



# MINUTES

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

**September 15, 2008**

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## **FORT MYERS BEACH TOWN COUNCIL**

### **I. CALL TO ORDER**

Mayor Kiker called to order the meeting of the Fort Myers Beach Town Council at 6:30 PM. Present 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. INVOCATION**

Pastor Maynard Pittendreigh of Chapel by the Sea led in prayer.

### **III. PLEDGE OF ALLEGIANCE**

All stood and recited the pledge to the flag.

### **IV. AGENDA ADOPTION**

### **V. PUBLIC COMMENT**

#### **Opened Public Comment**

#### **Public Comment was heard:**

- Jay Light referenced a recent resignation of the Director of Community Development, asking Council why this resignation wasn't questioned.

#### **Closed Public Comment**

### **VI. CONSENT AGENDA:**

- A. Adoption of Minutes: August 27, 2008
- B. Adoption of Minutes: September 3, 2008

**MOTION:** Councilmember List moved to adopt the Consent Agenda, provided the Clerk check the ex-parte communications of the hearing on Cabascas

on August 27, 2008. The motion was made subject to a correction. Councilmember Babcock seconded the motion.

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

**VII. PRESENTATIONS:**

A. Presentation of Town of Fort Myers Beach Annual Audit, Martin Redovan, LarsenAllen

Town Manager Scott Janke indicated he was asking the Council to accept the audit, which the Council has received, for the year ending September 30, 2007.

Mr. Martin Redovan, CPA with the firm LarsenAllen LLP, briefly spoke to the highlights of the audit, referencing page 3, Management's Discussion and Analysis. The Town's total net assets increased by \$702,985.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Babcock moved to accept the annual audit. Councilmember List seconded the motion.

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

B. Presentation of Lee County Comp Plan amendment/ San Carlos Island – McHarris Planning & Design

Joe McHarris with McHarris Planning & Design delivered a power point presentation on a proposed amendment to Lee County's Comprehensive Plan. This is a future vision of San Carlos Island in what is a blighted area. The conceptual plan includes a mixed use of residential and commercial and waterfront.

Mayor Kiker stated this amendment goes to Lee County Land Planning Agency on September 22, 2008, and to the Board of County Commissioners on October 23, 2008.

Councilmember Babcock asked that any detailed information that comes forward regarding traffic be forwarded to the Town.

**VIII. PROCLAMATIONS:**

A. National Estuaries Day

Town Clerk Michelle Mayher read the proclamation. Vice Mayor Herb Acken accepted it on behalf of the Charlotte Harbor National Estuary Program.

**IX. PUBLIC HEARING:**

**A. Resolution 08-41, Public Hearing to Adopt Millage for FY 2009**

Mayor Kiker opened the public hearing. Attorney Dalton read the title.

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS  
BEACH, FLORIDA  
RESOLUTION NUMBER 08-41**

**Opened Public Comment**

None

**Closed Public Comment**

Town Manager Scott Janke indicated that per the first public hearing on the adoption of the millage, the mill rate is .7093, 2.04% increase over the roll back, and 17.18% increase in mill.

**MOTION:** Councilmember Raymond moved to adopt resolution 08-41, with the mill rate of .7093, as discussed. Councilmember Babcock seconded the motion.

Councilmember Babcock stated his disappointment that there had not been more public comment. Mr. Babcock expressed his concern for next year, that there could be a decrease in property tax, but will support the budget as presented.

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

Mayor Kiker closed the public hearing at 7:45 PM.

**B. Resolution 08-42, Public Hearing to Adopt Budget for FY 2009**

Mayor Kiker opened the public hearing. Attorney Dalton read the title.

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS  
BEACH, FLORIDA  
RESOLUTION NUMBER 08-42**

Town Manager Scott Janke indicated asking the Council to adopt the final town operating and capital budget for fiscal year 2008/2009.

**Opened Public Comment**

None

**Closed Public Comment**

Town Manager Scott Janke stated the final operating and capital budget which sets forth the appropriations and revenue estimates in the amount of \$20,198,727.00.

**MOTION:** Councilmember Raymond moved to adopt resolution 08-42, with the operating and capital budget of \$20,198,727.00. Councilmember List seconded the motion.

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

Mayor Kiker closed the public hearing at 7:45 PM.

C. Final Public Hearing, Ordinance 08-11, LPA Membership Requirements and Terms

Mayor Kiker opened the public hearing. Attorney Dalton read the title.

**ORDINANCE 08-11**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.1214, 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 CHANGE IN DATE OF APPOINTMENT TO THE LPA AND ELIMINATION OF TERM LIMITS FOR LPA MEMBERS ; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.**

Local Planning Agency Chairman Dennis Weimer was present to answer any questions.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Raymond moved to approve ordinance 08-11 as presented. Councilmember Babcock seconded the motion.

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

Mayor Kiker closed the public hearing at 7:55 PM.

**X. ADMINISTRATIVE AGENDA:**

A. Resolution 08-31, Emergency Preparedness Fund Access

Attorney Dalton read the title.

**RESOLUTION NUMBER 08-31, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, IMPLEMENTING THE PROVISIONS OF ORDINANCE 08-13, KNOWN AS THE TOWN OF FORT MYERS BEACH EMERGENCY PREPAREDNESS FUND ACCESS ORDINANCE, FOR FISCAL YEAR 2008-09 AND PROVIDING AN EFFECTIVE DATE.**

**MOTION:** Councilmember List moved to approve resolution 08-31 also known as the Town of Fort Myers Beach Annual Emergency Preparedness Fund Access Resolution. Councilmember Babcock seconded the motion.

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

B. Introduction of Ordinance 08-14, Local Bidder MBE/DBE

Mayor Kiker opened the public hearing. Attorney Dalton read the title.

**ORDINANCE 08-14**

**AN ORDINANCE TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH LOCAL BIDDER PREFERENCE ORDINANCE; PROVIDING DEFINITIONS, PROCEDURES, EXCEPTIONS, CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.**

Attorney Dalton indicated that Council is being asked to either move this ordinance forward to a hearing on October 6, 2008, or, give direction and re-introduce the ordinance at another date.

Town Manager Scott Janke urged council to direct the town attorney to do more work on the ordinance to allow a sliding scale based on the value of the project.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Raymond moved to forward Ordinance 08-14 to public hearing on the next available town council meeting, or October 6, 2008 at 9:00 AM. Councilmember Babcock seconded the motion.

**AMENDED MOTION:** Councilmember Raymond amended his motion to move the ordinance to be re-introduced at the next available town council meeting. Councilmember Babcock would not amend his second.

**WITHDRAWN:** Councilmember Raymond withdrew his motion. Councilmember Babcock withdrew his second.

Discussion ensued regarding doing what can be done to bring business to Fort Myers Beach, having a graded scale with some maximum amount, have an opt-out clause to comply with federal and state guidelines, and a suggestion to opt out over a certain dollar amount. There would also be an annual registration of local vendors. It is a Council policy decision whether the Town Manager would decide whether a particular bid would be subject to local bidder preference.

**MOTION:** Councilmember Babcock moved to send ordinance 08-14 to a public hearing on October 6, 2008 at 9:00 AM. Councilmember Raymond seconded the motion.

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

C. Laguna Shores Channel Construction Bid Award

Town Manager Scott Janke commended Public Works Department for the hard work on this project.

**Opened Public Comment**

**Public Comment was heard:**

- Roy Hinkleman, Laguna Shores Association, stated that a lot of people are very happy about the project and are looking forward to the next step.

**Closed Public Comment**

Public Works Director Jack Green indicated having received seven valid bids. Florida Marine Construction came in as number one, staff has had experience with Florida Marine Construction for other projects, and the consultant for this project indicated that the dredge operator for Florida Marine Construction is one of the best in the business. Mr. Green indicated the assessment role is prepared, hope to be churning sand late in the year, and project is on schedule.

Town Manager Scott Janke stated this project is significantly below budget.

**MOTION:** Vice Mayor Acken moved approval of the award of contract 08-07-PW Laguna Shores Channel Construction to Florida Marine Construction in the amount of \$187,731.70 and authorize staff to move forward. Councilmember List seconded the motion.

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

D. Interlocal Agreement/ Lee County and Town of Fort Myers Beach for Signal Maintenance

Town Manager Scott Janke indicated this is an agreement for the maintenance of the traffic signal in Times Square.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Vice Mayor Acken moved to approve the Interlocal Agreement with lee county DOT for Traffic Signal Maintenance. Councilmember Babcock seconded the motion.

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

E. Discussion and Direction Regarding Lee Tran Transit Authority, requested by Councilmember Raymond

Councilmember Raymond referenced a meeting on September 29, 2008 with Lee Tran and the MPO, the purpose is to bring the Town up to date. Councilmember Raymond asked the Council what can and cannot be said on behalf of the Town.

Vice Mayor Acken would like to hold Councilmember Raymond to his statement that he will be there “just to listen.”

Councilmember Babcock stated he supports the oversight committee. When this oversight committee decides how the transit authority will be funded, then he would support a referendum to the voters or then determine whether to support the transit authority or not.

Town Manager Scott Janke stated he is of the impression that once the oversight committee is constituted, they will do some of the things that council is questioning. Some questions that the Town will bring to the 9.29.08 meeting are:  
Can the Town of Fort Myers Beach participate without an interlocal agreement, and can Fort Myers Beach use its own interlocal agreement.

**Opened Public Comment**

None

**Closed Public Comment**

**Recess: 8:55 PM**

**Reconvene: 9:05 PM**

Mayor Kiker sought consensus from Council to take an item out of order.

**Recess of the Town Council meeting: 9:05 PM**

**PUBLIC WORKS SERVICES INC.**

Chairman Kiker called to order the meeting of the Public Works Services Inc. All directors were present. Chairman Kiker recognized Mr. Martin Redovan, CPA for the firm LarsenAllen LLP.

**II. ADMINISTRATIVE AGENDA:**

**A. Presentation of Public Works Services Inc. Annual Audit – Martin Redovan, LarsenAllen**

Mr. Redovan indicated the audit of the Public Works Services Inc. is required under the loan agreement. Mr. Redovan indicated the balance sheet is more in line with business financial statements, repairs and maintenance continue to increase. Mr. Redovan brought to the Board’s attention that there needs to be more oversight by the Town Finance in monitoring the reporting by Woodard & Curran, that this is a material weakness. Mr. Redovan added that Town staff payroll should be allocated to the utility.

**Public Comment**

None

**Closed Public Comment**

**MOTION:** Councilmember Babcock moved to accept the audit of the Public Works Services Inc. Councilmember List seconded the motion.

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

**Reconvene as the Town Council: 9:20 PM**

F. Town Manager's Evaluation

Mayor Kiker indicated that when negotiating a contract when the Town Manager, Scott Janke was hired, he worked with the Town Attorney to put together some performance measure criteria to meet. After six months on the job, the Town Council would take a look at those objectives and decide whether Mr. Janke had earned up to \$6,000. for the first six months. Should it be the will of the Council to pay Mr. Janke the \$6000. , Mayor Kiker's recommendation was to begin the payment retroactive to September 1, 2008.

**MOTION:** Councilmember Raymond moved to pay the Town Manager the \$6,000. pay increase retroactive to September 1, 2008, and accepting the review. Councilmember Babcock seconded the motion.

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

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

A. Action Items

Town Manager Scott Janke said that the shoulder pavement project is going very well, at Newton Park, the chiki hut should be on site in three weeks, and the restroom project is in the works, in DEP permitting process and moving forward. Options to demolish the cottage will be a council decision, and approved by the HPB, and may go to the HPB in November.

B. Discussion regarding the Times Square Information Booth

Town Manager Scott Janke indicated that this item has come forward from Vice Mayor Herb Acken, and that as a result of the memo in this meeting's packet, Mr. Janke stated he needs to review the lease and see if the booth can be sub-let by the holder of the lease. Staff has been told that the current lease holder plans to sell the business and retire at the end of this upcoming tourist season. Council has the option to direct staff to draft an RFP to do something with that space.

C. Beach Clean-up with Keep Lee County Beautiful / Pilot Club of Fort Myers Beach

Town Manager Scott Janke mentioned an upcoming beach clean up scheduled for Saturday, September 20, 2008 and encouraged all to volunteer.

## **XII. TOWN ATTORNEY'S ITEMS**

Attorney Dalton referenced a memo regarding gas tax matters, but will defer this matter to another discussion.

## **XIII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Tom Babcock suggested having "good news items" as an early agenda item, and offered congratulations to Terry Cain and Jim Rodwell on their award for the work being done on Matanzas Preserve.

Councilmember Babcock asked how the Town will go forward to resolve issues pertaining to beach nourishment. Attorney Dalton suggested a workshop to discuss this and get direction. Mayor Kiker offered his time to meet with citizens and try to orchestrate it to have both pro and con views on the issues, and use that as a starting point for the Council to have a workshop.

Mayor Kiker suggested canceling the town council meeting scheduled for October 6, 2008. Town Manager Scott Janke responded that the October 6, 2008 meeting can be combined with the October 20, 2008 meeting. Consensus of Council was to cancel the October 6 meeting and have one regular meeting on October 20, 2008 at 9:00 AM.

Mayor Kiker asked Town Attorney Anne Dalton to submit a report before the council worksession on beach renourishment outlining the issues needing discussion. Mayor Kiker would like a definition of "managed beach," and would like to see one.

Attorney Dalton asked council to review the analysis that Mr. Spikowski did as it relates to the gas tax interlocal, and give staff clear direction from council on how to move forward as the financial aspects are very significant.

Vice Mayor Herb Acken thanked the director of the Town's community development for his loyalty to the Town and recognized his service and wished him the best in future endeavors.

Councilmember Jo List read a prepared statement expressing her appreciation for the work done by Jerry Murphy, that she had always been impressed by his knowledge.

Councilmember Bob Raymond mentioned the Town's advisory committees, suggesting that those members not reapplying, be given a certificate of appreciation. Mr. Raymond also suggested advertising vacancies in the newspaper. Mr. Raymond thanked Jerry for his time, wished him luck and good fortune.

Mayor Larry Kiker also recognized Mr. Murphy's service and thanked him for that service, and offered Mr. Frank Shockey much good luck and fortune, and Council offered their service toward his success.

Mayor Kiker mentioned having the opportunity to meet with the Daughters of the American Revolution, that it was pretty exciting and very informative and inspirational.

Regarding the gas tax interlocal, Attorney Dalton asked Council whether or not the Town is choosing to go for retroactive payments based on seasonal population in the part one allocation. Based on Mr. Spikowski's analysis, the "seasonal bump" was factored in to the original agreement, and would therefore be a redundancy for the Town to go back and get that a second time, and not a good idea to pursue that claim.

It was the consensus of Council to drop the retroactive claim, and ask for the money that belongs to the Town.

#### XIV. PUBLIC COMMENT

##### Opened Public Comment

##### Public Comment was heard:

- Nicole [Ceiley ] spoke about the times square information booth, it is her feeling that it is a farce, and was looking forward to finding when that lease will be available to someone else.

##### Closed Public Comment

#### XV. RECAP OF AGENDA ACTION ITEMS

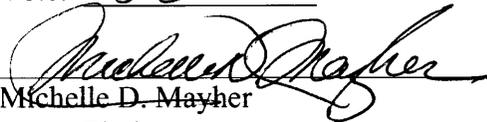
#### XVI.

#### XIV. ADJOURNMENT

The meeting adjourned at 10:50 PM.

Adopted 10-20-08 With/Without Changes. Motion by Babeak/Reynolds  
(Date)

Vote: 5-0

  
Michelle D. Mayher  
Town Clerk

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