

**MINUTES**  
**FORT MYERS BEACH TOWN COUNCIL**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

August 20, 2007

6:30 PM

Mayor Boback called the meeting to order at 6:30 PM. Present at this meeting was Mayor Dennis Boback, Vice Mayor Larry Kiker, Councilmember Herb Acken, Councilmember Bill Shenko, Councilmember Charles Meador, Town Manager Gary Parker, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Public Works Director Jack Green, and Mound House Director Theresa Schober.

**Opened Public Comment**

None

**Closed Public Comment**

Councilmember Shenko moved to adopt the minutes of August 6, 2007 as presented. Vice Mayor Kiker seconded the motion. Motion passed 5-0.

Mayor Boback read a proclamation recognizing September 17 -21, 2007 as Industry Appreciation Week.

Attorney Dalton read the title of **Ordinance 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**

**Opened Public Comment**

Jay Light, spoke regarding the elections.  
Pat Smith spoke regarding Council terms.  
Tom Babcock spoke regarding Council terms.

**Closed Public Comment**

Councilmember Acken moved to remove the version of the ordinance identified with “2009” in the Title, or as identified as version “B”. Vice Mayor Kiker seconded the motion.

Councilmember Meador made a subsidiary motion to amend Councilmember Acken’s motion to NOT remove the version of the ordinance. Mayor Boback seconded the motion.

Councilmember Acken removed his motion, Vice Mayor Kiker removed his second.

Councilmember Meador removed his motion, ~~Councilmember Shenko~~ <sup>Mayor Boback</sup> removed his second.

Council discussed Section 3 of the ordinance as to the effective date, whereby this section provides for referenda: should there be no referenda, then the ordinance is null and void.

Councilmember Acken moved to table this discussion.  
Motion failed for lack of a second.

Councilmember Meador stated that should the Florida ethics commission determine this to be a conflict of interest, he would forgo any pay as Councilman for the time difference.

The Town Clerk called the roll:

Councilmember Meador	aye
Councilmember Shenko	aye
Mayor Boback	aye
Vice Mayor Kiker	aye
Councilmember Acken	nay

Motion passed 4-1, with Councilmember Acken dissenting.

Vice Mayor Kiker requested to change the agenda to introduce Ordinance 07-07 at this time.

Attorney Dalton read the title to **Ordinance 07-07,**  
**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE**  
**CHARTER, PROVIDING AUTHORITY; AMENDMENT – PROVIDING FOR**  
**NOVEMBER ELECTIONS; AMENDMENT – PROVIDING FOR FOUR YEAR**  
**TERMS FOR COUNCIL; INITIATIVE AND REFERENDUM; SEVERABILITY;**  
**REPEALING CLAUSE AND EFFECTIVE DATE.**

#### **Opened Public Comment**

Public Comment was heard:

Daniel Hughes spoke in favor of four year terms.

Tom Babcock spoke regarding terms suggesting consideration of alternate, even years.

#### **Closed Public Comment**

Councilmember Meador made a motion to move ordinance 07-07 forward for public hearing on September 10, 2007 at 6:30 PM. Councilmember Shenko seconded the motion.

Councilmember Acken made a secondary motion to amend Section 3 of Ordinance 07-07.

Vice Mayor Kiker seconded the motion.

Motion failed 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

Mayor Boback called for the vote regarding the motion made by Councilmember Meador to move Ordinance 07-07 to public hearing. Motion carried 4-1, with Councilmember Acken dissenting.

Recess 7:50 PM Reconvene 8:00 PM

Attorney Dalton read the title of **Ordinance 07-06,**  
**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE CHARTER, PROVIDING AUTHORITY; AMENDMENT – PROVIDING FOR ELECTION AT LARGE; AMENDMENT - REPEAL OF COUNCIL SEATS AND QUALIFICATION FOR SPECIFIC COUNCIL SEATS AND QUALIFICATION FOR SPECIFIC COUNCIL SEAT; AMENDMENT – REPEAL OF REQUIREMENT FOR RUNOFF ELECTION; AMENDMENT – REPEAL REQUIREMENT OF MAJORITY VOTE; INITIATIVE AND REFERENDUM; SEVERABILITY; REPEALING CLAUSE AND EFFECTIVE DATE**

**Opened Public Comment**

Public Comment was heard:

Daniel Hughes spoke in favor of the concept of plurality voting, but not tied in with the referendum at this time.

Tom Babcock spoke in favor of plurality, however favors the passage be in the 2010 election.

**Closed Public Comment**

Councilmember Acken moved to table Ordinance 07-06 pending a presentation by Anthony Lorens, regarding the instant run-off voting process. Motion died for lack of a second.

Councilmember Acken moved to table Ordinance 07-06 indefinitely. Motion died for lack of a second.

Councilmember Meador stated being prepared to move to adopt Ordinance 07-06 as presented in the packet with additional amendments, but first requested that the Ordinance title be read from the material in the packet.

Attorney Dalton read the title: **ORDINANCE NO. 07-06,**  
**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE CHARTER, PROVIDING AUTHORITY; AMENDMENT –REPEAL OF REQUIREMENT OF MAJORITY VOTE; AMENDMENT –REPEAL OF QUALIFICATION OFR SPECIFIC COUNCIL SEAT; INITIATIVE AND**

**REFERENDUM; SEVERABILITY; REPEALING CLAUSE AND EFFECTIVE DATE.**

Councilmember Meador moved to adopt Ordinance 07-06 with the following modifications:

Specifically, with Section 5.07 which is part of SECTION 3. AMENDMENT – ELECTIONS, that in place of the current language, that the language be amended to read: In the event that more candidates qualify for election than there are open council seats, those candidates shall participate in the regular election and the candidate or candidates receiving the most votes shall be elected to the open council seat or seats.

The other amendment proposed, as it pertains to effective date, and replace what is currently in SECTION 5. to read: Upon approval by a majority vote of the electorate voting in the referendum and certification of same by the canvassing board such provision shall be deemed adopted and shall be effective as to the next ensuing election of members of the Town Council the provisions so adopted shall be incorporated in the Town Charter and the charter so revised shall be filed with the Florida State Department. In the event that any provisions of this ordinance are not approved by such majority vote, such provision or provisions shall be deemed null and void and of no effect.

Councilmember Shenko seconded the motion for discussion and asked for an amendment as to SECTION 4. REFERENDUM be amended to indicate that the ordinance would be a vote of the electorate on January 29, 2008 rather than on the next general election, as provided in the materials, and deletion of SECTION 6, LANGUAGE MODIFICATIONS in its entirety.

Councilmember Meador indicated his concurrence with the amendments proposed by Mr. Shenko and amended motion accordingly, and second amended accordingly.

Attorney Dalton offered to clean up the entire ordinance and bring it back to council if the council would be willing to continue this hearing to a date in September.

Councilmember Acken indicated his preference for a continuance.

Attorney Dalton read a suggested amendment for SECTION 2. AMENDMENT – ELECTIONS. Section 4.01 (b). The council person receiving the highest number of votes shall be assigned to the lowest available seat number.

Discussion among the Council ensued regarding the proposed changes; to include available seats be assigned to the highest vote-getter; assign seat numbers based on votes received; designate succession orders.

Attorney Dalton suggested that if it is the will of Council to continue this hearing, she could conform the next revision of Ordinance 07-06 to what has been given at this meeting, or have multiple versions, such as 07-06 (A) and 07-06 (B).

Councilmember Meador withdrew his motion; Councilmember Shenko withdrew his second.

Councilmember Meador moved to continue the public hearing to September 10, 2007 at 6:30 PM., with version A. and version B.

Motion passed 4-1, with Councilmember Acken dissenting.

Councilmember Meador moved to direct the Town Attorney to draft a resolution with the ballot question for the final public hearing on ordinance 07-06. Councilmember Shenko seconded the motion.

Motion passed 4-1 with Councilmember Acken dissenting.

Administrative Agenda, A. Mound House Restoration Bids

**Opened Public Comment**

None

**Closed Public Comment**

Mound House Director, Theresa Schober sought authorization to execute a construction contract for the Phase I restoration for the Mound House.

Council queried staff as to why recommendation was for White General Constructors, as opposed to the lowest bidder, Concept Enterprises, Inc. Ms. Schober explained that Concept Enterprises' bid proposal lacked strict adherence to the requested format, as to letterhead and number of copies, and it was staff's opinion that Concept Enterprises may be overburdened.

Councilmember Meador moved to approve the low bidder, Concept Enterprises, Inc. Councilmember Shenko seconded the motion. Motion passed 3-2, with Councilmember Acken and Vice Mayor Kiker dissenting.

Administrative Agenda, B. Discussion regarding Newton Beach Park  
Mr. Bill Grace, an ex-officio member of the CELCAB, and knowledgeable as to the historic designation process, spoke to the historic significance of the Newton buildings.

**Opened Public Comment**

Public Comment was heard:

Daniel Hughes referenced an agreement with Lee County that he had signed during his term as Mayor, that indicated what property should be retained

and what should not be retained, and his recollection was that the cottage was to be retained, and not the Newton home.

Barbara Anderson-Hill spoke to the historic significance of the property, and at 50 years of age is eligible for historic designation.

Ceel Spuhler spoke to the interior unique qualities of the home.

Pat Smith spoke about the long, ongoing expense to the taxpayers.

Ray Murphy encouraged preservation of a beachfront property.

#### **Closed Public Comment**

Councilmember Acken moved to keep both houses. Vice Mayor Kiker seconded the motion for discussion.

Discussion ensued regarding the desire to get the project moving and get the Park opened, and sitting down with the County and the State after the Council has agreed as to their approach.

Councilmember Acken indicated that his motion was not addressed in the discussion, so he withdrew his motion.

Councilmember Acken moved to resolve to keep the property and the park, and to work in a direction that the property remain in the possession of the Town of Fort Myers Beach. Vice Mayor Kiker seconded the motion.

Discussion ensued regarding contingencies and the agreement being subject to a later cost analysis.

Councilmember Acken amended his motion to pursue continued ownership of this property in the most expeditious fashion that will provide greatest benefit to residents, and visitors of Fort Myers Beach, and at a cost to be approved by Council.

Vice Mayor Kiker amended his second.

Motion passed 4-1, with Councilmember Meador dissenting.

Councilmember Meador moved to send a proposal to the State of Florida vis a vis development of the property with the "historic cottage" only on the property. Councilmember Shenko seconded the motion.

Motion passed 4-1 with Councilmember Acken dissenting.

Vice Mayor Kiker moved to clean up the property posthaste. Councilmember Shenko seconded the motion. Motion passed 5-0.

Councilmember Shenko moved to pursue discussion with Lee County Government as to the monetary obligation as to the Newton and report back. Councilmember Meador seconded the motion. Motion passed 5-0.

Administrative Agenda C. Beach Renourishment

**Opened Public Comment**

Public Comment was heard:

Frank Schilling spoke to a desire to have a plan to fix eight blocks of erosion.

**Closed Public Comment**

Councilmember Acken moved to ~~promote Council's interest in seeing the Beach Renourishment project move forward~~ *commit to forwarding the process of* as a matter of principle, and not commit any funds at this time. Vice Mayor Kiker seconded the motion.

Motion passed 5-0.

Council directed staff to contact FEMA to determine whether Fort Myers Beach is a "managed" beach, and if so to please define.

Recess 10:25 PM

Reconvene 10:40 PM

Administrative Agenda Item D. Town Manager's Evaluation Date

**Opened Public Comment**

None

**Closed Public Comment**

Vice Mayor Kiker moved to have the Town Manager's evaluation set for the first regular council meeting in July. Councilmember Acken seconded the motion. Motion passed 4-1, with Councilmember Meador dissenting.

Councilmember Acken moved to have the Town Manager's review set for the first meeting in November. Vice Mayor Kiker seconded the motion. Motion passed 5-0.

Administrative Agenda F. Special Event Permit - Shinedown Concert at Lani Kai

Town Manager Gary Parker indicated that it was staff's recommendation to deny the application.

**Opened Public Comment**

Public Comment was heard:

Kathleen Smith queried the Council as to an exception or exemption, and asking whether she should withdraw her application.

Reverend Deborah Zibell felt her advice had been mischaracterized.

Robert Burandt, Attorney, spoke on behalf of the Lani Kai Resort, that their interest was to generate revenue for the island.

**Public Comment was closed.**

Attorney Dalton addressed the question as to whether the permit application should have been submitted, and whether it should be withdrawn. Attorney Dalton indicated that it is the applicants' responsibility to review the ordinance and be aware of any possible exclusions that may be applicable. Attorney Dalton further noted that the applicant did not withdraw the special event permit application, therefore the religious affiliation was moot.

Councilmember Shenko made a motion, based on the information submitted, that the permit requires 21 days, and after thorough analysis as to the NIMS requirements, that application as to blue sheet number 2007-15, the application be denied and code enforcement be directed to work that day and along with the Lee County Sheriff's Office, be in force, and that the elements of liability insurance, the late application, that the applicant did not adequately address the issues of police, fire and traffic, and that staff's report be made part of the record, that the motion is a finding of fact, and the motion is for denial. Councilmember Meador seconded the motion. Motion passed 3-2, with Councilmember Acken and Vice Mayor Kiker dissenting.

Attorney Dalton indicated that the special event ordinance requires that a denial be in writing.

Councilmember Shenko moved to have the Town Manager issue a written denial based on the previously passed motion. Seconded by Boback to have the denial issued.

Motion passed 3-2, Kiker, Acken dissenting

Town Manager's Items – None

Town Attorney's Items – Withdrawn

Councilmembers Items

Motion by Councilmember Meador to have Lee County Sheriff's Office security at Regular Town Council Meetings. Seconded by Councilmember Shenko. Motion passed 3-2, with Vice Mayor Kiker and Councilmember Acken dissenting.

Vice Mayor Kiker requesting having the Town's website re-post the invitation for someone to submit a request to be appointed to the county's Human Services Council.

Mr. Kiker also expressed a desire to have the advisory committees' ten items present on council agendas.

Vice Mayor Kiker requested rescheduling a meeting for Council Goals and Objectives. Council set the meeting for October 17, 2007 at 6:30 PM.

### **Opened Public Comment**

Public Comment was heard:

Pat Smith spoke to the historical value of the presence of sheriff's deputies at  
Town meetings.

**Closed Public Comment**

Councilmember Shenko moved to adjourn. Councilmember Meador seconded the  
motion.

The meeting adjourned at 12:20 AM on August 21, 2007

Adopted 9-10-07 (Date) With Without Changes. Motion by Kiker

Vote: 5-0

  
Michelle Mayher  
Town Clerk

- End of Document

*Vic Mayor Kiker would like these  
minutes to include the following:*

- *We scheduled a workshop on October 3rd  
to discuss the Newton House.*
- *Mr Parker was supposed to contact Lee County  
in regards to cleaning up the property;  
add that the meters were suppose to  
have shown up by Wednesday.*