



**MINUTES**  
**FORT MYERS BEACH TOWN COUNCIL**  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

**TOWN COUNCIL MEETING**  
**May 19, 2008**  
**6:30 PM**

**I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 6:33 PM. Present along with Mayor Kiker is Vice Mayor Herb Acken, Councilmember Tom Babcock, Councilmember Jo List, Councilmember Bob Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton, Town Clerk Michelle Mayher and Public Works Director, Jack Green.

**II. PLEDGE OF ALLEGIANCE**

All stood and recited the pledge of allegiance.

**III. PUBLIC COMMENT**

**Opened Public Comment:**

**Public Comment was heard:**

- Kim Avery was present representing The Main Event Catering, and requested an extension of hours for this event, to be from 5:00 – 11:00.

**Closed Public Comment**

**IV. PRESENTATIONS:**

**A. Green Lodging Presentation by Pink Shell General Manager, Bill Waichulas and his Green Team**

Councilmember List introduced the Pink Shell General Manager, Bill Waichulas recognizing the Pink Shell for the stellar green lodging accommodation. Mr. Waichulas indicated that the recognition really belongs to the staff of the Pink Shell, and introduced Katja Kunz, the “Green Team” leader. Ms. Kunz identified the green lodging program and spoke of the various measures the resort has taken to become a green lodging hotel staff cooperation, guest surveys, water conservation program, energy efficiency by using fluorescent light bulbs, sensors in closets and main hallways, a full FPL audit, exit signs are LED lights, recycling bins in guest rooms and using recycled items.

**V. CONSENT AGENDA:**

A. Approval of Minutes: May 5, 2008

B. Special Event Permit Application: The Main Event Catering

**MOTION:** Councilmember Babcock moved to approve the consent agenda.  
Councilmember List seconded the motion.

**VOTE:** Motion passed 5-0.

**VI. PROCLAMATIONS:**

Mayor Kiker indicated that he would like to add an item at this time, and that would be to present a proclamation recognizing Police Week, and asked Lee County Sheriff's Office Lieutenant Matt Le Clair to accept the proclamation. Town Clerk Michelle Mayher read the proclamation.

A. National Public Works Week

Mayor Kiker asked Public Works Director Jack Green to accept the proclamation.  
Town Clerk Michelle Mayher read the proclamation.

**VII. PUBLIC HEARINGS:**

A. Ordinance 08-06, Reduction in Town / Corporation Notice of Bulk Water  
Rate Adjustment

Mayor Kiker opened the public hearing.

**Opened Public Comment**

None

**Closed Public Comment**

Attorney Dalton read the title.

**ORDINANCE 08-06**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, AMENDING  
ORDINANCE 01-03 REGARDING THE WATER UTILITY FRANCHISE  
AGREEMENT WITH THE TOWN OF FORT MYERS BEACH PUBLIC  
WORKS SERVICES, INC.; PROVIDING FOR MODIFICATION OF NOTICE  
FOR FILING PETITION FOR RATE ADJUSTMENT; PROVIDING  
AUTHORITY; SEVERABILITY; CONFLICTS, EFFECTIVE DATE**

Vice Mayor Acken indicated he felt 30 days was too short. Attorney Dalton clarified that the ordinance referenced "at least" thirty days. Councilmember Babcock supports the ordinance. Councilmember Raymond supports the ordinance. Councilmember List asked regarding a rate increase. Public Works Director Jack Green responded that some rate increase would be anticipated, however it would not be a huge bump.

**MOTION:** Vice Mayor Acken moved to approve ordinance 08-06 with the following language in section two which is on Page 2 of 2, section 2 sub paragraph B: Applications for all rate and charge adjustments greater than five percent shall be filed with the town council in the form of a petition with supporting document at least three months or ninety days prior to the proposed effective date for the adjustment. Sub paragraph C: Applications for all rate and charge adjustments less than five percent shall be filed with the town council in the form of petition with supporting document at least thirty days prior to the proposed effective date for the adjustment.

Motion failed for lack of a second.

**MOTION:** Vice Mayor Acken moved to approve ordinance 08-06 with section two sub section B modified to reflect a three month, ninety day required notice for any change.

Motion failed for lack of a second.

**MOTION:** Councilmember Raymond moved to approve ordinance 08-06 as written. Councilmember Babcock seconded the motion.

**VOTE:** Town Clerk Michelle Mayher called the roll:

Councilmember Raymond:	aye
Councilmember Babcock:	aye
Councilmember List:	aye
Mayor Kiker:	aye
Vice Mayor Acken:	nay

Motion passed 4-1, with Vice Mayor Acken dissenting.

#### **VIII. ADMINISTRATIVE AGENDA:**

Mayor Kiker recognized Commissioner Judah and members of the Metropolitan Planning Organization and brought this item forward ahead of the Newton Park item.

##### B. Presentation by the Metropolitan Planning Organization

Councilmember Raymond, Town delegate to the MPO, introduced this item. Lee Transit Authority is in the works of possibly changing over to a separate taxing authority.

Don Scott, Director of the MPO introduced Joel Rey, Senior Project Manager with Tindale Oliver and Associates out of Tampa. The intention is to establish a dedicated funding source to address future transit needs. Mr. Rey began with an update as to its history.

**Opened Public Comment:**

**Public Comment was heard:**

- Commissioner Ray Judah encouraged the Town Council to consider sending a representative to serve on the oversight committee and at least participate to have a say.

#### **Closed Public Comment**

Councilmember Babcock responded to Mr. Rey's questions: Would he support transit? Absolutely. He wants assurance that the Town gets their fair share. Will he support the Transit Authority? Maybe, as there is more to learn. Dedicated funding sounds like a good idea, however there is concern about another taxing district. Mr. Babcock questioned the value of the interlocal agreement.

Vice Mayor Acken verified that this would go to the voters for referendum. Mr. Acken asked how Fort Myers Beach services will change. Mr. Rey replied some beneficial services would be a water-borne transit system and growth of the transit system or connectivity to Cape Coral or extended access, greater frequency and longer hours. Vice Mayor asked whether the Town exercised the withdrawal clause, would that "withdraw" the taxation on the Town. Mr. Rey replied he was uncertain how it would work out, however the key point is that there is some type of severability clause, the details to be worked out later. Mr. Acken is hesitant to bring any new taxes to the residents, however agrees that we need to be receptive to discussion.

Councilmember List indicated that the Town needs to participate, that we need public transportation.

Councilmember Raymond said that he is a proponent of public transit, and if the Town is not at the table, we will not have a voice.

Mayor Kiker asked whether the transit authority would go forward with or without the Town. Mr. Rey replied affirmatively. Mayor Kiker asked for clarification: it is his understanding that the Town is being asked to be a part of the development process, being referred to as the oversight committee, however after it is developed, is the Town being asked to be a part of the voting board? Mr. Rey replied yes, that every municipality will have at least one member. Mayor Kiker requested that the pros and cons be viewed, and would like to know that the negative effects have been considered.

Attorney Dalton expressed some concern about section two, of the version marked August 20 2007, "powers and duties shall include the following" and she wanted to remind the Council that should they sign this agreement, this would be a mandatory requirement, to assist in the Lee County Transit Authority and require the Town to move forward with an independent special district. Attorney Dalton suggested that the interlocal agreement state "may" and not "shall".

Town Manager Scott Janke asked the Council to allow staff until the June 16, 2008 town council meeting to review the details of the interlocal and to talk with the City

of Sanibel to see what there position is. Councilmember Babcock asked for copies of the other municipalities' position statements.

Recess: 8:30 PM Reconvene 8:40 PM

Mayor Kiker asked the Council's agreement to take Administrative Agenda item, C., Beach Renourishment out of order and hear that item next. Council concurred.

### C. Beach Nourishment

Mayor Kiker stated that the Council will not be talking about all the specific items of beach nourishment, rather the Council's position in how to look at opportunities and projects in front of the Council.

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

#### **Public Comment was heard:**

- Frank Schilling stated he is for renourishment, but not some of the things that go along with it. He asked the Council to slow down and understand all facets.
- Joanne Shamp attended a three day shore and beach conference and is of the opinion that renourishment is a financial and environmental overkill, the sand will wash away, the appearance of the beach will change, risk may be reduced but no protection is provided, it is a budget shortfall, and that property rights are impacted.
- Carleton Ryffel is in favor of renourishment and encouraged Council to figure out a way to do as much as they can, as fast as they can.
- Fran Myers reminded the Council that the TDC just put 1.3 million dollars in the beach renourishment fund. This project has been in the pipeline for fourteen years. She asked, if you don't have a managed beach, with beach renourishment, and should a storm come and tear out this beach, who will pay to put the beach back? The federal government will not.
- Commissioner Ray Judah mentioned he will go to WCIND to secure funding to renourish the northern end of the island. This can be justified because of the need of some larger vessels, including the Coast Guard. The Town needs a long term beach renourishment plan. The window of opportunity is closing. There are still funds to help with matching local and federal cost sharing.
- John Albion, President of the Fort Myers Beach Chamber of Commerce, noted that the Chamber has taken a position in favor of beach renourishment.
- Tom Merrill was pleased to have debunked a lot of misinformation, but some persists, for example renourishment providing hurricane protection is not true.

The Town's plan is half a plan, we are creating a tremendous capacity for the TDC marketing to bring more people. We need a traffic mitigation plan.

- Bonnie McLaughlin expressed a need to do what we can to help ourselves not to be blown off the map.

#### **Closed Public Comment**

Mayor Kiker reminded Council that we do not have a current interlocal agreement for beach renourishment.

Town Manager Scott Janke asked the Council to give staff direction to move forward with beach renourishment, and to begin the drafting of the Interlocal Agreement. Mr. Janke referenced Fort Myers Beach Resolution 08-24, to show local support for beach renourishment, and to hold funding in place.

Councilmember Raymond stated he believes in beach renourishment. He feels the Town must do it, however not from one end of the island to the other, rather specific areas. He supports the resolution.

Councilmember List expressed her gratitude to those who came forward with passion and sustained input that is very helpful. Ms. List referenced a conversation with Dr. Al Browder, a coastal engineer. She quoted from an article in "Shoreline": "Not surprisingly the dune feature and beach burm in the completed portion of the beach fill faired much better than the rest of the shoreline." Sand will not stop a hurricane, however the surge that comes with it, what is referred to as "an over-topping event". The more sand between a structure , street and the wave - surge will be beneficial. It behooves the Town to pursue renourishment. Ms. List supports pursuing the Interlocal Agreement. She added that tourism is the Town's only real industry.

Vice Mayor Acken thanked the public that came out to speak on both sides of this issue. He thanked the councils that came before, and all their hard work, and thanked the current Mayor, Town Manager, Town Attorney and staff for all the hard work.

Councilmember Babcock attended the beach preservation conference in Sarasota. Decisions are not easy. Mr. Babcock's top four issues relate to funding. Until the funding issues are worked out, all other issues are moot.

Mayor Kiker supports the resolution and the interlocal agreement, as it provides others with what Fort Myers Beach chooses to do. Mayor Kiker feels it behooves the Town to look at Estero Boulevard and the impact of this project. It is time for Council to make a decision on behalf of this community,

Town Manager Scott Janke spoke to the issue before the Council tonight, is to adopt the resolution stating the Town's support of the project, and to direct staff to begin negotiations of an interlocal agreement; staff is not asking for approval of any interlocal agreement at this time.

Attorney Dalton read the title:

**RESOLUTION 08-24,**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CONFIRMING TOWN POLICY FAVORING BEACH NOURISHMENT AND RENOURISHMENT WITHIN THE TOWN AND AUTHORIZING TOWN STAFF AND THE TOWN ATTORNEY TO PERFORM NECESSARY ANCILLARY ACTIONS TO IMPLEMENT SAME; PROVIDING AN EFFECTIVE DATE.**

**MOTION:** Councilmember Babcock moved to pass resolution 08-24. Vice Mayor Acken seconded the motion.

**VOTE:** Motion carried 5-0.

Discussion ensued relative federal dollars, cost savings, securing easements, and the process of where to go next. Mayor Kiker suggested a workshop or meeting to identify and describe issues.

**MOTION:** Vice Mayor Acken moved to pursue options to allow fed funding. Motion was **withdrawn**.

Council concurred for staff to draft a letter for the Mayor's signature to serve as a cover letter with Resolution 08-24, and send it forward to the Lee County Commissioners.

A Newton Park Interlocal Interest Waiver

Town Manager Janke brought this forward, the release of a 12% interest charge in the event the property was not made into a park.

**MOTION:** Councilmember List moved approval of amendment #1 to the Interlocal Agreement for County Grant Funding for the Newton Beach Property to remove the 12% accrued interest penalty for use of the property other than as a public park or public facility. Vice Mayor Acken seconded the motion.

Opened Public Comment:

None

Closed Public Comment

**VOTE:** Motion carried 5-0.

Recess: 10:15 PM

Reconvene 10:30 PM

D. Discussion on Cell Phone Policy

Town Council discussed the addition of a cell phone policy being added to the Councils Policies and Procedures Manual, whereby Councilmembers will be reimbursed for personal cell phone use for Town business. Councilmember Babcock was of the

preference to have a Town issued cell phone for Town business. Town Manager Janke will redraft the policy to include the addition of a cell phone.

E. Gas Tax Interlocal Agreement

Town Manager Scott Janke outlined this item. The current interlocal agreement between the Town and Lee County is due to expire on September 30, 2008. Staff is seeking direction to pursue a new agreement. The new agreement is basically the same as the current, with two changes: one that the 1.53% of the County receipts are currently being collected and held by the County. The new agreement would have the money collected by the County and then given to the Town. The second change is in identifying the seasonal population to be based on the Tourist Development Council's figure of seasonal population.

Opened Public Comment

None

Closed Public Comment

**MOTION:** Councilmember Babcock moved to go forward with the interlocal as drafted. Councilmember List seconded the motion.

**VOTE:** Motion passed 5-0.

Attorney Dalton sought the direction from Council to advise the County that we apply the 1.53% that they are holding to other projects, and to pursue the seasonal bump as discussed, and to be retroactive for the passed five years.

**MOTION:** Councilmember Babcock moved to pursue direction according to Attorney memo dated May 11, 2008. Councilmember List seconded the motion.

**VOTE:** Motion carried 5-0.

F. Mayors' Meeting Memorandum

Mayor Kiker brought this item forward as a follow up to a County Mayors' Meeting, the subject of which was annexation. One letter in the packet is a template from Lee County Commissioner Hall, another is from the City of Bonita Springs, and a letter from Community Director Gerald Murphy as to what the Town's Comp Plan would allow.

Council directed the Town Attorney to research the Town's position on annexation, and to sign and send the draft letter for the Mayor's signature.

**IX. TOWN MANAGER'S ITEMS:**

A. Update on Sign Compliance, Community Development Department

Town Manager Scott Janke turned to Community Development Director Jerry Murphy for this item. Mr. Murphy stated looking for additional direction from the Council on how to move forward with Notices of Violations and the time to abate. Approximately 50-100 signs are out of compliance. Mr. Murphy opined it is an

optimistic assumption that people who may receive a letter regarding compliance, have no idea that they are out of compliance. The attempt is to get these people in to the process and discussion to find solutions.

**MOTION:** Councilmember Babcock moved to direct staff to send warning letters with a warning period of thirty days. Councilmember Raymond seconded the motion.

**MOTION: Secondary.** Vice Mayor Acken moved to change the warning period to ninety days and to allow for a variance fee of thirty-five dollars with a warning period of three hundred days.

**Secondary motion** fails for lack of a second.

**MOTION: Secondary.** Vice Mayor Acken moved to change the warning period to three hundred days. Motion failed for lack of a second.

Mayor Kiker asked to have a copy of the letter forwarded to the Council.

**MOTION:** Vice Mayor Acken moved to table this item until Council can see the letter from Community Development.

Mr. Murphy asked whether Council wanted to see the letter prior to it being sent. Council concurred. Mr. Murphy stated copying the Council on the letter to be sent to people that are not in compliance simultaneously with the letters being sent.

**VOTE:** On the motion to table, motion fails 4-1, with Vice Mayor Acken in favor.

**VOTE:** On the main motion, motion carried 4-1, with Vice Mayor Acken dissenting.

#### B. April Financials Report

Town Manager Scott Janke stated this item was informational. Councilmember Raymond indicated that he is looking for monies in this year's budget that have been allocated to a project, but have not been spent. Mr. Janke indicated that he will put together a Capital Projects Financial Report for the Council.

#### C. Emergency Operations Plan Re-entry Pass

Town Manager Scott Janke indicated he has been working with the Lee County Sheriff's Office, the Fort Myers Beach Fire Department and the Greater Fort Myers Beach Chamber of Commerce and has come up with a system to help residents and local business owners come back onto the island in the event of a weather incident this hurricane season. In the packet for this meeting Mr. Janke provided an application form and a copy of a proposed windshield decal. Mr. Janke is looking for authorization to move forward.

Councilmember Babcock suggested removing the Drivers' License number from the form.

**MOTION:** Councilmember Babcock moved to approve the format as outlined. Councilmember Raymond seconded the motion.

Opened Public Comment  
None  
Closed Public Comment

**VOTE:** Motion carried 5-0

**D. Update on Estero ROW Over-pavement Project**

Town Manager Scott Janke turned to Public Works Director Jack Green. Mr. Green indicated that this project had been brought forward to the Council from the Public Safety Task Force. Staff has looked at the use of a flexi-pave material made from recycled tires, and staff is looking to go forward within the next thirty days.

**MOTION:** Vice Mayor Acken moved to authorize staff to enter into a sole source contract with K-B Industries for the Flexi-Pave” Councilmember Babcock seconded the motion.

**VOTE:** Motion carried 5-0.

Town Manager Scott Janke indicated he will report on the progress of the beach renourishment negotiations at the June 2<sup>nd</sup> and June 16<sup>th</sup> town council meeting.,

**X. TOWN ATTORNEY’S ITEMS:**

No items

**XI. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Raymond had no items.

Councilmember List had no items.

Vice Mayor Acken

Councilmember Babcock mentioned being the Town’s representative on the Agency on Bay Management. Mr. Babcock commented on vacancies on other County advisory boards, and requested a compilation of various County advisory boards.

**MOTION:** Councilmember Babcock moved to appoint Mr. Art Monahan to the Town’s Marine Resources Task Force. Mayor Kiker seconded the motion.

**VOTE:** Motion carried 5-0.

Councilmember Babcock asked to have the Council's Policies and Procedures Manual back on a future agenda.

Mayor Kiker referenced having received comments from islanders regarding the speed of the Lee County Sheriff's Office on local roads. Mr. Janke will discuss this with Captain Powell.

Mayor Kiker asked to have the drug testing memo done by the Town Attorney be posted on the Town's website.

## XII. PUBLIC COMMENT

Opened Public Comment

None

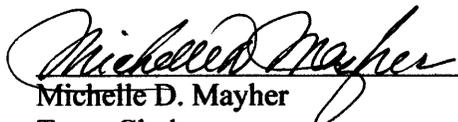
Closed Public Comment

## ADJOURNMENT

The meeting adjourned at 12:12 AM (Tuesday, May 20, 2008)

Adopted 6.02.08 With/ Without Changes. Motion by List / Raymond  
(Date)

Vote: 5-0

  
Michelle D. Mayher  
Town Clerk

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