



## MINUTES

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

**December 20, 2010**

**6:30 PM**

**I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 6:35 p.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel as well as Town Manager Stewart, Town Attorney Humphrey and Town Clerk Michelle Mayher.

**II. INVOCATION – Rev. Jean Davis, Beach United Methodist Church**

**III. PLEDGE OF ALLEGIANCE**  
All stood for Pledge of Allegiance

**IV. APPROVAL OF FINAL AGENDA**

Mayor Kiker stated Council would move through the Public Comment portion of the regular Council Meeting, recess and convene as Public Works Services, Inc. Board of Directors Meeting, complete that business and reconvene the regular Council Meeting. All Council members were in agreement.

**V. PUBLIC COMMENT**

**Public Comment Opened**

- **Tom Mizwa** questioned the \$9 million dollar library expansion and noted his disapproval of same.
  
- **Sam Lurie** spoke regarding the library expansion, his library tax and his disapproval of same.
  
- **Peter Reid** expressed his disapproval of the library , noting the need for an updated water system.

- **Jim Stevens** discussed how he wanted his tax dollars spent, wanting an updated water system over a library expansion.
- **Irene Queris** wanted to see the library process expansion slowed down, continuing to voice her dismay over the expansion, indicating she wanted to see the water utility improved.
- **Charles Eck** wanted to know if there was any interaction between Bay Oaks and the library regarding a meeting room for 200 people, wanting to look at the facility in a broader perspective.
- **Paul Martin** indicated he was opposed to the library expansion feeling most residents were unaware of the expansion, asking if polling the public might be needed.
- **Dan Gravis** indicated he had gone to the Mound House with Mayor Kiker and Town Manager Stewart, noting a price tag of \$1.2 million and \$25,000.00 on an engineer or architect stating most people put it out for bid, you don't just go get one. Mr. Gravis discussed prices the town was putting out on the Mound House, questioning how the town would ever recoup the money.

#### **Public Comment Closed**

Councilmember List responded to the comments regarding the library, indicating Council had no authority over the library taxing district, and encouraged those concerned to run in the future for the library board so they would have a greater say in what happened with those tax dollars.

Councilmember Mandel thanked all those who came to speak, stating there had been an interesting issue raised. Legally it was a separate taxing district, indicating many residents had no idea what their tax bill entailed. Ethically whether elections were noted properly or not or whether the sign was noticed or not there are other taxing districts operating on the island. Councilmember Mandel stated it was worth having the Town Attorney look into the issue.

Vice Mayor Raymond agreed with his fellow Council members Adding that the Town had no authority over the library.

Councilmember Babcock stated he appreciated those supporting the water utility.

Mayor Kiker reiterated that the town did offer to work with the library and the fire department and that he had attended a library board meeting. He also noted it would not happen for the library to transfer their funds to the town.

Mayor Kiker went on to state he had advised the library to seek legal services with issues that were coming forward.

Attorney Humphrey indicated the library was a special taxing district created by the legislature, however he added they were subject to Chapter 189, and the Council could take a position and could ask for a joint session with the special district but should authorize the attorneys to look at Chapter 189 first.

Mayor Kiker suggested that each Council member visit the Mound House taking Mr. Dan Gravis along with them to look at the project.

**MOTION:** Councilmember Babcock made a motion to recess the meeting to be continued followed the Public Works Services, Inc. Meeting with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

*Recess: 7:32 p.m.      Reconvene: 8:15 p.m.*

Mayor Kiker asked Council to move Administrative Agenda item A. next for discussion. There was a consensus from Council.

## **VI. ADMINISTRATIVE AGENDA**

### **A. Discussion Regarding Fowler White Boggs Open Files**

Attorney Humphrey addressed Council indicating there was a request from Denise Wheeler regarding open files as she was now with another firm.

**Denise Wheeler** stated since she had represented the town in the Tezak case she requested that case and those files remain with her as well as a recent age discrimination case before the town.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

Attorney Humphrey spoke to Ms. Wheeler's comments, however, noted their firm had already prepared the briefs for the appeal on the Tezak case and recommended keeping the issue within the firm.

Councilmember Babcock asked if there would be a difference in rates with Ms. Wheeler stating her rates would be the same. Attorney Humphrey indicated there was a listed rate which would remain.

**MOTION:** Councilmember Mandel made a motion to move that the open files referenced in the November 22, 2010 letter from Fowler

White Boggs be retained by that firm.

**FAILED:** Failed for lack of a second.

**MOTION:** Councilmember Babcock made a motion to move the open files referenced in the November 22, 2010 letter from Fowler White Boggs be retained by the firm with the exception of the Tezak matter be moved to Roetzel & Andress to be retained by Denise Wheeler. Second by Councilmember List.

Councilmember List noted the phenomenal legal interaction from Fowler White Boggs as well as the interaction with Denise Wheeler however felt she would like to have Denise Wheeler continue with the Tezak case, noting it was not a commentary of anyone's abilities.

Councilmember Babcock stated it was a win-win case for the town.

**VOTE:** Motion passed 4 to 1 Councilmember Mandel dissenting

**VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Councilmember List thanked staff, council members and the public for their thoughts during her family's difficulties.

**VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

None

**IX. APPROVAL OF MINUTES**

- A. November 15<sup>th</sup>, 2010 regular council meeting
- B. November 15<sup>th</sup>, 2010 work session

**MOTION:** Vice Mayor Raymond moved to approve; second by Councilmember Babcock.

**VOTE:** Motion passed 5 to 0

**X. CONSENT AGENDA**

- A. Acceptance of Engagement Letter from Nabors Giblin & Nickerson

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

Councilmember Babcock asked if the fees associated were charged to the town or the utility. Town Manager Stewart indicated it would be paid for within the utility.

**VOTE:** Motion passed 5 to 0

**XI. TOWN MANAGER'S ITEMS**

A. Town Facilities Open House Date Discussion

Town Manager Stewart asked for Council to select a date for the Open House for Bay Oaks, Newton Park and the Mound House.

Council decided on March 26, 2011.

**XII. TOWN ATTORNEY'S ITEMS**

None

**XIII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Mandel stated he had attended a Horizon Council Meeting.

Town Manager Stewart thanked everyone for their support upon the loss of his mother.

Councilmember Babcock noted the Regional Planning Council's topic of security, which caused him to question immediate police response. The possibility of using a panic button was discussed as well as Kevlar behind the dais. Also from the same meeting Councilmember Babcock provided information regarding the lack of rain through the fall with the need for water conservation.

Councilmember Babcock asked Council if they needed to address the issue of volunteers and if they would be able to be on the LPA as well as serve on other committees. It was decided to place the issue on agenda management.

Vice Mayor Raymond brought up the need to reply to Commissioner Judah regarding his memo on the town not funding the additional trolleys.

Councilmember Babcock indicated there was not a contract to review or approve as yet for the Town Manager. Councilmember Mandel said it was in process and would be ready for the first meeting in January.

Mayor Kiker suggested a joint meeting with MRTF and CRAB on the same day.

**XIV. AGENDA MANAGEMENT**

- Meeting with attorney and Council regarding library expansion issues

Councilmember Babcock felt it was not for Council to enter into this issue as the residents had years to understand what the library was planning. Councilmember List did not want to enter into it however felt some residents were asking for Council's assistance.

After some discussion, the item was placed on agenda management.

Councilmember Babcock also asked for mandatory recycling for commercial be placed back on agenda management, indicating from the minutes of January 7, 2008 the county had gone to mandatory recycling.

The town hall issue was also noted to be placed on agenda management.

Items for the January 3<sup>rd</sup> work session were then discussed.

**XV. RECAP OF ACTION ITEMS**

- Resolution 10-07-U forward for signature
- Bonita Springs Interconnect readied for signature
- Engagement letter from Nabors Giblin signed
- March 26 for Open House for Mound House, Newton & Bay Oaks
- Place committee appointments on January 3 agenda
- Commissioner Judah's recent letter regarding trolley on agenda for discussion
- Town Manager's contract for January 3<sup>rd</sup>
- Worksession for BOCC joint meeting

**XVI. PUBLIC COMMENT**

Public Comment Opened

No Public Comment

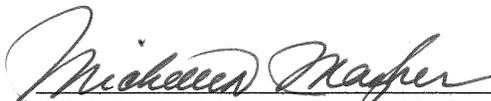
Public Comment Closed

**XVII. ADJOURNMENT**

*Meeting Adjourned 9:20 p.m.*

Adopted 1-18-11 With ~~Without~~ changes. Motion by Babcock / List

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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