRATIVE AGENDA**

- A. Introduction of Ordinance 09-06, Bay Oaks Advisory Committee

Ordinance title read by Attorney Anne Dalton:

**Town of Fort Myers Beach ORDINANCE NO. 09-06 BAY OAKS  
RECREATION CAMPUS ADVISORY BOARD**

**AN ORDINANCE ESTABLISHING THE FORT MYERS BEACH BAY OAKS RECREATION CAMPUS ADVISORY BOARD. PROVIDING AUTHORITY, COMPOSITION AND APPOINTMENT; QUALIFICATIONS OF MEMBERS; PURPOSE AND SCOPE; MEMBERS TERMS AND VACANCIES; FORFEITURE OF OFFICE; COMPENSATION OF MEMBERS; ELECTION OF OFFICERS, DUTIES OF OFFICERS; CLERK; RULE AND PROCEDURES; EMPLOYMENT OF STAFF AND EXPERTS; REIMBURSED EXPENSES; FUNCTIONS, POWERS AND DUTIES; COOPERATION WITH BOARD; SEVERABILITY AND EFFECTIVE DATE**

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

Discussion ensued with Councilmember Raymond preferring committee members be residents of the island and any others could be advisory members.

Councilmember Babcock also questioned the ability of Bay Oaks Committee Members to be a part of other committees, with Attorney Dalton noting that it was up to Council for decision.

Mr. Green recommended the current members of the committee be allowed to remain and fill out their terms.

**MOTION:** Councilmember Raymond made a motion to move the item forward to November 2<sup>nd</sup> with a second by Councilmember Babcock.

**VOTE:** Motion passed 4 to 0

**B. Resolution 09-31, Calling for Election March 2010**

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

Resolution title read by Attorney Dalton:

**RESOLUTION NUMBER 09-31, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CALLING FOR ELECTION; QUALIFYING, APPLICABLE LAW; POLLING PLACES, NOTICE; CANVASSING; DECLARATION AND PROVIDING AN EFFECTIVE DATE**

**MOTION:** Councilmember Babcock made a motion to adopt Resolution 09-31 with a second by Vice Mayor Acken.

**VOTE:** Motion passed 4 to 0

**C. Approval of the Right of Way Agreement Form**

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

Council discussed their opinions and choices for the agreement with all but Vice Mayor Acken agreeing on Option 2: Continue Agreement with modifications for #1. Eliminate/Retain Agreement. Vice Mayor Acken noted he would go with Option 3.

#2. Scope, with staff recommendation of Option 4. Council agreed on Option 4

After much discussion of whether to apply this document to only Old San Carlos or island wide, Council decided this document would apply for only Old San Carlos and a mirror document with changes would be decided on at a later date for the remainder of the island.

Due to that decision Council agreed #2 Scope would be Option 2.

#3 Term of Agreement, Council agreed on Option 2.

#4 Fee for Use of ROW, Vice Mayor Acken, Council members List and Babcock chose Option 2 with Councilmember Raymond selecting Option 3.

#5 Licensee's Obligation to Insure, Vice Mayor Acken selected Option 4 with Council members Babcock, List and Raymond choosing Option 3.

Interim Town Manager brought up concerns with #2 Scope and Option 2 selected by Council which would mean no protection for the Town in case of an accident.

Council then elected to change their decision for #2 Scope to Option 1.

#6 Licensee's Duty to Repair, with recommendation by Mr. Green of Option 4. Discussion ensued regarding the responsibilities of the property owners, their insurance responsibilities and scenarios concerning an Act of God. Council was split with Council members Babcock and Raymond selecting Option 2 and Vice Mayor Acken and Councilmember List selecting Option 4.

Mr. Green encouraged Council to make a decision on the document since the Town had two projects that were waiting for decisions from Council to move forward.

Joanne Shamp representing the LPA was asked to come forward to relay the LPA's choice on the issue. Ms. Shamp indicated the LPA voted unanimously that they wanted the responsibility to be with the business.

Continued discussion ensued with Council still deadlocked.

***Recess: 8:40 PM***

***Reconvene: 8:50 PM***

Vice Mayor Acken asked to hear from Attorney Dalton regarding a phone conversation she had with Mayor Kiker during the break. Mayor Kiker did not ask to participate in the vote but voiced his selection of Option 2.

Councilmember List made the decision to change her selection to Option 2, which changed the Council's choice to 3 to 1 with Vice Mayor Acken still opting for Option 4.

Motion was formulated by Attorney Dalton as Town Council approved the amended Agreement for use of the Town Right-of-Way for Commercial Design Standards with the following options selected:

1. Eliminate/Retain Agreement  
Option 2: Continue Agreement with modifications
2. Scope  
Option 1: Apply to any structure with any encroachments into Town Right-of-Way along Old San Carlos Boulevard.
3. Term of Agreement  
Option 2: Perpetual
4. Fee for Use of ROW  
Option 2: Eliminate fee for all CDS encroachments
5. Licensee's Obligation to Insure  
Option 3: Licensee provides \$1 million/\$3 million aggregate insurance with no annual indexing increase but Town can increase amount in future with the Town listed as an additional insured.
6. Licensee's Duty to Repair  
Option 2: Licensee responsible for repair of damage to ROW caused by Licensee or any third party as a result of Licensee's use of ROW and if structure and/or ROW is destroyed by Act of God, Licensee must repair at Licensee's sole cost.

**MOTION:** Councilmember Babcock moved for approval of noted motion with a second by Councilmember Raymond.

**VOTE:** Motion passed 4 to 0

D. North Estero Drainage Project – Under Grounding Electric

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Interim Town Manager Green provided updated information to Council regarding the use of public funds for private work. Mr. Green stated he spoke with FP&L about leaving the poles and going under the street and back

to the poles and continuing overhead as it is now to the property owners.

Discussion ensued whether the property owner could continue underground should they so choose with Mr. Green noting they would assist the property owners if that were their decision.

Also noted, the concrete poles that hold the street's lighting were different from the power poles.

Vice Mayor Acken argued the point for the Town to pay for the underground electric to be run to each property with the remaining Council members noting this would set a trend for all residents of the island expecting the same treatment.

Interim Town Manager Green brought up to Council the need to extend Denny Weimer's term to the LPA through December 7<sup>th</sup>, 2009, it was necessary due to the Special Meeting of October 16<sup>th</sup> being continued.

**MOTION:** Councilmember Babcock made a motion to extend Mr. Weimer's extension with a second by Councilmember Raymond.

**VOTE:** Motion passed 4 to 0

**X. TOWN MANAGER'S ITEMS**

**A. Update on Beach Renourishment**

Mr. Green informed Council that Cane Palm Condominiums and the Old Barking Shark indicated they intended to sign easements which would bring the percentage up to approximately 54%. Mr. Green also indicated the County had hired a public relations firm who would be calling property owners and questioning them on their easement decisions, collecting data along the way.

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

Interim Town Manager Green stated the project was moving forward, with some water lines being replaced and conflicts declining. Groundbreaking would be the 5<sup>th</sup> of November at 9 a.m.

Mr. Green also indicated he wanted to cancel the Bay Oaks Event until all aspects of the transition were in order, including the agreement with the school district. Mr. Green also noted if it were held the first part of the year the winter residents would be back as well to participate.

**C. Lobbyist Topics**

Mr. Green distributed to Council the list of topics he received from Council and staff that could be discussed with Mr. Peebles. Mr. Peebles would be accompanied by Bob Romig.

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

Attorney Dalton informed Council that the first meeting in November would also include the annual meeting of the Corporation.

Councilmember Babcock questioned Attorney Dalton on the issue of liability insurance regarding the properties that belong to the school but will be managed by the Town and if that would be considered in the agreement. Attorney Dalton noted that it would be a point of discussion as well as the issues of repair and maintenance.

Mr. Green added the annual Halloween event would be held Friday, the 30<sup>th</sup> at Bay Oaks and there would be a rain barrel workshop in Chambers on November 6<sup>th</sup> at 9 a.m.

## **XII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Raymond noted he attended the Transportation Committee Meeting at the Chamber. During the meeting the Chamber voiced their desire to have the bridge painted blue, however the FDOT stated that was not possible unless the Town signed a maintenance agreement to have the bridge painted. The Chamber requested Councilmember Raymond bring this issue before Council. Council was not in favor of this agreement.

Councilmember List shared a brochure by the Lee County Coastal Advisory Council filled with useful information regarding beach management. Councilmember List discussed her Beach School Civics class and her visit to the Pace School for Girls.

Councilmember Babcock commented on the State of the Region Workshop held in Punta Gorda sponsored by the Southwest Florida Planning Council.

Councilmember Babcock also discussed the letter received from The Clean Water Network of Florida.

Vice Mayor Acken noted the Volunteer Appreciation Dinner at DiamondHead October 22<sup>nd</sup>, October 30<sup>th</sup> the Bay Oaks Halloween Party, Friday October 23<sup>rd</sup> from 5 pm to 7pm the Historical presentation at the Preserve and a Kayak Festival at the Mound House on October 24<sup>th</sup>, the wounded soldiers would be arriving on Thursday October 22<sup>nd</sup> and donations were still be accepted.

Vice Mayor Acken also brought forth the topic of businesses using promotions as special events so they may use small professional banner signs. Council decided to put the item on agenda management.

## **XIII. AGENDA MANAGEMENT**

No discussion, continued to Wednesday, Oct. 21<sup>st</sup>.

**XIV. RECAP OF ACTION ITEMS**

- Setting aside publishing funds for committees
- Place BORC fee schedule on Agenda Management
- Parcelization
- Water Body Classification Changes
- Short term or loosening of banner sign restrictions

**XV. PUBLIC COMMENT**

**Opened Public Comment**

**No Public Comment**

**Public Comment Closed**

**XVI. ADJOURNMENT**

**MOTION:** Motion was made by Councilmember Babcock for adjournment with a second by Councilmember List.

**VOTE:** Motion passed 4 to 0

*Meeting adjourned at 10:15 PM*

Adopted 11-16-09 With/~~Without~~ changes Motion by Babcock/List

Vote: 4-1, Aiken dissent

  
Michelle D. Mayher, Town Clerk

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