



MINUTES

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

October 20, 2008

9:00 AM

- I. CALL TO ORDER
- II. ANNOUNCEMENT OF COMMENCEMENT OF
EXECUTIVE SESSION

EXECUTIVE SESSION CLOSED TO THE PUBLIC

A. Ganim v. Town of Fort Myers Beach, Certiorari action, Case # 06-CA-1972

ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION

- III. ANNOUNCEMENT OF COMMENCEMENT OF
EXECUTIVE SESSION

EXECUTIVE SESSION CLOSED TO THE PUBLIC

A. . Tezak v. Fort Myers Beach, Case # 07-CA-017676

ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION

AGENDA

October 20, 2008

10:00 AM

- IV. CALL TO ORDER

Mayor Kiker called to order the special meeting of the Town Council at 9:30 AM. 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.

- III. INVOCATION

No clergy was present.

IV. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

V. INTERGOVERNMENTAL REPORTS

Fort Myers Beach Fire Department Chief Mike Becker

Fort Myers Beach Fire Chief Mike Becker was not in attendance.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember Babcock acknowledged Terry Cain for her work in the Matanzas Pass Preserve, Audree Inglis and Andrea Groves for their beach clean up efforts, and the Island Arts Foundation for their Purple Heart Theatre.

VIII. PUBLIC COMMENT

Opened Public Comment:

Public Comment was heard:

- Marti Daltry spoke on the draft fertilizer ordinance.
- Carl Conley spoke regarding the sign ordinance, suggesting that the effect of what the council wanted may not be what is being administered by the HPB.
- John Albion spoke regarding the economic community, and the decisions being made by policy makers to diversify the Beaches economy encouraged the council to give something back to this community.

Closed Public Comment

IX. CONSENT AGENDA

- A. Adoption of Minutes: September 5, 2008
- B. Adoption of Minutes: September 15, 2008
- C. Adoption of Minutes: September 24, 2008
- D. FEMA Subgrant Agreement, North Estero
- E. TDC Grant Agreements
- F. Florida Humanities Council (FHC) Grant Agreement
- G. Special Event Permit Application – 1st Annual Hope Rocks the Beach

Mayor Kiker pulled item G, Special Event Permit Application – 1st Annual Hope Rocks the Beach.

MOTION: Councilmember Babcock moved to approve the balance of the consent agenda, items A through F. Councilmember Raymond seconded the motion.

Councilmember List asked for a correction to the minutes of September 5, 2008, page 3, reading “brakes” instead of “breaks”.

VOTE: Motion passed 5-0.

Special Event Permit Application, 1st Annual Hope Rocks the Beach.

Tom Gentile, event coordinator, was present to answer any questions. Mayor Kiker asked if staff had any comments on the event, to which Public Works Director Jack Green

responded that the event satisfies the Town. Mayor Kiker commented that there needs to be more lead time on permit applications.

MOTION: Councilmember Babcock moved approval of the special event application as presented. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

X. PROCLAMATIONS

A. Domestic Violence Awareness Month

Jill Shaffer, with the Abuse Counseling and Treatment Center was present to accept the proclamation. Town Clerk Michelle Mayher read the proclamation; Mayor Kiker presented it.

XI. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Marine Resources Task Force – Keep the Beach Clean Project

MRTF Chairman, Charles Hester introduced task force member, Jay Light. Jay Light introduced the program, indicating this is a continuation of an idea brought forward by MRTF member Audree Inglis, who recently passed away. The project is to encourage and award businesses who actively support the efforts to keep the beaches clean and eliminate the use of plastic straws and lids.

Public Comment:

Public Comment was heard:

- Brad Hill, a member of MRTF recognized Audree Ingliss for her work on this project, and mentioned being short two members on the task force.
- Hester commented on trying to find a “pure” paper straw that would be biodegradable.

Closed Public Comment

RESOLUTION 08-46

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA “KEEP THE BEACH CLEAN”

MOTION: Councilmember List moved the adoption of resolution 08-46, Keep the Beach Clean. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

B. MRTF Work in Progress Report

MRTF Chairman Charles Hester outlined the projects that the task force is working on, referencing the beach clean-up effort, the beachscape project to develop a voluntary beach planting and dune program; Red Tide/Red Algae education in cooperation with S.T.A.R.T. (Solutions to Avoid Red Tide); mangrove trimming guidelines to be distributed to beachfront condos and property owners.

C. Report from the Cultural and Environmental Learning Center Advisory Board

CELCAB chair person Betty Simpson addressed the council, highlighting the projects that the committee is working on. Ms. Simpson spoke of the restoration of the Mound House is about 90% complete with the tudor, the siding, and dormer windows being restored to the historic era; the shell mound exhibit will hopefully be completed in 2009; a logo has been developed to identify the Mound House; the landscaping at the Newton Park is being kept up by the Bay Oaks social seniors.

With the consent of Council, Mayor Kiker announced hearing agenda items out of order, and because of noticing and time constraints, will hear Public Hearing item B, then A then C, and Administrative Agenda item A then H.

XII. PUBLIC HEARINGS:

B. Resolution 08-44, Laguna Shores Dredge Assessment 11:00 AM

Attorney Dalton read title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUITON NUMBER 08-44

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RELATING TO DREDGING ACTIVITES; CREATING THE LAGUNA SHORES DREDGING ASSESSMENT AREA; IMPOSING SPECIAL ASSESSMENTS AND ESTABLISHING THE MAXIMUM ANNUAL AMOUNT FOR EACH TAX PARCEL; APPROVING THE ASSESSMENT ROLL; AMENDING AND CONFIRMING THE INITIAL ASSESSMENT RESOLUTION; PROVIDING FOR COLLECTION OF THE ASSESSMENTS; AND PROVIDING AN EFFECTIVE DATE.

Mr. Chris Traber with the law firm of Nabors, Giblin, Nickerson addressed the Council as special assessment counsel hired by the Town. Mr. Traber explained the assessment process; the initial resolution (08-28) in June detailed the method of assessment, with allocation based on water accesses; public hearings and notice to the community. The Council is being asked to adopt resolution 08-44, which is the final assessment resolution. This provides for the creation of the assessment area, confirms the initial assessment resolution as amended, approval of the assessment roll, and provides for collection.

Attorney Dalton referenced a letter received via e-mail from a resident in Laguna Shores with questions regarding the specifics of this resolution. Attorney Dalton opined that it is possible under the LDC, to launch personal water vehicles so they are to benefit by this assessment – it is waterfront.

Opened Public Comment

Public Comment was heard:

- Richard Hall spoke to the timing of this assessment, the current financial crises in the economy, and encouraged careful consideration, and to table the project until property values recover.

- Donald Cady, Vice President of the Laguna Shores Home Owners Association, and co-chair of the dredging committee spoke of the feasibility study done with Hans Wilson & Associates, and urged the council to vote approval.
- Ray Hinkleman, President of the Laguna Shores Home Owners Association, stated he is happy to see this come through. As a homeowner, he thanks all.
- John Gunther, resident on Buccaneer, agrees the need for dredging, that it is a worthwhile endeavor, and that he is curious about as to the plan.

Closed Public Comment

MOTION: Councilmember Raymond moved approval of resolution 08-44.
Councilmember Babcock seconded the motion.

VOTE: Town Clerk Michelle Mayher called the roll:

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

Motion passed 5-0

Mayor Kiker closed the public hearing at 12:00 PM.

A. Ordinance 08-14, Local Bidder MBE/DBE*

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 08-14
 Attorney Dalton read the title:
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.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember List moved to approve Ordinance 08-14, regarding local vendor preference and MBE/DBE preference. Councilmember Raymond seconded the motion.

Vice Mayor Acken suggested amending the motion to have the total bid price include only the base bid price. Councilmember List was not willing to amend the motion.

VOTE: Town Clerk Michelle Mayher called the roll:

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

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

Mayor Kiker closed the public hearing at 12:12 PM

C. Appeal ADM 2008-0002 Lani Kai Landmark Sign

Mayor Kiker opened the public hearing; Attorney Dalton swore in all those intending to testify or comment.

Frank Shockey, Interim Community Development Director, requested a continuance to November 3, 2008.

MOTION: Councilmember Raymond moved to continue the public hearing on the Lani Kai Landmark Sign appeal to November 3, 2008 at 9:00 AM. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

Mayor Kiker closed the public hearing at 12:16 PM.

XIII. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 08-15, Regulation of Fertilizer Use

Attorney Dalton read the title:

ORDINANCE 08-15

AN ORDINANCE REGULATING THE APPLICATION AND USE OF FERTILIZERS CONTAINING NITROGEN AND/OR PHOSPHORUS WITHIN THE TOWN OF FORT MYERS BEACH; PROVIDING FINDINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR TIMING OF FERTILIZER APPLICATION, CONTENT AND APPLICATION RATE, BUFFER ZONES; PROVIDING FOR EDUCATIONAL PROGRAMS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SOIL TESTS INFORMATION; PROVIDING FOR CERTIFICATION OF APPLICATORS; PROVIDING A PROCESS FOR ADMINISTRATIVE RELIEF; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, INCLUDING A 180 DAY IMPLEMENTATION PERIOD.

Ms. Joanne Shamp, member of the Town Local Planning Agency, was present on behalf of the LPA. Ms. Shamp spoke to this ordinance being a result of an ad-hoc committee made up of members of the Marine Resources Task Force, the Local Planning Agency, as well as membership from Jim Rodwell, and Kathryn Light from the Anchorage Advisory Committee, and former Mayor, Dan Hughes.

MOTION: Councilmember Raymond moved to forward Ordinance 08-15, Fertilizer Ordinance, forward to its first hearing on November 17, 2008 at 6:30 PM. It was not clear who seconded the motion.

VOTE: Motion passed 5-0.

E. Special Event Permit Application – 22nd Annual Sand Sculpting Festival
Georgia Reinmuth, with Fort Myers Beach Chamber of Commerce spoke to this item, requesting funding in the amount of \$9500.00 from the Town Council to cover the cost of trolley service for this event.

Councilmember Raymond questioned if the estimated \$2000.00 revenue proposed by Lee Tran would be coming off of the requested \$9500.00. Ms. Reinmuth concurred.

MOTION: Councilmember Raymond moved to approve \$7900.00 and the appropriate refund to the Town. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

H. Proposed Lee Plan Amendment for San Carlos Island
Councilmember Babcock brought this item forward, asking whether the Town would take a position and have a representative at the upcoming County hearing.

Council discussion resulted in a consensus not to take an official position prior to the upcoming BOCC meeting on the subject, a desire to be a good neighbor and have some involvement as it affects the Town's traffic. No further action was taken.

B. Future Town Council Workshops – 15 minutes

Town Manager Scott Janke asked Council whether they were willing to prioritize a list of workshops at this time.

Mayor Kiker indicated he had the understanding that council has already prioritized its goals.

Mr. Janke would like to have workshops regarding financing the future.

Council requested this as an agenda item for November 3, 2008.

C. Lee Tran Transit Authority Interlocal Agreement

Councilmember Raymond indicated that the interlocal agreement allows the Town to be a part of the transit authority charter; this addresses funding, membership and oversight.

D. Lee Tran Interlocal Agreement for Enhanced Trolley Service

MOTION: Councilmember Raymond moved to approve the interlocal agreement for enhanced trolley service. Councilmember List seconded the motion.

Opened Public Comment:

Public Comment was heard:

- Brad Hill commented that when the trolley ridership is free, vagrants are encouraged to frequent the trolley use, and are often disruptive to the tourists.

Closed Public Comment

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

Recess: 2:40 PM

Reconvene 2:55 PM

F. Schedule Beach Nourishment Workshop – 15 minutes

Council scheduled a workshop starting at 9:00 AM on Tuesday, October 28, 2008. Discussion ensued regarding the time frame for public comment, and possible presentations by concerned citizens – specifically a presentation requested by Councilmember List. The worksession will have public comment from 9:00 AM to 10:00 AM, which will include a 15 minute presentation from Ms. Shamp, as requested by Councilmember List.

G. Amendment to Town Manager’s Contract

Town Manager Scott Janke requested that the Town extend the temporary housing allowance of his contract until further notice, in lieu of a contribution to his retirement account.

MOTION: Vice Mayor Acken moved to authorize the requested extension. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

XIV. TOWN MANAGER’S ITEMS

A. Town Economic Model, Walter Klages, Research Data Services Inc.

Town Manager Scott Janke indicated this report was an informational item for the Council.

B. Departmental Reports

Town Manager Scott Janke indicated that departmental reports had been provided to the Council under separate cover.

C. Estero Boulevard Phase II Project and Discussion

MOTION: Councilmember List moved to do the survey and mapping of Estero Boulevard, to do the entire Estero Boulevard corridor at 50% , NTE 800,000. toward projects Phase I and II. . Councilmember Babcock seconded the motion.

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

XV. TOWN ATTORNEY’S ITEMS

A. Update on Ganim v. Town of Fort Myers Beach, Certiorari action, Case # 06-CA-)

B. Update on Tezak v. Fort Myers Beach, Case # 07-1972 A-017676

Attorney Dalton had no discussion for these items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Raymond mentioned the MPO's membership reapportionment, an extra member from Bonita Springs, and a resolution should be on a future agenda. Mr. Raymond also mentioned the State's desire to privatize Alligator Alley, and requested that the Town Council send a letter to the County to not sell (or lease) Alligator Alley to private individuals.

MOTION: Councilmember Raymond moved to send a letter to Lee County of support not to sell or lease our property, our state wide roadways or bridges. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

Councilmember List detailed her progress on a Youth Council – student interest in local government. Ms. List also asked how the Town might gain a permanent seat on the Tourist Development Council. It was requested the legal counsel have a memo or item regarding this at the next available town council meeting.

Ms. List stated that she would be out of town for the November 3rd council meeting and requested attendance by teleconference.

MOTION: Councilmember Babcock moved to allow Councilmember List to attend the November 3, 2008 town council meeting by teleconference, provided a Council quorum exists. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

Vice Mayor Acken thanked the members of the Marine Resources Task Force for coordinating the planting program with the Arbor Day tree sale.

Mr. Acken requested that the Town take (Chamber of Commerce President) John Albion up on his offer to get funds for Estero Boulevard.

Councilmember Babcock referenced a recent workshop in Sarasota, with the Tampa Bay Regional Planning Council and a focus to work on a shared vision regarding long range planning. Mr. Babcock also requested a future agenda item to discuss advertising matters of interest to the Town in local papers.

Mayor Kiker spoke of the Town's communications trailer, and the need to use it as an advertisement of the Town's programs, or to start using it for some special events.

Mayor Kiker spoke of the Estero Boulevard project and the ROW, asking council to give consideration to short term projects, or a "wish list" to pass along to BOCC.

Mayor Kiker mentioned the TDC meeting and a discussion regarding pulling funds out of TDC for Red Sox, future projects, and stated that beach maintenance will not be affected.

XVII.

A. Goals and Objectives

XVII. RECAP OF ACTION ITEMS

Have special events be a part of the council policies and procedures manual.
Who can people call when there is a violation of our beaches and dunes ordinance?
Draft a letter to Mr. Chacona.
Share information to Mr. Gunther regarding the Laguna Shores project.
Be in formed regarding the process with Lee County Comp Plan for the San Carlos Project
Beach Nourishment worksession 10.28.2008
Letter from Mayor re: Town's position on Phase II Estero Blvd.

XVIII. PUBLIC COMMENT

Opened Public Comment

None

Closed Public Comment

XII. ADJOURNMENT

The meeting adjourned at 4:20 PM

Adopted 11-17-08 With/ Without Changes Motion by List/Pabera
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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