

Note from the Clerk's Office: *The Town Council of the Town of Fort Myers Beach held a Council work session on May 7, 2007. Minutes from the session were presented to Council for adoption on June 4, 2007. Town Council deferred the adoption of these minutes, pending further information. At the June 11, 2007 Council meeting, Vice Mayor Kiker asked for the minutes of May 7, 2007 to reflect, with regard to the item of Code Enforcement, a consensus of Council not to pursue proactive code enforcement. Following are the minutes previously provided, and this clerk's effort to provide a near verbatim record regarding the discussion of code enforcement.*

Additionally, with regard to the discussion regarding the golf course at Bay Beach, Vice Mayor Kiker requested that the minutes reflect that the consensus of Council is that a councilmember should not be a representative to an outside group, and not a special interest group as previously recorded. Attached is a transcript of that discussion.

MINUTES

FORT MYERS BEACH TOWN COUNCIL

2523 Estero Boulevard
Fort Myers Beach, FL 33931

WORK SESSION

MAY 7, 2007

6:30 PM

I. CALL TO ORDER: Mayor Boback called the meeting to order at 6:35 PM.

Present: Mayor Boback, Vice Mayor Kiker, Councilmember Acken, Councilmember Meador. Town Manager Gary Parker, Town Attorney Anne Dalton, Community Development Director Jerry Murphy, Town Clerk Michelle Mayher, Public Works Director Jack Green, Projects Manager Theresa Schober and Finance Director Evelyn Wicks.

Absent: Councilmember Shenko

Mayor Boback amended the agenda to hear item number 6, Discussion/Review Noise Ordinance.

II. PUBLIC COMMENT:

~~Sam Lurie – Representing Laguna Shores, asking the Town Council to consider enforcing a stricter noise ordinance.~~

~~Jeannette Swenson – Read a letter from Mr. Al Furst who was unable to attend. Mr. Furst is concerned about unsafe bicycling conditions. Read a letter from Mr. Carpenter who enjoys the use of bicycle paths, however is concerned that they have become increasingly unsafe.~~

~~Councilmember Meador called a point of order as to the three minute time limit.~~

~~Pat Smith – Spoke in favor of proactive code enforcement, as opposed to only complaint driven.~~

~~Bob Simon – Feels that code enforcement should be proactive as opposed to only complaint driven.~~

~~Jim Stephens – Feels it is important to a municipality to have parks, and the Mound House and the Newton Beach Park are fine facilities.~~

Mayor Boback closed public comment.

DISCUSSION / REVIEW NOISE ORDINANCE - Mr. Parker introduced the item.
~~Sam Lurie spoke again about the request to consider a later start time.~~

~~Vice Mayor Kiker asked staff whether there had been any other complaints regarding this issue, and whether any members of staff had spoken with the construction company. Staff responded that there had been complaints during another construction project, and no one has spoken to the construction company regarding the current project. Vice Mayor Kiker is of the opinion that we don't necessarily need to change the code to fix a specific problem, and encourages the Town to be proactive to address the problem individually.~~

~~Councilmember Acken agrees with the Vice Mayor regarding speaking to the construction company.~~

~~Councilmember Meador is sympathetic to the citizens' concerns, yet to move forward to amend the ordinance, Mr. Meador feels we need to consider the entire impact and bring the trades in for discussion.~~

~~Mayor Boback agrees that in this heat, construction workers need that 7 AM start time. If we are going to change the ordinance we need to bring the trades in.~~

The consensus from Council is to not move forward with a change in the ordinance. Councilmember Meador feels that if we are to move forward with consideration of this, he would like staff to prepare a comprehensive financial impact study on all segments of our community. The council at this time would like staff to work with individual construction companies.

CODE ENFORCEMENT REPORT: Attorney Dalton spoke of the process for a repeat violation, and that if there is a violation which occurred previously in the prior 5 years, it could immediately go to hearing without going through the hearing process.

Public Comment:

~~Lee Melsek spoke of a complaint against dumpsters on Avenue E that are in violation, which he reported six months ago. He is dissatisfied with the Town's code enforcement.~~

~~Sandi Suter – spoke of a complaint made in May 2006 about the construction of an illegal apartment. Nothing was done, and the property sold, and there is another illegal apartment on Fort Myers Beach.~~

~~Mayor Boback commented on having been reading the LDC, the fact that there's nothing in the LDC stating that code enforcement is only complaint driven. He referred to page 4 of 8, sec 1-5E, that notice shall be in writing or posted on the property. Sec 1-6, enforcement of the provisions of the code is the responsibility of the town manager. Nothing says it's complaint driven.~~

~~Attorney Dalton mentioned Section 2-424 sub para B pg 20 of 26, an officer will give notice of type of violation and provide the violator a reasonable time to correct it.~~

Recess: 7:55 PM Convene at 8:10 PM

~~Councilmember Aeken asked regarding the cost of code enforcement, and who would pay. He mentioned a significant amount of training and education required for officials to enforce the codes. He is concerned about selective enforcement, surveillance, harassment. Even heavy-handed enforcement across the board will be costly.~~

Vice Mayor Kiker called for a point of order. He does not feel the council can discuss any specific code enforcement cases at this time.

~~Councilmember Meador spoke of the time prior to incorporation, the Lee County code enforcement officer managed to accomplish both complaint driven and proactive enforcement. He believes code enforcement is one of the toughest PR jobs in the Town. He has heard a lot of complaints about selective enforcement. Code enforcement can be nasty if not properly used. He is not in favor of going totally proactive; it's not the best service for our citizens.~~

~~Vice Mayor Kiker spoke of infractions that had been reported, but still exist. These are enforcement issues, not whether or not it's proactive or complaint driven. Mr. Kiker is concerned about the lack of process. He feels we need to set standards that are high enough so that all can operate under them, and eliminate selective enforcement.~~

~~Mayor Boback would like to see enforcement officers being more proactive.~~

~~Councilmember Acken feels the complaint-driven process is satisfactory.~~

~~Councilmember Meador said there are different levels of proactive enforcement.~~

Attorney Dalton spoke of the citation and the process in front of the magistrate. There can be an evidentiary issue, as code officers do not have access to the inside of people's homes. With allegations of illegal apartments, the officer can only address the complaint from public property.

Community Development Director Mr. Murphy told the Council that we address a complaint at a verbal level first. This can address the problem. When repeat situations occur, we can then begin a paper trail. Mr. Murphy offered to come back to the Council with information about what they are currently doing in terms of tracking and the number of verbal responses to complaints.

B. Signs

No Public Comment

Councilmember Acken asked if the council is willing to consider sunsetting the sign ordinance, requiring businesses to go to monument signs with the deadline this upcoming September. He would like a two year extension to the existing sunset.

~~Councilmember Meador spoke to the ethical concern regarding a conflict, as he is a business owner who may have a sign.~~

~~Vice Mayor Kiker spoke to the difficulty the businesses face regarding getting accurate information on what signage can be erected.~~

~~Mr. Murphy pointed out that chapter 30 in the LDC lays out the provisions.~~

~~Mayor Boback feels that business owners have had 8 years to come into compliance. If anything will be brought forward, it should come forward from the LPA. Notify the public that they will need to come into compliance.~~

Attorney Dalton will look into the pecuniary interests and how four of the five councilmembers may not be able to vote on whether to bring back the sign ordinance.

This item will be brought back on the May 14, 2007 Town Council meeting .

RIGHT OF WAY ISSUES:

Parking on Fifth Street - Public Works Director, Jack Green reported that staff has looked at the possibility to put in meters at this location to regulate the parking. ~~He has had conversations with the property owner, stating it's reasonable to assume that the folks parking there are using the resort. The parking meters in the downtown area bring in approximately \$2000.00 annually. The property owner would do the improvements and enter an agreement w/ the town to pay for those spaces on an annual basis.~~ Staff is asking Council to indicate if they are comfortable with the direction that staff is going regarding the use of the rights of way.

Public Comment:

~~Pat Smith - The TMA has looked at the parking on Fifth street and has determined that it is Town right of way. The TMA supports getting this particular ROW situation straightened out.~~

~~Public comment closed.~~

~~Councilmember Aeken feels the Lighthouse owners are responsible members of the community.~~

~~Councilmember Meador is against this agreement. He feels it's a perilous situation.~~

~~Mayor Boback feels the agreement is fair. Not aware of any policy currently in place, doesn't see the Town doing any exceptions. Staff will be prepared to have this agreement for Council's consideration on the May 21, 2007 Council meeting.~~

Jack Green spoke of more ROW issues on the island that will need to be addressed in the future. The Town is looking at even-handed treatment of the use and mis-use of the rights of way.

MPO's TIP AMENDMENT -

~~Years ago, the Town had requested through the MPO, with the use of federal funds, coming from FDOT to do a fatal flaw study and dedicated transit feasibility study of Estero Blvd. as plans for rehab and what we can do to mitigate traffic. In early 2003 or so, FDOT put monies earmarked for the Town to do this study. The Town partnered with the County in an interlocal agreement to share the cost of this study. The work has been done, and all the analyses have been done. The MPO then asked the Town to release these funds; we then asked to use this money for other things, such as the rehab for Estero Boulevard. The MPO said no, that the monies are for traffic mitigation, planning and studies. At the upcoming Town Council May 14, meeting, Councilmember Shenko will be seeking direction on what to present to the MPO at their May 18 meeting.~~

Public Comment

None.

FEE SCHEDULE –

Councilmember Meador requested Community Development to provide back up info to support the fees, a basis for computation on the numbers, and would like revenue details to go along with this added responsibility.

Mr. Murphy said that he can project revenues based on previous activity. These fees are strictly for zoning; doesn't address the building department.

Public Comment:

None.

Mayor Boback asked Public Works Director, Jack Green, to address the issue of sand in the Right of Way along Estero Boulevard. In some cases, this is the only pervious area we have to absorb the summer rains. The Water Management District also would need to be dealt with in any overpaving.

~~Vice Mayor Kiker expressed his concern for increasing fees by 70%. He fears this is becoming a revenue driven operation.~~

Councilmember Meador would like to be provided with an estimate of per man hour per project.

Recess: 10:22 PM Convene 10:35 PM

NEWTON CULTURAL RESOURCE ENHANCEMENT PLAN

Theresa Schober presented the information regarding the property. FCT declined the offer to address the Town Council, and asked that if the council had any concerns, to put those in writing, and FCT would respond in writing. Ms. Schober will continue to gather information regarding costs associated with building relocation(s), demolition, estimated construction costs and permitting timeline should the Council want to move forward with construction for restrooms.

Public Comment:

None.

~~Vice Mayor Kiker asked how much this project will cost on an annual basis, wanting to receive a hard copy, or a 'run rate'; an annual cost per year and a report as to from where the revenue is coming. When drafting the project, the Town predicted in the Management Plan a maintenance budget of \$50,000. per year not including staffing.~~

~~Ms. Schober responded that the data will be largely estimated.~~

~~Councilmember Acken asked Ms. Schober if she could identify what possible scenarios available to consider. Ms. Schober replied that the three she could identify are:~~

- ~~- Plan as it is listed – the recommendation from the architect;~~
- ~~- Relocating the Newton House~~
- ~~- Relocating the Newton house and constructing another building on the property to house some of the facilities.~~

~~The grant agreement stipulates keeping the “Cottage” FCT has approved relocating the Newton home off of the property, and the Town has never asked FCT if the building could be destroyed.~~

Councilmember Meador asked Ms. Schober to provide current numbers, and not those estimates based on 2002 numbers, as well as detailed numbers for alternative one (what has been previously approved), which appear on page 13 of exhibit 2.

PENSION PLAN

Public Comment:

~~None~~

Town needs to update the plan to be compliant with IRS regulations.

MOORING FIELD

No public comment

FINAL PUBLIC COMMENT

~~Tom Babcock spoke on the proposed fee schedule.~~

~~Jeannette Swenson expressed her concerns as to the litter on the island.~~

~~Annie Babcock offered a suggestion regarding the area between the sidewalk and the road, another surface other than pavement.~~

~~Vice Mayor Kiker would like to give the Town Manager a directive to work with the City of Sanibel to find out about the red drift algae study.~~

Vice Mayor Kiker also mentioned his attendance at a meeting of the Bay Beach homeowners – EBIA – and that the golf course is up for sale. He would like to be a council representative to pursue keeping the golf course as green space. The consensus of Council is that a councilmember should not be a representative to a special interest group.

ADJOURNMENT 11:53 PM


Michelle Mayher
Town Clerk

7-9-07 MOTION: Councilmember Meador.
passed 5-0.