



# MINUTES

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

**May 18, 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 Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

## **II. INVOCATION**

Reverend Alice Marcrum, St. Raphael's Episcopal Church

## **III. PLEDGE OF ALLEGIANCE**

## **IV. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

PTO meeting for the year on May 19<sup>th</sup> at 2:25 PM in Media room.

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

No reports.

## **VI. PUBLIC COMMENT**

**Opened Public Comment**

None

**Closed Public Comment**

## **VII. PROCLAMATIONS**

A. Police Week – Captain Matt Powell, LCSO, West District

Lt. Matt LeClair accepted the proclamation for Capt. Powell and gave a short speech in appreciation.

- B. Safe Boating Week – Daniel Eaton, Flotilla Commander, US Coast Guard Auxillary  
Commander Eaton accepted the proclamation and gave a short speech in appreciation.

## VIII. PRESENTATIONS

- A. The Great Calusa Blueways Paddling Trail – Betsy Clayton, Waterways Coordinator for Lee County Parks & Recreation

Ms. Clayton summarized the special features of this resource and gave information about how to access and use these waterways, safely and enjoyably. The festival runs Oct. 23<sup>rd</sup> through Nov. 1<sup>st</sup>. She encouraged the public to visit the website [www.calusablueway.com](http://www.calusablueway.com). Mound House will be one of the sites for presenting this festival, on Saturday Oct. 24<sup>th</sup>, and Bonita will host events for the project. Mr. Janke added that there is also a link on the Town's website to this one.

## IX. CONSENT AGENDA

- A. Contract Extension – Newton Interpretive Signage

**MOTION:** Vice Mayor Acken moved to approve the Consent Agenda. Motion seconded by Councilmember Babcock.

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

## X. PUBLIC HEARINGS

- A. First Public Hearing – Ordinance 09-01, ROW Vacation

Town Attorney Anne Dalton read the title:

### **ORDINANCE 09-01**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; FINDING OF NECESSITY; PURPOSE AND INTENT; ADOPTING AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS;" ESTABLISHING APPLICATION REQUIREMENTS AND LEGAL PROCEDURES FOR VACATING TOWN-OWNED PUBLIC INTERSTS IN REAL PROPERTY SEVERABILITY; AMENDING DIVISION 5 "PLATS AND VACATIONS;" AMENDING SUBDIVISION II "VACATION OF TOWN INTEREST IN REAL PROPERTY;" AMENDING SECTION 10-218 "PURPOSE AND INTENT;" AMENDING SECTION 10-219 "PPLICATIONS;" AMENDING SECTION 10-220 "PROCEDURE;" PROVIDING SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.**

Mr. Janke referred to Dr. Shockey for an overview of his report and he gave a background regarding the issue of vacation of the Town interests in real property. The recommended form for the ordinance includes in depth information to assist the Council in their decisions for procedure and process. Staff recommendations were

included in the packets, along with supporting information, as were the LPA's concerns.

Councilmember List asked how often the Town is actually faced with this situation. Dr. Shockey said it may be about 5 or 6 times. Vice Mayor Acken asked if there was any mechanism in place for recouping administrative costs of the Town for someone to pursue this. Dr. Shockey said that the county has a fee for this service so the Town would likely follow the same schedule.

Ms. Rochelle Kay, LPA member, addressed the Council and advised them of the LPA's recommendation to have a 2 appraisal requirement because it is very important an issue to vacate Town property.

**Opened Public Comment.**

None

**Closed Public Comment**

Town Manager Scott Janke indicated that this ordinance provides Council with the tools needed to simplify the process, Discussion among council involved how this would affect current applicants to which Dr. Shockey advised that, as of now, there are some pending applications wherein citizens have applied, paid money to the county and then the county did not follow through. Since there is no process, these do not have a timeframe to follow. Discussion ensued regarding fixing this system and how those applicants in limbo can get satisfaction.

Mayor Kiker asked if there would be restrictions on certain ROWs wherein the Town would automatically refuse. Ms. Dalton said this could be added to the ordinance and the Mayor said he would like this question addressed for the second hearing. Also, more discussion regarding the appraisals should take place before a decision is made, possibly with a list of approved appraisers. Mr. Janke agreed that the Town should also be involved in the picking of the appraiser. In addition, Mayor Kiker suggested timelines for the process, adding he would like some assurance that, should there be a possibility that there might be a Town use for the property in the future, the Town could just not vacate their interest. Dr. Shockey assured that this process, in passing an ordinance, does not make it law that the property be turned over; rather this creates a process by which the Town may judge each situation separately and uniquely.

**MOTION:** Councilmember List moved that Ordinance 09-01 move forward to a second public hearing on July 13, 2009 at 9:00 AM. Councilmember Babcock seconded the motion.

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

**B. Public Hearing, Ordinance 09-04, Amendment to 00-01, Public Works Agency**  
Attorney Dalton read the title:

**ORDINANCE 09-04**

**TOWN OF FORT MYERS BEACH PUBLIC WORKS AGENCY**

**AN ORDINANCE AMENDING TOWN ORDINANCE 00-01 TO REDUCE THE NUMBER OF MANDATORY MEETINGS TO BE HELD BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS AGENCY; TO ALTER THE GENERAL POWERS TO BE EXERCISED BY THE TOWN OF FORT MYERS BEACH PUBLIC WORKS AGENCY BY REMOVING THE PROVISION OF STORM WATER DRAINAGE MATTERS; PROVIDING FOR SEVERABILITY, AUTHORITY AND EFFECTIVE DATE.**

Mr. Janke gave a brief summary and background as to how this matter came before the Council and why it is necessary.

**Opened public comment.**

None

**Closed Public comment**

**MOTION:** Councilmember Raymond moved to approve Ordinance 09-04, which alters the provisions of Ordinance 00-01, regarding mandatory meetings and storm water duties of the Town of Fort Myers Beach Public Works Agency. Second by Councilmember List.

**VOTE: ROLL CALL:** Councilmember Raymond-aye  
Councilmember List-aye  
Mayor Kiker-aye  
Vice Mayor Acken-nay  
Councilmember Babcock-aye  
Motion passes 4-1; Vice Mayor Acken dissenting.

**Hearing closed at 7:48 PM.**

**XI. ADMINISTRATIVE AGENDA**

A. Extension of DOS2006-00041 (Casa Bahia)

Dr. Shockey referred to the LDC sec. 10-123, which states that Town Council may grant 2 year extensions on approved development orders, provided certain criteria are met (in packet). He provided necessary information and requested the extension.

**Opened Public comment**

None

**Closed Public comment .**

**MOTION:** Councilmember Babcock moved approval of Resolution 09-14, filling in the “whereas” date being May 18<sup>th</sup>, Town Council approves the applicant’s request, confirming that the findings of fact and conclusions as set out in the draft resolution are part of the motion. Second by Councilmember List.

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

B. Requesting Council Direction Regarding Educational Component of Ordinance 08-

15, Regulating Use of Fertilizer

Environmental Sciences Coordinator, Keith Laakkonen asked for direction on a letter to Lee County. The fertilizer ordinance (Sec. 8) requires a Town certification program for commercial applicators. He said that the county does hold that course, which Keith attended, and it would be appropriate to certify those performing this function in the Town. The County needs a letter stating that their course will satisfy the Town's needs and then they can offer the course at no cost to the Town.

**Opened Public comment**

None

**Closed Public comment .**

Council agreed to approve the letter to be sent.

D. Offer To Sell Property, Corner Lagoon Rd. and Estero Blvd.

Mr. Janke referred to the blue sheet in the packets, reviewing that the Town has had appraisals done on the property and they indicate value at about \$44.91 psf. He sent a letter to the appraisers to advise that this was too high. Mr. Janke summarized his report regarding plans for a possible parking lot on the property and the finding that the value of this parcel is too high but the Town is in need of land. Bay Oaks is a possibility for consideration.

**Opened Public comment**

None

**Closed Public comment .**

**MOTION:** Councilmember Babcock moved to delay decision on the issue subsequent to the workshops on June 17-18, 2009, and inform the owner that he should accept any other offer in the meantime. Second by Councilmember List.

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

C. FY09 Budget Amendment

Mr. Janke gave a summary of a recent M&P workshop and the outcome. Evelyn Wicks, Director of Finance, presented a budget amendment (included in packets) to balance the current fiscal year, basically representing a cut of about \$710,000.00. Ms. Wicks highlighted some of the items for the Council and things that changed or stayed the same, but said that revenues have not kept up with projections. Councilmember Raymond complimented Evelyn for her integrity, dedication and professionalism in her job performance pertaining to these budgeting tasks.

**Opened public comment.**

None

**Public comment closed.**

**MOTION:** Councilmember Raymond moved to approve the budget amendment, Resolution 09-13, amending the FY 08-09 Town budget. Second by Councilmember List.

**VOTE:** Motion carried 5-0

E. Initiate LDC Amendments Regarding Refuse Containers

Mr. Janke gave the detail summary of the Ad Hoc committee for dealing with this. Some suggestions were having lids on containers and walls around the dumpsters. Dr. Shockey gave specific details as to the current provisions and the newly proposed ones to make compliance easy for residents.

**Opened public comment.**

None

**Public comment closed.**

**MOTION:** Councilmember Babcock moved to authorize the LPA to hold a hearing on the draft language for LDC changes to consider improvements for garbage container handling and visibility. Second by Councilmember List.

Mayor Kiker asked about permitting and guidelines and feels that the Town should have some say in the pick-up times and rules. Much discussion ensued about fence heights, trash can covers, ad hoc committees, etc.

Mr. Weimer, LPA Chair, addressed the Council, explaining the LPA's position on needing direction for this ordinance. Councilmember Babcock volunteered to write a policy for review for ad hoc committees.

**AMENDED MOTION:** Councilmember Babcock amended his motion, adding that the ad hoc committee could participate, by choice; Councilmember List amended her second

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

**XII. TOWN MANAGER ITEMS**

A. Bay Oaks Update

Mr. Janke referenced blue sheet 2009-073 and the ad hoc committee that met and discussed this project, since the County will no longer be involved after Oct. 1, 2009. He summarized the points of interest from all of the recent meetings and correspondence regarding the turnover of the property. The letter from Ray Judah is in the packet. The County did agree to fund the unfunded capital reserve fund. Mr. Janke asked for Council direction, adding that his staff has been working diligently on the proposed budget and program structure to this point and need to know if the Council will actually support the Town taking this over. He asked that the motion from Council include a \$220,000.00 payment by the County to the Town for unfunded capital reserves, as identified in the ad hoc report, and a one-time cash payment of \$100,000.00 to help with the transition and operations for the next fiscal

year. Vice Mayor stated that he didn't see this item on the agenda; this was an item that was not on the revised agenda. Councilmember Babcock and Vice Mayor Acken objected to not having any time to review the packet of information and being asked to make a decision. . Mr. Janke praised staff members who are in complete developmental negotiations with the County, the specific program heads, etc. for this project and wholeheartedly supports the progressive efforts to save the center. He just reiterated that there is not much time, and not much staff, to do a proper take over in 4 months.

**MOTION:** Councilmember List moved that Council direct the Town manager and the Town attorney to proceed with the development of an inter-local agreement to accept the transfer of the Bay Oaks Recreation Center and all lands associated with it, along with a capitalization cash payment of \$220,000.00+ to cover unfunded capital reserves, as well as an additional \$130,000.00 to fund facility operations for FY2010.

Motion failed for lack of a second.

**MOTION:** Councilmember Raymond moved to direct Town manager and Town Attorney to proceed with the development of an inter-local agreement to accept the transfer of the BayOaks Recreation Center and all lands associated with it, along with a one-time payment of \$220,000.00 from Lee County to cover unfunded capital reserves. Town Council urges that Lee County pay, a one-time cash payment of \$200,000.00 to help fund facility operations, plus additional capital for FY 2010. Second by Councilmember List.

**AMENDED MOTION:** Councilmember Raymond moved to direct Town manager and Town Attorney to proceed with the development of an inter-local agreement to accept the transfer of the Bay Oaks Recreation Center and all lands associated with it, along with a one-time payment of \$220,000.00 from Lee County to cover unfunded capital reserves. Town Council urges that Lee County pay, a one-time cash payment of \$130,000.00 to help fund facility operations, plus additional \$70,000 for reserves for FY 2010. Second by Councilmember List.

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

B. Beach Nourishment Update

Mr. Janke referred to a report he received from Lee County Natural Resources, in packets. He said that the website has information waiting to be posted to help the public.

C. Estero Blvd. Repaving

This is in the CIP process with the County. The repaving is shoulder to shoulder and it is being coordinated with the ROW survey.

D. Seawalls

(from the Action List); Councilmember Babcock asked for a firm date to address this, since the date now is "TBD." He pointed out that presently the Comp Plan states that beach protection comes from dunes, beach nourishment and vegetation, and if your seawall is destroyed, you cannot replace it. If there is no beach nourishment, what does this do to the Comp Plan and seawalls? This should be made a staff task to find out when this will be done.

E. Traffic Light at Lenell Rd.

Vice Mayor Acken suggested that this issue be sent to the LPA for review as this remains a high accident location.

F. Newton Park

Mayor Kiker asked Mr. Janke when staff will start working of Seven Seas. He referred to pg. 3 of their packets and said that they are asking for bids. Newton Cottage RFPs.

**XIII. TOWN ATTORNEY'S ITEMS**

Ms. Dalton reported that she sent Council an email regarding a mediation order in the matter of Tezak vs Town of FMB. The date is July 6, 2009 at 9:00 AM and she requested an executive session before the mediation. Session set for June 1, 2009 at 8:00 AM.

**XIV. COUNCILMEMBERS ITEMS AND REPORTS**

A. HPB Request:

Councilmember Babcock referred to a document regarding expenditures for HPB plaques. He said that the HPB is requesting to spend the money in a different way. Councilmember Raymond clarified how the funds were meant to be used and does not support the use of the money in any other way. He added that the Community Development Director does not have the authority to approve this.

**MOTION:** Councilmember Babcock moved the expenditure of \$8500.00 for the request of the HPB to file for the National Registry. Motion dies for lack of a second.

B. Advisory Committees

- Decision on CRAB appointment for June 15<sup>th</sup>.
- ACC has 2 vacancies and have gotten 2 applications. Discussion ensued about residency requirements.
- LPA opening has been advertised to accept letters until June 5<sup>th</sup>.
- There should be a joint meeting with the LPA to be scheduled.
- Mayor Kiker asked for a status on CELCAB to rename Newton Park. Mr. Janke said there is nothing scheduled and all agreed this would be a major time consuming and costly project.

**MOTION:** Vice Mayor Acken moved that discussion of name change for Newton Park be tabled indefinitely. Second by Councilmember List. Motion withdrawn until there is a formal request from CELCAB.

- Need for a policy on Ad Hoc committees- Councilmember Babcock volunteered to put one together for review at the next meeting.

- Vice Mayor requested a workshop to explore outdoor display and noise ordinance. Council agreed.
- Councilmember List is putting together an ad hoc committee and review the noise ordinance. She also made a public announcement that on Saturday, it is her daughter's 30<sup>th</sup> birthday and the last day that she herself will smoke cigarettes.
- Councilmember Raymond stated that the Landmark Historical Signs to be approved must have a date to address this. Tentatively set for second meeting in October 2009.
- Mayor Kiker reported that there are special events upcoming and the Town is out of money for events. He asked where they get the funding for any other events. Mr. Janke agreed that, after paying for the July 4<sup>th</sup> event, there is no more funding.

#### **XV. AGENDA MANAGEMENT**

- Mayor Kiker added the Escalation Process and said it is ready to discuss.
- Councilmember Babcock brought up the Times Square waiver for open containers. Mr. Janke said last year this was done through the sheriff's office but the Vice Mayor Acken suggested that this be done administratively to save time and money. Mayor Kiker stated that there is already a process in place.
- Eliminate Comcast Channel Management
- Performance Measure-stand alone; does not belong under this topic
- 5-0 Implementation is repeated; eliminate one entry
- Special Events Permit-PNP
- Beachscape-done
- Add: Joint workshop with the LPA
- Add: Administrative Interpretation for Seawalls
- Add: Escalation Process

#### **XVI. RECAP OF ACTION ITEMS**

- Move forward ROW vacation Ordinance for 7/13/09
- Ordinance 09-04-completed
- Extended Casa Bahia
- Mayor to Sign letter regarding fertilizer training
- Amended FY budget
- Hold on offer to sell
- Sent the refuse container work for the LDRs to the LPA
- Bay Oaks-Inter-local agreement moving ahead; public meeting 6/8/09
- Executive session-Tezak on 6/1/09
- Discussion and dates for LPA joint meeting
- Residency requirements regarding committee memberships

#### **XVII. PUBLIC COMMENT**

Fort Myers Beach Town Council  
May 18, 2009

Roy Hinkleman-Laguna Shores addressed the meeting and the rubbish issue. He said that there is no problem in his neighborhood and thinks it's not a problem to ask people to clean up.

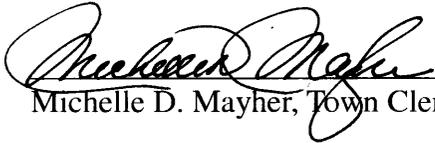
Dennis Weimer, LPA Chair, addressed the meeting, specifically the issue of the HPB usage of funds of the \$10,000.00 line item. He explained the HPB position and presented that he and the other members felt it is still a valuable way to use the funds.

**ADJOURNMENT**

The meeting adjourned at 10:50 PM.

Adopted 6-15-09 With/Without changes. Motion by Acker/Babcock  
(DATE)

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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