



**MINUTES**  
**FORT MYERS BEACH TOWN COUNCIL**  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

November 5, 2007

Mayor Boback called the meeting to order at 6:38 PM. All Councilmembers were present: Mayor Dennis Boback, Vice Mayor Larry Kiker, Councilmember Herb Acken, Councilmember Charles Meador and Councilmember Bill Shenko. All stood for the pledge of allegiance, and remained standing for the invocation by Reverend Tom Snapp.

**Opened Public Comment**

Public Comment was heard:

- Larry Yax thanked the Council for the job they do and spoke against unincorporating.
- Tom Cameron spoke about long range plan for an overpass would serve the Old San Carlos Boulevard merchants.
- Tom Van Oyen asked that the Town keep the building department in house.
- Chris Loffreno spoke in favor of the pedestrian by-way.

**Closed Public Comment.**

**CONSENT AGENDA:**

**MOTION:** Councilmember Shenko pulled item B, and moved to adopt the balance of the consent agenda. Councilmember Acken seconded the motion.

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

**MOTION:** Councilmember Shenko asked that the minutes clarify on page 8 of 10, on the motion by Councilmember Meador, that the liability insurance coverage read liability of \$100,000. per person, and \$300,000. per occurrence, and moved adoption of these minutes with that clarification. Councilmember Meador seconded the motion.

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

**ADVISORY COMMITTEE ITEMS AND REPORTS:**

**A. Presentation by the Traffic Mitigation Agency on the Pedestrian By-Way**

Pat Smith, vice-chair person of the Traffic Mitigation Agency began her presentation. The proposal has been before the Council twice previously in a more extended form. Tom Cameron, member of the Traffic Mitigation Agency also spoke to the proposal, mentioning the opportunity for a revenue source in the form of vendors along the walkway.

**MOTION:** Councilmember Acken moved to refrain from moving forward until the Town can look at the Times Square development and how construction will affect the pedestrian traffic. Vice Mayor Kiker seconded the motion.

Council discussed that perhaps the money could be improving current sidewalks, that most pedestrian traffic comes from Seafarers' and if it is closed, there won't be the foot traffic, that this could be an opportunity to provide a safe pedestrian alternative during the Times Square construction. There was further discussion that this proposal has been around over a year, however could be better developed.

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

**MOTION:** Vice Mayor Kiker moved to approved the project with the timelines\* indicated by Public Works Director Jack Green, with the caveat that as the plan progresses, have a 30-60 day review and adjust the time to look at other projects and incorporate and integrate.

*\*engineering and permitting 60-90 days; SFWMD permit, 60 days; ROW agreement under the bridge, 90 days: In summary, the best estimate is 6 months to start, with construction period estimated at 3 months.*

Councilmember Shenko qualified the motion to say he understood that to be approval of the project in concept, and to direct staff to go forward with drawing up plans, and bring alternatives back to Council. Councilmember Shenko seconded the motion.

**AMENDED MOTION:** Vice Mayor Kiker amended his motion to include directing the Town Attorney to look into allowing vendors, whether carts or booths, etc., along the pathway as part of the integration of future projects. Councilmember Shenko amended his second.

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

#### **B. TMA Recommendation Regarding Lenell Road Traffic Signal**

Pat Smith, vice chair of the TMA indicated that previously Council had asked the TMA to discuss the light and the TMA unanimously agreed that this signal should be not be pedestrian controlled, rather should be controlled only by the fire department.

#### **Opened Public Comment**

None

#### **Closed Public Comment**

Vice Mayor Kiker indicated his preference to have the Public Safety Task Force look at this issue and make a recommendation to the Council.

Recess 7:55 PM

Reconvene 8:15 PM

**RESOLUTIONS:**

A. Resolution 07-42, Encouraging the Extension of Colonel Paul L. Grosskruger, Commander, U.S. Army Corps of Engineers

Attorney Dalton read the title: **A RESOLUTION STRONGLY ENCOURAGING THE EXTENSION OF COLONEL PAUL L. GROSSKRUGER AS COMMANDER, JACKSONVILLE DISTRICT, U.S. ARMY CORPS OF ENGINEERS BEYOND HIS ANTICIPATED NORMAL ROTATION DATE OF JULY 2009; ENCOURAGING OTHER CITIES IN THE JACKSONVILLE DISTRICT AFFECTED BY LAKE OKEECHOBEE WATER RELEASES TO PROVIDE SIMILAR SUPPORTING DOCUMENTATION; AND PROVIDING AN EFFECTIVE DATE.**

Attorney Dalton mentioned that this appeared to be a boiler plate resolution, and references to the City of Sanibel should be corrected to reference Town of Fort Myers Beach.

**MOTION:** Councilmember Shenko moved approval of Resolution 07-42 with the corrections noted. Councilmember Acken seconded the motion.

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

Administrative Agenda:

A. Contract Extension for Mound House Landscape Restoration.

**Opened Public Comment:**

None

**Closed Public Comment**

Mound House Director Theresa Schober introduced this item, indicating what was before the Council was a request to authorized a scope of work extension and fee schedule for EDAW, Inc., to complete Phase I of the landscape restoration and park improvement plan at the Mound House with a NTE fee of \$164,500. for design, bid and construction services; environmental permitting; and landscape interpretive planning and signage design collaboration. Ms. Schober indicated that the plan had been approved in concept, and that Section 1.3, Preliminary Site Plan of the proposal , EDAW will develop a preliminary site plan based on the Concept Plan and incorporate the current client input, and bring this to Council. The kick off meeting for this plan should occur in early-mid December , and design development at the end of January or early February.

**MOTION:** Councilmember Acken moved to authorize the professional services scope and fee schedule for EDAW, Inc. to complete Phase I of the landscape restoration and

park improvement plan at the Mound House with a NTE fee of \$164,500.  
Councilmember Shenko seconded the motion.

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

Mayor Boback sought Council's consent to move Administrative Agenda Item C., Interlocal Agreement with Lee County for Enhanced Trolley Service up on the agenda to be heard next. Council concurred.

C. Interlocal Agreement with Lee County for Enhanced Trolley Service

**Opened Public Comment:**

None

**Closed Public Comment**

Mr. Steve Myers, Lee County Transit Director was present to take questions from the Council. Regarding alternate fuel busses and trolleys, Mr. Myers explained that he had brought a request to the MPO about one year ago for support of a three million dollar earmark request. Lee Tran did not get that money, however explained that they are looking at bio diesel as a blend, support the use of the hybrids and are looking at ways to get them here. Mr. Myers indicated that core level of service had been reduced by one trolley over the scale of the an entire year. Mr. Myers further identified the busiest stops which are in the plan for shelters, those being Estero and Driftwood, and Estero and Island Pines Way on the northbound route.

**MOTION:** Councilmember Shenko moved to request that the interlocal agreement between the Town of Fort Myers Beach and Lee County Transit include the following:

- o To enhance by two additional trolleys
- o Charge fifty cents per ride
- o To have Lee Tran count the ridership fee, and return the fifty-cents back to the Town
- o The trolleys are to run until 11:00 PM
- o To have the two trolleys travel only from Lynn Hall Park to Big Carlos, not Lynn Hall Park to Bowditch Park
- o The two trolleys funded by the Town have signs that say, "funded by the Town of Fort Myers Beach"
- o All trolleys without drivers have the trolleys turned off.

Vice Mayor Kiker seconded the motion.

Conversation ensued as to the time restraints in the adoption of an interlocal agreement. Mr. Steve Myers offered that their drivers bid for the routes, and that time for marketing materials should be considered. Councilmember Shenko pointed out that the interlocal agreement in the packet was incomplete.

**AMENDED MOTION:** Councilmember Shenko amended his motion to change the proposed ridership to twenty-five cents per ride. Vice Mayor Kiker amended his second.

Public Works Director, Jack Green, asked to be clear on the motions, and asked Council to address each one.

**AMENDED MOTION:** Councilmember Shenko amended his motion to have the hours of operation end at 10:30 PM. Mr. Shenko reiterated the change to a twenty-five cent fare: Councilmember Shenko asked that for every holiday the Town subsidizes trolleys, that they be in operation. Council identified New Years' Eve, New Years' Day, July 4<sup>th</sup>, and Memorial Day. Vice Mayor Kiker seconded the amended motion.

**WITHDRAWN:** Upon direction to staff to bring back to Council the costs associated with the aforementioned scope of service, Councilmember Shenko withdrew his motion, and Vice Mayor Kiker withdrew his second.

Staff will bring back the interlocal agreement with Lee County Transit, including costs associated with the aforementioned changes, on November 19, 2007.

Administrative Agenda: B. Budget Amendment

**Opened Public Comment:**

Public Comment was heard:

- Lee Melsek spoke regarding the COLA and merit increases in the budget, that most in the private sector do not get two raises a year.

**Closed Public Comment.**

Councilmember Acken called for a point of order, and asked for clarification as to what the budget amendment item was on the agenda to address. Mayor Boback replied that he requested the budget amendment item be on the agenda to specifically address merit and C.O.L.A. increases, and that there should be a freeze on funds for a building department until which time the town manager and community development director can come back to council with a plan for approval.

Councilmember Acken called for a point of order, stating that the Mayor was not on the prevailing side of the vote, and therefore could not bring this item back.

**MOTION:** Councilmember Acken moved to remove the budget amendment item from the agenda for consideration.

Attorney Dalton opined that the Mayor could not bring up a motion to reconsider, however could bring a motion to amend, provided that appropriate notice had been made. At the October 22, 2007 Town Council meeting, when the Mayor indicated he wanted a budget amendment to be an agenda item, he did state specifically that he wanted to revisit the merit increases and C.O.L.A., and that would satisfy the notice requirements according to Roberts' Rules. Attorney Dalton further opined that the vote taken at the

meeting of September 24, 2007 would supersede the vote taken at the meeting of August 1, 2007.

Vice Mayor Kiker expressed a desire not to get caught up in Roberts' Rules of Order, and if there were items that needed discussion, that we talk about them, aside from parliamentary procedure.

**MOTION:** Vice Mayor Kiker moved to have a discussion regarding the proposed budget amendments. Councilmember Shenko seconded the motion.

Vice Mayor Kiker reminded the Council that the discussion regarding the building department and the zoning department were to be an item of discussion at the meeting on goals and objectives, scheduled for November 15, 2007. Mayor Boback stated he was able to wait until that meeting to discuss those items.

**MOTION:** Councilmember Meador moved to require the town manager to come back to Council for specific approval, in an open meeting, prior to administering any C.O.L.A. or proposed merit increase. Councilmember Shenko seconded the motion.

Town Manager Gary Parker informed the council that the budget that was approved on September 24, 2007 approved the implementation of a C.O.L.A. beginning with the first pay period of the new fiscal year, and that had been done effective October 18, 2007.

**AMENDED MOTION:** Councilmember Meador moved to amend the motion, limited the requirement to come before Council to only merit increases. Councilmember Shenko amended his second.

Councilmember Meador reiterated that the motion is not to prohibit the town manager's ability to bring forward merit increases, rather to have the proposed dollar figure(s) brought to Council prior to being administered.

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

**MOTION:** Vice Mayor Kiker moved to direct staff to put together an RFP to have an outside organization look at the pay plan, and position classification and pay plan study. Councilmember Shenko seconded the motion.

**AMENDED MOTION:** Vice Mayor Kiker amended his motion to have the study include benefits. Councilmember Shenko amended his second.

**MOTION:** Councilmember Meador indicated that this discussion was off agenda, and the pay plan proposal had been taken out of sequence, but moved to lay the matter of the pay plan proposal on the table, and perhaps it could be taken up by a future town manager.

**VOTE:** (as to the secondary motion, to table) Motion failed, 3-2, with Mayor Boback, Vice Mayor Kiker and Councilmember Shenko dissenting.

**VOTE:** (as to the main motion, for an RFP) Motion passed 4-1, with Councilmember Acken dissenting.

Administrative Agenda D. Draft Revisions on Council Policies and Procedures Manual

**Opened Public Comment:**

None

**Closed Public Comment**

Attorney Dalton began by going through the various changes she understood Council wanted to see, and addressed such in the draft versions provided.

**MOTION:** Councilmember Shenko moved to adopt the amended changes to the policies and procedures manual, with the changes to allow for the inclusion of sections one and two of the memo from the Town Attorney referencing such, dated October 19, 2007, as to special meetings and special events, and as to number two, special events to also include any new special events with music, **or outdoor events with alcohol** go to the council for approval. Councilmember Shenko stressed the language regarding the use of alcohol. Vice Mayor Kiker seconded the motion.

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

Administrative Agenda Item E. Pay Plan Proposal

Mayor Boback indicated that since the Council voted to direct the Town Attorney to develop an RFP relative to that evaluation, that the item would be pulled from the agenda.

Administrative Agenda Item F. Town Manager Recruitment Process

**MOTION:** Councilmember Meador moved to accept the resignation from the Town Manager, Gary Parker. Vice Mayor Kiker seconded the motion.

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

**Opened Public Comment:**

None

**Closed Public Comment.**

Council discussed various options and approaches available to them as to how to proceed. Among this discussion, were options to have Mr. Parker fulfill his 60 day notice, to have an interim manager on board as soon as possible, to contact Mr. Colin Baezinger and hold him to the original contract terms, which provided for the clause that should the

town manager, as recruited by Colin Baezinger and Associates leave the position within one year of being hired, Colin Baezinger and Associates would conduct a new search at no additional charge to the Town.

Additional discussion included the wisdom of exercising the option of a free candidates' search, to encourage in-house application, and perhaps look at changing the Town's form of government, for example voting in a manager from the citizenry. Some discussion lent itself to prior employment of Mr. David Sallee as an interim manager, and appreciation was expressed as to his competency.

**MOTION:** Councilmember Acken moved to direct the Town Attorney to contact Mr. David Sallee to inquire as to his willingness and availability to serve in an interim capacity. Councilmember Shenko seconded the motion.

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

**MOTION:** Vice Mayor Kiker moved to direct the Town Attorney to contact Colin Baezinger and Associates to begin the search for a new town manager. Councilmember Meador seconded the motion.

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

#### **TOWN MANAGER'S ITEMS:**

Town Manager Gary Parker indicated that a matter regarding the Barking Shark may need discussion and referred to Town Attorney Dalton to further that discussion.

Attorney Dalton referenced a previously distributed memo in which she advised that this case not be brought forward until the property owner has filed for application and filed the appropriate procedural paper work.

Mayor Boback stated he still wanted in as an agenda item.

#### **TOWN ATTORNEY'S ITEMS**

Attorney Dalton stated having no items for the advertised topic of Czulewicz v. Town, however spoke to a previously mentioned memo on Council position as advisory committee liaisons.

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

Councilmember Meador requested items be placed on the next available agenda, which was determined to be November 19, 2007. Those items:

- ✓ Discussion regarding a citizens' petition request to consider the modification of the existing sign ordinance
- ✓ A public hearing on ordinance 07-04, Parcelization

- ✓ A detailed discussion, via an agenda item, regarding the proposed building department and zoning department, including a proposed bid to sub-contract out this service

Councilmember Shenko had no items.

Vice Mayor Kiker mentioned that on this upcoming Wednesday, he would be getting the first draft from Lee County regarding the Newton Property. Additionally:

- ✓ He inquired regarding the goals and objectives meeting, and Mr. David Sallee's participation
- ✓ Asked for a report on a monthly basis regarding the Times Square Redevelopment Project
- ✓ Asked what the process is or will be to get updates on action items, whether a written report or at Council meetings. Mr. Parker responded he would provide a written synopsis.

Councilmember Acken mentioned attendance at a Coastal Advisory Committee meeting, and that he felt it was very productive. Councilmember Acken presented a challenge to real estate attorneys that may want to write an easement agreement that would be more palatable to beach residents as it relates to the beach renourishment project.

Mayor Boback asked for a status of a joint meeting with Sanibel. Mr. Parker responded that Sanibel was still having scheduling conflicts, but that we would follow up. Mayor Boback asked the status of issues raised in a letter from resident Dan Graviss. Mr. Parker deferred to Public Works Director Jack Green, who responded that he spoke to Mr. Graviss regarding the Sterling property, and explained to him how to do the calculation for storm water management. Mayor Boback asked where we stood regarding the Newton Project and the Beach Renourishment and the Interlocal Agreement with Lee County. Attorney Dalton responded that she and Public Works Director Jack Green had met with the county staff and issued a joint memo that has been distributed to Council, contacted the county attorney's office regarding the change to the comp plan change last spring and have provide the council with a memo, have obtained an easement from the Army Corps of Engineers, if federal dollars are involved we are required to use the easement provided by the federal government. When asked whether the wording had been changed regarding the Estero Boulevard design phase, Mr. Green confirmed that the change will be incorporated in the agreement. Mayor Boback referenced a memo from the Public Safety Task Force asking where things are at with the Segway issue, and Council chose to take no action, as per the task force recommendation. Regarding PSTF request for an overpavement from the 3000 block of Estero to Primo, Mr. Green replied that storm water management is an issue, and the County did a section, across from the Lani Kai at the Town's behest. Council asked to have an agenda item to discuss the County doing more of this overpavement, and scheduled it for the December 3, 2007 town council agenda. Mayor Boback asked the status of the speed limit issue, and council would like the PSTF to look into that issue.

**Opened Public Comment:**

Public Comment was heard:

- Pat Smith spoke commending the Council for the action taken to correct alleged oversight in the budget adoption.

**Closed Public Comment**

**ADJOURNMENT**

The meeting adjourned at 10:52 PM.

Adopted 11-19-07 With/ Without Changes. Motion by Shenke/Mentor  
(Date)

Vote: 5-0

  
Michelle D. Mayher  
Town Clerk

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