



# MINUTES

**Tuesday, February 19, 2013**

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

## **I. CALL TO ORDER**

Acting Mayor Mandel called to order the February 19, 2013 Regular Meeting of the Town Council at 6:34 p.m. Present along with Acting Mayor Mandel: Council Members Andre, List, and Kosinski; Mayor Raymond was excused. 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 – Town Clerk Mayher**

## **III. PLEDGE OF ALLEGIANCE**

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

Acting Mayor Mandel requested to add a request for television coverage of the Joint Meeting tomorrow of the BOCC and Town Council.

Consensus approved the request for television coverage of the Joint Meeting tomorrow of the BOCC and Town Council.

Acting Mayor Mandel requested to add an appointment request for the Marine Resources Task Force.

Consensus approved the Agenda as amended as Item VIII, B.

Acting Mayor Mandel requested to add, at the advice of the Town Attorney, the appointment of a Vice Mayor to the Agenda.

Consensus approved the Agenda as amended as Item XI, B.

## V. PUBLIC COMMENT

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

Public Comment opened.

Carla Pine stated she was the owner of a store located at 1901 Estero Boulevard and of the Salty Dog Gallery & Gifts located in the Downtown zone. She reported that on Saturday at closing time a Code Enforcement officer requested she put inside all of her outside displays due to an anonymous complaint. She added that the officer had over 50 complaints he had to address on Saturday evening. She discussed her concerns regarding outdoor display permits; noted that she asked other area businesses to attend the Council meeting to discuss the matter; and stressed the importance of small business owners to the community. Ms. Pine stated she did not feel she had the support of the Town as a small business owner, and explained how important an outdoor display was to a small business. She requested the Town revisit the issue of outdoor displays. She noted her walkway was set back 20 feet from the street and how it was important to attract customers to her store. She suggested a workshop to discuss the issue and readdress the ordinance in order to create a more relevant code for the retail businesses.

Jackie Lyszak stated she owned the Sea Gypsy Inn and store at 1698 Estero Boulevard. She noted her belief that everyone knew what her business looked like prior to her purchasing the property; and told of how she was working on the site in order to make that area of the beach shine. She reported that a Code Enforcement officer visited her store on Saturday evening; that she was in the process of permitting her outdoor displays; and that she was informed the store could have only two outdoor displays. She discussed her views on the vagueness of the code; and the importance of outdoor displays to attract customers. She noted her agreement with revisiting the ordinance and having a workshop to discuss outdoor displays.

Amy Loughery of Distinctive Beach Rentals stated her company had been working to get short-term rentals revisited for about 4-5 years. She reported she heard that Council discussed the idea earlier today about addressing the ordinance and thanked them for doing so.

Ray Kuhn, resident, reviewed his concerns regarding the abandoned storefronts in the Town. He discussed his belief that there were abandoned storefronts because the Town did not help the businesses with "*getting business into the stores*"; his understanding of the difference between the north and south sections of the Island; and his views on the importance of outdoor displays to the small businesses and how the Town should be working to help small businesses survive. He noted his agreement with revisiting the ordinance and having a workshop on outdoor displays.

Ceel Spuhler stated she was speaking on behalf of the Friends of the Mound House. She described the events planned for Valentine's Day, the preparations made for the event, and how the rain cancelled the event. She requested people visit the Mound House on Thursday, February 21<sup>st</sup>, from 6:00-8:00 p.m.

when they planned to light the luminaries which had originally planned for February 14<sup>th</sup>, and to stop and hear the Cypress Lake High School Choral at Santini Plaza at 7:00 p.m.

Public Comment closed.

Council Member Kosinski noted at the Work Session this morning the Town Council had placed short-term rentals on Agenda Management, and they would work to address the issues as quickly as possible. He stated he like the idea of a workshop with the small businesses to discuss the outdoor displays.

Council Member List discussed her support of a workshop with the small businesses to address outdoor displays.

Council Member Andre noted his support to 'fast-track' the short-term rentals discussion. He reported that he had never received any telephone calls regarding outdoor displays, and added that he did not find the displays offensive.

Acting Mayor Mandel assured the public that the Council was not voting on short-term rentals tonight. He asked if the staff could review the ordinance pertaining to outdoor displays for the benefit of the Council and the public.

Town Attorney Miller reported she worked with staff last week; noted 'outdoor display' was permitted but limited; and gave a quick overview as follows:

- Vending carts with no more than two wheels
- Can only be left outdoors when the business was closed if they can be secured
- Clothing racks with one support rod up to six feet long
- Specialized display racks uniquely designed for a specific type of product
- Free-standing mannequins
- Tables or free-standing shelves limited to 2'X8' area or a 4'X4' area, not more than three feet in height
- Free-standing product displays not limited to a 4'X4' product area with no more than seven individual products or dining tables
- Permit was required
- Retail businesses may sell their regular retail merchandise only on private property between their stores and the street right-of-way and only if the merchandise is placed on a raised porch or patio (not in the sand)
- No business may have more than two outdoor displays of merchandise provided that; however, multiple occupancy structures with two or more businesses are permitted to have one outdoor display for each business for up to a maximum of four outdoor displays per multiple occupancy structure

She reviewed the amount and types of displays permissible per business under the current ordinance.

Town Manager Stewart prefaced his remarks with a notation that he was not directing his comments at any person who spoke on outdoor displays tonight. He explained the biggest thrust behind the current enforcement was due to people who failed to get their display permits. He stated staff had been working with the businesses to inform them of the need to get a permit. He reported the information on the

outdoor displays was in the Land Development Code under Section 34-678. Town Manager indicated that staff would completely support Council if they wanted a workshop with the businesses; and that staff would work with the businesses so they fully understood what they could and could not do. He mentioned that the Town was requesting people visiting the Mound House to park at the Baptist Church where the Town had an electric cart to transport visitors.

Council Member Andre reminded that during the Town's visioning process two years ago it was agreed to keep the Town 'funky'. He asked the purpose of the outdoor display ordinance.

Town Attorney Miller explained the ordinance stated the purpose and intent section read that it was *'outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items; the principle purpose of outdoor display in the Downtown District is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for free-standing businesses or mobile vendors'*.

Council Member Andre suggested a workshop would be a good place to begin to address the issue.

Acting Mayor Mandel stated the item should be brought up during Agenda Management.

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

Council Member Andre told of his experience attending The Beach Has Got Talent event at Santini Plaza, the Sunset Celebration at Times Square, and the singing by Council Member List and Town Manager Stewart at Chapel by the Sea; and he complimented the Town for being a 'great place'.

Council Member List noted how well-attended The Beach Has Got Talent event was; the success of the vendors at the event; and how it was a fun event.

Council Member Kosinski discussed the website on Estero Boulevard, and that there was a link from the Town's website to the Estero Boulevard site; how the site was interesting and informative; and noted the survey on the website that people could complete.

Acting Mayor Mandel reported he attended the Beach & Shoreline Conference in Jacksonville where he met with the Army Corps of Engineers who suggested the Town contact their State Senator regarding funding for beach and shoreline matters; and mentioned he gave the contact information for the State to Town staff. He stated that Commissioner Kiker contacted him to report there were tickets available for games with the Twins and Red Sox for children; and he forwarded the information to Parks & Recreation Director Evans who contacted the Little League about the tickets.

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

Town Manager Stewart reported he forwarded an email to the Council for a young man who previously was a Legislative Assistant for Paige Kreegel and now worked for the Florida DOT. The email included a link to FOX4.com where there was an article about the five 'under the radar' locations for Spring

Break, one of which was Fort Myers Beach. He added the article mentioned Fort Myers Beach was more of a 'family-oriented Spring Break' location.

Acting Mayor Mandel mentioned the link available until the end of March highlighting the *Privateer Lynx* tall ship in Fort Myers Beach. He announced Bay Oaks had 346 new members since January 1<sup>st</sup> under the new free membership program for residents; and encouraged residents to sign up. He noted the increase in program participation at Bay Oaks.

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

### **A. Appointment to the Public Safety Committee**

Town Manager Stewart reported the Town had received an application from Rexann Hosafros indicating her interest in being appointed to the Public Safety Committee; and the Town Clerk had verified the applicant was a Town resident and met the requirements in order to serve on the Committee.

Rexann Hosafros, Applicant, stated she seriously considered her application for the Committee and how she hoped to be of service to the Committee.

**MOTION:** Council Member Andre moved to appoint Rexann Hosafros to the Public Safety Committee; second by Council Member List.

**VOTE:** Motion approved, 4-0; Mayor Raymond was excused.

### **B. Appointment to Marine Resources Task Force**

Tree Andre, Applicant, stated that she would like very much to be a part of MRTF; that she was an avid environmentalist; and noted her passion for her home – Fort Myers Beach.

Town Clerk Mayer requested the Town Attorney address the Sunshine Law as it applied to Mr. and Mrs. Andre.

Town Attorney Miller explained the Sunshine Law would not apply; however, there was a prohibition in larger communities of spouses being appointed to advisory committees, but Fort Myers Beach fell below the threshold of population. She added that a spouse of relative of a Council Member could not serve on the LPA.

**MOTION:** Council Member Kosinski moved to appoint Tree Andre to the Marine Resources Task Force; second by Council Member List.

**VOTE:** Motion approved, 4-0; Mayor Raymond was excused.

## **IX. APPROVAL OF MINUTES**

### **A. January 22, 2013 Town Council Meeting**

B. January 22, 2013 Work Session

**MOTION:** Council Member Kosinski moved to approve the minutes as presented; second by Council Member List.

Council Member Andre requested in the minutes of January 22, 2013, Town Council Meeting, Page 2, Section XII, to add the word 'in' as follows: 'participated in the...'.

Motion maker and second agreed to the inclusion of the word 'in' as requested.

**VOTE:** Motion approved, 4-0; Mayor Raymond was excused.

**X. CONSENT AGENDA**

A. Resolution 13-04, Cancelling March 12, 2013 Election

A request for approval of Resolution 13-04, cancelling the March 12, 2013 election and re-electing incumbents Andre and Mandel to a new three year term, commencing March 18, 2013.

B. Resolution 13-05, Amending the Fee Schedule

Request for approval of Resolution 13-05, amending and correcting the fee schedule.

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

**VOTE:** Motion approved, 4-0; Mayor Raymond was excused.

**XI. ADMINISTRATIVE AGENDA**

A. TDC Beach and Shoreline Funding Application

A request for authorization for staff to prepare and submit five (5) funding applications to the Lee County Tourist Development Council for (1) beach and shoreline operations and maintenance; (2) capital improvements to bay side and beach accesses; (3) purchase and installation of a portable restroom; (4) (5) capital improvements for shade structures at the Newton Beach Park and the Mound House, all totaling \$876,854.

Town Manager Stewart explained how each year the Town made applications to the Tourist Development Council; that the Town had been approved to receive funding for a number of years; and how, if the Council approved, staff would then move forward to complete the final application for FY 2014. He pointed out that the Agenda Packet listed five items; however, there would actually be six items which would include the beach maintenance data analysis for a beach management plan.

Public Works Director Lewis reported the packet Council received did not include the additional information regarding the Coastal Management Plan which Council had taken action on several months ago to move forward with the Phase II process of the Coastal Management Plan. She noted the Town

would be submitting six applications for a total of \$943,610. She reviewed how Council gave direction to staff at a Work Session as to what they wanted to see in this year's application and what was being requested such as but not limited to shade structures at the Mound House and Newton Beach Park, personnel services for maintenance, replacement of signage at beach accesses, continuing ADA accessibility, landscaping maintenance, and beach access enhancements.

Public Comment opened.

Mark McConnell, resident, questioned if there was a list of the proposed beach and bay accesses.

Town Manager Stewart explained there was a list of beach accesses that run up and down the beach; the ones on north Estero Boulevard were owned and operated by the County; the ones from Times Square down to the south end of the Island were under the operation and control of the Town; and that there were a few exceptions that were private beach accesses. He added the accesses were marked on Estero Boulevard.

Mr. McConnell asked if the accesses would include Bayland Road.

Acting Mayor Mandel explained that Public Comment was a time to make a statement on the Town's application to the TDC.

Council Member Kosinski suggested Mr. McConnell make an appointment with the Town Manager to ask his questions.

Council Member Andre expressed his belief that Mr. McConnell was trying to find out if there were pre-selected accesses for the subject projects.

Council Member List pointed out that there were two beach and two bay side accesses named in the application.

Discussion ensued to determine what information Mr. McConnell was seeking.

Town Manager Stewart stated he would contact Mr. McConnell.

Public Comment closed.

Council Member Kosinski asked for the specifics on the sixth item to be included in the TDC application.

Public Works Director Lewis stated the sixth item was the Coastal Management Plan Study and the actual estimated cost was \$134,000, and noted staff was requesting the Town to provide a match to that amount which totaled approximately \$45,000. She pointed out that the Town already expended over \$21,000 on the first phase.

Town Manager Stewart explained that this was an item the TDC could fund and reviewed how in the past the TDC had done some type of similar funding. He pointed out the matching funds by the Town would demonstrate that the Town was serious about going forward with this matter and that the Town had a substantial investment in it.

Public Works Director Lewis reviewed the staff's recommendation for the priority listing in order:

1. Beach and shoreline maintenance
2. Capital improvements for bay and beach side accesses
3. Coastal Management Plan Study
4. Purchase and location of the portable restroom
5. & 6. Portable shade structures at the Newton Beach Park and the Mound House

Council Member List discussed her view that Items #2 and #3 should be reversed.

Public Works Director Lewis stated she agreed with Council Member List; however, noted her concerns regarding how the TDC had handled capital projects and studies in the past several years.

Discussion ensued regarding the proposed ranking of the items on the prioritization list for the TDC applications; and Beach Patrol and the parking management which were contracted services and if they could be incorporated into the request to TDC.

Public Works Director Lewis explained what aspects of Beach Patrol were and were not eligible for funding through TDC; and mentioned the element of Beach Patrol as a 'Town ambassador on the beach' was eligible and constituted approximately \$83,000 per year based on the current level of service; and that enforcement responsibilities were not eligible for reimbursement.

Town Manager Stewart reviewed the ratio of personnel expenses that would be eligible for reimbursement by TDC (28%). He pointed out that soon the Town would be seeking proposals for Beach Patrol services; and if the Council had the desire to add personnel then staff could add those 'ambassador-type' elements to the contract.

Discussion was held concerning the responsibilities of the current Beach Patrol personnel; the differences between enforcement and 'presence' on the beach; estimated personnel costs for two additional Beach Patrol staff; and warnings and citations issued on the beach.

Town Manager Stewart asked if it was Council's direction to include two additional personnel in the TDC applications.

Acting Mayor Mandel responded in the affirmative; and asked that staff research how many warnings and citations the current staff issue on the beach.

Consensus agreed that staff should include two additional personnel in the TDC applications.

Town Manager Stewart requested an amount to include in the motion.

Consensus agreed to approve the prioritization list as presented by Public Works Director Lewis with the option to change the order based on her conversations with the TDC.

Public Works Director Lewis stated the amount to include in the motion was \$1,195,246+/- and asked the motion to be worded in a way to give the ability to increase or decrease the amount.

**MOTION:** Council Member Kosinski moved to authorize staff to prepare and submit five (5) funding applications to the Lee County Tourist Development Council for (1) beach and shoreline operations and maintenance; (2) capital improvements to bay side and beach accesses; (3) the Coastal Management Plan Study; (4) purchase and installation of a portable restroom; (5) & (6) capital improvements for shade structures at the Newton Beach Park and the Mound House; all totaling \$1,195,246 that may be adjusted up or down as needed and to authorize staff to switch priority for (2) and (3) as they deem appropriate after meeting with the TDC; second by Council Member List.

**VOTE:** Motion approved, 4-0; Mayor Raymond excused.

**B. Appoint an Acting Vice Mayor**

Town Attorney Miller opened the floor for nominations for Acting Vice Mayor.

Council Member List nominated Council Member Kosinski; second by Council Member Andre.

Town Attorney Miller asked if there were any other nominations; seeing none she closed the floor for nominations.

**VOTE:** Motion approved, 4-0; Mayor Raymond was excused.

**XII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

**XIV. TOWN MANAGER'S ITEMS**

**A. Mound House Update**

Town Manager Stewart noted the Council was given a copy of the most recent report entitled "Town of Fort Myers Beach – Public Works Mound House Projects Update Report" in the agenda packet.

Town Attorney Miller reported staff would probably be ready by the end of this week to put the RFQ out on the street.

Council Member Andre pointed out that at the last Council meeting the Acting Mayor had requested the dates in the 'Projected Completion Date' column be updated on the Mound House Report.

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

### **A. Discussion of Possible Amendments to Ordinances for Advisory Committees**

Town Attorney Miller – requested direction as to if Council wanted to open all the committees to non-residents.

Council Member Kosinski expressed his belief that all committees could be opened to non-residents except for the LPA.

Town Attorney Miller commented that if there was a resident and a non-resident application for one seat then it would go to the Town resident.

Consensus agreed with the Town Attorney's statement.

Town Attorney Miller questioned the priority or preference of people who owned property in the Town, resident, and non-resident. She explained how she would suggest to prioritize the people and Council could then discuss and decide preference.

Acting Mayor Mandel announced that CRAB would be holding their Leadership Program soon and hoped graduates would become volunteers for some of the committees.

Town Attorney Miller reported she would be conducting a Public Records and Sunshine Law seminar for committee members and Council on February 28<sup>th</sup> at 1:00 p.m. in Council Chambers.

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

Council Member Andre – no items or reports.

Council Member List – reported on February 28<sup>th</sup> at St. Peter's the County was holding an Estero Boulevard workshop.

Council Member Kosinski – stated he was honored to be appointed Acting Vice Mayor and thanked the Council for their support.

Acting Mayor Mandel – no items or reports.

Mayor Raymond – was excused.

## **XVIII. AGENDA MANGEMENT**

Council Member List questioned the date for short-term rental agreements to be discussed at a Work Session.

Town Manager Stewart noted the need for sufficient time for staff to prepare background information for Council on the subject.

Town Attorney Miller reminded everyone of the legislation passed last session that pre-empted regulation of short-term rentals in the State. She added it could be 'grandfathered in' what the Town currently had on the books but essentially the choices were to repeal all or some of what was there or leave it as is; and that the Town could not adopt anything new or different.

Town Manager Stewart recommended looking at it in about 30 days.

Consensus agreed to place the short-term rental agreement discussion on the first Work Session in April.

Council Member List requested to allow public input during the Work Session due to the amount of interest by the public.

Council Member Kosinski agreed and suggested to use the 3-minute rule for public input.

Council Member Andre noted that #10 and #13 could be removed from Agenda Management. He mentioned his interest in moving forward with 'beach raking'.

Town Manager Stewart reported staff was working on a few last items on beach raking and it should be ready in the near future.

Council Member Andre indicated his eagerness to discuss the mooring field management, revenues and expenditures very soon.

Council Member List expressed her interest for a workshop on outdoor displays.

Town Manager Stewart suggested prior to a workshop that staff conduct a roundtable with the business owners to get feedback and have open discussion.

Acting Mayor Mandel stressed the importance of February 28<sup>th</sup> with respect to the Town Hall lease; and consensus to renew the 2-year option available to the Town.

Town Manager Stewart reported the letter was already on its way to the landlord indicating the Town's preference to renew the 2-year option and the letter also included wording indicating the Town wanted to discuss a longer term lease.

Town Attorney Miller stated she was attempting to contact the landlord's attorney.

Town Manager Stewart reported he would update the Council at their Regular Meeting on March 4<sup>th</sup> on the status of the lease.

**XIX. RECAP OF ACTION ITEMS**

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

- Members appointed to MRTF and Public Safety Committee; and staff would process accordingly
- Staff would process Resolution13-04 and notify the Supervisor of Elections accordingly
- Staff would process Resolution13-05 and process accordingly
- Staff would prepare and submit the applications to TDC as directed
- Short-term Rental Agreement scheduled for a Work Session on April 1<sup>st</sup>
- Staff would give information to Council on the mooring fields which would enable them to schedule a date for a workshop
- Staff would hold a roundtable on outdoor displays with the business community first, then staff would discuss with Council on setting a date for a workshop
- Moving beach raking forward

Motion by Council Member Andre; second by Council Member List to adjourn. Meeting adjourned at 8:20 a.m.

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

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

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Michelle D. Mayher, Town Clerk

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