

MINUTES

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

January 15, 2009

9:00 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 9:01 AM. Present along with Mayor Kiker was Vice Mayor Acken, Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

No clergy was present to lead an invocation.

III. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

IV. PUBLIC HEARINGS (60 minutes)

A. Lani Kai Historic/ Landmark Sign Appeal

Mayor Kiker opened the public hearing. Town Council declared ex-parte communication. Councilmember Babcock observed the property and had discussion with the LPA. Vice Mayor Acken had none. Councilmember Raymond had none, Councilmember List discussed the appeal with the Town Attorney. Mayor Kiker had none.

Mayor Kiker identified that counsel for the applicant, Robert Burandt, had requested permission for a change in the process, requested to be allowed to have the final word. Mayor Kiker asked whether Town Council had any objection to this. Councilmember Babcock indicated that he did object, that there is a process in place and preferred to

stay with that process. No other councilmembers objected, so the consensus was to allow this change in the hearing procedure.

Attorney Dalton swore in all those who would testify.

Robert Burandt, Attorney for the applicant, 1714 Cape Coral Parkway and long time beach resident delivered his opening remarks, asking the Council to reconsider the decision made by the LPA, and make a determination that the LPA didn't have all the facts for making a decision for landmark designation. Mr. Burandt opined that regulation of signs is a violation of freedom of speech, and the ordinance should be modified. Mr. Burandt further spoke that the LPA acted with broad discretion, although case law says that the LPA shouldn't have broad discretion.

Mr. Burandt identified the history of the application, that when Kenny Conidaris came before the LPA, he wasn't prepared for the LPA to have a different perception of landmark sign status.

Denise Wheeler, Fowler White Boggs, counsel for the Town, presented the standard of review is neither an abuse of discretion or a de novo, (*brand new and from scratch*) but rather the role is the review of the LPA decision, not new evidence, nor is it to review the sign ordinance. The exception to the sign ordinance is not at issue. The argument of a violation of freedom of speech is not applicable; the content of a sign relates to the freedom of speech, not the size of the sign which is at issue. Ms. Wheeler indicated the question is not whether the building is landmark, but rather that the sign is landmark. The task before the Town Council is to determine whether the applicant provided the facts to meet the requirements.

Mayor Kiker then turned to Council for questions of the applicant. Vice Mayor Acken questioned the property boundaries and whether the signs in question are on that property. Mr. Burandt answered in the affirmative.

Mayor Kiker then turned to Council for questions of the Town special counsel. Council had no questions.

Frank Shockey, Interim Community Development Director requested for Council to accept the staff report, submitted as testimony.

Vice Mayor Acken questioned the table in the brief, and asked how to score the historical sign criteria? Mr. Shockey answered that staff has no authority to score the criteria, and suggested posing that question to the LPA.

Mr. Dennis Weimer, Chairperson of the LPA, was present to provide the LPA's position and answer questions. The LPA was to determine whether the Lani Kai sign could be designated as landmark, and whether the applicant provided evidence to support that. Mr. Weimer indicated that staff's function was to accept the application, schedule and notice the hearing. The LPA evaluates the application, applicant testimony and hears

public comment in a quasi-judicial hearing. This process is outlined in the LPA Policies and Procedures manual, and the LPA followed this process and reached a proper and unanimous decision to deny the application. Mr. Weimer referenced a letter from Mr. Richard McDole, purported to be additional evidence, which states The LPA "...based their decision [to deny the signs] to deny, on that the signs did not comply with the ordinance." Mr. Weimer stated that is a falsehood. Compliance with the Town's sign ordinance is not a consideration or criteria for consideration of historical significance or landmark status.

Vice Mayor Acken asked for an explanation of the integrity evaluation criteria.

Mr. Weimer explained the evaluation form is information to the applicant. The table is a description of how it fits together, and is not a scoring check list. The applicant selects a quality of significant criteria and then describes how that historic context applies.

There was continued discussion regarding the application process, whether the applicant had an opportunity to seek clarification should the process not be understood, whether the applicant took advantage of that opportunity; which criteria the LPA used – landmark, historical, compliance or right of free speech. Mr. Weimer replied that the LPA evaluates the historic sign or landmark sign status; one or the other. Of those, the LPA chose "none".

Opened Public Comment:

Public Comment was heard:

- Richard McDole identified himself as a building official for the Lani Kai Resort. Mr. McDole represented that there are two separate ordinances: sign and historic/landmark, and in the sign ordinance there is an exception for historic. Mr. McDole's understanding is that if it has historic/landmark significance, it is exempt under the sign ordinance, that the exemption is there in order to maintain the integrity of the site.
- Kenny Conidaris identified himself as applicant, that he found it hard to figure out what was on the application, and stated that a member of the community who claimed partial authorship of the ordinance told him the Lani Kai was perfect to pass.
- John Albion, president of the Fort Myers Beach Chamber of Commerce opined that the discussion is not whether there was full understanding of the process; the burden is on the applicant, however this is a tourist destination and that signage is needed.

Closed Public Comment

Mayor Kiker closed the testimony portion of the hearing.

Recess: 10:27 AM – Reconvene 10:40 AM

Denise Wheeler, of Fowler White Boggs, presented her rebuttal. Ms. Wheeler referenced section 30-56, which talks about non-conforming signs, and the exception for the designation of historic/landmark sign is in section 30-56(b).

(b) Designation of historically significant and/or landmark signs. Pursuant to the Fort Myers Beach Comprehensive Plan, the town's vision for preserving its history is set out in chapter 13. This historic preservation element has two major goals. The first is to preserve "the best of the old" as the community evolves and redevelops over time. The second goal is to share the legacy left by previous residents with today's visitors and the broader community and to do so in a way that preserves the local culture and environment and enriches visitors' experiences. The local planning agency is designated to serve as the historic preservation board by this code. (subsection) (1) A sign may be nominated for designation as historically significant or having landmark status to the local planning agency.

Ms. White emphasized that the sign may be nominated for historic designation, not the site or the structure. Ms. White then skipped to subsection 5:

A sign that is designated as historical or having landmark status will receive a legal non-conforming status for as long as the sign remains. If the sign is destroyed in any way, it may be re-constructed to its legal non-conforming historical and/or landmark status. Similarly, if the underlying business is sold, or "copy" or "use" is changed the sign continues to hold its legal non-conforming designation and remains as a historical or landmark designated sign.

Ms. White emphasized that the designation is meant to be applied to the sign. No one is saying if the signs don't meet the criteria for historic/landmark designation that there will be an absence of signs, only that the signs would need to conform.

Discussion continued regarding the applicant's ability to seek answers from Town staff regarding the application process; whether the applicant ever applied for the property itself to be designated historic; whether free speech was at issue; the number of signs identified in the application and which signs would be affected if this appeal were approved.

Mayor Kiker closed the testimony portion of the hearing.

MOTION: Councilmember Babcock moved to approve resolution 08-45, as to section one, the Town Council finds that it DOES have jurisdiction; the applicant HAS file its appeal; the Town Council DOES have jurisdiction; the Town Council HAS the authority; The Town Council finds that he LPA DID follow the proper procedures; the LPA DID have jurisdiction under Section 30-56(b)(3); the LPA hearing WAS properly noticed; the LPA DID utilize the appropriate standards from the LDC and Comp Plan; under section

4, part a) the Town Council determines that the LPA DID properly apply the standards set forth in Chapter 13 of the Plan and LDC Section 30-56(b); and for all of the above reasons, the Town Council concludes that the Signs ARE NOT landmark or objects of significance in history; and the Town Council hereby AFFIRMS the determination by the LPA. Councilmember List seconded the motion.

Councilmember Babcock indicated his focus was on whether the LPA had clear guidelines and whether those were equally enforced; he referenced LPA resolution 2008-16, and under findings, the ones he felt were very important were that there were defined standards, it is not associated with events that had historic significance, not associated with people of historic significance to the island, does not embody any distinctive or artistic significance, or does not contribute to the overall significance of a historic district, and that the applicant failed to submit significant documentation to meet the integrity criteria. Mr. Babcock opined that the process does work, that in both cases standards are consistent, that staff provided the applicant with the materials, the LPA decision was based on a critical balance, and that the LPA should be complimented for the thoroughness with which this case was heard.

Attorney Dalton addressed the motion maker, stating that there were several scriveners comments that under the motion would not be applicable, and wanted to be sure they were dealt with. Ms Dalton referenced section four, parenthesis italicized A & B, requesting that the motion maker indicate that the scriveners comments be deleted, Section 3B & Section 3C *“proposed findings are set forth in the staff report for Council consideration, modification adoption or rejection”*

AMENDED MOTION: Councilmember Babcock amended his motion to delete the italicized A & B under section 4, and B & C under section 3 also be deleted. Councilmember List amended the second to the motion.

Councilmember Babcock called the question.

MOTION: Vice Mayor Acken moved to table. Motion failed for lack of a second.

VOTE: On the motion to call the question, motion passed 4-1, with Vice Mayor Acken dissenting.

VOTE: On the main motion (to approve resolution 08-45) motion passed 4-1 with Vice Mayor Acken dissenting.

Mayor Kiker closed the public hearing at 12:18 PM

Mayor Kiker recognized members of the Estero Island Garden Club in the audience, and would like to present the proclamation, and there is an ad-on for a special event permit that is time-sensitive.

VI. PROCLAMATIONS

A. Estero Island Garden Club 50th Anniversary

Town Clerk Michelle Mayher read the proclamation.

Mayor Kiker presented the proclamation to Sylvia LaChappelle. Ms. LaChappelle spoke to the tree program and the addition of 1626 more trees throughout the island, and national arbor day in April, and thanked the community who purchased the trees to beautify our island.

Town Manager Scott Janke advised the Council that there is a request for a special event permit that came forward after the closing of this meeting's agenda. The event will take place before the Council's next meeting, so the application is being walked on. Mr. Janke indicated that the application is complete and staff recommends approval.

MOTION: Councilmember List moved approval. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

Mayor Kiker asked if there are any items on the remainder of the agenda that are particularly time sensitive. Town Manager Scott Janke referenced Administrative Agenda item A. Approval of Contract Extension for Landscape Masterplanning Services, indicating that the consultant is in attendance and needs to leave Town at 2:00 this afternoon.

As to items sensitive to the date, Town Manager Janke indicated that the approval of the Lobbying contract needs to be addressed at this meeting. Also, Consent Agenda item C needs to be heard today. Mayor Kiker suggested that the aforementioned items will be heard first when the session reconvenes.

V. LOCAL ACHIEVEMENTS AND RECOGNITIONS (5 minutes)

A. Florida Institute of Government Certificate of Completion, Councilmember Tom Babcock

Councilmember Babcock indicated he would accept the Certificate of Completion, and not carry it over. Mayor Kiker said that Councilmember Babcock attended the advanced institute of elected municipal officials, and congratulated him.

X. ADMINISTRATIVE AGENDA

A. Approval of Contract Extension for Landscape Masterplanning Services for 216 Connecticut Street (10 minutes)

Town Manager Scott Janke asked Cultural Resources Director, Theresa Schober to address this item. Ms. Schober referenced the scope of work and fee schedule in the Council's packet for the empty lot on 216 Connecticut Street. Council asked staff to

proceed with necessary rezoning, the Town advertised a Request for Qualifications for landscape architecture services to prepare a landscape master plan, and Council authorized staff to negotiate with the first-ranked firm, EDAW, and Mr. David Sacks from that firm was present at this meeting. Town Manager Scott Janke added that funding for this project was from park impact fees, not property tax dollars.

MOTION: Councilmember List moved to authorize extension of contract with EDAW, Inc. to provide site master planning services for 216 Connecticut Street as stipulated in the scope of services for a fixed fee of \$9,920. Councilmember Babcock seconded the motion.

Discussion ensued regarding a completion date, options regarding the disposition of the cottage and whether or not it would be on the property at 216 Connecticut, the goal of masterplanning to have all information together to successfully accomplish an adopted vision by the Town.

MOTION: Mayor Kiker moved to table this item. Councilmember Raymond seconded the motion.

VOTE: On the motion to table, motion failed 3-2, with Councilmember List, Councilmember Babcock and Vice Mayor Acken dissenting.

VOTE: On the main motion to authorize the contract extension, Motion passed 3-2 with Councilmember Raymond and Mayor Kiker dissenting.

Recess: 1:05 PM

Reconvene 1:38 PM

VI. PROCLAMATIONS

B. Hazardous Materials Awareness Week

It was the consensus of Council to move this item to the consent agenda.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Response to Proposed Closing of the DEP Estero Bay Aquatic Preserve Office

The Marine Resources Task Force unanimously approved a resolution to show Town support for the continued operation of the Estero Bay Aquatic Preserve office to submit to Town Council for consideration.

MOTION: Vice Mayor Acken moved to adopt resolution 2009-011 supporting the continued operation of the Estero Bay Aquatic Preserve office. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

VIII. PUBLIC COMMENT

Opened Public Comment

None

Closed Public Comment

IX. CONSENT AGENDA

- A. Adoption of Minutes: December 15, 2008
- B. Adoption of Minutes: December 29, 2008
- C. Professional Service Agreement – HMGP Basin Based Neighborhood Project
- D. Proclamation: Hazardous Materials Awareness Week

MOTION: Councilmember Babcock moved to approve the consent agenda. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

X. ADMINISTRATIVE AGENDA

B. Approval of Contract for Lobbying Services, Wm J. Peebles, PA

Attorney Anne Dalton indicated this contract is for one year, the scope of services is outlined on page 4 of the service provider agreement, and the only other matter to decide is who will be the liaison.

MOTION: Councilmember List moved to approve the contract with William J. Peebles for lobbying and strategic planning services to the Town. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

Consensus of the Town Council was for Mayor Kiker to be the liaison with Mr. Peebles. Council confirmed a worksession with Mr. Peebles on Monday, January 26, 2009 at 9:00 AM. Councilmember Babcock indicated that he would not be in attendance at this worksession.

C. Resolution 09-01, Abandoned Vessels Enforcement

Public Works Director Jack Green indicated the purpose of this resolution is to provide staff with a better enforcement tool in dealing with abandoned vessels that violate the submerged land lease with the State. Staff is asking to designate code enforcement as the law enforcement agency for this matter, and that the submerged land lease has strict guidelines.

MOTION: Councilmember Babcock moved to approve resolution 09-01. Councilmember List seconded the motion.

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

D. Develop Lee County Capital Projects Nomination Form

Town Manager Scott Janke indicated this is a way to nominate the Town's capital improvement projects, to the LPA, and also can be used to formalize CIPs to the County. Mayor Kiker suggested identifying who will/should sign off on this, and establish a time frame.

The Consensus of the Council was for the Town Manager to go forward.

XI. TOWN MANAGER'S ITEMS

A. Action Items and Departmental Reports

B. Quarterly Financial Reports

- Evelyn Wicks, Director of Finance

C. North Estero Project Update

- Jack Green, Public Works Director

D. Stormwater Master Plan Update

- Cathie Lewis, Deputy Director, Public Works

Town Manager Scott Janke had a request from the Chamber for the Mayor to present a key to the Town to Congressman Mack at the annual gala.

Mr. Janke informed the Council that the County was intending to "turn over" to the Town Bay Oaks Recreation Center. Mr. Janke sought and received direction from the Council to do an analysis to bring back to the council regarding the finances and operational costs of the center, to send the finance director downtown to look at their books.

XII. TOWN ATTORNEY'S ITEMS

A. Ganim Certiorari Action Status

Attorney Dalton indicated this was a code enforcement case that was appealed in the circuit court, the Town was successful, the circuit court dismissed it, now it is in the second court of appeals. Attorney Dalton sought and received direction to spend up to three hours of (Fowler White)attorney time preparing a brief, should that be requested by the district court of appeals.

XIII. COUNCILMEMBERS ITEMS AND REPORTS

A. Proposed 2009 Council Meeting Calendar (10 minutes)

B. Continued Discussion of Support for Sanibel Environment
Position Statement Councilmember Babcock

Councilmember Babcock pulled the discussion of support for Sanibel, that it has lost its value through delay.

Town Manager Janke pulled the stormwater update.

Councilmember Babcock indicated he had items that absolutely could wait.

Councilmembers List and Raymond indicated a desire to finalize the calendar.

Mayor Kiker sought and received permission from the council to come back to the council with a proposal for a town hall meeting in conjunction with Santini Marina Plaza.

Mayor Kiker sought and received permission from the Council to revisit the structure of the agenda, working with the town manager for the upcoming agendas in the month of February.

Town Council reviewed the proposed **FY 09 Meeting Calendar** making changes to consolidate budget workshops and meeting dates.

Recess: 3:17 PM

Reconvene 3:35 PM

Regarding the verbal update on the short-term **Eestero Boulevard projects**, Public Works Director Jack Green indicated that he will inform the County that the next Town Council meeting is February 2nd, and so he will have the list of projects for them on February 3rd. Town Manager Scott Janke indicated the Town will formalize its requests by March 30th.

Regarding the **Quarterly Financial Reports**, Director of Finance Evelyn Wicks reported that the first three months of the fiscal year are the best the Town will be in for the entire year. The Town collects the majority of property taxes in the first quarter.

Public Works Deputy Director Cathie Lewis reported on the **Stormwater Master Plan**. The Town's consultant, CDM, who is working on the Stormwater Master Plan, has completed gathering all the data, has characterized sources and issues associated with the lack of infrastructure and are in the process of developing a model to evaluate the various alternatives. Ms. Lewis indicated the project is moving along on schedule, and anticipates bringing CDM and a presentation to Council in the near future.

Town Manager Scott Janke indicated he intended to have an update on **sign compliance** for the Council by Interim Community Director, Frank Shockey, however Mr. Shockey has left do to a personal matter, and will have that report for council at the February 2nd meeting.

XIV. RECAP OF ACTION ITEMS

In the interest of time, this item was not discussed.

XV. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Jack Green, resident at 215 Indian Bayou, FMB, commended the Town Council for their meeting with the Lee County BOCC.

Closed Public Comment

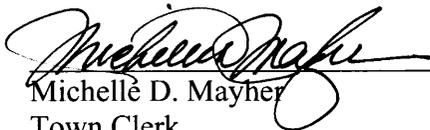
XVI. ADJOURNMENT

Meeting adjourned at 4:05 PM.

Adopted 2.2.09
(Date)

With/Without Changes. Motion by Dist/ Raymond

Vote: 4-0



Michelle D. Mayher
Town Clerk

- End of Document