

**MINUTES  
FORT MYERS BEACH TOWN COUNCIL  
APRIL 9, 2007**

**CALL TO ORDER:** Mayor Boback called the meeting to order, and all stood for the pledge to the flag.

Members present: Mayor Boback, Vice Mayor Kiker, Councilmember Acken, Councilmember Shenko, Town Manager Gary Parker, Town Attorney Anne Dalton, Town Clerk, Michelle Mayher, Community Development Director Jerry Murphy, Public Works Director Jack Green.

Absent: Councilmember Meador.

**PUBLIC COMMENT:** Public comment will be heard at the time the agenda items are heard.

**CONSENT AGENDA:**

Councilmember Shenko moved to pass the consent agenda. Councilmember Acken seconded.

**VOTE:** 4-0

**ADMINISTRATIVE AGENDA**

- A. Yucatan Grill – CDS – Vice Mayor Kiker declared ex-parte communication. Councilmember Shenko declared that he had involvement in so much as he did prepare instruments for the owners of the property although it's been several years and one of them is now deceased, but if you look at the deed in public record his name is at the top, as one who prepared those documents, and that was in 1991. He has not had any ex parte communication as it relates to this project.

Councilmember Acken and Mayor Boback had no ex parte communication.

Jerry Murphy stated that staff spoke with agents for the owners last week. The LDC requires that the owner build an awning out over the sidewalk; there will be no outdoor seating in that area and they are going to have drawing revised to clearly indicate that that canopy will be over the existing sidewalk. There will also have to be an easement executed between the Town and the owner for the use of that area, and they will be doing the survey work to draft a legal description for that easement area.

Councilmember Shenko's concern is that this is not a canopy, but rather a major structural component that hold the whole building up.

Murphy: may misspeak by calling it a canopy. It's a covering over the sidewalk for people to get out of the rain.

Vice Mayor Kiker understands that the length of the sidewalk is actually a wall that runs the whole length of the building. His concern is whether the dining will leak out into the sidewalk.

Councilmember Acken notices the front is defined as a walkway. The awning is not dissimilar to other things on the island, and doesn't personally see a problem.

Mayor Boback would like to go ahead with an appeal, he doesn't see it as an awning, it's part of the roof sticking out over the sidewalk.

Attorney Dalton explained the process would be a motion and a second, and passage by majority, and since this council today is only four members, it would require three members to approve.

**MOTION:** Mayor Boback made a Motion to appeal. Councilmember Shenko seconded.

Vice Mayor Kiker asked about the 50% rule, asking if there are time constraints for permitting.

Mr. Murphy explained that if the FEMA maps are adopted as proposed, they will not be able to develop this project as it is proposed. The Land Development Code is what requires them to build out over the sidewalk, to provide the covering of the sidewalk.

**PUBLIC COMMENT:**

None

Councilmember Shenko confirmed with Mr. Murphy that this project is not currently under any time constraints. He feels that structurally, we're opening Pandora's box. Drawings show that if the pole is removed, the building will not be supported: that's not an awning.

Councilmember Acken feels that if the structural component ties the awning into the building, it could only be a good thing for considering hurricane force winds. We should encourage this project, not discourage it.

**MOTION:** fails 2-2 with Vice Mayor Kiker and Councilmember Acken dissenting.

**Administrative Agenda:**

B: Jimmy B's

Attorney Dalton addressed this issue stating that the Town has received a letter from Gurelle Construction Company, which is the company handling the demolition for Empire Builders and that letter states that demolitions are to start April 16, 2007. They

represented that FPL has been instructed to turn off all power to the site on April 16, 2007, which is the same day that demolition will start.

**MOTION:** Councilmember Shenko made a motion for code action to go forward with all haste to obtain compliance of the property that we refer to as Jimmy B's

Mayor Boback seconded the motion.

**PUBLIC COMMENT:**

Pat Smith feels the need to be straightforward about rules regarding our comp plan and land development code. She encourages that we enforce rules that are applied to residents, apply to businesses as well.

**PUBLIC COMMENT CLOSED**

Mayor Boback commented for the record that several residents want to know if Councilmember Acken can vote regarding issues in Times Square.

Attorney Dalton responded that the definition of a conflict would be a matter of whether Councilmember Acken has a direct pecuniary interest, and if so, he may not vote. It is a matter at his determination whether he has direct pecuniary conflict or not. Attorney Dalton would have no idea of his relationship with the property under discussion.

Councilmember Acken answered that he is aware of the law, and understands that it's his responsibility to declare any conflict of interest. He further stated that he has no financial interest. If someone feels he has a conflict of interest, that person should consult an attorney and then file accordingly.

**VOTE:** 3-1, with Councilmember Acken dissenting.

The Mayor asked about the Town's options regarding code enforcement. Attorney Dalton offered to look into the process and report back to the Council.

Councilmember Shenko would also like that report to address the policy that code enforcement was complaint driven; whether it is working, and whether we would need to have more active code enforcement.

Mayor Boback expressed his displeasure with those who file complaints being subject to their identity being disclosed.

Jerry Murphy explained that the statute requires code to identify who the person is who is filing the complaint if they are asked, and if they know. Code Enforcement accepts anonymous complaints, but they must be in fact anonymous.

Attorney Dalton qualified whether the report on this item would be appropriate at the planning meeting scheduled for May 7, 2007, or another meeting.

Council felt comfortable with it being on the agenda for the planning meeting. Councilmember Shenko reminded that he would not be in attendance at the May 7, 2007 Council meeting.

## **B. DISCUSSION OF ADVISORY COMMITTEES**

Vice Mayor Kiker began by explaining his reasoning for bringing this item forward. When the Council met on March 26, 2007 in a workshop, the item was discussed and he understood the consensus was to bring this item forward to the Council, as no action could be taken in the workshop. Vice Mayor Kiker is of the opinion that the educational seminar being offered by Florida League of Cities in Lauderdale Lakes on April 27, 2007 will not fulfill what he feels is needed for our advisory committees. He feels we are at a crossroads in determining whether we want committees, standing committees or ad hoc committees, or some combination. He would suggest a four step process: 1) solicit input, asking community to come forward and give their input for our consideration. He further stated that after this discussion, he will be asking council to make decisions as to whether or not we want committees.

### **PUBLIC COMMENT:**

- Pat Smith: believes in continuous improvement. She has three areas of concern: 1) committees don't have as much direction from or communication with council as could be helpful and productive 2) she feels there is a lack of administrative and logistical support. 3) an overlap between some committees, but have been able to work around. Three Areas of Opportunities: 1) There are some good issues being generated, need to be encouraged with support and action. 2) Committees need clarity with staff as to the issues; scope of work and deadlines. 3) Perhaps have a designated councilmember liaison which would help with communication and direction.
- Jeff Butzer: 4198 Bay Beach Lane, member of Anchorage Advisory Committee. The anchorage is transition from start up to on-going. The AAC became committed to help the town operate the anchorage as a business. The Anchorage provides benefits in that it monitors the derelict, provides environmental protection to the pass, and welcomes visitors to town businesses.
- David Tezak is a member of the Traffic Mitigation Agency and echoes what Pat Smith said, and that is that he believes that committees are doing their best and have learned a lot. It's very positive. He would like to add that committees should have more direction from council.

- Sanid Suter is a member of CELCAB She can't imagine doing what these committees are doing in any adhoc manner. She feels there is such a learning curve, and such cooperation and give and take among members. Doesn't believe ad hoc would work, and further would request that any decision be made only with a full council present.
- Betty Simpson feels that the Town has been fortunate to have the types of committees which we've had. We have had dedicated workers who have achieved a great deal. Our purpose was to advise and bring to council. Workshops we've had have brought some conclusions.
- Ceel Spuhler, a member of CELCAB, and very grateful for her reappointment. Ms. Spuhler concurs with others, however would like to speak to the month and time of reappointment. March reappointment means new people have to be caught up on what committees have recommended. She would suggest that the selection process be made over the summer, and new appointments begin in the Fall.
- Bob Raymond is a member of the LPA, and has areas of concern, but not intended to be negative. This committee often Spends much time doing research, and then much seems wasted when it is tossed out at council discretion. He would like to see that when it does come to council they can have all the information reviewed by the committee.
- Tom Babcock is a member of the LPA, and has been a member of various advisory committees, he sees symptoms of potential problems, where good people leave out of concern of personal or political reasons. Committees have become a burden for the staff. He feels that many good ideas have been presented today, and will support a process of continuous improvement.
- Charles Hester is a member of the Marine Resources Task Force. There is a perception that committees lack volunteers. He feels that this comes from last years' reorganization which caused potential volunteers to relook at their efforts. 2- year limit is restrictive and seriously impacts the depth of knowledge . He would suggest that Council review term limits, perhaps structured like the LPA (staggered), and readdress the number of members.

Mayor Boback closed public comment.

Vice Mayor Kiker sought comments from Council on pubic comment.

Councilmember Shenko spoke to the fact that at the workshop when this was first discussed, Councilmember Meador went home sick and was not there when committees were discussed, and further Councilmember does not know that this is an item for

discussion this evening. Councilmember Shenko would like his input, and feels it's improper to go forward without input of Councilmember Meador.

Mayor Boback agrees with Councilmember Shenko regarding Councilmember Meador's participation. There have been a lot of excellent ideas mentioned. Mayor Boback would like a chance to sit with committee members, have input from staff, and feels that this should be done at a workshop where we can all sit at the table and bring forth suggestions and ideas.

The Council sought input from the Staff.

Public Works Director, Jack Green offered his input. He asks for clear direction, asking what Council would like to see done. Advisory Committees tend to be issue related, feels we should look at them functionally.

Community Development Director Jerry Murphy quipped that we have an opportunity to excel. His recommendation would be a workshop with potential volunteers, existing advisory board members and staff.

**MOTION:** Vice Mayor Kiker moved to begin the process of evaluating and making suggestions, that would be led by town staff and then come back to council.

**MOTION:** dies for lack of a second.

**MOTION** by Councilmember Acken to move forward for a workshop meeting with the current committee members invited to participate and then make decisions as to how much to lay on staff's plate.

Vice Mayor Kiker seconded.

The workshop would be sometime in the first week of May. Mayor Boback then asked the Town Clerk to reschedule the Public Safety Task Force meeting currently set for May 1, 2007.

**VOTE:** 4-0

**Recess at 5:00 PM**

**Resume 5:17 PM**

#### **TOWN MANAGER'S ITEMS AND REPORTS**

Town Manger Gary Parker advised Council that staff member Colleen Young is being proposed as alternate to Coastal Advisory Committee.

The Town has received a request form Cypress Lake High School Center for the Arts International for a contribution from the Town toward competition at Lincoln Center in NYC, and is asking for a contribution.

Manager Parker mentioned having received a letter from the Greater Fort Myers Beach Chamber regarding a gulf shore business magazine having a special insert in July, and the chamber is asking all area members for a donation toward the cost of this publication. Mr. Parker will gather more information and bring it back for discussion on April 23<sup>rd</sup>.

A request to the Town by Lee County Board of County Commissioners to appoint a representative from the Town to the Human Services Council. Council direction is that this be an item for the April 23<sup>rd</sup> agenda.

Manager Parker spoke of staff having received a site plan from Warfields, and that Community Development will go over this briefly to advise the council as to what is going on.

Jerry Murphy spoke of plans to redevelop the site called Warfields. Lee County approved a 50 unit hotel at that property. Warfields wants modifications. This case will not be heard by this council but this development will have a significant effect on beach traffic. The proposal is for traffic to exit on south street, and that that will allow for relief of vehicles leaving the island as all right hand turns on San Carlos would proceed under the bridge and come up. The hearing is scheduled for Wednesday April.18 @ 1:00 at 1500 Monroe Street on the second floor before the hearing examiner, and Community Development is seeking direction. The plans and application packet are available for perusal.

Mayor Boback feels we definitely need a representative there. This will have a considerable impact on Beach residents.

#### **TOWN ATTORNEY'S ITEMS AND REPORTS:**

Town Attorney Dalton is requesting an executive session in the Paine and Purtell, Bert J Harris Private Property Protection Act, pertaining to the property across from Edison Beach House, on April 23<sup>rd</sup> at 5:30 PM. Present will be all five councilmembers, town manager, town attorney and court reporter.

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

Councilmember Acken requests consideration to have open public comment at the beginning of meetings. His thoughts are that it's better to have increased public comment. Mayor Boback suggested putting it on an agenda for discussion.

Mayor Boback inquired as to the progress on the EOP brochures. Mr. Parker has done some tweaking and passed on to the accounting clerk. He will get with her and compare notes. Mayor Boback asked regarding progress on the Town's Emergency Operations Plan. Jack Green responded that he and Jerry Murphy had met with Ed Moran and they were confident that they were well on track, and that they will have a very good product.

Mayor Boback asked if the Town was taking any measures as to what happens to us as a Town if the legislature passes the elimination of property taxes?

Manager Gary Parker responded that staff will address that as they move through the budget process ahead.

**FINAL PUBLIC COMMENT:**

- Eddie Foster, a beach resident had several questions. One was as to beach furniture needing to be chained. Are they to be chained now, or does that start May 1<sup>st</sup>? Regarding the Times Square business meetings, she asked whether Councilmember Acken attends any such meeting, and cautioned him with regard to the possibility of the essence of wrong doing. Ms. Foster spoke to her displeasure as to the condition of Estero Boulevard. .
- Chris Loffreno thanked the Council for the joint meeting with the Board of County Commissioners, as he feels a lot was accomplished.

Mayor Boback closed Public Comment

**MOTION:** Motion by councilmember Shenko and seconded by Councilmember Acken to adjourn.

**ADJOURNMENT**

Meeting was adjourned at 5:52 PM.

Respectfully submitted:

  
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Michelle Mayher, Town Clerk

MOTION: APPROVE AS PRESENTED  
COUNCILMEMBER SHENKO/MEADOR  
VOTE: 4-0

 4/23/07