



## MINUTES

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

### *Continuation of Regular Town Council Meeting of February 1, 2010*

**February 3, 2010**

**9:00 AM**

#### **I. RECONVENE MEETING FROM FEBRUARY 1, 2010**

#### **II. CALL TO ORDER**

Mayor Kiker called the meeting to order at 9:02 a.m., noting the meeting was a continuation of the Council Meeting of February 1, 2010. Present with Mayor Kiker was Vice Mayor Acken, Council Members List, Raymond and Babcock along with Town Manager Terry Stewart, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

#### **III. PLEDGE OF ALLEGIANCE**

All stood to recite Pledge of Allegiance

Mayor Kiker explained Council had continued the meeting of February 1, 2010 to provide additional discussion time on a few topics as well as allowing Council the opportunity to vote on those topics. Once that portion of the meeting was concluded Council would take a break and then reconvene in the form of a worksession.

#### **IV. PUBLIC COMMENT**

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

▪ **Frank Schilling** indicated Council had the opportunity to do what the will of the people was relative to the beach, stating he was pleased that Council recognized that property issues were a real problem as they related to easements.

▪ **Joanne Shamp** thanked Council for their leadership in taking on the huge job of making a decision on beach renourishment. Miss Shamp continued by saying the Town

would be proud that Council showed confidence in the people that have spent decades of their lives here, that have committed most of their assets to the island and walk it's shores and again voiced her appreciation for Council's leadership.

### **Public Comment Closed**

### **V. BEACH MANAGEMENT**

Securing Council approval to rearrange the agenda, Mayor Kiker began discussion on Administrative Agenda item B.

#### **B. Letter of Intent, Beach Nourishment**

Mayor Kiker called on Council for their suggestions to be added to the letter of intent.

Vice Mayor Acken wanted to include voluntary vegetation as opposed to mandatory and if scrapping the project and starting fresh was Council's desire, to press the County into using the beachscape project as a voluntary option. Vice Mayor Acken again hoped that the present project would not be scrapped.

Councilmember Babcock presented his outline for communication or path forward whether it was through the ILA, a letter of intent or a memorandum of understanding which he felt may be more legally binding than a letter of intent.

Town Manager Stewart addressed his concern with the criteria that the County placed on the project, noting that the criteria had not been met thus feeling the project no longer stood.

Mayor Kiker voiced his concerns of long discussions feeling that a letter of intent stating the Town's intentions to develop a process and not use the ILA agreement process but using common knowledge with the criteria developed for the Town to move forward.

Attorney Dalton agreed that an ILA was premature with the need for a high level conceptual agreement between the Town and the BOCC with an ILA way down the road.

Councilmember Babcock's suggested items for the letter of intent:

1. End the current ILA
2. Recognize where the County has started, have a navigational channel project to protect Bowditch, deal with the immediate problems, and put sand where the need is essential.
3. Not give up, have beach management; start right away on a long term project and get by some of the barriers.

According to Councilmember Babcock, the primary recognition Council needed to make was that the original project had a problem and that the ILA was null and void with a need for the County to recognize that, along with the need for the County to address the easements.

Vice Mayor Acken indicated he had no interest in using Councilmember Babcock's suggested items for the letter of intent putting the Town in an awful negotiating position and giving up a lot, as well as painting the Town into a corner. Vice Mayor Acken indicated the project had not lapsed, that it was not in compliance and that Councilmember Babcock had placed the blame on the Town and had no desire to use the letter in any form.

Councilmember Babcock indicated the letter of intent was charting the Town's path forward. Part 2 was dealing with the issue of the modified beach nourishment program, amended ILA and the legal issues by separating that project out and defining it as a navigation channel project; by recognizing it needed to be a joint effort to address the navigation problems at the north end of the island as well as some part of the beach and deal with all of the issues including the funding.

Mayor Kiker presented his document suggestions which included the following:

- To understand the latest ILA signified a modification that represented reduction but with a solid commitment from Lee County to move forward
- Fort Myers Beach recognized the agreement was no longer in affect based on the criteria that was set by the County, which was 90% of the easements, with those easements directly tied to the Federal funding level with the exclusion of the funding changes, the requirements of the implementation and any specifications
- Matanzas Pass had developed into a maintenance challenge with a legal requirement to make it navigatable and that construction of a groin could help alleviate the problem and play an important role in future development of the beach
- Recognize hot spots that are present, but noting there will be others as the dynamic of Fort Myers Beach was unpredictable
- The beach and natural surroundings were unique indicating the program was not applicable and assume there were new technologies available that could be helpful as well as staff and experts that had established a lot of opportunities since the onset 12 years ago. That the Town recognized the economic advantage to homeowners and businesses, recognized a positive impact to Lee County and associated communities, recognized a positive economic impact to Bowditch and Lynn Hall Parks, recognized a financial impact to the upkeep of North Estero Boulevard and the percentage of property that Lee County enjoys.

Mayor Kiker then listed the following criteria:

- Accept the cancellation of the existing ILA by Lee County due to the criteria that was not met.
- Will work with the new ILA or modifications as it might impact commitments that are already in progress based on inclusions of the Town's criteria
- Fort Myers Beach questioned the need for easements relative to other beach nourishment projects performed in Lee County, i.e. now that there was no Federal money
- Recognize that Matanzas Pass will be ongoing maintenance and willing to work within permitting requirements of the Town to install a groin that meets acceptable, technical levels

- Future placement of sand should be the collective decision of Lee County and Fort Myers Beach provided by outside governing agencies
- Recognize new technologies that are available and those that are possibly not developed yet that would impact our unique environment
- That new technologies are funded as part of any future agreement that allows a leadership role of this community and other Lee beaches and municipalities.
- Fort Myers Beach is a major contributor of taxes being dispersed by Lee County as a result of property taxes and tourist taxes, with the Town either being included in the revenues generated by Lee Parks on the beach or acquire ownership of the parks located on Fort Myers Beach or accept payments or contributions for improvements that directly affect the positive welfare of those parks or take over the administration or maintenance of the Parks through an ILA or be exempt from any further contribution of any monies toward the reduced beach renouishment project.

Vice Mayor Acken did like Mayor Kiker's format indicating he would like to add the concept of without penalty to either party for cancellation of the ILA, as well as to reconsider dropping existing easements as they may be needed for future projects and to consider the beachscape project under new technologies.

Mr. Stewart indicated he felt there was enough for staff to craft a document, then asked Council if in item 3 (a) if that meant spoils from dredging the pass and if so it should be specifically stated as that.

Councilmember Babcock stated he wanted to discuss whether the current ILA was null and void and if it was, then the agreement itself clarified exactly what would happen, with the section 3 (f.) defining the process for easements; that the property owners who signed easements had 45 days in order to rescind, which also defined how it would be paid for in terms of recording.

Attorney Dalton stated for purposes of negotiation, the Town should take the position (1) that the cost of the rescission, should it happen, be paid by the County (2) there was a provision in the contract, upon cancellation all costs incurred to date would be shared in proportion by the local share and the County share and take the position that the County was attempting to unilaterally terminate the contract, therefore, the cancellation provisions would not take affect.

Town Manager Stewart directed the attention to page 2 (5) asking if it was an item directly related to the project and if not was it injecting something that could create a problem with getting to a final agreement.

Mayor Kiker indicated under 5b.no one wanted to spend \$250,000 on the project.

Council then discussed costs, percentages and the actual scope of the project regarding the groin, the placement of sand and the location of the actual project.

***Recess: 10:33 AM Reconvene: 10:47 AM***

Mayor Kiker recapped the previous ideas: Two different projects, the Navigation Project which impacted the design of the Beach Management program.

Council then decided to utilize the drawing board and list items first under the Navigation Project.

- Continuous maintenance
- Clear Engineering Plan
  - Groin Design
- Project Scope
- Permitting
- Funding
- Placement of dredging spoils
- Recognition of sand bar
- Source of sand
- Joint project development
- South end as well as North end of Island

Mayor Kiker reiterated there would be a letter of intent presented to BOCC with 3 items; (1) contract or ILA; (2) recognize there was a navigation channel project (3) a beach management project with all three being independent of each other followed by each of the topics being presented in a format by Mr. Stewart's choice for approval that would list many of the items talked about.

Councilmember Babcock indicated the need to learn from the past, develop anything new as well as laying out a project that would be doable.

Beach Management

- Recognition of studies
- Identify the planning program, beachscape
- Recognition of finding of fact, existing permits
- Funding
- Easement acquisition
- Maintenance program for new hot spots
- Man made erosion issues
- Storm water management
- Pending U.S. Supreme Court Case
- Sand placement
- Introduction of new technology
- Educational stewardship
- Existing Ordinances

Town Manager Stewart indicated there may be items under the Beach Management listing that did not hinge upon a beach nourishment project, also noting that even though the navigation project was separate it was still all part of a renourishment project itself.

#### Interlocal Agreement

- Recognizing the 90% criteria for easements did not get met
- Town prepared for unilateral termination
- Easement Administration
- Modify existing ILA

Council requested Mr. Stewart to bring back material to Council as soon as possible after he contacted County staff in regards to a timeline.

#### A. TDC Beach and Shoreline Project Descriptions

Mayor Kiker went over shoreline operations and maintenance and seawall repair at Newton Park, noting the need to discuss the new beach preservation technologies as well as Mound House.

Mr. Stewart indicated funding was not allowed for the type of projects Council was concerned about at Mound House but there were other funding opportunities and other program elements that the Town could address for those particular concerns.

Mayor Kiker felt those types of funding would be 2 to 3 years out indicating past conversations included moving funding from the pier over to the Mound House. Mr. Stewart replied the answer he was given regarding that issue was no, the funding would not be able to be used in that manner. Mayor Kiker felt the question then should go to the County to the BOCC level.

Mr. Stewart asked if Mayor Kiker wanted to petition the TDC to move funds from one fund to another to provide for a particular project.

Councilmember Babcock weighed in that there was no decision made not to do the pier and indicated he would not agree to having the funding transferred to the Mound House.

Mayor Kiker asked for a consensus in adding Mound House to the list with consensus being to move on to the original 3 items.

Jack Green joined the meeting addressing the issue of new beach preservation, stating it had been Councilmember Babcock's previous comments that caused staff to stop and consider there had been no real research done on alternative measures so staff felt it might be appropriate to go to the TDC since they are the County's fund source for beach projects.

**MOTION:** Councilmember Babcock moved for approval of the funding request to the TDC as defined on the blue sheet; seconded by Councilmember List.

#### **Public Comment**

**No Public Comment**

**Public Comment Closed**

**VOTE:** Motion passed 4 to 1 with Mayor Kiker dissenting.

**IV. ADJOURNMENT**

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

**VOTE:** Motion passed 5 to 0

*Meeting adjourned at 12:12 p.m.*

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

---

Michelle D. Mayher, Town Clerk

- End of document.