



MINUTES

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

JUNE 15, 2009

6:30 PM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 6:33 PM. Present with Mayor Kiker was Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher. Councilmember Acken was delayed a few minutes in arriving. Special guest was Lee County Commissioner Ray Judah.

II. PLEDGE OF ALLEGIANCE

Deacon Scoop Kiesel from the Church of the Ascension led the pledge.

III. INVOCATION

Deacon Scoop Kiesel from the Church of the Ascension led the Invocation.

Mayor Kiker addressed those in attendance and indicated there would be a break in procedure and asked to keep public comment at that time to comments concerning Bay Oaks.

Councilmember Acken arrived.

IV. PUBLIC COMMENT

**Opened Public Comment
Public Comment was heard:**

- **Frank Kunze** – Mr. Kunze commented on the closing of the beach pool indicating his opinion that November would be a better time to close for maintenance due to it being one of the slowest months. He stated most off season use is Friday afternoons and weekends and highly recommended remaining open weekends through the off season and suggested more advertising about the pool. Mr. Kunze presented brochures he had printed

regarding the pool and a list was given to staff for the record of 45 signatures all of whom wanted the pool to remain open.

- **Jim Leisure** – Mr. Leisure represented the Bay Oaks Social Seniors, a group of over 250 seniors on the island. Mr. Leisure indicated the need for the activities at Bay Oaks since the time spent there is for some the only social time they have. He stressed concern about the loss of a full time director and indicated that he along with others had formed a committee to look into possibilities for funding and presented their findings in writing to Council and Staff. He went on to clear up matters concerning their desire for a director and a van and issues with the budget.

Mayor Kiker asked those with Mr. Leisure to please stand, approximately 28 were counted.

- **Stephen Light** – Mr. Light came as an advocate for the pool and presented his thoughts on the many assets of having a community pool and reminded Council that the pool is an asset that generates income. Mr. Light went on to recommend an across the board staff cut to be able to fund the pool and encouraged Council to continue to do things that would attract a higher quality of life for all those on the island.

- **Jim Stevens** – Spoke on the need for promotion of the Town pool. He stated that he never felt the pool had been promoted in the past and was glad to see the brochure available and encouraged additional promotion.

- **Charlie Whitehead** – President of FMB Little League, spoke on all the sporting activities held at Bay Oaks and the fact that Council could not spend money on anything more cost effective than all activities at Bay Oaks. He looked at the transition as an opportunity for all programs to improve and grow. Mr. Whitehead felt the County should provide not only transitional funding but on going operational funding and offered his assistance throughout the transition. He wanted to remind Council what Bay Oaks was worth to the Town and what an investment it was to the community as a whole.

Mayor Kiker asked all those to stand representing the FMB Little League, count being approximately 30.

- **Tom Mizwa** – Mr. Mizwa spoke as a father and relative newcomer to the island and his desire for the pool's services to remain open along with the programs at Bay Oaks. Mr. Mizwa also encouraged the need for additional promotion and advertising of both the pool and Bay Oaks.

Mayor Kiker than asked for those in attendance to support the pool to please stand. It was a unanimous showing for the pool.

- **Nancy Redenius** – Ms. Redenius, a 40 year resident, spoke regarding the importance of Bay Oaks and of the help it gave her in raising her boys with all the sporting activities and holiday parties, and after school activities.
- **Kim West** – Speaking as a resident and mother, reiterated the need for the beach pool for her family, their friends and all island residents.

Closed Public Comment

V. SPECIAL TOPIC DISCUSSION

A. Bay Oaks Recreation Center

Town Manager Janke spoke to the fact that everyone in the building and sitting at the dais supported all that was said during public comment. Mr. Janke addressed the issue of the pool being closed and indicated that idea did not come from Town Hall. A temporary maintenance closing, yes, but the pool would not be closed.

Presentation by Nicole Olsen on Bay Oaks

Nicole introduced herself and stated she had been assigned to the transition of Bay Oaks from the County to the Town. A Power Point presentation was given showing all anticipated activities and that all programs would need to be self supporting. She went on to list possible new opportunities and asked residents to let Staff know what they wanted, it was their Rec Center. Nicole then displayed the new logo, a mascot called the BORC, to gain awareness and promote involvement in Bay Oaks.

**The Honorable Ray Judah, Lee County Commission Chair
Bay Oaks Recreation Center**

Commissioner Judah took the floor to address the transition of Bay Oaks from the County to the Town. He congratulated Mayor Kiker, the Council, Mr. Janke, Nicole Olsen and Jack Green regarding their hard work. Mr. Judah discussed his life as a public servant, his connection with Bay Oaks over the years and the work that was put forth for the construction of the FMB pool. He indicated that the County would not leave the Town holding the bag regarding Bay Oaks, even though we are in hard economic times.

Mr. Judah said he recognized the need for a smooth transition and to continue to offer it as a campus, a center piece for the community and all those who visit Fort Myers Beach. He reiterated that the County Commission recognized the

importance of the partnership and that discussions were continuing how best to make the transition. They realized that there are improvements and repairs that need to be made before turning the Center over to the Town. That there is capital funding in place and that there was some thinking from the administrative staff that the repairs to the roof should come from that funding. Mr. Judah, however, felt that repairs to the roof should be taken care of by the County right up front. There will also be some operational dollars to assist in taking over Bay Oaks.

Regarding the pool, Mr. Judah answered issues regarding graduated fees for those that are not beach residents. He indicated that legally since impact fees were used to build the pool, that could not be accomplished unless the Town repaid those fees. He discussed the need to keep fees reasonable so all could afford to utilize the pool, services and programs of Bay Oaks.

Commissioner Judah reinforced the fact that the County would be working hand in hand with the Town during the transition. Mr. Judah then introduced David Harner, Lee County Parks & Recs Director, who again reiterated the desire of the County to continually work to aid the Town with all aspects of running the Center and encouraged the Town to call them any time during the transition.

Mayor Kiker welcomed questions from the audience.

- Jim Leisure addressed the loss of the BOSS full time director, questioned the (CDBG) Block Grant and the start up of a 501C3.
- Charlie Whitehead questioned Mr. Judah on where the operational monies would come from, with Commissioner Judah indicating it would come from the general fund. Mr. Whitehead then asked if impact fees were used in the construction of Bay Oaks and if that would mean there could not be a graduated scale for the Rec Center itself. Mr. Judah felt that impact fees were not used for the Center and the Town probably could use a graduated scale for those non-residents using the Center.

Town Mgr. Janke stated that in meetings with the County administration he was told there would be no conditions on the title to the property of Bay Oaks.

- Becky Bodner – Ms. Bodner brought up concerns regarding the lack of a full time director. Mr. Judah understood the concerns but indicated that issue would fall on the shoulders of the Town of FMB. Mr. Harner concurred that it will be up to the Town of FMB as to how they develop the program. Mr. Janke indicated that the Town is already contributing to the program but will not be able to fund a full time employee for just that program.
- Josephine Castner - Ms. Castner voiced the desire for their present director to be kept on as the BOSS full time director.
- Ed Collins – Mr. Collins questioned whether the current grounds keeper for the

ball fields could be kept on, to which Mr. Harner indicated their technical expert services have been offered to the Town.

- Lee Melsek - Mr. Melsek questioned Mr. Judah about the statement reportedly made by Mr. Judah that either the Town took over Bay Oaks by Oct. 1st or it would close, at which time Mr. Judah stated he would never threaten the Town of FMB. Mr. Judah indicated the Rec Center is not going to close down, that the County will make sure they provide the capital dollars and operational dollars for a smooth transition. Mr. Melsek stated that from an earlier Council meeting Councilwoman List indicated that Mr. Judah had told her that if the Town could not take it over by Oct. 1st that the Center could stay open. Mr. Judah said he would not play what ifs and felt Mr. Melsek was taking it out of context. Mr. Judah went on to say the County would offer operational dollars to make it happen on Oct. 1st. Mr. Janke then stated that he was confident the Town could do it.

- Jim Stevens - Mr. Stevens spoke once again and offered up a petition of 191 signatures of BOSS members to Staff.

- Tom Blue - Mr. Blue asked that all keep in mind the long term affect of monies well spent.

Mayor Kiker reminded everyone that Bay Oaks was not closing but being transitioned from the County to the Town of Fort Myers Beach and what was being discussed was funding.

Nicole Olsen presented Commissioner Judah and Mr. Harner with Save the BORC T-Shirts.

Recess: 7:50 PM

Reconvene: 8:10 PM

Open Public Comment

Public Comment was heard:

- Elizabeth Chrissian - Ms. Chrissian stated that she lived aboard the boat, Liz Marie in the back bay near Snook Bight Marina. She described her life for the last 9 years living aboard her boat and advised Council of her qualifications and desire to be a member of the Anchorage Advisory Committee.

- John Albion – President Fort Myers Beach Chamber of Commerce. Mr. Albion invited all to the Taste of the Beach Festival, Sunday, June 21st.

Closed Public Comment

VI. PRESENTATION

A. Town of Fort Myers Beach Basic Financial Statements Annual Report Larson Allen LLP

Finance Director, Evelyn Wicks introduced Marty Redovan with Larson Allen.

Mr. Redovan discussed the Town financial statement with Council as well as auditing standards and audit adjustments. He then highlighted a management letter regarding MSBU charges and recording of all maintenance fees and explained the need for the Town and businesses to have paid their fair share. He went on to state the need for any outstanding monies owed to the Town to be captured and finalized and for these types of issues to be tracked and dealt with.

Comment 08-03 was for Evelyn to make sure she initialed documents she has reviewed.

Comment 08-04 concerned various contracts for the pool, the mooring field and others and to make certain insurance contracts are maintained and that the Town is included as an additional insured.

A discussion ensued as to the time line for filing the Town's financial statement. Sept. 30th was the deadline but it was encouraged to have it reviewed and completed prior to that date.

Mr. Allen continued to give a quick overview of the Town's Financials.

Council was given time to review the financial statement and encouraged to contact Staff or Mr. Redovan with any questions.

Recess 8:37 PM Reconvene at 8:48 PM

VII. CONSENT AGENDA

- A. Approval of Minutes: May 4th, 2009
- B. Approval of Minutes: May 18th, 2009
- C. FPAN Contract Extension FY 2010
- D. Special Event Permit Application: 1st Annual Jimmy B's Rooftop Bar 4th of July Picnic

MOTION: Vice Mayor Acken moved for approval of the consent agenda. Councilmember Babcock seconded the motion.

Mayor Kiker pulled item C.

AMENDED MOTION: Vice Mayor Acken moved for approval of the balance of the consent agenda. Councilmember Babcock amended his second.

VOTE: Motion passed 5 to 0.

Mayor Kiker voiced his reasons for pulling item C regarding the Mound House, stating he has lost site of the goal for the Mound House and the Newton House and asked Staff for an amount that has been spent so far including land.

Theresa Schober, Cultural Resources Director indicated \$850,000.00 had been spent since 1999 on the Mound House. Mayor Kiker questioned additional grant money to which Ms. Schoeber stated there was \$1.3 million from the TDC with \$250,000.00 spent.

Mayor Kiker than asked about monies on the Newton Property, to which Ms. Schober said there was \$500,000.00 in TDC money with \$180,000.00 spent and that the property had cost \$2.56 million with an additional \$164,000.00 of park impact fees for renovation of Seven Seas which was out for bid.

Regarding the Connecticut property, Ms. Schober reported the property was purchased in 2003 for \$200,000.00 and that there was an \$8,500.00 budget from park impact fees being used to design a parking lot.

A conversation ensued as to when these properties would actually be open for use. Town Manager Janke stated they were hoping for a CO for Newton by Oct. 15th, 2009. A discussion then began regarding the rezoning of the Newton Property with Dr. Shockey indicating it was in line for hearings.

Mayor Kiker voiced his concerns regarding these properties and when they would all be open and used by the public. Mayor Kiker felt a workshop was needed to discuss all of these projects to obtain more information for him to relay to the public. Town Manager Janke also addressed his concerns over these projects and that these were concerns of his when he was hired.

Mayor Kiker than proposed for Council to go back and look at the Goals and Objectives of the noted projects.

An explanation of FPAN (Florida Public Archeology Network) then began and that it was funded by the State.

Councilmember Babcock then mentioned that it would be nice to have a one page chronology of these projects. He also felt that Council could approve FPAN.

Councilmember Raymond then questioned FPAN and what the people would actually be doing. Ms. Schober stated that they would be educating people and yes the Mound House grounds were open and that education does go on nearly every day.

Vice Mayor Acken spoke regarding the Newton property and the issues with rezoning, with Mayor Kiker again questioning the lengthy rezoning timeline. Councilmember Raymond then discussed the Connecticut property and if there was to be a building there.

MOTION: Councilmember Babcock moved for approval of FPAN Contract extension FY 2010. Vice Mayor Acken seconded the motion.

.VOTE: Motion passed 5 to 0.

VIII. PUBLIC HEARINGS

A. First Public Hearing Ordinance 09-03, 2008-2009 Comprehensive Plan Amendment Adoption

Mayor Kiker opened the first of two hearings at 9:15 PM

Town Attorney Anne 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; AMENDING 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.

Opened Public Comment

None

Closed Public Comment

Vice Mayor Acken had comments he felt needed to be heard by the public. Mr. Babcock voiced his concern of matters being presented at the last minute and felt the public had the right to comment before moving to the final hearing.

Discussion ensued about the amount of time that would be needed to go through all of the amendments and how best to address them. Attorney Dalton explained some of the verbiage required to Council with Dr. Shockey providing additional information to assist Council in their understanding of the document.

Town Manager Janke suggested Consultant Spikowski be available to have meetings with Council. Dr. Shockey then explained the chain of progression of the ordinance through the LPA and DCA. A lengthy discussion continued as to direction, interpretation of wording and the setting of further meetings on the issues.

MOTION: Councilmember Raymond moved to continue the first public hearing on ordinance 09-03 to July 20, 2009 at 6:30 PM. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5 to 0

IX. ADMINISTRATIVE AGENDA

A. Discussion of Newton Cottage RFP Responses

Town Manager. Janke stated the Historic Preservation Board denied the request to demolish and delayed a request to relocate the cottage at Newton Park pending the Town doing additional work which would be accomplished by doing an RFP. After the advertising deadline there were no responses to move the structure. Staff then sought direction on how to proceed before the HPB. Mr. Janke's recommendation was to proceed with option 3 in Ms. Schober's report and a discussion of that option ensued. Mr. Kiker then questioned if an attorney was needed at the next meeting before the HBP and who Ms. Schober would be representing. Attorney Dalton indicated the Town was the applicant and could have Ms. Schober represent the applicant or some other person to do so, with regard to the need for a separate attorney that was up to Council's discretion.

MOTION: Councilmember Babcock moved to accept #3 to withdraw the current application and submit a new application for demolition with additional information given, with Councilmember Raymond attending to represent the interest of the Council and saw no need for additional legal representation. Councilmember List seconded the motion.

Mayor Kiker indicated he would not support the motion since he wanted another attorney present at the meeting. Councilmember Raymond wanted Town Manager Janke to attend. Vice Mayor Acken wanted to know if the will of the Council was to make the cottage go away and move forward with the Seven Seas as the primary structure on that spot. Councilmember Babcock felt that the Town had done its due diligence in attempting to have the cottage moved and felt the HPB would now be willing to allow the cottage to be demolished.

VOTE: Motion passed 3 to 2 with Mayor Kiker & Vice Mayor Acken dissenting

Recess: 9:56 PM Reconvene 10:10 PM

Mayor Kiker apologized to the audience for having omitted public comment on the Newton Cottage discussion.

Opened Public Comment

Public Comment was heard:

- **Ceel Spuhler** - Ms. Spuhler felt a workshop would be good concerning the Mound House so Council would become aware of all that goes on at the property and how important the property is to not only to the Town but the State. She also commented on the FPAN money and how prestigious it was. Ms. Spuhler also questioned keeping the cottage at Newton Park for office space.
- **Lee Melsek** – Mr. Melsek stated that over a year ago CELCAB researched and voted for the Town to get rid of the Newton cottage.

Closed Public Comment

B. Request for Adoption of the Fort Myers Beach Nourishment Vegetation Management Plan

Environmental Sciences Coordinator, Keith Laakkonen asked for Council to adopt the plan and explained the importance to the public.

Opened Public Comment

None

Closed Public Comment

MOTION: Councilmember Raymond moved to adopt the Town of Fort Myers Beach Nourishment Vegetation Management Plan. Vice Mayor Acken seconded the motion.

Councilmember Babcock liked the plan and felt it would make a big difference to the public. Councilmember List thanked Keith for all the good work as did Vice Mayor Acken. Councilmember Babcock also praised Keith with a job well done as did Mayor Kiker.

VOTE: Motion passed 5 to 0

C. Appointments to Advisory Committees

1. Anchorage Advisory Committee

Council discussed eligibility of applicants. Councilmember List noted she would like to see all applicants come before Council to answer any questions Council might have.

2. Community Resource Advisory Board

3. Local Planning Agency

MOTION: Vice Mayor Acken moved for approval of applicants, removing LPA for a separate motion. Mayor Kiker seconded the motion.

A discussion ensued regarding one of the applicants for ACC's residency status.

VOTE: Motion failed 3-2 with Councilmembers Babcock, List and Raymond dissenting.

MOTION: Councilmember Babcock moved to appoint Elizabeth Chrissian to the Anchorage Advisory Committee for the two year term that ends in October 2010 and Marilyn Quackenbush for the Community Resources Advisory Board.

Councilman Babcock suggested that the Anchorage Advisory Committee have the ability to discuss whether the other applicant could become an ex officio member, and that would be the choice of the Anchorage

Advisory Committee. Councilman Raymond seconded the motion.

VOTE: Motion passed 5 to 0

MOTION: Vice Mayor Acken moved that Lorraine Siegmann is approved for the remaining seat on the Achorage Advisory Committee. Mayor Kiker seconded the motion.

VOTE: Motion failed 3-2, with Councilmembers Babcock, List and Raymond dissenting.

MOTION: Vice Mayor Acken moved appointment of Mr. Ryffel to the LPA to the one, two-year term. Councilmember List seconded the motion.

VOTE: Motion passed 5 to 0

D. Waive Open Container Restrictions Times Square area on July 4th, 2009

MOTION: Councilmember List moved to approve the waiver of the open container restrictions in Times Square. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5 to 0

X. TOWN MANAGER'S ITEMS

A. Bay Oaks Update

Town Manager indicated that this item was a place-holder, and that updates had been discussed earlier in the meeting.

B. Beach Nourishment Update

Manager Janke thanked Council for adopting the plan and noted the County had not contacted those willing to sign easements. It was noted that Mr. Boutelle stated he did not want to spend the County's money to have the easements signed and recorded until he knew there was a viable project. Mgr. Janke discussed his concern over this matter. The number of easements had not changed.

Keith Laakkonen followed up with information on additional meetings and contacts he had scheduled with property owners. He also had a public workshop planned to get information out to all property owners.

Mr. Janke felt it was time for Council to authorize the Mayor to have a discussion with the Board of County Commission chairman about why the administration on that end was not working full speed ahead to acquire easements if that's the agreement on the interlocal.

Council agreed it was time to approach the County.

C. Action Items Report

North Estero Blvd. is going to bid.

XI. TOWN ATTORNEY'S ITEMS

A. Bay Oaks Recreational Facility Interlocal

Attorney Dalton commented on the County's draft that she amended and requested direction from Council. Manager Janke commented on the figures and wording and gave his suggestions. Council agreed on the inspection of Bay Oaks. Discussion of items H & I continued as well as fee structures for Bay Oaks and the pool.

Councilmember Babcock addressed the importance of the Bay Oaks inventory.

B. Request for Executive Session: Tezak Family Trust vs. Town Of Fort Myers Beach

Attorney Dalton stated the mediation in the Tezak Family Trust vs. Town of Fort Myers Beach was scheduled for July 6th and was requesting an executive session on July 13th. All were in agreement for 8 a.m.

XII. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Raymond stated he had spoken to John Richard regarding Center Street, also that he had been in contact with Kenny Conidaris and wanted to mention the bone marrow drive July 18th.

Councilmember List requested joining the budget workshops on Wednesday and Thursday from 9 to noon by telephone due to personal reasons.

MOTION: Vice Mayor Acken moved to approve Councilmember List's participation in the budget workshops by conference phone. Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

Vice Mayor Acken requested Town Manager's decision on pool hours.

Councilmember Babcock asked if the budget was on website and also would like a discussion on Ad Hoc Committee policies and procedures.

Mayor Kiker commented on manager evaluation. Mayor Kiker congratulated staff on the Emergency Operations Seminar.

XIII. RECAP OF ACTION ITEMS

- Public Hearing on Ordinance 09-03 continued to July 20th at 6:30 p.m.
- Mgr. Janke requesting Mr. Spikowski be available to Council
- Newton Cottage RFP responses – Councilman Raymond to attend
- Town to move forward with option #3
- Direction to Staff on Bay Oaks interlocal

- Adoption of Vegetation Management Plan
- Executive Session on July 13th at 8 a.m. re: mediation of Tezak Family Trust
- Mgr. Janke to send out memo regarding pool questions
- Set date on Center St. workshop

XIV. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- John Albion - Mr. Albion spoke for the FMB Chamber of Commerce' concern regarding the economy and the ability of local businesses to remain open and asked that the Town and County give latitude regarding code enforcement to all business owners.
- Charlie Whitehead – Mr. Whitehead commented on Bay Oaks and the ability of programs to support themselves. He reminded that there are children that cannot afford to pay for some programs.
- Terry Cain – Ms. Cain requested the Council withdrawal application on the cottage and find funding for the structure. She stated that she would like to see Council give further thought to the issue.

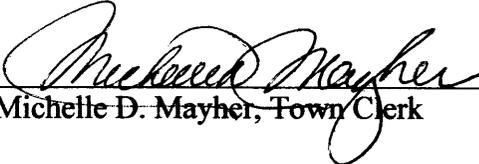
Closed Public Comment

XV. ADJOURNMENT

The meeting adjourned at 11:40 PM

Adopted 7-20-09 With/Without changes. Motion by List / Raymond

Vote: 4-0 (Kiku absent)



 Michelle D. Mayher, Town Clerk

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