



## MINUTES

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

**AGENDA**

**November 16, 2009**

**6:30 PM**

**I. CALL TO ORDER**

Meeting was called to order by Fort Myers Beach Elementary School Youth Councilmember Matt Weber assisted by Mayor Kiker. Other members of the youth council included Dana Miller, Morgan Beres, Steven James, Madison Tezak and Alex Fair. Present along with the youth council and Mayor Kiker was Vice Mayor Acken, Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Jack Green, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

**II. INVOCATION**

Invocation was led by Councilmember Jo List.

**III. PLEDGE OF ALLEGIANCE**

All stood and recited the pledge to the flag.

**Public Comment Opened**

- **Alan Mandel**, thanked the youth council for participating in the council meeting with hope that the experience would encourage the youth to contribute to their community.
- **Councilmember List** introduced parents and teachers of the youth council.

- **Beach Teachers** thank Councilmember List, Council and the youth for the experience of being a part of the council meeting.
- **Eddie Foster** requested the concrete curb stops in each business parking space be painted to aid in less tripping accidents.

**Public Comment Closed**

Matt Weber acting youth Mayor thanked Councilmember List and all members for assisting in the schools mock council meeting.

Youth Council adjourned their portion of the meeting.

**V. LOCAL, ACHIEVEMENTS AND RECOGNITIONS**

A. 2009-02, MRTF Resolution Recognizing Brad Hill

Councilmember Babcock asked Marine Resources Task Force Vice Chair Jeff Werner to read a resolution honoring the services of Brad Hill to the Marine Resources Task Force from November 5<sup>th</sup>, 2007 to October 13, 2009.

**VI. PUBLIC COMMENT**

**Public Comment Opened**

- **W. Charles Ivery**, business owner and resident, passed out a bullet point sheet to each Council member. Mr. Ivery voiced his dissatisfaction with staff's handling of a business matter regarding his ability to open a tattoo parlor.
- **Corina Stevenson**, a business partner of Mr. Ivery, reiterated the dissatisfaction with staff's handling of her ability to obtain information regarding the opening of a tattoo parlor on the island.
- **Laura Miller**, Chair of the League of Women Voters of Lee County, spoke regarding climate control and urged Mayor Kiker to join other Mayors in signing the Climate Protection Agreement.
- **Brad Hill** thanked Council for the sequencing of public comment.

**Public Comment Closed**

**VII. ADVISORY COMMITTEES ITEMS AND REPORTS**

A. Advisory Committees Appointments

1. Anchorage Advisory Committee
2. Bay Oaks Recreational Campus Advisory Board
3. Local Planning Agency
4. Marine Resources Task Force

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

**MOTION:** Councilmember Babcock made a motion of acceptance of the applicants for the Local Planning Agency, Marine Resources Task Force and continuing the decision on BORCAB to a later meeting Councilmember Raymond seconded the motion.

Vice Mayor Acken wanted to see the motion separated from the Bay Oaks Recreational Advisory Board.

**AMENDED:** Motion amended to approval of candidates who applied to vacancies to the Local Planning Agency and the Marine Resources Task Force and delaying the decision on the BORC until after the acceptance of ordinance 09-07.

**SECONDARY MOTION:** Vice Mayor Acken made a secondary motion to amend primary to remove consideration of the Bay Oaks Recreational Campus appointments from the motion. Motion failed for lack of a second.

**VOTE:** 4 to 1, motion passed with Vice Mayor Acken dissenting.

## **VIII. CONSENT AGENDA**

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

- A. Approval of Minutes: October 16, 2009
- B. Approval of Minutes: October 19, 2009
- C. Authorizing Mayor to Sign Mayors' Climate Protection Agreement Participation Form
- D. Special Event Permit Application, Florida Archaeological Council Reception
- E. Special Event Permit Application, Florida Trust for Historic Preservation Opening Reception

**MOTION:** Councilmember Babcock moved for approval of the Consent Agenda with a second by Councilmember List.

Councilmember Raymond asked to pull items D. and E.

**AMENDED MOTION:** Councilmember Babcock moved for approval of Agenda items A., B., and C. with a second by Councilmember List.

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

Councilmember Raymond asked Theresa Schober when Council approved \$4,000.00 for the noted events and why the Town was involved. Ms. Schober indicated Council was approached in either October or November of 2008 by the Florida Anthropological Society and the amount was a line item in the budget authorized by Council.

Councilmember Raymond voiced his disapproval with the use of the money.

Vice Mayor Acken felt it was an investment in promoting the property to gain additional grants.

Mayor Kiker felt the project should stand alone without promotion and felt if this action was an example of projects the Council did not get to discuss before approving the budget then he had an issue with the process.

Councilmember Babcock stated his embarrassment and frustration over the discussion.

Vice Mayor Acken noted this was a sponsorship.

**MOTION:** Vice Mayor Acken moved for approval of Consent Agenda Items D. and E. with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

**IX. PUBLIC HEARING:**

A. Resolution 09-32, Petition for Rate Adjustment

Mayor Kiker opened the Hearing at 7:27 p.m.

Attorney Dalton swore in all presenting testimony or giving public comment.

Interim Public Works Director Cathie Lewis began a review of the Public Works Services, Inc. rate adjustment, explaining all steps taken to get to the resulting information.

Ms. Lewis stated Public Works Services, Inc. is recommending an increase of all rates and fees of water service be increased in an amount of 23%. Also requested is a 10% increase to the base rate in conjunction with a per unit base rate charge for multi-family accounts, a modified block rate on the cost per thousand gallons and 23% on all other user fees, as well as the collection of approximately \$300,000.00 annually to fund capital and emergency reserves. The effective date was noted as January 1<sup>st</sup>, 2010 with an annual

index from Florida Public Services Commission of no less than 2% annually and no greater than 5% annually and to provide a sunset date of December 31<sup>st</sup> 2012 with automatic rate increases and to provide Town Council the ability to review and modify the amount of the automatic rate increase on May 1<sup>st</sup> of every year commencing May 1<sup>st</sup>, 2010.

Tom Gustafson with the Florida Rural Water Association was present to discuss the rate review his association proposed.

### **Public Comment Opened**

- **Barbara Puffer** past president of the Estero Cove-Condominium Association representing the finance committee, located on the south end of the island with 181 units. Ms. Puffer stated their association had sent Council a letter noting their concerns over the rate adjustments. Estero Cove would like to be on the record opposing the petition as it was currently worded. Ms. Puffer encouraged Council to continue searching for a more fair and equitable means for new water rates.
- **George Repetti** president of Island's End Condominium Association, representing 111 condominiums. Mr. Repetty voiced his disapproval of the proposed rate changes and felt the actual usage per gallon was more fair to all.
- **Carol Murphy** president of Sea Grape Bay Condominiums, a 30 unit complex on Mango Street. Ms. Murphy voiced her disapproval on behalf of her complex regarding the proposed rate changes.
- **Al VanHorn** wanted to impress upon Council the burden of the increase in a one year time.
- **Jim Collin** with Carlos Point Association on the south end of the island voiced his concerns and questioned base charges.
- **Thomas LaPlant**, Mr. LaPlant was seeking guidance and assistance regarding resources for living accommodations and employment. Staff was going to have information available for him the following morning at Town Hall.
- **Dan Fost** from Carlos Point questioned the amount of revenue actually needed as well as the 23% increase, with a possible phase in as opposed to all at once. Mr. Fost also asked how the rates compared with other cities.
- **Alan Mandel** chair of the Ad Hoc Committee, reminded Council that the Town was in default of the bank loan, which was illegal and that the reserves were fairly close to 0. Mr. Mandel explained the committee's conclusions and decisions regarding the rate changes to get the Town out of default and increase

reserves.

- **Bob Miller** questioned if the base rate was commonly used in areas such as ours. Mr. Miller noted the condition of our water utility was criminal and stated we need the funds now to replace and have a basic water system.

### **Public Comment Closed**

*Recess: 8:15 PM*

*Reconvene: 8:31 PM*

Mayor Kiker asked Interim Town Manager Green to comment on the items brought forward during public comment. Mr. Green addressed the base rate to condominiums, the readiness to serve or availability of water, repairs needed immediately, the loan, deferred maintenance, and a fixed customer base.

Councilmember List asked about the difference in commercial and residential rates as well as how our rates compared with surrounding communities.

Mr. Green noted the commercial accounts were charged in accordance with their meter size along with the 23% increase. Ms. Lewis noted that we were less than Sanibel and Captiva and close to Bonita Springs.

Councilmember Raymond noted the situation was unfortunate but needed to be addressed and fixed.

Councilmember Babcock questioned the rate the Town was paying to the County and the readiness to serve charge. Councilmember Babcock brought up the issue of being fair and equitable to all and how other communities deal with an ERU. Councilmember Babcock voiced his desire to move forward with the petition.

Mayor Kiker stated the Town had to be compliant, and noted there was an \$11 million bill ahead of the Town to take care of the system.

Council reviewed each decision point of the resolution to come to a consensus before making a motion and taking a vote with Mr. Green reading through the Council's decisions in the resolution.

**MOTION:** Councilmember Babcock made a motion to approve resolution 09-32 with the following items:

- Town Council finds that the suggested findings of fact and recommendations contained in the Water Rate and Charges Study dated July 3, 2009, as performed by the Florida Rural Water Association and attached to the PWSI Petition as Exhibit "B", are true and correct in all material terms and hereby **approves and adopts** except as modified in this Resolution.

- Section 5 C. **approved** as read by Town Manager.
- Page 6 new rate schedule for monthly base rate be modified separating the base amounts from the capital reserves and change as proposed by staff for the commercial accounts.
- Removal of Section 7

Councilmember Raymond seconded the motion.

**VOTE:** Motion passed 5 to 0

Mayor Kiker closed the hearing at 10:03 p.m.

***Recess: 10:03 PM      Reconvenes at 10:15 p.m.***

**X. ADMINISTRATIVE AGENDA**

**A. Resolution 09-35, Demolition Order for Newton Cottage**

Interim Town Manager Green indicated the Town Clerk would be passing out additional information regarding the cottage with Mr. Green giving a review of the new packet material.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Councilmember Babcock moved for approval of the Management Plan for Newton Beach Park, Fort Myers Beach FCT project number 02-098-FF2 dated, revised November 12<sup>th</sup>, 2009.

Councilmember Raymond seconded the motion.

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

**MOTION:** Councilmember Raymond moved for approval of Resolution 09-35 ordering demolition of the Newton Cottage followed by a second by Councilmember List.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

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

**B. Introduction of Ordinance 09-07, Amendment to Advisory Committees**

Attorney Dalton read the title:

**ORDINANCE 09-07**

**AN ORDINANCE AMENDING THE MEMBERSHIP REQUIREMENTS OF THE ANCHORAGE ADVISORY COMMITTEE, COMMUNITY**

**RESOURCE ADVISORY BOARD, CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD, MARINE RESOURCE TASK FORCE, PUBLIC SAFETY TASK FORCE, TIMES SQUARE ADVISORY BOARD, AND TRAFFIC MITIGATION AGENCY TO ALLOW FOR MEMBERSHIP ON MULTIPLE TOWN COMMITTEES; PROVIDING AUTHORITY; STATEMENT OF EFFECT ON ORDINANCE 07-08 AND ORDINANCE 08-12; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.**

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Councilmember List made a motion to forward Ordinance 09-07 to December 7<sup>th</sup>, 2009 at 9:00 a.m. with a second by Councilmember Babcock.

**VOTE:** Motion passed 5 to 0

C. Introduction to Ordinance 09-08, Amendment to LDC, LPA Membership

Attorney Dalton read the title:

**ORDINANCE 09-08**

**AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.114, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, WHICH ARE TITLED, RESPECTIVELY, “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS”, AND “MEMBERS TERMS AND VACANCIES”, PROVIDING FOR CHANGE IN DATE OF APPLICATION FOR LPA MEMBERSHIP, CHANGE IN THE DATE OF APPOINTMENT TO THE LPA AND CHANGE IN THE TERMS OF THE LPA MEMBERS; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.**

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Councilmember Babcock made a motion to move consideration of Ordinance 09-08 forward to the LPA for hearing with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

**XI. TOWN MANAGER’S ITEMS**

▪ **Regarding the Mound House**

- Deferring the pier until coming to a resolution with neighbors

- Conduct parking tests utilizing 216 Connecticut to reduce intensity
- Landscaping the property
- **Wednesday November 18<sup>th</sup> Budget M & P, Revenue Sources**
- **November 19<sup>th</sup>, agenda development for joint BOCC meeting 6:30 p.m.**
- **Southwest Florida Consortium on Legislative Priorities**

**XII. TOWN ATTORNEY'S ITEMS**

None

**XIII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Babcock suggested Attorney Dalton be at the M & P Meeting on November 18<sup>th</sup> ; the consensus of council was not in favor of the attorney attending M&Ps.

Councilmember Babcock discussed the lack of traffic or safety committees and found he was receiving numerous calls from residents regarding the issues. Councilmember Babcock also noted he felt the Town needed to be represented within the Southwest Florida League of Cities.

Vice Mayor Acken shared a thank you note from Madison Tezak the youth Council member portraying the Vice Mayor.

Councilmember List noted the Horizon Council on November 20<sup>th</sup> with Bob Ball speaking representing the airport, the Bay Oaks Holiday Dinner and Dance, Beach Schools Read on the Beach and a thank you note from a member of the youth council.

Councilmember Raymond noted he would like to see the sign ordinance be put back on the agenda as well as the issue of short term rentals.

Mayor Kiker noted his meeting with Amber Crook, who deals with water quality. Mayor Kiker also asked to have the escalation process put on agenda management.

**XIV. AGENDA MANAGEMENT**

**XV. RECAP OF ACTION ITEMS**

- Action taken on duel committee ordinance for BORC
- Collect data on water system charges, specifically commercial
- Add Mound House to joint BOCC agenda meeting discussion
- Update on Worksession
- Agenda Management
- Traffic Transportation and Road M & R
- Historic Sign Determination
- Escalation on Agenda Management for Worksession

**XVI. PUBLIC COMMENT**  
**Opened Public Comment**  
**No Public Comment**  
**Public Comment Closed**

**XVII. ADJOURNMENT**

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

Meeting adjourned at 11:25 PM.

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

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

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Michelle D. Mayher, Town Clerk

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