



MINUTES

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

March 16, 2009

6:30 pm

I. CALL TO ORDER

Mayor Kiker called to order the meeting of the town council at 6:30 PM. Present 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. PLEDGE OF ALLEGIANCE

All stood and recited the pledge to the flag.

Councilmember List delivered an invocation.

III. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council offered congratulations to the Lions Club for a successful Shrimp Festival.

Mayor Kiker read a comment from a resident, Jean Gottlieb, offering compliments to Town Public Works Supervisor, Brad Kiltz for courteous and efficient work.

IV. ADVISORY COMMITTEES ITEMS AND REPORTS

No items.

V. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Bill Baden spoke in favor of the water slide in the square and thanked the council and the local business owners for allowing them to operate.
- Dave Trulse indicated he attended last week's LPA and HPB hearing on the Newton Cottage, and was shocked to hear that the board voted to retain the building.

Closed Public Comment

VI. ADMINISTRATIVE AGENDA

A. Resolution 09-02, Service Boundary Agreement

Attorney Dalton read the title:

A RESOLUTION OF THE TOWN OF FORTMYERS BEACH, FLORIDA, PROVIDING FOR A RESPONDING RESOLUTION AS CONTEMPLATED IN PART II, CHAPTER 171, FLORIDA STATUTES; RESPONDING TO THE INITIATING RESOLUTION FROM LEE COUNTY, FLORIDA TO NEGOTIATE AN INTERLOCAL SERVICE BOUNDARY AGREEMENT TO DESIGNATE A JOINT PLANNING AREA AND PROVIDE FOR THE EFFICIENT DELIVERY AND FUNDING FOR PUBLIC SERVICES; PROVIDING AN EFFECTIVE DATE.

Attorney Dalton indicated that section 3 and section 4 require some action by the Council.

Town Manager Scott Janke indicated the purpose is to respond to the County's initializing resolution, and that response is needed by March 20, 2009.

Opened Public Comment

None

Closed Public Comment

Mayor Kiker recognized Commissioner Tammy Hall in the audience, who was present to speak to the County's initiating resolution. Ms. Hall indicated that this resolution comes after four years in the making as a result of lawsuits, the goal is to establish the most efficient manner for county residents assuring proper infrastructure. Discussion ensued regarding updates coming forward, the Town's ability to pull out at any time, facilitating municipalities with the county to ensure coordinated plans. Mayor Kiker requested consideration for a permanent seat on the TDC, to which Ms. Hall replied that seats are determined by state statute.

MOTION: Councilmember List moved to approve resolution 09-02 providing for a Responding Resolution to the Initiating Resolution from Lee County Florida to negotiate an interlocal service boundary agreement pursuant to chapter 171, Florida statutes. Vice Mayor Acken seconded the motion.

Discussion ensued regarding whether to include the map and legal description, whether to use the Fort Myers Beach fire district service area, whether to include school concurrency.

AMENDED MOTION: Councilmember List amended her motion to include in the resolution all issues from the county list, identified on page 2 of the Town Attorney memo of January 22, 2009. (Transit and trolley service; San Carlos Boulevard bridge; Hurricane evacuation; New bridge; Regional beach management; Blueways coordination; Cooperative efforts to address regional water quality; Utilities; San Carlos Island Redevelopment; Future role of Community Redevelopment Agencies/ Tax Increment financing). Vice Mayor Acken amended his second.

VOTE: Motion passed 5-0.

VII. CONSENT AGENDA

A. Approval of Minutes: February 17, 2009

- B. Special Event Permit Application – Beach Soccer Festival
- C. Appointment to the Community Resource Advisory Board – Jim Wray
- D. Approval of Annual Request to TDC

Councilmember Babcock pulled Consent Agenda items A and B.

MOTION: Councilmember List moved to approve the balance of the consent agenda, items C & D. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

Councilmember Babcock referenced page 4 of 10 of the February 17 2009 minutes, changing the content from “Councilmember Babcock express his dismay at the turn out,” to read, “Councilmember Babcock said that he was blown away [by the turn out]”.

MOTION: Councilmember Babcock moved to approve the February 17, 2009 minutes with the aforementioned change. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

Special Event Permit Application – Beach Soccer Festival

Mayor Kiker asked what is the targeted age group for this event.

Event Coordinator, Andres Paz came forward and responded the targeted age group is 18 and up.

MOTION: Councilmember Babcock moved to approve the special event permit, conditioned upon the applicant providing appropriate insurance. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

VIII. PUBLIC HEARINGS:

- A. First Public Hearing, Ordinance 09-02, Administrative Amendments MCP 34-219

Attorney Dalton read the title:

ORDINANCE 09-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO CHAPTER 34, ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES, ARTICLE II, ZONING PROCEDURES, DIVISION 4, APPLICATIONS AND PROCEDURES, SUBDIVISION II. ADDITIONAL PROCEDURES FOR PLANNED DEVELOPMENT ZONING DISTRICTS, SECTION 34.219(b) WHICH IS ENTITLED “ADMINISTRATIVE AMENDMENTS TO APPROVED MASTER CONCEPT PLAN;” PROVIDING FOR ELIMINATION OF NON-CONTROVERSIAL CRITERION FOR STAFF TO CONSIDER IN ADMINISTRATIVE

AMENDMENTS TO APPROVED MASTER CONCEPT PLANS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR FEE TO BE IN ACCORDANCE WITH LAND DEVELOPMENT CODE SECTION 34-53 RATHER THAN SET BY TOWN STAFF; SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Babcock moved to send ordinance 09-02 regarding changes to town land development code section 34-219(b) to simplify the administrative amendment process for Master Concept Plan approval, forward to Council hearing on April 6, 2009 at 6:30 PM. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

Recess: 7:50 PM

Reconvene 8:00 PM

IX. ADMINISTRATIVE AGENDA

B. Resolution 09-03, Aircraft Flights

Attorney Dalton read the title:

RESOLUTION NUMBER 09-03

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA SUPPORTING EFFORTS TO DECREASE THE NUMBER OF AIRCRAFT FLIGHTS OVER THE TOWN, INCREASE THE ALTITUDE OF AIRCRAFT AND HAVE AIRCRAFT ABIDE BY NOISE ABATEMENT ARRIVAL PROCEDURES WHEN ON VISUAL APPROACH OVER FORT MYERS BEACH; REQUESTING NOTIFICATION; PROVIDING FOR EFFECTIVE DATE.

Opened Public Comment

Public Comment was heard:

- Tom Merrill indicated that he is not supporting asking for longer runs but less; he is not opposed to aircraft, but is looking at the erosion of quality of life.

Closed Public Comment

MOTION: Councilmember Babcock moved the adoption of resolution 09-03. Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

C. Community Development Fee Schedule

With consensus of Council, this item was moved to the end of the meeting.

D. Discussion Regarding a Mail Ballot Referendum)

Town Manager Scott Janke indicated that he is seeking direction regarding the Public Works Services Incorporated and the Public Works Agency, whether to move forward with a referendum. Mr. Janke requested that the Council consider how best to secure funding if the utility is owned by the Town or remains a private corporation.

Mayor Kiker suggested that counsel and staff provide a comparative analysis of options for a validation hearing and for a mail ballot and let council assess the pros and cons. Council directed the town attorney to prepare an ordinance with referendum language, for staff and counsel to investigate a validation hearing/ mail ballot; provide options for utility ownership.

E. Status of Application Process for Newton Park
Opened Public Comment

None

Closed Public Comment

Town Manager Scott Janke updated the council on the meeting of the Historic Preservation Board and the items relative to Newton Park. The Town as applicant has requested that the Seven Seas be designated as historic in order to do needed renovations. The Town was successful in that application and can move forward. In reference to the structure known as the Cottage, the HPB rejected the Town's request to destroy the Cottage and delayed the decision of relocation for 35 days to allow the Town time to provide a better location for relocation. Mr. Janke outlined the Town's options for the disposition of the Cottage: appeal the demolition decision to the Town Council; request that the Town show an economic hardship to the HPB and request reconsideration; show the HPB a location for relocation; resubmit the application for demolition to the HPB. Mr. Janke indicated that the Town will move forward in accordance with Town Council direction in the Seven Seas reconstruction project.

Attorney Dalton outlined options: Withdraw the request to relocate, refile the application for the demolition, or if the Town chooses to move forward with the demolition request, the HPB can instruct the Town Council to attempt to relocate. Ms. Dalton added that if the structure is no longer considered historic, the owner can do whatever with the structure.

It was the consensus of the Council not to appeal. It was the consensus of Council that options can be discussed in a regular council meeting, and that a worksession on this subject is not necessary. Council will request a continuance from the HPB for 90 days total, do an RFP and solicit bids, and make a good faith effort to find a location for the cottage.

Recess: 9:50 PM

Reconvene 9:57 PM

X. TOWN MANAGER'S ITEMS

A. Beach Nourishment Meeting Summary

Town Manger Scott Janke briefed the Council that he has had six meetings with property owners regarding easements rescission. Mr. Janke summarized that he will get all Council to participate aggressively with the meetings regarding easements; will check on the status of the ILA; check on the official status of the "vegetation" plan.

B. Monthly Reports

Town Manager Scott Janke updated the Council on the County's installation of new sewer line on Old San Carlos between 1st & 2nd Streets, which would be closed about 150 days. Town staff asked for the County to wait until after May 1st.

Town Manager Scott Janke sought a policy decision from the Town Council regarding whether the Council would entertain putting on an easement a hold harmless and indemnification clause in a public utility easement, as a result of an applicant's request. The consensus of Council was No.

XI. TOWN ATTORNEY'S ITEMS

Town Attorney Anne Dalton referenced the gas tax interlocal and settlement agreement that was approved March 3, 2009 by the BOCC, that the County Attorney's office confirmed that there had been not changes to the document submitted to the BOCC by the Town and had sent an electronic version of the agreement to the Town Clerk.

Attorney Dalton requested time at an upcoming Council M&P to discuss Attorneys' fees and budget, and methods to do some cost-cutting. Council agreed to honor this request.

XII. COUNCILMEMBERS ITEMS AND REPORTS

A. Mayor – Status of Parks and Recreation

B. Status of March 19 Town Hall Meeting

Councilmember Raymond had no items.

Councilmember List mentioned a request for a waiver of the no parking for volunteers of the Matanzas Preserve. Ms. List mentioned adding to the bottom of the agenda, guidelines for public comment. Ms. List mentioned the Beach Elementary School principal's interest in having some form of town council meeting at the school. Vice Mayor Acken referenced the "hippo" water slide in the times square area, requesting a way to allow the operation to continue for 60 days. Town Manager Scott Janke indicated there may be a short, administrative solution. Council agreed to discuss this at the March 18, 2009 M&P meeting.

Councilmember Babcock mentioned that Jim Rodwell was appointed the chairperson of the Community Resource Advisory Board. Mr. Babcock mentioned the request for parking along the Matanzas Preserve, that the only time parking is an issue is during the peak months. Mr. Babcock referenced a resolution from the City of Bonita Springs regarding one of the bills on oil drilling off the coast of Florida. There was not a consensus of Council to pursue this item. Mr. Babcock offered for consideration what it would take to become a "green city."

Mayor Kiker mentioned he would be attending one on one meetings with the BOCC on April 7, 2009. Regarding the status of parks and recreation, Mayor Kiker indicated the Council was invited along with Lee County to walk the grounds of Bay Oaks, and asked whether the Council would like to instruct staff to explore the development of parks and recreation to include Bowditch and Lynn Hall. Mayor Kiker mentioned the

“meet & greet” outline that he has for the Mar 19, 2009 Town Hall meeting, with participation by twenty different groups.

XIII. RECAP OF ACTION ITEMS

Town Manager Scott Janke outlined the action items from the evening.

XIV. AGENDA MANAGEMENT

XIV. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Frank Schilling offered his opinion that in his experience over the years, there are good people at Town staff.

Closed Public Comment

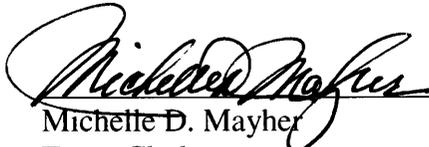
MOTION: Councilmember List moved to continue this meeting to March 18, 2009 at 9:00 AM for the purpose of discussing Administrative Agenda Item C., Community Development fee schedule. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

Recess: 11:26 PM

Adopted 4.20.09 With ~~Without~~ Changes. Motion by List / Babcock
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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