

**MINUTES  
TOWN OF FORT MYERS BEACH  
REGULAR TOWN COUNCIL MEETING  
APRIL 2, 2007**

**CALL TO ORDER:** Present: Mayor Boback; Vice Mayor Kiker; Councilmember Acken; Councilmember Meador; Councilmember Shenko; Town Manager Gary Parker; Town Attorney Anne Dalton; Community Development Director Jerry Murphy; Finance Director Evelyn Wicks; Public Works Director Jack Green, and Town Clerk Michelle Mayher.

**PLEDGE OF ALLEGIANCE AND INVOCATION**

All stood for the Pledge to the flag and remained standing for invocation.

Mayor Boback brought to the audiences' attention a change in format for future council meetings based on discussion at the last workshop. Beginning in May, the format will be for a workshop meeting and one business meeting. Councilman Meador stated it was his understanding that the workshop meeting will have public comment, and Councilman Shenko concurred.

Town Manager, Gary Parker mentioned to the Council of his understanding that the agenda for this evening will be amended to allow for a presentation on the Newton Beach Park Resource Management Plan. The Mayor confirmed.

**CONSENT AGENDA:**

**MOTION:** Councilman Shenko moved to approve Consent Agenda items A through D. Councilman Meador seconded.

**VOTE:** 5-0

**CONSENT AGENDA E.** Resolution 07-17, Banking, Florida Municipal Investment Trust

**MOTION:** Councilman Acken moved to accept resolution 07-17, seconded by Councilman Meador, for discussion and then inquired as to whether the signers would be bonded. Finance Director Evelyn Wicks responded that she would make sure that they were.

**VOTE:** 5-0

**CONSENT AGENDA F.** Resolution: 07-16, Banking, SunTrust

**MOTION:** Councilman Shenko moved to approve as presented, Councilman Acken seconded.

**VOTE:** 5-0

**ADMINISTRATIVE AGENDA:**

**A. ORD. 07-03, AMENDMENTS TO LDC CHAPTERS 14 AND 27, BEACH RAKING AND BEACH VENDORS**

Attorney Dalton read the ordinance title.

Mayor Boback opened the public hearing.

**PUBLIC COMMENT:**

**Dennis Kovach**, resident of Fort Myers Beach and Vice Chairperson for the Marine Resources Task Force. He thanked all participants who had contributed to the recommended amendments to the Land Development Code. He expressed dissatisfaction with the recommendation relating to manual removal of debris from the water line to five feet above wet sand combined with mechanical removal of debris above five foot wet sand. DEP restrictions approve raking below the rack line. Mechanic raking is toward the water. MRTF is asking not to allow raking over sand dollars, shells, etc., and destroy the integrity of the sand at the waterline.

**Eve Haverfield**, Turtle Time, has been monitoring sea turtles on the island since 1989. She would like Fort Myers Beach to be part of the solution in the recovery of sea turtles, allowing sea turtles to nest; allowing access to healthy habitat. By moving and stacking beach furniture, we allow sea turtles access to the healthiest part of the beach.

**Gabrielle Hickey**, Beach vendor. Ms. Hickey expressed her feeling of how it is very important for these changes to pass, as, advisory committee members as well as beach vendors spent many hours and put forth a lot of work in the hopes that this will be approved. Vendors see these as guidelines, not as restrictions. She expressed her appreciation for all the time put in by the MRTF.

**Tom Babcock**, Williams Drive. He opined that at the last hearing, Council rejected most of the recommendations of the experts, the MRTF and the LPA. The wording is very similar to an alternative that was rejected by MRTF and LPA. As stewards of our environment, he asks for consideration as to whether the wording in this code is appropriate for the intent of the comp plan.

Public comment is closed.

**DISCUSSION:**

Councilmember Meador began the discussion by pointing out that no definition for mechanical raking exists in the LDC, adding that any raking under our code is

mechanical and is prohibited. He went on further to express his dislike for more taxation; he feels that that's what more licensing is. He would like to eliminate that concept. Councilmember Meador further expressed his opinion that regulations for protecting turtles with chairs' storage and stacking already exists; this amendment will require that they be chained at night.

If this amendment keeps the licensing aspect, he would like to propose that in reference to smaller businesses, in section 14-12, subsection A, businesses and or properties that offer beach chairs, that we fashion an exemption for smaller properties, such as "complementary use" for businesses of 10 units or less "shall be exempt from the licensing requirements" of this part.

Councilmember Shenko expressed his desire to see a budget impact statement with every new proposed change in ordinances. He does not see a benefit in regulating beach chairs. He further opined that people want a clean beach, and so would propose we having raking as a budget item.

Vice Mayor Kiker asked for clarification regarding the process for bringing forward this ordinance.

Attorney Dalton explained that the Land Development Code requires two hearings but if Council is not ready to move it forward, they may continue, send it back to the advisory committees, table it, or take whatever action they choose.

Vice Mayor Kiker agrees that licensing and regulating needs to be less not more; agrees that beach raking should be a budgeted item. He is concerned that there's some good info not being considered, and suggests sending it back to the LPA with public comment, and one more shot at it.

Councilmember Acken expressed his desire to make the timing of the approval not a necessity, that is, would like to allow the Town Manager to approve beach raking while waiting for the DEP to approve same. He would also like to give the town manager the authority to rake when he deems necessary, and not require council approval in the event that any such raking will result in an unreimbursed expenditure of town funds in excess of currently budgeted funds. Councilmember Acken believes that the beach vendors would accept licensing if so imposed, but are not overwhelmingly in favor. He would like to change the language from "must" to "may" regarding licensing; and should licensing be required, he would like consideration to expand their work area from 4x6 to 10x10.

Mayor Boback expressed his gratitude to the Marine Resources Task Force and the Local Planning Agency. Under 14 – 6, (B), that budgeted funds must first be approved by Town Council, Mayor Boback is not in favor of changing that language. He feels that if it is Town expended funds, it should be a line item in the budget. Mayor Boback is uncertain whether residents are willing to pay for this added service, and feels that this is an item that should go to the voters via referendum.

**MOTION:** Councilmember Meador moved to approve Ordinance 07-03 as presented with the exception of item 14-12, and to discuss it separately.

Councilmember Shenko seconded the motion.

**AMENDED MOTION:** Councilmember Shenko would like to amend the motion to remove page one definition of beach chair service, as well as remove 14-5, D, as it refers to 14-12. Councilmember Meador amended and Councilmember Shenko seconded.

**ROLL CALL VOTE:**

|                                     |     |
|-------------------------------------|-----|
| Motion maker, Councilmember Meador: | aye |
| Councilmember Shenko:               | aye |
| Mayor Boback                        | aye |
| Vice Mayor Kiker                    | aye |
| Councilmember Acken                 | aye |

**VOTE:** Vote passes unanimously, 5-0

**MOTION:** Councilmember Meador moved to delete section 14-12 from Ordinance 07-03. Councilmember Shenko seconded the motion.

**VOTE:** 3-2 Mayor Boback, Vice Mayor Kiker dissenting.

***RECESS: 8:00 pm      RESUME: 8:06 pm***

**APPOINTMENT TO ADVISORY COMMITTEES:**

**MOTION:** Councilmember Shenko moved, and Councilmember Acken seconded the motion to appoint all advisory committees as presented in the packet, excluding the Local Planning Agency, and for the LPA to be acted upon separately.

**VOTE:** 5-0

Appointment to the Local Planning Agency. Five appointments needed to be made; four for two year terms and one for a one-year term, which is the completion of the term held by Randy Brown.

The votes came in with 5 votes each for Rochelle Kay, Alan Mandel and Dennis Weimer; four votes for Bob Simon and three votes each for Evie Barnes and Carrie Doine. A revote was cast between Barnes and Doine, with Evie Barnes receiving three votes to Doine's two. Therefore Evie Barnes will fill the remaining one year term vacated by the resignation of Randy Brown.

**NEWTON PARK CULTURAL RESOURCES MANAGEMENT PLAN**

Projects Manager Theresa Schober made a power point presentation based on a report provided by Renker Eich-Parks Architects. This is an introductory presentation of the project which was originally scheduled to go before the Town Council for consideration and action on April 9, 2007.

Councilmember Meador mentioned that he will be out of town for the April 9, 2007 meeting, and expressed a desire to be present when this item is before Council. He does not believe that directions given to staff toward this property during budget time have been followed

Councilmember Shenko sees some budgetary concerns, and will agree to postponing this item before Council until a time when all five councilmembers will be present

Vice Mayor Kiker requested some information he would like to see when this next comes before council. Those items are a five year performa; the expenses for the next five years. Also, the alternatives discussed in the presentation, some numbers around those so the Council can know the costs. Vice Mayor Kiker asked for the possibility of someone from Florida Communities Trust (FCT) coming to Fort Myers Beach, and discussing what options exist.

Councilmember Acken felt that the Town has funding resources available, and perhaps a next report could show the Town's share of the project.

Mayor Boback felt that some plans were based on historical significance, and that may now be shaky ground.

## **PUBLIC COMMENT**

Lee Melsek, FMB resident, spoke of the architects, and their confirmation that the cottage is not historic. In 2004, the Town Council accepted it as a historic resource. That agreement was based on flawed information. Some believe that that part of the agreement with the county should be voided. CELCAB voted 6-0 that the Newton home is not historic and that it should be removed.

Pat Smith, FMB resident commented her belief that those errors completely flawed the possibility of having a passive park, and asked regarding the 50% rule. It's time to own up to the mistakes made in the past, and she favors the idea of getting FCT to come to the Beach to set the record straight.

Sandi Suter, FMB resident and member of CELCAB. She felt that we are only talking about 4/5ths of an acre. Expectations are large for this parcel. CELCAB voted to keep the cottage, as the grant was predicated on that concept. Ms. Suter agreed with pursuing a visit from FCT.

Ceel Spuhler, Beach resident and member of CELCAB. She feels that modernization was overcoming our town, and that the home is more included to be saved, and not necessarily the cottage. The home was built in the 50's and being inside is very indicative of what it's like to be in a 1950's cottage. Mrs. Spuhler feels we should be preserving the history for the 1950's, and supports the idea of having FCT come to FMB and see what can be preserved. Something to be decided for generations to come needs much discussion.

**TOWN MANAGER'S ITEMS:** Town Manager Gary Parker had a request of Council for authorization to move the July 2<sup>nd</sup> Town Council meeting to July 9, 2007. Council was in concurrence.

**TOWN ATTORNEY'S ITEMS:** As a housekeeping matter, wanted to confirm that the consensus on the part of Town Council was the same as the direction received during the earlier Public Works Services Inc., Corporate Meeting. The Council concurred.

#### **COUNCILMEMBERS ITEMS AND REPORTS:**

Councilmember Meador would like to have the full documentation that was recorded in the public records, vis a vis the interlocal with the County and the agreement with the State be provided to the Council. He would also like to have a full copy of the minutes of the CELCAB meeting as referred to by Lee Melsek, Sandi Suter and Ceel Spuhler, in order to have the benefit of that material that is not here provided.

Councilmember Shenko reiterated his previous mention that he would not be present for the May 7, 2007 meeting.

Vice Mayor Kiker asked if the Town has a single source that we recognize as an expert for determining historical significance. This has not been presented to the historic preservation board. Vice Mayor Kiker also spoke to the issue of the advisory committees and looked for a concurrence from Council with regard to whether council should direct staff to review and revisit the advisory boards.

Councilmember Acken referred to his attendance at the Coastal Advisory Committee meeting and praised former Vice Mayor Massucco for assisting him in the transition. He spoke of the dollar funding requests put forward by the Town. He referred to the City of Sanibel and their funding requests, and expressed a hope in the future that we can partner with neighboring cities, or have requests of our own. Councilmember Acken expressed a willingness to submit a letter of endorsement to the TDC in support of the City of Sanibel's request and asked if the FMB Town Council would support that action.

Mayor Boback raised the issue regarding the sheriff's traffic control at the light, and asked how long to leave that in place? Councilmember Shenko recommended extending the Sheriff's traffic enforcement for at least one week beyond Easter and giving the Town Manager the discretion to continue into the second week if deemed necessary.

Councilmember Acken agreed and provided the caution not to “milk the clock”.

Mayor Boback continued by asking that the memo received regarding the Yucatan Grill be brought before Council for discussion in a public meeting.

Mayor Boback also asked to alert the staff and the Public Safety Task Force to begin preparing a Hurricane Preparedness Seminar.

Mayor Boback asked the Council’s voice regarding bringing forward a lobbying ordinance. Council’s concurrence was to let it go at this time.

Mayor Boback then asked for an update on Jimmy B’s. Community Development Director Jerry Murphy deferred to Town Manager, Gary Parker. Mr. Parker referenced a phone conversation with Mr. Slavich in which Mr. Slavich indicated that a letter would be forthcoming to the operators of Jimmy B’s directing them to close down. Referring to a printed flyer that is circulating, Mayor Boback felt that Jimmy B’s was not in compliance, and asked that this issue be an item for discussion at the next Town Council meeting.

**FINAL PUBLIC COMMENT:**

Sam Lurie, longtime beach resident, feels we have a serious pollution problem, that being a noise pollution at WaterSide at Bay Beach. This construction noise is disruptive well before sunrise, only to end shortly after noon. Mr Lurie requests that this be sponsored for a future agenda item, to be applied toward the entire island. Construction noise predawn is not conducive. Common courtesy would dictate respect for the neighbors. Mr. Lurie requests that Council pursue an ordinance for a later start time.

Dennis Kovach, resident, spoke toward complimenting the Council for the tear-down of the Days Inn. .

Eddie Foster, resident expressed her thanks to the Council their vote on Beach Patrol. Safety on this beach is a number one issue, and Ms. Foster feels a need for a town emergency number to report various violations that occur off hours.

Mayor Boback inquired about the possibility of having code enforcement in place for the weekends. Mr. Murphy responded that he will report back at the next Council meeting.

Gabrielle Hickey spoke to her disappointment that the ordinance did not pass as presented. She expressed her opinion that all vendors agreed to this.

**ADJOURNMENT : 950 pm**

Respectfully submitted,

*Michelle Mayher* 4-10-07

Michelle Mayher  
Town Clerk

MOTION: Shenko / Acken  
VOTE: 4-0

Approved as presented

Page 8 of 8