

MINUTES

July 9, 2007
Regular Town Council Meeting
Town Hall
Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Mayor Boback called to order the meeting of the Fort Myers Beach Town Council at 6:30 PM. All councilmembers were present. All stood for the pledge of allegiance. Town Manager Gary Parker brought the Council a request to delete Administrative Agenda Item E. Fee Schedule from the agenda, and to be brought forward at the July 19, 2007 workshop. Council consented.

Vice Mayor Kiker moved to accept the minutes of May 1, 2007.
Councilmember Meador moved to amend the minutes on page 1 of 35 to strike the entire text of public comment, with the exception of the 1st sentence of the 1st full paragraph, and with the exception of the PSTF comment; as part of the motion, Councilmember Meador read what he would like to remain: page two, LPA Tom Babcock provided comments and then prioritized, separating into improvement opportunities for all advisory committees; full PSTF, Linda Beasley responded for the PSTF voted not to have a recording secretary- that should be a staff function to free members for participation and unbiased recording; Charles Hester voiced his feelings relative to the MRTF; Alexis Galarza spoke regarding the MRTF; Pat Smith spoke for the TMA; Jim Rodwell spoke for the AAC; Lorrie Wolf spoke for the Cultural and Environmental Learning Center Advisory Board; Councilmember Meador asked Attorney Dalton to explore the legal ability to take advisory committees out from under sunshine law requirements; Mayor Boback recapped; all of paragraph four, retain 5 and 6 of the addendum and striking the balance which is the verbatim addendum of the minutes of that meeting.
Councilmember Meador called for a point of order, as the motion maker is afforded the first right to discussion.
Councilmember Meador called for a point of order, a member of the board could not have the floor again until all members have had an opportunity to speak to the issue.
Motion passed 4-1 with Councilmember Acken dissenting.

As corrections were being made to the minutes May 7, 2007, Councilmember Meador called for a point of order, as there was not motion on the floor.

Vice Mayor Kiker moved to approve the minutes of May 7, 2007.

Councilmember Meador called for a point of order: the motion is to approve the minutes, if the minutes are to be corrected, the motion needs to be to amend the minutes.

Councilmember Meador called for a point of order: the Chair responds to a point of order, the vice mayor does not.

Vice Mayor Kiker made a motion to amend the minutes.

Vice Mayor Kiker moved to include, on page 4 of 19 an action item that Mr. Parker was to send a letter to all the businesses regarding monument signs; about the disposition of them, and the specific businesses that are going to be affected; on page 4 of 19, above signs, that Mr. Murphy offered to come back to Council with information regarding tracking and number of verbal responses to complaints.

Councilmember Acken moved to amend the motion to follow the suggestion of Mr. Parker to confer with the Vice Mayor on the action items he brought forward.

Councilmember Meador called for a point of order: an amendment to an amendment cannot do anything other than amend the amendment.

Councilmember Acken withdrew his motion.

Vice Mayor Kiker withdrew his motion.

Councilmember Acken called for a point of order; he withdrew his second to the motion.

Councilmember Meador moved to amend the minutes of the May 7, 2007 worksession as follows: Under public comment, strike all of the text; under discussion/review noise ordinance, Mr. Parker introduced the item; going to the next page, the consensus from council is not to move forward with the change in the ordinance, and strike all other comments relative to that item. Going to the Code Enforcement report, retain the statement, "public comment" retain the statement, recess; retain the statement, full paragraph, Vice Mayor Kiker called for a point of order; going to the next page, retaining the last two paragraphs only of that section; under the section relative to signs, retaining the words No Public Comment, retaining the paragraph that starts with Councilmember Acken; strike the next four paragraphs, retain the next two paragraphs; going into Right of Way issues, retain the first sentence, and retain the last sentence; retain the words public comment; retain the sentence "Staff will be prepared to have this agreement for Council's consideration on the May 21, 2007 Council meeting; retain the sentence "Jack Green spoke of more ROW issues.." etcetera. As far as the MPO TIP Amendment, retain the last sentence on that page which states "at the upcoming Town Council May 14, meeting, Councilmember Shenko will be seeking direction."; retain the sentence, Public Comment, None; on the next page, strike the sentence Vice Mayor Kiker expressed his concern for increasing fees by 70%; on that same page, strike the last three sentences; strike down to Councilmember Shenko asked Ms. Schober to provide current numbers, etc; under Public Comment, strike all of the text, vis a vis public comment; strike the text, 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. As far as the addendum

material, pages 9 through 19, he moved that these be stricken from the official minutes of this workshop in its entirety.

Motion passes 5-0.

Vice Mayor Kiker moved to approve the balance of the Consent Agenda.

Councilmember Meador moved to amend the minutes of May 14, 2007: on the bottom of page 1 of 9, the vote 5-0 in favor of the motion; on the subsequent page, third line down, have the minutes reflect 5-0 in favor of granting the continuance; as far as the public hearing on the Plaka Restaurant, members indicated no ex parte communications; save the sentence Attorney Dalton swore in those testifying; save the first two sentences only, following that of the balance of the page. Page 3 of 9, strike the first partial paragraph, second, third fourth and fifth paragraph, saving the words, Lisa Hines, Senior Planner with Lee County representing the Town of Fort Myers Beach presented the staff report; saving the next two sentences, striking the following sentence, and saving the next. Vis a Vis public comment, striking everything on the balance of the page after the word, application; going to the next page, striking one, two three, four, five, six and seven paragraphs, saving the comment by Ms. Grady, striking the question by Mr. Shenko, saving the staff request a recess to coordinate the date; to the vote, amend to say vote 5-0 in favor of the motion; on page 5 of 9, saving the first paragraph, saving the second paragraph striking the sentence, "these designations are still coming .."; the third paragraph, striking the second sentence; under public comment, striking the text; going to page 6 of 9, where the vote is taken, notation vote 5-0 in favor of the motion; Councilmembers items, striking the first paragraph; striking the second sentence of the second paragraph; striking the second sentence of the fourth paragraph; striking the fifth paragraph in its entirety; striking the last sentence in the seventh paragraph; page 7 of 9, the conflict of interest opinion regarding sign ordinance, striking everything except Councilmember Acken's request to have this an agenda item; on the Bridgenorth Property, conflict of interest statement, strike the text of the conflict and indicate that a copy of the conflict statement are appended to the minutes; the bottom of that page on public comment, strike the text of that comment; on page 8 of 9, striking everything under addendum, saving the text of page 9 of 9.

Vice Mayor Kiker moved to amend the motion to amend, to retain the sentences on page 6 of 9, "Vice Mayor Kiker would like to discuss whether the Town should work with Sanibel on a red drift algae study."; Councilmember Acken is requesting an agenda item for an appointment to the Marine Resources Task Force; Councilmember Meador announced that he has been rewriting the LDC and has submitted a draft for council's consideration.

As to Vice Mayor Kiker's motion, motion passed 4-1 with Councilmember Meador dissenting.

As to Councilmember Meador's motion, with the amendments as altered, motion carried 5-0 in favor.

As to the original motion, except as amended by Councilmember Meador's motion, except as amended by the subsequent motion by Vice Mayor Kiker, motion passed 5-0.

Councilmember Meador moved to divide the motion on the minutes, to amend the minutes of May 21, 2007, proposing the following: on page 1 of 7 under public comment, strike the first sentence; paragraph two, save the words, as to the appointment of Jeff Werner to the Marine Resources Task Force, Councilmember Shenko filed Form 8B, Memorandum of Voting Conflict, and striking the text of what was stated and concluding with a statement as such being read for the record and a copy being appended to the minutes; striking the balance of that paragraph on page two. On Page two where the vote is taken, show the vote 4-0 in favor of the motion; under public comment, striking the first three sentences opposite the bullet points; on the next paragraph starting with Theresa Schober, saving the first three sentences of that material and striking the rest of the page; page 3 of 7, striking paragraphs one, two, three, four and five in their entirety and changing the next sentence to read, Council instructed the town manager to get the property cleaned up, as opposed to council instructed staff to get the property cleaned up; un the contract for the mooring field, striking the last sentence in that paragraph; under public comment, striking the text; at the bottom of that page where a 4-0 vote is indicated, indicate the vote in favor of the motion; on the subsequent page, 4 of 7, the first indication of a vote was taken, the 4-0 should be in favor of the motion; as to the hurricane brochure, strike the entire paragraph starting with Mayor Boback would like staff; again where a vote is indicated, adding the words in favor of the motion; page 5 of 7, second paragraph, strike the last sentence; paragraph four strike the last sentence; under public comment, strike the entire text, as to the adjournment vote, the vote is 4-0 in favor of the motion; as to the addendum consisting of two pages, striking all but the very first line and the very last line of that page, and on page 7 of 7, save the first sentence and the two bullet points and strike the balance of the text on that page.

Vice Mayor Kiker moved to keep all the verbiage that Councilmember Meador's motion would strike. Motion failed 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

As to the motion my Councilmember Meador to amend the minutes, motion passed 3-2, with Vice Mayor Kiker and Councilmember Acken dissenting.

Councilmember Meador moved to amend the minutes of the June 4, 2007 work session as follows: as to the North Estero Boulevard Rehabilitation Project, save the first full sentence, and strike the last two sentences on that page; on the next page, 3 of 6, save the first sentence and strike down to the statement, unless there is some concern on the part of the council; on the Jaywalking Ordinance, strike all but the first and the last sentence; on the Prioritization of Council Goals, strike from Councilmember Meador indicated down to Town Manager Parker responded, and strike the last sentence; as to contracts, strike the last sentence; on beach renourishment, strike second paragraph down to the statement Public Works Director Jack Green asked for clarification; on proposed land development code amendments, no change; on page 4 of 6, strike the last full sentence and the statement , Councilmember Meador inquired down to the last full sentence; on

advisory committee items, strike the last sentence; on search committee, strike the last sentence; on temporary parking lots save the first sentence only; and that's the extend of the amendments.

Motion passed 4-1 with Councilmember Acken dissenting.

Councilmember Acken called a point of order, asking for public comment. Mayor Boback indicated public comment will be heard after the recess.

RECESS: 7:35 PM RECONVENE: 7:45 PM

OPEN PUBLIC COMMENT

Council heard public comment.

CLOSED PUBLIC COMMENT

ADVISORY COMMITTEES:

MRTF Chairman Charles Hester was present to take questions from the Council regarding the submitted report.

NO PUBLIC COMMENT

From the PSTF, Linda Beasley and Chris Loffreno spoke to the committee's report on Segways.

OPEN PUBLIC COMMENT

Council heard public comment

CLOSED PUBLIC COMMENT

Vice Mayor Kiker moved to bring this topic to a work session and get input from the LPA. Motion died for lack of a second.

Councilmember Acken moved to follow PSTF recommendation #1, to take no action to ban EPAMD's from the sidewalks of Ft. Myers Beach. Motion dies for lack of a second.

No further action was taken on this item.

Update on Ten Items – Town Manager Parker spoke to this.

First Public Hearing of proposed amendments to Chapter 34 of the LDC in reference to parcelization. Attorney Dalton read the Title to Ordinance No. 07-04.

ORDINANCE No. 07-04

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES"; AMENDING SECTION 34-2

“DEFINITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND DESCRIBED”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS”; AMENDING SECTION 34-1801 “DEFINITIONS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1807 “CONVERSIONS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Bill Spikowski, Planning Consultant outlined the proposed amendments.

PUBLIC COMMENT:

Public Comment was heard.

CLOSE PUBLIC COMMENT

Councilmember Meador moved to table this item at this time, until council has the version that Council had previously moved forward, and not the edited version that is being presented. Motion passed 4-1 in favor with Councilmember Acken dissent.

VII. ADMINISTRATIVE AGENDA

(Town Manager Parker requested pulling item B. out of original order in order to be heard before other administrative agenda items. . Council consented.)

Second Preliminary Report on Beach Renourishment – Mike Jenkins, ATM presented this report.

Recess 9:50 PM Reconvene 10:00 PM

Public Works Director Jack Green asked to confirm the Council’s acceptance of ATM’S preliminary report.

Councilmember Shenko made a motion to accept the report as presented.. Motion passed 5-0 in favor.

Sheriff’s Substation – Public Works Director presented this item, and added the support from the Technology Advisory Committee for this dual purpose trailer.

PUBLIC COMMENT

Council heard public comment

CLOSED PUBLIC COMMENT

Councilmember Meador moved to defer a decision on this item until after budget adoption. Motion passes 3-2 with Councilmember Shenko and Mayor Boback dissenting.

Introduction of Ordinance 07-05, Elections. Attorney Dalton read the Title.

ORDINANCE No. 07-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE CHARTER, PROVIDING AUTHORITY; AMENDMENT- PROVISION FOR ELECTION OF COUNCILMEMBERS FOR 2009 AND SUBSEQUENT ELECTIONS; SETTING DATE OF NEXT GENERAL ELECTION; SEVERABILITY; REPEALING CLAUSE AND EFFECTIVE DATE.

PUBLIC COMMENT

Council heard public comment

CLOSED PUBLIC COMMENT

Councilmember Meador moved to forward this ordinance for public hearing. Motion passed 3-2 with Vice Mayor Kiker and Councilmember Acken dissenting

Councilmember Meador made a motion to bring this schedule the public hearing for August 6, 2007 at 6:30 PM. Motion passed 4-1 with Councilmember Acken dissenting.

DINGY DOCK BID SELECTION Chad Spitznagle, Public Services Supervisor spoke to this item requesting Council approval.

PUBLIC COMMENT

None

CLOSED PUBLIC COMMENT

Councilmember Meador moved to accept the bid. Motion passed 5-0 in favor.

AGENDA ITEMS DEADLINE – Town Clerk Michelle Mayher spoke to this item as it relates to the Council Policies and Procedures Manual.

Councilmember Meador moved that the timetable and preparation process provision of paragraph two of Council meeting preparation that the Council policies and procedures manual be amended to reflect the deadline for agenda to be ten calendar days' prior to the meeting.

PUBLIC COMMENT

None

CLOSED PUBLIC COMMENT

Motion passed 3-2 with Councilmember Acken and Vice Mayor Kiker dissenting.

Supplemental Agreement for FDOT, Alternating Light
Adoption of Resolution 07-23, LAP Supplemental Agreement
Attorney Dalton read the title:

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-23**

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SUPPLEMENTAL AGREEMENT FOR THE LOCAL AGENCY PROGRAM, TRAFFIC OPERATIONS IMPROVEMENT – SAN CARLOS AT PRESCOTT, CONTRACT NUMBER AN G22 AND AUTHORIZING TOWN STAFF TO PERFORM NECESSARY ANCILLARY ACTIONS TO IMPLEMENT SAME; PROVIDING AN EFFECTIVE DATE.

Councilmember Meador moved to approved agreement an adopt resolution. 07-23 as written.

PUBLIC COMMENT

None.

CLOSED PUBLIC COMMENT

Vote: 5-0 in favor of the motion.

Vice Mayor Kiker moved to forward on the referenda questions regarding the electoral process: plurality and elimination of seat requirements for Jan 2008 election.

Motion passed 4-1 with Mayor Boback dissenting. This item will be brought forward at the next Town Council meeting, or July 23, 2007.

Town Manager's Evaluation Process – it was the consensus of the Council to keep the process simple for this year, and move toward a more comprehensive evaluation form. The discussion will be an agenda item for July 23, 2007.

TOWN MANAGER'S ITEMS

None

TOWN ATTORNEY'S ITEMS

Attorney Dalton requested an executive session for July 16, 2007 at 2:00 PM for the litigation of Czulewicz vs. Town of Fort Myers Beach. The Executive Sessions will begin at 11:30 AM to hear all four sessions, Shenko vs. Werner, Payne vs. Town, Purtell vs. Town and Czulewicz vs. Town.

COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Acken requested consideration of a tentative agenda item for the July 23, 2007 Town Council meeting regarding the operation of the MatchBox Tattoo License .

Councilmember Acken declared a conflict of interest in the litigation Shenko vs. Werner et al.

Vice Mayor Kiker made a motion to reconsider the Ordinance 07-05 for the election. Motion fails 3-2, with Mayor Boback, Councilmembers Shenko and Meador dissenting.

Mayor Boback asked for an agenda item for the Citizens Advisory Committees seminar on the July 23, 2007 agenda.

At Mayor Boback's request, Public Works Director Jack Green updated the Council on the status of the Times Square Advisory Committee. Mr. Green's recommendation is for staff to come up with recommendations and then bring to Council for a workshop.

The meeting adjourned at 12:10 AM, July 10, 2007.

7-23-07 MOTION: Shunko / Meador
VOTE 3-2, Acker, Kiker
dissent



Michelle Mayher
Town Clerk

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