



# MINUTES

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

**APRIL 20, 2009**

**6:30 P.M.**

## **I. CALL TO ORDER**

Mayor Kiker called to order the meeting of Town Council at 7:25 P.M.

## **II. YOUTH COUNCIL**

Youth Council was not present.

## **III. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Councilmember Jo List thanked Town Staff for their work during the water line crisis. Manager Janke also thanked the Council Members for caring but not interfering with the work at hand.

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

### **A. Resolution 09-06, MRTF, Request Supporting the Formation of the Estero Bay Pole and Troll Zones**

Charles Hester, chairperson for the Marine Resources Task Force indicated a willingness to forego items due to the length of the meeting.

Jeff Werner, vice chair of MRTF summarized resolution 09-06, supporting the creation of two non internal combustion motor zones aka the pole and no troll zones in the Estero Aquatic Preserve near Fort Myers Beach to help protect the sea grass beds. Mr. Werner identified the first area as being by Big Carlos Pass next to Lovers Key and the second area as Long Key from marker G29 to G13.

Mr. Werner indicated there will be signage at the entry point and that a lot of education would be going out so the public would be aware as to the reason for the zones and consequences for lack of compliance.

### **Opened Public Comment**

Public Comment was heard:

- John Albion, President FMB Chamber of Commerce indicated the Chamber is not taking an official position, however cautioned the Council regarding increasing laws that may punish boaters, and to be prepared with an educational strategy to gain the desired results.

**Closed Public Comment**

**MOTION:** Councilmember Babcock moved approval of resolution 09-06. Councilmember List seconded the motion.

**VOTE:** 4 – 1 Motion passed 4-1 with Councilmember Acken dissenting.

**B. MRTF Request for Consideration of a New Town Beach Furniture Ordinance**

Jeff Werner, vice chairman of the MRTF presented information regarding personal watercraft rental, parasail, beach chair and umbrella rental vendors. Of these categories only the personal watercraft and parasail businesses are currently licensed and regulated by the Town. In January 2006, MRTF held a public workshop that was attended by beach furniture vendors, the result of which is the proposed **section 14-12 to the LDC**. On April 2, 2007, previous Council voted to exclude section 14-12 from **Ordinance 07-03**. MRTF is asking Council to bring this omitted section back to the table by amending the LDC to include the proposed section 14-12.

**Opened Public Comment**

None

**Closed Public Comment**

**MOTION:** Vice Mayor Acken moved to table this item until Council can speak to business vendors. Mayor Kiker seconded the motion.

**VOTE:** Motion fails 3-2, with Councilmember Babcock, Councilmember Raymond and Councilmember List dissenting.

**MOTION:** Councilmember Raymond moved to send this item to the LPA. Councilmember Babcock seconded the motion.

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

**V. PROCLAMATIONS**

**A. NATIONAL PUBLIC WORKS WEEK**

Debi Turner, Executive Assistant to the Town Manager, read the proclamation. Mayor Kiker presented the proclamation to Public Works Director, Jack Green.

**Opened Public Comment**

Public Comment was heard:

- Terry Cain, a resident of Fort Myers Beach FMB, read a letter previously sent to Council regarding beach renourishment. Mrs. Cain indicated she would like to keep the easements that have already been signed, that dunes and plantings could be a negotiating factor, and urged Council to keep communications open and move forward with beach nourishment.
- Jeff Werner encouraged Council to do everything in their power to make beach nourishment a reality.
- Joanne Shamp commended the council on their work, however, opined that the artificial beach project cannot be justified. Ms. Shamp cited statistics and financial costs and asked the Council to consider how quickly the added sand will be washed away and the negative impact on sea life.
- Tom Merrill, resident on Indian Bayou, questioned the reasoning for wanting to proceed with a project in this economic time that will cost dearly now and in years to come without a clear objective, and urged Council to take a look at what is needed for infrastructure and move ahead.
- John Albion, president FMB Chamber of Commerce, applauded the Council for the repaving of a portion of Estero Blvd. As to beach nourishment, Mr. Albion urged the Council to work with the County Commissioners.

**Closed Public Comment**

**VI. CONSENT AGENDA**

- A. Approval of Minutes: March 16<sup>th</sup>, 2009
- B. Approval of Minutes: March 18<sup>th</sup>, 2009
- C. Acceptance of Bid and Award of Contract for Calusa Carts
- D. Special Even Permit Application  
Yucatan Beach Stand Cinco De Mayo Party
- E. Resolution 09-07, Requesting Opposition of SB2016 and HB 1123  
Relating to Environmental Permitting
- F. Resolution 09-08, Requesting Support of SB1296 and HB707  
Healthy Beaches
- G. Resolution 09-09, Requesting Opposition SB 1436 and HB987  
Water Management Districts' Use of Certifications of Participation

**MOTION:** Councilmember List moved to approve the Consent Agenda.  
Councilmember Babcock seconded the motion.

**VOTE:** Motion passed 5 – 0.

*Recess:*

*Reconvene: 8:50 PM*

With the consent of Council, Mayor Kiker amended the agenda with the addition of two items, the Charter Amendment brought forward from the Public Works Services Inc. Board of Directors Meeting, and Beach Nourishment.

**VII. ADMINISTRATIVE AGENDA**

**A. INTRODUCTION OF ORDINANCE 09-03 ADOPTION OF COMPREHENSIVE PLAN ADMENDMENT**

Attorney Dalton read the title:

**ORDINANCE 09-03**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH ENTITLED "SEVENTH AMENDMENT TO THE FORT MYERS BEACH COMPREHENSIVE PLAN"; ESTABLISHING PURPOSE AND INTENT; AMENDING CHAPTER 1, INTRODUCTION; AMENDING CHAPTER 4, FUTURE LAND USE ELEMENT; AMENDNG CHAPTER 5, COASTAL MANAGEMENT ELEMENT; AMENDING CHAPTER 7, TRANSPORTATION ELEMENT; AMENDING CHAPTER 8, UTILITIES ELEMENT; AMENDING CHAPTER 9, STORMWATER MANAGEMENT ELEMENT; AMENDING CHAPTER 11, CAPITAL IMPROVEMENTS ELEMENT; ADDING CHAPTER 16, PUBLIC SCHOOLS ELEMENT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**MOTION:** Councilmember List moved to send ordinance 09-03 to public hearings before Town Council. Councilmember Raymond seconded the motion.

**VOTE:** Motion passed 5 – 0.

**B. UTILITY OWNERSHIP**

Town Manager Scott Janke sought action on the part of the Council to maintain the current ownership of the water utility pursuant to the reasons stated in the Public Works Services Inc., Board of Directors actions taken on April 20<sup>th</sup>, 2009 for the reasons set forth in the corporate minutes.

**MOTION:** Councilmember Babcock moved to maintain the current ownership of the water utility as discussed in the PWSI meeting. Councilmember List seconded the motion.

**VOTE:** Motion passed 4 to 1 with Vice Mayor Acken dissenting.

**E. PUBLIC WORKS AGENCY AMENDMENT TO ORD. 00-01**

Town Manager Scott Janke indicated this item is brought forward from the PWSI Board of Directors meeting, seeking authorization and direction to staff and the attorney to make amendments to ordinance 00-01 to reduce the number of annual meetings to one, and to move all responsibilities for Stormwater systems to the Town Council.

**MOTION:** Councilmember List moved to moved to direct staff and the Town attorney to make amendments to ordinance 00-01 as outlined by Mr. Janke. Councilmember Babcock seconded the motion.

**VOTE:** Motion passed 4 to 1 with Vice Mayor Acken dissenting.

#### **F. REFERENDUM TO CHARTER**

**MOTION:** Councilmember Babcock moved to bring forward to the May 20<sup>th</sup> M & P meeting a discussion that would include referenda to change the Charter to allow longer periods of borrowing than 36 months. Councilmember Raymond seconded the motion.

**VOTE:** Motion passed 4 to 1 with Vice Mayor Acken dissenting

#### **G. BEACH NOURISHMENT**

Town Manager Scott Janke summarized the current status of the beach nourishment project, from the interlocal agreement approved in February by the Town Council and forwarded on to the Board of County Commissioners. Mr. Janke indicated that before the Council are amendments to the interlocal that accomplish satisfaction of things important to the Council and some items sent back to the Town from the County.

Town Attorney Anne Dalton read the actual changes from the original document to the amended document, and reviewed the termination provisions.

Atty. Dalton read the items of issue between the Town and County.

1. Lee County will be primarily responsible for acquisition of easements
2. If a reduction in Town parking spaces results in a diminution of the State's share of funding, the Town will pay that difference in funding and this payment will not be subject to the \$1 million "cap"
3. The Town will not charge different parking rates for islanders and others (i.e. the Town will eliminate or modify the Town resident parking pass)
4. Both parties have the ability to review the project costs at the time the construction bids are opened and prior to the County's award of a construction contract. Either party may cancel the Agreement at that time, if the Town's cap would be exceeded by the Town's share of the estimated project construction costs. If the Town cancels, it would not be responsible for any project-related costs incurred by the County.
5. After award of the construction contract, either party will have the ability to cancel the Agreement but each will bear its proportionate share of the costs incurred as of the date of such cancellation.

.Responding to questions from Council regarding sand quality, Town staff member Keith Laakkonen, Environmental Sciences Coordinator, spoke to sand to be used, rocks, sand size, silt content and color.

**MOTION:** Councilmember Raymond moved to accept amended document 04-20-09; Councilmember List seconded the motion.

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

**VIII.**

**IX. TOWN MANAGER'S ITEMS**

Town Manager Scott Janke updated the Council on the action items, speaking to the paving of Estero Boulevard, that as a county project, the Town has no control over the work, and that the Town still waits for work from the County on the completion of the paving.

Mr. Janke indicated the RFP on the Cottage are due on June 15<sup>th</sup>.

**X. TOWN ATTORNEY'S ITEMS**

In response to Vice Mayor Acken's question Attorney Dalton stated the next Town election will be the second Tuesday in March of 2010.

**XI. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Raymond thanked everyone for kind words, cards and visits while he was ill.

Councilmember List reviewed her meeting at the Coastal Advisory Meeting, entailing requests for funding from the TDC. She will be at the TDC meeting when they vote.

Vice Mayor Acken thanked the VOICE volunteers and suggested a crossing guard program when the VOICE people are not there. Suggested gathering email addresses to provide information for agendas, water notices, etc. to the public.

Councilman Babcock states that the Budget Workshop could be moved to morning on the 18<sup>th</sup> of June since his schedule had changed. The meeting is 9 a.m. June 18<sup>th</sup>.

**XII. RECAP OF ACTION ITEMS**

**XIII. AGENDA MANAGEMENT**

Mgr. Janke wanted to highlight on Wednesday Bay Oaks and an item for the purchase of property. For May Utility Ref. and Financing and Electric Utility Franchise Fee for that meeting.

**XIV. PUBLIC COMMENT**

**Opened Public Comment**

- Public Comment was heard
- Lee Melsek opined that walking on the Beach Nourishment ILA did not violate the Sunshine Law, but put a dagger through that law. Mr. Melsek added that there are a lot of people on Fort Myers Beach who do not want nourishment, and should have been informed that nourishment was to come for a vote.

**Closed Public Comment**

**XV. ADJOURNMENT**

The meeting adjourned at 11:11 PM.

Adopted 6-1-09 With/Without Changes. Motion by Babcock/Raymond  
(Date)

Vote: 5-0

  
Michelle D. Mayher  
Town Clerk

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