



MINUTES
FORT MYERS BEACH TOWN COUNCIL

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

JANUARY 7, 2008

REGULAR TOWN COUNCIL MEETING

I. CALL TO ORDER

Mayor Boback called to order the regular meeting of the Town Council at 6:35 PM. Present is Mayor Boback, Vice Mayor Kiker, Councilmember Acken, Councilmember Shenko, Councilmember Meador, Town Manager David Sallee, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Community Development Director Jerry Murphy, Public Works Director Jack Green, and Mound House/Newton Project Director Theresa Schober.

II. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

III. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Eddie Foster stated that public safety should be the Town's number one priority in goals and objectives.
- Richard Scalzo inquired as to the status of the Town's building and permitting and the future transition of the in-house department.

Closed Public Comment

IV. CONSENT AGENDA

- A. Approval of Minutes: December 3, 2007
- B. Approval of Minutes: December 10, 2007
- C. Resolution 08-01, in Support of Congressional Appropriations
for Herbert Hoover Dike
- D. Resolution 08-02, Acceptance of Town of Fort Myers Beach
Annual Audit

MOTION: Vice Mayor Kiker moved to approve the consent agenda.
Councilmember Acken seconded the motion.

Councilmember Meador pulled item D.

VOTE: Motion passed 5-0.

MOTION: Councilmember Meador moved to adopt Ordinance 08-03, with a modification to section three; striking “Approval” and striking “and acknowledges that it is true and correct in all material terms.” Councilmember Shenko seconded the motion.

VOTE: Motion passed 5-0.

V. ADVISORY COMMITTEES ITEMS AND REPORTS

A. LPA Year in Review Report (Informational)

Tom Babcock, Chair of the LPA recapped the year in review report. He recognized the participants in the Local Planning Agency, Community Development Director Jerry Murphy and the staff, and LPA Attorney Anne Dalton. Mr. Babcock further extended his appreciation to town staff.

B. LPA Resolution 2007-27, Resolution in Support of Community Development Bob Raymond, member of the LPA spoke in favor of the Community Development Department, and support by way of resolution 2007-27.

VI. PUBLIC HEARINGS:

A. Introduction of Ordinance 08-01A, and Ordinance 08-01B, Municipal Speed Limits

Mayor Boback opened the public hearing. Attorney Dalton read the title:

ORDINANCE 08-01A

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH MUNICIPAL SPEED LIMIT ORDINANCE; PROVIDING AUTHORITY; DEFINITIONS; SEVERABILITY

Opened Public Comment

Public Comment was heard:

- Ibrahim Maliki spoke to the need of reduced speed limits.
- Henry Turgeon spoke to the petition for the speed limit having been for 20 mph., not 15 mph.
- Carol Loffreno referenced a new petition, and the petition is for 20 mph, not 15 mph.
- James Tabasso stated he so no reason for a 15 mph.
- James Howser stated he realizes the need and has no problem with speed limits and stop signs.
- Donald Cady stated his opinion that the stop signs are in lieu of rumble strips, and believes in compromise.
- Janice Campitiello is in favor of reduced speed limits.
- Bernie Lierow is in favor of 20 mph speed limit.
- Isabelle Wells stated that the streets are not safe; the petition is for 15 mph.

- Dan Santomero stated the need for 15 mph speed limit as the streets are not safe.
- Gary Young spoke that the issue is for safety.

Closed Public Comment

Public Works Director, Jack Green explained that the 15 mph speed limit signs and the stop signs were installed as a trial for effect, and removed the 30 mph signs.

MOTION: Councilmember Acken moved to send both versions of ordinance 08-01 to public hearing, with the modification to allow 20-25 mph speed limit applied to all side streets. Councilmember Meador seconded the motion.

MOTION: Councilmember Shenko made a secondary motion that if Council action is necessary, to consider a four-way stop sign at Buccaneer and Lagoon. Vice Mayor Kiker seconded the motion.

Attorney Dalton inquired whether the motion for the 4-way stop sign at Buccaneer and Lagoon was to be part of this ordinance, or if it was something for Public Works to do. Councilmember Shenko responded that his intention was for it to be whatever is necessary to get it done. If the placement of a stop sign does not require an ordinance, then he would like to see it brought before town council for a vote, whether it be this evening, or when the speed limit ordinance is heard. He would like it included as an agenda item at the hearing, and with that understanding, withdrew his secondary motion. Vice Mayor removed his second.

VOTE: Motion passed 5-0.

Attorney Dalton indicated that this item will be heard January 23, 2008 at 6:30 PM.

B. Introduction of Ordinance 08-02, Mandatory Recycle – Commercial and Multi-family

Attorney Dalton read the title:

ORDINANCE 08-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH REGARDING MANDATORY RECYCLING OF COMMERCIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION DEBRIS; PROVIDING FOR PURPOSE AND SCOPE OF ORDINANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR BUSINESS RECYCLING REQUIREMENTS; PROVIDING FOR MULTI-FAMILY RECYCLING REQUIREMENTS; PROVIDING FOR CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REQUIREMENTS; PROVIDING FOR CHANGES TO FEES AND PENALTIES; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, AND EFFECTIVE DATE.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Acken moved to institute the recycling program as outlined in the ordinance, however that it be voluntary for the first twelve months.

Attorney Dalton indicated that this is to move forward an ordinance to a hearing.

Councilmember Acken withdrew his motion.

Councilmember Meador inquired as to who brought this forward. Attorney Dalton responded that this ordinance was brought forward from Lee County, that the interlocal agreement between the Town and Lee County states that the Town's municipal solid waste to be directed to the County's solid waste disposal. The County has gone to mandatory recycling, and under the interlocal, the Town has agreed to move to mandatory recycling.

Councilmember Meador filed a conflict of interest, as this ordinance will inure to his specific loss as to the additional cost associated with compliance, and filed form 8B with the clerk.

MOTION: Councilmember Shenko moved to have the draft of the ordinance be investigated by town staff with the County to be less onerous on businesses and condos and to get a handle on the cost of enforcement, and to bring this item back for discussion. Councilmember Acken seconded the motion.

VOTE: Motion passed 4-0, with Councilmember Meador abstaining.

Recess: 8:07 PM

Reconvene 8:24 PM

C. First Public Hearing Ordinance 07-09, Amendment to the LDC,
Membership Appointment to the LPA

Attorney Dalton read the title:

ORDINANCE 07-09

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 LPA MEMBERS; SEVERABILITY; EFFECT OF ONRDINANCE AND EFFECTIVE DATE.

Opened Public Comment

Public Comment was heard:

- Tom Babcock spoke as to the residency requirements, the term limits and the appointment date for LPA members

Closed Public Comment

MOTION: Vice Mayor Kiker moved to have ordinance 07-09 moved forward to the second hearing as it reads. Councilmember Acken seconded the motion.

Discussion ensued regarding the term limits, whether to be two term limits with one year off, to be two, two-year term limits, and whether to lift the residency requirements.

VOTE: Motion fails 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Councilmember Shenko moved to have ordinance 07-09 move forward to the second public hearing, with a term limit of two terms (of two years each) and all residency requirements removed.

Motion failed for lack of a second.

MOTION: Councilmember Acken moved to have the ordinance brought forward for consideration at the second council meeting in April.

Motion failed for lack of a second.

MOTION: Councilmember Meador moved to have ordinance 07-09 moved forward to a second hearing with the amend relative to terms, that the term limit be changed, a limit of two terms with one year out, before being eligible again to retake a seat on the LPA. Mayor Boback seconded the motion.

VOTE: Motion passed 4-1, with Vice Mayor Kiker dissenting.

Attorney Dalton indicated that the next hearing will be January 23, 2008 at 6:30 PM

D. Public Hearing Ordinance 07-08, Advisory Committees Membership

Attorney Dalton read the title:

ORDINANCE 07-08

AN ORDINANCE AMENDING THE MEMBERSHIP REQUIREMENTS OF THE ANCHORAGE ADVISORY COMMITTEE, CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD, COMMUNITY RESOURCE ADVISORY BOARD, MARINE RESOURCE TASK FORCE, PUBLIC SAFETY TASK FORCE, TIMES SQUARE ADVISORY BOARD, AND TRAFFIC MITIGATION AGENCY, PROVIDING AUTHORITY; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE

Attorney Dalton requested that the options provided at this hearing be considered and recommended by council, and that this hearing be continued so that the selections could be incorporated into the ordinance which could then be passed, and considered along with the ordinance governing the LPA membership.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Acken moved to have the ordinance 07-08 continued to public hearing, incorporating the following options: A. no terms; B. no residency; C. set the minimum number lower than 5 greater than one; D. option two and option four. Vice Mayor Kiker seconded the motion.

MOTION: Councilmember Meador made an incidental motion that the motion be divided and that each of the components, A,B,C & D be dealt with on an individual basis. Vice Mayor Kiker seconded the motion.

VOTE: (incidental motion) Motion passed 5-0.

As to Councilmember Acken's motion to have no term limits, motion failed 4-1 with Councilmember Acken the only affirmative vote.

MOTION: Councilmember Meador moved as to item A, propose to adopt a term limited to two consecutive terms with a possible total of four years, with one mandatory hiatus after two consecutive terms. Councilmember Shenko seconded the motion.

VOTE: Motion passed 4-1, with Councilmember Acken dissenting.

As to Councilmember Acken's motion for no residency requirements, motion failed 4-1, with Councilmember Acken the only affirmative vote.

MOTION: Councilmember Shenko moved as to residency, a modified three, residency or property ownership a requirement prior to and during period of service to the Town. Councilmember Meador seconded the motion.

VOTE: Motion passed 4-1 with Councilmember Acken dissenting.

As to Councilmember Acken's motion regarding option three, minimum membership, motion failed 4-1 with Councilmember Acken voting in favor.

MOTION: Vice Mayor Kiker moved to modify option C., to set a minimum number lower than five but greater than two. Councilmember Acken seconded the motion.

VOTE: Motion fails 3-2, with Mayor Boback, Councilmember Meador and Councilmember Shenko dissenting.

MOTION: Councilmember Acken moved that the membership requirements stay the same as are currently, however any committee can meet two times in a calendar year with a number greater than 5 but lower than 2 to meet on an emergency basis. Vice Mayor Kiker seconded the motion.

MOTION: Councilmember Meador amended the motion to retain the minimum of five members, and strike the rest of the motion. Councilmember Shenko seconded the amended motion.

VOTE: Motion passed 3-2 with Vice Mayor Kiker and Councilmember Acken dissenting.

As to Councilmember Acken's motion to consider option D. 2 & 4, motion failed 3-2 with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Councilmember Shenko moved as to option #1, to take no action. Councilmember Meador seconded the motion.

VOTE: Motion passed 3-2, with Vice Mayor Kiker and Councilmember Acken dissenting.

MOTION: Councilmember Meador moved that this hearing of Ordinance 07-08 be continued to January 23, 2008 with the aforementioned options incorporated into the draft ordinance. Councilmember Shenko seconded the motion.

VOTE: Motion passed 4-1, with Councilmember Acken dissenting.

VII. ADMINISTRATIVE AGENDA

A. Pedestrian By-Way Update; presentation by McMahan & Associates

Mr. Michael Spitz, P.E. with McMahan and Associates, Inc. presented a power point presentation of the four design options and cost estimates available to the Town for the pedestrian by-way.

Opened Public Comment

Public Comment was heard:

- Evelyn May asked council to consider safety aspects as to lighting.
- Pat Smith spoke to encouraging the Town to move toward some traffic mitigation.

Closed Public Comment

- B. Approval of Amendment No. 1 to the Interlocal Agreement for Municipal Waste Collection, Billing, and Disposal (Disaster Assistance) Solid

Public Works Director Jack Green explained the state requirements for hurricane debris removal, such as a pre-approved staging and reduction site, having a formal agreement. With the proposed agreement, the Town can piggy-back with the County. The county will identify the site, the Town can use the same firm, and the same monitoring service and maintain the database for the technical information used to gain reimbursement.

MOTION: Councilmember Acken moved approved of the agreement with one minor modification: Section 3, removing the words “or \$1,000.00, whichever is greater.”

Councilmember Meador inquired as to the origin of the agreement, and suggested that to be consistent with the intent of the agreement, to propose adding the word “contractor” added to the indemnification agreement.

Councilmember Meador seconded the motion, however should the County disagree with the elimination of the \$1,000.00, that the Town ride with it.

Councilmember Acken amended his motion.

VOTE: Motion passed 5-0.

C. Contract Extensions for Mound House Final Exhibit Design Services

Theresa Schober, Mound House Director explained the two contracts and the extensions proposed. Staff is seeking direction to execute change orders to Renker Eich Parks architectural and exhibit design contracts executed on January 25, 2007 for the shell mound exhibit (not-to-exceed \$239,775) and March 5, 2007 for the Mound House property (not to exceed \$58,987.50 for the current phase and \$84,678 for Phase II.)

Opened Public Comment:

None

Closed Public Comment

MOTION: Councilmember Acken moved to authorize the extension of the contracts as outlined on Blue Sheet 2008-005, as provided by staff in the packet. Councilmember Shenko seconded the motion.

VOTE: Motion passed 5-0.

D. Elections Timeline (Informational)

Town Manager David Sallee identified this as an information item.

Vice Mayor Kiker indicated he had a conflict with serving on the canvassing board, as he intends to write an article in support of the plurality referendum, and is unable to serve in that capacity.

Attorney Dalton indicated that the Town does require someone else to serve in that capacity.

Council had discussion regarding whether any or all of the Council could or may have a conflict as to serving on the canvassing board with the upcoming referenda.

Council asked counsel to opine as to the statute, and Attorney Dalton requested a recess in order to consult the statutes.

Recess: 10:00 PM Reconvene 10:20 PM

Council continued to the next agenda item while waiting for an opinion from the Town Attorney.

E. Request for Permission to Submit Grant – Mound House Public Archaeology Center
Town Manager David Sallee introduced this item, as the main role being one of marketing and education. It would increase the Mound House publicity. The Town's responsibility would be to supervise, and would be reimbursed all costs.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Acken moved to authorize staff to submit an application for the Mound House to host the Southwest Florida Regional Center of the Florida Public Archaeology Network. Councilmember Meador seconded the motion.

VOTE: Motion passed 5-0.

VIII. TOWN MANAGER'S ITEMS

Town Manager David Sallee indicated that work has started on the vegetation for the Newton Park, and thanked Vice Mayor Kiker for his work and support.

Mr. Sallee spoke about the upcoming Town Manager selection process, indicating that another candidate had dropped out. Mr. Sallee outlined the current revised schedule and asked that it meets the Council's needs. January 24, 2008 will be the date for the phone interviews.

Council recognized Attorney Dalton, who has returned to the meeting.

Ms. Dalton indicated that she had a copy of the statute. Attorney Dalton read from Fl statute 102.121 regarding canvassing board duties, substituting local municipality for county. Her legal opinion is that the election in question, January 29, 2008 is for referenda, and not a candidate election, and there is not a conflict for a councilmember to serve on the canvassing board for the January 29, 2008 election. Ms. Dalton indicated that she would like to further check with any ruling(s) from the Attorney General that may be contrary.

Councilmember Shenko suggested a special meeting to elect a member to the canvassing board, and thereby allowing the Town Attorney time to research further into the statute.

A special meeting was set for 8:00 AM Wednesday, January 9, 2008.

IX. TOWN ATTORNEY'S ITEMS

A. Selection of Special Magistrate for FLUEDRA/ Bella Beach Villas
Attorney Dalton referenced a memo that will be distributed to Council outlining Mr. Simon Harrison as special magistrate.

MOTION: Councilmember Shenko moved that council accept Mr. Simon Harrison as the special magistrate in the matter of FLUEDRA for Bella Beach Villas. Councilmember Meador seconded the motion.

VOTE: Motion passed 5-0.

Attorney Dalton referenced the matter of Tezak v. Town, which has not been served on the Town, and until which time, no action is required by the Town.

X. COUNCILMEMBERS ITEMS AND REPORTS

A. Request for Appeal, DOS 2007-002167, Holland Center 200 Old San Carlos Boulevard

Mayor Boback brought this item forward to avoid future problems with design approval, but then delays in determining how projects moving forward, as it relates to design over the right-of-way.

Opened Public Comment

Public Comment was heard:

- Barbara Johnson is a representative of the Hollands, and the property is very important to the growth of the Town.
- Joe McHarris identified himself as the planner for the Holland Center. (Attorney Dalton asked that the substance of these comments be reserved for a formal hearing).

Closed Public Comment

MOTION: Councilmember Acken moved that no action be taken at this time. Motion failed for lack of a second.

MOTION: Mayor Boback moved to appeal at the first available date. Councilmember Shenko seconded the motion.

Mayor Boback withdrew his motion.

MOTION: Councilmember Shenko moved to direct staff to meet with the developer and work out a right of way agreement and get back to Council as soon as possible. Mayor Boback seconded the motion.

VOTE: Motion passed 4-1, with Councilmember Acken dissenting.

Vice Mayor Kiker referenced some information he had sent to the Town Manager regarding the appointment of a representative to the Estero Bay Agency on Bay Management and requested that the information be forwarded to the Marine Resource Task Force.

XI. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Tom Babcock addressed the Bella Beach Villas case.

Closed Public Comment

XII. ADJOURNMENT

The meeting adjourned at 11.50 PM

Adopted 1-23-08 (Date) With/ Without Changes. Motion by Shenko
(add date on front page)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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