



# MINUTES

**Monday, October 17, 2011**

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

## **I. CALL TO ORDER**

Mayor Kiker called to order the October 17, 2011 Meeting of the Town Council at 6:30 p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Town Attorney Miller, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

## **II. INVOCATION – – Deacon Scoop Kiesel, Church of the Ascension**

**III. YOUTH COUNCIL** – Beach Elementary School Fifth Graders, Bridgette Myers and Samantha D’Angelo represented the Youth Council as Mayor and Vice Mayor respectively. Each student presented a statement of activities at Beach School, including the Youth Council elections, Math Magicians program, the after-school program and the upcoming school play.

## **IV. PLEDGE OF ALLEGIANCE**

## **V. APPROVAL OF FINAL AGENDA**

Agenda approved as presented.

## **VI. PUBLIC COMMENT**

### **Open Public Comment**

Dolores Yost, resident, spoke of the swales in front of her Mid Island Drive home, stating that they need to be cleaned out.

Louis Monoco, resident, spoke of the need for maintenance of the sidewalks along Estero Blvd.

James Hunter, resident at 119 Andre Mar, stated a problem he endures every year with flooding.

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Vic Berez, resident at 4560 Strandview, petitioned the Town Council to address blighted property at 4545 Estero.

Joyce Heckman, resident, indicated she had written several Letters to the Editor of beach weeklies, expressing her unwillingness to fill out a consent form for background checks.

### **Closed Public Comment**

Town Manager Stewart explained that in locations such as the schools or Bay Oaks the Town employees who worked with children were required to undergo background checks; and noted requirements per State Statute (as of August 2010) that also applied to individuals who work around the elderly. He reviewed the different levels of background check as it pertained to working with the elderly and depended upon the number of hours worked by the individual. He noted some people questioned why background checks were asked of volunteers, and not advisory board members; and explained that advisory board and Council members usually sit in a room meeting together; and added there was no State statute requiring background checks for elected officials. He mentioned the Town analyzed the topic by questioning the Town's legal exposure.

Town Attorney Miller explained in Florida Cause of Action there was an item called 'negligent hiring' that applied to employees, volunteers, and anyone who acted on behalf of the Town. She added there was a statute that as long as a background check on the employee or volunteer was performed there was a presumption against negligent hiring. She also pointed out there were various federal laws (i.e. National Child Protection Act) that required the Town to provide background checks for anyone who was caring for or even around children, the elderly, or the disabled. She advised the Council the Town needed to perform the background checks in order to have the presumption against any potential claim for negligent hiring.

Town Manager Stewart explained the reason why Social Security numbers were used in the background check process since it was to confirm the correct or specific person. He discussed the protection of Social Security numbers and pointed out that Florida State Statutes specifically exempted Social Security numbers from being providing to others. He stressed the Town was not performing any credit checks; only Level I or II background checks depending upon the nature of the work performed by the person.

Mayor Kiker noted that Council was unaware of the forthcoming new policy on background checks.

Discussion was held regarding the new policy, how to inform the public of the new policy, and the modifications to the form used for volunteers.

Mayor Kiker expressed his desire to the Town Manager and Town Attorney to discuss the matter further at another meeting so Council may have copies of the volunteer form in question, and allow input from those people affected. He requested the item be placed on Agenda Management and to be scheduled for the next meeting.

Discussion was held regarding whether or not to allow individuals to volunteer until the policy was reviewed further by Council.

Consensus was to continue the present volunteer process until the new policy document was evaluated by Council.

Vice Mayor Raymond addressed Mr. Monoco's comments regarding sidewalks on Estero Boulevard and noted there was a possibility of funding for congestion mitigation (i.e. sidewalks and bicycle paths) and he hoped to have that information by the end of this year.

Mayor Kiker announced that after many years the Town's priority of refurbishing Estero Boulevard was officially included in the County's 5-Year CIP during the last budget cycle, and discussed how this funding would make improvements to Estero Boulevard happen (i.e. water system, utilities, drainage, sewer system, sidewalks, trolley pull-offs, etc.).

Town Manager Stewart addressed Mr. Berez's comments concerning the properties across the street from him at 4545 Estero Boulevard, and reported he met with individuals from Strandview who informed him the properties had been condemned. He discussed the demolition process of structures from the aspect of a 'dangerous building' for the health, safety, and welfare of the community. He reviewed discussions held with the Lee County Building Official, who had the final approval as to whether or not a building could be condemned/demolished, and noted the Official's reluctance to condemn and demolish buildings basically anywhere in Lee County, and rarely did. He added that the Building Official declined to issue an order for the subject property. He reported there were Code Enforcement liens on the property and the Town could foreclose; however, the mortgages and notes on the property were too high and it would end up costing the Town money.

### **Closed Public Comment**

## **VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Town Manager Stewart explained that Keith Laakkonen was the Town's Environmental Sciences Coordinator, and noted among Mr. Laakkonen's many responsibilities he insured the Town's wildlife was appropriately addressed and not harmed by development, or by individuals. He announced Mr. Laakkonen was recently honored by the Audubon Society of the State of Florida as recipient of the Guy Bradley Award, because of his work with the State of Florida and others for building an innovative program for nesting birds on a particular area of the beach.

Council Member Mandel announced the 'Friends of the Film Festival' held their first get-together and there was a turnout of 46 people.

## **VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

### **A. CELCAB Report on Mound House Vision**

Barbara Anderson Hill, Vice President of CELCAB and the Mound House, noted the draft Vision Plan which resulted from the joint meeting of CELCAB and Council last August. She presented the revised Vision Plan and requested adoption by the Council. She reported it was the collective desire of the Mound House volunteers that the Town Council would officially endorse the Mound House vision, complete capital projects as recommended by Town staff and CELCAB, operate the Mound House as a museum, and the grounds as a passive park. She noted her museum background/experience and the basis for her involvement with the Mound House; and she recognized Ms. Schober for her work to put the Mound House on the State's cultural map.

**MOTION:** Motion by Council Member Mandel to endorse the vision for the Mound House as presented by CELCAB and authorize implementation; second by Council Member List.

**VOTE:** Motion approved, 5-0.

Mayor Kiker and Council recognized the CELCAB and Mound House volunteers present in the audience.

#### **IX. APPROVAL OF MINUTES**

- A. September 6, 2011 Town Council Meeting
- B. September 6, 2011 Work Session
- C. September 26, 2011 Town Council Meeting
- D. September 26, 2011 Work Session

**MOTION:** Motion by Council Member Kosinski to approve the minutes without changes; second by Vice Mayor Raymond.

**VOTE:** Motion approved, 5-0.

#### **X. CONSENT AGENDA**

- A. Interlocal Agreement Town of Fort Myers Beach and Lee Count BOCC for Plan Review and Permitting Services

Town Manager Stewart reported staff had negotiated a new agreement with Lee County that would save the Town \$266,904 annually. He thanked Community Development Director Fluegel and staff for their hard work regarding the agreement renegotiation, and the Mayor and Council for supporting and enabling staff to accomplish this goal.

**MOTION:** Motion by Council Member Mandel to approve the Interlocal Agreement with Lee County for Building Services; second by Council Member Kosinski.

Council Member List complimented Director Fluegel and his staff for an outstanding job on the agreement negotiation and cost savings for the Town.

Town Manager Stewart noted the matter would be presented to the BOCC on October 25, 2011 for approval.

Council Member Mandel pointed out that if the agreement was approved by the County, then the Town would not need to use any reserves for this year's budget.

Robert DeAngelo, resident, asked if the Town was savings \$266,904 annually, what was the cost to the Town.

Town Manager Stewart explained the present process and costs between the County and Town. He added that the amount paid to the County was a fixed amount, and the cost of a permit was not changing.

**VOTE:** Motion approved, 5-0.

## **XI. PUBLIC HEARING**

### A. Final Public Hearing, Case Number FMBVAR2008-0003, DiamondHead Resort Sign Variance

Mayor Kiker opened the Hearing at 7:30 p.m.

Mayor Kiker asked if any Council Member had ex-parte communication regarding FMBVAR2008-0003: Council Member Kosinski – none; Vice Mayor Raymond – none; Council Member List – none; Council Member Mandel – none; Mayor Kiker – none.

Mayor Kiker asked LPA Attorney Miller to swear in the witnesses.

Leslee Chapman, Zoning Coordinator for the Town of Fort Myers Beach, presented comments on behalf of the Town and noted the date of 2008 in the case number was correct. She displayed an aerial of the location of the subject property. She explained the application was for the Diamond Head Beach Resort and Spa and the requested variation was from the sign ordinance - Section 30-153 (b) and 30-154(c) of Chapter 30 of the land development code. She discussed some specific site conditions when reviewing the case: 1) at the time of development of the site Lee County required a subsurface drainage system at the site, so the property had to be raised approximately two feet above the elevation of Estero Boulevard which caused a grade change, and because of this the building code required a fence where the grade was changed; 2) the sign on the location was approved prior to 1999 and must come into compliance by the end of this year (she displayed a photograph of the existing sign and explained the current definition would consider this sign to be a pole sign which is prohibited); 3) and she reviewed how the current sign did not meet the requirements of Section 30-153(b) or 30-154(c). She discussed the applicant's request to reduce the current height of the sign; keep the existing sign face; and requesting a 54 foot square sign area for the two businesses located at this site instead of two signs of 32 square feet each. She displayed a photograph indicating the proposed sign changes. She noted the supporting regulations (Section 34-87(3)(a) and (e)) staff used to recommend that the finding of the elevation difference between the parking lot surface and the adjacent roadway was an exceptional condition and it justified a variance, and the conditions were not the result of actions created by the applicant (noting the original

requirements were part of the Development Order required by Lee County at time of development). The variance, if granted, would be the minimum variance that would relieve the burden for the applicant. She stated that granting the variance would not be injurious to the neighborhood or detrimental to the public welfare. She reported the variance was presented to the LPA on September 13, 2011 and that most of the discussion at the time was about the diamond shape on the top of the sign (depicted in photograph) with regard to measuring the sign height; and discussed both the views of the LPA and staff. She reported the LPA approved a motion recommending a change in staff's recommended conditions by a 3-2 vote in favor of the variance. She stated staff recommended approval of the variance with the following conditions:

1. Approval of this variance does not exempt the subject property from the LDC Sections 30-55 permit requirements for signs.
2. The height of the sign measures from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed eight feet six inches (8.6") except for the diamond shape extension, provided the area of said extension shall not exceed the dimensions shown in Exhibit E;
3. Construction and/or remodeling the sign must comply with all applicable codes, regulations, including building codes and lighting standards
4. If the principal building on the subject property is removed or replaced for any reason, this variance will expire and the sign allowed by this variance must be removed within 30 days of the issuance of the demolition permit for the principal building or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever condition(s) applies and whichever comes first. Placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.
5. Landscaping shall be installed and maintained around the base of the sign at a height so that no more than 18 inches of the monument base is visible.

Council Member Kosinski asked if the solid base to the proposed monument would impede the visibility for drivers.

Ms. Chapman stated her belief the sign was situated back far enough not to be within the visibility triangle.

Mr. Neil Hopgood, General Manager for DiamondHead Beach Resort and Spa, stated the Resort had applied for a variance in 2008 and intends to fully comply with the Town's code for monument signs. He reviewed the hardship the business had experienced due to the grade/elevation. He mentioned they were trying to reduce cost by re-using the cap of the sign, and that they had obtained a permit to reface the sign in 2009.

Council Member Kosinski expressed the basis for his belief that the request did meet the spirit of the sign ordinance.

Discussion was held regarding the number of businesses and the dimension and number of signs permitted per Code; the new sign ordinance; definition of a 'glitch' ordinance, and staff's interpretation of Council's intent.

No public comment.

Public Hearing closed.

**MOTION:** Motion by Council Member Kosinski to approve Resolution 11-20, FMBVAR2008-0003, granting a variance from LDC Section 30-153(b) (maximum sign area) and 30-154(c) (standards for monument signs) for the DiamondHead Resort located at 2000 Estero Boulevard with the following conditions:

1. Approval of this variance does not exempt the subject property from the LDC Sections 30-55 permit requirements for signs.
2. The height of the sign measures from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed eight feet six inches (8.6”) except for the diamond shape extension, provided the area of said extension shall not exceed the dimensions shown in Exhibit E;
3. Construction and/or remodeling the sign must comply with all applicable codes, regulations, including building codes and lighting standards
4. If the principal building on the subject property is removed or replaced for any reason, this variance will expire and the sign allowed by this variance must be removed within 30 days of the issuance of the demolition permit for the principal building or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever condition(s) applies and whichever comes first. Placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.
5. Landscaping shall be installed and maintained around the base of the sign at a height so that no more than 18 inches of the monument base is visible.

Recommended Findings and Conclusion: in accordance with the regulations in LDC Section 34-84 and 34-87 regarding consideration of eligibility for a Variance the LPA recommends that the Town Council make the following Findings and Conclusions:

- There are exceptions, extraordinary conditions or circumstances that are inherent to the property in question.
- The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of regulation in question.
- The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- The conditions or circumstances of the specific piece of property for which the variance is sought are not general or recurrent in nature as to make it more reasonable and practical to amend the regulation in question.

second by Council Member List.

**VOTE:** Motion approved, 5-0.

B. Final Public Hearing, Case Number FMBSEZ2011-0001, La Ola Patio Special Exception

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Mayor Kiker opened the Public Hearing at 8:00 p.m.

Mayor Kiker asked if any Council Member had ex-parte communication regarding FMBSEZ2011-0001: Council Member Mandel – none; Council Member List – stated she spoke with the owner about what he planned to do, and that she did go to the establishment prior to the application, and that she spoke to two of the applicant’s neighbors about the request; Vice Mayor Raymond – none; Council Member Kosinski – none; Mayor Kiker – stated his interaction with the applicant had been on several subjects but not on the special exception request.

Mayor Kiker asked LPA Attorney Miller to swear in the witnesses.

Leslee Chapman, Zoning Coordinator for the Town of Fort Myers Beach, presented comments on behalf of the Town and the Applicant. She explained the applicant was seeking a special exception for property located at 1035 Estero Boulevard (La Ola Restaurant); a multi-tenant commercial building located in Times Square; the special exception request was to amend conditions from a previous special exception (Town Resolution 04-14 which contained 8 conditions – Exhibit C); and there were two previous COP approvals for the subject property by the Town Council in 2004. She noted the subject property was included in the Business Extension in Times Square Agreement which was a utilization of Town right-of-way (Applicant leased 741 square feet from the Town, and the contract was renewed annually). The applicant was seeking to increase outdoor seating and offer live music which was an amendment to Resolution 04-14. The zoning for the subject property was Downtown and the future land use is Pedestrian/Commercial. She displayed a copy of the proposed site plan and reviewed the plan as submitted by the applicant. She pointed out there were some special considerations to consider for the applicant with regard to the limited size of the restaurant which does not allow indoor seating; Resolution 04-14 did limit dining use at the site to 10 tables and 42 chairs; and limited all music to be pre-recorded. She noted there was a six foot utility easement runs the length of the property. Ms. Chapman stated the applicant was seeking amendment to Resolution 04-14:

- Condition #3 - to expand the outdoor seating to 11 tables and 42 chairs, 6 high top tables, 14 stools, 3 moveable bars, and 11 stools for a total of 67 seats.
- Condition #7 – to allow live music in addition to pre-recorded music; and applicant has suggested hours of operation for the live music to be 3:00 p.m. to 9:00 p.m., 7-days per week.

She displayed photographs of the current conditions at the subject property. She noted supporting regulations fall under Chapter 34-88 in the Land Development Codes, and when determining if the changes were consistent with the goals, objectives, policies, and intent, staff found that outdoor seating was strongly encouraged in the Comprehensive Plan and the Land Development Code for the Downtown. She reported staff found that there were no changing conditions on the subject property; and the change was generally consistent with the Comprehensive Plan regarding outdoor entertainment and restaurant seating. She noted the reason why the applicant was seeking a special exception was because the request involved a previous special exception thereby requiring another public hearing in order to amend it. She explained the subject property was not directly adjacent to any sensitive environmental areas. Ms. Chapman pointed out that the subject property was located in a heavily used pedestrian area and was compatible with its existing use, and the Comp Plan and existing Code. She noted staff’s concerns pertaining to the live music request since the Town had a Street Performer Program. She reported the application was presented to the LPA on September 13, 2011 who voted 5-0

for recommending approval subject to conditions listed in the Staff Report. Ms. Chapman stated and discussed staff's recommendation for approval of FMBSEZ2011-0001 with the following conditions:

1. The expanded seating area shall not exceed the current building, fire and life safety codes and will be re-evaluated on an annual basis for compliance.
2. No bars, tables, speakers, chairs, or any other items may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.
3. Conditions 1, 2, 4, 5, 6, and 8 of Resolution 04-14 (Exhibit C) remain in effect.
4. Non-amplified live music is permitted only between the hours of 3:00 p.m. to 9:00 p.m., 7-days per week; and must comply at all times with applicable Town noise ordinances.
5. Upon approval by Town Council the applicant must amend their Business Extension in Times Square Agreement to reflect the changed site plan.

Discussion ensued regarding the increased amount of tables of chairs requested; the existing conditions of the subject site with regard to tables and chairs; and Ms. Chapman clarified the applicant was not proposing to extend any further into the Town's right-of-way.

Vice Mayor Raymond questioned the impact of live music with respect to neighboring businesses.

Ms. Chapman reported the other businesses with live music were on the Gulf side of the Times Square.

Town Manager Stewart noted staff's recommendation was to only allow non-amplified music in order to help mitigate sound levels.

Council Member List recounted her experience and the set-up of when an amplified band appeared at the subject property one time when the owner was unaware of the outdoor music restrictions; and she added that the music was kept within the proper decibel levels and there were no complaints from the applicant's neighbors. She stated she did not work or sing at the subject site, nor did she plan to do so during her term as Council Member, and that she was not related to the applicant. She discussed her thoughts on amplified and non-amplified music for the subject site; noting that patrons may have a problem hearing non-amplified music. She asked Council to reconsider the condition pertaining to non-amplified music, and allow amplified music.

Discussion was held regarding amplified and non-amplified music.

Director Fluegel discussed concerns of amplified music and explained how staff took a conservative approach with the application because the street performers were not permitted to be amplified, and how this could impact the Times Square area in general. He suggested the Town Council may want to consider reviewing this policy in the future.

Mayor Kiker asked if there were any adjacent properties that were permitted to have amplified music.

Ms. Chapman responded in the negative.

Community Development Director Fluegel listed the businesses on the Gulf-side with amplified music on their back deck.

Discussion was held regarding seating change request as it related to the special exception process and the need to come back before the Town Council; and how music sound from amplified music might carry to the neighboring businesses.

Mr. List, Applicant, explained how he would arrange the music so it would not disturb others. He reported that he spoke with the neighboring businesses and they supported his efforts. He noted the street performers were only present in the area during the busy season and then left; whereas the businesses in Times Square area were there all year.

Public Comment closed.

Council Member Mandel suggested the Council may want to revisit the topic of street performers at a later date as it pertained to performing in front of businesses with live music. He noted concern regarding approving with conditions as it related to any future problems a neighbor may have with the amplified music.

Town Manager Stewart explained the Council had a policy regarding street performers in Times Square as being non-amplified, except for background music. He asked Community Development Director for input on whether or not outside music was a special exception or a use by right.

Community Development Director Fluegel stated he would defer to the Town Attorney; however, he discussed his belief that it was not a prohibited use and would probably be treated more as a permissible use.

Discussion was held regarding the restrictions of the prior resolution that restricted the subject property; street performers and amplification; other potential requests from other businesses for amplified outdoor music; license and permitting requirements for street performers; and pre-recorded amplified music.

**MOTION:** Council Member List moved to approve Resolution 11-12, FMBSEZ2011-0001, granting a Special Exception in the Downtown zoning district to increase the outdoor seating area and permit live music at LaOla Restaurant located at 1035 Estero Boulevard subject to the following conditions:

1. The expanded seating area shall not exceed the current building, fire and life safety codes and will be re-evaluated on an annual basis for compliance.
2. No bars, tables, speakers, chairs, or any other items may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.
3. Conditions 1, 2, 4, 5, 6, and 8 of Resolution 04-14 (Exhibit C) remain in effect.
4. Amplified live music is permitted only between the hours of 3:00 p.m. to 9:00 p.m., 7-days per week; and must comply at all times with applicable Town noise ordinances.
5. Upon approval by Town Council the applicant must amend their Business Extension in Times Square Agreement to reflect the changed site plan.

And the recommended Findings and Conclusions;

1. Changing conditions do exist that make the approval appropriate.
  2. The requested special exception as conditioned is consistent with the Comp Plan.
  3. The requested special exception as conditioned meets or exceeds performance and locational standards.
  4. The requested special exception as conditioned will protect, conserve, or preserve the environmentally critical areas and natural resources.
  5. The requested special exception as conditioned will be compatible with existing and planned uses and will not cause damage, hazard, nuisance or other detriments to persons or property.
  6. The requested special exception as conditioned will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set for in LDC Chapter 34.
- Second by Council Member Kosinski.

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

Recess at 8:37 p.m. – Reconvened at 8:45 p.m.

## **XII. ADMINISTRATIVE AGENDA**

### **A. Special Event Permit Application – Sand Sculpting Championship**

Town Manager Stewart reported this was the second time the Town received an application for this type of permit; and noted this was before Council without all of the items being finalized; therefore, an approval would be conditional. He stated staff was requesting approval of the World Championship Sand Sculpting Event scheduled for November 17-27, 2011; and this required Council approval because it was a 10-day event that included serving alcohol.

Public Works Director Lewis reported the following items were received since the agenda packet was compiled:

- Applicant received their permit from DEP to utilize the beach area
- Applicant has applied for their beach vehicle permits which would be obtained through Town staff
- Applicant had not yet obtained their ‘Extension of Premise’; however, it was not anticipated to be a problem from the Department of Business & Professional Regulation (Organizers could not apply earlier than 30 days prior to the event)
- Applicant receive approval from Lovers Key State Park which was identified for parking (i.e. as well as other locations such as the Holiday Inn and Santini Plaza)

Town Manager noted the applicant was still required to obtain approvals from ABT.

Jason Camp, Big C Events, Pinchers Crab Shack Restaurant, and Applicant and also representing the Holiday Inn, discussed how this event would help to bring tourism dollars to Fort Myers Beach and described some of their marketing efforts such as but not limited to an email blasts to over 700,000 people and the national media coverage already received. He thanked Town staff for their assistance

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during the application process and noted he had Kiwanis representatives with him who were spearheading the charitable portion of the event. He added that there were other charities benefiting from the event that were assisting with parking efforts – Teen Challenge and Friends of Lovers Key. He pointed out that one of the charities was pulling the permit with ABT and it would not be an extension of the restaurant’s bar itself.

Council Member Kosinski questioned the location of the fence up against the grass area depicted on the site layout.

Mr. Camp explained that was just a rendering and the fence would be well off the grass and the seawall.

Public Comment opened.

Bill Ricigliano, representing the Northside Naples Kiwanis Club, explained between Lee and Collier County there were approximately 20 different Kiwanis Clubs and how this event would be a joint effort among them. He reported the funds raised through Kiwanis at the event would be for their ‘Eliminate Project’ that worked to end neonatal tetanus throughout the world. He requested Council approval of the event application.

Public Comment closed.

Council Member List reported the band she works with, Habitat for Harmony, may perform at the event and if it did, she would not accept any remuneration.

**MOTION:** Council Member Mandel moved to approve the World Championship Sand Sculpting Event scheduled for November 17-27, 2011, conditioned on receipt of all required permits, approvals and authorizations, including approval of the extension of premises and confirmation that the Town will be included as a sponsor; second by Vice Mayor Raymond.

**VOTE:** Motion approved, 5-0

Public Works Director Lewis reported she received a telephone call today from a business in Times Square that was interested in extending the sand sculpting event by hiring one of the sculptures to sculpt something in Times Square during the time of the event, and she noted the Chamber of Commerce was having their sand sculpting event earlier in the month. She stated she had not had the opportunity to speak to the business yet, but she wanted to make Council aware of the request.

**B. Lien Reduction Request for 5858 Lauder Street**

Town Manager Stewart reported the request was for a lien reduction for property located at 5858 Lauder Street and a full explanation of the circumstances and events had been provided within the documentation included in the agenda packet. He noted his memorandum dated October 6, 2011 which outlined his recommendation for the request; and stated the total lien on the property was \$76,950.00 and it was his recommendation to reduce the lien to \$37,035.00. He mentioned the Council’s policy for

recouping 'hard costs' associated with liens, and conveyed the Applicant's opposition to the Town recouping attorney fees. He explained after speaking with Town Attorney Miller, she informed him that if the Town had sought the entire amount of the lien and the attorney costs it would not be permitted; however, since the lien was being reduced then the attorney fees could be included.

Council Member Kosinski explained his ex-parte matter with the item and wanted to abstain because he was the engineer of record when the violations were reviewed. The measure before Council Member Kosinski and the nature of the conflicting interest in the measure is as follows:

*Blue Sheet Number 2011-123, Code Enforcement Case No. 2005-051F, I wish to abstain from voting on this issue since I was the engineer retained by the owner to work on this project at the time of the violation.*

Mayor Kiker indicated he would be filing Form 8B, Memorandum of Voting Conflict for Local Public Officers and abstaining from the vote.

George Ganim, Applicant, discussed his opinion for the basis of his request of mitigation and why he felt it was justified. He discussed his experience with this matter which started in 2006. He distributed copies of his condensed version of the events surrounding Case No. 2005-051F that included copies of applicable statutes and debated his opinion/interpretation of the statutes as it applied to the events of the case.

Council Member Kosinski noted on page 13 in the Council agenda packet there was a letter date January 21, 2010 to then Town Manager, Jack Green, inviting him to come see the existing unit because the applicant believed it to be in compliance, and questioned what happened between that time and May 25<sup>th</sup>.

Mr. Ganim reported the Town Manager never responded; and stated he also sent a similar letter to the Building Official.

Discussion was held concerning whether or not there was compliance with the accessory apartment.

Council Member Kosinski pointed out final inspection was on May 25, 2010.

Discussion ensued regarding construction which was deemed inappropriate in the downstairs area; possible termite damage in the supporting structure of the building.

Town Manager Stewart stated, as with all the other code cases, compliance was based upon the date of the information was received to validate there was no longer a concern on the site – July 27, 2010.

Town Attorney Miller stated the Code Order clearly noted that when the respondent believes they are in compliance, that they were to contact the Town. She asked Code Officer Hidle if he had inspected the subject property on or about July 27, 2010.

Code Officer Shane Hidle responded in the affirmative. He stated Code Enforcement received the letter on July 27, 2010 from the engineer regarding the wall, and he performed an inspection of the subject property on that date.

Council Member List discussed how the aspects of the case appeared to be a bit muddled. She asked if Mr. Ganim had filed an appeal after the first appeal.

Mr. Ganim responded in the affirmative.

Discussion ensued regarding pertinent dates in Case No. 2005-051F.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member Mandel addressed the interpretation of different compliance dates (May 25<sup>th</sup> versus July 27<sup>th</sup>) and questioned events that happened for the prior three years.

Town Attorney Miller stated the appeal was happening during that three year period and there was the Stay Order from the Magistrate which placed a burden on the Respondent to keep the Magistrate apprised of the Appeal, which she did not believe happened.

Discussion continued regarding pertinent dates in Case No. 2005-051F; the ruling of the Magistrate; the Stay Order pending the Appeal; a date for commencement of the fine; the validity of the building permit; the inclusion of attorney's fees in the recommended lien amount; and possible mitigation of the lien amount.

Mr. Ganim readdressed his position concerning Case NO. 2005-051F and debated staff comments regarding the matter.

Discussion ensued proposing a lien reduction amount.

**MOTION:** Council Member List moved to approve a Release of Lien in Code Enforcement Case No. 2005-051F on payment to the Town in the amount of \$8,650.00;

Town Manager Stewart requested a date certain for payment be included in the motion.

**AMENDMENT:** Motion maker amended the motion to include 'payment within 30 days of October 17, 2011 otherwise the lien shall revert back to the original full amount of \$76,950.00'; second by Vice Mayor Raymond.

Vice Mayor Raymond stated he arrived at an amount of \$11,015.00.

Discussion was held concerning the suggested amount of \$11,015.00.

**VOTE:** Motion denied 1-2; Vice Mayor Raymond and Council Member Mandel dissenting; Mayor Kiker and Council Member Kosinski abstained.

Discussion ensued regarding a possible amount for the Release of Lien.

**MOTION:** Council Member Mandel moved to approve a Release of Lien in Code Enforcement Case No. 2005-051F on payment to the Town in the amount of \$10,200.00 to be paid within 30 days of October 17, 2011 otherwise the lien shall revert back to the original full amount of \$76,950.00; second by Vice Mayor Raymond.

**VOTE:** Motion approved 2-1; Council Member List dissenting; Mayor Kiker and Council Member Kosinski abstained.

Mayor Kiker in consideration of the representative present for Item D, he moved Item D up on the Agenda order.

D. Easement Relocation View Corridor Agreement

Town Attorney Miller reported she had been in receipt of a letter from Beverly Grady of Roetzel & Andress on behalf of Pink Shell concerning an exchange of walkway easement which had been approved in a Master Concept Plan for the Gulf side of Pink Shell in January 2010. She explained approval would relocate the walkway easement from the current location between White Sands and Captiva Villas to the newly approved location on the north side of Captiva Villas adjacent to Sanibel View. She added that it would also maintain the existing 36 foot wide view corridor between Captiva Villas and White Sands; and the agreement needed to be recorded and required Council approval.

Bill Wauchulis, representing Pink Shell, noted they still had to obtain the County's approval and requested that the motion include it was contingent upon the County's approval.

**MOTION:** Vice Mayor Raymond moved to approve the Amended and Restated Easement Relocation View Corridor Agreement concerning the walkway between Captiva Villas and White Sands contingent upon obtaining the County's approval; second by Council Member List.

**VOTE:** Motion approved, 5-0.

C. Town Health Care Benefits Proposals and Recommendation

Town Manager Stewart noted he requested staff to review the Town's health care coverage which included the use of a consultant due to the involved and detailed nature of the RFP. He mentioned that during budget preparation, not knowing the results of the RFP at the time, staff had included a potential 5% increase; however, staff negotiated a more favorable renewal with FMIT that resulted in a cost savings of \$64,246.80 over the current year and \$27,328.80 over the PRIA proposal. He requested a

motion to reject all other proposals in response to the RFP, and accept the contract renewal proposal with FMIT.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member List moved to reject all proposals in response to RFP 11-01-FIN Employee Benefits Coverage for the Town of Fort Myers Beach, and authorize staff to execute a three-year contract renewal with Florida Municipal Insurance Trust (FMIT); second by Council Member Mandel.

**VOTE:** Motion approved, 5-0.

### **XIII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

### **XIV. TOWN MANAGER'S ITEMS**

Town Manager Stewart reported Estero Boulevard paving would begin on the evening of October 23, 2011 and should take approximately 10 days to complete; new park trolley pull-outs and sidewalks to the Publix entrance would be the last week of October and should be completed within 30 days. He announced that October 21, 2011 was the Town's Halloween Fright Night.

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

#### A. Clarification regarding the effective date of Ordinance 11-09, Public Service Tax

Town Attorney Miller explained when the public service tax was adopted the ordinance had an effective date provision which merely stated the ordinance was effective upon adoption. She discussed why language needed to be included in the effective date provision to make it clear the tax would not be imposed until April 1, 2012. She proposed that Council add, for clarification purposes, language to the ordinance for the effective date.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Kosinski moved to approve that it was Council's intent for the effective date to be April 1, 2012 for Ordinance 11-09, and the appropriate language shall be included in the ordinance as requested by the Town Attorney; second by Council Member Mandel.

**VOTE:** Motion approved, 5-0.

Mayor Kiker mentioned that at the earlier Work Session, Council requested Town Attorney Humphrey to inform Town Attorney Miller of their desire to draft interlocal agreement regarding Estero Boulevard and the County's 5-Year CIP in order to have an identifiable document for the future when other County Commissioners were elected.

Town Attorney Miller reported that she was already working on the request.

**MOTION:** Council Member List moved to direct the Town Attorneys to draft an interlocal agreement for consideration by Council for improvements to Estero Boulevard; second by Council Member Mandel.

Public Comment opened.

No speakers.

Public Comment closed.

Mayor Kiker noted the draft agreement needed to be presented to Council with sufficient time for review before the BOCC meeting in January.

**VOTE:** Motion approved, 5-0.

## **XVI. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member Kosinski – no items or report.

Vice Mayor Raymond –questioned if the Student Council event was tomorrow.

Council Member List responded in the negative; and added the new date would be either October 25<sup>th</sup> or November 1<sup>st</sup> and she would inform the Council of the date when confirmed.

Vice Mayor Raymond –asked if the Tezak item was settled.

Town Manager Stewart reported the Appellate Court had several motions before them from Mr. Tezak attorney about a rehearing clarification, a hearing *en banc*, and a written opinion and all of the motions

were denied without further comment by the Court. He added that the Tezak property owners had a very little window to take the matter to the Florida Supreme Court.

Vice Mayor Raymond commented that before any decisions were made about the subject property, he would like Council to be informed first.

Town Manager Stewart stated that late this afternoon he distributed copies to the Mayor and Council of a communication he received and forwarded it to the Town Attorney with recommendations for a letter to be sent to Mr. Tezak attorney outlining the Town's stance on the matter. Town Manager Stewart asked that after Council had the opportunity to review his letter, that they inform him of their concerns.

Council Member List – no items or report.

Council Member Mandel – reported the Horizon Council meeting location had been changed to downtown Fort Myers, and they would no longer be held at the Summerlin location. He stated that he was on the Fire District 10-Year Comp Plan project and they have started to meet again.

Mayor Kiker –requested an update on the Veolia services with respect to supplying trash cans.

Town Manager Stewart stated staff was still working with them on the matter and an update would be forthcoming. He added he would forward information to the Mayor before the end of this week.

Mayor Kiker - gave a reminder about the Volunteer Appreciation Dinner on October 27<sup>th</sup> and questioned the details of the dinner such as the confirmation of Senator Richter as the guest speaker at the dinner.

Town Manager Stewart reported they received written confirmation from the Senator that he would be attending.

Mayor Kiker also reminded everyone of the Work Session that would actually be a Town Hall Meeting at the Paint the Beach event.

## **XVII. AGENDA MANAGEMENT**

Town Manager Stewart noted he added from today's meeting:

- Discussion of background checks for volunteers

Mayor Kiker noted a request from Gar Reynolds to have the Town staff review an ordinance.

Town Manager Stewart pointed out that Mr. Reynolds had forwarded a communication to the Council.

Mayor Kiker asked if there was a Council Member interested in sponsoring the ordinance review request – none noted.

## **XVIII. RECAP OF ACTION ITEMS**

Town Manager Stewart reviewed the Recap of Action Items:

- Staff would examine public input comments by Ms. Yost about the swales, contact Ms. Yost, and report their findings and outcome.
- Staff would continue their work regarding Strandview and the people across the street.
- Staff would forward the interlocal agreement Council approved tonight with Lee County regarding the Plan Review and Permitting Services for their consideration on October 25<sup>th</sup>.
- Staff would work to insure the LPA cases heard tonight are appropriately implemented.
- Sand Sculpting event permit would be issued based upon Council's approval.
- Implement Town health care proposal
- Attorney's Office would handle the easement relocation agreement for the Pink Shell
- Council approved the amendment to Ordinance 11-09
- Town Manger Stewart would have a report regarding the Veolia canister collection to the Council by the end of the week

**XIX. ADJOURNMENT**

Motion by Council MemberMandel, seconded by Council Member List to adjourn. Meeting adjourned at10:28 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

- End of document.



**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

**IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:**

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Joseph C. Kosinski, hereby disclose that on October 17, 20 11.

(a) A measure came or will come before my agency which (check one)

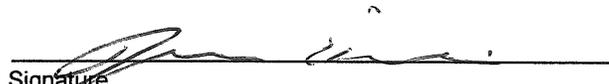
- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Blue Sheet Number 2011-123, Code Enforcement Case No. 2005-051F, I wish to abstain from voting on this issue since I was the engineer retained by the owner to work on this project at the time of the violation.

OCT 17 2011

\_\_\_\_\_  
Date Filed

  
Signature

**NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.**

# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

|  |   |
|--|---|
| LAST NAME—FIRST NAME—MIDDLE NAME<br><b>KIKER LARRY RAY</b> | NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE<br><b>Town of Fort Myers Beach Council</b>  |
| MAILING ADDRESS<br><b>6035 ESTERO BLVD</b>                 | THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:<br><input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY |
| CITY COUNTY<br><b>Fort Myers Beach LEE</b>                 | NAME OF POLITICAL SUBDIVISION:<br>_____   |
| DATE ON WHICH VOTE OCCURRED<br><b>10/17/11</b>             | MY POSITION IS:<br><input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE   |

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

\* \* \* \* \*

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

\* \* \* \* \*

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, LARRY KIKER, hereby disclose that on October 17, 2011:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Principal in Real Estate Co. in which my wife Paula Kiker represented George Ganin. He was informed over a year ago that I personally would not participate.

Date Filed

Oct 17 2011

Signature

[Handwritten Signature]

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.