



MINUTES

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

MINUTES

May 3, 2010

9:00 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 9:06 a.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members List and Mandel, Town Manager Stewart, Town Attorney Dalton and Town Clerk Michelle Mayher. Absent was Councilmember Babcock.

II. INVOCATION

Invocation led by Rev. Maynard Pittendreigh of Chapel By The Sea.

III. PLEDGE OF ALLEGIANCE

All stood to recite the Pledge of Allegiance.

IV. APPROVAL FINAL AGENDA

Council approved final agenda.

V. PUBLIC COMMENT

Opened Public Comment

▪ **Jeff Werner, MRTF** addressed Council regarding the Gulf Oil Spill, encouraging the Town to prepare for the possibility of emergency response due to the oil spill if it had not done so already. Mr. Werner indicated MRTF members were ready and willing to assist as volunteers.

▪ **Maynard Pittendreigh, Chapel by the Sea** on behalf of the ministerial association and Pastor Jeannie from the Methodist Church invited everyone from the community to the National Day of Prayer, Thursday, May 6th at 7 p.m. at the Methodist Church.

Public Comment Closed

Keith Laakkonen provided a brief update regarding the oil spill in the Gulf, indicating there were no notifications for the immediate vicinity for the week but that the information could change depending on wind and currents. Mr. Laakkonen felt the Town should be prepared and ready, stating the U.S. Coast Guard had an area contingency plan for oil spills that covered the area from St. Petersburg to Key West by using contractors to do booming and skimming operations as well as dispersal of chemicals. Mr. Laakkonen indicated that by the time our area was affected the volatiles would have burned off leaving a very thick tar residue on the beaches. Mr. Laakkonen informed Council they were continuing to monitor the progression of the spill and would proceed accordingly.

Town Manager Stewart advised Council that the County had activated their EOC and staff members were in contact with the County. Mr. Stewart indicated there were contractors used by the Federal and State levels that would be called in to rescue and save the wildlife but the tar deposited on the beaches would be a significant issue for the Town.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Civic Association Support of Bay Oaks Recreation Campus

Mayor Kiker presented a plaque to Lorrie Wolf on behalf of the Civic Association for investing in our community through Bay Oaks Recreation Campus.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Mulholland Stewardship Award

Jeff Werner and Charles Hester representing the Marine Resources Task Force presented Carol Lis and Greg Boyd with awards in recognition of their outstanding community service in the field of environmental conservation as evidenced by their actions to preserve the natural resources of the Little Estero Critical Wildlife Area and the beach at large.

VIII. MINUTES ADOPTION

A. Approval of Minutes: April 5, 2010

MOTION: Councilmember List moved to approve with a second by Councilmember Mandel.

VOTE: Motion passed 4 to 0

IX. CONSENT AGENDA

No Items

X. PUBLIC HEARINGS

A. Public Hearing, 10-06, Ordinance Amending Chapters 6-11, 34-1744, and 34-1745 (Refuse Container and Fence Height/Location) (Second of two hearings)

Mayor Kiker opened the hearing at 9:28 a.m.

Attorney Dalton read the ordinance title: **Town of Fort Myers Beach**

ORDINANCE

10-06 AN ORDINANCE AMENDING REGULATIONS IN CHAPTER SIX AND THIRTY-FOUR OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO ARTICLE I (PROPERTY MAINTENANCE CODE) OF CHAPTER SIX WHICH IS ENTITLED MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS; ADOPTING AMENDMENTS TO DIVISION 17 (ENTITLED FENCES, WALLS AND ENTRANCE GATES) OF ARTICLE IV (ENTITLED SUPPLEMENTAL REGULATIONS) OF CHAPTER 34 (ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES); PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Stewart indicated this ordinance was dealing with the desire to require lids on refuse containers as well as amend the height limitations on dumpster enclosures. Dr. Shockey added the amendment to the fence code was specifically for situations where dumpsters were located in the front yard areas to allow the enclosures of those located in the front yards to be tall enough to screen the dumpsters.

Mayor Kiker indicated there was no one present from the LPA to comment.

Public Comment Opened

No Public Comment

Public Comment Closed

Councilmember List inquired to the possibility of a raise in trash collection rates if all trash cans had lids with Mr. Stewart stating no, there would be no increases due to lids. Councilmember List asked if the ordinance would affect large items that would not fit in containers. Dr. Shockey indicated if there were items too large to fit into a trash container then it would be left along side the street if it was not prior to 24 hours before pick up and stating there were other areas of the code that applied to that issue.

MOTION: Vice Mayor Raymond made a motion to adopt Ordinance 10-06,

amending Chapters 6 and 34 of the Land Development Code with a second by Councilmember List.

VOTE: Town Clerk Mayher conducted a roll call on the motion to adopt Ordinance 10-06 amending Chapters 6 and 34 of the Land Development Code.

Vice Mayor Raymond	Aye
Councilmember Mandel	Aye
Councilmember List	Aye
Mayor Kiker	Aye

Motion passed 4 to 0

Mayor Kiker closed the hearing at 9:35 a.m.

B. Public Hearing, Case #SEZ2010-0001, Hooters COP Special Exception (Only Hearing)

Mayor Kiker opened the hearing at 9:35 a.m.

Mayor Kiker called on Council for any ex parte.

Councilmember Mandel	none
Councilmember List	none
Vice Mayor Raymond	none
Mayor Kiker	none

Attorney Dalton swore in those making comment.

• **Paul Lynch** representing Mauhi Enterprises and Waterfront Concepts, doing business as Hooters 11600 Estero Boulevard, Fort Myers Beach. Mr. Lynch indicated Mauhi Enterprises was the property owner and Hooters Restaurant was the tenant who recently had a 2COP beer and wine license with a special exception Downtown Zoning District for outdoor consumption on the front and rear decks of the restaurant and wanted to upgrade the 2COP license to a 4COP liquor license which would permit the sale of full liquor. Mr. Lynch stated the request was for a special exception in the Downtown Zoning District to allow for the consumption of beer, wine and liquor on the existing outdoor seating, front and rear decks of the restaurant with it being the only change they were requesting from their current special exception of beer and wine consumption on the outdoor seating. Mr. Lynch indicated they had agreed to maintain their existing hours of operation which were 11 a.m. until midnight Monday through Thursday and 11 a.m. until 1 a.m. on Friday and Saturday and 12 noon until 10 p.m. on Sunday and also agreed that outdoor music would not be played. Mr. Lynch noted to Council that the LPA had reviewed the request and recommended approval and respectfully requested the Town's approval.

On behalf of staff, Dr. Frank Shockey indicated per Mr. Lynch's request it was for a special exception COP for an establishment within 500 feet of a dwelling of separate ownership with a special request of beer, wine and liquor. Dr. Shockey stated the Town had granted a special exception in the past but limited the exception to a 2COP only.

Dr. Shockey stated the Town's approval was somewhat different from the LPA's limits in regards to the hours of operation per Town Ordinance regarding service and sale of alcohol within the Town. Dr. Shockey indicated staff recommendation was approval of the request with the recommended conditions not to include any specific limitations of a type of license in the future but simply the conditions that the use remain a restaurant rather than a bar or other type of use.

Councilmember Mandel asked for a review of the hours of operation. Dr. Shockey stated the Town had an ordinance that was a stand alone ordinance that regulated the hours during which alcohol could be sold, served and consumed within the Town's limits that set the external boundaries from 7 a.m. until 2 a.m. of each day. When zoning approval is given for a special exception you have the opportunity to make an exception that the hours be restricted to some particular hours that were less then noted above. Since there had been no testimony for hours of operation staff recommended that the hours would be the external limit, however there are dwelling units in the neighborhood.

Public Comment Opened

No Public Comment

Public Comment Closed

Attorney Dalton advised Council if they wanted to consider Dr. Shockey's conditions it would be #3 under Conditions of Approval for hours of operation noting it complied with the Town's Ordinance.

Council asked the applicant to once again state the hours of operation they were requesting. Mr. Lynch indicated they were 11 a.m. until midnight Monday through Thursday, 11 a.m. until 1 a.m. Friday and Saturday and 12 noon until 10 p.m. on Sunday.

Town Manager Stewart stated there were no written or oral responses from anyone in the public at either the LPA or to staff.

MOTION: Councilmember List made a motion to adopt Resolution 10-12 to codify Town Council's determination of special exception requested by Mauhi Enterprises and Waterfront Concepts (Hooters Restaurant)

CONDITIONS OF APPROVAL: Sales and service, and consumption of alcoholic beverages must not begin earlier than 11 a.m. Monday through

Thursday and must end no later than midnight, 11 a.m. Friday and Saturday and end no later than 1 a.m., 12 noon on Sunday ending no later than 10 p.m.

FINDINGS AND CONCLUSIONS:

- 1.) This consideration is **not applicable** to this request.
- 2.) ...the requested special exception, as conditioned, **is**
- 3.) The requested special exception, as conditioned, **meets or exceeds** all
- 4.) The requested special exception, as condition, **will**
- 5.) The requested special exception, as conditioned **will** be compatible with existing or planned uses and **will not** cause damage
- 6.) The requested special exception, as conditioned **will** be in compliance

Attorney Dalton asked Councilmember List to reference the document above CONDITIONS OF APPROVAL with Councilmember List including the statement, The Town Council **APPROVES** the applicant's request.

Attorney Dalton also asked Councilmember List to use the hours of operation indicated by the LPA regarding the consumption hours as it was a little more detailed with Councilmember List stating as long as it represented the hours the applicant had requested.

Vice Mayor Raymond seconded the motion.

VOTE: Motion passed 4 to 0

Mayor Kiker closed the hearing at 9:50 a.m.

XI. ADMINISTRATIVE AGENDA

A. Request for Outdoor Seating – Harbour House

Town Manger Stewart reviewed the request stating LDC Section 34-678 (f) allowed restaurants to operate outdoor seating areas on public sidewalks and plazas in the Times Square pedestrian plaza “and other locations if explicitly approved by the town council”.

Mr. Stewart asked Council if they were willing to consider the request and if so did they want to use the same lease format as used in the Times Square area.

Frank Shockey stated he had sent Mr. Speirn-Smith a copy of the document with his response being it was routine form of agreement. Mr. Speirn-Smith had been unable to arrange his schedule to be present indicating if Council was hesitant about the issue he would like to have an opportunity to be present and talk about it with Council.

Dr. Shockey indicated there was space available, however the tables would benefit from the overhang from the building and pedestrians would not, also stating there could be a question regarding the need for additional parking for the seating area. Dr. Shockey stated that in the Times Square area of outdoor seating

those property owners were not required to provide parking spaces as they receive credit due to being adjacent to an outdoor plaza, in the Old San Carlos area the required parking is reduced due to the fact that there is a lot of parking and pedestrians in the area, but it was not zero. Ordinarily a business would be required to provide additional parking in the building but it was a question as to how Council wanted to treat the issue since in the future others may come forward. The decision for Council would be to require additional parking or view it as an area on a sidewalk used primarily by pedestrians not requiring additional parking.

Attorney Dalton stated it was not a hearing but administrative approval and was before Council for two purposes, one being if Council liked the contract form which was different than the one used in Times Square and secondly if Council wanted to consider the application.

Mayor Kiker asked if there were any recommendations as to whether Council continued with the discussion or waited for the applicant to be present.

Town Manager Stewart stated the issue was not time sensitive to staff but if Council felt there was not enough information to move forward then they would want to continue at a later date.

Vice Mayor Raymond stated he would like to know what the fee would be for the use of table space, as well as making sure the applicant was present for the next consideration on the request.

Council made the decision to reschedule the item for a later date.

B. Discussion Regarding Approval Procedures for Committee Actions

Town Manager Stewart addressed the procedure of committee actions and the fact that a committee had announced a decision to the public before it was considered by Council. Mr. Stewart asked Council for their decision on the matter.

Public Comment Opened

- **Terry Cain** provided a bit of history to Council stating that in the past committees had worked very hard in doing their research when awarding residents and guests acknowledgments asking consideration for the committees' hard work and allowing it to continue.

- **Jeff Werner** chairman MRTF read the names of all recipients of the John Mulholland Award showing Council that a diverse group of people and organizations were covered in consideration for the award.

- **Charles Hester** stated to Council he felt as if he had publicly had his hands slapped by the Town Manager and felt it was misrepresented and that the

committee had acted in good faith since 2002 and felt MRTF had worked in good faith based on an ordinance that was in existence.

Public Comment Closed

Mr. Stewart indicated he was not directing his statement toward any committee but was merely looking for direction from Council. Mayor Kiker stated that Council believed in their committees and felt everyone deserved recognition for their activities and work being done for the Town.

Vice Mayor Raymond suggested it may need to go on agenda management. Councilmember List indicated there was an empowerment that was given to MRTF to make the awards feeling it was a separate situation and did not feel that they needed to be put through the Council. Councilmember List indicated she understood there could be an issue with some people taking up causes or activities that haven't been assigned by Council but one of the unique qualities of the Town's advisory committees was they were made up of people that were concerned, interested and loved the island, stating the less Council tried to manage how they go about their business would be less inhibitive and indicating she appreciated all the hard work that goes on within the committees.

Councilmember Mandel asked for confirmation from the Town Attorney if there was an ordinance that gave certain rights and privileges and if the presentation should have been made by the committee if that was desired. Councilmember Mandel indicated he understood why a question could come up as there could be certain circumstances unique which should be taken care of in advance and suggested looking into it to see if other committees did or did not have those rights and privileges and if not it should be bounced off of Council.

Mayor Kiker suggested meetings with each committee and Council for discussion feeling there might be communication breakdowns.

Town Manager Stewart indicated during staff meetings there had been no indication made to him that there was a specific rule that allowed the committee to make the presentation on its own, had that been the case Mr. Stewart stated he would not have brought it before Council.

Attorney Dalton stated she would meet with Mr. Hester and Mr. Werner and ask them about the ordinance after the meeting.

Mayor Kiker indicated the issue would be made part of an action item.

C. Discussion of Meeting Dates for Adoption of FY 2011 Millage and Budget
Town Manager Stewart stated Council had asked to have the item put on the agenda so they could discuss when to have their budget hearings. Town Clerk

Michelle Mayher noted the calendar showed September 7th, 2010 and September 20th, 2010 for the final hearings on the 2011 Millage and Budget, both during Council Meetings. May 17th was set to begin discussions with Council deciding to wait until the end of that meeting to schedule an additional meeting date.

D. Discussion of Status of Town Attorney Search

Councilmember Mandel presented a suggestion to Council after considering the existing conditions. Councilmember Mandel suggested engaging Fowler, White, Boggs as interim attorney for the Town of Fort Myers Beach. Councilmember Mandel stated the benefits of this action would allow Attorney Dalton after years of service to the Town to begin her new career as soon as possible and permitted the Town to immediately engage on an interim basis with a firm of extensive governmental legal experience, a firm currently representing the Town and a firm experienced in municipal financing issues, a firm with an office in Tallahassee which could represent the Town in the Capital on an as needed basis, a firm with staff experience representing the water utility of Bonita Springs, a firm to be evaluated over several months, a firm established in 1943 representing clients such as Lee Memorial Hospital and a firm who works with Nabors, Giblin a firm also representing the Town.

Councilmember Mandel felt immediate action was needed instead of a lengthy process, indicating that all members of Council had noted 3 significant time sensitive issues facing the Town which included the lease of Town Hall which was ending in June and both temporary and long term real estate issues needed to be negotiated, financing to repair the water utility system for the safe and reliable delivery of water as well as the need for action after receiving the storm water report. Councilmember Mandel requested Council to allow him along with the Town Manager to negotiate with Fowler, White and Boggs.

Vice Mayor Raymond felt Councilmember Mandel should go forward in meeting with Fowler, White and Boggs to ascertain pricing and what the firm had to offer by way of a written proposal.

Councilmember List approved of Councilmember Mandel moving forward to acquire additional information from the firm.

Mayor Kiker discussed the different ways possible for billing from a law firm as well as indicating a date certain for an interim basis.

Attorney Dalton stated she had a great deal of confidence in Fowler, White and appreciated Council in their efforts to move forward. Attorney Dalton recommended Council retain them at least through the rest of the budget year and make a decision from there, asking Council to allow her to assist Mr. Mandel in communicating with Fowler, White.

Mayor Kiker stated there was consensus from Council to allow Mr. Mandel to move forward with the assistance of Mr. Stewart and Attorney Dalton

XII. PUBLIC COMMENT

Public Comment Opened

▪ **Frank Schilling** stated his puzzlement as to why Council was using the term Beach Renourishment as the County indicated that issue was dead and that it was now a navigation issue with a groin. Mr. Schilling indicated since it was not renourishment the LDC required a permit from the Town of Fort Myers Beach for any work done, indicating he did not know where Council was going on the issue but suggested they refresh memories in terms of what had been said and done and concluded by the Council in the past.

Public Comment Closed

Recess: 10:40 AM Reconvene: 11:00 AM

XIII. TOWN MANAGER'S ITEMS

Town Manager Stewart read a letter from Councilmember Mandel regarding the disposition of surplus funds by candidate from Councilmember Mandel's campaign presenting a check to the Town in the amount of \$1,872.99 with a suggestion to direct the funds to Bay Oaks. Council accepted the check with the intention to direct funds to Bay Oaks Recreation Campus.

Mr. Stewart informed Council of a County Commission M & P Meeting scheduled for later in the afternoon at 1:30, noting that the second item on their agenda was beach renourishment. Town Manager Stewart provided Council with information regarding a report by Mr. Boutelle from the County and issues of communication or lack of same with the County.

Town Manager Stewart, Vice Mayor Raymond, Councilmember Mandel and Mayor Kiker planned to attend the County's M & P Meeting at 1:30 p.m. after a discussion of their opinions on the status of the issue.

XIV. TOWN ATTORNEY'S ITEMS

Attorney Dalton advised Council the Town had been sued, indicating she had been on the Clerk of Courts website researching a separate matter and found it listed noting she had been given no earlier information on the issue.

Attorney Dalton stated the Town had not as yet been served and the suit was regarding an issue with the Pink Shell docks and was brought by Susan and Peter Lisich. Attorney Dalton stated she had provided the Pink Shell with a copy of the notification and that when the Town was served she would be bringing it back before Council.

Attorney Dalton stated that she might be asking for an Executive Session for the next meeting and would advise Town Manager Stewart either way, noting the

Executive Session would be for discussing that litigation.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember List provided information of the Beach PTO Golf Tournament which was a huge fundraiser for the school to be held at the Bayfront Bistro. Councilmember List also noted that the Yucatan Beach Stand delivered a \$500 donation to the Bay Oaks Summer Camp Sponsorship and then informed Council of her attendance at the Horizon Council Meeting which focused on the State of Tourism in our area.

Councilmember Mandel requested Council to provide a proclamation for a resident on the island who would be 100 years old on Mother's Day.

Mayor Kiker brought up the Leadership Conference which would begin on May 12th, asking if it could be publicized to inform all residents. Mayor Kiker informed Council the Florida Trust for Historic Preservation was having a President's Party at Tween Waters at 6:30 p.m. on May 12th.

XVI. AGENDA MANAGEMENT

Town Manager Stewart reminded Council of the discussion after the first budget meeting when additional meetings should be scheduled.

Mayor Kiker asked when Council would see the first Cash Flow Analysis. Mr. Stewart indicated he had emailed out to Council a revised version of the end of the month report and the Cash Flow Analysis should be available the first week of June.

XVII. RECAP OF ACTION ITEMS

- Bring back the discussion of a table space lease for Harbour House
- Future discussion on committee decisions
- Check from Councilmember Mandel to be deposited in Bay Oaks Account
- Work with Town Attorney regarding service of lawsuit
- Inform Council for need of Executive Session
- Work with Councilmember Mandel on negotiating with Fowler and White

Mayor Kiker questioned the day and time for the 4th of July parade and fireworks. Town Manager Stewart stated there had been no discussion to his knowledge but that it would be brought up at the next morning's staff meeting and noted to Council staff had not yet received application for either of the events.

Attorney Dalton indicated she would be discussing with Mr. Hester the issue regarding the ordinance for the advisory committees as well as working with Councilmember Mandel once the proposal was received.

XVIII. ADJOURNMENT

MOTION: Councilmember List moved to adjourn the meeting with a second by Councilmember Mandel.

Meeting adjourned at 11:37 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

- End of document.