



# MINUTES

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

**May 17, 2010**

**6:00 PM**

**I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 6:00 p.m.

**II. ANNOUNCEMENT OF COMMENCEMENT OF EXECUTIVE SESSION**

Executive Session for Case #10-CA-001727, Peter and Susan Lisich v. Town of Fort Myers Beach.

Town Attorney Dalton indicated present for the Executive Session were all 5 Council members, the court reporter, Town Manager Stewart and herself with the session to go off the record for approximately ½ hour or less.

Mayor Kiker concluded the Executive Session at 6:25 p.m.

**I. CALL TO ORDER**

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

**II. INVOCATION – Revered Jeanne Davis, Beach United Methodist Church**

**III. YOUTH COUNCIL**

Alle Feike and Dawson LaForce, student representatives from Beach Elementary led the Pledge of Allegiance.

**IV. PLEDGE OF ALLEGIANCE**

All stood for Pledge of Allegiance.

The students reported on the silent auction and golf tournament indicating \$16,000 had been raised for field trips, assemblies, classroom materials, library books and numerous other needs for the school. It was noted this year's school play, the Wizard of Oz would be preformed on the school's new stage, a display of student inventions and mention of the award ceremony during the 3<sup>rd</sup> week of June followed by the PTO end of year carnival. The students thanked Town Council for allowing the school to become involved in the Town government during the year.

**V. APPROVAL OF FINAL AGENDA**

Pilot Club Donation presentation to be postponed to June 7<sup>th</sup>.

Administrative Agenda items to be changed as follows: F., C., E., B., A., and D.

**VI. PUBLIC COMMENT**

**Public Comment Opened**

▪ **Ceel Spuhler** voiced her pride with the Town hosting the two conferences, the archaeology and historic preservation conferences for Florida, adding that the responses were wonderful. Ms. Spuhler also encouraged Council to move forward with the landscaping of the Mound House property.

▪ **Lee Melsek, Civic Association**, advised Council the Civic Association raised \$1,200 from their 50's dance to go to the summer camp program for children as well as soliciting a \$500 donation from town resident and business owner Tom Kolar for the summer camp program. Mr. Melsek also indicated he was close to acquiring a van for Bay Oaks along with a \$500 donation from Sam Galloway as well as encouraging everyone to get involved in assisting Bay Oaks.

▪ **Roy Hinkleman** representing the Laguna Shores Homeowners Association advised Council he was receiving lots of calls regarding those getting stuck due to the channel filling in and the safety hazard it presented.

**Public Comment Closed**

Town Manager Stewart commented on Laguna Shores indicating a meeting was scheduled for Thursday May 20<sup>th</sup> at 11 a.m.

**VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Councilmember Babcock indicated the events involving the Mound House were quite moving and outstanding with recognition to Ceel Spuhler on her presentation of the history of the property as well as all others who played a part in the events. Councilmember Babcock also commented on the Leadership Conference.

Vice Mayor Raymond thanked CRAB for their efforts during the Leadership Conference.

Councilmember List commented and recognized all those connected with the Taste of the Beach and its new location. Councilmember List also stated she attended the Memorial Service by the Sheriff's Department for their Fallen Law Officers.

Councilmember Mandel as well as Mayor Kiker commented on Taste of the Beach as well as noting the PTO Golf Tournament. Town Manager Stewart thanked staff as well as Council regarding getting the Mound House and Newton Park ready for the conferences.

#### **VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

Mayor Kiker indicated Council had a joint meeting with the LPA where a prioritization was set and on behalf of Council thanked the LPA for their part in making it a successful meeting along with the leadership of Joanne Shamp and Rochelle Kay from the Historic Committee.

#### **IX. APPROVAL OF MINUTES**

- A. April 14, 2010 Work Session
- B. April 19, 2010 Work Session
- C. April 19, 2010 Regular Town Council Meeting

Councilmember Mandel requested a change to the April 14<sup>th</sup> meeting on page 4 to add 'wording of ordinances and noise' after 'dealing with alcohol relating to hours of operation'.

Councilmember Babcock asked May 19<sup>th</sup> be changed to April 19<sup>th</sup> as the date selected for the P & P discussion.

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

**VOTE:** Motion passed 5 to 0

#### **X. CONSENT AGENDA**

- A. Approval of Donation to V.O.I.C.E. Volunteer Program

Town Manager reviewed that V.O.I.C.E was a volunteer program of the Sheriff's Department assisting in directing traffic in the Times Square area addressing the outstanding job they do for the town. Mr. Stewart indicated the Council had decided during the last budget process to set aside \$2,000 to be given to the V.O.I.C.E. program and staff was looking for approval to allow the check to be written. LCSO representation provided additional information to Council.

**MOTION:** Councilmember Mandel made a motion to authorize the Town Manager to have the check written and delivered to V.O.I.C.E. with a second by Councilmember Babcock.

**VOTE:** Motion passed 5 to 0

**XI. ADMINISTRATIVE AGENDA**

**F. Discussion Regarding 4<sup>th</sup> of July Fireworks/Parade**

Town Manager Stewart indicated the fireworks and parade were planned for Sunday, July 4<sup>th</sup>.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

▪ **Dennis Boback**, representing FMB Civic Association, after speaking with each church on the island, made the decision to start the parade at 1 p.m.

**C. ROW Lease Tables and Chairs**

Town Manager Stewart stated there had been a request to place tables and chairs in a Town right of way at the Harbor House Inn, noting there was an ordinance in place for Times Square as well as allowing Council to make exceptions as appropriate. Two previous discussions were the lease document itself and whether additional parking should be required. Mr. Stewart indicated staff had provided a memorandum dated May 10<sup>th</sup> by which additional parking not be required.

Attorney Dalton stated she had modified the agreement for structural purposes and provided it for Council.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Councilmember Mandel questioned fees for the use of the right of way. Town Manager Stewart indicated he did not recommend handling them by resolution but reviewing on an annual basis. Mr. Stewart asked Council if they were comfortable with the agreement and if so, staff would come back with appropriate fee structure for Council to review, also if Council was in agreement with staff's recommendation of no additional parking needed.

Councilmember Babcock voiced his concerns over the use of the space and wanted the fee structure addressed for Times Square and other areas making sure they were across the board and at the appropriate rate.

Dr. Shockey reviewed staff's findings for Council with Councilmember Babcock again voicing his concern as to whether the request was within the LDC and Comp Plan. Council continued discussion.

**MOTION:** Councilmember List made a motion to approve the contract agreement for use of town right of way Old San Carlos umbrellas, tables and chairs ancillary to any restaurant with the change in #3 instead of automatic renewal to be renewed yearly with a second by Councilmember Mandel.

**AMENDED MOTION:** Councilmember Mandel asked to amend the motion to adopt the contract with the same liability insurance required for other rights of way, that the contract would automatically renew each year with the fee discussed each year during the budget process. Councilmember List agreed to add to the motion a review of each contract at the end of the first year.

**VOTE:** Motion passed 5 to 0

*Recess: 8:25 PM*

*Reconvene: 8:32 PM.*

**B. Beach Renourishment**

Town Manager Stewart introduced this item by updating Council on recent discussions with the County.

**Public Comment Opened**

- **Nicki Linhart** spoke regarding a possible technology solution to beach erosion providing Council with information on the Westwall Erosion Protection System.
  
- **Frank Schilling** spoke on the navigation project indicating the need to find a way to proceed without needing a project every 5 years and scouring the beaches as has been done. Mr. Schilling referenced the project in Naples and their success then went on to discuss the easements and the language on the contracts.
  
- **Ellis Etter** representing the Pink Shell Resort spoke on the deterioration on the north end of the island and their loss of business at the resort due to the erosion of the beach at the resort.
  
- **Jim Stephens** commented on previous agreements with the county, the lack of funds dispersed to the town from the county, feeling the town had already provided enough funds to the county.
  
- **Joann Shamp** spoke regarding the different rolls of the WCIND and Council as well as the problem created by the last dredging at the north end, encouraging the Council to make sure the island was represented this time and that there was a properly designed groin put into place.

**Public Comment Closed**

**MOTION:** Councilmember Mandel moved the following:

- Town will cooperate with the county navigational project with town approval; County pays a consultant
- Town to pay \$110,000 and the county will absorb the expense and effort associated with the cancellation of the easements. (County must rescind easements)
- County to provide a bond
- Town Manager will report back on new technology & funding efforts to be used for the remainder of the beach

Vice Mayor Raymond seconded the motion.

Council discussed their thoughts on Councilmember Mandel's motion as well as their own feelings on beach renourishment, new technologies, the responsibility of previous dredging along with Councilmember Babcock's outline on the issue which he distributed to Council. Mayor Kiker indicated he was looking for a way to move the issue forward even though it would not be a perfect plan as there was an element of time to consider regarding available funding and an immediate need for the north end of the island.

Councilmember Babcock again voiced his concerns with lack of information from the county on the scope of the project.

**VOTE:** Motion passes 4 to 1 with Councilmember Babcock dissenting.

***Recess: 10:00 PM Reconvene: at 10:15 PM.***

**E. Update on Gulf Oil Spill**

Town Manager Stewart brought Council up to date on the oil spill as well as all planning being put into place at the local, state and federal levels.

Council discussed the possibility of enacting an emergency plan for the Town Manager to move forward with necessary decisions during an event, such as the oil spill hitting the island. Discussion continued regarding equipment used for cleanup as well as the financial aftermath.

**A. Resolution 10-13, Approval of Council Policies and Procedures Manual**

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Councilmember Babcock moved for approval of Resolution 10-13 adopting a new Policies and Procedures Manual for Town Council with inclusion

into the header that the date be May 17<sup>th</sup> and under section 2 that it read May 17<sup>th</sup> with a second by Councilmember List.

Councilmember Mandel questioned whether the new attorneys should review the document.

**VOTE:** Motion was approved 5 to 0.

**D. Town Attorney Search Update**

Town Manager indicated he and Councilmember Mandel met with Fowler White bringing back information for Council to consider.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Councilmember Mandel passed out information to Council that he had just received with the intention to summarize and then make a motion.

Councilmember Babcock raised a point of order with the printed information and the need for public comment on the information, indicating he appreciated the work completed but did not feel Council would be ready for a vote.

Councilmember Mandel reviewed information obtained regarding the firm of Fowler White.

**MOTION:** Councilmember Mandel made a motion to retain Fowler White effective immediately, with a request of Anne Dalton to reveal to Fowler White all legal issues facing the town and transfer files to Fowler White by the end of May.

Attorney Dalton indicated she had an issue with being able to transfer everything to Fowler White by the end of May. Second by Council Member List.

Councilmember Mandel discussed his feelings on retaining Fowler White noting the firm has worked for the town, they have offices in Tallahassee and have attorneys to address many of the issues facing the town. Councilmember List stated with the information available she felt it would probably be a good idea. Vice Mayor Raymond questioned the number of meetings included in the fee with Mr. Stewart reading from the proposal sent by Fowler White. A discussion regarding legal for LPA as well as additional calls to the firm from Council members were questioned by Vice Mayor Raymond. Council member Babcock voiced his concern with the evening's process and Council member Mandel's desire for a vote on the legal decision; challenging the reduction in expenses, the retainer rate and hourly rate. Town Manager Stewart provided

his recollection of the conversation with Mr. Humphrey of Fowler White. Mayor Kiker received confirmation from both Mr. Stewart and Councilmember Mandel that their understanding was the \$8,200 monthly identified as a retainer was a flat rate.

Vice Mayor Raymond asked if they could get *retainer* changed to *contract*, if the dates could run with the budget ending on September 30<sup>th</sup>, and if the \$8,200 dollars included Mr. Humphrey's assistants, materials, etc.

Councilmember Babcock again questioned the fees proposed by the firm, as well as questioning a decision to hire an interim attorney. .

Attorney Dalton indicated there were items of concern.

Ms. Dalton stated several of the attorneys listed were out of the local area code, also that the document was a proposal and Councilmember Mandel's motion was to accept it as a contract which it was not, also a concern with going forward with a 6 line paragraph which was the heart of the Council's discussion which stated meetings, not workshops which could be included but in her opinion it did not say workshops, along with interaction with staff and if that was included in the \$8,200 along with Comp Plan, LDC and other issues of the town. Attorney Dalton again voiced her concern with the document feeling it was a marketing document with a 6 line proposal at the end.

**AMENDED MOTION:** Councilmember Mandel amended the motion to move forward and get the proposal changed into an appropriate format; to accept the proposal as far as fees and turn it into a contract form.

Councilmember List amended her second.

Councilmember Babcock indicated he had other questions that had not been addressed; first being interim versus permanent asking for a definition of interim. Councilmember Mandel indicated the firm was willing to make a commitment for 8 months for the firm and the town to evaluate each other at which time both sides could take a look at the agreement at that point. Conversation continued on differing opinions as to what Council had directed Councilmember Mandel and Town Manager Stewart to accomplish in their meeting with Fowler White.

**WITHDRAWN:** Council Member Mandel withdrew his motion; second withdrawn.

**MOTION:** Councilmember Mandel made a motion to move forward with the information provided in the document and prepare a contract which would be presented to Council at the next meeting. Vice Mayor Raymond seconded the motion.

Discussion began on whether Attorney Dalton would be included in the contract process with Ms. Dalton asking for a week to review the contract before it would come back to Council for review per the policies and procedures manual.

**VOTE:** Motion passed 5 to 0

**XI. TOWN MANAGER'S ITEMS**

Town Manager Stewart questioned Council regarding the meeting immediately following Labor Day as there had been questions raised whether they wanted to stay with that meeting date. Council agreed to keep the date.

**XII. TOWN ATTORNEY'S ITEMS**

A. Case # 10-CA-00727, Peter and Susan Lisich v. Town of Fort Myers Beach  
Attorney Dalton asked Council to ~~formerly~~ approve Denise Wheeler of Fowler White as litigation counsel in the matter. *formally*

**MOTION:** Councilmember List moved to approve Denise Wheeler of Fowler White as litigation counsel in the matter of Case #10-CA-00727, Peter and Susan Lisich v. Town of Fort Myers Beach with a second by Vice Mayor Raymond.

**VOTE:** Motion passed 5 to 0

**XIII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Babcock questioned the M & P meetings in September as to whether they would be Wednesdays or Mondays, also when the next discussion on Mound House landscaping would be.

**VX. AGENDA MANAGEMENT**

None

**XI. RECAP OF ACTION ITEMS**

- Follow up on Laguna Shores
- Follow up and discuss July 4<sup>th</sup> parade
- Bring back a recommendation on the Harbor House application
- Work with WCIND regarding technologies
- Research tar removal equipment
- Work toward the new town attorney contract issue

**XII. PUBLIC COMMENT**

**Public Comment Opened**

- **Frank Schilling** commented on a bond for beach erosion as well as easements for beach renourishment.

▪ **Annie Babcock** offered her thoughts on the attorney issue, offering to Council how she heard the discussion at the May 3 council meeting (from the DVD).

**Public Comment Closed**

**XIII. ADJOURNMENT**

Councilmember List moved to adjourn with a second by Councilmember Mandel.

*Meeting adjourned at 12:10 a.m.*

Adopted 7-12-10 With/Without changes. Motion by List / Mandel  
pg 9 of 10

Vote: 4-0 Babcock absent

  
Michelle D. Mayher, Town Clerk

▪ End of document.