



## **MINUTES**

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

### **AGENDA**

**December 7, 2009**

**9:00 AM**

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

Meeting was called to order by Mayor Kiker at 9:01 a.m. Present along with Mayor Kiker was Vice Mayor Acken, Council members Babcock, List and Raymond as well as Interim Town Manager Green, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

#### **II. INVOCATION**

Invocation was led by Reverend Jeanne Davis of Beach United Methodist Church.

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

Pledge led by Reverend Davis.

#### **IV. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

- Councilmember Babcock noted the Holiday Christmas Tea presented by the Friends of the Mound House, Saturday, December 12<sup>th</sup> 2 to 4 p.m.
- Councilmember List recognized Pam Flowers from Beach Elementary for winning the Golden Coconut Award from the Chamber of Commerce.
- Mayor Kiker asked Denny Weimer to come forward and be recognized for his contributions to the Town and accept the Mayor's Special Award.

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

**VI. PUBLIC HEARINGS:**

A. FMBDC12006-0001 and FMBDC12006-0002, White Sands,  
Captiva Villas, and Bayside CPD Amendments

Mayor Kiker opened the hearings and asked all Council members to declare any ex parte communication.

- Councilmember Raymond indicated he had not talked to any one since the last meeting.
- Councilmember List had a meeting with two residents in the neighborhood.
- Vice Mayor Acken noted he had contact with Mr. Wachulis, Mr. Ryffel, residents in the neighborhood and representatives of Pink Shell.
- Councilmember Babcock stated he had viewed the site multiple times, met with representatives of the applicant, neighbors on both sides of the issue, as well as discussed some of the issues with prior LPA members and prior Town Council Members as well as the planning consultant.
- Mayor Kiker indicated he had been on site and 3 or 4 months prior had spoken to the applicant.
- Councilmember List indicated that she too had been on site as well as speaking to the applicant as noted in a previous hearing.
- Councilmember Raymond noted he has had nothing since the first meeting at which time he had been to the site multiple times and spoken to both sides.

Attorney Anne Dalton read the title: .

**Resolution of the Town Council the Town of Fort Myers Beach, Florida,  
Resolution 09-33**

Attorney Dalton then swore in all those planning to testify or provide comment.

Attorney for the Applicant, Beverly Grady of the firm Roetzel and Andress, representing JABO LLC and as authorized by the unit owners on file was present with the Pink Shell team.

Ms. Grady guided Council through a power point presentation from the time Pink Shell filed an application in the fall of 2006 for minor amendments to

the Pink Shell Resort to the present, noting that after the LPA meeting in June the applicant did remove a number of items simplifying their request. Ms. Grady then indicated the applicant was coming to the Town seeking minor modifications for the betterment of the tourists, the neighbors, and the work force which include:

1. Retain boat ramp
2. Relocation of walkway easement
3. Providing employee housing onsite
4. Parking improvements
5. Trash compactor to replace dumpster

Ms. Grady indicated:

- Pink Shell staff conditions required (1) new restrictions and obligations unrelated to Pink Shell's request and (2) repeal of all existing deviations and conditions and (3) staff incorrectly states request
- Applicant cannot accept staff changes as to do so would expose the applicant and the Town to likely litigation from unit owners and its lenders who would view these changes as a diminution of value to their investment in the resort, or in the security of their loan.

Ms. Grady continued with Pink Shell's position on the Town of Fort Myers Beach Process:

- Pink Shell in reliance on Town Council approvals has been found to be in compliance with the Town's Comprehensive Plan, planned development zoning resolutions, and chapter 10 LDC development orders but staff proposes conditions placing uncertainty and threatens entitlements.
- Pink Shell has spent millions in reliance on Council's approvals.

Ms. Grady indicated they were looking to Council for a decision on the 5 requests noted, to either approve, approve with conditions or deny. Ms. Grady continued with more in depth information on each of the modifications requested.

Bob Mulhare then reviewed the parking improvements that were being requested by the applicant which included:

- Additional parking on Dock Master Parcel
- Additional parking lot adjacent to Bowditch
- Control gates
- Reaffirm valet parking for new spaces
- Public Safety Issue
- Requesting deviation for landscape buffer along Estero Boulevard where current easement exists
- Trash Compactor

Ms. Grady then noted there was an area of disagreement with staff regarding the buffer and the staff's disapproval of access to the trash compactor due to the buffer.

Ms. Grady continued with an overview of the applicants concerns with staff's resolution:

- Changes property development regulations
- Changes rights under Post-Disaster Buildback from the LDC Post-Disaster Buildback
- Changes assurances by Town given in LDC 34-961 Former MPD (Captiva Villas); 34-962 Former PUD – Pink Shell
- Staff Resolution changes Pink Shell's rights and obligations – it repeals Pink Shell's existing rights and entitlements.

Ms. Grady also addressed the realignment of the accessory docks and concluded with a summary noting the following:

- Minor modifications
- Each modification consistent with the comprehensive plan of the land development code
- Pink Shell must keep existing entitlements or withdraw this application
- The proposed staff conditions impose new obligations unrelated to Pink Shell's application and imposes substantial risk on Pink Shell.

Ms. Grady requested the hearing be kept on the actual application filed by Pink Shell, not on the resolution where staff brought in other issues but on the application of the 5 items with a request of Council's approval of the 5 modifications.

Frank Shockey, Interim Community Development Director presented the staff's case.

Mr. Shockey began by reading Comprehensive Plan Policy 4-B-4 regarding mixed residential, reviewing what is entailed for plan development zoning and amending the Land Development Code. Mr. Shockey went on to address Ms. Grady's concern over lack of deviations.

Mr. Shockey noted that staff generally agreed with the modifications with exception of the trash compactor, stating it was not an appropriate location for a trash compactor to be next to a neighbor.

Mr. Shockey asked that the staff report and all of its attachments be entered into the record as staff's further testimony.

Councilmember Raymond questioned the parking and the valet parking area.

Vice Mayor Acken questioned the applicant's willingness to restrict hours of use for the trash compactor as well as relocating it further away from the residential unit with Mr. Mulhare indicating there would be a buffer between the compactor

and the residential neighbor, however the applicant would consider another location.

Mayor Kiker, and Council members Babcock and List had no questions for the applicant at that time.

Councilmember Babcock passed on any questions for staff.

Vice Mayor Acken asked for the threshold in coming before the Town to rewrite zoning history with Mr. Shockey indicating the code does not distinguish between the size or scope of the request in the section that suggests the resolution needs to be accumulative and cover the entire property. Vice Mayor Acken asked if the past zoning history had a bearing in value with Mr. Shockey agreeing that this resolution was a reflection of that statement.

Interim Town Manager Green indicated that the staff's intent was to create a single resolution or document that encompasses the rights and restrictions from the previous three and to make one document to be used for the present and the future so that all rights and restrictions that the applicant has on that parcel comply.

Vice Mayor Acken then questioned Mr. Green as to whether the applicant asked staff to do this. Mr. Green stated the applicant did not specifically ask for it but the Town wanted a unified master concept plan so it could be looked at as one piece, one consistent document.

Councilmember List had no questions.

Councilmember Raymond asked staff if they were being proactive in consolidating the plan, with Mr. Green saying yes but taking care not to emphasize change as staff took great pains for nothing to be lost in the consolidation.

Dennis Weimer, representing the LPA gave the conclusions of the LPA's findings. Mr. Weimer indicated the review for the amended and updated master concept plan, schedule of uses, conditions and deviations reflecting the terminology and regulations of the current LDC required an analysis of 6 Lee County Board of Commissioner Resolutions, 8 Administrative Amendments and 5 Fort Myers Beach Town Council Resolutions stretching over a 26 year history of these and other nearby properties.

The LPA hearing process stretched over 4 meetings from March through June of 2009. Mr. Weimer cited mostly negative public comment and the neighborhood friendless deteriorated which was a stark difference from previously requested changes on Pink Shell properties.

In the overview Mr. Weimer indicated most conditions were met with approval

from the LPA except for condition 9. which is the applicants request to remove the prior condition restricting use of restaurants, personal services and other commercial amenities to guests of the Pink Shell Resort only. Although the applicant had removed this request a review of past years would show numerous modifications and expansions of structures and uses have been granted since the original PUD was approved in 1983. Mr. Weimer went on to note the denial of the proposed compactor location was not an indictment of the Pink Shell's effort for improving their trash collection but suggests the applicant needs to be more considerate toward the neighborhood in finding a more suitable location for the compactor or providing more buffering.

Mr. Weimer noted each condition was thoroughly discussed by the LPA with the passing of their recommendation 2009-13 with a unanimous vote of 5 to 0.

Council members List and Raymond had no questions for Mr. Weimer.

Vice Mayor Acken questioned the time line of a property owners rights and whether anything was lost in taking the 3 CPDs and rolling them into 1.

Councilmember Babcock voiced his appreciation for the time the LPA put into their decision as well as voicing his concerns regarding the parking.

Mayor Kiker noted he was troubled with the combining of the CPDs into 1 and whether the LPA felt they were entering into the realm of setting policy.

Interim Town Manager Green addressed the Mayor's concerns regarding legality and noted the policy has been set by the LDC in section 34-214 that this is something that is encouraged with an issue like this happens.

***Council Breaks (Time Not Noted) Council Reconvenes (Time No Noted)***

#### **Public Comment Opened**

▪ **William Shenko Jr.** of Carlos Circle felt he was fortunate to have a neighbor like Pink Shell, however cautioned Council regarding a change the master concept plan. Mr. Shenko went on to support the Pink Shell's parking request then endorsed Pink Shell's bay front regarding docks. Mr. Shenko then went on to address the trash compactor noting he would not object to the use of private property by a private land owner in their effort to run a private first class resort. Mr. Shenko ended with support of the Pink Shell's request.

▪ **Matt Uhle** representing the Pink Shell Vacation Villas Condominium Association and Peter and Susan Lisich as individuals. Mr. Uly asked to give their presentation as organized as they represented a large number of people and needed additional time.

Council decided to allow the remaining public comment to present their views then allowing comments by Mr. Uhle.

- **Sharon Faircloth** owner of Holiday Watersports, Fort Myers Beach, the watersports vendor at Pink Shell since 1991 as well as owning the boat rental business at the Pink Shell running out of the dock master building. Ms. Faircloth stated her support for Pink Shell.

- **Ellis Etter** director of sales and marketing at the Pink Shell Resort and Spa. Mr. Etter provided Council with information regarding numbers of guests, room nights, and various other data regarding the Pink Shell and it's affect on the local economy.

- **David Forster** resident of 133 Estero Boulevard, next to the Pink Shell parking lot. Mr. Forster cited increased traffic as well as pedestrian traffic on his property noting concerns with additional noise and odors from the proposed trash compactor.

- **Cyndy Miller** resident of 133 Estero voiced her concerns with wildlife and felt the trash compactor would be inconsistent with the North end of the island. Ms. Miller felt she would be affected by the parking as well as the trash compactor.

- **John Boucher** owner of a unit at Estero Island Beach Villas. Mr. Boucher stated he has witnessed the area go from quiet peaceful cottages to a noisy high rise complex. Mr. Boucher discussed parking issues and noise. Mr. Boucher wanted to note that in the past he and other neighbors were in favor of previous Pink Shell improvements, however asking the Council now to note the applicant has a long history of non-compliance.

- **Ed Schmidt** owner of Island Shores noted Pink Shell has improved the North end of the island and as a neighbor to the South side of Pink Shell Mr. Schmidt recommended approval of Pink Shell's request.

- **Peggy Scarpati** resident of Fort Myers Beach and employee of the Pink Shell since 1986. Ms. Scarpati felt the Pink Shell's improvements have added to the island's value noting the resort's requests were within reason and asked for Council's approval.

- **Jim Johnson** speaking for Margaret Ervin, owner of the Pelicans. Mr. Johnson stated Ms. Ervin is an animal lover and does not want to see any more land taken from them, feeling the Pink Shell could police their parking and do a better job with what they have.

- **15 people relinquished their time to Mr. Ryffel and Uhle's comments and presentation.**

Council discussed the legality of this form of public comment.

- **Matt Uhle** indicated the times for his comments, Mr. Ryffle's and Mr. Lisich's comments.

- **Carleton Ryffel** noting his qualifications discussed prior rezonings and the impacts on the neighbors. He presented an aerial view of the North end of the island indicating it was largely a residential area. A copy of the master concept plan from 1990 was shown with Mr. Ryffel reviewing and describing all aspects of the master concept plan comparing it with the master concept plan provided with the application for modifications. Mr. Ryffel stated the parking should be denied and the trash compactor with its proposed location is certainly not being a good neighbor, noting the compactor should be several hundred feet from any neighboring property. Mr. Ryffel felt the applicants requests were not in compliance with the Comprehensive Plan.

- **Peter Lisich** owner of 131 and 133 Estero Boulevard, whose property is completely surrounded by Pink Shell Resort. Mr. Lisich discussed his concerns and the deterioration of the quality of life in the area. Mr. Lisich encouraged Council to deny the parking lot, the trash compactor and dockage providing information regarding the submerged land lease and its uses. Mr. Lisich also brought up the absence of vegetation/buffering on the new master concept plan, asking Council to address the issue. In conclusion Mr. Lisich urged Council to deny the intrusion into a residential neighborhood again stating none of the changes applied for are minor.

- **Matt Uhle** addressed the issues of concern:
  - Opposition of open space to parking lot
  - Trash Compactor to a location abutting Mr. Lisich's property
  - Boat Ramp
  - Absence of vegetation buffer on new master plan
  - Number of docks
  - Usage of docks
  - Consumption on premises
  - Public use condition

- **John Albion** President of Greater Fort Myers Beach Area Chamber of Commerce asked Council to consider their responsibility to alleviate any impact on the area by working toward a better flow of the area, noting the Pink Shell is an asset to the island.

#### **Public Comment Closed**

Council discussed whether it was possible to continue the hearing, the issue of legally needing to begin the regular Council meeting as advertised, time

allotted for a break and lunch and/or rescheduling the remainder of the hearing on another date.

Mayor Kiker asked Attorney Dalton the requirements for starting the regular meeting, with Ms. Dalton indicating there were items advertised for 1:30 p.m. Attorney Dalton also reminded Council the hearing needed to be continued to a date and time certain.

**MOTION:** Councilmember Babcock made a motion to continue the hearing to 3 p.m. December 7<sup>th</sup>, 2009 with a second by Councilmember List.

The applicant was asked if that would be acceptable to them with Ms. Grady indicating the original motion was to limit the hearing to 12:30 p.m. Ms. Grady stated a continuance at 3 p.m. would not be suitable as their experts would not be available.

**WITHDRAWN:** Councilmember Babcock withdrew his motion and Councilmember List rescinded her second.

Council then discussed rescheduling the continuance of the hearing deciding on 4 p.m. December 21<sup>st</sup>, 2009 prior to the regular Council meeting.

**MOTION:** Vice Mayor Acken made a motion to give staff additional direction to bring forward at the next hearing date a simplified resolution that addressed only the things requested by the Pink Shell with a second by Councilmember Raymond.

After discussion, Councilmember Raymond removed his second to the motion.

**FAILED:** Motion died for lack of second.

**MOTION:** Councilmember Raymond made a motion to continue the hearing until the 21<sup>st</sup> of December at 4 p.m. with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

All parties have agreed to the date of December 21<sup>st</sup>, 2009 at 4 p.m.

***Recess: 12:55 PM***

***Reconvene: 1:30 PM***

Mayor Kiker reconvenes the Council Meeting at 1:35 p.m.

**Public Comment Opened**

▪ **Joanne Shamp** spoke supporting the Town Council's promise to allow the property owners to decide regarding the beach renourishment project and for that

decision to be made before the end of the year. Ms. Shamp reviewed the issue over the past 12 years, noting she felt the taxpayers had spoken regarding the issue. Ms. Shamp encouraged the Town to work toward economical and environmental methods for the island and beach issues.

**Public Comment Closed**

**VII. CONSENT AGENDA**

- A. Approval of Minutes: November 2, 2009
- B. Special Event Permit Application – New Years Eve Fireworks Display
- C. Request for Waiver of Open Container Law – Times Square New Years Eve
- D. Resolution 09-36, Offshore Drilling
- E. Renewal of Professional Services Contract, Spikowski Planning Associates

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Vice Mayor Acken moved for approval of Consent Agenda with a second by Councilmember Babcock.

Councilmember Raymond requested the lack of a dollar amount on the fireworks item.

Council pulled item B. Special Event Permit Application – New Years Eve Fireworks Display.

**AMENDED MOTION:** Vice Mayor Acken amended his motion to the approval of the balance of the consent agenda, excluding item B. Councilmember Babcock amended his second.

**VOTE:** Motion passed 5 to 0

Interim Town Manager Green stated this was an annual event with the applicant requesting \$11,404.89 funding. Mr. Green went on to state changes were made in everyone's funding request with staff recommending no more than \$9,510.00 for the event.

Mayor Kiker asked the Semmers to participate in the discussion regarding the amount suggested by staff. Bill Semmer indicated the extra charge is from the sheriff department in the amount of \$2,700.00 which had previously been paid by the Town.

Mr. Green stated that the Town had not paid in the past as there had been no charge in the past; however, Mr. Semmer again stated the sheriff had charged in the past and the Town had paid in the past.

Mr. Green indicated the annual special events budget was decreased from \$40,000.00 to \$30,000.00 so an incremental change had to be made.

A discussion ensued regarding the itemized costs as well as the funding allocated to four different events during the year.

Councilmember Babcock noted he supported local events but we would not be the first Town to not support fireworks and now is not the time to be backpedaling on our proposed budget.

Councilmember List did not want to lose the event for \$2,700.00.

**MOTION:** Councilmember List made a motion to approve the requested funding In the amount of \$11,404.89 for the New Years Eve Midnight Fireworks display to be held on December 31<sup>st</sup>, 2009 from the pier adjacent to the Times Square area. Vice Mayor Acken seconded the motion.

**VOTE:** Motion passed 3 to 2 with Council members Babcock and Raymond dissenting.

Mayor Kiker asked Mr. Green to contact the sheriff's department regarding the \$2,700.00 fee for the event.

Councilmember Babcock commented on the resolution for Offshore Drilling, pointing out it was an excellent job.

## **VIII. ADMINISTRATIVE AGENDA**

### **A. Award of Bid, Newton Park Site Improvements, 09-09-CR**

Mr. Green indicated there were three bidders with the lowest bid was from Maddox Construction Company, which is the company recommended by staff for approval in the amount of \$109,409.00.

Councilmember Raymond asked if the park would be open by the end of December with Mr. Green indicating it would probably be in the March time frame for total completion, however, the park would be open during construction.

**MOTION:** Councilmember Babcock made a motion to approve award of contract 09-09-CR Newton Beach Park Site & Landscape Improvements to Maddox Construction Company in the amount of \$109,409.00 and authorize staff to move forward with the project. Councilmember List seconded the motion.

**VOTE:** Motion passed 5 to 0

### **B. Town Manager Recruitment Options**

Mr. Green indicated this was on the agenda at the request of Council for their

decision as to how to proceed with recruitment of a new Town Manager.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Attorney Dalton advised Council she had sent them a vendor list of professionals used in the past and if it were Council's decision staff could move forward with the process quickly.

Vice Mayor Acken noted the shortness of time.

Mayor Kiker noted they were unlikely to find a replacement before February 13<sup>th</sup> and felt the Town needed to find a temporary replacement right away. The Mayor went on to state he felt the way the Town was structured did not work and suggested forming an ad hoc group to take a look at the way the Town does business. Mayor Kiker suggested structuring an organization that better suited our environment.

Councilmember Babcock stated he had been on a charter review and noted there should be no conflict if the charter is followed. Councilmember Babcock indicated he was willing to support several options, if there were to be a review it was not an ad hoc committee, but a charter review commission needed to be formed. A recommendation would then be brought back to Council which then had to be put on a referenda, which would probably be 2 years. Councilmember Babcock noted after the workshop he thought Council was either going to hire an outside consulting firm or find a way to deal with the process in house.

Councilmember List opined that until Hurricane Charley our form of government worked then a precedent was made thinking the Council was the end all in local government. Councilmember List stated she felt what didn't work was when everyone did not know what their jobs were in relationship to each other and that the line had been blurred to the point the system couldn't work. Councilmember List went on to state she would like to take a look at all the names of applicants that have come into the Town in the past and look through them with Council to see if there was a potential manager, noting her lack of confidence with headhunter firms.

Vice Mayor Acken agreed with taking a look at applicants they had on file and felt a decision needed to be made for the short term. Vice Mayor Acken felt the previous firm used to compile candidates could be used or possibly find candidates through the Florida League of Cities.

Councilmember Raymond stated he looked at those candidates emailed to him and reminded Council they would be making decisions for new Council members in March.

Councilmember Babcock discussed the issue of the change of government at the previous Charter review, regarding strong Mayor, noting it was not well received and citing other cities shifting away from the strong Mayor system.

Discussion continued with Council giving staff direction to provide candidates for a consulting firm by Monday, December 14<sup>th</sup>.

Council then discussed contacting a company that brings in temporary managers, several names were brought up one of which was David Sallee. The Florida League of Cities was suggested as well as Range Riders.

**IX. PUBLIC HEARINGS:**

A. Adoption 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**

Vice Mayor Acken noted he was in favor of people being on multiple committees. Mayor Kiker voiced his disapproval of the Ordinance.

**MOTION:** Councilmember Babcock made a motion to approve Ordinance 09-07 modifying advisory committee membership requirements specifically the ability to be on multiple committees. A second was made by Councilmember List.

**VOTE:** Town Clerk Michelle Mayher instituted a roll call

Councilmember Babcock	Aye
Councilmember Raymond	Aye
Councilmember List	Aye

Mayor Kiker  
Vice Mayor Acken

Nay  
Aye

Motion passed 4 to 1 with Mayor Kiker dissenting.

Hearing was closed for adoption of Ordinance 09-07.

**X. ADVISORY COMMITTEES ITEMS AND REPORTS**

**A. Appointment(s) to Bay Oaks Recreational Campus Advisory Board**

Council voted for the seven members making up the Bay Oaks Recreational Campus Advisory Board.

Members making up the new board are:

Becky Bodnar, Rick Loughrey, Myra Miller, Tom Mizwa, Tom Myers, Betty Simpson, Rae Sprole.

**XI. TOWN MANAGER'S ITEMS**

- Mr. Green stated the gazebo and tree lighting ceremony went well on Saturday with thanks to Councilmember List for leading the children in song.
- The water pipe on the bay side of the North Estero Boulevard project is complete and water testing has been done as well. Replacement water lines on the Gulf side are beginning to be replaced, however there were some utility conflicts because of Teco and Century Link and only one change order had been issued due to a pipe size change.
- Mr. Green indicated there was an issue in Laguna Shores between marker 1 and 2 due to filling with DEP to do an inspection.
- Regarding water rates, the new increase will be reflected in the February bill.
- Bay Oaks will have a youth holiday party December 19<sup>th</sup> from 5 to 8 p.m., the adult dance had been canceled due to lack of reservations, the sports program is getting started.
- New Years Entertainment would be paid for by Pierside Hotel
- Mound House, The Town had the opportunity to apply for a couple of grants to finish the shell mound exhibit, with the need being \$60,000.00.

**XII. TOWN ATTORNEY'S ITEMS**

- The Town has been successful in the litigation of Ganim vs. Town of Fort Myers Beach.
- Attorney Dalton noted she and her brother took kayaking lessons at the Mound House and stated it was a wonderful experience.

**XIII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Babcock raised a question regarding policy, one being the receipt of unsigned letters.

Vice Mayor Acken discussed his email regarding the amended noise ordinance and his desire to discuss it with Council. A discussion began regarding the need for additional research, workshop time, and when it could be introduced.

#### **XIV. AGENDA MANAGEMENT**

Parks and Recreation, Animal Control, which is set for January 4<sup>th</sup>, Vacation Ordinance, second hearing on December 21<sup>st</sup>, the administrative determination on seawalls would be coming up soon and the Parks and Recreation Ordinance was in play at the present time.

Vice Mayor Acken asked for the Noise Ordinance to be moved forward on agenda management with Councilmember Babcock disagreeing, stating it needed to be discussed in a work session.

Council along with Mr. Green discussed the items on agenda management and the need for prioritization.

Councilmember Babcock asked to have Policies and Procedures to be added to agenda management.

**MOTION:** Vice Mayor Acken moved that the Noise Control Ordinance Be brought forward for introduction at the next possible Town Council Meeting with a second by Councilmember List.

**VOTE:** Motion fails 2 to 3 with Mayor Kiker, Councilmember Babcock and Councilmember Raymond dissenting.

**MOTION:** Councilmember Babcock made a motion to make the next scheduled work session for prioritization topics with a second by Councilmember Raymond.

Vice Mayor Acken noted that it was a work session for work sessions and he hoped no one supported it, that it was time to move forward.

**VOTE:** Motion passed 3 to 2 with Vice Mayor Acken and Councilmember List dissenting.

Councilmember Babcock also noted the desire to add a Town Hall Meeting.

#### **XV. RECAP OF ACTION ITEMS**

- Calls to the sheriff and fire departments regarding fees for New Years Eve
- Obtaining 3 to 5 proposals for management firms
- Multiple contacts for temporary Town Manager
- Unsigned letter policy
- January 19<sup>th</sup> M & P would be a budget session, with update on revenue sources
- Moving P & P to Quarter 2
- Work session to prioritize work sessions

- Town Hall Meeting under Town Business

#### **XVI. PUBLIC COMMENT**

##### **Public Comment Opened**

- **Joanne Shamp** spoke regarding the BOCC and if they took the position to proceed with a modified groin project it was the Council's financial responsibility to make sure the Town's million dollars be retained for the Town's use.

- **Rick Loughrey** thanked Council for the appointment to the Bay Oaks Recreational Advisory Committee, noting that the roof repair is inadequate and still leaking.

##### **Public Comment Closed**

#### **XVII. ADJOURNMENT**

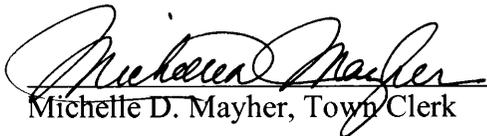
**MOTION:** Councilmember List made a motion to adjourn with a second by Councilmember Raymond.

**VOTE:** Motion passed 5 to 0

Meeting adjourned at 3:55 PM

Adopted 1-4-10 With ~~Without~~ changes. Motion by List / Babcock

Vote: 50

  
Michelle D. Mayher, Town Clerk

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