



## MINUTES

**Monday, December 3, 2012**

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

### **I. CALL TO ORDER**

Mayor Raymond called to order the December 3, 2012 Regular Meeting of the Town Council at 9:00 a.m. Present along with Mayor Raymond: Vice Mayor Mandel, Council Members Andre, Kosinski, and List. 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, Beach United Methodist**

### **III. PLEDGE OF ALLEGIANCE**

### **IV. APPROVAL OF FINAL AGENDA**

Consensus approved the Agenda as presented.

### **V. PUBLIC COMMENT**

Mayor Raymond noted Public Comment time was scheduled for discussion of items that were not on the agenda.

Public Comment opened.

Tom Babcock, resident, stated he was a representative of Fort Myers Beach residents who were concerned about aircraft noise; and thanked the Council for supporting their efforts in the past regarding this matter. He indicated his understanding was that Vice Mayor Mandel would address the '*Draft - Part 150 Noise Study*' during his report time; and noted that a part of the Air Corps group was currently reviewing all 923 pages of the Study. He explained that the analysis of the Noise Study clearly reflected the Town's recommendations, and their requests must be acceptable to the FAA. He described the

group's prior work in the efforts regarding air traffic noise and the Beach; he indicated the group was basically pleased with Chapter 11 of the Study; and stated the Study should recommend that aircraft fly 'at or above' 3,000 feet until east of Estero Island. He reviewed the new arrival approach discussed at a meeting of the Port Authority, FAA, and Air Traffic Controllers last August. He requested from Council the following: 1) to give the Air Corps group one week to analyze the entire document and submit their recommendations; 2) that a supportive letter be sent to all Commissioners; and 3) that the Council's letter be reviewed at their December 17<sup>th</sup> Meeting.

Roy Hinkleman, resident and President of the Laguna Shores Condominium Associations, noted their dredging project was completed; and thanked the Town Council, and Town Manager and staff for their support and work in conjunction with the dredging project.

Public Comment closed.

## **VI. IMAGE OF FORT MYERS BEACH**

Council Member Andre thanked the Chamber of Commerce for the boat parade and noted the great turnout for the event.

Vice Mayor Mandel noted that two members of the Town Council, Council Member Andre and Mayor Raymond, assisted greatly in making the boat parade a successful event.

Mayor Raymond expressed his delight in participating in the event and described the work involved to produce the boat parade.

## **VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Vice Mayor Mandel recognized the successful sand sculpting event.

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

Jim Rodwell, Audit Committee, reported the Committee had reviewed the investment policies as assigned by Town Council. He explained that as part of their deliberations that Town staff approached the Committee to consider as part of their review to have counter-signed checks, and if so, at what monetary level. He reported staff prepared for the Committee information regarding checks prepared during the last fiscal year for both the General Fund and the water utilities; and reviewed the information submitted to them by staff. He reported that the Committee agreed to recommend that it would be good policy to have counter-signed checks for a certain monetary level; and selected \$10,000 or greater for both the General Fund and water utilities. He addressed the Florida Municipal Investment Trust (FMIT) account that was managed by the Florida League of Cities which was where the Town kept most of its investment money; and noted that account had not seen activity in several years. He pointed out that presently only the Town Manager was able to make transfers or withdrawals from that account. He added that the Committee was heading in the direction to see that account being more actively used in the future. He reported at this point in time the Committee recommended two signatures to be required for transfers 'to or from' the investment account.

Vice Mayor Mandel noted his role as liaison to the Committee, and stated his belief that the group performed a very thorough review of the check and investment policy counter-signing issue.

Council Member List noted the authorized level of \$25,000 for the Town Manager as it pertained to Council approval, and questioned if the proposed change would affect the policy in place for the Town Manager as it related to Council approval.

Town Attorney Miller explained that the \$25,000 limit was regarding the Town Manager's ability to enter into contracts or purchases. She noted the recommendation was only for check signing purposes.

Discussion ensued regarding the recommendations as presented by the Audit Committee.

Council Member List questioned if the Audit Committee had recommendations regarding the investment trust account at this time.

Mr. Rodwell reported he was not prepared to discuss the investment policy at this point since there was much more discussion and review to be done with the staff by the Committee.

Town Manager Stewart reported that staff supported the Committee's recommendation for counter-signed checks and the transfers to/from the investment account. He discussed Council's previous direction to the Audit Committee to review and recommend a broad and all-encompassing investment policy; and the current recommendation regarding transfers.

**MOTION:** Vice Mayor Mandel moved for the Council to accept the recommendation of the Audit Committee providing two signatures on above \$10,000 checks written by the Town and/or the water utility and two signatures on any amount for the investment account; second by Council Member List.

**VOTE:** Motion approved, 5-0.

## **IX. APPROVAL OF MINUTES**

- A. November 5, 2012 Town Council Meeting
- B. November 5, 2012 Town Council Work Session

**MOTION:** Council Member Andre moved to approve the minutes as presented with one correction to Page 10 of the November 5, 2012 minutes – Kucera to Nocera; and page 2 of the November 5, 2012 Work Session minutes – “Council Member Andre noted the Town's mooring field was operating at a deficit, and he questioned if ~~the~~ other town mooring fields operated in a similar fashion.”; second by Council Member Kosinski.

**VOTE:** Motion approved, 5-0.

## **X. CONSENT AGENDA**

- A. Appointment to the Public Safety Committee
- B. Appointment to the Marine Resources Task Force
- C. New Year's Eve Fireworks, RFP-12-16-PR

**MOTION:** Council Member List moved to approve the Consent Agenda Items A, B, and C; second by Council Member Kosinski.

Council Member List questioned if there had been any discussion between the Times Square merchants and the Town regarding any other aspect of the New Year's Eve event.

Town Manager Stewart reported that he and Parks and Recreation Director Evans had some conversations with Mr. Lallo.

Parks and Recreation Director Evans reported she spoke with John had some conversations with Mr. Lallo and that the music was scheduled all afternoon using two bands that was at the expense of the merchants; and indicated the Town was handling the fireworks, the open-container issues, and set-up. She added that the merchants were supplying the music from 1:00 p.m. to midnight. She stated she was working together with the merchants regarding additional entertainment and that she would attend the group's event meeting tomorrow.

Council Member List noted that in the past there had been a person appointed as a coordinator of the event who remained in the stage area to ensure items such as but not limited to the ball drop and fireworks synchronization.

Parks & Recreation Director Evans reviewed how the fireworks were coordinated at the Fourth of July event and how it would be handled on New Year's Eve.

Mayor Raymond questioned if the event was still within the budget.

Parks & Recreation Director Evans responded in the affirmative; and noted the only cost at this time was the fireworks; however, there were no sponsors at this time.

**VOTE:** Motion approved, 5-0.

## **XIII. PUBLIC HEARINGS**

- A. Quasi-Judicial Hearing Case SEZ2012-0001, Smokin' Oyster Brewery

Mayor Raymond opened the Public Hearing at 9:30 a.m.

Mayor Raymond asked if any Council Member had ex-parte communication regarding this item. Council Member Andre – site visit; Council Member List – site visit, spoke with owner, and attended a meeting between owner and Town staff; Vice Mayor Mandel – spoke with owner and site visit; Council

Member Kosinski – spoke with Mr. Easterbrook, noted his initials on the plans and announced he would participate in the discussion but abstain from voting; Mayor Raymond – site visit.

Mayor Raymond requested Town Attorney Miller to swear in the witnesses; and the Town Attorney swore in the witnesses.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Zoning Coordinator Chapman noted that she had copies of survey information which had not been included in the Council's packet distributed copies of the same. She presented comments for SEZ2012-0001, Smokin' Oyster Brewery on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the subject property and described the location of the site. She reported the request was for a special exception in the Downtown zoning district with a Future Land Use of Pedestrian Commercial to allow the expansion of outdoor seating, with consumption-on-premises, into the Town right-of-way (Old San Carlos Boulevard and Third Street) immediately adjacent to the building located on the subject property. She displayed a proposed site plan and noted the outdoor seating and consumption. She discussed the Applicant's request for additional outdoor seating for waiting patrons; and requesting a waiver of parking requirements for parking spaces generated by additional outdoor seating (12 required on-site spaces). She reviewed the supporting regulations:

- **Section 34-88(2)(a)** - whether there exist changed or changing conditions [that] make approval of the request appropriate. Staff in agreement.
- **Section 34-88(2)(e)** – whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan. Staff in agreement.
- **Section 34-88(2)(f)** – whether the request meets or exceeds all performance and locational standards set forth for the proposed use. Staff in agreement request is appropriate due the location; applicant to meet all building code standards.
- **Section 34-88(2)(g)** – whether the request will protect, conserve, or preserve environmentally critical areas and natural resources. Staff reported the request would have no negative effects on the environmentally critical areas and natural resources.
- **Section 34-88(2)(h)** – whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property. Staff reported the request was compatible and appropriate within its neighborhood.
- **Section 34-88(2)(i)** – whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34. Staff noted any use of alcohol on the subject property would be subject to Section 34-671 and 34-1264 and the existing business approvals on the subject property.

She stated that staff recommended approval with conditions of the requested special exception to expand outdoor seating with consumption-on-premises into the Town right-of-way as follows:

1. Consumption on premises is limited to the building located on the subject property at 340 Old San Carlos Boulevard and the additional areas as depicted on the attached Exhibit A.
2. All conditions of approval from Resolution 05-06 remain in force with the exception of Condition #4.
3. Hours of operation for consumption-on-premises shall be limited to the hours of 7:00 a.m. to 2:00 a.m., daily for inside the building and the additional deck area. Hours of operation for

consumption-on-premises for Old San Carlos Boulevard sidewalk are and shall be limited to 10:00 a.m. to 12:00 midnight, daily.

4. Upon approval of the special exception, the applicant must enter into a lease agreement with the Town, to be renewed annually, with rates as set forth by Town Council, for the use of the Town right-of-way on both Old San Carlos Boulevard and Third Street. Additionally, the applicant will execute a hold harmless agreement with the Town for the use of such right-of-way. If the applicant fails to renew the annual lease, this special exception shall be rendered null and void.
5. All uses of Town property are subject to the conditions established in LDC Section 34-678(f).
6. All work proposed to be done will require Limited Review Development Order and any other permits determined to be necessary at the time of permitting.

She reported the LPA held a Public Hearing on the subject case on October 9, 2012 at which time they voted 7-0 to recommend approval with two additional conditions which she reviewed:

7. A minimum clear pathway of 5' in width be kept clear at all times for a pedestrian throughway.
8. Pavers and/or paint are to be used to delineate the area where tables are to be located along Old San Carlos Boulevard.

She noted her discussion with Public Works staff regarding Condition #8; and how it would change the consistency of the existing pavers along the street and create additional maintenance for Public Works.

Discussion was held concerning the property line of the subject property, the existing red brickwork, the Town's right-of-way, and the current parking area.

Council Member Kosinski questioned the location of two tables next to the parking area as they pertained to car doors as they were opened. He wondered if the tables should be moved closer to the building.

David Easterbrook, Easterbrook Consulting and representing the owner, stated he had reviewed the issue and felt that there would not be a problem with the tables.

Council Member Kosinski expressed his belief that the pavers should not be painted.

Vice Mayor Mandel echoed Council Member Kosinski's comment regarding the pavers. He questioned ownership of a piece of property that he pointed to on the proposed site plan displayed on the screen.

Zoning Coordinator Chapman responded that property in question was owned by another party.

Council Member List noted the redundancy with including a condition about the pedestrian throughway since that was already a federally mandated requirement. She agreed not to paint the bricks.

Council Member Andre also agreed about the comment not to paint the bricks. He noted there was no parking on either side of Third Street and suggested when future planning occurred that some type of pedestrian walkway from under the bridge parking to Old San Carlos Boulevard would be helpful.

Mayor Raymond discussed his opinion that concurred the bricks should not be painted. He asked if there was a member of the LPA present for comments.

No LPA representative was present.

Public Comment opened.

Ed Scott, resident, discussed his belief that the proposed request would clog up the only exit advertised for leaving the island which was already a bottleneck. He reviewed problems for vehicles when they make turns in that area to get off the island.

Community Development Director Fluegel responded to Mr. Scott's concerns regarding the traffic bottleneck at Third Street as it pertained to back-out parking spaces and the turning radius at the corner.

Public Comment closed.

Discussion was held concerning the proposed location of tables, the right-of-way, and the street.

**MOTION:** Council Member List moved for approval of Case SEZ2012-0001, Smokin' Oyster Brewery, the requested special exception in the Downtown zoning district to allow expansion of outdoor seating, with consumption-on-premises, into the Town right-of-way (Old San Carlos Boulevard and Third Street) immediately adjacent to the restaurant located on the applicant's property, with any approval subject to stated conditions #1-7 and the Recommended Findings and Conclusions:

1. Changed or changing conditions do exist that make the requested approval, as conditioned, appropriate.
  2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
  3. The requested special exception, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use.
  4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources.
  5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property.
  6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.
- second by Council Member Andre.

Mayor Raymond questioned if the outside of the subject property was for dining only (no outside entertainment).

Town Manager Stewart stated the outside was strictly for dining and the consumption of alcohol.

**VOTE:** Motion approved; 4-0; Council Member Kosinski abstained.

Mayor Raymond closed the Public Hearing at 9:50 a.m.

## **XII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

## **XIV. TOWN MANAGER'S ITEMS**

Town Manager Stewart reported that the Public Works Director wanted the Council to be aware that the alternating light at Buttonwood was not operating properly; and that Director Lewis had informed Lee County DOT of the problem. He noted that the Town had requested some federal funding for sidewalks coming from under the bridge parking areas.

### **A. Mound House Update**

Town Manager Stewart indicated the Council was given the most recent report on the Mound House. He noted that Council had previously been informed that the whereabouts of some artifacts were unknown; and he reported that one of the artifacts had been located with a State agency. He added that the necessary paperwork to transfer the artifact to the State agency had not been filled out and staff was in the process completing the paperwork to retrieve the item.

Public Works Director Lewis gave an update on the renovation specifications and noted how staff had been reviewing a different methodology to get the project '*back out on the street*'. She expressed her belief that the document would be ready before the holidays; however, staff believed it would be best if it was released after January 1<sup>st</sup>.

Mayor Raymond expressed his displeasure with the bid process.

Town Attorney Miller discussed her apprehension regarding the bids received; possible bid protests; and how the staff was now prepared to better structure the bid documents.

Mayor Raymond questioned the status of the golf cart for transporting visitors from off-site parking to the Mound House.

Town Manager Stewart reported the golf cart was in the process of acquisition and staff expected to have the 6-person golf cart within the next 30 days. He reviewed issues the staff had been working on such as but not limited to requirements pertaining to how far off-site parking may be located away from the subject site, and a parking analysis of the Mound House site.

Mayor Raymond questioned the status of repair work to the Mound House mural.

Town Manager Stewart reported a new mural was ordered; however, there was not a date certain for completion.

Vice Mayor Mandel requested the mural, golf cart, and parking agreement to be added to the Public Works Mound House Projects Update Report. He suggested that there should be a completion date column on the report and another date column.

Town Manager Stewart pointed out that the Report listed only capital items as requested by Council.

Council Member List reported that at a recent CELCAB meeting they discussed the display cards for the Mound House which had been constructed especially for satellite use and educational purposes. She stated she would like to see that topic included in the Mound House considerations.

## **XVI. TOWN ATTORNEY'S ITEMS**

Town Attorney Miller – reported staff, Mayor Raymond, and the Town's traffic consultant attended the hearing on the Ebtide Project conducted by the Hearing Examiner last week where they presented the Town's material and concerns. She added that the Hearing Examiner seemed to be sensitive to the traffic issue.

Community Development Director Fluegel stated that after attending the hearing he was unsure if the County understood the Town's concurrency management system. He discussed the difference between the County's road impact fee and the Town's transportation impact fee.

Discussion was held concerning the Ebtide public hearing.

Mayor Raymond reviewed his experience and what he learned at the Ebtide public hearing such as but not limited to the fact that the project was not one developer rather it was five developers with five projects; and that someone had to commit to the idea of a water taxi or the shuttle bus element. He discussed major changes to the subject development project such as but not limited to the five condo towers now included hotels; and reviewed his concerns regarding the Ebtide project and how it would impact Fort Myers Beach and San Carlos Island in 10-15 years. He noted he commented to the Metropolitan Planning Organization (MPO) that they should conduct a study on San Carlos Boulevard for 10-15 years from now with both FDOT and Lee DOT. He complimented Town Attorney Miller and Community Development Director Fluegel for their presentations to the Hearing Examiner regarding the Ebtide Project.

## **XVII. COUNCILMEMBER ITEMS AND REPORTS**

Vice Mayor Mandel – reported he attended the Coastal Advisory Committee meeting where it was announced and confirmed that the Laguna Shores dredging project was completed. He added that the dredging at the north end would probably be delayed for 3-4 months. He pointed out that most of the Army Corps of Engineers' personnel and equipment were relocated to the New York/New Jersey area due to the damage caused by Super Storm Sandy. He stated that also noted at the CAC meeting was some projected TDC funding for beach re-nourishment projects. He mentioned that the Air Corps group

would make their presentation to the County Commissioners regarding the aircraft noise issue in January; and if approved, by the County Commissioners it would then go to the FAA for review. He suggested the Council prepare a letter or a resolution supporting the Air Corps recommendation.

Town Manager Stewart stated he would place the resolution on the next Council meeting; however, he noted the resolution might not be included in the packet for the December 17<sup>th</sup> Council Meeting since the deadline for the packet was this Wednesday.

Discussion was held concerning a draft resolution.

Mr. Babcock reported he would try to get the information to the Town staff by Wednesday or no later than Friday.

Council Member List – no items or reports.

Council Member Andre – questioned if the Town would permit a water taxi as it pertained to the Ebtide Project.

Community Development Director Fluegel stated that question had not been asked of the Town yet; staff had not researched it; but noted a landing site would need to be secured in the town.

Discussion ensued regarding potential landing sites for a water taxi.

Council Member Andre – offered a recommendation to change the name of MRTF and the scope of the task force to more of an environmental advisory committee.

Town Attorney Miller reported that over the summer she had prepared a chart of her To Do List that included a review of all the Town committees with the aim of placing the matter on a Work Session which might be appropriate to include Council Member Andre's recommendation.

Discussion was held concerning placing the MRTF recommendation on Agenda Management; it was noted that a review of the Town's advisory committees was already on Agenda Management; and the Town Attorney stated she was prepared to present the matter.

Town Manager Stewart stated they would place the item on the first Work Session in January.

Council Member Kosinski – no items or reports.

Mayor Raymond – reported he had notice of an event to be held on December 13<sup>th</sup> which he is unable to attend. He asked if a Council Member was interested in attending to let him know.

**XVIII. AGENDA MANGEMENT**

Town Manager Stewart noted the placement of ‘Review of Town’s Advisory Committees’ on the first Work Session in January; and at the next meeting on December 17<sup>th</sup> there were three items on the agenda.

**XIX. RECAP OF ACTION ITEMS**

Town Manager Stewart recapped the Action Items added during the meeting:

- Staff would continue to seek sponsors for the New Year’s Eve event
- Public Hearing Case #SEZ2012-0001 was approved with the exclusion of painted pavers
- Council authorized that two signatures were required for the movement of any funds FMIT account and two signatures on checks \$10,000 and over from the General Fund and water utilities
- Staff would await recommendations from the Air Corps group; and staff would begin preparing a resolution for the next meeting
- Staff would continue to follow-up on the problem with the light at Buttonwood
- Staff offered to provide an update on the grant application for sidewalks
- Staff would include the display cards for the Mound House

Motion by Council Member List, seconded Vice Mayor Mandel to adjourn. Meeting adjourned at 10:35 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

- End of document.