



## MINUTES

### FORT MYERS BEACH TOWN COUNCIL

Town Hall – Council Chambers

2523 Estero Boulevard

Fort Myers Beach, FL 33931

October 22, 2007

Mayor Boback called to order the meeting of the Fort Myers Beach Town Council at 3:00 PM. All Councilmembers were present, as well as the Town Manager, Gary Parker, Town Attorney Anne Dalton, and Town Clerk Michelle Mayher. All stood and recited the pledge of allegiance to the flag.

#### Opened Public Comment

Public Comment was heard:

- Pat Smith spoke about staff agenda processes.
- Joann Shamp spoke about special assessments and about unincorporation.
- Carl Marsh spoke regarding the Yucatan Beach Stand ROW agreement.
- Keith Felder spoke about the co-op information booth in the square.
- Mike Roeder spoke about redevelopment of platted lots and permitting fees.
- Robert Warren spoke about the information booth in times square.
- Harry Heist spoke about unincorporation.
- Pat Loffreno spoke about unincorporation.
- Tracey Gore submitted a letter about unincorporation; the clerk read it into the record.

#### Closed Public Comment

Consent Agenda: Vice Mayor Kiker pulled item B; Councilmember Shenko pulled item D; Councilmember Meador pulled the Mound House landscape agreement from item E.

**MOTION:** Councilmember Acken moved to approve the balance of the consent agenda. Councilmember Shenko seconded the motion.

**VOTE:** Motion passed 5-0.

**MOTION:** As to consent agenda item B. minutes of 9.17.07, Vice Mayor Kiker moved to have the minutes deferred in order for the tapes to be reviewed and include substance regarding the sales tax proposal. Councilmember Shenko seconded the motion.

**VOTE:** Motion passed 4-1, with Councilmember Meador dissenting.

**MOTION:** As to consent agenda item B, Minutes of 10.01.07, Councilmember Shenko asked to correct on page 3 of 3 from seconded by Councilmember Shenko, seconded by Councilmember Meador.

**VOTE:** Motion passed 5-0.

**MOTION:** As to Lee County/TDC Interlocal Agreements: Mound House Landscape, Councilmember Meador moved to accept the agreement with a notation to the TDC that significant additional parking will be added. Councilmember Shenko seconded the motion.

**VOTE:** Motion passed 4-1 with Councilmember Acken dissenting.

Public Hearing: Second Reading, Ordinance 07-04, Parcelization

Attorney Dalton informed the Council that due to noticing inaccuracies, this item cannot be heard. This item will be heard on November 19, 2007 after 5:00 PM.

been any ex-parte communications. Councilmember Meador declared that he handled the Public Hearing: Robert Seibt Deck Setback Variance Request

Mayor Boback opened the public hearing. Councilmembers declared whether there had real estate closing when this property was purchased, but has had not other contact since, and none involving this setback variance request. All other councilmembers declared having no ex-parte communication.

Attorney Dalton swore in all those intending to testify.

Ken Alford spoke on behalf of the applicant, stating that they are requesting a variance to extend the back deck.

Frank Shockey spoke on behalf of staff. Staff's recommendation was denial of this request, as it has not met all the findings and conclusions in order to grant the request. However, should the Council decide to approve this request, staff prepared a resolution that would address these findings and conclusions.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Acken moved approval of resolution 07-37, A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA. Councilmember Shenko seconded the motion.

Attorney Dalton read the findings and conclusions as she understood the motion to include:

The Town Council **APPROVES** the requested variance,

1. There **ARE** exceptional or extraordinary conditions

2. Any exceptional.: conditions ...**ARE NOT** the result...
3. The variance recommended **IS** the minimum variance ...
4. The granting of the variance **WILL NOT** be injurious...
5. The conditions or circumstances ...**ARE NOT** of so general ...a nature...

Councilmember Meador questioned the motion maker, whether it is the intention that the exhibits referenced in resolution 07-37 be identical to exhibits in the LPA resolution and be attached to this resolution.

Staff affirmed that the exhibits are the same.

**VOTE:** Motion passed 5-0.

Mayor Boback closed the public hearing.

Administrative Agenda Item: Special Assessment Consultant Selection

Attorney Dalton addressed the Council indicating that she was asked to provide quotes from three law firms to undergo an assessment for special projects, and is seeking council direction.

**MOTION:** Councilmember Acken moved to not accept these proposals at this time.

Motion died for lack of a second.

Attorney Dalton commented that Nabors, Giblin provided an alternate methodology different from the statutory process. Ms. Dalton further commented on Edward Cohen indicating they would coordinate with an assessment consultant. Town Manager Gary Parker indicated that the Town currently does not have a staff member in that capacity.

**MOTION:** Councilmember Acken moved approval of the Fowler, White proposal with the stipulation that this is specific to canal dredging projects.

Motion failed for lack of a second.

**MOTION:** Councilmember Acken moved to accept the proposal from Fowler White and begin negotiations with them.

Motion failed for lack of a second.

Attorney Dalton indicated that what is before council tonight is the raw data that was requested, and suggested that council direct her to come back with more specifics as to what each firm assumed in making these proposals as far as expertise on the part of staff, or additional consultants.

Council agreed to have this item be a one hundred percent proposal to staff and have it on the upcoming Wednesday, October 24, 2007 meeting.

Administrative Agenda Item: Interlocal Agreement with Lee County for Enhanced Trolley Service

**Opened Public Comment**

None

**Closed Public Comment**

Public Works Director Jack Green explained the interlocal agreement and the enhanced service from Lee Tran for seasonal trolley service.

**MOTION:** Councilmember Shenko made a motion to go forward with Lee Tran, with a twenty-five cent fare, eliminate the two additional trolleys between Bowditch and Lynn Hall, and ask that the engines be turned off when not occupied. Vice Mayor Kiker seconded the motion.

Councilmember Shenko withdrew his motion; Vice Mayor Kiker withdrew his second. Councilmember Shenko suggested Council direct the Public Works Director to inquire as to schedule changes, advertising, upgraded stops as discussed, and bring the information back to Council at the November 19, 2007 Town Council meeting.

**MOTION:** Councilmember Acken made a secondary motion to approve the interlocal agreement as presented.

Motion died for lack of a second.

Recess: 4:35 PM Reconvene: 4:55 PM

Administrative Agenda Item: Direction on request to initiate a Future Land Use Map (FLUM)

**Opened Public Comment**

Public Comment was heard:

- Matt Uhle spoke regarding a lawsuit under the Bert Harris act, and he felt it is appropriate for the Town to initiate an amendment.

**Closed Public Comment**

Councilmember Shenko filed Voting Conflict of Interest Form 8B, indicating that he had represented Mr. Purtell in the past, may have given legal advice as to development rights, does not represent him at this time, but felt he must file a voting conflict of interest form.

**MOTION:** Councilmember Acken moved to initiate a the rezoning requested for these two parcels.

Community Development Director Jerry Murphy clarified that it would not be a rezoning, but a future land use map change.

Attorney Dalton clarified that there is no linkage between this request to initiate a rezoning and the withdrawal of a Bert J. Harris claim.

Motion died for lack of a second.

**MOTION:** Councilmember Meador moved to NOT direct a FLUM change. Vice Mayor Kiker seconded the motion.

**VOTE:** Motion passed 3-1, with Councilmember Acken dissenting and Councilmember Shenko abstaining.

Administrative Agenda Item: Laguna Shores Speed Limit

**Opened Public Comment:**

Public Comment was heard:

- Don Rollins spoke in favor of lowering the speed limits in Laguna Shores.
- Henry Turgeon spoke in favor of lowering the speed limits in Laguna Shores.
- Jeannette Turgeon spoke in favor of lowering the speed limits in Laguna Shores.
- James Howser spoke in favor of lowering the speed limits in Laguna Shores.
- Donald Cady spoke in favor of lowering the speed limits in Laguna Shores.
- Isabelle Wells spoke in favor of lowering the speed limits in Laguna Shores.
- Lou Marrone spoke in favor of lowering the speed limits in Laguna Shores.

**Closed Public Comment**

**MOTION:** Councilmember Shenko moved to take all actions necessary to change the speed limits in the entire Laguna Shores subdivision to 15 mph and to include the installation of rumble strips at key locations, only with the permission of the adjoining land owners. Vice Mayor Kiker seconded the motion.

**VOTE:** Motion passed, 4-1, with Councilmember Acken dissenting.

Town Clerk Michelle Mayher reread the motion for clarification. Council indicated the vote was with the presupposition that 15 mph was legal. The vote stands.

Administrative Agenda Item: Resolution in support of Anne Dalton and Jack Green

**Opened Public Comment:**

Public Comment was heard:

- Tom Babcock spoke as representing himself and representing the Local Planning Agency, and referenced LPA Resolution 2007-18. The LPA requests that Ms. Dalton reconsider her resignation.

**Closed Public Comment**

Councilmember Meador expressed his preference to have both Ms. Dalton and Mr. Green stay in the service of the Town. Mr. Meador expressed a desire to see a unanimous endorsement from Town Council in support of **Resolution 07-39, A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, IN SUPPORT OF ATTORNEY ANNE DALTON AND PUBLIC WORKS DIRECTOR JACK GREEN.**

Vice Mayor Kiker added that in passing this resolution, he would like to include that Ms. Dalton remain as the Town Council attorney as well as the Local Planning Agency attorney.

**MOTION:** Councilmember Shenko moved to adopt resolution 07-39, including asking Ms. Dalton to continue as the LPA attorney, and highlighting it with the words, "please stay."

Councilmember Meador asked a parliamentary procedural question, whether the motion could be made by more than one council person. Councilmember Meador joined in with Councilmember Shenko in making the motion.

Mayor Boback spoke to his full support of Ms. Dalton and Mr. Green, but indicated he could not support the adoption of a resolution. Mayor Boback did not believe that a resolution was appropriate.

Councilmember Shenko and Councilmember Meador amended the motion to take it out of the form of a resolution, and moved for a unanimous vote of confidence for Ms. Dalton and Mr. Green to remain in the service of the Town.

**MOTION:** Councilmembers Shenko, Meador, Acken, Vice Mayor Kiker and Mayor Boback moved to request Attorney Dalton and Public Works Director Mr. Green to rescind their resignations.

**VOTE:** Motion passed unanimously.

Recess: 5:50 PM Reconvene 6:00 PM

**MOTION:** Vice Mayor Kiker moved to wait until Wednesday, October 24, 2007 for an answer to the Council's request that Ms. Dalton and Mr. Green rescind their resignations. Councilmember Shenko seconded the motion.

No vote was taken.

Administrative Agenda Item: ROW Agreement/ Commercial Design Standards

Attorney Dalton spoke to this item, stating that this has come before the Council previously, at which time Ms. Dalton requested being able to gather input from certain individuals affected by this item.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Acken moved acceptance of the draft agreement dated October 04, 2007 with the provision that the following text be stricken: "Licensee shall designate the Town as an additional insured and shall deliver to the Town a Certificate of Insurance showing the Town as an additional insured upon mutual execution of this Agreement and thereafter on a yearly basis on or before the 30<sup>th</sup> day of September for each year this Agreement is in effect." Vice Mayor Kiker seconded the motion.

Council discussed that it would be prudent to require this liability insurance, and that the dollar amount would need to be addressed. The Council further discussed that they have a fiduciary duty to the Town.

Councilmember Acken withdrew his motion; Vice Mayor Kiker withdrew the second.

**AMENDED MOTION:** Councilmember Acken amended his motion to approved the agreement as written. Vice Mayor Kiker amended the second.

Council asked the motion maker to indicate the amount of liability insurance that the Town would require.

**SECONDARY MOTION:** Councilmember Acken made a secondary motion that before the issuance of a certificate of occupancy, the Town would reach a reasonable insurance agreement , numbers required outlined - \$100,000. - \$300,000. – and additionally that this would not prevent the issuance of a permit to begin work by the Community Development Department. To allow them to begin their projects, but not be issued a C.O. until they have signed a the liability insurance agreement with the Town, with the minimum insurance, or higher, as deemed necessary by the Town Manager.

Attorney Dalton indicated that she was not following the process as stated, that if it's a CPD it would come forward with the application process, through the LPA and the Town Council.

Councilmember Acken removed the secondary motion.

Councilmember Shenko asked the motion maker if he could amend the motion to indicate that minimum liability insurance limits be \$100,000.per occurrence - \$300,000. per aggregate or such larger amounts as may be determined by the Town Manager.

Councilmember Acken was not willing to amend the main motion.

**VOTE:** Motion passed 3-2, with Councilmember Shenko and Vice Mayor Kiker dissenting.

**MOTION:** Councilmember Shenko made a motion to amend the agreement for the use of the Town ROW Commercial Design Standards as shown in the draft, October 04, 2007, pg. 2 of 3, paragraph 9, to include minimum liability limits of \$100,000 - \$300,000, or such greater amounts as may be determined by the Town Manager based upon the project. Councilmember Meador seconded the motion.

Councilmember Acken indicated that since Councilmember Shenko voted against the main motion, perhaps the motion should be made by Councilmember Meador.

**MOTION:** Councilmember Meador made the motion to fill in the blank on page 2 of 3, paragraph 9 as it pertains to insurance coverage to include minimum of \$300,000 liability with \$100,000 per occurrence limits; leaving out the discretion of the manager, with a deductible not to exceed \$25,000. Vice Mayor Kiker seconded the motion.

*per person; \$300,000*

**VOTE:** Motion passes 5-0.

Administrative Agenda Item: Consideration of Ad-Hoc Committee on Unincorporation

### **Opened Public Comment**

Public Comment was heard:

- Jeff Werner spoke in favor of a committee to gather information on unincorporation.
- Lee Melsek spoke about the electors evaluating the Town.
- Bob Simon spoke in favor of home rule.
- Tom Babcock supports an assessment as to how we evaluate our Town.
- Nancy Lynn Van Oyen spoke against unincorporation.

### **Closed Public Comment**

Council discussed the possibility that if ten percent of the registered voters petition a charter amendment, the Council would be required to put the matter to referendum. Council directed the Town Attorney to research as to the process of a charter amendment.

Town Manager's Items: Lee County Professional Services Agreement with McMahon on Estero Boulevard Design Work

### **Opened Public Comment**

None

### **Closed Public Comment**

**MOTION:** Vice Mayor Kiker moved to approve the analysis and design as presented with a clarification as to the Comparative Analysis of Alternatives. Councilmember Shenko seconded the motion.

**VOTE:** Motion passed 5-0.

Town Attorney's Items:

Attorney Dalton asked for an executive session in the matter of Czulewicz v. Town of Fort Myers Beach for November 5, 2007, with the Town Council, Town Manager, Town Attorney, Attorney Denise Wheeler and a court reporter in attendance. Council set the session for 5:45 PM.

Councilmembers Items.

Councilmember Meador had no items.

Councilmember Shenko spoke in praise of the junior Olympic sailing club.

Vice Mayor Kiker spoke to the Wednesday meeting with committee chairs, and his desire to review the top ten items, inquired as to the status of updating the ordinances for the advisory committees asking to have it brought back in November. The Vice Mayor asked to review pending action items on a monthly basis, to review the times square development items, the status on the pool, he asked Mr. Parker to let Council know when he goes out of Town and designate someone in charge, he would like an update on Newton, and a review of the building department

**MOTION:** Vice Mayor Kiker moved to do a complete review of the Community Development Department and determine if we want to continue in a "government lite" venue, and whether this is the business we want to be in. Councilmember Acken seconded the motion.

**AMENDED MOTION:** Vice Mayor Kiker amended the motion to include a zoning as well as the building department, and to begin the review process during the goals and objectives meeting.

**VOTE:** Motion passed 5-0.

Councilmember Acken thanked Bay Oaks for the Family Fright Night.

Mayor Boback asked to have beach renourishment assessment cost on an agenda, to post on the web the three vacancies on the Traffic Mitigation Agency, to have as an agenda item a resolution in support of Colonel Grosskruger of the Army Corps of Engineers, and to get back to Sanibel regarding a joint meeting. Mayor Boback also asked to have a budget amendment on the next agenda, the TMA By-way proposal, the appointment of Brad Hill to the MRTF, Pay Plan Proposal. The Mayor mentioned the TMA memo on

the ROW on 5<sup>th</sup> Street, and asked to have on an agenda the TMA item regarding the light at Lenell Road.

Councilmember Shenko asked to have on an agenda the appointment of Isabelle Wells to the Public Safety Task Force.

**Opened Public Comment**

Public Comment was heard:

- Nancy Lynn Van Oyen spoke regarding the right-of-way on Cottage Street and beach access #23.
- Annie Babcock spoke in support of the work of Attorney Anne Dalton, referencing a former newspaper article.

**Closed Public Comment**

Town Council scheduled a town hall meeting for January 14, 2008 at 6:30 PM.

**ADJOURNMENT**

The meeting adjourned at 8:07 PM.

Adopted 11-05-07 (Date) With/ Without Changes. Motion by Shenko/Meador

Vote: 4-1 Acker

Michelle D. Mayher  
Michelle D. Mayher  
Town Clerk

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