

1. Discussion Objective:

Work Session Date: March 3, 2014

Discuss the implementation of a policy for managing obstructions placed within the Town's public rights-of-way.

2. Submitter of Information:

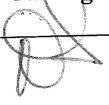
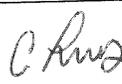
- Council
- Town Staff (PW)
- Town Attorney

3. Estimated Time for this item:

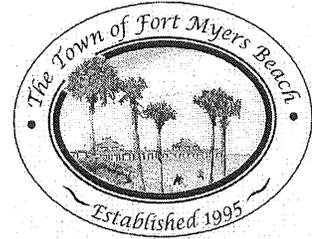
20 minutes

5. Background:

Attached for background are various memos, blue sheets and Town Council minutes related to the various right-of-way matters that the Town has addressed over the years. Town Council is interested in discussing an approach to managing right-of-way encroachments.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

MEMORANDUM



DATE: February 20, 2014
TO: Don Stillwell, Interim Town Manager
FROM: Cathie Lewis, Public Works Director *C Lewis*
SUBJECT: Public Rights-of-Way

You will find attached a few memos, blue sheets and minutes from over the years related to matters relating to the Town's public right-of-way. To date the Town has not developed a comprehensive approach to matters relating to the public right-of-way. Town Council has adopted a method for leasing the public right-of-way within the down town area as well as for parking. Direction has been provided that Town Council intended to approach rights-of-way issues with each improvement project that impact a right-of-way.

In December, 2013, staff brought forward a request for direction related to the current Phase I reFRESH potable water rehabilitation project. Town Council provided direction that driveways were to be replaced in kind, with no change to existing width and providing that they can extend to the edge of pavement. *(This was a different approach from a prior improvement project.)* All other landscape and structures were to be removed, if necessary to allow for construction, either by the property owner if they wished to save such items or by the Town's contractor with the understanding that those items would not be salvageable.

To date Town Council has not addressed other assorted situations of property owners utilizing the public right-of-way or requests by property owners to have the Town remove certain other infringements. There are many examples such as: pavers, asphalt or concrete added to the right of way for parking, boulders, statuary, and of course trees and other landscaping.

To date it has not been a PW procedure to remove anything within the public right-of-way unless it was causing a health or safety issue. There currently is not a budget to handle requests made by property owners to have items removed from within the public right-of-way. It is difficult to provide cost estimates for such removals as every scenario is different. For instance some items could be removed/restored by staff where other items would need to be bid and performed by outside contractors.

Please let me know if you have any questions regarding this matter or the implementation of the same.



MINUTES

Monday, December 2, 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 December 2, 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 Rooney, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, Parks and Recreation Director Norton, and Town Clerk Mayher.

II. INVOCATION – Town Clerk Mayher

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Mandel requested to add a discussion for letters of support to the FAA and Senators Rubio and Nelson.

Consensus approved the Agenda as amended.

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.

A.J. Bassett, Curator of the Estero Island Historic Society, reviewed a new walking/bicycle tour program entitled “Footprints in Time”. She displayed a copy of the Society’s new logo; and noted the new map located in the library with QR codes indicating historic vistas. She distributed copies of the Society’s new brochure with QR codes to be used for a self-guided tour.

Public Hearing closed.

Recessed at 11:16 a.m. - Reconvened at 11:30 a.m.

X. ADMINISTRATIVE AGENDA

- A. Refresh Water Lines Phase I Construction Engineering Inspection (CEI) Supplemental Task Authorization, Tetra Tech
Request for approval of a Supplemental Task Authorization with Tetra Tech, Inc. in the amount of \$50,000.00 to begin the Construction Engineering Inspection (CEI) for the upcoming segment of the Phase I - Basin Based Neighborhood water and stormwater improvements.

Community Development Director Lewis reviewed the request was for up to 750 hours of construction activities of the first segment of Phase I which would get the initial work started.

Town Manager Stewart noted that staff would come back with requests for proposals so that inspection services were covered under the contract; and it would be paid for out of water utility.

Vice Mayor Kosinski asked if the amount was for a lump sum or hourly.

Community Development Director Lewis stated it was hourly and was a not-to-exceed dollar amount.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve a request for Supplemental Task Authorization with Tetra Tech, Inc. in the amount up to \$50,000 to begin the Construction Engineering Inspection (CEI) for the upcoming segment of the Phase I – Basin Based Neighborhood water and stormwater improvements; second by Council Member Andre.

VOTE: Motion approved; 5-0.

- B. Driveway Apron Restoration Resulting from Town Construction Activities
Requested approval of a policy related to structures and landscaping within the public right-of-way and for providing restoration of driveway aprons resulting from construction activities by the Town.

Town Manager Stewart reviewed the request which dealt with the potable water project; and recommended driveway aprons be replaced with what existed unless it was in violation of code.

Mayor Mandel asked if code required a porous material.

Public Works Director Lewis stated the code was silent on that matter.

Public Comment opened.

Diane Eisenhower, resident, questioned if pavers would be replaced.

Town Manager Stewart explained if the driveway had concrete, it would be replaced with concrete; and if there were pavers, then pavers would be replaced; if Council approved the item.

Public Comment closed.

Discussion was held concerning construction work on public rights-of-way and private property; and driveway apron restoration (i.e. concrete versus porous materials, alternative materials, etc.).

Town Manager Stewart requested a motion to approve where the Town could replace/restore the driveway apron with what had existed as long as it met code.

MOTION: Council Member List moved to approve a policy related to structures and landscaping within the public right-of-way and for providing restoration of driveway aprons resulting from construction activities by the Town; second by Vice Mayor Kosinski.

Town Manager Stewart noted if structures were in Town right-of-way, then it would be the property owner's issue.

Consensus agreed that structures in Town right-of-way would be the property owner's issue.

Town Manager Stewart questioned how to handle vegetation in the right-of-way; and mentioned that the Town was giving people the option to move the vegetation before the work was done.

Consensus agreed that people should be given the option to move the vegetation before the work was done.

Town Manager questioned the policy to be used for trees in the right-of-way.

Public Works Director Lewis reviewed the policy that was utilized during improvements in the north end of the island.

Town Attorney Rooney recommended that he prepare a generic waiver of liability for the Town.

AMENDMENT: Motion maker amended the motion to include: and to follow the policies used in north Estero. Second agreed.

VOTE: Motion approved; 5-0.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

Mayor Mandel noted the FAA in Washington DC was conducting a public hearing on the Part 150 Study. He suggested the Town send a letter to the FAA noting their support of the Part 150 Study, as well as letters to Senators Rubio and Nelson. He reported he had been contacted over the weekend regarding the noise study and wanted to know who to contact in Washington DC. He suggested adding that information to the Town's website.

XI. TOWN MANAGER ITEMS

A. Mound House Update

Public Works Director Lewis reported that Fowler Construction had begun some of the lead paint remediation work; and it was anticipated that would be completed this week. She anticipated receipt of the building permit very soon. She announced the Town received the modification to the Army Corps of Engineers permit for the pier.

B. Action Items Recap

Town Manager Stewart asked if Council had any questions on the information submitted the Action Items Recap.

Council Member Andre questioned the status of the pictures for the windows in the front of Town Hall.

Town Manager Stewart stated that Town Attorney Miller was working on language for the agreement between the Lessor and the Town.

XII. TOWN ATTORNEY ITEMS

Town Attorney Rooney - no items or report.

XIII. COUNCILMEMBER ITEMS AND REPORTS

1. Requested Motion:

Meeting Date: December 2, 2013

Approve a policy related to structures and landscaping within the public right-of-way and for providing restoration of driveway aprons resulting from construction activities by the Town.

Why the action is necessary:

Town Council decides all policy matters.

What the action accomplishes:

Provides direction to Town staff.

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other -

4. Submitter of Information:

- Council
- Town Staff – Public Works
- Town Attorney

5. Background:

At a workshop held on June 12, 2007, the then seated, Town Council discussed various matters relating to the Town's public right-of-way, the minutes are attached for reference. A portion of that meeting was used to address restoration activities resulting from Town construction projects. Council provided direction to staff that the approach to each project should be determined on a community level and provide property owners with 30 – 60 advance notice of the work to allow sufficient time for the property owner to remove any landscaping or driveway pavers in the right-of-way; the removal and replacement of these items would be the responsibility of the property owner.

Now that the reFRESH Waterlines Phase I project is approaching construction staff is looking for direction as to the method Town Council desires to use for this Phase I work. Staff is looking for a determination from Council related to who will be responsible for removing and or replacing items such as fences, statues, landscaping, etc. located within the public right-of-way as well as handling driveways with respect to the removal and replacement of decorative pavers, replacement of stamped concrete, restoration of stone, shell, asphalt and concrete driveways, and driveway width.

Attached is also a memorandum providing additional information related to this.

6. Alternative Action:

Take no action to provide direction to staff for the upcoming project

7. Management Recommendations:

Provide the needed direction.

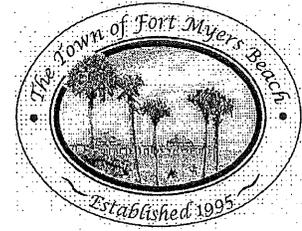
8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Park & Recreation Director	Town Clerk
<i>Terry Stahl</i>			<i>C Ruiz</i>			

9. Council Action:

- Approved
- Denied
- Deferred
- Other

MEMORANDUM



DATE: November 21, 2013
TO: Terry Stewart, Town Manager
FROM: Cathie Lewis, Public Works Director
SUBJECT: Public Right-of-Way Restoration – Potable Water Rehabilitation Project

During final design of the North Estero Project staff brought forward to the then seated Town Council a number of items associated with encroachment into the public right-of-way. I have attached the minutes from the June 12, 2007 Town Council workshop whereby this matter among others were discussed. The discussion regarding this is within the first paragraph of the second page.

The minutes reflect that Town Council wanted to provide consideration regarding this on a project basis, providing advanced notice to property owners giving them adequate time to remove anything within the right-of-way, at the owners expense, for those materials they wanted saved. This included the removal and replacement driveway pavers.

Shortly after this, LPA was requested to work on stormwater related matters which entailed determining the minimum and maximum widths for residential driveways.

For the North Estero project, property owners were required to remove anything within the public right-of-way that they wanted to keep and relocate it, including driveway pavers. All residential driveway accesses were to be restored in a consistent manner, using a concrete apron up to the edge of the right-of-way. Residential widths were set at a minimum of 9', maximum of 11'. Where the driveway access intersects with the roadway, a maximum width of 18" was set.

Now that the Town is moving forward with the potable water rehabilitation project, I believe Town Council should discuss this matter as it relates to these project areas. As we know the Town's side street paved lane widths are narrow by design and range from a right-of-way width of 15' to 50'. With the water project, the installation of the piping and appurtenances will take place on one side or the other of the right-of-way, for the most part staying out of the paved area.

There are varying materials used for driveways throughout the Town consisting of stone, shell, asphalt, concrete, decorative stamped concrete, and decorative pavers. I believe it is difficult for the Town to assume responsibility for removing, replacing and warranting anything of a decorative nature. Replacing decorative materials will also have the potential of increasing the project costs due to additional materials and specialized labor needed for this restoration. With that being said, I am not aware of any reason why the Town could not do so if it so chose.

I look forward to discussing this with Town Council in the near future. Please let me know if you have any questions or require additional information.

MINUTES

Town Council Workshop
Town Hall –Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

June 12, 2007

9:00 AM

Present at this workshop was Mayor Dennis Boback, Vice Mayor Larry Kiker, Councilmember Herb Acken, Councilmember Charles Meador, Councilmember Bill Shenko, Town Attorney Anne Dalton, Town Manager Gary Parker, Public Works Director Jack Green, and Public Works Senior Projects Manager, Cathie Lewis.

Town Manger Gary Parker informed the Council that the purpose of this workshop was to discuss issues related to the use of the Town's Right of Way: Parking, Dumpster, Driveways, Swales.

Public Works Director Jack Green asked Council to provide direction for staff with regard to parking in the ROW, in order to maintain consistent handling of these issues. The discussion contained references to particular cases, such as the use of the right of way by customers of the Lighthouse Resort, S.O.B. on 3rd Street and the Royal Beach Club, to general use by various businesses throughout the island. Concerns were raised as to how any lease agreement would be managed, that there are many variables that would need consideration, and what is legally owned by the Town and what is merely an easement for Town's use. As it relates to the Lighthouse Resort and a lease agreement, Council was concerned about unsafe parking on the Town's egress from the island. Jack Green stated that the sense he received from the Council is that the ROWs are public domain, for community based purposes and not to be leased. With regard to the area on fifth street, Public Works will install no parking signs for the present, and have an engineer come up with a safe design for metered parking. Enforcement of the private use of the rights of way will complaint-driven.

Public Works sought direction from Council as to how to approach the rights of ways on the side streets. The Town will be reclaiming many of the swales for storm water management, and would like Council direction as to who would bear the cost of landscaping and driveway pavers for removal and replacement. Council would like the Town to approach each project on a community level, give the property owners 30-60 days' advanced notice of the work to be done, to allow the property owner to remove any landscaping or any driveway pavers in the ROW; the removal and replacement would be the responsibility of the property owner. Where pipes currently exist under driveways, should the pipe be damaged, the cost will be absorbed into the project. Public Works stated that swales are preferable for storm water management as they have a greater capacity than pipes and they filter the water. Council would not like to mandate swales where pipes may already exist, or where the property owner has a preference for piping.

There was discussion regarding awnings and overhangs onto the Right of Way and being permanently fixed to structures, and the Council was not in favor of this activity, and discussed liability. Proposed FEMA maps were discussed and the effect the V-zone will have on pedestrian friendly community. The consensus of the Council is that there are concerns over structural supports within the Town's Right of Way; and the Community Development Director and the Town Attorney can develop an easement agreement for Snug Harbor as a starting point. Other cases will be addressed on a case-by-case basis.

Regarding newspaper boxes, signs etc. in the right of way, Public Works Director Jack Green said that from previous discussion, he inferred that this activity will continue to be prohibited. He expressed concern about construction staging and fencing that closes off the ROW. Council would like staff to determine the appropriateness based on the project. Staff would like some sort of agreement or policy, whether the use of the ROW would provide some compensation to the Town. The builders would already be paying impact fees, application/permitting fees, and address these on a case-by-case basis and work with the builder.

Community Development Director Jerry Murphy raised the topic of Traffic Impact Analysis as identified in the Comp Plan. Discussion lent itself to not having any criteria for such, and not being in favor of hiring a consultant.

Staff asked for discussion among Council on how to proceed in situations whereby a property owner would offer additional ROW in exchange for frontage to allow for enhanced development. Council would not want Community Development to turn down any offers, to consider on a case by case and keep our alternatives open.

Budget workshops were set for July 19 and 26, 2007 at 6:30 PM.

Workshop adjourned; time not noted.

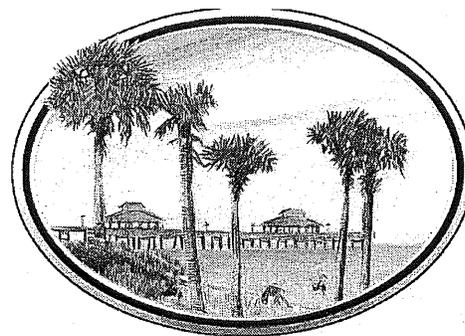
Adopted 8-6-07 With/ Without Changes. Motion Meador/Shenko
(Date)

Vote: 4-1, Kiker dissent

Michelle Mayher
Michelle Mayher
Town Clerk

- End of Document

TOWN OF FORT MYERS BEACH



MEMORANDUM

DATE: January 8, 2013
TO: Terry Stewart, Town Manager
FROM: Cathie Lewis, Public Works Director
SUBJECT: Rights-of-Way Parking/Use Leases

Resulting from the planned improvements associated with the North Estero Blvd. project, staff brought forward the issues associated with private properties utilizing the Town right-of-way. The direction received through that workshop was that the public R-O-W is to be reclaimed, including the removal of signs, landscaping, dumpsters, displays, construction staging areas, newspaper/periodical boxes, and parking.

Many properties on the island were developed long before the Town incorporated and prior to development standards being implemented. Throughout the Town property owners have extended their uses into the public R-O-W, some for convenience others due to necessity.

Ultimately there were only two properties along North Estero Blvd. that needed to utilize the R-O-W, which was for parking. In addition to a lease agreement being implemented for parking, the owners provided the Town with a sidewalk easement.

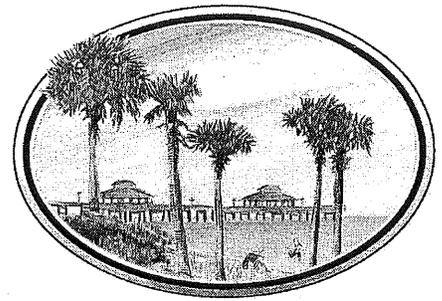
The use of the R-O-W in the Downtown District is encouraged in the Town's LDC and a program for that was established with the redevelopment of Times Square and has continued with the redevelopment of Old San Carlos Blvd. The use is controlled via a lease agreement based on a per square foot charge that is established from by Town Council. These agreements are termed on an annual basis. Structures within the R-O-W of Old San Carlos Blvd. area have been controlled via a long term lease/hold harmless agreement.

The process that staff has used to determine the annual rate for parking is based on an annual average of metered parking revenue from areas in close proximity to any subject property divided by one-half and multiplied by the number of parking spaces needed.

To date there has not been a thorough evaluation of all island properties and their encroachment into the Town rights-of-way. Community Development has been working through a number of situations, i.e. dumpsters, signs. Many encroachment issues are brought forth through complaints, public improvement projects and property redevelopment.

Processes have been established as is outlined above and attached for review are copies of the lease utilized for N. Estero, Times Square Business Extension, and a table lease and hold harmless agreement utilized on Old San Carlos Blvd.

Please let me know if you have any questions regarding this matter or the implementation of the same.



Memo

To: Town Council
From: Water Utility Manager
Via: Public Works Director
CC: Town Manager, Town Attorney
Date: July 1, 2008
Subject: LPA Resolution #2008-08

At its meeting on June 17, 2008, the LPA adopted a Resolution (attached) requesting that Town Council direct staff to develop a policy regarding the alteration and paving of the right-of-way (ROW) in front of private properties and recommended that Council direct the LPA to begin work on comprehensive changes to the LDC establishing the maximum surface area that may be covered by impervious surfaces on private property. Staff concurs and is bringing this matter forward because of the urgent nature of the issues facing the Town resulting from neighborhood flooding due to the application of impervious surfaces within the ROW and on private property.

Currently, the Town's LDC does not provide limitations regarding the use of impervious surfaces on private properties, which often results in neighborhood flooding. Nor does it address "paving" within the right-of-way in front of a property. As you know, this island has chronic flooding problems, many of which are associated with private property owner's changing the grade of their property, adding impervious surfaces, filling swales and paving the right-of-way.

Effective October 1, 2008, Lee County will no longer be the agent for the Town with respect to issuing driveway and ROW permits. As a result of this change, Town staff has been working with County personnel to make that transition and learn the processing procedures. It has become apparent during this transition that the Town's code requirements associated with the installation, repair and replacement of driveways is inadequate; as well as the lack of regulations regarding the use of the ROW.

To effectively monitor and assist residents with the development and improvements to their properties, staff must have the tools to do so. Therefore, staff requests that the Town Council authorize the development of regulations regarding the alteration and paving the ROW, including the filling of swales.

Additionally, staff urges Council pursuant to Resolution 2008-08, to authorize the LPA to begin work on other comprehensive changes to the LDC associated with stormwater issues as required in the Town's Comprehensive Plan. The LPA will begin by developing a strategy for the modification of impervious surfaces on private property.

The recently completed neighborhood stormwater management study recommended the use of porous materials as well limiting and reducing impervious surfaces on public and private properties. Staff recommends that LPA address this as a priority issue.

pc: file

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