



## MINUTES

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

October 18, 2010

6:30 PM

### I. CALL TO ORDER

Mayor Kiker called the meeting to order at 6:30 p.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 Michelle Mayher.

### II. INVOCATION – Rev. Forrest Critser, Beach Baptist Church

### III. PLEDGE OF ALLEGIANCE

All stood for the Pledge of Allegiance led Beach Elementary School Youth Council members Megan Creswell and Philip Belli who then presented a review of happenings at the school.

### IV. APPROVAL OF FINAL AGENDA

Agenda stood.

### V. PUBLIC COMMENT

#### Public Comment Opened

▪ **Howard Friedin** addressed Council indicating his client has dismissed the Lawsuit.

▪ **Roy Hinkleman, President of Laguna Shores** thanked Council for those who came out to do surveying and measuring regarding the Laguna dredging.

#### Public Comment Closed

### VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

### VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Fort Myers Beach Town Council  
October 18, 2010

## VIII. APPROVAL OF MINUTES

- A. September 20, 2010
- B. September 20, 2010 Work Session

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

**VOTE:** Motion passed 5 to 0

## IX. CONSENT AGENDA

No Items

## X. ADMINISTRATIVE AGENDA

- A. Estero Boulevard Resurfacing

Town Manager Stewart introduced Walter Fluegel the Town's new Community Development Director.

Public Works Director Cathie Lewis stated staff was looking for direction from Council to determine whether the resurfacing of Estero Boulevard from Jefferson Street to Mound Road be done during daytime or nighttime hours. The work would be scheduled to begin the first part of November and should be completed within a week.

### **Public Comment Opened**

- **Delores Yost** addressed Council voicing her disapproval with condition of the island's streets, Estero Boulevard as well as the side streets.
- **Carrie Hill** member of the Bicycle Pedestrian Coordinating Committee spoke regarding the disrepair of the roadways, sidewalks and what there was of the bike paths encouraging Council to address the issue.

### **Public Comment Closed**

Mayor Kiker reviewed a previous joint meeting with Council and the BOCC regarding a CIP process for funding on projects long term and short term with one being the resurfacing of Estero Boulevard.

Councilmember List wanted a guarantee that the work would either be completed before the Sandsculpting Event or not started until after the Sandsculpting Event which Ms. Lewis noted would be the case.

Councilmember Babcock brought up the issue of side street resurfacing, and the list of streets selected for resurfacing. Another question by Councilmember Babcock was whether Estero would be paved from shoulder to shoulder with Ms. Lewis indicating it would be.

resurfacing along with staff's recommendation of approving night time paving.

**MOTION:** Councilmember Babcock made a motion to approve paving of Estero Boulevard from Jefferson Street to Mound Road during either daytime or nighttime paving.

**FAILED:** No second, motion failed for lack of second.

**MOTION:** Councilmember Mandel made a motion to approve paving at night and only during the day if it was an absolute necessity, preferably all to be done at night; second by Councilmember List.

**VOTE:** Motion passed 5 to 0

**B. Mound House Landscape Bid Award**

Town Manager Stewart reviewed the process the project had taken to date indicating the Town's portion was \$46,000.00, that the project was more than just a landscape project but one that included the perimeter road, pathways, handicap accessibility, irrigation and plantings. Mr. Stewart also advised Council that adding any additional parking would require an application to the D.E.P. for permits adding a possible 1 to 2 years to the project.

**Public Comment Opened**

- **Laurie Nienhaus** addressed Council asking them to please approve the project so the Mound House could move forward and open to the public.
- **Ceel Spuhler** voiced her thoughts on the Mound House property, encouraging Council to approve the project.

**Public Comment Closed**

Vice Mayor Raymond asked whether the Town had the grant money in hand with Mr. Stewart indicating no, TDC funds reimbursable type grants. Vice Mayor Raymond continued to question opening the underground exhibit without doing the entire project as well as wanting a definite time line for completion as well as voicing his disapproval with the parking on the property.

Councilmember Mandel questioned the previous amount of \$39,000.00 to get the exhibit open. Town Manager Stewart reviewed issues that arose which caused staff and Council to take another look at the correct path to take. Councilmember Mandel then stressed the desire to have a plan to open and operate the underground exhibit.

Mayor Kiker indicated he was in no way wanting to stop the Mound House from opening but felt there were issues, asking first if moving forward with the project at hand would change the way the property was being used at present. Theresa Schober indicated that no, it would not. Mayor Kiker then asked if waiting for grants was the reason for the house not being completed and opened with the answer being yes. Further questions from the mayor concerned rezoning of 216

Connecticut, which had not started, as well as an analysis of a low impact plan and the cost of opening the house without grant funding.

Councilmember Babcock stated the discussion on the house was scheduled for December but could be moved to a meeting in November.

**MOTION:** Councilmember List moved to approve award of contract 10-01-CR Mound House Landscape Restoration & Park Improvements to Wright Construction Group, Inc. in the amount of \$460,000.00 with a second by Councilmember Mandel.

**VOTE:** Motion passed 5 to 0

*Recess: 7:40 PM      Reconvene: 7:53 PM*

C. Lee Tran Interlocal Agreement, FY 2011 Trolley Service

Town Manager Stewart indicated it was the routine interlocal agreement with the Town of Fort Myers Beach and Lee County Transit Authority to provide transit service to the town, with nothing added or subtracted with a request for Council's decision to move forward.

**Public Comment Opened**

▪ **Rob DeGennaro, Nervous Nellie's Restaurant** voiced his concern with the time for the last trolley being too early as well as the need for an earlier trolley to get workers onto the beach.

**Public Comment Closed**

It was noted that the times of the trolley were not a part of the agreement with that issue being looked at separately and taken as an action item.

Councilmember Babcock indicated if he was going to spend town money he wanted it to be beneficial to the people of the island, suggesting reducing the trolleys by one and making them free.

Mayor Kiker requested a performance standard for the trolley service to adhere to, extended service hours and facilities for riders to wait out of the rain and/or sun.

Town Manager Stewart discussed his thoughts on the transit service with a consensus from Council to move the issue to a work session as well as preparing a list of questions to present to Mr. Myers from Lee Tran.

D. Special Event Permit Application – Sandsculpting

Town Manager Stewart indicated the reason the issue was before Council even though it was a recurring event was that they had asked for funding in the amount of up to \$8,000.00.

**Public Comment Opened**

▪ **Rob DeGennaro, Nervous Nellie's Restaurant** encouraged Council to move forward with the \$8,000 and if not to allow time for a fundraiser.

▪ **John Albion, Pres. Fort Myers Beach Chamber** addressed Council noting the importance of the event to the town, addressing trolley service, parking at Lover's Key State Park and emphasizing the need to showcase the beach due to the recent negativity from the oil spill.

▪ **Joanne Shamp** stated to Council that the event was noted in Coastal Living Magazine.

#### **Public Comment Closed**

Councilmember Mandel questioned the expenditures since a lot of them were donations, asking why the town was being asked for funds.

▪ **Andrew Cochran, Chairman of the Board Fort Myers Beach Chamber of Commerce** addressed Council indicating he had been with the event for 7 years and Chairman for 5 years and attempted to answer questions for Council along with John Albion.

Council continued their discussion over the funding requested and the budget presented to Council by the Chamber.

**MOTION:** Vice Mayor Raymond made a motion to approve the budget request up to \$8,000.00 and authorize open containers of alcohol at the recurring annual event titled the "24<sup>th</sup> Annual American Sandsculpting Competition" on November 10-14, 2010 in the designated area of the street festival with a request for a copy of the net figures at the end of the event. Second by Councilmember List.

**VOTE:** Motion passed 5 to 0

E. Special Event Permit Application – Almost Acoustic Christmas Concert  
Town Manager Stewart indicated the permit was requested by Rob DeGennaro of Nervous Nellie's Restaurant with the funds from the crafts to go to the Fort Myers Chamber of Commerce.

#### **Public Comment Opened**

▪ **John Albion, Pres. Fort Myers Beach Chamber of Commerce** addressed Council indicating there was progress in the revitalization of the Old San Carlos area encouraging Council to approve the permit.

▪ **Rob DeGennaro, Nervous Nellie's Restaurant** provided a review of the event.

#### **Public Comment Closed**

**MOTION:** Councilmember Mandel made a motion to approve the proposed special event titled "Almost Acoustic Christmas Concert" scheduled for December 5, 2010. Waive the parking fees of the closed off parking meters of

Old San Carlos and authorize open containers of alcohol in the closed off sections of Old San Carlos Boulevard as specified on the exhibit. Second by Councilmember Babcock.

**VOTE:** Motion passed 5 to 0

F. Introduction of Ordinance 10-10, Adopting FMB Code of Ordinances  
Town Attorney Marilyn Miller reviewed the ordinance for Council.

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

**MOTION:** Councilmember List moved ordinance 10-10, adoption of Fort Myers Beach Code of Ordinances to the final public hearing on November 1, 2010 at 9:00 a.m. with a second by Councilmember Mandel.

Attorney Miller asked for the ordinance title to be read.

Town Clerk Michelle Mayher read the ordinance title:

**ORDINANCE NO. 10-10**  
**AN ORDINANCE ADOPTING A CODIFICATION AND REVISION OF CERTAIN ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA; REPEALING ALL ORDINANCES THAT ARE INCONSISTENT THEREWITH AND SAVING FROM REPEAL CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR A PENALTY FOR VIOLATION OF THE CODE OF ORDINANCES; PROVIDING FOR THE MANNER OF AMENDING THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.**

**VOTE:** Motion passed 5 to 0

G. 2009-24, LPA Resolution Restricting Further Expansion of On-Premises Consumption of Alcoholic Beverages on Gulf Beaches.

▪ **Joanne Shamp, Chair LPA** provided comments to the Council from the LPA regarding the background of this issue.

**Public Comment Opened**

- **Rob DeGennaro, Nervous Nellie's Restaurant** addressed the issue of expansion cautioning against a possible 'wasps nest' of problems.
- **Gary Farris, owner Gulf Shore Grill** indicated his business had a problem with the restrictions as they could not enforce someone taking a beverage and moving beyond the posted signs, which put his staff and their alcohol license at risk. The lack of consistency was brought up, due to grandfathered businesses.
- **Rob DeGennaro, Nervous Nellie's** felt it was an ATF situation and didn't feel the town should be involved or have a say with what ATF had to say.

▪ **Joanne Shamp, Chair LPA** indicated that she as a beachfront property owner had property that extended almost to the waterline and that she nor her family could drink alcohol on her property, noting the comprehensive plan was clear that it was a regulated zoning district, going on to cite sections of the LDC. Ms. Shamp again indicated the LPA was looking for consistency across the island per the Comprehensive Plan.

▪ **John Albion, Pres. Fort Myers Beach Chamber of Commerce** questioned the real issue and whether it was the appropriate route for the Council to take.

### **Public Comment Closed**

Mayor Kiker asked Town Manager Stewart to provide further explanations on the issue if Council accepted or rejected the LPA recommendations.

Mr. Stewart indicated if accepted it would instruct LPA to go back and begin preparing recommended changes to the LDC that would guide specific actions in regard to consumption of alcohol across the island, not only for the future but retroactively as well due to some grandfathering.

Council discussed their take on the issue as well as how to proceed.

Town Manager Stewart indicated if Council rejected the recommendations they could decide to leave it as it was and have decisions made on a case by case basis, or make a determination to accept part of what LPA had presented asking them to go back to work on that portion, the matter was not limited to the COP but also the noise ordinance.

▪ **Joanne Shamp** indicated if LPA were not discussing the actual direction of Council or the town then they were wasting taxpayer dollars, and could not proceed to fine tune the LDC with consistency with the Comp Plan without proper direction.

***Recess: 9:40 PM      Reconvenet 9:55 PM***

Councilmember Babcock read from the Comprehensive Plan indicating the process to be used for the issue at hand.

Town Manager Stewart was given direction from Council to get with staff and legal counsel then reschedule the issue.

### **H. Seafarer's Property**

Town Manager Stewart stated Council had a blue sheet before them with staff recommendation as well as a draft letter of intent to the BOCC indicating the town was interested in acquiring the Seafarer's property.

Town Attorney Miller offered optional language for the second paragraph that talked about the Mayor and Town Manager to serve as a negotiation team to maintain compliance with the Sunshine Law.

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

**MOTION:** Councilmember Mandel made a motion to have the letter written per the Town Attorney's changes with a second by Vice Mayor Raymond.

Mayor Kiker suggested the wording be changed to 'the town's intent was to enter into negotiations regarding disposition of Seafarer's property'.

Vice Mayor Raymond wanted the word 'possibly' used.

Attorney Miller reread the language to be used, per the motion made by Councilmember Mandel. Replacing the second paragraph of the letter it would read: The Town Council is interested in gaining controlling ownership of the Seafarer's Mall property in Lee County. In that regard the Town would like to engage in negotiations with Lee County in terms of such an acquisition.

Vice Mayor Raymond removed his second to the motion after hearing the revised language from Attorney Miller.

**ADMENDED MOTION:** Councilmember Mandel amended his motion to remove 'controlling' ownership to 'acquiring' ownership with a second by Vice Mayor Raymond.

Councilmember Babcock requested Attorney Miller to state that the Council was not signing up to purchase anything by sending the letter and then followed up with questions regarding the negotiations and the Sunshine Law as well as whether she would be present for the negotiations.

**VOTE:** Motion passed 5 to 0

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

Town Manager Stewart indicated he was given a request for a Surf & Song special event which would use Town Property, no open container in the R.O.W. but a stage would be set up which would be scheduled for Sunday, October 24<sup>th</sup>. Town Manager Stewart was asking for approval if the remainder of the information was presented. The event was to support autism.

There was consensus of Council for Mr. Stewart to proceed with the permit as long as all necessary paperwork was presented.

Town Manager Stewart then brought up a Town event which would be in Santini Plaza, setting up a tent and open container in conjunction with the Sandsculpting Event.

There was a consensus to proceed from Council.

Town pedestrian signs will now be a pilot program with funding for 3 of the locations, indicating the signs were \$300 each with a total of 10 signs planned.

**XII. TOWN ATTORNEY'S ITEM**

Attorney Miller stated the new sign ordinance was out and would be submitted to Council for review.

**XIII. COUNCILMEMBER ITEMS AND REPORTS**

Councilmember Babcock thanked staff for the work on the pavers in Times Square; brought up MRTF's desire to bring their list of projects to Council in December; rebroadcast of Council meetings.

Councilmember List reported that the Bay Oaks Recreational Advisory Board had met and referenced the Bay Oaks Fright Night for Halloween; reminded Council of the need for an additional van for Bay Oaks.

Councilmember Mandel thanked Town Manager Stewart and staff for working on the pedestrian signs.

Mayor Kiker commented on the fountain, the fact that it was still working and the number of positive comments he had received concerning the fountain.

Councilmember List asked about the lighting of the gazebo for Christmas.

**XIV. AGENDA MANAGEMENT**

- December Strategy Session and Objectives
- February Initial look at 2011/2012 budget
- November Special Events Policy
- Council Meet and Greet
- Mandatory Recycling
- November 1<sup>st</sup>, Trolleys
- Special Worksession with Lee Tran

**XV. RECAP OF ACTION ITEMS**

- Approval from Council for night paving
- Move forward with site improvements at Mound House
- Lee Tran Special Meeting
- Further discussion on LPA Resolution
- Approval for two special event permits
- Rebroadcast of Council meetings
- Bring forward information on funds for Bay Oaks Van
- Public Hearing on November 1<sup>st</sup>, for ordinance 10-10

**XVI. PUBLIC COMMENT**

**Public Comment Opened**

▪ **Keri Hendry** Island Sandpaper thanked Council for approval of Special Event benefiting Autism.

▪ **Ceel Spuhler** thanked Council for their approval of the Mound House site plan.

**Public Comment closed**

**XVII. ADJOURNMENT**

**MOTION:** Councilmember Mandel moved to adjourn with a second by Councilmember List. Adjournment 11:00 PM.

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

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

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Michelle D. Mayher, Town Clerk

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