



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

July 14, 2008

9:00 AM

I. CALL TO ORDER

Mayor Kiker called to order the meeting of the Town Council at 9:04 AM. Present along with Mayor Kiker was Vice Mayor Acken, Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

II. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

III. INVOCATION:

St. Peter Evangelical Lutheran Church, Pastor Thomas Snapp
Pastor Snapp delivered the invocation.
Mayor Kiker informed the public that Pastor Snapp is retiring, and presented a proclamation honoring the pastor's service to the community. Town Clerk Michelle Mayher read the proclamation. Mayor Kiker presented the Key to the Town to Pastor Snapp.

Mayor Kiker sought consent from the Council to remove agenda items for consideration at a future agenda. Council pulled:

Consent Agenda

G. Direction to the HPB for Newton Property Historic Designation Application

Administrative Agenda

C. Selection of Landscape Architect, 216 Connecticut Street

D. Newton Park Architectural Services Contract Extension

IV. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard

- Joann Shamp offered the council ways to improve our Beach; stop commercial entities from discharging their pools onto the beach; residents to

plant native plantings; plug the drains in the seawalls, and evaluate each beach access.

- Tom Merrill spoke regarding the potential for a problem regarding the Town's airspace and encouraged the Council to talk with the airport and have further discussion.

Closed Public Comment

Chamber of Commerce Pirate Festival

Mayor Kiker requested Council's permission for a walk-on item. The Chamber of Commerce wished to address the Council regarding the planning of an upcoming event. Georgia Reinmuth, Fort Myers Beach Chamber of Commerce representative, requested Council approval to offer the use of the parking area under the bridge as the event venue. The Chamber also requested the Town's waiver of the parking meters for the three day event. Town Manager Scott Janke stated that staff had no objection.

MOTION: Councilmember List moved to give support for the location, subject to the special event permit application approval. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

V. CONSENT AGENDA

- A. Approval of Minutes, June 16, 2008
- B. Construction Contract Award, Alternating Light
- C. FDLE Grant Letter of Support
- D. Resolution 08-29, Request to South Florida Water Management District
- E. Resolution 08-30, Board of County Commission CIP
- F. Resolution 08-28, Laguna Shores Assessment
- G. Direction to the HPB for Newton Property Historic Designation Application

Councilmember Bob Raymond pulled Consent Agenda Item E., Resolution 08-30, Board of County Commission CIP. The Council consented to continue this item following the evening worksession, July 14, 2008 at 6:30 PM.

Vice Mayor Acken pulled Consent Agenda Item A., Approval of Minutes, June 16, 2008.

MOTION: Councilmember Raymond moved to accept the Consent Agenda Items B, C, D & F. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

Vice Mayor Acken amended Consent Agenda item A., Minutes of June 16, 2008 as the following addition to page 2 of 15.

MOTION: Vice Mayor Acken moved to approve Consent item B, with the understanding that this is a non-recurring event, meaning that future 4th of July parades will require Council approval.

MOTION: Councilmember Babcock moved approval of the minutes of June 16, 2008 as amended by Vice Mayor Acken. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

VI. PROCLAMATION:

A. Daughters of the American Revolution

Town Clerk Michelle Mayher read the proclamation. Mayor Kiker presented the proclamation to a representative of the Estero Island Chapter of the Daughters of the American Revolution.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Update from CELCAB

Cultural and Environmental Learning Center Advisory Board (CELCAB) member Barbara Anderson-Hill addressed the Council, outlining the Committee's recent trip to Historic Spanish Point in Osprey, Florida. Ms. Anderson-Hill thanked the Council for allowing committee members these training and travel opportunities.

VIII. PUBLIC HEARING

Mayor Kiker opened the public hearing at 9:50 AM.

A. Ordinance 08-08, Animal Control Ordinance

ORDINANCE 08-08

AN ORDINANCE AMENDING THE TOWN OF FORT MYERS BEACH ORDINANCE NUMBER 00-08, ALSO KNOWN AS THE TOWN ANIMAL CONTROL ORDINANCE, PROVIDING FOR ENFORCEMENT BY TOWN AND TOWN DESIGNEES; MODIFYING LEASH PROVISIONS FOR DOGS ON THE BEACH AND OTHER PUBLIC AREAS AS DEFINED IN THE ANIMAL CONTROL ORDINANCE; EFFECT OF ORDINANCE; AND EFFECTIVE DATE

MOTION: Vice Mayor Acken moved to continue this hearing to a later agenda date, at least October, preferably February. Councilmember List seconded the motion.

Council discussion included the time frame for a continuance and the desire to reach the majority of residents, having something in place before season and the fact that should the ordinance be deferred, the Town will have no ability to enforce its own animal control ordinance (00-08).

MOTION: Vice Mayor Acken moved to amend the motion to continue this item to an agenda in December. Motion failed for lack of a second.

VOTE: (AS TO THE PRIMARY MOTION) Motion failed 4-1, with Vice Mayor Acken voting in favor, all other councilmembers dissenting.

MOTION: Councilmember List moved to strike the proposed modification of the definition of restraint from the ordinance, and that the remainder of the ordinance would stand; in essence remove the leash component from proposed ordinance 08-08. Vice Mayor Acken seconded the motion.

Opened Public Comment

Public Comment was heard:

- Bill Van Duzer, resident of Fort Myers Beach expressed his opinion that the people of Fort Myers Beach want restraint of dogs on the island.

Closed Public Comment

Town Clerk Michelle Mayher called the role:

Councilmember List	nay
Vice Mayor Acken	aye
Councilmember Babcock	nay
Councilmember Raymond	nay
Mayor Kiker	nay

VOTE: Motion failed, 4-1, with Vice Mayor Acken voting in favor, all other councilmembers dissenting.

MOTION: Councilmember Babcock moved to adopt ordinance 08-08, as presented. Councilmember List seconded the motion.

Town Clerk Michelle Mayher called the role:

Councilmember Babcock	aye
Councilmember List	aye
Mayor Kiker	aye
Vice Mayor Acken	nay
Councilmember Raymond	aye

VOTE: Motion passed 4-1 with Vice Mayor Acken dissenting.

Vice Mayor Acken requested the Lee County Animal Control report(s) be made available to the Local Planning Agency.

Mayor Kiker closed the public hearing at 10:40 AM.

Recess: 10:40 AM

Reconvene 10:50 AM

B. Ordinance 08-09, Amendment to the LDC, new FEMA NFIP FIRMS
ORDINANCE 08-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE FLOODPLAIN REGULATIONS AND REFERENCES TO THE FEDERAL FLOOD INSURANCE STUDY (FIS) AND FLOOD INSURANCE RATE MAPS (FIRM) IN THE LAND DEVELOPMENT CODE (LDC); ADOPTING AMENDMENTS TO ARTICLE IV (FLOODPLAIN REGULATIONS) OF CHAPTER 6 OF THE LDC, TITLED "MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS," AND WHICH PROVIDES ARTICLE IV FLOODPLAIN REGULATIONS, DIVISION 1 GENERALLY; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Community Development Director, Jerry Murphy indicated that this is the first of two hearings to adopt the new FIRM maps, which is required by August 28, 2008. The second Town Council hearing is scheduled for August 18, 2008.

LPA Representative, Bill Van Duzer spoke to this item as having been properly done, reviewed by the LPA. This item originally came to the Town in 2005 and Mr. Van Duzer stated his pleasure at seeing this outcome.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Babcock moved to have Ordinance 08-09, Amendment to the LDC, move forward to public hearing on August 18, 2008 after 5:01 PM. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

Mayor Kiker closed the public hearing for Ordinance 08-09.

IX. ADMINISTRATIVE AGENDA:

A. Presentation of Preliminary Budget

Pursuant to Town Charter, Town Manager Scott Janke presented the preliminary budget, announced a final budget worksession scheduled for August 18, 2008 at 9:00 AM.

B. Resolution 08-31, Adoption of Tentative Millage Rate FY 2008-2009

MOTION: Councilmember Babcock moved to adopt a tentative ad valorem millage rate of .8000. Councilmember Raymond seconded the motion.

AMENDED MOTION: Councilmember Babcock amended the motion to state the adoption of resolution 08-31 and public hearings for adoption of the millage and the

budget are scheduled for September 3, 2008 at 6:30 PM and September 15, 2008 at 6:30 PM. Councilmember Raymond amended the second to the motion.

VOTE: Motion passed 5-0.

C. Selection of Landscape Architect, 216 Connecticut Street

This item was not heard; this item was pulled at the start of the meeting.

D. Newton Park Architectural Services Contract Extension

This item was not heard; this item was pulled at the start of the meeting.

E. Request for Direction Regarding ROW/LPA, Impervious Pavement Requirements

Public Works Director, Jack Green indicated that this item relates to stormwater management, which is significant on Estero Boulevard which is the County's right-of-way. The side streets have very little in the way of conveyances for storm water. Staff is asking Council to accept the recommendations by the LPA outlined in LPA resolution 2008-28, and direct staff to develop rules associated with the alteration of the Town right-of-way and request that the LPA prioritize the development of comprehensive changes to the Land Development Code associated with impervious surface on private property.

MOTION: Councilmember Babcock moved to accept resolution 2008-28, and assign it a high priority request for the staff and for the LPA. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

F. Introduction of Ordinance 08-11, LPA Membership Terms and Requirements
ORDINANCE 08-11

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.114, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, WHICH ARE TITLED, RESPECTIVELY, "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS", AND "MEMBERS TERMS AND VACANCIES", PROVIDING FOR PARTIAL ELIMINATION OF APPLICATION REQUIREMENTS; PROVIDING FOR PARTIAL ELIMINATION OF APPLICATION REQUIREMENTS; PROVIDING FOR CHANGE IN DATE OF APPOINTMENT TO THE LPA AND ELIMINATION OF TERM LIMITS FOR LPA MEMBERS; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Raymond moved to send ordinance 08-11 forward to a first public hearing, on August 18, 2008 at 6:30 PM. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

Recess: 11:45 AM

Reconvene 12:05 PM

X. TOWN MANAGER'S ITEMS

A. Newton Park Supplemental Project

Town Manager Scott Janke indicated that this is a request for funding to install a composting toilet, contingent upon satisfaction of flood plain regulations.

MOTION: Councilmember List moved to authorize the purchase and installation of one M54 Composting Toilet and the construction of a 24 ft x 12 ft Tiki Hut at the Newton Park property, contingent upon meeting flood plain regulations. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

B. Update on Newton Property Costs

Town Manager Scott Janke indicated that this item is for the Council's consideration, and that he will package this information along with the other items relative to the Newton Property for the August 18, 2008 town council meeting.

C. Public Works Water Resources Update

This is an informational report; no action is requested or required.

D. Report, Lee County Animal Services

This is an informational report, requested by Vice Mayor Acken. No Council action is required, however Vice Mayor Acken requested that animal control reports be made available to the Local Planning Agency.

XI. TOWN ATTORNEY'S ITEMS

A. Status of Newton Park Interlocal Negotiations

Attorney Dalton indicated that the Council directed the Town Attorney to remove the interest component in the interlocal agreement and clarify the requirement of a historic residence on the property. Attorney Dalton sought direction whether to stop at this point in the negotiations, or to continue.

MOTION: Councilmember List moved to approve amendment one to the interlocal agreement for county grant funding of the Newton Beach Property, and direct staff to discontinue negotiations with the County *at this time*. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

B. Direction on Schlenk Bankruptcy/ Old San Carlos Special Assessment

Attorney Dalton sought Council direction with regard to Mr. Schlenk's bankruptcy. Mr. Schlenk owns 185 Old San Carlos and is related to the special assessment on that property. Attorney Dalton recommended that the Town file a proof of claim advising the bankruptcy court that the Town is a secured creditor, in a first position as a secured creditor, and that the bankruptcy trustee be requested to give the Town a written notice of the abandonment of the property.

MOTION: Councilmember Babcock moved to direct the Town Attorney to file a proof of claim in the bankruptcy action, and also provide the bankruptcy trustee with a written notice of abandonment for him to sign and return to the Town, even sending it certified mail if necessary. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

C. Beach Renourishment

BOCC will be considering our request for a thumbs up, thumbs down at the County Management and Planning Session scheduled for August 4, 2008 at 1:00 PM.

Attorney Dalton requested Council's direction whether it is their desire to have a presence at this Management and Planning Session. Attorney Dalton suggested the Town come forward with the position that we have a million dollars, and the County, in their own way, would bring their other issues that they feel they need to negotiate.

Referendum

If you have any suggestions for a referendum bring them to the August 18, 2008, and e-mail to Attorney Dalton in advance of that.

Franchise Fee Ordinance

Attorney Dalton indicated she has been drafting an ordinance for a franchise fee from prior direction, that is very protective of the Town. Ms. Dalton sought direction whether to continue if the Council is not interested in pursuing this document. The majority of Council was not interested in having the Attorney continue the drafting of this ordinance.

XII. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Acken thanked everyone who contributed to the 4th of July fireworks display, and especially the beach cleanup on July 5, 2008. The cleanup was a joint effort of the Pilot Club and Keep Lee County Beautiful. Mr. Acken mentioned the Edison Sailing School which is underway.

Regarding Ordinance 07-04, Vice Mayor Acken asked for a status. Attorney Dalton indicated that no direction had been given for the LPA to address this at this time. Vice Mayor Acken requested this be an agenda item for October, 2008.

Councilmember List praised the 4th of July celebration. Ms. List spoke of her involvement with the Horizon Council and the Economic Development Council. This

is a council comprised of government officials and private stakeholders, who are charged with ensuring that the existing building industry is stable. As an alternate revenue source, there is consideration to ask the Economic Development Council to fund some of our infrastructure.

Councilmember Raymond handed out a MPO apportionment plan, explaining that the Town will not be splitting with Sanibel – the Town will be keeping its vote. Regarding the Oversight Committee for the MPO, that item has not yet come up, perhaps will be discussed in August. Mr. Raymond has received communication from residents not happy with the north Estero speed limit, being of the opinion that it should be the same as the rest of Estero. Mr. Raymond has received e-mails from condominium owners seeking EOP re-entry passes. Town Manager Scott Janke indicated that property owners can obtain a re-entry sticker.

Councilmember Babcock has also received communication from residents who are out of the area. Mr. Janke answered that they can show evidence of residency and the re-entry decal can be mailed to them. Councilmember Babcock suggested having two lines for re-entry – one for those with the decal, and one for those who need to show proof of residency.

Southwest Florida Regional Planning Council is putting together Vision 2050. Mr. Babcock encouraged Council to get started on Vision 2025. Mr. Babcock mentioned that Brad Case has left the Town's employ, and expressed his appreciation for a job well done. Mr. Babcock requested an updated meetings calendar. Mr. Babcock referenced the public comment by Ms. Shamp. He witnessed the same situation regarding the need for stormwater management and addressing environmental issues involved. Mr. Babcock stressed the need for education. Mr. Babcock referenced the advisory committee members' ordinance, asking whether Council is interested in discussing other items relative to them.

Councilmember Raymond asked that the vacancies for the advisory committees be more recognizable on the website, and perhaps running an advertisement in the newspaper.

Councilmember Babcock referenced public comment by Tom Merrill, and asked what the status of the concerns regarding flight patterns. Mayor Kiker responded having received a letter from the FAA, but the FAA is not forthcoming with the information, however the meeting that was held had nothing to do with flight patterns. There is an effort by the FAA to split the flight patterns in half, bring half from the north and half from the south.

Town Manager Janke suggested sending a letter to the congressional delegation.

Councilmember Babcock is concerned about the Town's quality of life issue, and should not depend on citizen support to take action. There are a lot of changes going on in the airline community that will be taking place in the Fall. Mr. Babcock

supports sending a letter to any congressional delegate willing to put their neck on the line.

Mayor Kiker would like to allow a response from Mr. Ball before proceeding.

Councilmember Babcock referenced an e-mail he sent to the Council regarding the August 18 budget workshop, outlining the kinds of things he would like to see accomplished at that meeting. Mr. Babcock suggested discussing at the evening worksession scheduled for July 14, 2008 at 6:30 PM.

Mayor Kiker asked for the list of Action Items be included on the Agenda. Mayor Kiker mentioned the concept of a Management and Planning session, asking Council to consider making this a more formal process at a future agenda. Mayor Kiker mentioned that Lee County is doing free admission to parks. It is his desire to match that and publicize it.

Vice Mayor Acken added he would like to encourage that participation from the County and take it further to include perhaps the month of September, which is typically a slow period.

Mayor Kiker was referring to one day, or perhaps one day a month, and join in with the County if there is a free day.

XIII. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard

- Lee Melsek spoke on behalf of the Board of Directors of the Civic Association thanking Town Manager Scott Janke for his help both with time and the use of his automobile for the 4th of July parade. Mr. Melsek also mentioned that there were some agreements reached with the FAA at the time of incorporation regarding the height at which an airplane would fly.

Closed Public Comment

Council recessed the meeting at 2:25 PM.

Reconvene: 8:27 PM

Mayor Kiker reconvened with all members present.

Estero Boulevard

Councilmember Raymond referenced the vote on the pilot section for the Estero Boulevard Rehabilitation project. He also mentioned the ROWs that will adversely affect a lot of people.

Discussion ensued regarding various aspects of the project, including the engineering study and the construction costs.

Councilmember Raymond expressed his concern to continue with this project without a financial commitment from Lee County.

MOTION: Councilmember Raymond moved to reconsider the vote taken by Council on June 16, 2008 on the Estero Boulevard pilot Section. Councilmember Babcock seconded the motion.

VOTE: Motion failed, 3-2 with Councilmember List, Councilmember Babcock and Vice Mayor Acken dissenting.

MOTION: Councilmember Babcock moved to pass resolution -08-30 as written. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

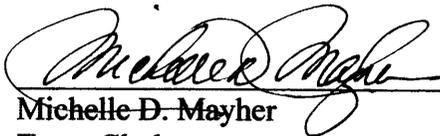
The budget was discussed, with no action taken.

XIV. ADJOURNMENT

The Council adjourned the meeting at 10:05 PM

Adopted 8-26-08 With/ Without Changes. Motion by List/ Raymond
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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