



MINUTES

Tuesday, October 7, 2013

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

I. CALL TO ORDER

Mayor Mandel called to order the October 7, 2013 Regular Meeting of the Town Council at 9:00 a.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Raymond. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

II. INVOCATION – Rev. Jeanne Davis, First United Methodist Church

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Mandel reported he received requests to amend the Agenda as follows:

- Move Consent Agenda Item ‘A’ - Special Event Permit Application for the Pirate Fest 2013 to the beginning of the Agenda; and,
- Add a discussion on Water Utility Improvements to end the end of the Agenda.

Consensus approved the Agenda as amended.

Consent Agenda Item X(A):

A. Special Event Permit Application – Pirate Fest 2013

A request to authorize open containers of alcohol at the “Fort Myers Beach Pirate Festival” on October 11-13, 2013 in the designated area of the street festival, as provided in Ordinance 99-15.

Bud Nocera, Fort Myers Beach Chamber of Commerce, explained how the Chamber was working to finish up the special event permit requirements; and how they requested Nervous Nellies to obtain an 'extension of premises' permit for the Pirate Ball. He requested approval to authorize the open containers at the Fort Myers Beach Pirate Fest.

Town Manager Stewart reported Town staff reviewed the Special Event Permit Application for the Pirate Festival and recommended approval.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding timing and scheduling of other required permits such as but not limited to the Bureau of Alcohol and Tobacco; the decision to request Nervous Nellies obtain an 'extension of premises'; and the increased public interest in the event.

MOTION: Council Member Andre moved to authorize open containers of alcohol at the "Fort Myers Beach Pirate Festival" on October 11-13, 2013 in the designated area of the street festival, as provided in Ordinance 99-15; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

Discussion ensued regarding time sensitive agenda items.

V. PUBLIC COMMENT

Mayor Mandel noted Public Comment was a time for the public to discuss Consent Agenda Items and issues currently not on the agenda.

Public Comment opened.

John Heim, resident, reviewed highlights from his trip to Washington D.C.; thanked Mayor Mandel for representing Fort Myers Beach in Washington D.C.; and offered an update on the 'clean water rally' he was working on called "Floridians for Clean Water". He discussed a proposal for an 'eco-based town identity' program that could be called "Back Bay Kids"; and questioned how he could arrange a meeting with the Council on the program. He gave a flyer concerning the October 19th clean water rally event to the Town Clerk for distribution to the Council.

Town Manager Stewart requested Mr. Heim first bring his proposal for the "Back Bay Kids" Program to the Acting Parks & Recreation Director; and then the proposal would go before BORCAB who would bring a recommendation to Town Council.

Council Member Andre noted to Mr. Heim a program called “Back Bay Buddies” and offered contact information to him.

Council Member List recognized Mr. Heim for his actions in saving a person from a submerged vehicle over the past weekend.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Kosinski mentioned a favorable article on the Mound House that appeared in the Sunday News-Press newspaper.

Mayor Mandel thanked Council for sending him to Washington D.C. where he represented the community regarding water quality issues, and water releases from Lake Okeechobee and the impact on Florida. He offered highlights on the bipartisan efforts on the water quality issue; and his discussion with US Representative Radel regarding flood insurance rate increases. He reported that Representatives Radel and Nugent introduced a bill (HB30218) to request a delay for one year on the implementation of the increased FEMA flood insurance rates, and that Senator Nelson has taken the same action in the Senate. He urged property owners to contact their legislators to inform them of the flood insurance rate increases and how it was negatively impacting them.

Town Manager Stewart noted that property owners could contact the Town’s Floodplain Manager (Josh Overmyer) who might be able to help them mitigate their rate increases.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Keri Weeg, MRTF Vice Chair, reported that plantings would begin next week at the Connecticut Street beach access; and on October 22nd there would be a community outreach with Fort Myers Beach Elementary School and the Island Coast High School regarding water quality testing by the students who would ultimately make a presentation to Town Council and the School Board on water quality.

VIII. PROCLAMATIONS

A. National American Indian Heritage Month

A request from the National Society Daughters of the American Revolution

Nanseamarkham Miller, Chair of the American Indian, Estero Island Chapter and Connie Church Lizak, Regent, Estero Island Chapter of the National Society Daughters of the American Revolution accepted the proclamation.

B. National Long-term Care Residents’ Rights Month

A request from the Florida Department of Elder Affairs

Barbara Pohl, Florida Elders Affairs Ombudsman Manager (District 10) Program accepted the proclamation.

IX. APPROVAL OF MINUTES

- A. September 3, 2013 Town Council Meeting
- B. September 3, 2013 DRA Meeting
- C. September 3, 2013 Work Session
- D. September 16, 2013 Town Council Meeting
- E. September 16, 2013 DRA Meeting
- F. September 16, 2013 Work Session

MOTION: Council Member List moved to approve the minutes as written; second by Council Member Andre.

VOTE: Motion approved, 5-0.

X. CONSENT AGENDA

- A. Special Event Permit Application – Pirate Fest 2013
A request to authorize open containers of alcohol at the “Fort Myers Beach Pirate Festival” on October 11-13, 2013 in the designated area of the street festival, as provided in Ordinance 99-15.

Approved during Approval of Final Agenda, Item IV.

- B. Florida League of Cities, Municipal Achievement Award
A request for approval of a packet to be submitted to the Florida League of Cities for entry in the 5th Annual Florida Municipal Achievement Awards Program.

Town Manager Stewart explained that the Agenda item was a request to approve a submittal to the Florida League of Cities for consideration in their Annual Florida Municipal Achievement Awards Program. He noted this year’s application was in cooperation with the Viva Florida 500 Program; and how the application needed to be reviewed and approved by the Town Council prior to submission.

Council Member List encouraged the public to read the Town’s application.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve a packet to be submitted to the Florida League of Cities for entry in the 5th Annual Florida Municipal Achievement Awards Program; second by Council Member List.

VOTE: Motion approved, 5-0.

XI. PUBLIC HEARING

Mayor Mandel opened the Public Hearing at 9:37 a.m.

A. Quasi-Judicial Hearing: Case #2013-0002, Pointe South Setback Variance

Mayor Mandel asked if any Town Council Member had ex-parte communication regarding this item. Council Member Andre – none; Council Member List - none; Council Member Raymond - none; Mayor Mandel – none; Vice Mayor Kosinski – none.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Dulmer presented comments for VAR2013-0002 Pointe South Setback Variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property. She reviewed the Applicant's request:

- Relief from Section 34-638(b) requiring a 20' minimum side setback in the residential multi-family zoning district.
- Specifically requested a 12' side setback where a 20' side setback was otherwise required.

She gave an overview of the background of the subject property:

- Property was developed in 1976
 - Zoned under Lee County as Multiple Family Hotel and Motel District (RU-3) which stated "Accessory buildings in all zones shall not be closer than five feet to the side or rear property line";
 - Subject property was now zoned as residential multi-family (RM) and Environmentally Critical (EC).

She reviewed the existing conditions of the subject (Exhibit C); and explained the proposed accessory structure was a Chickee Hut that was 18' x 20' with a setback of 12' from the side property line. She pointed out that the accessory structure (barbeque hut) and pool area was constructed 10' within the side setback and the Florida Department of Health Section 64E-9.008(7.1) stated: "No food or beverages in pool or on pool wet deck". She noted the supporting regulations pertaining to the Applicant's request:

- Section 34-87 – gives Town Council the authority to hear and decide all requests for variances from the terms and restrictions of the LDC; Council must consider whether the fact support the five required findings, staff report and LPA recommendations, testimony from the Applicant, and testimony from the public.
- Section 34-87(3) Findings – before granting any variance, the Town Council must find that all of the following exist:
 - Section 34-87(3)(a) - *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.* While the lack of space on a property is not as exceptional or extraordinary circumstances inherent to any property, the side setback in this case **does** represent a relative hardship to the subject property because the applicant has stated there is no other feasible location for the proposed structure near the existing

- barbeque hut. The proposed location is landward of the 1978 CCCL. The subject property also has to meet the Department of Health requirements, which prohibits eating or drinking in the pool area. Staff recommended the finding that there **are** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance is justified.
- Section 34-87(3)(b) – *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.* The conditions **are not** the result of actions of the applicant taken after the adoption of the regulation in question, as the condo was constructed in 1976, well before the adoption of the LDC Section 34-638(b). The principal building was built in accordance with the Lee County Zoning Regulations and the side setback regulation for accessory structures has changed from 5' to 20'.
 - Section 34-87(3)(c) – *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.* The variance requested **is** the minimum variance that will relieve the setback burden. The applicant states the proposed pad of 18' x 20' is necessary for the structure to be functional. If the applicant was to construct an accessory structure built to current setback requirement in the proposed location, the structure would only extend 8' deep. This would limit the functionality of the structure as an effective eating area. Staff recommended that the variance requested **was** the minimum variance necessary to relieve an undue burden.
 - Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.* The granting of the variance **would not** be injurious to the neighborhood or detrimental to the overall public welfare. If granted, the variance may actually be an improvement to public welfare and safety due to the deterrence of residents and their guests eating in the pool area, which is not allowed by Health Department ordinances. Staff recommended that granting the variance as requested by the applicant **would not** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.
 - Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.* The 20' side setback in question was **not** a recurring issue and can usually be complied with on most RM properties. Most RM properties do not have the unique existing circumstances as the subject property, such as the lack of space and feasible locations and the existing non-conforming structures within the setback. Staff found that the circumstances on the specific piece of property for which the variance was sought **are not** general in nature, and demonstrated a verifiable hardship.

Zoning Coordinator Dulmer reported staff received 2-3 phone calls with questions about the subject request and when they learned of the type of proposed structure that none voiced an objection. She reported that staff recommended approval with conditions of a setback variance request from Section 34-638(b) to allow a 12' side setback for the construction of an accessory structure where a 20' setback was otherwise required, subject to the following conditions:

1. That the request be limited to the 18' x 20' accessory structure as shown on the applicant's site plan attached as Exhibit B.
2. A Type B vegetative buffer as defined in LDC Section 10-416(3) was implemented and continuous from the existing pool area to the existing grill area.

She added that the request came before the Local Planning Agency on August 13, 2013; there was no Public Comment at the hearing; and there was a 4-0 vote to recommend approval (three LPA members were excused from the meeting – Steele, Shamp, and Kakatsch).

Homer Odum, Property Manager for Pointe South Condominium, stated he was present to answer questions.

Council Member Andre asked if the Mr. Odum approved the recommended conditions.

Homer Odum responded in the affirmative.

Mayor Mandel asked if the Town had received any correspondence on the matter.

Zoning Coordinator Dulmer reported staff received 2-3 phones calls with questions about the subject request and when they learned of the type of proposed structure that none voiced an objection.

Mayor Mandel asked if there was a representative from the LPA for comment.

No representative from the LPA was present.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member Andre moved to approve the Applicant's request for a variance from Section 34-638(b) of the Town of Fort Myers Beach Land Development Code (LDC) to allow a 12' side yard setback for the construction of an accessory structure (Chickee Hut) subject to the conditions proposed by LPA and contained in the draft Resolution 13-20; and in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the Town Council makes the following findings and reaches the following conclusions:

A. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and that the request is for a de minimis variance under the circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. Granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

SECOND: Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

Public Hearing closed.

XII. ADMINISTRATIVE AGENDA

A. Appointment(s) to Anchorage Advisory Committee

Discussion was held regarding applicant.

MOTION: Vice Mayor Kosinski moved to reappoint Gerry Trantina to the Anchorage Advisory Committee; second by Council Member Andre.

VOTE: Motion approved, 5-0.

B. Appointment(s) to Audit Committee

Discussion was held regarding applicants who requested to be reappointed; no other applications were received.

MOTION: Vice Mayor Kosinski moved to reappoint Richard Cote and Dan Hughes to the Audit Committee; second by Council Member List.

VOTE: Motion approved, 5-0.

C. Appointment(s) to Bay Oaks Recreational Campus Advisory Board

Discussion was held regarding applicants; four requests for reappointment and one new application (received on 9/20/13) were submitted for four vacancies.

Town Attorney Miller pointed out the ordinance required any application (new appointment or reappointment) were to be submitted by September 1st.

Discussion was held concerning the September 1st application deadline.

MOTION: Council Member List moved to reappoint Tom Myers, Rex Pontius, Rae Sprole, and Summer Stockton to the Bay Oaks Recreational Campus Advisory Board; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

Mayor Mandel suggested Town Clerk Mayher contact Mr. Davis and inform him of any vacancies on other committees.

D. Appointment(s) to Community Resource Advisory Board

Discussion was held regarding applicants; three requests for reappointment were received.

MOTION: Council Member Andre moved to reappoint Olga Carballo, Karen Haengel, and Bobbi Kemp to the Community Resource Advisory Board; second by Council Member List.

VOTE: Motion approved, 5-0.

E. Appointment(s) to Cultural and Environmental Learning Center Advisory Board

Discussion was held regarding applicants; two requests for reappointment and one new application were received; and discussion ensued concerning the request for Mr. Pontius to be appointed to CELCAB since he was reappointed to BORCAB.

MOTION: Vice Mayor Kosinski moved to reappoint Becky Werner and Lorrie Wolf and to appoint Rex Pontius to the Cultural and Environmental Learning Center Advisory Board; second by Council Member List.

VOTE: Motion approved, 5-0.

F. Appointment(s) to Local Planning Agency

Discussion was held regarding applicants; two requests for reappointment and two new applications were received (Bruce Butcher who already served on the Public Safety Committee and Chuck Bodenhafer).

MOTION: Vice Mayor Kosinski moved to appoint John Kakatsch, Jane Plummer, and Chuck Bodenhafer to the Local Planning Agency; second by Council Member Andre.

VOTE: Motion approved, 5-0.

G. Appointment(s) to Marine Resources Task Force

Discussion was held regarding applicants; two requests for reappointment and one for appointment were received; and it was noted that one application was from an 'off-island' person.

MOTION: Council Member Andre moved to reappoint Ted Schindler and Bill Veach, and appoint Cheryl Clark to the Marine Resources Task Force; second by Council Member List.

VOTE: Motion approved, 5-0.

H. Appointment(s) to Public Safety Committee

Discussion was held regarding applicants; three requests for reappointment and one application for appointment were received.

MOTION: Council Member List moved to reappoint Rexann Hosafros, Tom Myers, and Jim Wray and appoint Alice Mack to the Public Safety Committee; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

Town Manager Stewart noted the Town Clerk had provided Council with a chart for each committee that indicated member attendance and whether or not there was a quorum. He requested the Council impress upon members the importance of having a quorum.

Recessed at 10:10 a.m. – Reconvened at 10:30 a.m.

I. Waterside Development Order Extension

A request for a two-year extension of time for previously approved and extended Development Order DOS20001-00083 (Waterside at Bay Beach) from September 19, 2013 to September 19, 2015.

Richard Yovanovich, Attorney and owner's representative, reviewed the request for an extension to Development Order DOS2001-00083; the DO's original expiration date of September 19, 2009; and the two 2-year extensions that were previously granted via State mandated permit extensions, thereby extending the expiration date to September 19, 2013. He requested another extension to take the expiration to September 19, 2015. He reported staff recommended approval and noted that all the infrastructure was in place, so the Applicant would come to the Town for a building permit when appropriate.

Mayor Mandel questioned the 'tower' construction.

Attorney Yovanovich reported there had already been construction of three towers, and that Phase 6 included the tower in question.

Mayor Mandel questioned if the property owner had a Commitment Letter from a bank.

Attorney Yovanovich stated the property was "*owned outright*".

Mayor Mandel questioned if there was a 'start date'.

Attorney Yovanovich explained the owner was certain the economy was coming back and was requesting the extension so they would not have to go through the development order process again.

Community Development Director Fluegel gave an overview, in general, of the development order process (i.e. site engineering approval, etc.).

Town Manager Stewart reviewed the State's legislative action that compelled communities to extend development orders on two different occasions in the past. He noted the subject request did not entail a construction permit; and if there were any construction code changes since the time the development order was first received until today, then the Applicant would have to meet the new codes.

Town Attorney Miller pointed out this matter was different from 2500 Estero Boulevard as it pertained to the base flood elevation issue.

Town Manager Stewart explained the proposed development was a continued extension of what was already in existence.

Discussion ensued regarding the proposed development as an extension of what was already in existence.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member List moved to approve the request for a two-year extension of time for previously approved and extended Development Order DOS2001-00083 (Waterside at Bay Beach) from September 19, 2013 to September 19, 2015; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

J. RFQ-12-13 PR, Ongoing Archaeological Services

A request for approval of the Master Contract with SEARCH, Inc. for ongoing archaeological services.

Town Manager Stewart gave an overview regarding the Town's pursuit to find a firm to perform archaeological services. He reviewed highlights of the proposed three years of activities (i.e. Time & Materials - archaeological consultation, monitoring, excavation, historical architectural assistance, laboratory analysis, landscape signage, etc.). He described how the Museum Action Plan and the Museum Exhibits – Phase I would help the Town meet the obligation portion of the State grant the

Town had been awarded. He reported on October 21st that Council would have the final pricing of the building restoration which would satisfy the restoration portion of the grant.

Discussion ensued concerning the services covered by grant funding; potential restoration costs; grant requirements for the museum and restoration; and landscape signage costs.

Council Member Raymond discussed his concerns regarding the proposed costs for the Mound House restoration, signage costs, and the museum exhibits.

Town Manager Stewart addressed Council Member Raymond's concerns regarding the proposed costs and noted the criteria for historical restoration.

Discussion ensued regarding archaeological services and historical restoration and their associated costs; future steps or phases of the project; and the anticipated construction Guaranteed Maximum Price.

Town Attorney Miller noted potential problems that could arise due to lead-based paint.

Council Member List questioned if there was a fund identified for the operation of the Mound House.

Town Manager Stewart stated there was not a specifically identified fund for the Mound House.

Discussion continued regarding the potential costs associated with the Mound House restoration and museum exhibit; future operational costs; TDC grant funding for landscaping; State grant funding for the restoration; proposed landscaping costs; and other potential restoration costs.

Town Manager Stewart reported he spoke with the State Grant Coordinator about transferring funds from one aspect to another aspect of the site restoration.

Discussion continued concerning the potential restoration costs; funding sources; grant funds and transfers; project phases and costs; museum exhibit expenses; and the project's estimated budget.

Council Member Raymond requested staff to determine how much was spent on the Mound House since inception and what was projected to be spent from this point forward.

Town Manager Stewart noted staff would compile the numbers and indicate which funds were from grants and which from the Town.

Discussion continued regarding future costs for completion of the museum exhibits; and the potential use of reserves to be utilized for completion of the house restoration.

Public Comment opened.

Barbara Hill, CELCAB Chair, commended staff and SEARCH Inc. for the proposal and requested Council's approval. She discussed the benefits of the restoration and museum exhibits to the Town's residents and businesses.

Public Comment closed.

MOTION: Council Member List moved to approve the Master Contract with SEARCH, Inc. for ongoing archaeological services and to further approve the Museum Action Plan in the amount of \$21,084.78 and the Museum Exhibits Phase I Design Project in the amount of \$165,800; second by Council Member Raymond.

VOTE: Motion approved, 5-0.

K. RFQ-13-08-PR, Mound House Restoration Phase II Contract – Guaranteed Maximum Price

Item K pulled from the Agenda; to be placed on October 21, 2013 Agenda.

Added Agenda Item during the Approval of Final Agenda, Item IV – Water Utility Discussion.

Mayor Mandel asked if there was a date in November for “*breaking ground*”.

Town Manager Stewart reported he anticipated receiving a date this week; and that staff and the project contractor met with residents from Delmar Avenue regarding the recent flooding in their area.

Mayor Mandel requested the Town Manager arrange for a staff member to begin planning a groundbreaking ceremony for the water utility project (i.e. invite all the former mayors of the Town, etc.).

XIII. PUBLIC COMMENT

Public Comment opened.

Ed Scott, resident, questioned the status of the annexation of Shell Mound Island and if there were any additional costs for the Town due to the annexation for services from the Lee County Sheriff’s Office and the Fort Myers Beach Fire District.

Ceel Spuhler, resident and CELCAB member, thanked the Council for approving the SEARCH Inc. contract. She noted there would be a Council Work Session on October 21st at which time there would be a discussion on the Mound House restoration and Phase II. She encouraged residents to come to the Work Session or to watch it on television.

Public Comment closed.

XIV. TOWN MANAGER ITEMS

A. Mound House Update

Town Manager Stewart noted previous discussions and concerns about getting the Mound House contract to Council; and Council's prior approval that Vice Mayor Kosinski would meet with staff to review the timeline of the Mound House restoration project contract and report back to Council; and that he include a comment on whether he felt there was sufficient staffing for the upcoming projects. He described staff's meeting with the Vice Mayor.

Vice Mayor Kosinski reported he intended to bring the item at the Work Session later today.

Council Member Raymond complimented the completed walkways at the Mound House.

XV. TOWN ATTORNEY ITEMS

Town Attorney Miller offered an update on the following issue:

- Mound Key Annexation – State of Florida has a concern about potential development of the subject property by the private property owner(s). She suggested to her firm's Tallahassee representative to approach the State with the possibility of creating an annexation agreement with a possible offer to the private property owner(s) for transfer of development rights off of Mound Key which would hopefully satisfy the State.

Mayor Mandel asked if staff could estimate a potential savings to taxpayers if the Town annexed Mound Key.

Town Manager Stewart explained that if the annexation helped the Town to move to the next lower insurance classification it would mean about a 5% reduction. He described how staff met with the insurance evaluator recently which hopefully would bring the Town's rating from a 7 to a 6.

Town Attorney Miller continued to bring Council up to date on the following issues:

- CRA – she spoke with the Town's consultant and a representative from the State's Special District Reporting about the Fort Myers Beach CRA. She explained the State's Special District Reporting representative felt he did not have sufficient documentation to show the CRA was properly established. She reported she had documentation for the original creation of Estero Island CRA by Lee County, and a resolution by the Council after the Town's incorporation stating that the Council did not consent to the County disbanding the CRA. She added that there was no evidence that the County took any formal action; and there was a bond validation from a judge that the Fort Myers Beach CRA was in existence. She explained her opinion that there was sufficient evidence that the CRA existed and that she informed the State's Special District Reporting representative that she would prepare an ordinance for the Town Council to adopt which would reaffirm that the CRA does exist. She added that she was working to have the proposed ordinance ready for introduction at the next Council meeting.
- Bus Benches with Commercial Advertising on Estero Boulevard – noted that bus bench advertising was an 'off-site' sign. She reported she contacted the County regarding the bus benches and learned there was no agreement with a bus bench company in place and the County had taken over the benches. She explained her belief that the advertising on the bus benches violated the Town's sign ordinance and that she was preparing an email to send to the County Attorney on the matter. She requested Council's approval to pursue the item. She noted that the

Town exempted signs from the sign ordinance that were erected by the State, County, and the Town; and an amendment to the sign ordinance may be necessary to describe exempt signs as 'governmental-type signs' and not advertising. She added that it may arise that the bus bench advertising revenues help to fund LeeTran.

Council consensus approved the Town Attorney to further pursue the bus bench advertising matter with Lee County.

XVI. COUNCILMEMBER ITEMS AND REPORTS

Council Member Raymond – reported he met with the attorney who had sent the Council a letter about taxis and the use of a local store as a taxi terminal. He explained that even though the issue was on Agenda Management, he would like to see Council discuss the matter at today's Work Session. He added that he requested the Town Manager have staff research the matter to determine if there were any zoning issues with the taxi terminal issue.

Vice Mayor Kosinski – no report or items.

Council Member Andre – reported the representative of *Surfers for Autism* would come to the next Council meeting regarding an event they would like to hold in the Town. He commented the Recap of Action Items was a great tool for Council and suggested a type of 'progress report' be established to track the Action Items which could be added to their meeting agenda.

Consensus agreed to Council Member Andre's request for a 'progress report' for the Action Items.

Council Member Andre – reported he spoke with the Town Manager on the matter of Animal Control and was informed the issue was still being worked out with the County. He questioned the status of the Town's Viva Florida 500 activity.

Town Manager Stewart noted the Florida League of Cities Award application would be submitted; and that staff was working with CELCAB on the 1-day conference related to Viva Florida 500.

Council Member Andre – requested an update on the photos for the front of Town Hall.

Town Manager Stewart indicated staff sent the photos to the Lessor for approval; staff also sent a Hold Harmless Agreement to the Lessor which was now being worked on between the Lessor and the Town Attorney.

Council Member Andre – questioned the status of mandatory recycling in Times Square and the potential use of a central recycling location for Times Square.

Town Manager Stewart reported staff discussed the matter with the disposal company to come up with an innovative way to handle refuse and recycling in Times Square. He noted staff was awaiting a response from the disposal company.

Council Member Andre – questioned the status of Center Street.

Town Manager Stewart reported he spoke with the State and Ms. Monroy to determine if the Town could open the street, and the Town had not heard back from the State. He stated he would send a follow-up email to Ms. Monroy and report back to Council.

Council Member Andre – questioned the status of the action regarding the Town’s Investment Policy that was discussed at a previous Council meeting.

Town Manager Stewart explained the Audit Committee (AC) requested the opportunity to meet with the representative who would be able to answer some questions concerning the Investment Policy; and that meeting was scheduled for the next AC meeting.

Council Member Andre – questioned the status of the installation of the new Lani Kai sign.

Town Manager Stewart reviewed highlights from the Council’s Public Hearing on the Lani Kai sign variance. He reported that the Town was recently in receipt of a letter from the subject property owner indicating that his attorney made a mistake; that what the Council granted was not what he wanted; and that he wanted a “*re-hearing*”.

Town Attorney Miller pointed out that there was a 30-day time limit in which to request a “re-hearing” and that was not met by the Applicant; therefore, a new application would be required if the Applicant wanted to come before the Council again.

Town Manager Stewart added that the Applicant would have to start the variance process from the beginning to include but not limited to appearing before the LPA. He reviewed staff’s actions as it pertained to the point from which the staff began code enforcement action for signs that had not come into compliance; and how the Lani Kai’s non-compliance has resulted in a code enforcement action.

Community Development Director Fluegel noted that the staff has now brought the Lani Kai sign back to the Code Enforcement Magistrate due to non-compliance and no action on correcting the sign after the variance had been granted.

Council Member Andre – questioned the status of the mooring field.

Public Works Director Lewis reported she had been working with the group at the Matanzas Pass Inn and she anticipated having the issue before Council at their first meeting in November.

Council Member Andre – questioned the status of the ‘observation deck’.

Town Manager Stewart explained how Director Lewis discovered that the permits for the DEP and Army Corps of Engineers were different (i.e. footprint); however, staff worked on the matter to resolve the issue.

Public Works Director Lewis reported the issue was moving forward; however, it would take the Army Corps of Engineers (ACE) up to two months to issue the revised permit based upon the revisions. She added that during that time everything would still be moving forward and that she was comfortable with putting the item 'on the street to bid'.

Discussion was held concerning the permits submitted to the DEP and ACE.

Council Member List – no report or items.

Mayor Mandel – questioned the status of the Town Attorney's review of Supreme Court Rulings as it pertained to a noise ordinance.

Town Attorney Miller reported she had prepared the information on the Rulings and forwarded it to the Town's consultant (LaRue).

Mayor Mandel – questioned the status of the Town's approach to the County regarding the Master Transportation ILA; and noted that services [LCSO] in the mooring field were to be considered in the next budget. He questioned that Council had requested at a previous meeting the Town contact the Florida League of Cities (FLC) regarding the health prescription card.

Town Manager Stewart reported that matter was completed and staff was awaiting delivery of the supply of prescription cards from the FLC.

Mayor Mandel – mentioned that at a previous Council meeting it was decided that if the DOT was agreeable to the opening of Center Street that the matter would be added to the Traffic Engineer's project list.

Town Manager Stewart reported staff was awaiting the response from the State DOT.

Mayor Mandel questioned the status of the presentation of the investment companies as it pertained to the Town's Investment Policy.

Town Clerk Mayher noted it was scheduled for the Audit Committee Meeting on November 14, 2013.

Mayor Mandel questioned the status of the request for an Attorney General opinion regarding 'dual office holding' [Chief Building Official].

Town Attorney Miller responded that the request was written and had been forwarded to the Attorney General's Office.

Mayor Mandel questioned the status of Comp Plan changes regarding high rise buildings.

Town Manager Stewart noted the question was related to the high rise area of Estero Boulevard as it pertained to the Master Streetscape Plan.

Community Development Director Fluegel reported there was nothing in the Comp Plan that tied it to the Master Streetscape Plan.

Mayor Mandel requested staff communicate that information to the County. He questioned if Parks & Recreation was working on the opening event for the Mound House; and it was confirmed Parks & Recreation was working on the event. He questioned the status of the gazebo in Times Square.

Town Manager Stewart reported the gazebo in Times Square remained 'on hold' because the Town had been awaiting a firm to perform 'ground penetrating radar' to determine whether or not the Town could run lines to a different location. He noted the work had been delayed due to the recent rains and ground penetrating water; however, the work was completed and the firm was preparing a report to submit to the Town.

Mayor Mandel questioned the status of the research to determine staffing levels for upcoming Town projects.

Town Manager Stewart explained his belief that the Town was fine with the people currently on staff, and that he spoke with Director Lewis regarding the use of some temporary staff on a consulting basis. He noted that the team in place for when the water utility project starts would help to alleviate some of the workload currently handled by Director Lewis.

Mayor Mandel questioned the status of the Town flag for the Council Chambers.

Town Manager Stewart noted the flag was in his office.

XVII. AGENDA MANAGEMENT

Council Member List requested to add to Agenda Management a presentation and discussion on having a Town film commission.

Council Members Andre and Raymond agreed to the request.

Council Member Andre requested the Policy for Non-Profit Waivers and Funding be moved up to a Work Session agenda.

Council Member Raymond requested the discussion include 'all fees' (i.e. banner fees).

Discussion was held on scheduling Policy for Non-Profit Waivers and Funding for a Work Session; consensus approved placing the item and the Taxi License and Taxi Transit Station on the October 21st Work Session.

XVIII. RECAP OF ACTION ITEMS

Town Manager Stewart recapped the Action Items during the meeting:

- Staff to work with Mr. Heim on his water quality event application.

Town Manager Stewart asked if the Council wanted staff to schedule a Town Hall Meeting regarding the Biggert-Waters National Flood Insurance Program Reform Act to inform the public.

Discussion was held concerning a Town Hall Meeting on the Biggert-Waters NFIP Reform Act; Council Member Raymond suggested adding the Estero Boulevard Improvement Project to the meeting; Council believed each issue should be conducted at separate meetings; consensus approved the Town Manager's request.

Mayor Mandel noted the idea of a national disaster program that would cover disasters other than just floods (i.e. earthquakes, snow storms, etc.); and should the County or the State also consider this type of a program.

Town Manager Stewart continued to recap the Action Items during the meeting:

- Staff would work with MRTF regarding their funding of bus transportation for their community outreach with Fort Myers Beach Elementary School and the Island Coast High School.
- Proclamations were given to the requesting organizations.
- Pirate Fest request was approved, staff signed off on the permit, and the organizers were moving forward with the event.
- Staff would process the FLC Award Application as approved.
- Staff would process the modified setback variance as approved.
- Staff would notify appointees to the Town committees; and notify those not appointed of potential vacancies on other committees.
- Staff would process the Waterside Development Order Extension as approved.
- Staff would process the RFQ12+-13-PR for Ongoing Archaeological Services with SEARCH, Inc. as approved.
- Parks & Recreation staff to work on the water utilities ground breaking ceremony
- Town Manager discussed his belief that the annexation of Shell Mound Key would not create additional costs to the Town by the LCSO or Fire District; however, if staff gets to the point that an agreement was prepared for the State then he would prepare a document for Council addressing Mr. Scott's concerns determining if there are any costs associated with annexation.
- Staff would prepare an estimated dollar savings on flood insurance by moving down one rating classification.
- Staff would place a new section on the agenda to review old business [Action Items].
- Town Manager would review and report back to Council on the Transportation ILA.
- Film commission item placed on Agenda Management.
- Policy for Non-Profit Waivers and Funding and the Taxi License and Taxi Transit Station was placed on the October 21st Work Session.
- Staff would prepare the requested information as it related to total expenditures for the Mound House from inception to current date.

Town Attorney Miller reported she intended to have the ordinance regarding the CRA ready for introduction at the next Council meeting.

XIX. ADJOURNMENT

Motion by Council Member Andre; second by Council Member Raymond. Meeting adjourned at 12:25 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

- End of document.