



MINUTES

Monday, May 20, 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 20, 2013 Regular Meeting of the Town Council at 6:30 p.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre and Raymond; Council Member List arrived at 7:51 p.m. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Contracts Administrator Bargmann for Town Clerk Mayher.

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

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Kosinski requested to pull Consent Agenda Item B, Special Event Permit Application – Times Square Merchant and Event Association, Inc., for discussion.

Council Member Raymond requested to pull Consent Agenda Item 'A', Special Event Permit Application - FMB Friends of the Arts, for discussion.

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.
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Don Reagan, resident and President of Fort Myers Beach Taxi, distributed copies of a handout entitled Taxi Franchise Outline May 20, 2013. He outlined future challenges that may face the Town such as having a franchise agreement that would address local taxi companies servicing the local market. He discussed his handout as it related to: safety of the Town residents and visitors, economic benefits for local job creation through a franchise agreement, limiting the number of available cabs and cab companies to service the Town, creation of an annual Town franchise license fee for cab companies, current inspections were provided by Lee County Sheriff's Office, and how taxi companies would set their own rates to ensure competition.

Public Comment closed.

Mayor Mandel pointed out to Mr. Reagan that Council would discuss issues raised during Public Comment later in the meeting, if they so desired.

Council Member Raymond suggested placing the matter on Agenda Management at the appropriate time during the Agenda.

VI. IMAGE OF FORT MYERS BEACH

Mayor Mandel noted the recent memorial service held by the LCSO to commemorate fallen law enforcement officers.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Andre reported his daughter appeared in In-Style Magazine again this month.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

No speakers.

IX. APPROVAL OF MINUTES

- A. April 15, 2013 Town Council Meeting
- B. April 15, 2013 Work Session
- C. April 22, 2013 Joint Town Council/CELCAB Meeting
- D. April 22, 2013 Joint Town Council/MRTF Meeting

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

VOTE: Motion approved, 4-0; Council Member List not present at time of vote.

X. CONSENT AGENDA

C. Letter of Support for Lee MPO's TIGER V Grant Application

A request to approve a letter of support for the MPO TIGER V Grant Application.

MOTION: Vice Mayor Kosinski moved to approve a letter of support for the MPO TIGER V Grant Application; second by Council Member Raymond.

VOTE: Motion approved, 4-0; Council Member List not present at time of vote.

Consent Agenda Items pulled for Discussion

B. Special Event Permit Application – Times Square Merchant and Event Association, Inc.

A request from the Times Square Merchant and Event Association for approval of a recurring Times Square Sunset Celebration from June 21, 2013 to June 14, 2014.

Town Manager Stewart reviewed Council's approval last year as it pertained to a process for handling a recurring event permit and for the Times Square Merchant and Event Association Sunset Celebration. He reported the Association had applied again this year for the Sunset Celebration; staff had reviewed the application submitted and found it to meet the requirements; and staff was recommending approval.

Public Comment opened.

John Lallo, owner of Pete's Time Out and Vice President of the Times Square Merchant and Event Association, noted last week he had forwarded an email to the Town Council. He thanked the Council for the approval last year to hold the Sunset Celebration events throughout the past year, and noted the success of the event. He reported the Association's cost to conduct the recurring event last year was over \$66,000; and noted circumstances within the ordinance when the Town Manager could waive the special event permit fee (i.e. for 501(3)(c) organizations). He pointed out the Association was a 501(3)(6) organization. He mentioned the benefits of the recurring event to the community and requested Council approve their request for a fee waiver.

Town Manager Stewart noted the request on the Agenda was for Council to approve a recurring special event permit, and that Mr. Lallo had made an additional request tonight for approval of a fee waiver. He recommended that Council address the requests as two separate issues.

Council Member Raymond reported he had received emails about the fact that the event tied-up Times Square on Friday and Saturday nights for 52 weeks; and questioned if that was in the best interest of the Town and the residents.

Discussion ensued as it pertained to the request for a recurring event that encompassed 52 weekends; the Association's use of the stage area in Times Square and the ability of the licensed street performers to work in the other areas of Times Square; the dates requested for the subject annual permit; and if one event should be considered in the Times Square area for every Friday and Saturday night for 52 weeks.

Council Member Raymond noted that he was questioning the use of Times Square by one organization for 52 continuous weeks because of the emails he received asking him to do so.

Council Member Andre asked who paid for the stage set-up and utilities.

Town Manager Stewart reported the Association paid the cost for stage set-up and utilities.

Mr. Lallo reported that every week the Association paid \$80 to the Town for stage set-up; they plugged into the 'information booth' who in turn paid his own electric bill; and the Association members did chip-in to pay for the stage covering. He stated that if another organization wanted to utilize the area on a weekend they could always come to the Association with their request or the Council could retract the permit for that particular event. He added that the Association was seeking consistency as it pertained to entertainment in Times Square on weekends which helped to bring back repeat visitors and aided in booking entertainment.

Council Member Andre queried if the \$80 fee the Town received for stage set-up was sufficient.

Town Manager Stewart reported the fee covered the costs.

Council Member Andre asked if this would set precedent with respect to the stage and what happened if another organization needed the stage at the same time.

Mr. Lallo reported the Association had given up use of the stage such as but not limited to holidays; and that they would give up using the stage if needed, and have the entertainment play on the ground level. He explained the benefit of utilizing the stage for entertainment such as but not limited to securing the canopy and protecting the band equipment in poor weather. He noted his anticipation for one day when a permanent stage structure would be constructed in Times Square.

Mayor Mandel asked how many permit requests had been received for Times Square on a Friday and Saturday night during the past year by a group other than the Association.

Town Manager Stewart stated he was not aware of any other requests; however, he would need to ask staff if they had received any requests.

Discussion was held regarding a future permanent gazebo-style structure in Times Square; and the benefits of the recurring event to the community.

Public Comment closed.

Discussion was held concerning the request for a recurring annual special event permit; special event costs incurred by the Association; and the benefit of scheduling entertainment well in advance of an event.

Council Member Andre questioned if the permit was approved, would it set precedent, and how would the Town handle conflicting requests.

Town Attorney Miller explained that the permit would be issued to the Association and that others would not have the right to have a permit for the same area, and the approval could set a precedent.

Town Manager Stewart explained that the Town always reserved the right to make a decision that seemed the best fit for the Town; and that if more than one entity came forward and asked for a permit for Times Square for a year; and then it would be up to the Council to weigh the merits and make a decision.

Discussion was held concerning the potential for a request for a recurring event at a location other than Times Square; and Ordinance 12-04, Chapter 22 of the Code as it pertained to recurring events *up to* a year.

Town Attorney Miller cautioned that once the Council approved a permit the Town would be “*stuck*” with it except for certain grounds of revocation.

Town Manager Stewart explained how, prior to last year, the Applicant was required to submit a special event every week.

Discussion continued regarding the recurring special event application; marketing advantages for event consistency; economic benefits to the Town from a consistent special event; weekly event permit fees versus one annual recurring event permit fee; and the rational nexus pertaining to the permit fees amounts.

MOTION: Vice Mayor Kosinski moved to approve the recurring special event permit to the Times Square Merchant and Event Association for the Times Square Sunset Celebration from June 21, 2013 to June 14, 2014 and authorize the Town Manager to sign the permit on the Town’s behalf; second by Mayor Mandel.

Council Member Raymond noted his concern as it pertained to the potential for multiple recurring annual event permits throughout the Town.

Vice Mayor Kosinski suggested Council consider an amendment to the ordinance.

Mayor Mandel suggested postponing approval and placing the matter of recurring events on a Work Session agenda.

Town Manager Stewart noted the Applicant’s current permit would expire soon. He reviewed the Applicant’s concern regarding event consistency and Council’s concern as it pertained to other organizations wanting to conduct event at the same location at the same time.

Discussion continued regarding concerns about the recurring event application; potential instances where applicants could request the use of the Town’s right-of-way for a year; and event consistency.

VOTE: Motion approved, 4-0; Council Member List not present at time of vote.

Council Member Raymond noted that now the Council needed to address Mr. Lallo's request for a fee waiver.

Discussion was held regarding the request for a fee waiver by the Applicant; and use of the appropriate forms to request a fee waiver.

Consensus agreed that the Applicant should submit the appropriate forms to the Town to request a fee waiver for the recurring Times Square Sunset Celebration.

A. Special Event Permit Application – FMB Friends of the Arts

A request from the Fort Myers Beach Friends of the Arts for Town Council to waive the special event application fee for the 7th Annual Fort Myers Beach Film Festival.

Town Manager Stewart reviewed the request from the Fort Myers Beach Friends of the Arts for the Town Council to waive the special event application fee of \$75 and two banner fees for \$320 [\$395 total] for the 7th Annual Fort Myers Beach Film Festival which was held April 24-28, 2013. He stated the Applicant met all the requirements necessary for Council to consider the application.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member Andre noted that the Council had already donated \$25,000 to the FMB Friends of the Arts for the Film Festival for marketing.

Mayor Mandel noted the Town's contribution was to the Film Festival for the purpose of marketing and public relations of the subject event.

Discussion ensued concerning the use of the Town's contribution to the FMB Friends of the Arts for the Film Festival; Council's past practice of waiving event permit fees for organizations and not-for-profit groups and consideration of waiving event permit fees for certain organizations in the future; conducting a further discussion and placing the matter on Agenda Management; and the difference between the Friends of the Arts organization and the Film Festival event.

MOTION: Vice Mayor Kosinski moved to approve a request from the Fort Myers Beach Friends of the Arts for Town Council to waive the special event application fee for \$75 and two banner fees for \$320 for the 7th Annual Fort Myers Beach Film Festival that was scheduled for April 24-28, 2013.

VOTE: Motion died for a lack of a second.

Mayor Mandel asked for the item, along with the request from the Matanzas Pass Preserve, to be discussed during the upcoming budget process.

Recess at 7:39 p.m. – Reconvened at 7:51 p.m.

XI. PUBLIC HEARING

A. First and Only Public Hearing: Ordinance 13-04, Amending Chapter 14 of the LDC, Beach Raking

Public Hearing opened at 7:54 p.m.

Contracts Administrator Bargmann read the title of Ordinance 13-04:

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 how Environmental Scientist Laakkonen had given a presentation on beach raking to Council at a Work Session and he was prepared to offer the presentation again if Council desired.

Environmental Scientist Laakkonen gave a brief presentation on the ordinance timeline which began in 2008; and noted the ordinance amendments had been vetted by MRTF and the LPA.

Town Manager Stewart explained that the businesses involved with beach raking were well aware of the proposed amendments.

Mayor Mandel asked if a member from LPA was present for comment.

No member from the LPA was present and no member from any other Town committee was present for comment.

Public Comment opened.

No speakers.

Public Comment closed.

Town Attorney Miller explained that the Town would need an amount for a permit fee to be established by resolution; and staff's intention was that the license would run along with the fiscal year and to make the effective date of the proposed ordinance October 1st. She asked if staff wanted instead for the ordinance to be effective immediately, but have the new license requirements effective October 1st.

Environmental Scientist Laakkonen responded in the affirmative; noted the importance of having the section pertaining to the new definition of ‘wrack line’ effective immediately.

Town Attorney Miller requested an approval with the effective date for the new license requirements as October 1st and the remainder of the ordinance effective immediately.

Discussion was held concerning a separate fee resolution.

MOTION: Council Member Andre moved to adopt Ordinance 13-04, Amending Chapter 14 of the LDC, Beach Raking in total with the exception of licensing part which would be effective October 1, 2013 and a fee to be established; second by Council Member List.

VOTE: Motion approved, 5-0.

Council Member Andre noted that the ordinance provided that “*all permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration*”.

Public Hearing closed at 8:04 p.m.

XII. ADMINISTRATIVE AGENDA

A. Amendment No. 1 to the Upload Services Contract – Estero Bay Hotel, dba Matanzas Inn LDC, Beach Raking

A request to authorize staff to approve Amendment No. 1 to the Upland Services Contract, which extends the term of the agreement to September 15, 2013.

Town Manager Stewart briefly reviewed the request was for an extension of the Upland Services Contract.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member Andre noted that there had been no negotiations with Estero Bay Hotel Company up until this point.

Town Manager Stewart responded in the affirmative.

Mayor Mandel questioned what would occur during the next three months.

Town Manager Stewart reported staff was preparing a Request for Proposal to go ‘out on the street’ to get other proposals; and one of the significant elements to be addressed would be the split between the Town and the service provider.

MOTION: Council Member List moved to approve Amendment No. 1 to the Service Provider Agreement between the Town of Fort Myers Beach and Estero Bay Hotel Company (dba Matanzas Inn) to extend the term of the agreement to September 15, 2013; second by Council Member Andre.

VOTE: Motion approved; 5-0.

B. Report on Estero Boulevard

Mayor Mandel reported he and some staff members had attended meetings conducted with the BOCC, MPO, Senator Benaquisto, representatives from the State DOT; and what he learned was as follows:

- The bridge at the north end of the island could support three lanes of traffic.
- Both alternating lanes on the bridge for traffic mitigation and a trolley lane could be considered going forward.
- BOCC comments included – that Estero Boulevard should be done; work on Estero Boulevard should coincide with the Town’s utility project; and that traffic mitigation should be an aspect of the plan if work was done on Estero Boulevard.

He reviewed how he and the Town Manager met with staff from the FDOT; and that the State [at their cost] was willing to go ahead and prepare an overview plan of what would be involved, if the Town had the alternating lane on the bridge. The caveat was that the Town Council and the BOCC would have to approve the FDOT to do so. He noted his belief that if Council approved the State’s offer, it would enhance the Estero Boulevard Project.

Discussion was held concerning the State’s offer to prepare an overview plan for the alternating lane.

Town Manager Stewart noted that even though the bridge could handle three lanes of traffic, it could not handle a cantilevered walkway or bike path.

Mayor Mandel clarified that Council was to decide if they wanted the State to do a study and come back to the Town with an overlay of feasibility for the Town to review.

Discussion ensued concerning the State’s offer to conduct a study and come back to the Town with an overlay of feasibility for the Town to review; potential safety issues for the study to investigate for Estero Boulevard and the bridge; timing of the study as it related to the next tourist season; and the impact of Ebb Tide on Estero Boulevard traffic.

Consensus of four members of the Town Council agreed to approve the State’s offer to conduct a study and come back to the Town with an overlay of feasibility for the Town to review.

XIII. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XVII. TOWN MANAGER'S ITEMS

A. Mound House Update

Town Manager Stewart noted that CELCAB's concerns about the Mound House had been addressed at the recent Council/CELCAB Joint Meeting; and he pointed out that there had been no significant changes since that meeting. He reported he would be attending the Florida City/County Managers Association Meeting during the coming week.

XVIII. TOWN ATTORNEY'S ITEMS

Town Attorney Miller – reminded Council that they had approved a few weeks ago shortlisting five firms [9 firms received in total] for the RFQ for the potable water project and that the purpose of the first stage was to determine qualifications. She reported she met with staff and was now recommending that the Town open it up for all nine firms to do verbal presentations to the SAC. She requested a motion to approve modifying Council's prior action to now allow all nine firms to proceed to Step 2 and make a presentation.

Town Manager Stewart pointed out this request did not involve moving to the negotiation phase, and did not involve ranking. He explained the presentation would be made to the Selection Advisory Committee (SAC).

MOTION: Council Member Andre moved to approve that all nine firms be able to proceed to Step 2 and make a presentation to the SAC; second by Council Member List.

VOTE: Motion approved; 5-0.

Town Attorney Miller – recalled that the Town had been sued concerning the property at 2500 Estero Boulevard as it pertained to FEMA flood elevations. She reported there was a petition for a *writ of certiorari* and a *mandamus*; the judge granted the *writ of certiorari*, but denied the *mandamus*. She added that the judge pointed out in his Order that it would put the parties back to the position they were in before the conditional permit was issued. She stated staff would work to get something in writing from FEMA; and noted that the judge did not order the Town to allow the property owner to build below base flood elevation. She reviewed how the State had mandated all local law to extend building permits because of the economy at the time [even if the permit had expired which was what happened in this case]. She noted her concern if the Town would allow the property owner to build at below base flood elevation that FEMA could disqualify the entire town.

Town Attorney Miller – mentioned that a few weeks ago when the Personnel Rules were adopted she had not been present. She noted there was a question concerning garnishment and reported that State statute did authorize the Town to recover costs and attorney fees if served with a *writ of garnishment*.

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 – acknowledged the volunteers who sent the Council letters thanking them for the Volunteer Recognition event. She discussed the information from the Florida League of Cities about the Municipal Lifetime Achievement Award; and asked if Council would be interested in pursuing the award on behalf of Dan Hughes.

Consensus agreed to approve Council Member List's request to pursue the award on behalf of Dan Hughes.

Council Member List – questioned the handout distributed by Mr. Reagan earlier in the meeting.

Mayor Mandel explained it had not been discussed yet.

Council Member List – reported that because of the new 'school agenda' that the program she conducted with the school had been greatly reduced for next year. She added that she would work with the school principal over the summer to develop a program that was more meaningful and less time consuming for the school.

Mayor Mandel – reported he spoke with someone today about concerns regarding the channel [Big Carlos Pass]; noted the buoys had been realigned to define the best passage in, and one critical area remained where the depth of the water was 2.5 feet at low tide; mentioned that there was a reduced number of large boats through the drawbridge which meant an economic loss; and asked what was the status of Big Carlos Pass.

Town Manager Stewart indicated he spoke with the Town's Environmental Scientist earlier today about the position being taken by the County's Department of Natural Resources. He reported staff has been working continually with the group that was working to get the Pass dredged; and that the Town has informed the group that they needed to encourage people to file a complaint when they have encountered a problem during the past 8-9 months. He added that the County had received only three such calls. He explained his understanding that the County's Department of Natural Resources took their guidance from the BOCC, and if the BOCC recognized the problem, then they would direct County staff to work on it. He encouraged everyone to relay their concerns about the Pass to the BOCC.

XX. AGENDA MANGEMENT

Town Manager Stewart noted there were two items Council mentioned:

1. Taxi Franchise – Council Members Andre and List concurred to place the matter on Agenda Management

2. Process for charitable funding or fee waivers - Council Members Andre and List concurred to place the matter on Agenda Management

Council Member Andre suggested removing the following items from Agenda Management:

- Beach raking
- Corporate personhood
- Code Enforcement

Council Member List requested Code Enforcement remain on the Agenda Management list.

Council Member Andre noted a newspaper article about beach umbrella vendors setting up on the water's edge and questioned if the area they were on was public beach.

Discussion was held concerning other items on the beach such as but not limited to machinery and equipment.

Community Development Director Fluegel explained at this point the problems would be a matter of enforcement.

Mayor Mandel asked the status of the Rate Study for water utility.

Town Manager Stewart stated his belief that it would come back to Council before the break; however, he would validate the timeline.

Mayor Mandel asked if a discussion on stormwater management and an enterprise fund was necessary (i.e. stormwater utility fee).

Town Manager Stewart noted it would be beneficial to hold a discussion about how the Council might decide to fund a stormwater program.

Discussion was held concerning a potential date to discuss Stormwater Projects; and it was decided the discussion would not take place until the second meeting in August.

Mayor Mandel requested a date to conduct the budget discussion(s).

Town Manager Stewart reported there was already a budget discussion scheduled for June 17th.

Discussion was held concerning dates for Work Sessions to discuss the budget and the Rate Study; initial information regarding property values from the Property Appraiser to be received June 1st; the timeline to set a millage rate and potential meeting dates; and it was decided to conduct a Budget Work Session on Friday, June 7th at 10:00 a.m.

Council Member Andre pointed out not to forget about Item #21, Short-Term Rentals on the Agenda Management list.

XXI. RECAP OF ACTION ITEMS

Town Manager Stewart recapped the Action Items:

- Taxi Franchise item to be placed on Agenda Management
- Staff would process the recurring event permit for the Times Square Merchants that was approved
- Funding and fee waiver process was placed on Agenda Management for further discussion
- Consent Agenda Item ‘A’ failed to move forward due to a lack of a Second
- Times Square Merchant and Event Association would submit the necessary application to request a fee waiver
- Beach raking ordinance approved immediately; however, effective date for licensing would be October 1st, and staff would prepare a resolution for the license fee amount
- Mayor Mandel was authorized to seek the BOCC approval for the State’s proposal regarding the alternating lanes on the bridge
- Council authorized all nine firms to make a verbal presentation to the SAC regarding the potable water project
- Council approved to present the name of Dan Hughes to the Florida League of Cities for consideration to receive their Municipal Lifetime Achievement Award
- Code Enforcement to investigate the set-up of chairs and umbrellas too close to the public right-of-way on the beach
- Staff would schedule a budget work session for June 7th

XXII. ADJOURNMENT

Motion by Council Member Andre; second by Vice Mayor Kosinski to adjourn. Meeting adjourned at 8:50 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

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