



# MINUTES

**Monday, March 19, 2012**

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

## **I. CALL TO ORDER**

Mayor Kiker called to order the March 19, 2012 Meeting of the Town Council 9:00 a.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Community Development Director Fluegel, and Town Clerk Mayher.

## **II. PLEDGE OF ALLEGIANCE**

Mayor Kiker announced the Mayor's Award may be given tonight or on April 2<sup>nd</sup>; consensus was to present it tonight. He reported that this Friday, Lover's Key was having a birthday celebration; Vice Mayor Raymond, Town Manager Stewart, and Mayor Kiker stated they would attend, and Council Member Mandel would confirm his attendance later.

Council Member List reported there were some 'unhappy business people' due to rumors circulating around the Beach about the harassment of business owners by the Town during the height of season over minor issues (i.e. Seagrape Plaza, ancillary flags, sandwich signs, exterior building artwork). She noted some of the business owners may attend tonight's Regular Council Meeting to discuss their concerns.

Town Manager Stewart stated he would rather find out about issues prior to a Council Meeting so he could address the issues and concerns.

Council Member List declared she would give the City Manager the names and contact information she had available.

Town Manager Stewart explained that if there were issues with unpermitted signs or ancillary flags that did not meet with the Town's sign regulations, it would be addressed appropriately. He reported there was no action being taken against the Mermaid to paint over their exterior artwork.

Community Development Director Fluegel gave an update on the signage issues staff was presently addressing (i.e. monument signs).

Discussion was held regarding the exterior artwork at the Mermaid and how the code addressed the delineation of the lettering; the signage on the top of cars in a business parking lot, and Director Fluegel would investigate the matter further; and the status of the '*Heavenly Biscuit*' which was a business operated in an area not properly zoned and how staff was working with the owners to resolve the CPD matter.

Mayor Kiker suggested that when someone comes to a Council Member with an issue it might best if they make the Town Manager aware of the concern, and be present when the Town Manager contacts the person to discuss the matter.

Discussion was held regarding the Island's '*coconut telegraph*' and how to alleviate rumors or incomplete information or misinformation.

Community Development Director Fluegel stated staff would need to address the possibility of a monument sign at Seagrape Plaza with the interested parties. He reported there were fewer than 10 businesses in the Town that were not in compliance with the sign ordinance which were approaching the Code Enforcement stage; however, staff was still working with those businesses.

Council Member List discussed her views regarding the criteria of the current sign ordinance; whether or not it was too restrictive as it pertained to artwork and lettering, and sandwich signs, and ancillary flags; and the small business owner's perception of the Town's sign ordinance.

Discussion was held regarding the current sign ordinance and the small business owners; a monument sign for Seagrape Plaza; consistency with the application of the sign ordinance throughout the Town; and compliance rate of the business owners with the new signage regulations as of today.

Council Member List noted that the sign ordinance was already on Agenda Management and requested that 'sandwich boards, flags, and banners' be added.

Mayor Kiker pointed out that the sign ordinance topic on Agenda Management was to discuss 'developer's signs'.

Council Member Mandel requested the 'enforcement plan' be added to the discussion of the sign ordinance.

Discussion was held concerning which aspects of the sign ordinance topic to discuss on Agenda Management.

### **III. TRAFFIC AND SAFETY (TMA)**

Town Manager Stewart explained the TMA was a committee Council had demonstrated interest in possibly restoring, and copies of Ordinances 98-02 (Public Safety Task Force) and 04-19 (Traffic Mitigation Agency) were included in the agenda packet.

Mayor Kiker discussed how in the past when the Public Safety Task Force and the Traffic Mitigation Agency were in existence at the same time, there were problems with both groups dealing with the similar issues. He noted both committees were on currently on hiatus, and one of them could be reinstated without having to pass another ordinance. He stated that if the Council was interested, they would have to decide on which committee, define their responsibilities, and then move forward to advertise for the openings.

Discussion was held concerning which committee and their responsibilities; and the anticipated improvements to Estero Boulevard and how that may or may not involve the committee.

Council Member Mandel discussed his inclination to have the Mayor be the person to have discussions with the County Commissioners regarding traffic safety and crossings on Estero Boulevard.

Mayor Kiker explained how he believed the committee responsibilities should be specific and defined; and he described some of the previous recommendations regarding trolley pull-offs and crosswalks that came out of the former TMA. He believed the TMA could work on short-term projects such as the 'Point to Safety' Program.

Council Member Kosinski suggested Public Works Director Lewis could be assigned to the committee and she would be able to keep them focused.

Mayor Kiker stated the committee would be assigned to Director Lewis who in turn would be able to assign a staff member if she desired.

Town Manager Stewart that staff would review the ordinance, determine if an amendment to the ordinance was necessary, and then it could go forward.

Consensus was to reinstate the Traffic Mitigation Agency and staff would proceed to review the matter and bring recommendations to the Council for action.

### **IV. DISCUSSION REGARDING PROPOSED BEACH RAKING ORDINANCE**

Town Manager Stewart explained the basis for the review of the proposed ordinance.

Keith Laakkonen, Environmental Sciences Coordinator, gave a brief history on the background of the beach raking ordinance, the direction given to him by the previous Community Development Director on this matter, and his involvement with the matter to date. He presented the summary, background, and analysis for the proposed changes to the beach raking and wrack line policy of the Land Development

code. He noted that Marine Resources Task Force (MRTF) began review of the proposed changes to the beach raking and wrack line policy in March of 2009, and approval of the final version was submitted to the LPA in 2010. It was noted that the LPA conducted a public hearing in 2011 for the proposed changes and rejected it; voted to send it back to MRTF for changes; and MRTF continued their review and resubmitted it to the LPA who eventually approved it subject to an amendment to the ordinance. He continued his presentation on the proposed ordinance and reviewed:

- Changes to clarify definitions such as but not limited to wrack line
- Permit application and site plans requirements; business or property owner may apply
- Insurance requirements for commercial mechanical beach rakers
- Educational or training requirement for rakers
- Time of day and year raking may occur; ability for rakers to operate at night outside of turtle season; the ability to remove hazardous conditions
- MRTF recommendation for a \$25 annual fee for environmental education and restoration

Discussion was held concerning the application fee for mechanical raking; and it was clarified the permit fee was only for ‘mechanical’ raking.

Town Manager Stewart noted the review and approval process the proposed ordinance had been through with MRTF and the LPA. He asked if the Council had any questions and/or would approve staff presenting the ordinance to Council at a regular meeting.

Mayor Kiker questioned the original concerns by MRTF and the LPA.

Environmental Scientist Coordinator Laakkonen explained the original concerns had to do with liability insurance, single permits that may be issued to a business conducting raking on multiple projects, hand raking, and night raking.

Discussion was held concerning permit requirements for property owners and commercial rakers.

Mayor Kiker noted his hesitance to ‘adding another layer’ to doing business with the Town. He explained his belief that the proposed ordinance offered an opportunity for communication to break down between the property owner, business owner, and the Town.

Town Manager Stewart explained the Town had experience with some commercial providers that did not do what was required and the proposed ordinance would clean up the language and make it clearer as to what was required. He pointed out that the permit fees would be used for environmental education and restoration.

Environmental Scientist Coordinator Laakkonen explained that the current ordinance was ‘*completely unenforceable*’ due to the vagueness of the language. He commented that the proposed ordinance would allow the Town to have stewardship over their beaches.

Discussion was held regarding the proposed educational classes; current State regulations concerning removal or planting of dune vegetation; the Dune Management Program; and consistency of definitions

throughout the Town (except for difference between north end and the remainder of the Island pertaining to the Dune Management Program and the Beach Renourishment Project).

Mayor Kiker discussed his concerns about the proposed ordinance and how it could have an effect on property rights.

Discussion ensued with questions and answers concerning the current ordinance; the proposed ordinance and how to make it functionally effective; private property rights; differences between vegetation requirements between the north and south ends of the Beach; mechanical raking and hand raking the wrack line; taking photographs of residential property and their wrack line and vegetation; the property owner's rights to groom their property according to the existing and proposed ordinances; and the changing wrack line from year-to-year.

Council Member Mandel suggested making a rule for the entire Island.

Environmental Scientist Coordinator Laakkonen stated if that was Council's desire for the entire Island, then staff would investigate the request with the DEP since this was a DEP Rule.

Council Member Kosinski asked if the intent of the proposed ordinance was how to properly control and rake the beach; and if anything with vegetation was controlled by the State and DEP through other ordinances.

Environmental Scientist Coordinator Laakkonen responded in the affirmative.

Discussion continued regarding the north end residential vegetative requirements; consistency of vegetative requirements throughout the Island; how the north end of the Island was required to plant vegetation; the natural process of the beach; the definition of the wrack line and what could be done; mechanical raking and the equipment used; and potential future beach renourishment projects in the south end.

Council Member Mandel suggested doing the wrack line at the water's edge.

Town Manager Stewart explained that the proposed ordinance would give a fair and equitable manner to determine where the starting point of the wrack line was located by using the overhead photo; and everything else remained the same (nothing changed about raking the vegetation). He stated that if the Council did not like the suggestion of taking a photo then he would like direction to remove it. He requested that the remainder of the suggested changes be made; and if was Council's desire to get the State of Florida to allow the Town to invoke the same program on the south end as the north end, then staff would work on it; however, he cautioned it might be a difficult 'sell'.

Council Member List agreed to the aerial photo requirement should be removed.

Discussion was held concerning property rights, the Dune Management Program, the DEP, and differences between the horizontal and vertical plane with respect to trimming in the north and south ends.

Recess at 11:00 a.m. – Reconvened at 11:20 a.m.

Town Manager Stewart asked if the Council desired to move this item forward for a vote; and if so, was there an aspect of the proposed ordinance Council would like to see modified before bringing it forward.

Mayor Kiker suggested, in the future on items such as this, that staff should include a member of the LPA at the Council's Work Session.

Discussion was held concerning potential modifications for the proposed ordinance such as but not limited to removal of the photograph requirement, and whether or not to instruct staff to begin working together with the DEP to accomplish a similar profile through the whole Island as was done on the north end; and dunes and vegetation management.

Consensus (4-1; with the Mayor dissenting) was to approve to move forward with the proposed ordinance for a Council vote, making the change that was suggested to not make the photograph a requirement but an alternate, and to instruct staff to begin working together with the DEP to accomplish a similar profile through the whole Island as was done on the north end.

Environmental Scientist Coordinator Laakkonen explained it was his understanding that he would seek from the DEP potential, if they would allow the reduction of the distance towards raking salt tolerant vegetation dunes; and whatever the property owners had now they could maintain by raking up to the edge of the dunes.

Discussion ensued regarding the dimensions for maintaining vegetation, and how the north end served as a Master Mitigation Program.

Vice Mayor Raymond requested if the Council could take off in July this year as was done last July.

Consensus was to approve that the Council take a hiatus for July 2012.

## V. ADJOURNMENT

Meeting adjourned at 11:45 a.m.

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

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

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Michelle D. Mayher, Town Clerk

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