



MINUTES

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

March 1, 2010

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 6:35 p.m. Present with Mayor Kiker was Vice Mayor Acken, Council members Babcock, List and Raymond along with Town Manager Terry Stewart, Attorney Anne Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

Deacon Scoop Kiesel, Church of the Ascension led the invocation.

III. PRESENTATION OF COLORS: Fort Myers Beach Boy Scout Troop 999

IV. PLEDGE OF ALLEGIANCE: Fort Myers Beach Elementary School 5th Grade Representatives Taylor Green and Sam Hoerr led the Pledge of Allegiance.

V. YOUTH COUNCIL: Beach School Announcements

Taylor Green and Sam Hoerr from Beach Elementary updated Council and the public on happenings at the school. Sam stated the K kids were selling 'feet' to help with the Relay for Life to be held on the beach. Students also had collected shoes for the people of Haiti indicating the students from Gulf Coast University picked up 108 pairs of shoes from the school. Taylor noted that starting March 9th the 3rd, 4th and 5th graders would be taking the FCAT, indicating that all students did well last year and expected the same or better this year. Also on March 19th the students will be able to wear their pajamas to school to 'put the test to rest' followed by an ice cream party to celebrate their success.

**VI. PROCLAMATION: Historic Society in Recognition of Fort Myers Beach
Boy Scout Troop 999**

Councilmember Jo List read a proclamation honoring Troop 999 as well as Sandor Kane, the latest Eagle Scout recipient and last year's Eagle Scout, Chip Bunting.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Mayor Kiker noted that public comment was moved up in the Agenda due to a request.

Councilmember Babcock congratulated the Friends of the Mound House for their 5 one act plays presented at the Beach Theater, and particularly Keith Laakkonen for the handling of the algae issues over the last few weeks, addressing the media, and educating the public regarding beach algae. Councilmember Babcock also sent his thoughts to beach resident Claude Bowyer who was injured on Estero Boulevard.

Vice Mayor Acken thanked all who participated in the Blessing of the Fleet, noting the neighborhood and community feel at the event.

Councilmember List also asked everyone to keep Mr. Bowyer in their thoughts and prayers as well as commenting on the success of the Blessing of the Fleet event.

Councilmember Raymond agreed with all comments made by the other Council members.

Mayor Kiker spoke about attending the event to meet all the Princess candidates for the upcoming Shrimp Festival. Mayor Kiker then commented on attending Market Watch, stating from the information presented it could be a couple of years before the area turns around on residential properties and a few years more for commercial. Mayor Kiker did pass on the data that Fort Myers Beach had increased in sales and decreased in inventory over the past year and felt the island could be the leader in the real estate turnaround.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

None

IX. PUBLIC COMMENT

Public Comment Opened

No Public Comment

Public Comment Closed

X. CONSENT AGENDA

A. Approval of Minutes: January 19, 2010

B. Approval of Minutes: February 1, 2010

- C. Approval of Minutes: February 3, 2010 Continuation of February 1, 2010
- D. Approval of Minutes: February 3, 2010 Worksession
- E. Special Event Permit Application – Civic Association, 1950's Dance

Town Manager Stewart requested item E. be pulled for discussion regarding insurance. Manager Stewart indicated the Civic Association had approached the Town indicating insurance could be an issue as far as cost was concerned, making it prohibitive for them to acquire insurance for the event. The Civic Association asked if the Town would allow them to provide a rider to the Town's insurance, paying for the rider. Mr. Stewart indicated if the Town were a sponsor of the the event there would be no need for the insurance, but since the Civic Association is the sponsor they would be required to obtain insurance making it a matter of discussion for Council.

Attorney Dalton indicated if the Town's insurer had no problem with an association paying for a rider to the Town's insurance policy she saw no reason not to allow it, stating it was a policy decision for Council.

Mayor Kiker questioned if it was an event for Bay Oaks sponsored by the Civic Association or if it were a Civic Association Event held at Bay Oaks. Town Manager Stewart indicated it was a Civic Association event for the benefit of Bay Oaks.

Vice Mayor Acken asked if there was any increased exposure to the Town if there was alcohol at the event. Attorney Dalton indicated the rider would have to be reviewed, stating it would be a policy question whether the Council would want to allow it, noting Council could be setting a precedent for other organizations as well.

Mr. Stewart recommended Council approve the request contingent upon staff being able to secure the rider as well as receive assurance from the insurer that the Town's liability would not be significantly increased. Mr. Stewart indicated from his past experience it was very common for organizations to request this.

Attorney Dalton requested the ability to review the rider to make sure it read appropriately.

MOTION: Vice Mayor Acken recommended approval with the contingencies with a second by Councilmember List.

Vice Mayor Acken asked for clarification that the motion included that the Town did not take on any additional liability by allowing the Civic Association to be able to use a rider.

Councilmember Babcock asked for clarification that the issue would be handled administratively with no need to come back to Council. Mr. Stewart indicated that was correct.

VOTE: Motion passed 5 to 0

Mayor Kiker asked Pat Smith to come to the podium to describe the event.

Pat Smith on behalf of the Civic Association thanked Council for voting to support the event, a 1950's, 1960's dance called The Bay Oaks Boogie to benefit Bay Oaks Recreational Center, leaning toward scholarships to assist children in paying for Bay Oaks Programs. Miss Smith indicated there was to be a disc jockey with admission of \$15 per person \$30 for a couple. The Beached Whale and Mermaid Lounge had offered to serve the drinks donating the proceeds to Bay Oaks. Miss Smith stated the Civic Association was asking for two things; one being the allowance of alcohol for the event and two allowing for a rider to the Town's insurance or for the Town to co-sponsor allowing the event to be covered under the Town's insurance. Miss Smith stated the event would be Saturday night, March 27th from 7 p.m. to 11 p.m. with alcohol sales being cut off at 10:30, noting they would be arranging for a deputy sheriff to be present.

Mayor Kiker then reviewed the list of meeting minutes on the Consent Agenda for approval.

MOTION: Councilmember Babcock moved for approval of Consent items A through D with a second by Councilmember List.

VOTE: Motion passed 5 to 0

XI. ADMINISTRATIVE AGENDA

- A. Nabors, Giblin Engagement Letter
- B. Discussion and Direction on FEMA Flood Mitigation Grant Programs and Erickson Application
- C. Award of Bid, 10-01-CR, Mound House Landscaping Restoration

Town Manager Stewart asked Council to pull item C. Award of Bid, 10-01-CR, Mound House Landscaping Restoration due to information he had received regarding the process, requesting time to clear up a few issues. Mr. Stewart addressed the length of time on the project, citing the permitting process taking 2 years just to be able to get to the point of moving forward and stating that was not uncommon in dealing with the State, Army Corp of Engineers and DEP. Mr. Stewart indicated his desire to make sure the Town proceeded in the right way making sure the public was comfortable with how the process was being handled.

Council gave consent to pull item C.

- A. Nabors, Giblin Engagement Letter

Attorney Dalton indicated Council had previously given direction to former Interim Town Manager Green and herself to have a discussion with Nabors,

Giblin and Nickerson, with contact person being Chris Traber, regarding providing services relating to the Water Utility. The loan was coming due this summer and the Revenue Refunding Note Series 2007 which was issued on August 6, 2007 was coming due on August 6, 2010. Based upon Council direction she and Mr. Stewart spoke to Chris Traber of the Law Firm of Nabors, Giblin & Nickerson who have provided services in the past pertaining to the Water Utility and the Corporation as well as special services regarding the special assessment that was done regarding Laguna Shores.

Attorney Dalton indicated before Council was a letter of engagement dated February 22, 2010 providing legal services related to the refinancing and revenue refunding note. Attorney Dalton indicated she had provided Council with a memo earlier in the day asking if the Town would be going out for a request for proposals for refinancing or if the Town would be continuing with Sun Trust, indicating it was a Council decision.

Town Manager Stewart stated in regard to whether the Town should go to RFP on borrowing, the amount was not a huge amount in the course of municipal borrowing for most lenders. In regards to remaining with the current lender or going elsewhere, Mr. Stewart indicated most institutions normally did not want to participate in a loan if there was not a depository and treasury relationship with them. Mr. Stewart stated the relationship with Sun Trust was good, citing the need to meet the loan covenants.

Mr. Stewart also indicated that normally he would be in favor in going out for RFP, but in this particular case it would be expending time and additional monies with no real benefit realized. Town Manager Stewart also stated he had contacted the Town's representative at Sun Trust and was given all indications that they were ready to move forward with the refinancing.

Public Comment Opened
No Public Comment
Public Comment Closed

Councilmember Babcock asked for clarification on the duties of Nabors, Giblin & Nickerson since the Council had never officially voted on refinancing the debt or even if refinancing the debt was legal, whether the law firm would be offering an opinion on the referenda that was held in 2007, and whether it would allow the Town to refinance. Attorney Dalton responded that that was part of the services they would be offering.

Councilmember Babcock then asked if that would be done and brought back to Council before refinancing. Attorney Dalton indicated that Nabors, Giblin, herself as well as Town Manager Stewart would follow whatever direction Council wished. Councilmember Babcock stated to his knowledge Council had never decided how best to refinance the debt, with

it having been brought to the attention of Council multiple times since March of 2009. He indicated Council had looked at 3 different options, one being to change the Charter through a referenda, as well as having discussions to hold a referendum to allow the roll over of the debt or to have a validation hearing to determine if the referenda in 2007 allowed Council to roll over the debt. Councilmember Babcock indicated he was uncomfortable, asking the question once again if the Town could legally roll over the debt.

Councilmember List asked if that was one of the questions that would be answered by the law firm with Attorney Dalton answering yes.

Vice Mayor Kiker indicated they might be legally able to refinance year after year but may be bypassing the Charter at a fairly high interest rate.

Councilmember Raymond indicated he would have preferred a referendum, stating it had been talked about for nearly a year, but noting there was no choice, it had to be done.

Mayor Kiker reminded everyone that there was an extensive conversation on the issue along with a referendum with a 96% approval rate but there had been the advice of Attorney Dalton and others that the Town should not follow that referendum. Attorney Dalton stated that was correct as there were no dollars and the Town had not done the needs analysis and the financial dollars were not available for the referendum. Mayor Kiker also indicated the Town was given advice against the validation hearing. Councilmember Babcock stated he could find nothing in any minutes stating that and noted Council had been talking for a year but taking no action.

Councilmember Babcock felt Council needed someone to tell them it was ok to go ahead with the refinancing, stating when he read the referendum it presented questions in his mind.

Attorney Dalton felt the letter from Nabors, Giblin and Nickerson indicated their first step was to review the very thing Councilmember Babcock was questioning.

Vice Mayor Acken indicated the requested motion and the requested scope of work would answer the questions of Councilmember Babcock.

Councilmember Babcock stated the Town could not default and indicated he was for doing anything in parallel to give the Town plenty of time to react to any unexpected questions that come up along the way, noting he was uncomfortable with the wording of the motion but now feeling much more comfortable after the discussion that the issues were being addressed.

Attorney Dalton provided Council with a suggested motion:

Move to approve letter of engagement dated February 22, 2010 with Nabors, Giblin & Nickerson for provision of legal services as bond council related to Revenue Refunding Note, Series 2007.

MOTION: Vice Mayor Acken moved for approval of letter of engagement dated February 22, 2010 with Nabors, Giblin & Nickerson for provision of legal services as bond council related to Revenue Refunding Note, Series 2007 with a second by Councilmember List.

Town Manager Stewart indicated he understood there was a discussion about moving forward with the actions that were contemplated by the referendum based upon the fact that there were no specific dollars outlined in the referendum which dealt with the current debt and additional debt which might be necessary for improvements to the system. Mr. Stewart felt it would probably not be a path to take if there was no analysis provided on the additional work that was to be supported by the future debt, as it related to the long term refinancing of the current debt he would like for Nabors, Giblin to opine if there was sufficiency within the referendum itself to support the long term refinancing of the current debt. Mr. Stewart stated it was well known what the debt was, having been reported to the Town on a routine basis.

Councilmember Babcock wanted to read what the wording was on the referendum to deal with any confusion there might be, feeling it did not deal with any capital improvements to the system.

Councilmember Babcock read the referendum aloud and felt there were two parts, one which was rolling over the purchase and whether passing the referenda allowed for refinancing once, twice or many times and whether it allowed for a term longer than 36 months indicating the answer could allow the Town to get better terms for a longer period of time.

Mr. Stewart felt the issue of 36 months was one matter but the general obligation or referenda approved financing it was not uncommon for municipalities to refinance a debt once they had been approved, stating they were not adding anything to it, but just refinancing a current debt, perhaps to gain a more favorable interest rate or terms.

Mayor Kiker stopped the discussion indicating many hours had been spent on the discussion bringing Council back to the motion on the floor.

VOTE: Motion passed 5 to 0

B. Discussion and Direction on FEMA Flood Mitigation Grant Programs

Town Manager Stewart indicated from the last meeting the issue was

raised whether the Town wanted to continue with the program that provided support to property owners in raising the level of their structures to the current requirements for Flood Plain. Mr. Stewart stated there was money available to accomplish the projects with FEMA having very specific requirements of a contract with the State administering the money for FEMA with the Town having a contract with the State, as well as a contract with the property owner since the Town would be responsible for the pass through of the dollars. Mr. Stewart noted there was a requirement put into place by a previous Council that any property owner taking advantage of the program was required to have a letter of credit or performance bond in place before Council authorized the project. Mr. Stewart stated Mr. Erickson was willing to do that, indicating there were two issues before Council; one being whether or not the Town would continue to participate with FEMA on the projects and Mr. Erickson in particular, who was willing to put up a letter of credit as the current requirements provide for, with the next issue being that the Town Attorney and he feeling it was a rather onerous requirement. Mr. Stewart recommended getting rid of the requirement or putting a letter of credit or performance bond into place for a limited amount of time.

Attorney Dalton indicated Council had a memo before them from February 22, 2010 outlining options to assist with the discussion. One alternative would be to continue with the current guarantee, another would be to completely eliminate the requirement of a guarantee, stating that several Councils ago the contracts went forward with no requirement of guarantee, with yet another option being to require guarantee for duration of the project and another for duration of the project and one year thereafter. Attorney Dalton recommended if Council wanted to make it less onerous they could require all funding be on a reimbursement basis, noting there was a limited option for the State to provide the money up front with the risk to the Town being insignificant. If it were on a reimbursement basis then the property owner would have to jump through a number of hoops with the State of Florida before getting the money, which would better protect the Town. Attorney Dalton indicated that a lot of private individuals could not get letters of credit as it tied up their personal credit and noting that it was a benefit to the Town in having the work done.

Public Comment Opened
No Public Comment
Public Comment Closed

Councilmember Babcock questioned the process for the funds. Attorney Dalton recommended that if Council were to reduce the requirement of a guarantee then they require all funding to be on a reimbursement basis.

MOTION: Vice Mayor Acken moved to approve continuing with the program and all funding would be on a reimbursement basis to the

sub recipient, the person getting the money, removing any requirement for a letter of credit.

WITHDRAWN: Councilmember Babcock indicated he could not support that motion asking Vice Mayor to read into the motion option 3. Vice Mayor removed his motion from the floor.

MOTION: Councilmember Babcock moved to approve the use of the program without the requirement of a letter of credit using option #3 with the Town requiring a guarantee for the duration of the project and require that all funding by the State be on a reimbursement basis with a second by Councilmember List.

VOTE: Motion passed 5 to 0

XII. PUBLIC COMMENT

Public Comment Opened

No Public Comment

Public Comment Closed

XIII. TOWN MANAGER'S ITEMS

Town Manager Stewart stated since being on the job he has had an opportunity to learn more about the water system. Not wanting to be an alarmist he felt it was a priority issue for the Town and indicated Council and staff needed to decide how best to deal with it in the near future.

Councilmember Babcock indicated one of the critical issues was the right of way study and asked if there was a time noted for its completion.

Town Manager Stewart stated the survey and analysis was on track with the deliverables being slated for April.

XIV. TOWN ATTORNEY'S ITEMS

Attorney Dalton stated she had sent an email to Council requesting an Executive Session for April 5th concerning the lawsuit of Southwest Florida Beach Bay Inc and 151 Old San Carlos LLC vs. Town of Fort Myers Beach and John Richard, Case Number 10-CA-484 with the subject matter being to discuss litigation strategy and other matters as permitted by the limited exception to the Sunshine Law, expecting the session to last approximately 1 hour. April 5th at 8 a.m. was selected for the session.

Attorney Dalton indicated she had received direction previously that Denise Wheeler was to be retained to assist the Town in the lawsuit and requested that be confirmed by Council.

MOTION: Councilmember List moved to approve Ms Wheeler be retained as council with a second by Councilmember Babcock.

VOTE: Motion passed 5 to 0

XV. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Raymond thanked Town Clerk Michelle Mayher and those who came to the workshop regarding the two islands working together for San Carlos Boulevard and the trolleys, indicating another meeting was being slated for everyone to get together again.

Councilmember List reminded all that Saturday March 6th would be opening day for Little League and encouraged everyone to attend along with the Lions Club Kids Run being earlier in the day on Saturday. Councilmember List also noted that she had attended the monthly Horizon Council Meeting.

Vice Mayor Acken stated he had received an email just prior to the evening's meeting from the people operating the hippo slide and requesting the route they needed to take to expand their space. Vice Mayor Acken indicated he hoped staff could provide them with the proper path to accomplish their goals.

Town Manager Stewart stated he had already started that process having spoken with the Town Attorney about the matter earlier and it was in the midst of an administrative review.

Vice Mayor Acken stated it had been an honor serving with everyone on Council, the previous Council and all of staff.

Councilmember Babcock stated he had gone to the workshop with San Carlos Island, noting it was a very good workshop albeit heavily loaded with San Carlos Island representatives, pointing out to him that Fort Myers Beach needed representation for the island. Councilmember Babcock indicated that comments made were about the interest of getting people to Fort Myers Beach which was not the case, stating the intention of the meeting was to find solutions that were good for everyone. Councilmember Babcock strongly encouraged Council to initiate another traffic committee citing the accident concerning Claude Bowyer. Councilmember Babcock noted he had begun to look at how many beach accesses did not have crosswalks.

Councilmember Babcock then referenced the development coming to San Carlos Island and the impact it would have on Fort Myers Beach; part of which could be the increased traffic of construction trucks, asking if the Town should be putting some protection in place possibly an ordinance that would not allow that to happen, suggesting it be brought back as an action item for discussion.

Councilmember Babcock addressed a letter sent to one of the local papers

in regards to the vendors on the beach and placing their chairs too close to the water's edge making it difficult for walkers to get through. Councilmember Babcock suggested making a change to the LDC to include regulations on the placement of the vendor's beach equipment. Councilmember Babcock indicated MRTF was working on a process to license the operators that do beach raking as the Town's Codes are not being followed, stating the Town needs to reinforce the intent of the Comp Plan and the LDC and encouraged discussions with those doing the raking.

Mayor Kiker asked for an update regarding a letter from a volunteer for the LPA and/or Anchorage Advisory Committee. Town Clerk Mayher indicated it was ready for review at the Council's direction and could be put on the next Agenda.

Mayor Kiker brought up Council having given Councilmember Raymond the task of looking into putting together a Traffic Committee with Councilmember Raymond indicating he may be passing that task along to someone else. It was then noted by Mayor Kiker that he and Mr. Stewart had their first meeting with the County regarding Seafarer's Mall; it was a brief meeting with assignments given to find out the true disposition of the property.

XVI. AGENDA MANAGEMENT

Town Manager Stewart had no changes or updates to date.

Attorney Dalton had an amendment regarding an item for Town Manager and Town Attorney scheduled for March 3rd stating that at the last meeting a decision was made to defer the Town Attorney item as Attorney Dalton had a previous engagement so that part needed to come off of agenda management per Council direction.

Councilmember Babcock questioned the dates for M & P Meetings, citing a date of April 21 for the Water System Replacement Meeting and March 24th for the Strategic Planning Meeting. Councilmember Babcock then asked if the Charter discussion which had been slated for March 17th was canceled permanently or was it moved to another date. Town Attorney Stewart noted it was there prior to his tenure and would be happy to assist with it if it were Council's wish.

Mayor Kiker suggested Council get through March, noting there was a meeting scheduled for March 3rd for Management Criteria with Town Clerk Mayher stating the meeting was for Town Manager and Town Attorney evaluations, duties and assignments, performance and job descriptions as well as Town Attorney in house or contractual. Councilmember Babcock felt some of the items were not now needed and were simply brainstorming items, indicating he had shared previously a way to evaluate a Town Manager, taking the feedback he was given bringing back a simpler version for review, stating that is what he expected the

March 3rd meeting to cover.

Mayor Kiker stated there would be a meeting at 9 a.m. on the 15th of March and 9 a.m. on March 24th for M & P regarding Strategic Planning, April 5th would be an 8 a.m. start, April the 7th worksession scheduled as Estero Boulevard originally with hopes the survey would be back to Council for discussion and if not Council would change the subject accordingly. The meeting on April 21st would be Utilities.

XVII. RECAP OF ACTION ITEMS

- Civic Association Event benefiting Bay Oaks resolving the insurance issue
- Working with Nabors, Giblin to present information regarding refinancing
- Council agreed to participate in the FEMA Flood Mitigation Program and move forward with Mr. Erickson's application
- Approval of Attorney Denise Wheeler to be used regarding lawsuit
- Follow up by staff regarding the hippo slide in the Times Square area
- Boards and Committees volunteer placed on next agenda
- Identify a date for agenda item to cover the Town Attorney's evaluation

X. ADJOURNMENT

MOTION: Vice Mayor Acken made a motion to adjourn the meeting with a second by Councilmember List.

VOTE: Motion passed 5 to 0

Meeting adjourned at 8:25 p.m.

Adopted 4-5-10 With/Without changes. Motion by Babcock / List

Vote: 5-0


Michelle D. Mayher, Town Clerk

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