



MINUTES

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

February 17, 2009

6:30 PM

I. CALL TO ORDER

Mayor Kiker called to order the meeting of the Town Council at 6:30 PM. Present along with Mayor Kiker was Vice Mayor Herb Acken, Councilmember Tom Babcock, Councilmember Jo List, Councilmember Bob Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

No clergy was present for the invocation.

III. YOUTH COUNCIL

Mayor Kiker indicated that the youth council will not be in attendance.

IV. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

V. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VI. PRESENTATIONS

A. Bay Walk Group at Times Square - John Richard

Ms. Joann Semmer came forward as representative of the Bay Walk Group, who is asking the Town Council to consider a trial period during season of limited use on Center Street, that the existing roadway be limited to passenger cars and light passenger trucks, to get cars off the roads to Old San Carlos Boulevard and to the parking under the bridge.

Opened Public Comment

Public Comment was heard

- Barbara Johnson spoke as representative of the property owner, Mr. Holland. They were not aware this group existed, the proposed trial would destroy this business, and pleaded to give adjacent property owners a chance.

- John Richard, a member of the Bay Walk Group took responsibility for notifying the property owner, and he stated he feels this could be a win – win situation.

Closed Public Comment

It was the consensus of the Council to move this item forward to a future workshop for discussion.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

State Solar Rebate - Alan Mandel, LPA

Mr. Mandel was not present, and this item was not heard.

VIII. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard

- Lou Marrone, resident of Laguna Shores, offered congratulations and gratitude to the Town Council for getting the Laguna Shores project completed.
- Roy Hinkleman, President of the Laguna Shores Home Owners Association offered special thanks to the Council, Town Manager and Public Works Director, Jack Green.
- Gertraude Short, resident of Madison Court, asked Council to recommend objections to the San Carlos Island development, the effects are so close, the ecology of the bay will be further damaged, it is a sensitive area, in a flood zone, and the traffic implications are great.
- John Gerola, a 30 year resident and owner of two small business, one of which is a cleaning company, spoke to the airline overflight and his experience with the amount of fuel splattered on windows of restaurants he cleans.
- Joann Shamp, Beach resident, indicated that beach nourishment is a multi-million dollar expanded program to create an artificial beach, it affords no storm protection and opined it is unequal treatment to beachfront property owners

Closed Public Comment

IX. CONSENT AGENDA

A Special Event Permit Application – Budweiser Clydesdales

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

VOTE: Motion passed 5-0.

X. ADMINISTRATIVE AGENDA

With the consent of council, Mayor Kiker pulled Administrative Agenda item G to be heard next.

G. Estero Aircraft / FAA Issues – Councilmember Babcock

Mayor Kiker asked Councilmember Babcock to introduce this item.

Councilmember Babcock indicated that the public is aware of the issues, the increase in aircraft and noise pollution since the September 30, 2008 redesign of the flight patterns.

Opened Public Comment

Public Comment was heard:

- Tom Cameron resident of Curlew Street, identified a new pollution concern. He demonstrated roofing soffits of his home that he replaced, showing the soot they collected over a short eight months. He is concerned that it is in the air we breathe, coming from the air traffic.
- Tom Merrill, beach resident, brought this matter to the Council's attention some time ago. Other communities have developed a coalition and got action. The Town needs "full court press" It comes down to communication for the elected officials to get through the bureaucracy.
- Al Van Horn, a 24-year resident, encouraged Council and the beach community to raise our voices, join together to see an end result.
- Bob Owen, resident of Randy Lane, identified black soot on his white lanai tiles, and will back all efforts to address this issue.
- Dan Hughes, beach resident, identified three issues that are facing the council this evening that will have significant consequences for the Town; Beach Nourishment, San Carlos Island Development and the FAA Issues. Mr. Hughes referenced a memo written by Councilmember Babcock, having done an excellent job identifying the issues, recommending enforcing that aircraft stay above 3,000 feet, and the noise interruptions make it impossible to conduct business.
- Carlton Ryffel suggested that the resident who demonstrated the pollution in his soffit vents perhaps send the debris for testing, perhaps get the DEP involved.
- Nicole Sampson, a resident of Laguna Shores agreed that the airplanes are flying too low, the noise is unacceptable and urged the Town Council to take aggressive action now.
- Jim Hanson, a 49 year resident, indicated that this is a serious enough situation that may make him sell his house, the aircraft is noisy and dirty and needs to be addressed.
- Bob Miller, resident of Lenell Road, stated he used to live near O'Hare airport in Chicago, and that the Beach is experiencing the same scenario, home values and quality of life are decreasing, rules have changed, property values have decreased

overnight, and he encouraged the elected officials to represent the community's interests.

- Kathleen Cameron, a resident of Curlew Street, offered to share a log she has kept of air traffic in the mornings, airplanes flying over every 12-14 minutes, and the Council needs to pay attention.
- Willis Beard, a resident of Albatross, a sea and land plane pilot, called the airport, spoke with Jim Haley and requested to speak with the FAA representative, however could not. He encouraged the elected officials to take action.

Closed Public Comment

Councilmember Babcock ~~expressed his dismay at the turn out,~~ ^{said that he was blown away (by the turn out)} expressing that the heat falls on him. The FAA has been pushing all flights over Fort Myers Beach, however does not want this to become a fight with other communities. Mr. Babcock mentioned a noise abatement study, and that no community should be adversely affected.

In discussion, Council considered the merits of having a councilmember as a point person for this issue, creating a policy, and whether to engage residents in this matter, and whether there is a threshold for complaints.

MOTION: Councilmember List moved to continue to engage Councilmember Babcock as the Town point person on this issue. Councilmember Babcock seconded the motion.

AMENDED MOTION: Councilmember List amended her motion to have this item for discussion in a workshop, to regroup and review and position themselves to better support Councilmember Babcock leading the charge.

VOTE: Motion passed 5-0

Recess: 8:30 pm

Reconvene 8:35 pm

With consent of council, Mayor Kiker pulled Administrative Agenda item, F forward to be heard.

E. San Carlos Island Development Project –

Councilmember Babcock

Mayor Kiker indicated the item for discussion is whether the Town Council should send a letter to the BOCC supporting the State of Florida Department of Community Affairs Objections, Recommendations and Comments regarding Lee County Comp Plan Amendment.

Opened Public Comment

Public Comment was heard:

- Harry Gottlieb, resident of Aberdeen, indicated that past town councils have paid too little attention to the broader aspects of the beach community, asked the Town Council to tell the County commissioners to stand behind their own comp plan.
- Maria Eigerman Humphrey, resident of Glenview Manor, supports the previous speakers however has grave concerns about the water resources, water quality in Estero Bay, waste and storm water concerns, traffic on the beach both to and from. This is an opportunity for Council to “de- emphasize” personal gas-powered vehicles.
- Dan Hughes, resident of Randy Lane, supports what the previous speakers brought forward, but also raised concerns about issues such as solid waste disposal. Mr. Hughes agrees that property owners have a right to develop their property, is concerned about the Town’s mooring fields, and supports DCA’s objections, recommendations and comments.
- Joe McHarris, McHarris Planning & Design, represents the property owners, referenced DCA’s ORC. As to Coastal High Hazard, Mr McHarris distributed a document with regard to the issue brought up by DCA, showing that working with DCA and County staff there has been a solution to reduce the units to 9.36 units per acre, a max of 271 units, a 1 to 1 ratio, making the density issue moot. As to utilities, the development has no impact on water or sewer. As to transportation, traffic to the property will be exactly as it is today. The developer is self-imposing a cap, and thus the transportation is now set at a more reasonable rate.
- Lee Melsek, resident of Fort Myers Beach, urged the Town Council to join with the Director of Lee County Smart Growth, Mr. Wayne Daltry, to encourage Lee County to develop a plan for San Carlos Island before approving this development.
- Matt Uhle, representative for the property owners, indicated that Lee County staff recommends approval of this development, the applicant has no issue with the proposed letter to the County in the ORC report, subsequent representation by DCA indicates the DCA is in agreement with density.

Closed Public Comment

After considerable discussion regarding the Town’s position and a councilmember’s participation whether as a citizen or a representative of the council and ethics, the council concurred to table this until the latter part of the agenda.

Recess: 9:45 PM Reconvene 9:55 PM

A. North Estero Blvd., Presentation and Discussion – (30 minutes)
ECT, Ron Edenfield

Town Manager Scott Janke indicated that Mr. Ron Edenfield would do a brief overview of the presentation on North Estero, and then Council will have discussion regarding the project.

Opened Public Comment

Public Comment was heard:

- Carlton Ryffel, beach resident at 100 Estero Boulevard, is supportive of the North Estero Project, but his issue and concern is that the Town has an approved project, that is contingent on easements for a storm water management project. He opined that it would be in the best interest if those easements were in had before the Town goes forward.

- Gene Hume, represents the interests of the folks at Sand Castle, and implores the Council to give their best efforts to retain parking for them.

Closed Public Comment

Ron Edenfield, with Environmental Consulting and Technology, ran through his power point presentation, outlining the pros and cons of the project, costs and permitting timelines, and current issues. (Power point presentation is enclosed in the packet material).

Public Works Director indicated that there are six fairly large issues that encroach upon the right-of-way, with the most vexing being the parking issue.

MOTION: Councilmember Babcock moved to accept the recommendations made by staff. Councilmember Raymond seconded the motion.

AMENDED MOTION: Councilmember Babcock amended his motion to include setting a policy and recognizing exceptions to be dealt with by staff on a case-by-case basis. Councilmember Raymond amended his second.

VOTE: Motion carried 5-0.

D. Beach Renourishment Interlocal Agreement Update

Attorney Dalton outlined the changes to the ILA based on Council direction, making clear that there are two separate termination provisions, one relating to construction costs without liability to the canceling party, and section 8C gives an umbrella provision associated with costs. There are questions as to the language in the easements, with "X" being replaced with "2009".

Mayor Kiker clarified that this document supports council position as it relates to easements, that the Council would not be taking a heavy hand, and were allowing rescission of easements on a case-by-case basis, and that the council and staff would visit each property and go over individual concerns as they relate to easements.

Attorney Dalton concurred that this document does support those positions.

Opened Public Comment

Public Comment was heard

- Frank Schilling talked about the decision making process and the process the Council is going through. He questioned whether it make sense to sign an ILA, easements are an issue, and after 8 to 10 years of county's active lobbying, less than 50% of private owners have signed up.
- Dan Hughes is in favor of the Council proceeding along the current path. As President of Smugglers Cove Condominium, it is one of the most affected areas of the beach. It is incumbent to pursue the easements, and added that staff meeting with individual property owners is an excellent idea.

Closed Public Comment

MOTION: Mayor Kiker moved to provide further direction to the Town Attorney and Town staff regarding negotiation of the Beach Interlocal Agreement. Councilmember List seconded the motion.

Discussion ensued regarding the easements and dealing with easements and fairness to the property owners who have already signed easements.

Attorney Dalton indicated that the requested motion was for Council to provide further direction and Ms. Dalton believes that direction was provided at the February 12, 2009 worksession, and it is her desire to clean up the document provided on 02.17.09 and forward it on to the County.

AMENDED MOTION: Mayor Kiker amended the motion to direct the Town Attorney to forward the ILA on to the county. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

Town Council gave direction to Town Manager Scott Janke to send a formal letter to the County Manager requesting clarification regarding the 90% number for easements, as presented by Lee County Natural Resources Manager, Steve Boutelle.

MOTION: Mayor Kiker moved to provide further direction to the Town Attorney and Town staff regarding negotiation of the Beach Nourishment Interlocal Agreement. Councilmember List seconded the motion.

AMENDED MOTION: Mayor Kiker amended his motion for the Town Attorney to clean up the document currently provided, and forward it to the County. Councilmember List amended her second.

VOTE: Motion passed 5-0.

B. Mound House Landscape Plan – Authorization to
proceed with zoning amendment

MOTION: Vice Mayor Acken moved to direct staff to apply for a zoning amendment to the Mound House Commercial Planned Development including modifications to the Master Concept Plan and conditions limiting the number of participants in Mound House programs and consumption on premises. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

C. Introduction of Ordinance 09-02, LPA Amendment to LDC
Sec 34-219, Resolution 2008-45

MOTION: Councilmember Babcock moved to send Ordinance 09-02, regarding changes to Town Land Development Code Sections 34-219(b) to simplify the administrative amendment process for Master Concept Plan approval, forward to Council hearing on March 16, 2009. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

F. Direction on 09-02, Resolution Interlocal
Service Boundary Agreement

Attorney Dalton introduced this item, stating that the Lee County BOCC passed an Initiating Resolution to initiate discussions with the Town regarding a proposed Interlocal Service Boundary Agreement for joint services. The Town is required to pass a Responding Resolution on or before March 20, 2009. This Resolution must respond to the proposed geographic and substantive elements of the Interlocal Service Boundary Agreement, and may suggest additional geographic and/or substantive elements.

Town Council directed Attorney Dalton to draft a resolution to be considered at the next regular town council meeting, and for that resolution to include the following:

The Town Council of the Town of Fort Myers Beach hereby declares its intent to retain all of its Home Rule Powers as provided for in Section 2(b), Article VIII of the Florida Constitution, as further set forth in Florida Statutes §166.021, and nothing contained in this Resolution shall be interpreted as diminishing such powers.

The Town of Fort Myers Beach hereby responds to the County's proposal of geographic areas designated for discussion for possible incorporation into an interlocal service boundary agreement, as set forth in County Resolution 09-01-14, by identifying the following additional geographic areas within the incorporated boundary of the Town of Fort Myers Beach and/or the unincorporated area(s) of Lee County, Florida, for discussion with Lee County:

all of the property within the incorporated limits of the Town of Fort Myers Beach; all of San Carlos Island within unincorporated Lee County, Florida; and the following additional area within unincorporated Lee County, Florida.

XI. TOWN MANAGER'S ITEMS

A. Monthly Reports

B. Bay Oaks Transition Update

C. Discussion to Schedule Worksessions

Town Manager Scott Janke updated the Council on monthly reports, on the formation of a Bay Oaks Transition Team being headed up by Dennis Weimer. The Council scheduled a worksession for Tuesday, March 3, 2009 at 9:00 AM.

XII. TOWN ATTORNEY'S ITEMS

A. Request for Executive Session, Tezak Vs. Town of Fort Myers Beach

Attorney Dalton requested an executive session to discuss strategy & litigation expenses on Monday, March 2, 2009 at 8:45 AM.

MOTION: Councilmember List moved to approve an executive session. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

XIII. COUNCILMEMBERS ITEMS AND REPORTS

A. Discussion Regarding PSTF and TMA –

(5 minutes)

Councilmember Raymond

MOTION: Councilmember Raymond moved to appoint Linda Beasley to CRAB, subject to her resignation from the PSTF. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Lee Melsek spoke of an e-mail exchange he had with Commissioner Frank Mann through which Steve Boutelle responded that “he decided” on the 90% number for easements, that the idea of condemnation didn’t sit well with the BOCC. Mr. Melsek spoke of the problem of garbage, citing an occurrence of seven bags of garbage which sat out on the sidewalk at Hooters, and that he has volunteered for an ad hoc committee to look at cleaning this matter up.

- Frank Schilling indicated that as to beach renourishment, dunes are “encouraged” but not required. Mr. Schilling suggested the Town engage Connie Mack’s office with the FAA.

Closed Public Comment

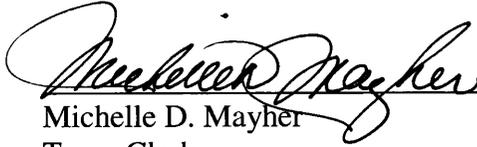
XVII. ADJOURNMENT

The meeting adjourned at 12:30 AM (February 18, 2009).

Adopted 3-16-09 (Date) With Without Changes. Motion by Babcock / Leo

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Vote: 5-0


Michelle D. Mayher
Town Clerk

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