



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

TOWN COUNCIL MEETING
June 2, 2008
9:40 AM

I. CALL TO ORDER

Mayor Larry Kiker called the meeting to order at 9:40 AM. Present along with Mayor Kiker is Vice Mayor Herb Acken, Councilmember Tom Babcock, Councilmember Jo List, Councilmember Bob Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton, Town Clerk Michelle Mayher and Public Works Director, Jack Green.

II. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was earlier at the Public Works Services Inc. Board of Directors.

III. PUBLIC COMMENT

Opened Public Comment:

None

Closed Public Comment

V. CONSENT AGENDA:

A. Approval of Minutes: May 19, 2008

MOTION: Councilmember List moved approval of the consent agenda.
Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

VII. PUBLIC HEARINGS:

**A. SEZ2008-0001/VAR2008-0001 – Fort Myers Beach Library Addition
RESOLUTION 08-26**

Mayor Kiker referenced a memo by Attorney Dalton outlining procedures for quasi judicial proceedings before Town Council. With the consensus of the Council, Mayor Kiker altered the order so that after the applicant presents its case, that the

Town Council ask questions of the applicant, and then the staff offers clarifications to the Council. As a formality, recognition of any LPA members in Chambers, and then the opportunity for clarification from the LPA representative.

Vice Mayor Acken expressed his concurrence with the suggested procedure, with the understanding that this is not an establishment of policy.

Mayor Kiker opened the public hearing. Councilmembers declared ex-parte communication, all having none.

Attorney Dalton swore in all those intending to testify.

Attorney Dalton read the title:

**RESOLUTION 08-26,
RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT
MYERS BEACH, FLORIDA**

Ward J. Friszsolowski, AIA, presented on behalf of the applicant. Mr. Friszsolowski outlined the proposed structure, being two stories above ground level parking, with a parking garage, and ground level lobby, and elevators joining existing structure. The proposed project would not be injurious or detrimental to the public health. the existing and the new portion. They request a twelve foot ceiling height.

Leroy Hummerding, Director, Fort Myers Beach Library spoke to the efforts of five years' design, and spoke to the prominence of the Library as an important civil structure.

Councilmember Babcock commented on the value of the LPA hearing, and the responses of the applicant; many questions were answered.

Councilmember Acken commented the drawings had been most helpful, and was excited about the project.

Jerry Murphy, Community Development Director, spoke on behalf staff, referencing the staff report in the packet, and entered it for the record as staff's testimony. Staff recommended approval of the special exception, but denial of the variance. The LPA recommended approval of both requests, and staff has no professional issue with the LPA recommendations.

Dennis Weimer, Chair of the Local Planning Agency spoke to the zoning variance and special exception heard by the LPA, unanimously approved as adopted in resolution 2008-12, on May 6.2008 meeting. LPA submits the resolution in lieu of minutes.

**Opened Public Comment:
Public Comment was heard:**

- Pat Smith shared her feeling that the Fort Myers Beach Public Library is one of the nicest facilities in the area.

Closed Public Comment.

Discussion ensued with gratitude to LPA and staff for the work on this case, clarification as to the added height in the form of an elevator hoist way, and for appearance; the parking garaged, and that the site plan is conceptual. Parking being exclusively for the library will be a policy issue for the library. Councilmember Babcock asked about energy efficiency or what “green” compliant measures are being taken, and his desire to have this be a matter of course in future requests.

Dr. Hommerding outlined some of the energy efficient measures currently being used, and having been implemented at the library over the past five years.

Councilmember Babcock asked about the 250 sq. ft. setback requirement. Community Development Director Jerry Murphy responded that based on his research, that was a residential constraint, and the Fort Myers Beach Library is a civic building, and can be a prominent civic building without the variance, and that is why staff recommended denial.

MOTION: Councilmember Babcock moved to accept Town Council Resolution 08-26 with the first page of that document, reading, the Town Council **APPROVES** Applicant’s request for a variance, the Town Council **APPROVES** the applicant’s request for a special exception; there **ARE** exceptional or extraordinary conditions; the conditions justifying the variance **are not** the result of actions of the applicant; the variance requested is the minimum variance; the granting of the variance **will not be injurious to the neighborhood**; the conditions or circumstances on the specific piece of property for which the variance is sought **are not**; on page 4, the requested special exception **is not contrary** to the public interest or health; the attached conditions **are necessary** for the protection of the health, safety, comfort, convenience or welfare of the general public and **are reasonably** related to the special exception requested. There **EXIST** changed or changing conditions that make approval of this request, with the above conditions, appropriate. The requested special exception as conditioned **IS** consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan; That it **MEETS OR EXCEEDS** all performance and locational standards set forth for the proposed use; **DOES** protect, conserve or preserve environmentally critical areas and natural resources; **WILL** be compatible with existing or planned uses and **WILL NOT** cause damage, hazard, nuisance or other detriment to persons or property; and **WILL** be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC. Vice Mayor Acken seconded the motion.

VOTE: Motion carried 5-0.

Mayor Kiker closed the public hearing at 10:20 AM.

VI. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 08-07, Capital Project and Related Service Assessment Ordinance

ORDINANCE 08-07

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RELATING TO CAPITAL IMPROVEMENTS AND RELATED SERVICES PROVIDING A SPECIAL BENEFIT TO LOCAL AREAS WITHIN THE CITY PROVIDING DEFINITIONS AND FINDINGS; PROVIDING FOR TITLE AND CITATION; PROVIDING FOR THE CREATION OF ASSESSMENT AREAS; AUTHORIZING THE IMPOSITION AND COLLECTION OF SPECIAL ASSESSMENTS TO FUND THE COST OF CAPITAL IMPROVEMENTS AND RELATED SERVICES PROVIDING A SPECIAL BENEFIT TO LOCAL AREAS WITHIN THE CITY; ESTABLISHING PROCEDURES FOR NOTICE AND ADOPTION OF ASSESSMENT ROLLS AND FOR CORRECTION OF ERRORS AND OMISSIONS; PROVIDING THAT ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF THE ASSESSMENT ROLLS; ESTABLISHING PROCEDURES AND METHOD OF COLLECTION OF ASSESSMENTS; AUTHORIZING THE ISSUANCE OF OBLIGATIONS SECURED BY ASSESSMENTS; PROVIDING FOR VARIOUS RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH OBLIGATIONS; PROVIDING THAT SUCH OBLIGATION WILL NOT CREATE A GENERAL DEBT OR OBLIGATION TO THE CITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

Attorney Dalton indicated that this ordinance comes forth on direction from prior council to set up a special assessment ordinance, set up so that should council choose to pass this, any future assessments would be by resolution. This process is also under the Town's home rule, and will put these assessments on the tax rolls.

Opened Public Comment

None

Closed Public Comment

Attorney Dalton introduced Chris Traber and Teresa Prince, from Nabors Giblin Nickerson. This ordinance establishes an umbrella process, based on due process ordinance set forth by Florida statutes. Mr. Traber outlined the two-step process, of the initial resolution setting forth the public hearing date, and then adopt the final resolution for each area.

Vice Mayor Acken referenced various sections of the proposed ordinance, including those on any legislative findings, some provisions to assessments and other the Town imposing assessments until a valid assessment is imposed. Vice Mayor Acken agreed

that this document was drafted in the best benefit to the town, but added that his job as a councilmember is to represent what's in the best interest of residents. He expressed concern about the level of power to this taxing authority.

Vice Mayor Acken suggested, in section 2.03, the initial assessment resolution, adding a section (H) be added: include legislative findings of necessity of special assessment funding for any local improvements or related services.

Attorney Dalton spoke to a concern about the use of the word "necessity" adds an additional layer that could then be subject to challenge.

Town Manager Scott Janke added that this is an umbrella ordinance to have public hearings for resolutions that will specifically identify a project, gives specificity to future projects.

Vice Mayor Acken indicated his intent is to clarify what is already there, it is in 2.01, but not enumerated in 2.03. To convey the tone of this document, consider that with this document, the Town would have a tool to fund Estero Boulevard improvements.

MOTION: Councilmember Babcock moved to send ordinance 08-07 to hearing on June 16, 2008 at 6:30 PM requesting any modifications which might seem appropriate at that hearing but the intent would be to make this a generic document and subsequent to this vote, discuss how to handle Laguna Shores. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 4-1 with Mayor Kiker dissenting.

Council discussed whether to have Laguna Shores as a hearing at the introduction of the resolution and the policy decisions as to option one or option two. Staff indicated a high estimated cost from last year is \$345,000., that assumed disposal of the dredge spoils somewhere other than the island. That figure does not including any management of the tax roll by an outside entity, any staff time or any additional engineering or construction management costs, or any attorneys' fees.

With regard to the Laguna Shores project only, Council collectively chose Option 1 – to continue with proposed schedule/ but build in an automatic reduction.

With the agreement of Council, Mayor Kiker pulled the Status of Old San Carlos item to the next agenda.

VII. MANAGER'S ITEMS:

B. Status of Old San Carlos Special Assessment Collection

Opened Public Comment:

Public Comment was heard:

- Evelyn May commented she is interested in hearing where the Council is at with this item.

Closed Public Comment

Town Manager Scott Janke explained this is informational only, at the request of some of the council, that the memo provided in the packet indicates there are only two outstanding collections.

Attorney Dalton indicated that in a previous meeting with staff and Ms. May, Ms. May believes she has information that would lead the Town to take a different view on her obligation, and the Town is waiting for that information to come forward.

Recess: 12:05 PM Reconvene: 12:35 PM

VI. ADMINISTRATIVE AGENDA:

B. Interlocal Agreement, Lee County Animal Control Services

Town Manager Scott Janke asked for Council to postpone any action on this item until after the LPA hears these matters at the June 3, 2008 LPA meeting. Mr. Janke also asked Council to authorize staff to negotiate with Lee County prior to any Council action.

Opened Public Comment:

Public Comment was heard:

- Dennis Weimer, Chairperson of the Local Planning Agency outlined the two items that the LPA are discussing relative to this matter: one is a short-term leash law ordinance change, and the second is a long-term, over-all look at the ordinance.

Closed Public Comment

Councilmember Babcock called for a point of order, not to discuss the LPA recommendations *until we saw LPA recommendations.*

Council concurred to authorize staff to negotiate the interlocal with Lee County.

C. Bid Award, Office Remodel

Town Manager Scott Janke identified three top ranked bids; One Source, Janitz and Corax.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember List moved to direct staff to move forward with the top ranked bid for the Town Hall office remodel. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

D. Bulk Water Interlocal Agreement Amendment

Attorney Dalton indicated this is an addendum to extend the notification time to the Town when the County intends to increase bulk water rates and to provide for the reimbursement to the Town for billing sanitary sewer charges.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Raymond moved to approve addendum #1 to the Interlocal Agreement between Lee County and the Town of Fort Myers Beach for the sale and purchase of potable water. Councilmember List seconded the motion.

VOTE; Motion passed 5-0.

E. Resolution 08-27, Goals and Objectives

With the consent of Council, Mayor Kiker moved this item down the agenda .

TOWN MANAGER'S ITEMS:

A. Financials on CIP Projects

Town Manager Scott Janke indicated that these reports are a response to Council request. Council discussed the various items, indicating that revenue from grants not be in this report. Council discussed the process, whether this detail is to be discussed in this format, or a workshop, and where does policy overlap the administration. Council expressed a desire to receive these reports to see that projects are on track.

C. Palmetto/Easy Street Special Assessment

This item was covered in the discussion of the Old San Carlos Assessments.

D. Monthly Reports

Town Manager Scott Janke introduced a report for action items, to see how it is evolving, to track action that Council takes; he welcomes comments and advice.

E. Authorization for Office Equipment and Furnishings

Town Manager Scott Janke indicated this item is informational, that the costs associated with the office equipment and furnishings is within the authority of the town manager.

VIII. TOWN ATTORNEY'S ITEMS:

Attorney Dalton referenced a recent FLUEDRA filed in December and went forward on May 13, 2008. Ms. Dalton received notification on May 31, 2008 in a memo from the Magistrate with recommendations to Council and found that the Town acted appropriately.

E. Resolution 08-27, Goals and Objectives

Attorney Dalton read the title:

**RESOLUTION NUMBER 08-27,
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS
BEACH, FLORIDA, ESTABLISHING TOWN COUNCIL GOALS AND
OBJECTIVES FOR FISCAL YEAR 2008-2009; AND PROVIDING AN
EFFECTIVE DATE**

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Raymond moved to approve resolution 08-27.
Councilmember Babcock seconded the motion.

SECONDARY MOTION: Vice Mayor Acken made a secondary motion to pass this as
a declaration, not a resolution.

Secondary Motion fails for lack of a second.

SECONDARY MOTION: Vice Mayor Acken made a secondary motion to have this
resolution sunset at the end of this fiscal year.

Secondary Motion fails for lack of a second.

VOTE: (Main motion) Passed 4-1, with Vice Mayor Acken dissenting.

Recess: 2:15 PM

Reconvene 2:30 PM

IX. COUNCILMEMBERS ITEMS AND REPORTS:

Councilmember Babcock passed out a book for Council for completion of goals.

Mr. Babcock referenced the MRTF and the S.T.A.R.T. organization presented by Hans
Wilson, Hans Wilson & Associates, that it makes sense to link with them.

Mr. Babcock mentioned the rain barrel workshop, P.R.I.S.M.

Mr. Babcock mentioned the SWFWMD Magic bus tour; good information regarding
water quality issues.

Mr. Babcock mentioned the Estero Bay Agency on Bay Management June 9, 2008 all
day meeting, is open to anyone.

Mr. Babcock sought consent of the Council to attend the September 15, 2008 council
meeting by phone, provided there was a quorum in attendance.

MOTION: Councilmember List moved to authorize Councilmember Babcock to join the September 9, 2008 meeting by telephone, contingent upon a quorum. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

Vice Mayor Acken requested staff to consider rebroadcasting council meetings in the evening, at 6:30 in addition to the 1:00 PM rebroadcast.

Vice Mayor Acken referenced a desire to revisit the parcelization ordinance, and a desire to bring it forward on the shortest path.

Mr. Acken spoke to “green” requirements, and suggested consideration of some amendment(s) to the fee schedule to allow discounts for levels of “green” compliance.

Mr. Acken asked about the special event for the 4th of July parade, and additional trolleys and port-a-lets.

Councilmember List referenced a triage at the Ruth Cooper Center.

Ms. List mentioned the horizon council and expressed her enjoyment of the opportunities.

Councilmember Raymond commended the Town Manager and the Community Development Director on the handling of a resident’s pool permit.

Mayor Kiker expressed a desire to revisit the Mound House project. The Council scheduled a work session for Monday June 9, 2008 at 6:30 PM to discuss the Mound House, the Newton property and Beach Renourishment.

Mayor Kiker asked about the possibility of a trolley pull-off at the library.

Mayor Kiker expressed a desire to discuss funding a youth council.

Mayor Kiker requested a line item on the agenda to talk about Priority Process Improvement Projects, or “old business” and “new business”.

Mayor Kiker requested that staff send an e-mail to the advisory committees informing them of the Lee County Attorney’s Ethics & Sunshine seminar.

Regarding the June 16, 2008 meeting, specifically the MPO’s request for the Town to join the oversight committee, Councilmember Raymond volunteered to sit on the oversight committee.

Mr. Kiker requested staff to set up a meeting with the county regarding gas tax.

Mr. Kiker requested a list of all the advisory committees.

Mr. Kiker requested that drug testing memo be put on the town website.

X. PUBLIC COMMENT:

Opened Public Comment:

Public Comment was heard:

- Dennis Weimer, chairperson of the LPA outlined items the LPA is working on; the legislative changes to the LDC; working in conjunction with MRTF for the fertilizer ordinance; the animal control issues; and refuse containers.

Close Public Comment

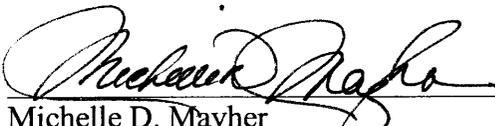
ADJOURNMENT

The meeting adjourned at 4:13 PM

Adopted 6-16-08 (Date) With/ Without Changes. Motion by Lest / Sabcock.

Vote: 5-0

Pg 6 of 10


Michelle D. Mayher
Town Clerk

- End of Document