



MINUTES

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

March 2, 2009

8:30 AM

- I. CALL TO ORDER**
- II. ANNOUNCEMENT OF COMMENCEMENT OF
EXECUTIVE SESSION**

EXECUTIVE SESSION CLOSED TO THE PUBLIC

A. Tezak Family Trust vs. Town of Fort Myers Beach

ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION

Mayor Kiker called to order the meeting of the town council at 8:30 am. Present along with Mayor Kiker was Vice Mayor Acken, Councilmember Babcock, Councilmember List, Councilmember Raymond, Town Manager Scott Janke, Town Attorney Anne Dalton, and Town Clerk Michelle Mayher.

A miscommunication with the court reporting services caused the executive session to be rescheduled for Tuesday, March 3, 2009 at 8:30 am.

III. PLEDGE OF ALLEGIANCE

Councilmember List introduced the Youth Council, and three elementary school students took their place at the dais, and led the chambers in the pledge to the flag.

Councilmember List introduced Beach Elementary School Principal Mr. Larry Wood. Mr. Wood outlined a program the school conducted called the Carsons Scholarship. The students wrote essays and the winning essay was awarded a one thousand dollar scholarship. The winning student held a 3.75 gpa, and Mr. Wood introduced Tatum Flowers. Tatum Flowers took the dais as Mayor for the Youth Council, accompanied by Annie Salyers and Bryanna Walker. The students read their essays on education. Mayor Kiker awarded the students certificates of accomplishment.

V. REORGANIZATION OF COUNCIL

- A. Election of Mayor
- B. Election of Vice Mayor

Attorney Dalton explained the process for the election of mayor and vice mayor. It was the will of the council to have open nominations and elections, as opposed to written ballots. Ms. Dalton opened up the floor for nominations.

Herb Acken nominated Larry Kiker to continue as Mayor. Mr. Kiker accepted the nomination. Councilmember Babcock had no nominations. Councilmembers List and Raymond support the nomination of Mr. Kiker.

MOTION: Councilmember Babcock moved to close the nomination.
Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

Attorney Dalton opened the floor for nominations for Vice Mayor. Councilmember List nominated Herb Acken for vice mayor. Mr. Acken accepted the nomination. Councilmembers had no other nominations.

MOTION: Councilmember Babcock moved to close the nominations.
Councilmember List seconded the motion.

VOTE: Motion passed 5-0.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember Babcock recognized Streetscape Program, recipient of the 2009 Lady Bird Johnson Award, being shared with the Estero Island Garden Club.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Vice Mayor Acken mentioned that the BOCC would be discussing the Beach Interlocal Agreement that afternoon, indicating that he had distributed copies of the County staff report highlighting several statements regarding the project that he felt were unrealistic, and asked Council to consider whether the draft ILA presented to the County is negotiable. Vice Mayor Acken suggested that this meeting be recessed for either this evening or tomorrow night, in order to have discussion after the County feedback regarding the ILA.

Councilmember Babcock referenced an e-mail from County Natural Resources Steve Boutelle, asking that the Council go through those options prior to the meeting with the County.

Mayor Kiker surmised that the Council will continue with the agenda, allowing time before recess at noon to discuss the Beach Nourishment negotiations, adding as an agenda item, D.

Councilmember List referenced the Coastal Advisory Committee, stating that she feels that she is out of her league with this committee, not being able to offer any substantive discussion, stating her willingness to take on any other committee appointment, allowing someone who is more conversant in coastal engineering. Town Manager

Scott Janke encouraged Ms. List to take advantage of the Town's Environmental Sciences Coordinator, Keith Laakkonen, indicating that he would like for him to attend the CAC meetings with Councilmember List.

VIII. PUBLIC COMMENT

Opened Public Comment

None

Closed Public Comment

IX. CONSENT AGENDA

- A. Approval of Minutes: February 2, 2009
- B. Special Event Permit Application: Yucatan Beach Stand St. Patrick's Day Event
- C. Special Event Permit Application: Sound Check "Butt Out on the Beach"
- D. Approval of Revised Citizens Recognition Program

MOTION: Councilmember List moved to approve the consent agenda.
Councilmember Raymond seconded the motion.

VOTE: Motion passed 5-0.

X. ADMINISTRATIVE AGENDA

A. TDC Beach and Shoreline Project Applications

Town Manager Scott Janke indicated that the Council has been provided with a memo from Public Works Director Jack Green, that outlined for what the Town is applying, that it is Maintenance reimbursement, not capital improvements, asking the Council to bless the application, and added that the motion on the blue sheet states and amount "not to exceed \$350,000.", however the figure is now a not to exceed \$400,000.

Opened Public Comment

None

Closed Public Comment

MOTION: Vice Mayor Acken moved to authorize staff to prepare and submit funding applications to the Lee County Tourist Development Council (TDC) for operations and maintenance of the Beach, Beach Accesses, Newton Park and the Mound House in an amount not to exceed \$400,000. Councilmember Babcock seconded the motion.

VOTE: Motion passed 5-0.

Mayor Kiker recognized a member of the audience who was in attendance to speak to the Special Event Permit Application: Sound Check "Butt Out on the Beach" which was passed under the Consent Agenda.

Mr. Brendan Donahue, Lee County Health Department told the Council that the goal is to substantially reduce tobacco use among teens. "Sound Check" is sponsoring rock concerts throughout the country to make the music industry aware of the damage being done by cigarette smoking. Mr. Donahue requested additional parking spaces under the bridge. The Council directed staff to work with the event planner with regard to

what parking can be provided, and whether the free parking on San Carlos Island can be used.

Opened Public Comment

None

Closed Public Comment

Town Manager Scott Janke referenced the planning areas identified on the map provided, and pointed out that the discussion should focus on the geographic area.

B. Discussion of Responding Resolution 09-02, Service Boundary Agreement

Attorney Anne Dalton referenced Resolution 09-02, Interlocal Service Boundary Agreement, which is on a short time table to be adopted, the draft resolution is for input from Council. The Council will be required to adopt this or a similar resolution at an upcoming Council meeting, and if no resolution is adopted, the agreement goes forward without Council input.

Discussion ensued regarding the geographic boundaries be identified as the FMB Fire District boundaries, but not to include other districts in section seven, taking the Fire District Boundary and extending it out to both sides of Summerlin Road.

Discussion continued regarding the subject matter, on Page 3 of the Town's responding resolution. Councilmember Babcock suggested that the regional beach management be removed, and add school concurrency and economic impact. Mayor Kiker suggested having some input into TDC, traffic mitigation, the MPO and impact fees and Estero Boulevard's 5-year plan, and the surrounding waters of the Town with the derelict vessels.

Attorney Dalton felt she had received adequate direction to redraft the resolution, for Council consideration at the next regular Town Council meeting.

C. Aquisition of Property, Adjacent to Town Water Tower

Town Manager Scott Janke indicated that this property, located at 815 Estero, adjacent to the Town's north water tower site, is being offered to the Town for purchase. Included in the packet are two appraisals, one done by the Town in June 2008 and one done by the property owner, Mr. Fred Paine. Mr. Janke added that the FY budget 09 has \$225,000. in land acquisition funds.

Discussion among Council included the current market value and the age of the appraisals, and the lack of density on the property, that it is unbuildable. Mayor Kiker suggested that this item be discussed at the March 3, 2009 worksession under the agenda management item. Council concurred.

Recess: 11:10 AM

Reconvene 11:20 AM

Mayor Kiker indicated that the Town Attorney's Items and the Town Manager's Items for this agenda are not time sensitive, and in light of time constraints, will be moved to the next Council worksession.

D. Beach Nourishment Interlocal Agreement

Mayor Kiker suggested getting a handle of what is intended to accomplish in the next 25 minutes. Vice Mayor Acken requested a reconsideration of the Council's hard line on easements. Councilmember Babcock suggested voting on the items presented by Steve Boutelle. Councilmember List suggested a straw poll on the options presented by Mr. Boutelle, and come to a united front on the Town's position. Councilmember Raymond agreed with reviewing Mr. Boutelle's options and come to an agreement.

Opened Public Comment

None

Closed Public Comment

Mayor Kiker outlined the topics for discussion: a discussion on easements; a review of Mr. Boutelle's items; an update on the program Mr. Janke has put together (outreach to the beach front property owners); appoint a spokesperson for the BOCC meeting.

Discussion began with the definition of a "berm." Mayor Kiker interjected that the matter of allowing rescission of easements is more the point for consideration. Vice Mayor Acken opined that the County's requirement of dunes and vegetation influences the easements and their rescission. Councilmember List read a prepared statement in support of not strong-arming constituents into the easements and the agreement. Councilmember Babcock would like the discussion with the Board of County Commissioners to address the minimum number of easements required to keep the current cost projections, and/or for project viability.

Town Manager Scott Janke referenced Mr. Boutelle's recommendation that the Town be responsible for easement acquisition, and asked that the Council relay to the BOCC that the Town does not have staff to accomplish that.

Council concurred to reconvene at 6:30 this evening to continue this discussion, after input from the Board of County Commission.

In attendance at the Board of County Commissioners' meeting, the Town will request that the County staff will answer the question regarding the minimum number of easements required for project viability be answered to the Town before close of business.

Councilmember Raymond went on record stating that he will not vote favorably if condemnation is in the agreement.

MOTION: Councilmember List moved to continue this meeting to 6:30 PM on March 2, 2009. Vice Mayor Acken seconded the motion.

VOTE: Motion passed 5-0.

The Town Council recessed until 6:30 PM

Mayor Kiker reconvened the meeting at 6:30 PM. All members of Council were present, along with Town Manager Scott Janke, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

Town Manager Scott Janke began with an update on the Council's attendance at the Lee County BOCC Management and Planning Meeting. The Board of County Commissioners accepted all of (county) staff's recommendations except the easement rescission. Chairman Judah spoke firmly against the support of easement rescission.

Town Council collectively discussed their understanding of the County's comments regarding the interlocal agreement, 'condemnation', federal easements vs. construction easements, parking spaces, the Town's \$10 Million dollar cap on the project and retaining the Town's position on new technology, suggesting a figure of \$100,000.00 as a starter number for engineering.

Town Manager Scott Janke outlined his plan is that he would go with Keith Laakkonen (Fort Myers Beach, Environmental Sciences Coordinator) and Steve Boutelle (Lee County Natural Resources) along with an elected official from the Town to visit homeowner(s) and/or condominium association designee(s) to address the needs of their specific property, and outline what would be required for them to sign the ten-year easement. Mr. Janke indicated that this is a fact-finding mission, and will come back to Council to inform the Council as to the public opinion or position, and what can be done to help the community. Mr. Janke reiterated that it is the County's responsibility to secure the easements, and the Town will assist in assuring community trust.

Recess: 7:50 PM

Reconvene 8:00 PM

XI. TOWN MANAGER'S ITEMS

A. Authorization for Florida League of Cities "Legislative Action Day" for Mayor and Manager

Town Manager Scott Janke requested Town Council authorization for the Town Manager and the Mayor to attend Florida Legislative Action Day, in Tallahassee on March 25, 2009.

Councilmember List indicated that she would also like some town representation at the 6th annual Lee County days in Tallahassee at the same time, March 24, 25 and 26.

Town Manager Scott Janke indicated that he will kick off a meeting of the Bay Oaks transition team, scheduled for 1:00 PM on March 5 to tour the facility, county personnel will be present to answer questions. The Transition team, consisting of Town Staff and key County personnel will be "sequestered" on March 9th 11th and 12th at the new fire station on San Carlos Boulevard. On March 23rd the transition team will meet without County personnel.

Town Manager Scott Janke referenced a letter received from a citizen requesting changing the name of Newton Park and also a request to add a kayak landing in the vicinity of Newton Park. Council directed the Town Manager to look into public bay accesses.

XII. TOWN ATTORNEY'S ITEMS

Town Attorney Anne Dalton noted for the record that she had requested that the executive session in the case of the Purtell versus Fort Myers Beach be cancelled for today.

Ms. Dalton referenced an e-mail sent regarding a validation hearing vs. a referendum [on refinancing the water utility]. Ms Dalton summarized that if Town Council chose to move to borrow for water system repairs or other purposes, there are two avenues to pursue, one is called a validation hearing in the nature of a declaratory judgment hearing, which is expedient if no objections.

The second option is to have a mail ballot referendum: put a specific dollar figure in the referendum and send the ballot out to the voters of Fort Myers Beach.

Mayor Kiker suggested this item be scheduled for discussion on a future agenda, preferring to wait until after the worksession scheduled for Tuesday March 3, 2009.

XIII. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Raymond attended the County Commission meeting on February 25, 2009 at which the San Carlos Island development was discussed. Mr. Raymond handed out a written summary of the results of the meeting, outlining residential units, traffic, water taxis, airport shuttle, development of a harbor.

RECAP OF ACTION ITEMS

XIV. AGENDA MANAGEMENT

XVI. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Lee Melsek agreed with Vice Mayor Acken regarding reducing fees for variances. Mr. Melsek spoke regarding the M&P at the BOCC ; he doesn't hate beach renourishment, rather a county government which has consistently misled the people of the beach.

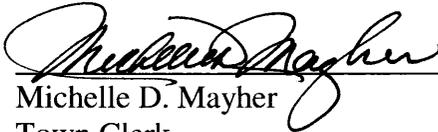
Closed Public Comment

XII. ADJOURNMENT

The meeting adjourned at 9:36 PM

Adopted 4-6-09 With/ Without Changes. Motion by Liot / Raymond
(Date)

Vote: 5-0


Michelle D. Mayher
Town Clerk

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