



MINUTES

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

AGENDA

February 16, 2010

6:30 PM

I. CALL TO ORDER

Mayor Kiker called to order the meeting February 16th, 2010 at 6:40 p.m. Present with Mayor Kiker was Vice Mayor Acken, Council members Babcock, List and Raymond along with Town Manager Stewart, Town Attorney Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

Invocation led by Reverend Jeanne Davis, First United Methodist Church.

III. PLEDGE OF ALLEGIANCE

Pledge led by Reverend Jeanne Davis

IV. LOCAL ACHIEVEMENTS AND RECOGNITION

Town Manager Stewart acknowledged Town Clerk Michelle Mayher in her achievement of becoming a Certified Municipal Clerk.

Mayor Kiker and Town Manager Stewart presented plaques and recognition to Coldwell Banker who presented a \$1,600 donation to the Bay Oaks Teen Program and to Harbor House at the Inn for their donation of \$4,000 to the Seniors and Youth Programs.

Mayor Kiker mentioned that Town Attorney Dalton had been a prior recipient of the Paulette Burton Citizen of the Year award, joining Fran Myers as well as her own father and congratulating Roxie Smith for also receiving the award.

Councilmember List offered her congratulations to Roxie Smith for her years of incredible service to the Town.

V. PUBLIC COMMENT
Public Comment Opened

▪ **Bill Waichulis** General Manager Pink Shell Resort addressed Council regarding Beach Nourishment, noting the limited beach on the North end of the island and encouraged Council to proceed with beach nourishment.

Public Comment Closed

VI. ADVISORY COMMITTEES ITEMS AND REPORTS

A. 2009-24, LPA Resolution, COP Expansion

Town Manager Stewart indicated this item may have been cast in the incorrect position and was actually a resolution that the public should have been given an opportunity to comment. M

Mayor Kiker felt the need to reschedule and to have the LPA present with staff providing a filter in terms of process with the information obtained and placing the item under Administrative Agenda to allow for public comment.

Council discussed the path Council should take in moving the subject forward.

Mayor Kiker suggested scheduling the topic in the future and allowing time for public comment. Town Manager Stewart discussed process, providing three approaches one being to allow things as they are, to support the resolution that was brought forward by the LPA or take an opposing stance in the opposite direction which would require a separate resolution.

Discussion ensued as to the possible process to follow and whether or not Council wanted to work on the subject. Consensus of Council was to not address the issue at present but include it to prioritize with the LPA at a future meeting.

VII. CONSENT AGENDA

A. Approval of Minutes: January 21, 2010

MOTION: Councilmember Babcock moved for approval with a second by Councilmember List.

VOTE: Motion was approved 5 to 0

VIII. PUBLIC HEARINGS

A. Ordinance 10-03, Animal Control Services

Town Manager Stewart indicated the revision was putting together several of the Ordinances into a single vehicle that would be more comprehensive and easier to understand for the public and for Lee County. Lee County has in the past asked that the Council adopt their ordinance by reference and the Town Council had indicated it was not prepared to do so, so staff brought forward the presented recommendation. Mr. Stewart advised Council not to adopt the Lee County Ordinance by reference as the County wanted even though they implied there may be additional costs incurred if Council did not do so. Mr. Stewart indicated it was a State Statute for the County to provide the services.

Attorney Dalton read the title: **TOWN OF FORT MYERS BEACH ORDINANCE 10-03, AN ORDINANCE REGULATING THE CONTROL OF ANIMALS WITHIN THE TOWN OF FORT MYERS BEACH, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH ANIMAL CONTROL ORDINANCE; PROVIDING FINDINGS, PROVIDING FOR PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT AND PENALTY; REPEALING ALL PRIOR TOWN ORDINANCES REGARDING ANIMAL CONTROL; PROVIDING FOR SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.**

Public Comment Opened
No Public Comment
Public Comment Closed

MOTION: Councilmember Babcock moved to adopt Ordinance 10-03 to be known as the Animal Control Ordinance with a second by Councilmember Raymond.

VOTE: Roll Call
Councilmember Babcock Aye
Councilmember Raymond Aye
Councilmember List Aye
Mayor Kiker Aye
Vice Mayor Acken Nay

Motion passed 4 to 1 with Vice Mayor Acken dissenting.

Mayor Kiker closed the hearing at 7:30 p.m.

IX. ADMINISTRATIVE AGENDA

A. 10-10, Resolution Fee Schedule, Animal Control Services

Public Comment Opened
No Public Comment
Public Comment Closed

MOTION: Councilmember Babcock moved to adopt Resolution 10-10 to provide the fees and fines for animal control purposes with a second by Councilmember Raymond.

VOTE: Motion passed 5 to 0

X. TOWN MANGER'S ITEMS

Town Manager Stewart indicated he had prepared a letter to the Lee County Commissioners regarding beach renourishment outlining each of the items that were of significant concern to the Council and would provide Council with the draft the following day. Mr. Stewart stated it would be put together with a cover letter and forwarded to the County Commissioners for their review.

After discussion about how to review the letter, whether additional input could or should be added from Council it was decided to take a recess for copies of the letter to be made and distributed to Council for their review.

Recess: 7:40 PM Reconvene: 7:48 PM

Town Manager Stewart stated to Council that the letter was only part of the equation of what the County Commission would receive noting there should be a cover letter coming from Council with the Mayor as the representative that would define the atmosphere of when the discussion originally took place and what the Town's concerns were and setting the details.

Regarding a consensus of items:

1. No concerns
2. Vice Mayor Acken did not agree on releasing all the easements
3. No Concerns
4. Vice Mayor Acken did not agree
5. Councilmember Babcock felt there should be no cost to the Town for a navigation project.

Town Manager Stewart brought forth an issue regarding a mitigation project under FEMA regarding a program of properties that have repetitive flood damage.

Dr. Shockey stated that the Federal Government as part of the unified plan for the national flood insurance program provides funding for states, local governments and individuals to encourage mitigation of future flood hazards. The programs are aimed at bringing non conforming structures

into compliance and mitigating damage that might be sustained from future floods through structural and nonstructural alterations. In the case of Mr. Erickson his house was substantially below the required flood elevation and he voluntarily came forward partially due to losses sustained in the past and indicated his desire to be a part of the program when funds became available several years ago through the program. Dr. Shockey indicated Mr. Erickson submitted data about his property and the scope of work to bring his property into compliance with the current flood requirements, which meant elevating the house. His project was approved by FEMA but the process of administering the grant was torturous and involved an agreement between the Town and the State and the Town and Mr. Erickson.

Dr. Shockey noted that should something go wrong amongst the various requirements of the agreement there is the potential the actions of Mr. Erickson and or the Town are audited by the State and or FEMA and if there are problems discovered then some or all of the money that was provided through the Town to Mr. Erickson could be required to be repaid, which was why a prior Council took the position that some sort of protection for the Town's potential liability should be provided either in a letter of credit or a performance bond.

Dr. Shockey clarified that at this time, staff is asking for the Mayor to execute the necessary agreements now and in the future to ensure the project could go forward and Mr. Erickson could complete his project.

Town Manager Stewart expressed staff's desire for Council to acknowledge The intention to participate in the program and thereby enable the Town to participate and do the project. Mr. Stewart reiterated that no funds come from the Town, noting the funds come from FEMA and from the property owner.

Mayor Kiker asked to have it put on an agenda with the necessary material for Council to be able to follow along with the process.

MOTION: Vice Mayor Acken made a motion to allow the Mayor to be a signatory on the application for the case in question and move forward with **a discussion**

FAILED: For lack of a second.

Mayor Kiker indicated there was a consensus for the issue to be moved forward as an agenda item.

XI. TOWN ATTORNEY'S ITEMS

A. SWF Beach Bay, Inc & 151 Old San Carlos LLC v Town of Fort Myers Beach & John Richard/case # 10-CA-484

Attorney Dalton had nothing to report.

XII. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Babcock suggested reinstating the Traffic Mitigation Agency, indicating there continued to be traffic issues.

Mayor Kiker asked Councilmember Raymond to review what he felt the Town would like to have in terms of representation on traffic and come back to Council with a recommendation.

Council discussed the joint meeting to be held in Council Chambers regarding traffic issues and the trolley lane from Summerlin to the bridge. Council also discussed the proposed painting of Matanzas Pass bridge.

Councilmember Raymond read a letter drafted to send to the MPO on their request indicating that the Town of Fort Myers Beach supported the installation of the safety rail, the dedicated trolley lane as well as blue color for painting Matanzas bridge as voted for by MPO. By consensus, Council approved sending the letter.

Vice Mayor Acken requested clarification of staff's position on the rental of right of way space on the sidewalk, asking if there were any permissible uses of the right of way in the Old San Carlos Business District for restaurant or retail, if there are where are they and to what extent.

Dr. Shockey explained the regulations of the Downtown Zoning District addressed Downtown display of goods and outdoor dining in a great deal of detail with regards to location and configuration. The rules were unequivocal that no merchandise may be displayed outdoors on public property. Dr. Shockey stated that other than that with regard to public property what it said was that restaurants could extend their operations onto public sidewalks and public plazas only as follows: providing specifically to allow on the Times Square pedestrian plaza and other locations if specifically approved by Town Council. Dr. Shockey noted that the question of the sidewalks or pedestrian plaza on Old San Carlos was a question for Council as opposed to staff, with Council addressing a specific location.

XIII. AGENDA MANAGEMENT

Councilmember Babcock indicated he felt there were errors in the current agenda, dates and topics and asked for clarification for his calendar.

Council then proceeded to discuss items on Agenda Management, setting April 7th for Estero Boulevard discussion, March 3rd Beach Management, Town Manager Performance Criteria discussion March 3rd, April 14th Policies

and Procedures, Mandatory Recycling, Alcohol Restrictions.

Mayor Kiker suggested Council stay 30 days ahead of the subject leaving the target dates alone. Due to Councilmember Babcock pressing to obtain a consensus from Council regarding including the LPA in the May 5th meeting, Mayor Kiker directed staff to query the LPA on their availability for the May 5th meeting.

Councilmember Babcock then asked Council about setting up a joint meeting with the BOCC with a recommendation by Vice Mayor Acken to wait until the new Council members were seated before making that decision.

XIV. RECAP OF ACTION ITEMS

- Staff to bring back to Council a process for bringing forward committee recommendations
- Resolution 10-10 approved
- Application for Erickson mitigation grant funds on future agenda
- Amendments to letter to County Commissioners, then forwarded to County
- Communicate with LPA regarding their availability on May 5th

Attorney Dalton asked if Council wished her to move forward on the hybrid agreement regarding the Old San Carlos extension of premises, with Council directing the Town Attorney to bring it back at the next meeting.

XV. PUBLIC COMMENT

Public Comment Opened

- **Frank Schilling** thanked Council for moving forward on the navigation project and for Mr. Stewart writing the letter.

- **Lee Melsek** asked Council to consider moving the final Public Comment portion of the meeting above the action items and agenda management items. Mr. Melsek addressed FEMA's flood mitigation program indicating the Town did have experience with that program with participation by Michael Riley, whose house went up to 18 feet after Hurricane Charley. Mr. Melsek reference the bridge painting project, feeling the issue had been decided very few people, the bridge was an integral part of the community and the community should be heard regarding the color of the bridge.

- **Ceel Spuhler** addressed the issue of safety for the island's tourists and residents regarding traffic at crosswalks and pedestrians and cyclists wearing dark clothing at night suggesting these might be items to be discussed for future committees.

Public Comment Closed

Councilmember Babcock added to Ms Spuhler's comments addressing

people exiting the trolleys and running across the street from the front of the trolley, thinking traffic would stop as it does for a school bus. Councilmember Babcock felt Council needed to start addressing the issues before next season.

XVI. ADJOURNMENT

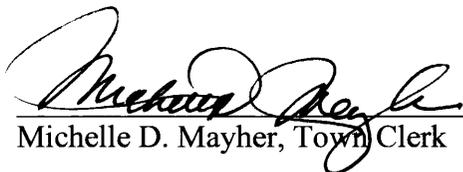
MOTION: Councilmember List moved to adjourn with a second by Councilmember Raymond.

VOTE: Motion passed 5 to 0

Meeting adjourned at 9:25 p.m.

Adopted 3-15-10 With/Without changes. Motion by LBT Babcock

Vote: 5-0


Michelle D. Mayher, Town Clerk

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