



# MINUTES

**FORT MYERS BEACH TOWN COUNCIL  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

**August 2, 2010**

**9:45 AM**

**I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 9:45 a.m.. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel along with Town Manager Stewart, Town Attorney Miller and Town Clerk Mayher.

**II. INVOCATION – Reverend Forrest Critser, Beach Baptist Church**

**III. PLEDGE OF ALLEGIANCE**

All stood for the Pledge of Allegiance.

**IV. APPROVAL OF FINAL AGENDA**

Bring item A. 10-20, Resolution for Approval of Proposal from Sun Trust for the Refinancing of the Potable Water System forward after public comment.

**V. PUBLIC COMMENT**

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

10-20, Resolution for Approval of Proposal from SunTrust for the Refinancing of the Potable Water System.

Town Clerk Michelle Mayher read the title:

**RESOLUTION NUMBER 10-20; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE ISSUANCE BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. (THE “CORPORATION”) OF THE CORPORATION’S REVENUE**

**REFUNDING NOTE, SERIES 2010 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,520,000 TO REFINANCE THE CORPORATIONS REVENUE REFUNDING NOTE, SERIES 2007, ISSUED PURSUANT TO A LOAN AGREEMENT BETWEEN THE CORPORATION AND SUNTRUST BANK; PROVIDING FOR A COVENANT TO BUDGET AND APROPRIATE LEGALLY AVAILABLE NON-AD VALORN REVENUES OF THE TOWN TO THE EXTENT CERTAIN REVENUES OF THE CORPORATION ARE INSUFFICIENT TO PAY DEBT SERVICE ON THE SERIES 2010 NOTE; AUTHORIZING THE CORPORATION TO PLEDGE CERTAIN REVENUES TO THE DEBT SERVICE OF THE SERIES 2010 NOTE; DESIGNATING THE SERIES 2010 NOTE AS A QUALIFIED TAX-EXEMPT OBLIGATION; DELEGATING CERTAIN AUTHORITY TO THE MAYOR; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Manager Stewart stated it was a briefing of the action previously taken with Public Works Services, authorizing the signing of the documents.

**MOTION:** Council member Mandel made a motion to approve Resolution No. 10-20, relating to the refinancing of a prior utility system loan; seconded by Council member Babcock.

**Public Comment Opened**  
**No Public Comment**  
**Public Comment Closed**

**VOTE:** Motion passed 5 to 0

## **VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

### **A. Recognition of Council Member Mandel – Florida Institute of Government Certificate of Completion**

Mayor Kiker presented Council member Mandel with a certificate.

### **B. Presentation of a Plaque to Michael Perry in Recognition of Club Rec Scholarship**

Mayor Kiker announced the recognition of Michael Perry who was not in attendance.

## **VII. PROCLAMATION**

### **A. The Horizon Council of Lee County – Industry Appreciation Week**

Town Clerk Michelle Mayher read the proclamation with Council member List stating she would present the proclamation to the Horizon Council at their next meeting.

## **VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

Rochelle Kay, on behalf of the Historical Preservation Board provided Council with a review of the Historic Vista Project asking for their consent to continue with the project which educates the public on the history of the island. Council provided consensus to move forward.

**IX. APPROVAL OF MINUTES**

- A. May 5, 2010 LPA/Town Council Joint Work Session
- B. May 5, 2010 Town Council Work Session Mound House
- C. July 12, 2010 Regular Town Council Meeting
- D. July 12, 2010 Town Council Work Session

**MOTION:** Councilmember List moved to approve with a second by Council member Babcock.

**VOTE:** Motion passed 5 to 0

**X. CONSENT AGENDA**

- A. Special Event Permit Application – Soccer on the Beach Tournament

**MOTION:** Councilmember List moved to approve; seconded by Council Member Mandel.

**VOTE:** 5 to 0

**XI. PUBLIC HEARING**

- A. 10-08, Ordinance Emergency Operations

Mayor Kiker opened the hearing at 10:05 a.m.

Town Clerk Michelle Mayher read the ordinance title:

**TOWN OF FORT MYERS BEACH ORDINANCE NO. 10-08  
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
ESTABLISHING PROCEDURES FOR THE DECLARATION OF A  
STATE OF LOCAL EMERGENCY; PROVIDING DEFINITIONS;  
PURPOSE AND INTENT; AUTHORITY TO DECLARE A STATE OF  
LOCAL EMERGENCY; METHOD OF DECLARING AND  
TERMINATING A STATE OF LOCAL EMERGENCY; AUTHORITY OF  
TOWN COUNCIL; EFFECT OF DECLARATION OF A STATE OF  
LOCAL EMERGENCY; PROHIBITIONS DURING DECLARED STATE  
OF LOCAL EMERGENCY; ACCESS TO EMERGENCY  
PREPAREDNESS FUND; PENALTIES FOR VIOLATIONS; REPEAL OF  
PRIOR ORDINANCES; CONFLICT AND SEVERABILITY; AND  
EFFECTIVE DATE.**

Town Manager Stewart brought this item forward due to conflicts in two prior ordinances, especially with how an emergency could be declared, and access to emergency funds. Attorney Marilyn Miller gave a review of the new ordinance.

**MOTION:** Councilmember Mandel made a motion to approve Ordinance 10-08, Emergency Operations; seconded by Vice Mayor Raymond.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Council member Babcock addressed ordinance 10-08, regarding terminating wording and hierarchy; ordinance 08-13, section 3 was discussed on non-emergency events and access to funds.

After much discussion there was a consensus by Council to have the Town Attorney include wording for a non-emergency situation to require a super majority.

Councilmember Babcock continued by addressing 08-13, section 4 on emergency management funds and his concerns for the Council to have the ability to manage the funds.

Attorney Miller read the following change: To include the language from section 4, of ordinance 8-13 but with the second section to read the resolution shall specify the total final funding of this reserve for the upcoming budget year, the methodology for rebuilding this fund during the course of the budget year if necessary, restrictions if any on the town's usage of such fund and such other specifics as the town council may determine.

Town Manager Stewart suggested to Council it would be good to establish financial policies that would be set in place and could be tweaked from year to year.

Council member Babcock and Mayor Kiker continued their discussion on the intention of the ordinance with Council member Babcock still wanting to add language to the ordinance regarding overseeing the emergency funds.

It was a consensus of Council not to include section 4 of ordinance 08-13; there was a consensus of Council to include establishing a financial policy to an action item list.

Council member Babcock referenced 06-12, section 3 page 2 regarding the sentence reading 'the plan shall be reviewed and approved by Town Council'. Attorney Miller indicated that any changes would have to come before Council.

It was the consensus of Council that the language 'the plan shall be reviewed and approved by Town Council' did not need to be included.

Attorney Miller read the changes to amend the motion: amending 10 to repeal the price gouging ordinance 05-23; amend section 4 to provide for the same order of succession for terminating declaration of state or local emergency; amending ordinance to provide for super majority vote for non-emergency access to the emergency preparedness fund.

AMENDED: Motion was amended by Council member Mandel to include suggested additions. Vice Mayor Raymond amended the second.

**VOTE:** Motion passed 5 to 0

*Recess: 11:20 AM    Reconvene: 11:35 AM*

**XII. ADMINISTRATIVE AGENDA**

**B. 10-19, Resolution Regarding Deepwater Oil Spill**

Town Clerk Michelle Mayher read the resolution title:

**RESOLUTION 10-19, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO THE DEEPWATER HORIZON WELL OIL SPILL IN THE GULF OF MEXICO; REQUESTING MONETARY ASSISTANCE FROM THE STATE OF FLORIDA TO BE USED BY THE TOWN OF FORT MYERS BEACH TO INFORM THE PUBLIC AND PROSPECTIVE VISITORS TO SOUTHWEST FLORIDA OF THE FACT THAT THE OIL SPILL HAS HAD NO PHYSICAL IMPACT ON SOUTHWEST FLORIDA BEACHES; PROVIDING FOR AN EFFECTIVE DATE.**

**MOTION:** Council member Mandel moved to approve the motion as read; second by Councilmember List.

Council member Mandel indicated he and Town Manager Stewart attended a meeting with a number of community and media groups with the intention to send out a common message to drive home the point of the clean beaches and the need to continue to do so for some time.

Councilmember Babcock questioned the intent of the resolution with Mr. Stewart indicating it was a request for funds to come to the town for advertising.

**VOTE:** Motion passed 5 to 0

**C. Discussion Regarding LPA Resolution 2010-04, Amendment LDC Chapter 34, Parking Regulations**

Town Manager Stewart indicated this item has come forward from the LPA for Council consideration.

LPA representative Rochelle Kay provided the LPA's discussions, stating

the 2 items recently addressed were the ADA requirement for an unpaved parking lot, omitting the need for blue lines and the decision that the time a parking lot could operate as a temporary parking lot, consecutive or not, would be 3 years.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Town Manager Stewart noted it was not before Council for a change in the ordinance but rather whether Council would like it brought forward. Council concurred. Town Manager Stewart indicated it would be introduced at the next regular meeting.

### **XIII. TOWN MANAGER'S ITEMS**

#### **A. Update on Laguna Shores**

Keith Laakkonen presented Council with a review indicating he had looked at the site, as well as the proposed dredging site, outlining a discussion that ensued with DEP regarding abandoning the current southern outlet which was shoaling in, in favor of the one originally proposed. DEP indicated they wanted proof that the present site was a poor location as well as abandoning the possibility of an adjacent property owner being able to re-dredge the abandoned channel. Mr. Laakkonen stated he was setting up another meeting with DEP and had been meeting with the property owners of Laguna Shores.

Town Manager Stewart brought up the issue of cost for the project noting they would be addressing funding with DEP since their choice of locations for the channel was the reason behind the present need for a new channel and would be looking to DEP for some funding of the project.

Mayor Kiker stated his desire to see funds allocated in the budget to take care of the issue with no need to look to Laguna Shores' residents for additional monies.

Mr. Stewart indicated if the project would be done during the coming fiscal year then the town would have to look to reserves for the project as there are not funds specifically set aside.

Councilmember Babcock stressed the need for a plan of a new channel that would not be filling back in. Town Manager Stewart stated the area chosen for the new channel was actually the original area that the DEP rejected, and that the needed maintenance time between dredging would be longer.

#### **B. Report on Estero Boulevard Interim Improvements**

Discussion would be during workshop and any needed vote would be moved to the August 16<sup>th</sup> meeting.

C. Update on Advisory Committees

Mr. Stewart noted there were going to be 22 seats available soon due to terms expiring as well as another needing to be filled due to a committee member stepping down, which then totaled 23 available seats.

Vice Mayor Raymond indicated his desire for those interested in being appointed to committees and boards to come before Council so Council members could become familiar with the candidates.

**XIV. TOWN ATTORNEY'S ITEMS**

A. Case #10-CA-001727, Peter and Susan Lisich v. Town of Fort Myers Beach.

There was no information on the Lisich case as the hearing would be moved to the August 16<sup>th</sup> meeting.

**XV. PUBLIC COMMENT**

**No Public Comment**

**Public Comment Closed**

**XVI. COUNCILMEMBERS ITEMS AND REPORTS**

Council member Mandel indicated he had attended a Coastal Advisory Committee meeting. Councilmember Mandel then addressed the following:

- The date for the appreciation dinner – which was noted as October 21st
- Update information on pedestrian signs – Mr. Stewart would provide
- Request of Town Attorney to report to Council at the second meeting of each month with the number of hours expended on meetings, ordinances, resolutions, Council and staff requests to be able to follow expenses – Attorney Miller indicated at present it was right around 50 hours but would provide the information in the future.

Councilmember List stated she would no longer be able to attend the Human Services Council meetings, therefore requested for another Council member to take this appointment. Vice Mayor Raymond agreed to attend. Councilmember List asked for information regarding time frames on permits, licenses and other community development decisions affecting applicants.

Councilmember List addressed the possibility for a routing form to be used. Town Manager Stewart indicated there should be a list of actions and documents in a file showing the progression of the file.

Vice Mayor Raymond commented on the quick response of a street light Complaint; he would be attending a Florida League of Cities Annual Conference on the 18<sup>th</sup> through the 20<sup>th</sup> of August and that he would need an alternate for his MPO meeting, which was taken by Councilmember List.

Vice Mayor asked if Attorney Dalton's work was now complete so the

town was not paying two law firms.

Council Member Babcock agreed with the need for a routing slip for permitting; he inquired on recycling on the beach which he thought was being handled by Cathie Lewis.

Mayor Kiker also brought up recycling and discussion continued regarding commercial recycling. Mayor Kiker referenced his participation in the chili cook off at Pink Shell; he questioned the problem with the fountain. Town Manager Stewart indicated there was a need for Council to ok bringing in a company to assess the issues with the fountain. Mayor Kiker acknowledged the ribbon cutting at Newton Park, his continued work on Seafarer's, his discussions with other taxing authorities, his donation of \$1,250 from his campaign monies with a desire to turn it into a stimulus package for future local committee events. Mayor Kiker than addressed the dog attack on the island.

Councilmember Babcock suggested the possibility of the fire department to assist with code enforcement on the island.

#### **XVII. AGENDA MANAGEMENT**

- Review Emergency Management Plan
- Financial Ordinance for Reserves
- Review language concerning automatic rate structure for water utility
- Change in water rate schedule for different type structures
- Set date for discussion of storm water master plan and ROW study
- Pedestrian signs

#### **XVIII. RECAP OF ACTION ITEMS**

No discussion

#### **XIV. ADJOURNMENT**

**MOTION:** Councilmember Mandel made a motion to adjourn; seconded by Councilmember List.

**VOTE:** Motion passed 5 to 0

*Meeting Adjourned 1:20 p.m.*

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

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Michelle D. Mayher, Town Clerk

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