



## MINUTES

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

**December 6, 2010**

**9:10 AM**

**I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 9:10 a.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel as well as Town Manager Stewart, Town Attorney Miller and Town Clerk Michelle Mayher.

**II. INVOCATION – Chaplin Major Vincent Cummings, Air Force Reserve**

**III. PLEDGE OF ALLEGIANCE**

All stood for Pledge of Allegiance

**IV. APPROVAL OF FINAL AGENDA**

Mayor Kiker requested item #10, an add-on for public hearing be moved past Administrative Agenda. Council consented to the change.

**V. PUBLIC COMMENT**

**Public Comment Opened**

▪ **Roy Hinkelman, president Laguna Shores HOA**, thanked Council and Town Manager for continuing to work on their dredging issues as well as thanking Town Manager Stewart and Vice Mayor Raymond for attending the Laguna Shores Association Meeting.

▪ **Suzanne Ziemer** requested a study of the Bayview Avenue launch site, indicating her willingness to assist the town in anyway she could. Ms. Ziemer did a drawing showing the location, as well as the encroachment of the neighbors into the launch area.

▪ **Artis Chester** spoke regarding the beach accesses and the placement of the portable restrooms, indicating that the beach did not need nor want public restrooms on the public access roads.

- **Larry Yax** thanked Council for the progress on the North Estero Project.
- **Chris Schaab** indicated there was a need for public restrooms.

**Public Comment Closed**

Councilmember Babcock felt Council had not properly addressed Ms. Ziemer's request, indicating the issue had fallen low on the priority list. Mayor Kiker suggested placing the subject on Agenda Management for future discussion.

**VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Councilmember List mentioned the lighting of the gazebo.

Councilmember Mandel thanked the Surf Club for raising money for those in need.

Mayor Kiker noted the change of command at the U.S. Coast Guard Auxiliary.

Town Manager Stewart acknowledged art work from the beach elementary school displayed on the Council Chamber walls.

**VII. ADVISORY COMMITTEES ITEMS AND REPORTS**

**A. Marine Resources Task Force Prioritized Project Suggestions FY2010-2011**

- **Jeff Werner, Chairman** from MRTF addressed Council with suggestions for 2010/2011 priority list.

Councilmembers thanked Mr. Werner and MRTF committee members for their work, and offered a suggestion to use college students for research.

Vice Mayor Raymond indicated he had looked forward to seeing the entire committee and being able to have a discussion with each member of the committee.

Mayor Kiker discussed process, noting there were a few other topics that he would like to discuss before approving a final agenda for the committee. Council decided to schedule a joint meeting with MRTF as soon as possible.

Mayor Kiker brought up the issue of abandoned boats and whether that could be sent to the Anchorage Advisory Committee with consensus from Council to do so. Mayor Kiker continued by addressing beach accesses as far as safety, accessibility and aesthetics, asking to send that topic to CRAB. Council provided consensus to do so.

**VIII. APPROVAL OF MINUTES**

- A. October 18, 2010 regular council meeting
- B. October 18, 2010 work session

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

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

**IX. CONSENT AGENDA**

- A. 10-28, Resolution Calling for Election, March 8, 2011
- B. Civic Association Birthday Party Town Contribution
- C. FMB New Years Eve Fire Works Town Contribution
- D. Award of Contract to Softrim Corporation for IT Technical Support Services RFP-10-01-AD

**MOTION:** Councilmember Babcock moved approval of items A. and D.; second by Councilmember List.

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

Vice Mayor Raymond requested financial statements and evidence that the Town was recognized through advertising as a sponsor for items B. and C. noting that for the contributions to be made the aforementioned issues needed to have been presented. Town Manager Stewart indicated the town had not received copies of advertisings to date.

Vice Mayor Raymond stated the cost to the town for the New Years Eve events was \$12,500 for fireworks, and an additional \$7,000 for clean up.

Evelyn Wicks, Director of Finance stated the town had received financials on last year's birthday party as well as the fireworks.

**MOTION:** Vice Mayor Raymond made a motion to approve items B. and C. with a second by Councilmember Mandel.

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

A. Update on Beach Renourishment

Town Manager Stewart informed the Council that this was an opportunity to provide information and an update beach renourishment. Mr. Stewart advised Council that a local resident of the island, Mr. Frank Schilling, had sent out documents to property owners on his own at the same time the town had sent out their documents which created confusion for many property owners.

Town Manager Stewart continued by advising Council of the bid process and construction start dates of perhaps February or March as well as daily progression depending on the size of the equipment, concerns with odor, and the time each property would be affected, access to the water and information on groin construction and vegetation.

- **Steve Boutelle, Lee County Departments of Natural Resources** provided Council with copies of his power point presentation and reviewed the materials. Mr. Boutelle indicated the pre-bid meeting had been held on site, that Bowditch Point Park would be the only land based access point for the construction project and that they were on schedule for the bid opening.

Some of the concerns raised by Council to Mr. Boutelle included:

- If 50% easements means frontage
- Start date possibility of March
- 6 qualified companies bidding
- Jetty work must begin first
- Sand placement beginning South heading North
- Lowest bid chosen
- Damage to new portion of N. Estero, roadway condition to be videotaped prior to project start
- All bidding contractors were qualified and vetted

### **Public Comment Opened**

- **Chuck Smith** resident of Seaview St. suggested the project be deferred past tourist season, noting the last time there was sand placed on the beach it was filled with 'junk' which could be dangerous to beach walkers.

- **Paul Malbon co-owner of Best Western Beach Resort** noted his opposition to the timing of the project suggesting any time after Easter.

- **Bill Wauchulis, Pink Shell Resort** indicated he was in favor of the renourishment but opposed to the timing of the project, asking if the jetty could be started but renourishment held off until August without losing funding.

- **Dennis Greenspan** 456 Estero Blvd. indicated he had no problem with the project; he has more beach today than in the last 6 or 7 years, however, he had problems with the vegetation requirement. Timing was also an issue, urging the time to be at least past Easter. Mr. Greenspan also posed a question regarding the 10' wide strip of vegetation and what happens in the early years if it is washed away in a storm.

- **Carlton Ryffel** indicating that his condo board had signed the easement for their beach frontage urging no further delay of the project. Mr. Ryffel then posed two questions, one of which was when the BOCC would either sign off on the project or sign a notice to proceed so there would be no chance of losing funding and secondly, questioned whether the Council would be signing off on the project at the December 20<sup>th</sup> Council Meeting.

- **Robert Haller 100 Estero Blvd.** voiced his desire to get the project moving ASAP.

- **Chris Schaab** indicated the beach needed renourishment along with good stewardship of keeping the beach clean.
- **Carrie Lucas** stated she was willing to risk losing business in order to get the renourishment completed right away.

### **Public Comment Closed**

Environmental Sciences Coordinator Keith Laakkonen spoke to the question regarding vegetation being washed away in a storm. In case of a natural event there was not a requirement for a property owner to replant, but if it was an intentional removal then vegetation would need to be replanted.

The town would be responsible for implementing the vegetation plan. Mayor Kiker indicated that if any property owner had questions they could contact the town to have a staff member walk the property with them to discuss their options.

Mr. Boutelle stated the end of December would be the 'no risk' date for signed contracts, however, the money was protected for 18 months. Discussion continued on the process of signed contracts with the contractor, the BOCC and the town.

Councilmember Mandel stated to keep the cost at a minimum it would be best for Council to provide a start date immediately. Attorney Miller suggested alternate dates could be provided for the contractors with them providing costs for each date.

Mayor Kiker listed three criteria for Council to consider:

- Type of equipment, larger in lieu of saving money
- Material for jetty brought in by barge
- Start date

**MOTION:** Councilmember Babcock made a motion to follow the time line recommended by the county on page 3 of the document provided by Mr. Boutelle. Seconded by Councilmember List.

Councilmember Babcock would like to see the project started sooner to avoid delays during hurricane season as well as having a completed project at that time could provide protection to the island.

Vice Mayor Raymond again noted his fear of losing funding and indicated his desire to see the project start as soon as possible. Councilmember Mandel posed questions regarding the start of the jetty, timelines for that work and where the disruption to the beach would be during the jetty construction.

Mayor Kiker felt there was a lack of information from the contractors. Mr. Boutelle commented that the more parameters placed on the contractor the higher the cost would be, and that all the contractors bidding the project

were highly qualified for the job.

Councilmember Mandel suggested the jetty could be started right away with no equipment placed on the beach until after Easter at which time all concerns could then be addressed.

**VOTE:** Motion passed 3 to 2 with Councilmember Mandel and Mayor Kiker dissenting.

**MOTION:** Councilmember Babcock made a motion that all heavy equipment be brought in by barge.

**FAILED:** Motion failed for lack of a second.

Council discussed possible options in the bid to protect roadway on North Estero from heavy equipment damage. Attorney Miller suggested an addendum for clarification.

*Council Recessed 11:30 a.m. Council Reconvened at 11:40 a.m.*

A. Consumption on Premises (COP) Policy Interpretation

Town Manager Stewart reviewed the subject matter turning it over to Community Development Director, Walter Fluegel.

Mr. Fluegel indicated per Council's direction staff came up with some options for Council to give a more focused approach on COP, reviewing those for Council per the packet made available.

**MOTION:** Councilmember Mandel moved to determine that the Land Development Code was the more appropriate place to identify more specific permissible uses. Then direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use. Second by Councilmember List.

**Public Comment Opened**

▪ **Rochelle Kay, LPA Rep.** voiced her thoughts on the blue sheet, noting the LPA passed Resolution 2009-29. Miss Kay questioned taking the use of COP as Council purview and not an LPA charge and whether the special exception being discussed would be permanent. Miss Kay questioned why this action was necessary.

Town Manager Stewart clarified it was a continuing everyday use not for a special event. Attorney Miller and Town Manager Stewart addressed the procedures to answer Miss Kay's questions in terms of LPA and Council decisions.

▪ **Carleton Ryffel** felt they all should be special exceptions, cautioning Council to think about the issue.

▪ **Chris Schaab** voiced his concerns with alcohol on the beach and the lack of stewardship regarding trash.

### **Public Comment Closed**

Attorney Miller addressed the difference between a special exception use and a permitted use.

Councilmember Babcock called a point of order, stating he did not feel the motion was correct, that the question should be, does Council feel there should be expansion of alcohol onto the beach then move forward from there.

Councilmember List felt the motion was correct in agreeing that the Land Development Code was the correct place to identify specific permissible uses.

Mayor Kiker addressed Councilmember Babcock's point of order asking to what process was the objection. Discussion continued with Council and the Town Attorney dissecting meanings, recommendations and interpretations and whether this is a policy decision or an implementation decision.

**MOTION:** Councilmember Mandel made a motion to reject the LPA's interpretation that consumption on premises is prohibited in recreation land use; second by Councilmember List.

Councilmember Babcock asked for a clarification from Mr. Fluegel if recreation land use and EC zone were the same, wanting to make sure of the intent of the LPA.

**AMENDED MOTION:** Councilmember Mandel amended his motion to reject the LPA's recommendation that on premises consumption on the beaches within the Town of Fort Myers Beach is restricted. Amended second by Councilmember List.

Councilmember Babcock stated he would not support it as the interpretation of the Comprehensive Plan had always been to not expand alcohol sales to the EC Zone or the beach.

**VOTE:** Motion passed 4 to 1 with Councilmember Babcock dissenting.

**MOTION:** Councilmember List moved to postpone any further discussion of the permitted ancillary use of COP.

**FAILED:** Motion failed for lack of a second.

**MOTION:** Councilmember Mandel put back on the table his motion to determine that the LDC is the more appropriate place to identify more specific permissible uses. Councilmember List removed her second to the motion. Second by Vice Mayor Raymond.

Councilmember List asked if voting in favor would continue to allow discussion. Mr. Fluegel indicated it would give staff a direction to take to bring back to Council. Attorney Miller responded that it would be a permitted ancillary use to an adjacent approved COP use.

**VOTE:** Motion passed 4 to 1 with Councilmember Babcock dissenting

**X. PUBLIC HEARING:**

Ordinance 10-10, Adopting the Town of Fort Myers Beach Code of Ordinances

Mayor Kiker opened the Public Hearing at 12:40 p.m.

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 AND SAVING FROM REPEAL ALL ORDINANCES THAT ARE NOT INCLUDED THEREIN; PROVIDING FOR A PENALTY OF VIOLATION OF ORDINANCES; PROVIDING FOR A MANNER OF AMENDING THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.**

**MOTION:** Councilmember List moved to continue the Public Hearing to the December 20<sup>th</sup> meeting.

**FAILED:** Motion failed for lack of a second.

**MOTION:** Councilmember Babcock made a motion to adopt Ordinance 10-10. Second by Councilmember List.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

<b>VOTE:</b> Town Clerk Mayher called for a vote	Babcock	Aye
	List	Aye
	Mandel	Aye
	Raymond	Aye
	Kiker	Aye

Motion passed 5 to 0

Mayor Kiker closed the hearing at 12:40 p.m.

**XI. PUBLIC COMMENT**

Fort Myers Beach Town Council  
December 6, 2010

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

**XII. TOWN MANAGER'S ITEMS**

A. Report on F.P.A.N. Grant Closeout

Town Manager Stewart advised Council that F.P.A.N. was brought to an end with one more billing for the last group of expenses with a need to now furnish the offices.

**XIII. TOWN ATTORNEY'S ITEMS**

None

**XIV. COUNCILMEMBERS ITEMS AND REPORTS**

None

**XVI. AGENDA MANAGEMENT**

Beach and Bay Accesses analyses to be sent to CRAB for review

**XVII. RECAP OF ACTION ITEMS**

- Send thank you letter to school for art work
- Abandoned Vessels to Anchorage Advisory
- Beach and Bay Accesses, common design elements
- Letter drafted on behalf of Mayor Kiker and Ray Judah regarding easements

**XVIII. ADJOURNMENT**

**MOTION:** Councilmember List made a motion to adjourn with a second by Vice Mayor Raymond.

**VOTE:** Motion passed 5 to 0

*Meeting adjourned at 12:45 p.m.*

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

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

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Michelle D. Mayher, Town Clerk

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