



# MINUTES

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

**February 2, 2009**

**9:00 AM**

## **I. CALL TO ORDER**

Vice Mayor Acken called to order the meeting of the Town Council at 9:02 AM. Present along with Vice Mayor Acken was Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher. Mayor Kiker was absent.

## **II. INVOCATION**

No clergy was present to deliver an invocation.

## **III. PLEDGE OF ALLEGIANCE**

All stood and recited the pledge of allegiance.

With consensus of the Town Council, Mayor Kiker will participate by teleconference for a limited time. Vice Mayor Acken also sought the agreement to move public comment up before the public hearing.

## **PUBLIC COMMENT**

### **Opened Public Comment**

#### **Public Comment was heard:**

- Rick Redenius described a drain that had been installed on his property on Primo, not in the right of way, and he asked that it be removed.
  
- John Gardner lives on 3<sup>rd</sup> street, adjacent to the proposed parking garage. He requested a transition for the parking garage, and that it not be an encumbrance like Moss Marina.

### **Closed Public Comment**

Attorney Dalton advised Council that should they open the public hearing and take testimony, the council may request that Mr. Gardner ask that his public comment be entered as testimony for the public hearing.

#### **IV. PUBLIC HEARINGS**

##### **A. Snug Harbor CPD**

Vice Mayor Acken opened the public hearing, and asked if any councilmembers had ex-parte communication. Councilmember Babcock visited the site, Councilmember Raymond visited the site, Councilmember List visited the site and had a conversation with a resident of the neighborhood. Vice Mayor Acken indicated he visited the site and had been a former employee of Snug Harbor several years ago.

Attorney Dalton informed the Council that Mr. McHarris, the applicant, was not present, and that Community Development Director, Frank Shockey had additional information.

Attorney Dalton swore in all those intending to testify.

Mr. Shockey stated that Mr. McHarris contacted him on Friday, stating that he would like to ask for a continuance in order to have further discussions with some of the neighbors. Mr. Shockey informed Mr. McHarris that the code requires written request 24 hour before the hearing, or that he must attend the hearing and request in person the continuance.

Vice Mayor Acken called for testimony from the public.

Mr. Robert Pritt, with the law firm of Roetzell & Andress was present on behalf of Marina Village Condominium, and is in favor of a continuance. Mr. Pritt requested the ability to comment after the applicant's testimony, should it be heard.

Mr. John Gardner requested his previous comments be made part of these proceedings.

Kathryn Reese owns time shares at Marina Village and believes that adding buildings on the water does nothing to preserve or protect the bay area, and brings added traffic and noise.

Doug Speirn-Smith, partner in adjacent property, requested the ability to comment after the applicant's testimony.

Attorney Dalton swore in Mr. Joe McHarris, applicant.

Joe McHarris, McHarris Planning & Design, indicated he was working closely with one of the neighbors, and therefore would like to ask for a continuance, for some time after April.

Michael Ketchmark, owner and member of the Board of Directors of Marina Village, would like to speak after the applicant's presentation.

**MOTION:** Councilmember Raymond moved to grant a continuance on this hearing until after April to a date scheduled by staff. Vice Mayor Acken seconded the motion.

**VOTE:** Motion passed 4-0, with Mayor Kiker excused.

Recess: 9:25 AM

Reconvene 9:30 AM

#### **V. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Vice Mayor Acken announced that Mr. Charlie Loucks, long time editor of the Fort Myers Beach Observer, would be retiring, and read a proclamation, and presented him with a plaque of appreciation for the important contributions made to our town government.

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

No items.

#### **VII. CONSENT AGENDA**

- A. Approval of Minutes: January 5, 2009
- B. Approval of Minutes: January 15, 2009
- C. Approval of Street Sweeper Purchase

**MOTION:** Councilmember List moved approval of the Consent Agenda. Councilmember Raymond seconded the motion.

**VOTE:** Motion passed 4-0, with Mayor Kiker absent.

#### **VIII. ADMINISTRATIVE AGENDA**

- A. Special Event Permit Application –Blues on the Green  
-Island Arts Foundation

Town Manager Scott Janke indicated a correction on the blue sheet, that the Town Council recently authorized up to \$5500. to be spent at the Town Meeting in March, so that \$4700. remained in the budget for special events, not \$10,200. as stated on the blue sheet.

#### **Opened Public Comment**

##### **Public Comment was heard:**

- Carl Conley, of 2915 Estero Blvd., present as artistic director of the Island Arts Foundation. The application is being modified to drop the Friday portion of the event, moving it to just a Saturday and Sunday event. Mr. Conley indicated that the Town is thoroughly indemnified with the IAF insurance and the golf course naming the Town as additionally insured.

## **Closed Public Comment**

Discussion ensued regarding promotional avenues, size of anticipated crowds, and history of these types of events on the island. Town Manager Scott Janke indicated that this upcoming budget will require event planners to submit a request for funding prior to the adoption of the budget. Mr. Janke also added that the proposed concert would include alcoholic beverages, all agencies (sheriff and fire) have signed off.

**MOTION:** Councilmember Babcock moved to have staff move forward with the permitting process, with the approval of funding for \$5,000. Motion died for lack of a second.

**MOTION:** Councilmember Raymond moved to approve permitting the event, however no funding from the Town. Vice Mayor Acken seconded the motion.

Discussion continued regarding the budget and that cultural and artistic events are always the first to be cut, that there is a need to support the arts to provide a diverse community.

**VOTE:** Motion failed, 3-1, with Councilmember List, Councilmember Babcock and Vice Mayor Acken dissenting.

**MOTION:** Councilmember List moved to approve the special event permit and a contribution up to \$2000. to be reimbursed to the Town. Councilmember Babcock seconded the motion.

**VOTE:** Motion passed 3-1, with Councilmember Raymond dissenting.

Town Manager Scott Janke asked the applicant to give the Town some billing on the event.

Mr. Carl Conley stated his appreciation of the comments in support of the arts, however the amount of money being contributed by the Town is not substantial enough to list the Town as a sponsor and stated he will not have stipulations placed on his request.

Town Manager Scott Janke asked to move up next, Administrative Agenda item D., Special Event Permit Application – Burrito A Go Go.

### D. Special Event Permit Application – Burrito A Go Go

**MOTION:** Councilmember Babcock moved to allow Mayor Kiker to participate with this item by teleconference, and the rearrangement of the agenda. Vice Mayor Acken seconded the motion.

**VOTE:** Motion passed 4-0.

Recess: 10:17

Reconvene 10:20

Mayor Kiker was present via teleconference.

Vice Mayor Acken declared a conflict of interest and submitted Form 8B, Memorandum of voting conflict .

Opened Public Comment

None

Closed Public Comment

Nicole Cilley, Burrito A Go Go, applicant, thanked the council for this consideration.

Councilmember List declared a conflict of interest, and that she will be submitting Form 8B, Memorandum of voting conflict.

**MOTION:** Councilmember Raymond moved to approve live entertainment for Burrito A Go Go on February 14, 2009 and March 17, 2009. Councilmember Babcock seconded the motion.

**VOTE:** Motion passed 3-0, with Vice Mayor Acken and Councilmember List abstaining.

#### C. Estero Boulevard Short Term Projects

##### Presentation and Selection

Cathie Lewis, Deputy Public Works Director, introduced McMahon & Associates representatives Trent Ebersole, P.E. and Natalia McGuckian, who will be presenting Estero Boulevard short term improvements.

Mr. Ebersole presented some background on what he termed spot improvements. The Estero Boulevard Analysis and Design report was completed and called Phase I with recommendations for a comprehensive improvement for the whole corridor and a recommendation to implement a pilot program for one section. Phase II has become a surveying and right of way exercise, which is delaying the implementation of physical improvements. McMahon & Associates are helping the Town put together a list of spot improvements. They have put together a list of improvements for the whole study. Surveying has started from the South toward the North, the County's decision, however Mr. Ebersole believes a North to South orientation is better. Keeping in mind the \$1.5 Million from the county, they looked at four improvement types: trolley pullouts, sidewalk segments, drainage hotspots and utilities underground. Mr. Ebersole ran through the prioritization and cost estimates.

Councilmember Babcock suggested starting at the North end and move South, and do all projects except undergrounding utilities.

Public Works Director Jack Green referenced the projects list indicating that undergrounding utilities has the greatest conflict potential, due to the unknown factors.

He suggested the Town could present this list to the County suggesting starting at the North end and move South until the monies run out. Mr. Green suggested indicating that the undergrounding of the utilities would be the least important task, rather see spot storm water improvements, trolley pull-offs and sidewalks before undergrounding utilities.

**MOTION:** Vice Mayor Acken moved to authorize staff to prepare and submit to Lee County DOT the FY10 list of proposed short term Estero Boulevard improvements as approved by Town Council. Councilmember List seconded the motion.

Councilmember Babcock opined that the motion should include that these projects are funded by the County, that the surveying project start at the north end and move south, that the priorities would include trolley pull-offs, drainage projects and sidewalks.

Town Manager Scott Janke suggested that the motion be pursuant to the joint meeting of the Board of County Commissioners and the Town Council, the Town of Fort Myers Beach is hereby nominating short-term projects up to \$1.5 M, starting with figure one and move south identify types of projects.

**AMEND:** Vice Mayor Acken amended his motion to include the comments as suggested by Councilmember Babcock and Mr. Janke. Councilmember List amended her second to the motion.

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

Recess: 11:45 AM      Reconvene 12:15 PM

**B. Appointments to Advisory Committees**

Councilmember List indicated that she is the Council representative to the Bay Oaks Advisory Committee, and she would like to see Mr. Tom Kolar on the board.

Councilmember Babcock spoke to the by-laws that govern the BOAC, and that in light of the Town taking over Bay Oaks, Mr. Babcock would like the Town to have its own ordinance governing this committee.

**MOTION:** Vice Mayor Acken moved to appoint Tom Kolar to the Bay Oaks Advisory Committee. Councilmember Raymond seconded the motion.

**VOTE:** Motion passed 4-0.

**Opened Public Comment**

None

**Closed Public Comment**

After discussion, it was the consensus of Council to table any decision or appointment to the Community Resource Advisory Board.

## **X. AGENDA MANAGEMENT**

### **Opened Public Comment**

None

### **Closed Public Comment**

After brief discussion, it was the consensus of Council to table any discussion on this item to the February 5, 2009 worksession.

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

- A. Holiday Decorations
- B. Laguna Shores Update
- C. Newton House Update
- D. Animal Control Update
- E. Town Website Update
- F. Sign Compliance/ Code Enforcement Update

Town Manager Scott Janke explained that the Director of Finance audited the holiday decorations as a result of public concerns, and that memo is enclosed. Laguna Shores dredging is done, the channel markers are being put in. At the Newton House was the grand unveiling of the rolling restroom, vandalized and shut down within two days. Mr. Janke mentioned a productive meeting with county animal control and making progress, suggesting future hearings would be on the beach and that the town manager be given notice and an opportunity to attend. The Town website will be active February 13, 2009. Mr. Janke indicated that Frank Shockey was going to report on sign compliance, however he has left.

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

Attorney Dalton indicated she had forwarded to council documents on the interlocal agreement for beach renourishment, and the memo of January 28, there is a significant problem of easements, which must be to approximately 90% of the shoreline, the county has taken the position that they will consider rescinding back to ten years, but not agree at this time that they should be rescinded. There is a major change in the financial responsibility; county staff suggested all parties have the ability to look at everything, and if for any reason either party thought the cost overruns would be too significant, either party could walk away.

## **XIII. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Raymond inquired about a follow up letter to the county regarding short term projects as discussed at the joint meeting with the board of county commissioners. Mr. Raymond asked the status of the beach access on Chapel Street, and Mr. Green indicated that it is still being monitored and has not been as controversial as of late as it has been in the past.

Councilmember List indicated that because of FCAT, the student participation at the March 19, 2009 town hall day will not be as strong as hoped. Ms. List inquired what measures the Town could take to encourage the Matanzas Pass dredging project to move forward. Staff responded that it is in the hands of the governmental agencies.

Councilmember Babcock asked about the Pink Shell docks. Town Manager Scott Janke indicated that he has written to the DEP requesting a hearing in the Town to voice our concerns. Mr. Babcock mentioned the poor reception on the Comcast channel 97, and Town Clerk Michelle Mayher will address that with Comcast. Mr. Babcock requested a discussion of the San Carlos Island Development be placed on the February 17, 2009 agenda.

#### **XIV. RECAP OF ACTION ITEMS**

Vice Mayor Acken recapped the items:

Snug Harbor public hearing was continued to no date certain.

The Town approved the Special Events

An appointment was made to the Bay Oaks Advisory Committee

Agenda Management process will be discussed on February 5, 2009

Staff was given direction regarding North Estero.

#### **XV. PUBLIC COMMENT**

##### **Opened Public Comment**

None

##### **Closed Public Comment**

#### **XVI. ADJOURNMENT**

The meeting adjourned at 1:58 PM.

Adopted 3-2-09 With/ Without Changes Motion by AS/ Raymond  
(Date)

Vote: 5-0

  
Michelle D. Mayher  
Town Clerk

- End of Document

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

LAST NAME—FIRST NAME—MIDDLE NAME <b>List, Joanne Barnard</b>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <b>Town of Fort Myers Beach Town Council</b>
MAILING ADDRESS <b>PO BOX 2851</b>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY      COUNTY <b>Ft. Myers Beach      Lee</b>	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED <b>February 2, 2009</b>	MY POSITION IS: <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, Joanne List, hereby disclose that on February 2, 20 09:

(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; members of music quartet;
- 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: Business owner asked for approval of special event permit. My band "Left of Center" has been asked to provide musical entertainment for compensation, of which I would receive 1/4 of the total amount paid to the band. As music performances account for most of my personal income, I chose to keep the gig and not vote on it.

February 2, 2009  
Date Filed

Joanne List  
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.

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LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY _____ COUNTY _____	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION:
	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

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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.

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- You must disclose orally the nature of your conflict in the measure before participating.
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**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Herb Acker, hereby disclose that on 2/2/19, 20 09:

(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:

Burns & Co. Co. Special Event Application  
Finance

2/2/19  
Date Filed

[Signature]  
Signature

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