MINUTES

Monday, May 6, 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 May 6, 2013 Regular Meeting of the Town Council at 9:00 a.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Raymond. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

II. INVOCATION – Rev. Lorrie Davison, St. Peter's Lutheran Church

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Mandel reported there was a request by staff to pull Administrative Agenda Item E. He requested to add two items - a discussion on Committee Reorganization, and a discussion on Traffic Mitigation.

Consensus approved the Agenda with the amendments as requested.

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.

Tom Taulbee, resident (8642 Estero Boulevard), discussed beach accessibility issues at the south end of Estero Boulevard; and noted that he had requested the Marine Resources Task Force (MRTF) to place this matter on their agenda. He requested Council consider a change to the Land Development Code to allow the residents in his area to use of a golf cart to transport family members to and from the beach due to the difficulty with accessing the beach.

Public Comment closed.

VI. IMAGE OF FORT MYERS BEACH

Council Member Raymond noted the successful recent event held for recognition of the many Town volunteers.

Vice Mayor Kosinski talked about the enjoyable and successful Taste of the Beach event held over the past weekend.

Council Member Andre echoed Vice Mayor Kosinski's observations about the Taste of the Beach.

Council Member List reported on the success of the 7th Annual Fort Myers Beach Film Festival.

Mayor Mandel reaffirmed the positive comments made by Council on the Volunteer Recognition Picnic (AKA – Roxie Smith Davis Day), Taste of the Beach, and Fort Myers Beach Film Festival. He suggested that Chair Greer and the CRAB members might want to evaluate the date for next year's volunteer recognition event. He reported the Chamber of Commerce was willing to maintain a 3-year calendar on their website for organizations to utilize in planning/scheduling their events.

Consensus approved the offer of the Chamber of Commerce to maintain a 3-year calendar on their website for organizations to utilize in planning/scheduling their events.

Mayor Mandel noted how the Film Festival filled the theater; and that a Film Festival Report would be available in June.

Council Member Andre pointed out that he owned a 6-room inn; and last week he had patrons from France, Italy, Germany, Switzerland, and the Netherlands.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Mayor Mandel offered appreciation to Ginger Weber for the PTO fundraiser held last weekend.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Audit Committee Report

Jim Rodwell, Audit Committee Chair, discussed the Committee's request to the Auditor to address a concern regarding the Financial Statements – 'prior period adjustments'. He reported the Audit Committee was in agreement with the audit as it stands; that the investment policy should be completed at their next meeting on May 13th which would then be presented to Council at a date to be determined;

and that there was an issue regarding the Audit Committee's role concerning the audit, and suggested the Committee be able to review the audit prior to Council. He reported the Committee requested a Joint Work Session with the Town Council.

Mayor Mandel noted a letter the Town received from the State pertaining.

Chair Rodwell reported the State had formed their own audit committee; however, no one knew what the State's audit committee would do. He stated the Town appropriately addressed the State's letter.

Town Manager Stewart gratefully acknowledged the work performed by the Audit Committee; and reviewed how staff addressed the 'material weakness' as discussed by Chair Rodwell. He noted his disagreement with the suggestion by the Committee to review an audit prior to the Council; and his belief that Council should see the audit first.

Chair Rodwell discussed 'revenue recognition'.

Miffie Greer, Community Resource Advisory Board (CRAB) Chair, expressed appreciation for the volunteer recognition picnic held on Saturday. She discussed the Board's suggested items for inclusion in the VIVA Florida 500 time capsule:

- Year End Review (written by Council Member List)
- List of the animal species on Fort Myers Beach
- Map of the island, including the sand
- List of the biggest concerns on the island this year (i.e. traffic, short-term rentals, COP, Seafarer's property, etc.)
- Photographs of fashion and culture
- Hat from the Fort Myers Beach Film Festival

She requested direction from Council as to how CRAB should proceed on this matter.

Council Member List suggested including some more 'iconic' objects that were representative of the island in the time capsule.

Chair Greer explained why the Board did not suggest including historical items. She stated the Board would continue to discuss the matter and await Council's direction.

Council Member List explained that Council Liaison Andre would bring further instructions to the next CRAB meeting.

Discussion was held concerning the procurement of photographs and information from both Town newspapers.

IX. APPROVAL OF MINUTES

A. <u>April 1, 2013 Town Council Meeting</u>
B. <u>April 1, 2013 Work Session</u>

MOTION: Council Member Andre moved to approve the minutes as presented; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

X. CONSENT AGENDA

A. Appointment to the Community Resource Advisory Board

Town Manager Stewart reported Carla Mandel submitted a request to be appointed to CRAB.

MOTION: Vice Mayor Kosinski moved to appoint Carla Mandel to the Community Resource Advisory Board; second by Council Member Andre.

VOTE: Motion approved, 5-0.

Recess at 9:30 a.m. – Reconvened at 9:35 a.m.

XI. PUBLIC HEARING

A. Quasi-Judicial Hearing: HDD2012-0001, The Big M Roof Sign
Request from George Freeland, owner, to designate the Big M roof sign as historically significant per Section 30-57 of the LDC.

Public Hearing opened at 9:35 a.m.

Mayor Mandel asked if any Town Council Member had ex-parte communication regarding this item. Council Member Andre – drive-by; Council Member List - drive-by; Council Member Raymond - drive-by; Mayor Mandel – drive-by; Vice Mayor Kosinski – reported several years ago he visited the site to perform a general inspection of the subject buildings and that he had not received any compensation, and was not presently doing any work for the Applicant.

LPA Attorney Miller swore in the witnesses.

Town Manager Stewart pointed out there were two agenda items from the same Applicant; and the first was for a historic sign designation which had been reviewed by the LPA.

Zoning Coordinator Chapman presented comments for the "Big M" roof sign, Historically Significant Sign, HDD2012-0001, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the subject site and noted the location of the subject property was at 450 Harbor Court. She reviewed the request for a designation of the roof sign [approximately 1,500 square feet] as a historically significant sign per Section 30-57(b)2 – [*Whether the sign provides significant evidence of the history of the product, business or service represented*.]. She noted the Moss family began construction of the first buildings on the subject site in the 1960's [1968] and the 'locals' thought the shape of the storage barn was in the shape of an ‘M’ and began calling the marine the Big ‘M’. It has not been determined when the letter ‘M’ was painted on the roof. She reviewed the subject application history as follows:

- Original application, December 2011, as part of VAR2011-0007
- August 2012, LPA, determined a need to apply separately for historic designation; case heard by Historic Preservation Board (HPB)
- October 2012, HPB, continued case to February 2013; requested additional supporting evidence and/or documentation
- February 2013, HPB, continued case to March 2013; the applicant had not provided staff with any new data or material that would justify the granting of a historical designation for the roof sign; requested additional supporting evidence and/or documentation
- March 12 2013, HPB, materials submitted via email on February 25th; no direction with attached information; documentation submitted were two aerial photographs [1983 – and displayed on the projection screen], three letters from local residents, and a petition signed by numerous residents and visitors entitled ‘Save Our Sign’.

She explained that staff could only evaluate the application based upon the information provided by the applicant. She reviewed the five sections within Section 30-57 that the Council should consider when making a decision:

1. Whether the sign was associated with historic persons, events, or locations.
2. Whether the sign provides significant evidence of the history of a product, business or service represented.
3. Whether the sign was characteristic of a specific historic period.
4. Whether the sign was an outstanding example of the art of sign making through its craftsmanship, use of materials and/or design.
5. Whether the sign was a local landmark that was popularly recognized as a focal point in the community.

She reported that the material provided by the Applicant to justify the request for the Big ‘M’ sign to be recognized as a historically significant was not sufficient; and staff recommended denial of the Applicant’s request. She reported that at the March Historic Preservation Board (HPB) Meeting the vote was 4-3 to recommend approval of the historic designation for the subject sign because the sign met the criteria set forth in Section 30-57(b)1 and 30-57(b)5.

Sam Ireland of Carter Outdoor Signs, Contractor for the Applicant, explained how aircraft pilots used the Big ‘M’ sign as a landmark. He reviewed how he became involved as the sign contractor for the Applicant and the efforts he made on their behalf. He reported the earliest photograph he could obtain of the roof sign was from the late 1980’s.

Discussion ensued regarding the requested documentation and justification submitted by the Applicant; what documentation/justification was received and what documentation/justification was not furnished to the Town; and when Mr. Ireland was hired by Moss Marine and the work he performed on their behalf as it pertained to the subject sign.

Council Member List questioned the motive of the Applicant for hiring a sign contractor.

Town Manager Stewart reviewed how the Applicant had been unprepared at the October 2012 meeting; how it had been explained to the Applicant that they needed to be better prepared at the next meeting and granted a continuance; and how they were again unprepared at that next meeting.

Council Member List asked if staff had informed the Applicant of what type of information was needed.

Zoning Coordinator Chapman responded in the affirmative; and noted the Applicant was granted a total of three continuances.

Town Attorney Miller noted the LPA had urged the Applicant to provide additional information.

Council Member List mentioned she agreed with the decision of the LPA; however, she questioned how the application was handled.

Town Manager Stewart reviewed how staff helped applicants; however, he noted that staff had to be the Town's advocate and not the applicant's advocate.

Council Member Raymond pointed out that the Applicant was not present.

Discussion ensued as to whether or not the request met the criteria for approval of a historically significant sign.

Vice Mayor Kosinski noted the subject building was rusty and questioned if the sign could be exempt due to safety reasons.

Town Attorney Miller responded in the negative; and added that any non-conforming signs had to be removed unless they could be designated as historic.

Discussion ensued regarding the existing condition of the building and roof; and how a historically designated sign, approved without conditions, could be replaced.

Zoning Coordinator Chapman noted that the information in the Council's agenda packet was the same that the LPA received in their meeting packet.

Mayor Mandel asked if the request could be approved until such time as when the roof was replaced.

Town Attorney Miller responded in the affirmative.

Town Manager Stewart cautioned the Council when making a decision regarding whether a sign should remain or not based upon a safety issue.

Town Attorney Miller clarified that the Council could condition an approval; however, the approval would have to meet one or more of the criteria as stated by staff.

Council Member Andre explained that if the sign was granted historical designation, it seemed that Council would want to perpetuate the sign instead of limiting it.

Public Comment opened.

Ed Scott, resident at 412 Harbor Court, requested Council consider that across the back bay the Diversified Yacht business had a huge building with a huge lighted sign, and that they were in competition with Moss Marine. He believed the Council should consider Moss Marine's request; and suggested the Town's sign ordinance be the same as the County's sign ordinance. He added that Moss Marine had been a great neighbor and he had no complaints about the Applicant.

Mayor Mandel noted that in the LPA report one of the members suggested that signs along the back bay waterway should be considered as a future discussion topic, and he had urged staff to investigate his suggestion.

Sam Ireland of Carter Outdoor Signs, Contractor for the Applicant, noted the Town did not have a waterway ordinance pertaining to signs, and that particular issue would be addressed in the variance case to follow. He pointed out the few times when the Big 'M' sign on the roof was visible to the public.

Public Comment closed.

MOTION: Council Member List moved to approve the request for designation for a historically significant sign, for an existing roof sign painted on the roof and measuring at approximately 1,500 square feet in area on the roof of one of the storage facilities at Moss Marine, under Section 30-57 of the Town of Fort Myers Beach Land Development Code, and make the following findings and reach the following conclusions: #5, that the sign was a local landmark that was popularly recognized as a focal point in the community; second by Vice Mayor Kosinski.

Council Member Andre looked to the Town Attorney to determine if the Council was required to vote on each of the five criteria individually.

Town Attorney Miller responded in the negative.

VOTE: Motion approved, 5-0.

Public Hearing closed at 10:06 a.m.

B. Quasi-Judicial Hearing: VAR2011-0007, Moss Marine Sign Variance
Request from George Freeland, owner, for a variance from Section 30-153(b)(1) of the Town's LDC to allow the existing sign area to remain.

Public Hearing opened at 10:06 a.m.

Town Manager Stewart reviewed that the variance request was from the same Applicant as the prior case, and this case had to do with the remaining signage at the subject business location. He pointed out that the variance request was separate from the previous case.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for VAR2011-0007 Moss Marine Sign Variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 450 Harbor Court. She reviewed the variance request was from Section 30-153(b)(1) which states: *For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area* to permit existing signage that exceeds the maximum. She noted the initial request was submitted in December 2011; the application requested to retain all the existing signs on the subject site as is; the application was insufficient; and staff then conducted a round of sufficiency with the Applicant. The application was moved forward; however, information regarding the total sign area [where all the signs were located] was missing from the application. Staff determined there were two registered businesses [Big M Casino and Moss Marine] at the subject site, which entitled the site to have a total of 64 square feet of signage. She reported that during the summer of 2012 staff conducted site visits; and met with the Applicants on-site where staff identified signs and indicated the additional signs and signage beyond those identified by the Applicant. She reviewed the timeline of the variance application:

- Application first came before the LPA in August 2012; staff requested a continuance to the October LPA meeting to provide additional information (i.e. site plan to indicate sign locations and a total square footage chart) to the LPA; and LPA and Applicant agreed with staff's request. Applicant indicated a desire to apply for a 'historically significant sign' designation for the roof sign and the subject sign was bifurcated from the variance and the application was submitted in September 2012 for HDD2012-0001.
- October 2012 LPA Meeting – staff requested a continuance to the December LPA meeting to allow the Applicant time to provide additional documents and the level of analysis that was necessary for the case to proceed through the LPA and onto Council; LPA and Applicant agreed, granting additional time for a continuance to the February 12, 2013 LPA Meeting.
- February 12, 2012 LPA Meeting – staff recommended denial as the Applicant had not responded or provided any additional materials by the packet deadline; LPA granted a one month continuance to the March 12, 2013 LPA.
- March 12, 2013 LPA Meeting – staff received materials from the Applicant on February 25, 2013 via email and no direction or summarization document was included with the emailed documents. She added that the level of analysis and justification provided by the Applicant did not meet with the standards set by Council while considering other sign variance cases; that the burden of proof was placed upon the Applicant to submit sufficient evidence to justify that the request was the minimum variance necessary to relieve an undue; and that staff could only evaluate the application based upon the information provided by the Applicant. She explained that at this point there was not sufficient information to make a recommendation for approval (i.e. it was unclear as to the total square footage the applicant was seeking, sign locations, etc.). Staff recommended denial as the level of analysis and justification provided by the Applicant was not sufficient, and the actual request in terms of total square feet of sign area remained

unclear. The LPA voted unanimously (7-0) to recommend denial; and they strongly encouraged the Applicant to amend submittal documents, clarify the request, and provide the necessary justification information prior to the hearing with the Town Council.

- Post-March 12, 2013 LPA Meeting – staff received materials from the Applicant's sign contractor on March 28th without any clear indication of the magnitude of the variance being requested, and lacked any narrative statements in support of the variance request; the Applicant had not provided a narrative summary explaining the relevance of the supporting documentation; the Applicant had failed to provide any justification for the variance request; missing from the resubmittal was a chart or table that depicted exactly how much sign area was requested to remain for each businesses on the subject property; and staff remained unclear as to what the actual variance request was and if it truly was the minimum variance necessary.

She displayed on the projection screen and briefly reviewed the five criteria [per Section 34] and how they pertained to what the Town was seeking in order to make a recommendation:

1. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **and** the request **is/is not** for a *de minimis* variance to protect public safety by not obstructing access to public utilities and fire protection facilities.
   a. Applicant has maintained that their 3± acre parcel and 46,200 square feet of building sides are the 'exceptional or extraordinary circumstances' inherent on the subject property that keeps them from conforming to the standards set forth in Chapter 30.
   b. Staff did not find that a large parcel or a waterfront business was exceptional or extraordinary; therefore, staff recommended the finding that there **are not** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that it does not justify the variance.
2. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
   a. Staff was not able to find any permit records as to when the current and existing wall signs were installed; however, the applicant maintains that he signs were in place prior to the adoption of the original sign ordinance in 1999.
   b. Staff finds that the conditions justifying the variance **are not** the results of actions of the applicant taken after the adoption of the regulation in question.
3. The variance granted **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
   a. The applicant has not provided a complete inventory and assessment of all signs, including their area, on the subject property which makes it difficult to assess the degree of variance actually being requested. There was no clear communication of what the existing sign area was, and what was proposed to remain/or be exempt.
   b. Therefore, based on limited evidence as to the necessity of the request, staff finds that the variance requested **is not** the minimum variance necessary to relieve an undue burden.
4. The granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
   a. It remained unclear as to what extent the Applicant was requesting relief from total sign area requirements of Chapter 30 of the LDC. No totals of existing, proposed, and exempt were provided to staff to analyze, nor was any narrative justification provided detailing how granting the variance would not injure the neighborhood or be detrimental to the public welfare.
   b. It was staff's opinion that there was not a justifiable reason or hardship that existed on the subject property, and the applicant has not provided any compelling evidence that

would justify or permit the granting of a sign area variance by Town Council. Staff, therefore, finds that granting the variance **would be** injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.

5. The conditions or circumstances on the specific piece of property for which the variance is sought **are/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.
    a. With the adoption of the amended sign ordinance and the consequent amortization period for conformity, numerous locations on the beach have pursued variance requests from the amended requirements; however, by the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including area and prohibited types) and has made a decision to enact and enforce a uniform sign code.
    b. Staff finds that the circumstances of the specific piece of property on which a variance was sought **are** general in nature and, therefore, **do not** demonstrate a verifiable hardship.

She reported, with a continued lack of clarification on the actual request and no justification provided by the Applicant, staff recommended **denial** of the Applicant's request for a variance form Section 30-153(b)(1) to allow the existing sign area to remain.

Town Attorney Miller reported it had appeared that after the March LPA meeting the information [did not include a narrative] submitted by the Applicant appeared to indicated that it was the Applicant's opinion that a variance was not necessary because the existing signage was exempt for one reason or another. She noted that she and Zoning Coordinator Chapman reviewed the information submitted by the Applicant (see Staff Report) and determined some signs were exempt; however, if the exemptions were taken into account the variance request still exceeded the 64 square feet of area.

Town Manager Stewart explained the importance of staff's request for a list of the signs, the location of the signs, and the size of the signs; and the Applicant's responsibility to furnish the appropriate information as requested. He pointed out how the LPA had tried to assist the Applicant through the process and had heard the request at three different meetings; and that both staff and the LPA did everything reasonably possible to assist the Applicant.

Sam Ireland of Carter Outdoor Signs, Contractor for the Applicant, reported that 98% of Moss Marine's signs faced the water and were not in the public view from the right-of-way from Harbor Court or Bonita Street; and the only ones viewable from other than the waterway were the two that said 'Moss Marine'. He added that the two signs were not in compliance and could be brought into the code required dimensions; and the other signs dealt with parking and directional signs. He explained the difficulties he was encountering in trying to make the signage on the waterway come into compliance with the existing sign ordinance.

Council Member Andre noted his concern regarding the Applicant's lack of seriousness pertaining to the variance request; and pointed out the inaccurate descriptions of the photographs submitted by the Applicant.

Council Member List explained that the Council had to base their decision upon the existing sign ordinance. She mentioned her disappointment with the fact that the Applicant was not present.

Council Member Raymond noted the many hearings with the LPA for the variance, and his disappointment with the fact that the Applicant was not present.

Vice Mayor Kosinski expressed disappointment with the fact that the Applicant was not present. He queried if the Town would look at the waterway signs and if the variance request should be continued.

Town Manager Stewart stated that during Agenda Management he would ask Council if they wanted to add waterway signs to the list. He recommended that the variance request should not be continued until such time as a waterway ordinance was adopted.

Mayor Mandel questioned if the variance was denied, were there existing waterway signs that would have to be removed.

Town Manager Stewart responded in the affirmative.

Mayor Mandel discussed the potential economic impact as it related to a decision for denial. He questioned if there were signs [not waterway signs] that could be denied today, but the waterway signs could be given time to be considered.

Town Attorney Miller commented that the subject site had so many signs that even if the Council allowed some consideration due to sight issues from the waterways, she could not foresee that the Council would allow the extent of the square footage the Applicant had on the site. She explained that if the variance was denied then Code Enforcement would have to visit the subject property and cite the business and give them an opportunity to come into compliance. She added that if the Code Enforcement Magistrate was aware that the Town had a draft ordinance to address waterway signage, then the Magistrate could grant a continuance; however, at this time the Council should address whether or not to grant the variance.

Community Development Director Fluegel reported that staff had already taken an initial look at waterway signage; and that the issue was ‘applicability’ because all of the other marinas were CPDs that had deviations to cover their signage. He stated that it appeared to staff that they would be preparing a provision to the sign code for one marina.

Council Member List noted the lack of information provided by the Applicant to the Council in order for them to make a decision on which signs could remain and which should be removed. She explained how she did not want to see Code Enforcement make the Applicant remove signs facing the water; however, the Applicant did not submit sufficient information as to which signs they wanted to remain and it was not Council’s responsibility to decide for the Applicant.

Town Manager Stewart explained that the Applicant failed to demonstrate the basis for their request to allow the signs to remain and that it was not Council’s responsibility to create the rationale for the business.

Community Development Director Fluegel discussed the problems associated with the Shell Gas Station sign on the subject property such as but not limited to the fact that the Applicant requested a variance from the total square footage, but did not request a height variance for the Shell sign.

Town Attorney Miller pointed out that the Applicant had made a previous comment that their lease with Shell Oil required a certain type of sign, yet the Town had not received anything definitive on that matter from the Applicant.

Council Member Raymond questioned if the variance was denied, could the Applicant request a variance for specific signs.

Town Attorney Miller explained that the Applicant could come back on an individual sign basis but they would be required to pay another application fee; and she mentioned a decision for a 'denial without prejudice'.

Public Comment opened.

Ed Scott, resident at 412 Harbor Court, stated that as a neighbor to Moss Marine he felt they needed more directional signs because they were located in an isolated corner. He reported there were many times that he gave directions to drivers trying to find Moss Marine; and that he believed signage was important to that business.

Public Comment closed.

Mayor Mandel asked if there was a representative from the LPA present to make comment.

No representative from the LPA was present.

Town Attorney Miller read that "*when the Town Council denies without prejudice any application for variance, special exception,…it is an indication that although the specifically requested action is denied the Town Council's willing to consider the same request after modifications have been made or an application for other action without the Applicant having to wait 12 months*".

Sam Ireland of Carter Outdoor Signs, Contractor for the Applicant, reported there was a total of six signs on the water (3 on the back of the building, #8, #9, & #10; #7 was the big Moss Marine sign facing the water) and the Shell sign. He stated the Applicant attempted to contact Shell Oil; however, he was unaware of the outcome.

Town Manager Stewart discussed his view on making a decision that was related to the specifics of the application and how it could impact the business and the Town as a whole.

Council Member Andre explained to Mr. Ireland what type of information he was seeking from the Applicant with respect to the signs, sign locations, and sign dimensions.

MOTION: Vice Member Kosinski moved to **deny without prejudice** the request for a variance

(VAR2011-0007) from Section 30-153(b)(1) of the Town of Fort Myers Beach Land Development Code to permit existing signage that exceeds the maximum sign area; second by Council Member Andre.

VOTE: Motion approved, 5-0.

Council Member List noted that she did not appreciate having to deny a variance and hoped that the Applicant would find someone who could help them assemble the proper materials to justify the variance.

Mayor Mandel complimented staff for their work on the variance request and that it was now up to the Applicant to come back with the appropriate information.

Public Hearing closed at 10:45 a.m.

Recess at 10:45 a.m. – Reconvened 10:53 a.m.

XII. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 13-04, Amending Chapter 14 of the LDC, Beach Raking

Town Clerk Mayher read the title of Ordinance 13-014:
AN ORDINANCE AMENDING CHAPTER 14 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE – ENVIRONMENT AND NATURAL RESOURCES; AMENDING SECTION 14-1, DEFINITIONS AND SECTION 14-6, BEACH RAKING AND WRACK LINE POLICY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart reviewed that the proposed ordinance would change the requirements of beach raking and established a permit. He added the proposed ordinance had been vetted with the business community that handles raking, as well as with the condominiums.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member Andre moved to introduce Ordinance 13-04, Amending Chapter 14 of the LDC for Beach Raking, and set a Public Hearing date for May 20, 2013; second by Vice Mayor Kosinski.

VOTE: Motion approved; 5-0.

B. Matanzas Pass Preserve Request for Funding

A request for a motion to approve Matanzas Pass Preserve request for $25,000 in funding to support its Education and Resource Station Project.

Town Manager Stewart explained he reviewed the application based upon the criteria established by Town Council in order to determine whether or not the applicant would qualify for Council's consideration. He reported the applicant had met the various criteria necessary to submit the application; however, that did not denote the Town Manager's recommendation or approval of the application.

Council Member Andre asked if this request pertained to the remaining funds the Town had set aside for various items/requests.

Town Manager Stewart reported he was unsure of the exact amount of the remaining funds.

Discussion was held concerning what the funds could be used for and the remaining funds available.

Public Comment opened.

Jim Rodwell, Board Member of the Friends of Matanzas Pass Preserve (Friends), noted that Council had approved a similar amount to another not-for-profit organization a few months ago. He mentioned that in the past he had individually spoken with the Council about having a facility at the Preserve. He described how funding from the County had always been problematic; and reported the Friends may receive some in-kind services from the County in 2014, but no funding. He added that the Friends of Matanzas Pass Preserve would need to raise about $70,000 for the facility, and they were hoping the Town would assist them in their fundraising efforts. He stated the proposed building would not be a recreation center for the Friends of Matanzas Pass Preserve or a gift shop or a nature center; rather it would be a building to support their programs. Mr. Rodwell reported the four programs were land stewardship, education, events, and resources; and added that the land stewardship program did not require a building. He explained how the education program (i.e. programs for adults and children) would benefit from having a facility. He stated that Lee County would not be conducting any events this year in the Matanzas Pass Preserve due to budget cutbacks. He discussed events, both existing and proposed, at the Preserve and how a facility would benefit that programming. He explained how the proposed facility would assist with resource programming (i.e. walking guides with QR codes, display boards, etc.).

Council Member Raymond explained that he could not support the request because the site was a County-owned property. He added that he personally supported the proposed building; however, he did not believe the Fort Myers Beach taxpayers should be the only ones to support it.

Council Member Andre noted that the Town did benefit from Matanzas Pass Preserve.

Council Member List asked who would own the proposed building.

Mr. Rodwell reported the County had approved the project all the way up to their highest level; the County would own the building; and the Friends would have an interlocal agreement with the County. He added that the Friends would operate the proposed building and there would be no staff located at the proposed building.

Town Manager Stewart added that, as a general rule, when a structure was constructed on a government-owned property [absent any contract to the contrary] the structure became the property of the owner.

Town Attorney Miller explained an agreement could be structured any number of ways, but normally the entity that owned the property under the structure wanted to own the building.

Town Manager Stewart noted that the subject funding set aside by Council was to be used for '*art, cultural, and historic events*'.

Council Member List explained that her first reaction was that the subject site was County property; however, the Preserve had greatly benefited the Town.

Vice Mayor Kosinski noted the Preserve benefited the Town and the Friends did a lot for the community.

Mayor Mandel asked if Council had set a deadline for funding requests.

Town Manager Stewart reported that traditionally Council had asked organizations to submit requests for major funding before the beginning of the year.

Mayor Mandel noted he was a member of the Friends of Matanzas Pass Preserve; and that the Preserve did benefit the Town and tourism.

Vice Mayor Raymond asked how much the Town would spend on fireworks since they had taken over that responsibility.

Town Manager Stewart reported the Town would spend approximately $70,000 on fireworks between two events.

Vice Mayor Raymond reiterated his objections to spending Town funds for a project on County-owned property. He noted to the Town Manager that when the budget was presented to Council, he would be looking at the funding allocated for events and programs.

Discussion was held regarding placing the funding request in next year's budget.

Jeff Butzer, resident and member of the Friends of Matanzas Pass Preserve, explained that the request was about programming; that the programming helped to make the Preserve come alive; and that funding the Friends request would be a good use of the money.

Public Comment closed.

Council Member Raymond pointed out that the Council should keep in mind what would they do the next time an organization came before Council with a funding request.

Town Manager Stewart mentioned that at the appropriate time in the Agenda he would speak to Council about a methodology that might help them through these types of issues.

Discussion ensued regarding programming requests versus construction requests; and postponing the funding request until the next budget cycle or 'escrowing' the funds.

Mr. Rodwell stated the funds, if approved, could be escrowed with the restriction that it could not be spent until the project began. He suggested the Council consider making a 'pledge' for the payment in the next budget cycle.

Discussion was held concerning that the request was for funding construction and not programming; and reviewing the matter further at a Work Session prior to approval.

Council Member Andre stated he was a member of the Board of Directors for the Friends of the Matanzas Pass Preserve.

MOTION: Council Member List moved to table the request and set-up a date and time for the item to be on a Work Session; second by Vice Mayor Kosinski.

VOTE: Motion approved; 5-0.

C. Bond Attorney Presentation
This presentation was to inform the Council of impending financing that may be required for the potable water system rebuild.

Town Attorney Miller introduced Attorney Christopher Traber of Nabors Giblin & Nickerson.

Town Manager Stewart explained that Council would be dealing with determining ways for the Town to finance the potable water project.

Attorney Christopher Traber of Nabors Giblin & Nickerson utilized a PowerPoint presentation to inform Council of the impending financing that may be required for the potable water system rebuild as follows:

- Bonds, Notes or Other Debt
  - Local government borrows money to acquire or construct capital projects.
  - Interest received on debt by holder may be excluded from income for federal tax purposes.
  - Issued pursuant to local law, state law, federal tax law and state/federal securities law.
- Typical Flow of Funds – Underwriter, Issuer, Paying Agent, and Bondholders; debt service; and key documents
- Milestones in Financing
  - Revenue Analysis/Project Needs/Structuring Review

  - Master Resolution Adoption
  - Tax/Securities/Revenue Stream Due Diligence
  - Preparation of Primary Bond Documents
  - Rating Agency Review (if applicable)
  - Approval of Supplemental Resolutions/Bond Documents
  - Marketing/Sale of Bonds (only if public offering)
  - Closing Document Preparation
  - Pre-closing/Closing
  - Post-closing Compliance
- Finance Team
  - Local government staff/counsel
  - Bond counsel
  - Disclosure counsel
  - Underwriter/bank/counsel
  - Financial advisor
  - Rate consultant/engineers
  - Rating agencies
- Primary Bond Documents
  - Bond Resolution
    - Term of Bonds
    - Revenue Pledged as Security
    - Covenants/Contract with Bondholders
  - Offering Document
    - Summarize Bond Resolution
    - Describe risks that a reasonable investor would want to know
  - Bond Purchase Agreement
- Bank Loans
  - Eligible Projects
  - Term of Loan
  - Interest Rate
  - Covenants
  - Cost of Issuance
- State Revolving Fund Loans
  - Eligible Projects
  - Term of Loan
  - Interest Rate
  - Covenants
  - Cost of Issuance

Mayor Mandel questioned the timetable for the Town.

Town Manager Stewart explained the Town was not in a position of being rushed on this matter; and believed the Town could accomplish the first phase of the project without having to do a borrowing. He estimated in 2015-2016 would be when the Town would have to take serious consideration of having to move forward with any type of borrowing. He requested Attorney Traber make copies of his presentation available to the Council. He suggested when considering the cost of the projects that the Town may want to 'move them out to 30 years'. He questioned if there was a restriction on a bank loan about the amount that could be borrowed within a year.

Attorney Traber explained that if less than $10,000,000 was issued in a calendar year [all debt], then there might be a lower interest rate from the bank [bank qualified loan].

Mayor Mandel requested a timeline of when the Council would receive the Rate Study and when the Town would have to 'invite in people to discuss the options'.

D. RFQ 13-02-PW Design-Build Services for Phase I Water Distribution System Improvements
Request for approval of the Selection Advisory Committee's shortlist recommendations and authorize staff to begin the second step of the selection.

Public Works Director Lewis explained staff was bringing forth the results from the Selection Advisory Committee Meeting where the nine teams that submitted for the Phase I potable water RFQ were shortlisted. She noted the Town was using the design-build approach for the project which would expedite the process of construction. She reported that after review by the SAC the nine submittals were reduced to five; and that the shortlisted firms would be asked to prepare a technical presentation for the SAC. Next, the SAC would rank the firms and bring them back to Council for authorization to begin negotiations with the top ranked firm.

Town Manager Stewart noted staff was seeking Council's approval of the shortlisted five firms. He added that the firms were informed of the areas the Town was particularly focusing on such as but not limited to the public service element.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the Selection Advisory Committee's shortlist recommendations in response to Request for Qualifications RFQ 13-02-PW, Design-Build Services for Phase I Water Distribution System Improvements and authorize staff to begin the second step (technical proposal) of the selection process with Manhattan Construction Group; Mitchell & Stark Construction; MWH/SWUSI Joint Venture; Stevens and Layton, Inc.; and Wright Construction Group; second by Council Member Andre.

VOTE: Motion approved; 5-0.

E. Administrative Appeal APL2013-0001, Krohn Investments, LLC/Teeki Hut

Item was pulled from the Agenda at the adoption of the Final Agenda earlier in the meeting.

F. Discussion regarding Committee Reorganization

Mayor Mandel asked Council if they still wanted John Pohland to continue to represent the Town on the Lee County Citizens Advisory Committee (CAC).

Consensus agreed to approve Mr. John Pohland to continue to represent the Town on the Lee County Citizens Advisory Committee (CAC).

Mayor Mandel reported that when he was in Tallahassee he was asked to join a committee [Tax & Finance Committee] and noted his two caveats pertained to joining the committee – 1) that Town Council approved it; and 2) that he could bring up for discussion the funding of municipalities who serve the tourist industry and who have small populations but have to deal with large influxes of people. He requested Council's approval to join the committee.

Consensus agreed to approve that Mayor Mandel join the Tax & Finance Committee as requested.

Mayor Mandel asked if a Council Member would be interested in taking over his position as Liaison to the Audit Committee.

Discussion was held concerning the Council Liaison to the Audit.

Council Member Raymond agreed to be the Council Liaison to the Audit Committee.

Mayor Mandel requested approval for himself to serve as the Town's alternate representative on the Metropolitan Planning Organization.

Council Member Raymond pointed out that he had 10 months remaining on his term of office and did not want to be the representative for the MPO; and would prefer having a Council Member on the MPO who had a longer term in office remaining.

Discussion ensued regarding the Council's representation on the MPO.

Consensus agreed to approve Mayor Mandel as the Alternate for the Metropolitan Planning Organization.

G. Discussion regarding Traffic

Mayor Mandel reported the following MPO items:

- He received an email requesting the Town's support regarding the TIGER-5 Grant Application which dealt with funding for sidewalks and bicycle paths; the request was for the Town to write a letter of support; however, Fort Myers Beach was not mentioned as a recipient for any of the funding. He reported he would be attending the May 13th MPO meeting and wanted to be able to report that the Council would support the request if the Town was included in the funding request.

Consensus agreed with Mayor Mandel's request.

Public Works Director Lewis reported that last year the Town submitted an application under the TE Program for sidewalks on some of the Town's secondary roads (i.e. Crescent Street, Connecticut Street, etc.). She stated it was her understanding that the way the request was being processed was that the Town may receive funding to do an overall town-wide study to determine where sidewalks were best suited.

Mayor Mandel asked Public Works Director Lewis regarding the status of the grant she described.

Public Works Director Lewis reported she had not received any further communication from the MPO in the past few months.

Mayor Mandel offered to investigate the funding at the MPO. Mayor Mandel continued to report the following MPO items:

- The MPO had mentioned they wanted to go forward with a further study of a dedicated trolley lane on San Carlos.

Council Member Raymond reported that FDOT had approved $2.2 million dollars.

Mayor Mandel pointed out that Vice Mayor Kosinski came up with a concept for a certain property in the Town to be considered for a parking deck. He explained that he was considering asking MPO to delay or stop the dedicated trolley lane until Town Council had a chance to look at the projects the Town was considering (i.e. a parking deck, bridge and traffic mitigation).

Discussion ensued concerning MPO traffic and the transportation elements in the Town.

Mayor Mandel recognized Mr. Pohland.

Mr. John Pohland reviewed that the Town's Comprehensive Plan had a chapter which deemed that the traffic count on Estero Boulevard be changed before Estero Boulevard was viewed as a 'failed street'. He reviewed what would occur if the street was deemed 'failed' (i.e. development restrictions).

Mayor Mandel requested Community Development Director Fluegel to review this matter further and come back to Council with more detail.

Community Development Director Fluegel acknowledged the request; and noted that the County was looking at changing the County's Comprehensive Plan, in particular, the transportation element and a concurrency standard that was more qualitative.

XIII. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XVII. TOWN MANAGER'S ITEMS

Town Manager Stewart reported he provided the Council with the Florida League of Cities Annual Conference information and their publication *Quality Cities*; and asked if the Council wanted to place an advertisement in the magazine again this year [cost $800].

Consensus approved Town Manager Stewart's request.

He reported he received a request from the Fort Myers Beach Little League requesting use of the pool at no cost on May 19th from noon until closing.

Four Council Members voted to approve and one Council Member voted to deny the Town Manager Stewart's request; request approved.

Town Manager Stewart reported at the last Joint Meeting of the Town Council and CELCAB questions were raised about the kayak building at the Mound House; and that a draft response was prepared and he anticipated having the report ready prior to the next Council meeting.

A. Mound House Update

Council was given a copy of the most recent report entitled "Town of Fort Myers Beach – Public Works Mound House Projects Update Report" dated April 24, 2013 in the agenda packet.

XVIII. TOWN ATTORNEY'S ITEMS

Town Attorney Miller – no items or reports.

XIX. COUNCILMEMBER ITEMS AND REPORTS

Council Member Raymond – no items or reports.

Vice Mayor Kosinski – no items or reports.

Council Member Andre – no items or reports.

Council Member List – no items or reports.

Mayor Mandel – requested the Work Session this afternoon begin at 2:30 p.m.

Consensus agreed to start the Work Session this afternoon at 2:30 p.m.

XX. AGENDA MANGEMENT

No discussion.

XXI. RECAP OF ACTION ITEMS

No discussion.

XXII. ADJOURNMENT

Motion by Council Member Andre; second by Vice Mayor Kosinski to adjourn. Meeting adjourned at 12:24 p.m.

Adopted _______________ With/Without changes. Motion by ________________

Vote: ________________________

____
Michelle D. Mayher, Town Clerk

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