



MINUTES

FORT MYERS BEACH TOWN COUNCIL

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

REGULAR TOWN COUNCIL MEETING

MARCH 10, 2008

I. CALL TO ORDER

Mayor Boback called to order the meeting of the Town Council at 3:00 PM. In addition to Mayor Boback, present was Vice Mayor Kiker, Councilmember Acken, Councilmember Shenko, Councilmember Meador, Town Manager Scott Janke, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Community Development Director Jerry Murphy and Mound House/ Newton Park 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:

- David Mann spoke regarding the Newton Park project encouraging a name change.
- Ray Dugan spoke regarding the Newton park project encouraging added crosswalks in this increasingly congested area.

Closed Public Comment

IV. CONSENT AGENDA:

No Items

V. RESOLUTIONS:

A. Resolution 08-14, Banking Resolution SunTrust

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING TOWN MAYOR, VICE MAYOR, AND MANAGER TO HAVE SIGNATORY AUTHORITY ON TOWN BANK ACCOUNT AND PROVIDING AN EFFECTIVE DATE

Opened Public Comment:

None

Closed Public Comment

MOTION: Vice Mayor Kiker moved to accept resolution 08-14. Councilmember Acken seconded the motion.

VOTE: Motion passed 5-0.

B. Resolution 08-15, Banking Resolution FL Municipal Insurance Trust

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING TOWN PERSONNEL TO HAVE SIGNATORY AUTHORITY REGARDING TOWN INVESTMENT OF SURPLUS FUNDS, AND PROVIDING AN EFFECTIVE DATE

Opened Public Comment:

None

Closed Public Comment

MOTION: Vice Mayor Kiker moved to accept resolution 08-15. Councilmember Acken seconded the motion.

VOTE: Motion passed 5-0.

C. Resolution 08-16, Banking Resolution SunTrust Credit Card

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING TOWN MAYOR, VICE MAYOR AND MANAGER TO HAVE SIGNATORY AUTHORITY ON THE TOWN COMMERCIAL CREDIT CARD ACCOUNT; AND PROVIDING AN EFFECTIVE DATE

Opened Public Comment:

None

Closed Public Comment

MOTION: Vice Mayor Kiker moved to accept resolution 08-16. Councilmember Acken seconded the motion.

VOTE: Motion passed 5-0.

VI. PUBLIC HEARINGS:

A. Continuation of Public Hearing on Topps CPD, FMBDCI2007-00003

Mayor Boback opened the public hearing.

MOTION: Councilmember Acken moved to continue the public hearing to April 21, 2008 at 3:00 PM. Vice Mayor Kiker seconded the motion.

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

Opened Public Comment:

Public Comment was heard:

- Elsie Volpe addressed the council to request moving a crosswalk. Ms. Volpe was advised to come to town hall and speak with the town manager.

Closed Public Comment.

B. First Public Hearing: Ordinance 08-03, Open House Signs

AN ORDINANCE AMENDING REGULATIONS IN CHAPTER 30 WHICH IS TITLED “SIGNS” OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

MOTION: Councilmember Meador moved to send ordinance 08-03 to second public hearing, with a date certain of April 7, 2008. Councilmember Shenko seconded the motion.

Discussion ensued regarding the procedure to get the information from and to the right people with regard to items before the LPA and the Council. Council requested to hear from the chair of the LPA. Mr. Tom Babcock indicated that it is the intention of the LPA to finalize this proposed ordinance on March 18, 2008. The LPA appreciates Council’s concern for the process and indicated that the issues raised by the Council had been discussed by the LPA.

AMENDED: Councilmember Meador amended his motion, and Councilmember Shenko amended his second, to move the ordinance to a **time certain of 6:30 PM** on April 7, 2008.

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

C. 111 Gulfview Avenue – Appeal of Administrative Action

FMBADM2008-0001: 111 Gulfview Avenue

Attorney Dalton referenced a memo whereby she referenced the legal procedure for the applicant to apply for a minimum use determination pursuant to the Comprehensive Plan and LDC requirements is for that determination to be made by the LPA attorney or the LPA. Attorney Dalton opined that the Town Council does not have the legal jurisdiction to hear this appeal, and requested that the Town Council not hear this appeal at this time.

Opened Public Comment:

Public Comment was heard:

- Matt Uhle began by stating he will address only the jurisdictional issue. The applicant is asking to be considered under the post-disaster build-back provisions, and are not asking to be considered as a MUD (minimum use determination). He asked the council to make a decision based on two single family structures in lieu of one, two-family structure.

Closed Public Comment

MOTION: Councilmember Meador moved to allow the appeal to go forward. Councilmember Shenko seconded the motion.

Councilmember Meador stated it was his understanding that the applicant intends to appeal one or both of the administrative interpretation(s) and show how the post-disaster procedure applies without the application of a MUD.

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

Recess: 4:30 PM

Reconvene: 4:45 PM

Mayor Boback opened the public hearing. Attorney Dalton swore in all those intending to testify. Councilmembers declared ex-parte communication. Councilmembers Meador and Shenko indicated having received a phone call from Mr. Roeder but did not discuss the case. Mayor Boback and Vice Mayor Kiker indicated they had received a phone call from Mr. Roeder but did not discuss the case. Councilmember Acken had no ex-parte communication.

Matt Uhle, for the applicant outlined the history of this case. There was an initial misrepresentation as to the number of units when the property was sold. In 2003 the applicant requested and in August 2004 received a zoning verification letter. The property sustained significant damage after hurricane Charley, at which time the applicant filed an application for an administrative determination under the pre-disaster build back. In late 2007, the applicant filed a determination under the post-disaster provisions

Community Development Director Jerry Murphy spoke on behalf of staff, providing a rebuttal to Mr. Uhle's presentation, and outlined the information provided to Council in the packet. Mr. Murphy summarized the zoning history of the property from 1977 when the property owner requested a change from residential single family to residential multi-family. The BOCC declined to recognize that change and the property was zoned single family. In 2004, the property owner requested a ZVL, and were told that the appropriate process to go through was a residential planned development. With regard to the MUD, staff advised that in staff's opinion, they could not be granted a MUD based on staff's reading of the language.

Post Hurricane Charley 2004, the property owner showed evidence of a substantially damaged structure. There are limitations to what can be rebuilt without going through the public hearing process with proper notice to adjacent property owners. Under the post-disaster build back policy, the property can be built back to what existed prior to the disaster, and that was one building on one parcel, which could not be sub-divided absent a minimum use determination

Opened Public Comment

Public Comment was heard:

- Mike Roeder offered to provide additional history/chronology for this application.
- Tom Babcock stated that this is not about fees or the length of time taken at this point, rather using the administrative appeal process to change our LDC without going through the right process.

Closed Public Comment

MOTION: Councilmember Meador moved the adoption of Town Council Resolution 08-17, to be supplemented with the actual attachment referenced as exhibit A, and as to findings of fact and conclusions the Town Council makes the following findings of fact and reaches the following conclusion: that the post disaster build back provisions of the LDC DO NOT support the conclusion that the applicant requests that the Town Council

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reach, in that the post-disaster build-back provisions contained in section 34-3238 of the LDC do not support the replacement of one multi-family building with two single family buildings; going to paragraph two, the Town Council hereby upholds the administrative interpretation of Town Community Development Department and denies the requested appeal. Section three is not needed.
Councilmember Shenko seconded the motion.

VOTE: Motion passed 5-0.

Mayor Boback closed the public hearing.

VII. ADMINISTRATIVE AGENDA:

A. Newton Park Update

Former Town Manager David Sallee addressed this item. Staff requested direction from Council to pursue changes in the approved Management Plan with Florida Communities Trust (FCT) and necessary zoning to : 1) relocate the Newton cottage to 216 Connecticut Street while adaptively reusing the Newton home for meeting, exhibit, and beach restroom facilities; 2) modify the type of user-oriented recreation facilities stipulated; 3) amend the requirement to remove the seawall; and 4) amend the language concerning dune construction to tie it with beach renourishment should it occur.

(Councilmember Shenko has left the meeting for the evening).

Opened Public Comment:

Public Comment was heard:

- Marilyn Quackenbush, a resident of Ocean Harbor indicated that the structures are in need of great repair. She is very concerned about the process for the park development.
- Dave Trelease, a resident of Ocean Harbor encouraged Council to be sure to look at the cost of maintaining this property, and the cost benefit of returning the property to the State.

Closed Public Comment

MOTION: Councilmember Meador moved to authorize staff to pursue changes in the approved Management Plan with Florida Communities Trust, modified with the change to move the larger of the two properties. Mayor Boback seconded the motion.

VOTE: Motion fails 4-0.

MOTION: Vice Mayor Kiker moved to authorized the requested direction as indicated on Blue Sheet # 2008-033, to relocate the Newton cottage. Councilmember Acken seconded the motion.

AMENDED: Vice Mayor Kiker amended his motion to authorize the requested direction without specifying which structure. Councilmember Meador seconded the amended motion.

VOTE: Motion passed 4-0.

B. Florida Public Archaeology Contract

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Staff requested authorization to execute the contract with University of West Florida to host the Southwest Florida Regional Center of the Florida Public Archaeology Network (FPAN) at the Mound House.

MOTION: Vice Mayor Kiker moved to authorize the execution of the contract as requested. Councilmember Acken seconded the motion.

VOTE: Motion passed 4-0.

Recess: 7:10 PM

Reconvene 7: 25 PM

C. Discussion Regarding Coastal Construction Control Line

In the absence of Councilmember Shenko who had requested this item, Council concurred to move this item to the next agenda when Mr. Shenko will be available.

VIII. TOWN MANAGER'S ITEMS

A. Welcome New Town Manager

Mayor Boback introduced and welcomed Mr. Scott Janke. Mr. Janke gave the Council an update as to his activities since coming on board.

IX. TOWN ATTORNEY'S ITEMS

A. Tezak Family Trust versus Town of Fort Myers Beach

Attorney Dalton indicated she is requesting the Town Council to select outside counsel, and her recommendation is the law firm of Fowler White, with lead counsel being Denise Wheeler.

MOTION: Vice Mayor Kiker moved to select Fowler White as outside counsel. Councilmember Acken seconded the motion.

VOTE: 4-0 with Council Member Shenko absent.

X. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Acken commended the fine job the Mound House interns did on decorating the float for the shrimp festival parade, and asked Town Manager Scott Janke to come up with some way to reward the efforts of the interns and staff.

Councilmember Acken announced the Historic Society Board Tours. Regarding the Coastal Advisory Committee, Mr. Acken indicated strongly supporting all of the Town's requests.

Vice Mayor Kiker asked about moving the cottage to a new location, suggesting talking to the neighbors. Mr. Kiker asked if there are condemned buildings on the island, how many and if we have a plan for removal.

Vice Mayor Kiker referenced the beach renourishment white paper, and it is his impression that the Town has until the end of year to elect to move forward, or the funding will no longer be available.

Councilmember Meador thanked the Fort Myers Beach Lyons Club and all the participants for a great Shrimp Festival .

Mayor Boback referenced the Mayor's Citizen Recognition Award as outlined in the Town's Citizen's Recognition Program. Mayor Boback announced he would like to award Mr. Rodney Melsek, whhas spent countless hours of his own personal time in developing the Town's Emergency Preparedness Plan.

XI. PUBLIC COMMENT:

Opened Public Comment

Public Comment was heard:

- Eddie Foster spoke about safety and security on the island.

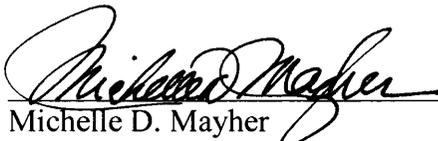
Closed Public Comment

ADJOURNMENT

The meeting adjourned at 7:45 PM.

Adopted 4-7-08 With/Without Changes. Motion by Kiker/Allen
(Date)

Vote: 5-0



Michelle D. Mayher
Town Clerk

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