

**MINUTES  
FORT MYERS BEACH TOWN COUNCIL  
MARCH 12, 2007**

**Town Hall- Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931  
March 12, 2007**

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<b>AGENDA</b>	<b>Land Use Town Council Meeting</b>	<b>4:00 PM</b>
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**I. CALL TO ORDER** – Mayor Boback called the meeting to order at 4:20 PM

**Members Present:** Mayor Dennis Boback, Vice Mayor Don Massucco, Councilman Garr Reynolds, Councilman Charles Meador, Jr., Councilman Bill Shenko, Jr.

**Absent:** None

**Town Staff Present:** Town Attorney Anne Dalton, Town Manager Gary Parker, Community Development Director Jerry Murphy, Public Works Director Jack Green, Finance Director Evelyn Wicks, Town Clerk Michelle Mayher.

**II. PLEDGE OF ALLEGIANCE:**

All present stood for the recitation of the Pledge of Allegiance.

**III. PUBLIC COMMENT:** Please note that public comment will be heard at the time the agenda item is discussed.

**IV. CONSENT AGENDA**

- A. Approval of Minutes; February 20, 2007*
- B. March 13, 2007 Election Canvassing Board*

**MOTION:** Vice Mayor Massucco made a motion to approve Consent Agenda. Councilman Shenko 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

**V. READING AND PUBLIC HEARING OF THE FOLLOWING ORDINANCE**

**A. *First Public Hearing, Ordinance 07-03; amending regulations in LDC Chapters 14 and 27***

Mayor Boback opened the Public Hearing. Attorney Dalton read the title to Ordinance 07-03; amending regulations in the Land Development Code Chapters 14 and 27.

*Mayor Boback opens public comment:*

- Gabrielle Hickey vendor on the beach expressed her support for Chapter 14.
- Terry Cain resident and former member of MRTF expressed her support raking 5-feet from the wet sand.
- Joe Yerkes representative of MRTF expressed his concerns regarding the Red Drift Algae and asked Council members to find a way to get this matter resolved.
- Eve Haverfield expressed her concerns regarding beach furniture and securing them in order to protect the nesting sea turtles.

*Mayor Boback closes public comment:*

- Charles Hester, member of MRTF, referred to section 14-6 beach raking and wrack line; and reiterated the Ordinance was vague and needed clarifications and they have broadened the health and safety provisions to include the excessive accumulation clause. Mr. Hester referred to Section B-2 where MRTF added provisions governing the raking procedure to ensure raking was minimally invasive with the least amount of harm to the environment. Mr. Hester referred to Section 14-12 beach furniture & equipment licenses.
- Tom Babcock, LPA member, pointed out that Council did not have the approved minutes from the LPA meeting which forwarded this Ordinance to them; adding the LPA has approved essentially what MRTF had provided. Mr. Babcock addressed the concerns which were raised regarding issues on beach raking, and pointed out that MRTF added definitions which would be an easier task on how to rake the beach.

Vice Mayor Massucco commended both MRTF and LPA members for the efforts they have put into this issue, and added that this will be an ongoing problem as the solution is not within their hands. Vice Mayor Massucco expressed that with the information gathered by MRTF and LPA members, there will be great strides for the future.

Councilman Reynolds questioned Mr. Babcock whether or not they will be getting a permit from DEP in order to proceed with the beach raking.

Mr. Babcock responded that one of the requirements for an emergency raking would be getting a permit from DEP.

Councilman Reynolds questioned the feasibility of enforcing raking by private businesses. Mr. Babcock responded that they have discussed enforcement and concerns, stating that it would be an education on how they should rake.

Councilman Reynolds questions if there are any restrictions regarding hand raking.

Mr. Hester responded that the proposed Ordinance is that mechanical raking can be done 5-feet above wet sand, and that you can hand rake. Mr. Hester pointed out that this only applies to the Town, and has been told that the residents can hand rake as long as it is in front of their own property.

Mayor Boback questioned why a beach vendor might need more than one vehicle to move beach furniture.

Mr. Murphy reported that a vendor may want an extra vehicle for backup; that all vehicles used on the sand need to have a permit, adding that he will further investigate issues concerning unauthorized vehicles.

Mayor Boback referred to 14-5-C which requires beach properties with more than five cabanas or beach furniture to file their hurricane action plan with the Town, asking Mr. Murphy if they had that in place.

Mr. Murphy responded that this had been conducted by another department, but that it will now become part of Community Development, and ensures Council that it will become part of the permitting.

Mayor Boback referred to 14-12-C2; the requirements of businesses to obtain a Lee County occupational license, and questioned if the Town were to issue the licensing.

Mr. Murphy reported the Town issues a use permit, which assures Lee County that all the requirements of the Town have been satisfied, and pointed out that the Tax Collector issues occupational licenses.

**MOTION:** Vice Mayor Massucco made a motion to move Ordinance 07-03 with changes to a second reading and final public hearing on April 2, 2007 at 6:30. Councilman Reynolds 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Reynolds agreed that the beach furniture should be anchored as Ms. Haverfield has suggested.

Councilman Meador pointed out that they will be spending a lot of time with the proposed amendment regulating where they don't need to regulate, and over regulating adding they will be spending money that they don't need to spend. Councilman Meador proposed to authorizing the Town Manager to approve raking at the wrack line conditioned on prior approval by DEP; if it is determined that excessive accumulation or natural or other debris caused by extreme events, including but not limited to red tide, red algae bloom or storm carried debris are present. Should such excessive accumulation be determined, the Town Manager may approve raking with the authorization given by DEP. Councilman Meador pointed out that they need to set a spending limitation by the Town Manager.

Councilman Shenko agreed with Councilman Meador and pointed out that they didn't need to be in the business of licensing and regulating chairs, but do need to tell them to lock them up, and put them away. Councilman Shenko proposed that any raking that will result in the unreimbursed expenditure of Town funds in excess of current budgeted sums, be first approved by Town Council. Council then could go into a budget amendment if they desire. Councilman Shenko was in favor of and would support Councilman Meador's proposed amendment.

Vice Mayor Massucco responded that he will go along with any changes on 14-6.

Mayor Boback reiterated they have consensus on 14-6 which everyone is in favor of.

Mr. Green reported that TDC will be reimbursing the Town for their expenditure but the exact amount is not yet known.

**VOTE:** The motion passes 4-1; with Councilman Meador dissenting.

## **VI. NON-CONSENT AGENDA:**

### ***A. FEMA FIS & Firm Appeal- Update/ request for Direction***

Mr. Murphy reported that FEMA has received their appeal and is under review, along with the County. Mr. Murphy asked for Council's direction whether to speak with Tomasello's office to get a ball park figure and to bring it forward to Council for authorization.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Meador made a motion not to move forward with the appeal. Councilman Reynolds 2<sup>nd</sup> the motion.

Councilman Shenko pointed out that they needed to confirm with Mr. Tomasello what this would cost the Town before deciding not to move further with this issue.

Vice Mayor Massucco expressed that they needed to continue to give the best shot with the FEMA maps, even if it meant extending TCE.

Mayor Boback agreed with Vice Mayor Massucco and Councilman Shenko with finding out first the cost, before they forget about it.

Councilman Meador announced that FEMA has proposed those regulations for the protection of the public. Adding that he does not see any benefit unless one was a developer looking to get a permit under the FEMA guidelines.

When questioned on the August 7 deadline for construction projects, Mr. Murphy responded that the deadline was tentative, and is based on FEMA's timetable. Mr. Murphy pointed out that due to the amount of appeals and the complexity of these appeals, FEMA would have to evaluate them all, which will take some time.

**VOTE:** The motion fails 3-2; with Councilman Shenko, Vice Mayor Massucco and Mayor Boback dissenting.

**MOTION:** Councilman Shenko made a motion to direct staff to contact Tomasello Consulting Engineers to determine what action they would recommend, and what firm estimate they would give to move forward with that action to be brought back before Council. Vice Mayor Massucco 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 3-2; with Councilman Meador and Councilman Reynolds dissenting.

**B. *Request direction from Council regarding (EPAMDs or "Segways") within Town limits- Bring back with more info on 03/19-07.***

Mr. Murphy made reference regarding Segways first appearance. Mr. Murphy pointed out that Council directed Public Safety Task Force to take on the issue, and referred to Ms. Mayher to update Council with their decisions.

Michelle Mayher reported the information before Council was the same information given to Public Safety Task Force, and reported that when they met on March 6, 2007, the committee took no action, as they were not prepared to discuss the item at the time and it was tabled to their next meeting in May.

*Mayor Boback opens public comment:*

- Mr. Billy Kirkland presented guidelines to Council regarding the Segways rentals.
- Doris Kovach shared her concerns regarding the use of Segways and the condition of the sidewalks on the beach.

*Mayor Boback closes public comment:*

Mr. Murphy explained that this item is before Council as staff is seeking direction as to applications for occupational licenses for this use. Vice Mayor Massucco reiterated that he was against the segways and stood behind his position. Vice Mayor Massucco expressed that the segways do not fit into the dynamics of their beach, adding that these machines are not properly set up with safety regulations.

Councilman Reynolds agreed with Vice Mayor Massucco and the previous speaker that the beach is not the place to put these segways.

Councilman Meador expressed that he was not prepared to outlaw segways until they have some statistics regarding the safety of these machines, and felt that it would be premature to take any action at this time.

Councilman Shenko agreed that Public Safety Task Force needed to review this further.

Ms. Mayher reported that the Public Safety Task Force next meeting would be on the first Tuesday in May.

Ms. Dalton pointed out that in the absence of some determination made by Town Council, there would be no reason for Mr. Murphy to issue licenses. Ms. Dalton suggested deferring the matter until she can provide other options. The Council directed staff to continue through the normal review process, and that the town attorney would draft language which

would advise license applicants that the license may be conditioned or revoked, pending further consideration by the Town Council.

**C. 1154 Estero (Barking Shark) Update**

Mr. Murphy referred to his memo regarding the specifics of what the Fire Inspector, staff and owner have concluded.

There was no discussion regarding the matter.

**D. Sandarac**

Mayor Boback referred to a letter in response to the Sandarac.

Ms. Dalton reported that it was Council's discretion whether or not to hear this item.

Councilman Shenko also agreed that the association needed to present a unified front to Council, and that it would be premature to come to any decision at this time.

Vice Mayor Massucco addressed Mr. Schilling pointing out that there was no need for discussion by Council, until they can speak to the appropriate person.

Councilman Reynolds expressed that he too had spoken to Mr. Schilling to this regard, and that Mr. Schilling had responded to Councilman Reynolds that he in fact did have the authority to make decisions.

Mayor Boback responded that he had no problem with Mr. Schilling addressing the Council regarding responses from Sandarac.

*Mayor Boback opens public comment:*

- Mr. Frank Schilling, Vice President of Sandarac. He spoke of his authority as the Vice President and presented Council with documents relating to Sandarac Association, then proceeded with his presentation.
- Bud Mays owner at Sandarac referred to Attorney DeBoest and an opinion letter he wrote. He spoke of the construction of the wall, stating that Mr. Schilling is entitled to represent the association.
- Harold Douglas referred to the time Mr. Schilling was an officer and Director of the Board.

- Tom Babcock shared his concerns regarding Sandarac and the wall, referring to the Comprehensive Plan and read a caption in 5-D-1. Mr. Babcock added that they will be having an LPA meeting regarding this same issue.

*Mayor Boback closes public comment:*

Mayor Boback asked members of Council whether they would be addressing this issue at this time.

Ms. Dalton suggested to Council to hold off on further discussion until she can identify by what authority Mr. Schilling represents the Sandarac Association.

Councilman Meador shared his concerns regarding any consideration, stating they need clear corporate authority regarding this matter.

Councilman Shenko also agreed that they needed a voice from the Board of Directors of the condominium association indicating that today's presentation is true and correct.

Mayor Boback was in agreement with what they have in front of them. Mayor Boback also agreed that they needed to have some definitive authorization to avoid getting into any kind of problems.

## **VII. TOWN MANAGER'S REPORT:**

### **A. Special Event: Sand Bar**

Mr. Parker referred to a request for a Sand Bar and Grill at Santini Plaza for approval of Special Events for St. Patrick's Day from 8:00 AM to 10:00 PM, and deferred to Nicole Olsen for further information.

Nicole Olsen reported that this was not the normal request for Special Events Permit Application as they must be in 21-days prior to the event.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Vice Mayor Massucco made a motion to approve the request as stated. Councilman Shenko 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Reynolds asked if the event was for fundraising purposes.

Ms. Olsen responded that the permit application was for an extension of the premises for the sale and consumption of alcoholic beverages underneath the tent.

Councilman Meador asked if they had the application in hand, commenting that he had no objection to the request.

Councilman Shenko cautioned the applicant to comply with the noise ordinance.

**VOTE:** The motion passes 5-0.

Mr. Parker announced that on Monday they will begin rerouting traffic off Estero Blvd onto the bridge for the study period, and deferred to Mr. Green regarding the time and specifications.

Mr. Green announced they will be conducting the study beginning Monday through Saturday from 3:00 PM to 7:00 PM. Mayor Boback questioned whether Times Square businesses had been notified. Mr. Green responded that they would be advertising in the paper.

Councilman Shenko stressed to the Town Manager, Mr. Parker and Mr. Green to pull the plug should they see that things are not going as planned, and not wait for Council to make the decision.

Vice Mayor Massucco shared his concern regarding the demolition, along with the heavy trucks entering the bridge, would affect the result of their time trials.

**MOTION:** Councilman Reynolds made a motion to defer the test. Councilman Meador 2<sup>nd</sup> the motion.

Mayor Boback emphasized that the dump trucks should not slow down the traffic, and that this would be as good a time as any.

Councilman Meador pointed out that this is not the routing the developers proposed.

Councilman Shenko commented that he would not see the difference between the developers proposal shown to them, and routing the traffic suggesting that they can try it; keeping in mind if it didn't work, they can always take it out.

**VOTE:** The motion fails 3-2. With Councilman Shenko, Vice Mayor Massucco and Mayor Boback dissenting.

Mr. Parker announced holding a workshop within the next couple of weeks regarding Policies and Procedures, with the dates in mind of March 24<sup>th</sup> and March 31<sup>st</sup>.

Council members agreed to have the work shop after the new Council is seated after March 19<sup>th</sup>, which will be on March 26, 2007 at 5:00 PM.

#### **VIII. TOWN ATTORNEY'S ITEMS**

Ms. Dalton had no items to report.

#### **IX. COUNCILMEMBERS ITEMS AND REPORTS:**

Vice Mayor Massucco referred to the CAC meeting, and congratulated the Lion's Club.

Councilman Reynolds spoke of the Shrimp Parade and overall outcome of those who attended.

Councilman Meador reminded the residents to vote on March 13<sup>th</sup>, 2007.

Councilman Shenko expressed his thanks to Vice Mayor Massucco for his years of dedication to the Town.

#### **X. FINAL PUBLIC COMMENT: Public comment at this time is heard on any item and/or issue of concern.**

*Mayor Boback opens public comment:*

- Eddie Foster expressed concerns regarding the Beach Patrol.
- Gabrielle Hickey commended Council for their efforts, and also spoke about the vehicles on the beach.

*Mayor Boback closes public comment:*

#### **XI. ADJOURNMENT**

**MOTION:** Vice Mayor made a made motion to adjourn. Councilman Shenko 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

Mayor Boback adjourned the meeting at 8:08 PM

**NEXT MEETING:** Monday March 19, 2007 at 6:30 PM

**NOTE:** This meeting is televised live on Comcast Channel 11.

*If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that a verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based. Please note: Agendas will be available on the Friday prior to this meeting at [www.fmbeach.org](http://www.fmbeach.org).*

Respectfully submitted,

Debbie Cardoso

*MOTION: Approve as presented  
Councilmember Shenko / Meadar  
VOTE 5-0*

*Mickelle Meyer 4-2-07*