



MINUTES

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

November 17, 2008

CALL TO ORDER

Mayor Kiker called to order the meeting of the Town Council at 6:30 PM. Present with Mayor Kiker was Vice Mayor Acken, Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Attorney Anne Dalton, and Town Clerk Michelle Mayher. Town Manager Scott Janke was not present, and Director of Finance Evelyn Wicks was present as acting Town Manager.

INVOCATION

Deacon Scoop Kiesel from Church of the Ascension led in prayer.

PLEDGE OF ALLEGIANCE

Mayor Kiker indicated a slight change in format at this time, and introduced students from the community who were present as the Town of Fort Myers Beach Youth Council. The Youth Council was called to the dais, taking the chairs of the current Council and introduced themselves: Youth Council: William Hucceby, Travis Redenius, Jessica Hucceby, Issac Lefevre and John Hucceby. Acting Mayor Jessica Hucceby asked all to stand and join in reciting the pledge to the flag.

The Youth Council delivered reports on their current projects, including but not limited to the Kiwanis K-Kids who are selling candy grams to buy books for the Beach School library; a November student/teach conference where students' personal data folder was available.

Opened Public Comment

Public Comment was heard:

Charlie Loucks commended the youth council on a great job.

Herb Acken praised the youth council for a fine job, and for being a part of the community.

Closed Public Comment

Returning to the dais, Mayor Kiker indicated that since Town Manager Scott Janke was not present, some items may not be heard, and with the consent of council, rearranged the

agenda as such: Administrative Agenda B., North Estero FEMA Subgrant Agreement moved to 12.15.08; Admin Agenda C., Update on Gas Tax Interlocal – postponed pending comments from Lee County; Town Manager’s Items C., Discussion regarding Lobbyist and Proposed Scope of Services – temporarily postponed.

LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Mulholland Stewardship Award

Marine Resources Task Force Chairperson Charles Hester indicated that this year, the Mulholland Stewardship Award was being awarded to the Island Sand Paper in recognition of their outstanding community service in the field of environmental conservation as evidenced by their many and varied in-depth articles to inform and educate their readership. Mayor Kiker presented the award. Island Sand Paper editor Carl Conley accepted the award on behalf of the staff, thanking the Marine Resources Task Force and the Town Council.

B. Councilmember Babcock expressed his gratitude to the Estero Island Garden Club for their efforts toward beautification of our island.

PUBLIC COMMENT:

Open Public Comment

Public Comment was heard

- Clay Cason stated his opinion that the Town comprehensive plan is not working, businesses are suffering, and he would like to discuss this with the council.
- Michael May, representing the Estero Island Garden Club mentioned the Tree Sale Nov. 17 through Jan. 09, and identified the trees and their costs.
- Maria Humphrey mentioned the short term rental ordinance, and stated that she would like to be alerted when or if the Town will revisit this item.
- Steven DeAngelis, representing Yucatan Beach Stand thanked the Town Council and staff for helping him get through the special event permitting process for the 1st annual snow bird festival.
- John Albion, representing the Greater Fort Myers Beach Area Chamber of Commerce, thanked council and staff for participation in the SandSculpting event. Mr. Albion then extended an invitation to the council as dignitaries for the upcoming annual boat parade, Saturday, December 6, 2008. Mr. Albion urged the Council when considering the comp plan amendments on the agenda, to be careful about what additional costs may be pushed on to businesses. Adding a personal comment, Mr. Albion hoped council looks strongly at Lobbyist Carol Green.

Closed Public Comment

ADVISORY COMMITTEES ITEMS AND REPORTS

A. 2008-41, LPA Resolution LDC Refuse Containers

Dennis Weimer, representing the LPA, indicated that most people and businesses are in compliance, and only a few people aren't. The section of LDC is brief, concise and clear.

Mr. Weimer encouraged any resident or business which has difficulty complying to come before the LPA for a variance. Council asked to have this on a future agenda.

CONSENT AGENDA

A. Approval of Minutes, October 20, 2008

B. Special Event Permit Application – 1st Annual Snowbird Festival

MOTION: Councilmember List moved the adoption of the consent agenda.
Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

PUBLIC HEARINGS

A. Ordinance 08-15, Regulation of Fertilizer Use, 1st of 2 Hearings

Mayor Kiker opened the public hearing at 7:26 PM. Attorney Dalton read the title:

TOWN OF FORT MYERS BEACH 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 APPLICATIONS; PROVIDING A PROCESS FOR ADMINISTRATIVE RELIEF; PROVIDING FOR ENFORCEMENT AND PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE INCLUDING AN IMPLEMENTATION PERIOD.

Joanne Shamp representing the LPA. indicated that when fertilizers were introduced for agricultural use, the impact on water bodies was not recognized. The fertilizer industry does now recognize the impact, and this ordinance provides the framework for safe products. Ms. Shamp indicated that of the estuaries around Fort Myers Beach, 73% of the watershed is impaired, that water quality sensors in Mexico show high levels of nitrates. This ordinance has gone through a long process with herself, Jim Rodwell and Charles Hester, to work with council to fully understand this ordinance.

Opened Public Comment

Public Comment was heard

- Marti Daltry identified herself as the Sierra Club regional conservation coordinator, expressed her thanks to all; Sierra club consistency and ease of compliance is why recommendations were made.

Closed Public Comment

Councilmember Babcock indicated his desire to see the Town move forward to write an actual program for certification.

Charles Hester spoke to the educational components, such as listing the program with the extension service, brochures, flyers, CD-rom; instructions on how to properly apply fertilizers, and what to avoid. Town website has environmental sciences section, media coverage is important, letters to residents, speeches to local groups encouraging compliance, perhaps a town hall workshop bringing in outside experts.

Councilmember Babcock sought to reformat the ordinance for the final hearing:
On page 5 of the ordinance, the buffer zones, fertilizer must not be applied within three (3) feet, suggesting between 3 and 6 feet, not higher than 6 feet.
Page 5 recommendation to add: item G – define a voluntary low maintenance zone
Page 6, section 7: best management practices, agrees that a-2, can be deleted
Pg 7, section beginning with “as a result of soil content” would be deleted, #2 remain.

Joanne Shamp stated that the LPA felt strongly about the 3ft rule, because of all the canal properties, prefers leaving it 3 feet.

MOTION: Councilmember Babcock moved ordinance 08-15 to final hearing 12.15.08 at 6:30 PM. Councilmember List seconded the motion.

Town Clerk Michelle Mayher called the roll:

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

VOTE: Motion passed 5-0

Mayor Kiker closed the public hearing at 8:00 PM.

Recess: 8:00 PM Reconvene: 8:17 PM

With consent of Council, Mayor Kiker pulled forward Administrative Agenda item D.
Purchase of Mobile ADA-Compliant Restroom

ADMINISTRATIVE AGENDA

D. Purchase of Mobile ADA-Compliant Restroom

Public Works Director, Jack Green, outlined the Town’s interest in a composting toilet for Newton Park, the idea being to replicate them at beach accesses. A composting toilet at grade had regulation hurdles, so we looked at options. The proposed mobile restroom

would be temporary depending on location, can be used for emergency use, special events, etc. Cost is \$26,000.00. Mobile toilets to lease for a year is about the same as buying. Staff is asking for approval from Council to go forward with this purchase. Funding could come from park impact fees received annually and funds are available. .

Opened Public Comment

Public comment was heard

- Marilyn Quakenbush stated that they have been looking forward to this for sometime, that this is a wonderful addition to Newton Park.

Closed Public Comment

MOTION: Councilmember Babcock moved to approve the purchase of a Comfort Elite ADA Unit from Wells Cargo, an ADA-compliant mobile restroom, for use at the Newton Property, Farmers Market, special events, and any emergency situations when sanitation facilities are not available. Councilmember List seconded.

VOTE: Motion carried 5-0.

B. Comp Plan Amendments

Mayor Kiker opened the public hearing at 8:30 PM.

Attorney Dalton indicated that the requested motion is for council to instruct staff to transmit eight proposed comprehensive plan amendments to the Florida Department of Community Affairs.

Mayor Kiker outlined the process, being a hearing, then sent to DCA, then back to the Town Council for a final hearing, with comments from the DCA.

Bill Spikowski, Spikowski Planning Associates, consultant for the Town indicated that comp plan amendments are different from other amendments in that there is one public hearing before DCA looks at it, and then one hearing after with comments from the DCA. There is customarily a sixty day period. Following DCA review and receipt of these comments, these amendments will come back to council for a final hearing. About half of the amendments came out of the E/A report, three or four state mandated in 2005 legislature. Of those state mandated amendments, the policy implications are very few, and have very little impact on how to run the Town.

Mr. Spikowski indicated that state law allows amendments twice a year, the Town tries to amend once a year, as it is about a nine month process. Mr. Spikowski further indicated that the LPA will review six more amendments which hopefully will be before the council in December, after which the Town has the option to send one big package to DCA and get one report back. The requested motion is to transmit the amendments, indicating the intention of adopting, but not a commitment until the final hearing. Two amendments have evolved since the LPA hearing. 2008-01-Text, is a complete revision in the CIP element, which was written in 1998. The state required major changes to this

ordinance, basically went back and wrote it front to back. The policy has changed much but how the Town raises revenues and which of those revenue can be used for capital improvements, etc is summarized here. The Policy implication is toward the back – table on page 11-34. This is the five year schedule of improvements. This reflects the situation the Town is in. Everything in red is what has changed since LPA hearing in May – no policy changes.

Mr. Spikowski did a brief introduction on the amendments.

2008-02-Text is the public school element in the comp plan. In April of 2008 the Town adopted an interlocal agreement with the school board which sets most of the policy, a technical demonstration to build enough schools to meet expected growth. The policy component carries out the requirement of state law.

08-03, TEXT – Flood damage. The Town intended to implement a plan policy in 1999. This amendment is simply taking out a policy that committed to something that showed to be not so good on further examination.

2008-04 TEXT Pre-disaster build-back policy. Building back – tearing down and building back over density.

2008-05 TEXT Clarifies the matter in the text that Bed and Breakfasts will be treated the same as hotels.

2008-07- TEXT addresses the Town taking over Estero Blvd. This amendment merely changes the language to May negotiate, leaving it open ended.

2008-08 – TEXT addresses deleting a policy that shouldn't have been in the plan in the first place, dealing with closing down the left turn lane up Estero Blvd. at Times Square.

2008-09 – TEXT – Traffic Impact analysis for very large developments on the island. This amendment will keep this idea alive, into perhaps next year.

Opened Public Comment

None

Closed Public Comment

Mr. Dennis Weimer was present, representing the LPA on the eight proposed amendments. He stated that Mr. Spikowski very clearly *audiblized* everything before the LPA – in general approved all except 2008-04, build- back policies. The LPA felt there shouldn't be a whole laundry list of incentives, quoting comments from the minutes, as spoken by LPA member Yerkes: “This amendment as written seems contrary to the spirit of the comp. plan, since long term intent on the island is to decrease intensity and density and bring the entire island into something less large than what it is today.” This policy seems to do the opposite, that is reward a property owner if already nonconforming.

Councilmember Raymond suggested that Council instruct staff to transmit these amendments to DCA and see what they send back, versus changes now and then the State will make changes.

Council engaged in significant discussion on each amendment. Councilmember Babcock began with questions regarding decentralized services, questioning whether Lee County continues to issue building permits, questioned and corrected the current millage rate, and cleaned up that item, identifying scriveners' errors, asking for a time measure on traffic and improvement to parks.

Vice Mayor Acken identified page 11-3, regarding recreational facilities, in particular Bay Oaks, and wondered if unnecessary speculation could compromise the Town, seeing no need for the last sentence beginning with the word, "however".

Mayor Kiker asked about revenue projections, realizing that the fee increase was County, not Town. Mayor Kiker questioned the local option gas tax allotment, dune creation and construction of dune walk overs; the possibility of a Town Hall; non transportation capital improvements dependent on TDC funds.

MOTION: Councilmember Babcock moved to pass comp plan amendment 2008-01-TEXT with the suggested changes. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

Vice Mayor Acken indicated a desire to strengthen the position of a beach school and create an opportunity for a future school. He expressed a need to draw a family segment, the need for all strata for a healthy community.

Mr. Spikowski offered to add text or policy for the Town to add a small middle school, and to have the record reflect few slight changes via footnotes.

MOTION: Vice Mayor Herb Acken moved to approve the corrections indicated by Mr. Spikowski and to add language to reinforce the need of for the Beach Elementary School and to add language for the possibility for a middle school, should the need arise. Councilmember List seconded the motion.

VOTE: Motion passed 4-1, with Councilmember Raymond dissenting

2008-03-TEXT

MOTION: Councilmember Babcock move to approve the amendment as written. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

2008-04 – TEXT

MOTION: Councilmember Babcock moved to approve the version submitted by LPA for 2008-04. Councilmember List seconded the motion.

Mr. Dennis Weimer, representing the LPA indicated what the Town is dealing with is a policy that doesn't exist in most places, to build back in a time of calm. What is being considered is a pre-disaster build back policy.

Recess: 9:55 PM

Reconvene: 10:04 PM

VOTE: Motion carried 3-2, with Vice Mayor Acken and Mayor Kiker dissenting.

2008-05-TEXT

2008-07- TEXT

2008-08-TEXT

2008-09-TEXT

MOTION: Councilmember Babcock moved to approve (comp plan amendments) 2008-05, 07, 08 and 09. Councilmember List seconded the motion.

VOTE: Motion carried 5-0.

Mayor Kiker closed the hearing at 10:10 PM.

IX. ADMINISTRATIVE AGENDA

Neighborhood Basin-Based Drainage CCNA Ranking

Public Works Director Jack Green indicated that the selection committee met and ranked the firms responding to the solicitation for the professional services associated with the Planning and Design of the /Basin Based Drainage Improvements.

MOTION: Councilmember List moved to accept the selection committee's ranking of the firms responding to the solicitation for the professional services associated with the Planning and Design of the Basin Based Drainage Improvements and authorize staff to begin negotiations, and moving down the list until a firm has been selected. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

X. TOWN MANAGER'S ITEMS

A. Re-Entry Permits for 2009

Attorney Dalton addressed this item, indicating that the Town has added language for this upcoming year that states if for any reason a person does not want their information in the public records, there are various exceptions in the public records laws, they need to advise the Town to keep their information out of the public records,

Staff is merely apprising the Council of the process in place, and is not looking for Council action at this time.

Sponsorship for FL Trust Conference

Cultural Resources Director, Theresa Schober addressed this issue. The enclosed memo describes the request. Florida Trust for Historic Preservation is the state-wide arm for historic preservation and each year they hold a national conference which is very prestigious. Staff is requesting a pledge, which needs to be signed by representative of the Town for following fiscal year.

MOTION: Councilmember List moved to pledge a minimal \$5,000. in support to bring the Florida conference to Lee County in 2010, with the understanding that these funds would come out of the 2010 budget. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

Update and Status of North Estero Project

Public Works Director Jack Green addressed this item, noting that the storm water plans are complete. The Town will start moving forward with Pink Shell with regard to the five feet of space along side the road way; the Town needs an easement for 300,000 cubic yard of sub-surface space being given under the parking. The Town will go out to bid in January. The Subgrant Agreement has been released by FEMA, and staff expects to have that at the December 15, 2008 meeting for approval.

Update and Status of Lee County / Estero Blvd. ROW Study

Public Works Director, Jack Green indicated that McMahon and Associates have submitted a proposal for surveying and mapping the entire corridor, Lee DOT is reviewing that now. The cost is upward of \$800,000. for mapping, legal work, county land section review of subdivisions; this is probably an 18 month time frame.

Monthly Reports

Mayor Kiker asked to have the Newton Beach Management be listed as an action item, pertaining to when it will go in front of historic preservation board.

Mayor Kiker mentioned regarding the open house signs on Estero Blvd., since the Town "cannot force the county to act" that perhaps this is a dead issue. Mayor Kiker asked to bring this back on another agenda,

Report on Meeting with SW Regional Airport

Councilmember Babcock spoke to this item, indicating his communication with Bob Ball regarding airspace redesign, he has done a considerable amount of research, will continue to communicate what's going on, and offered his thanks to those who have made the effort to seek him out regarding this issue. Mr. Babcock said that the FAA is redesigning all of Florida, with Southwest Florida at the tail end, and he wants to have an impact on how FAA is implementing this change.

XI. TOWN ATTORNEY'S ITEMS

A. TDC Membership Memo

Councilmember Jo List would like to lobby to have the Florida statute changed, so tax allocation is based on community contribution, and would like this item on the agenda for the joint meeting with the Board of County Commissioners.

B. Discussion of Changes to LDC Regarding Historic Landmark Signs

MOTION: Vice Mayor Herb Acken moved to look at reviewing the entire sign ordinance including suggestions made by Councilmember Raymond. Motion failed for lack of a second.

MOTION: Councilmember Bob Raymond moved to set a date to look at the possible change in who will make the final decision on landmark signs. Councilmember List seconded the motion.

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

C. Discussion Regarding COP Fee Waiver/Fee Reduction for Non-Profit Entities

Attorney Anne Dalton indicated not being aware of any waiver provision, and questioned if there may be a zoning issue associated with the temporary use of this project.

MOTION: Councilmember List moved to give direction to the Town Attorney and staff to meet with the Island Arts Foundation representatives to determine whether the current zoning of the parcel in question includes the uses of the subject property as outlined in letter dated October 30, 2008. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

XII. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember List spoke of her progress with the youth council.

Vice Mayor Acken spoke of a deliverable on shoreline survey. Mr. Acken mentioned an upcoming change in Comcast broadcasting.

Councilmember Babcock mentioned the MRTF "pole and troll" project. Mr. Babcock would like to advertise for positions on CRAB, would like a future agenda discussion on a 2009 Charter Review Commission, a Town Hall Meeting, and a discussion on parcelization.

XIII. RECAP OF ACTION ITEMS

Attorney Dalton recapped action items:
Mandatory recycle ordinance
Fertilizer ordinance with an ad hoc committee and the Sierra Club.
Open house signs on the agenda with the BOCC
Workshop on December 1, 2008 to discuss BOCC strategy
Landmark signs after Valentines' Day
Direction to staff to add a website update
Revise code enforcement activity report
Parcelization (LPA version) brought back for crisp direction
Charter Review Commission on agenda
Town Hall Meeting on agenda

XIV. PUBLIC COMMENT

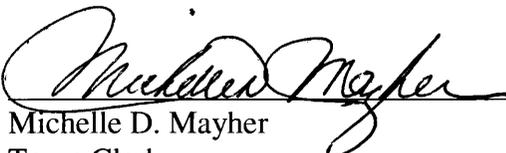
Opened Public Comment
None
Closed Public Comment

XV. ADJOURNMENT

The meeting adjourned at 12:10 AM (November 18, 2008).

Adopted 12-15-08 With/Without Changes, Motion by Acker/ Raymond
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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