



## **MINUTES**

**Tuesday, September 16, 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 September 16, 2013 Regular Meeting of the Town Council at 6:30 p.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

### **II. INVOCATION – Rev. Jeanne Davis, First United Methodist Church**

### **III. YOUTH COUNCIL – Fort Myers Beach Elementary School**

### **IV. PLEDGE OF ALLEGIANCE**

Council Member List introduced the student representatives from the Fort Myers Beach Elementary School Youth Council.

Kayla Sandall gave a report which thanked the community for supporting the students with their efforts to make the Fort Myers Beach Elementary School an ‘A-rated’ Lee County school. She announced the students would conduct a canned food drive for the Salvation Army during the next two weeks; and added that the school had been in first place for collecting the most cans of food per student in the District during the past two years. She reported the school began a new art club and that their first project was to create a five foot tall seahorse (donated by Fish Tale Marina).

Trevor Zamniak talked about the anticipated ‘school invasion by pirates’ during lunch on October 9<sup>th</sup> as part of the school’s Pirate Day; and added there would be a Pirate Festival the following weekend. He reported firefighters would join the students with their ‘live production’ of Our Best News in the morning; and eat lunch with the students later in the day to help promote Fire Prevention Week. He

noted the entire school would practice safety procedures next month (i.e. Code Red Drill, evacuation drill, and a tornado drill).

## **V. APPROVAL OF FINAL AGENDA**

Mayor Mandel requested to pull Consent Agenda Item 'A' for discussion.

Consensus approved the Agenda as amended.

## **VI. 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.

Bud Nocera, Fort Myers Beach Chamber of Commerce, noted the upcoming Pirate Festival and how the Chamber submitted an application for the event to the Town and paid a \$250 fee. He added that he later learned there would be some additional expenses from the Town (i.e. loss of parking meter revenues, delivery of barricades, etc.). He proposed a 'trade-out' between the Chamber of Commerce and the Town in order to keep the event expenses down, such as but not limited to including Town informational brochures within the Chamber's monthly newsletter.

John Heim, resident, thanked Council Member List for her leadership in working with the Town children and Youth Council. He recounted his trip to the east coast of Florida regarding water quality issues and working with a dolphin research group. He discussed an idea related to the identity of the Town; and a proposal for an 'eco-based town identity' program that could be called "Back Bay Kids" which would be in conjunction with a program called "River Kids" that existed on the east coast. He distributed and reviewed information on the proposed program. He announced an upcoming educational and celebration event called "Floridians for Clean Water" at Crescent Beach Park on October 19<sup>th</sup>; and offered an invitation to the Council to attend and speak at the event.

Public Comment closed.

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

Council Member Andre reported he met with a representative of *Surfers for Autism* regarding an event they would like to hold in the Town. He added that the person would attend and address the Council at their next meeting concerning the group's event request.

Council Member List noted BORC was the host facility for a very well-attended body building event; and thanked the organizer (Council Member Raymond's son) for bringing the successful event to the Town and Town staff for helping coordinate the event.

Council Member Raymond reported approximately 700 people attended the body building event; noted the success of utilizing the Bay Oaks facility; and pointed out how the event assisted the local economy (i.e. attendees stayed local hotels, patronage of local restaurants, etc.).

Mayor Mandel congratulated the BORC staff who now had 43 after-school students registered; and increased membership and the new corporate memberships. He thanked Senator Benaquisto, Senator Rodriguez, and County Commissioner Kiker for coming to the Town regarding the Lake Okeechobee releases and water quality issue, and the FEMA flood insurance issue. He reported Representative Radel asked him if he could attend a bipartisan committee meeting in Washington DC regarding the water quality issue, and he requested Council's input his attending the meeting.

Consensus approved Mayor Mandel to attend the bipartisan committee meeting in Washington DC.

Mayor Mandel noted he would be meeting with the Army Corps of Engineers on the water quality issue prior to the bipartisan committee meeting in Washington DC.

Town Manager Stewart reported this week the Town would be undergoing their review from ISO for the insurance classification for flood insurance. He added that Planning Coordinator Overmyer did a "stellar" job in preparation for the insurance review.

Mayor Mandel noted how the annexation of Mound Key could assist with calculation to lower the Town's insurance classification.

Town Manager Stewart suggested Council might consider the annexation of other surrounding islands which would help improve the Town's 'open land' as it pertained to the Town's insurance classification. He added that he would present Council with additional information on this matter in the near future.

Consensus approved the Town Manager to continue with obtaining information regarding annexation of surrounding islands in addition to Mound Key.

Town Attorney Miller noted the Town may have to negotiate with the State and the individual property owner for an annexation agreement for Mound Key. She pointed out that an attorney from her Tallahassee Office had contacted the State regarding the annexation; and reported the State was not in support of a voluntary annexation if the one private property owner in Mound Key would develop the property.

Mayor Mandel reported he and the Town Manager met with the three brothers who owned one parcel of property on Mound Key and how they indicated one of the issues they were seeking was the Town's help to develop a passive park on the subject property. He requested the Town Manager share the notes from their meeting with Council and the Town Attorney.

## **VIII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

No items.

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

Mayor Mandel thanked Council Member List for serving as liaison to CELCAB, and announced that as of the Work Session that Vice Mayor Kosinski would be the new liaison to CELCAB. He asked if there were any Town committee representatives present to offer a report.

No Town committee representatives were present.

(Order of Agenda Items changed.)

## **X. APPROVAL OF MINUTES**

- A. August 19, 2013 Town Council Meeting
- B. August 19, 2013 Work Session
- C. August 27, 2013 Work Session

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

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

## **XI. CONSENT AGENDA**

- A. Interlocal Agreement for Local Option Gas Tax  
Third Interlocal Agreement with Lee County relating to distribution of the Local Option Gas Tax.

Mayor Mandel explained he had one question regarding the Consent Agenda Item – why was Sanibel's distribution amount 5%.

Town Manager Stewart explained that much of the Local Option Gas Tax distribution was predicated upon lane miles of roadways and shared use paths. He reviewed the amount of lane miles and shared use paths for Sanibel versus Fort Myers Beach.

Mayor Mandel reported there were other cities that would be attending the Florida League of Cities meeting regarding the local option gas tax distribution and allocation.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Kosinski moved to approve the Third Interlocal Agreement for Distribution of Local Option Gas Taxes by and between Lee County and the Town of Fort Myers Beach; second by Council Member List.

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

## **XII. PUBLIC HEARING**

Mayor Mandel opened the Public Hearing at 7:06 p.m.

### **A. Resolution 13-18, Final Public Hearing to Adopt Tentative Millage for FY 2014**

Town Clerk Mayer read the title of Resolution 13-18:

A RESOLUTION TO ESTABLISH AND LEVY AD VALOREM TAXES WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH, FLORIDA, FOR THE TAX YEAR OF 2013; PROVIDING FOR THE LEVY OF AD VALOREM TAXES IN THE AMOUNT OF .7530 MILLS (\$0.7530 PER \$1,000) BASED ON THE ASSESSED VALUE OF NON-EXEMPT REAL AND PERSONAL PROPERTY LOCATED WITHIN THE TOWN LIMITS OF THE TOWN OF FORT MYERS BEACH, FLORIDA; PROVIDING FOR THE MANNER OF ASSESSMENT AND COLLECTION; PROVIDING FOR AN ADJUSTED MILLAGE RATE; PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart reviewed how the proposed resolution would authorize the millage rate; how State statute required the millage rate to be approved before the budget was approved; how the recommended millage rate attained the 'rolled-back rate'; and how the millage rate may or may not affect property taxes as it pertained to assessed valuation (island-wide the millage would not cause a property tax increase).

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Andre moved to approve Resolution 13-18 adopting and levying ad valorem taxes within the Town of Fort Myers Beach for the tax year 2013, in the amount of .753 mills (\$.753 per \$1,000) and taking other action as authorized in such resolution; second by Vice Mayor Kosinski.

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

Public Hearing closed.

B. Resolution 13-19, First Public Hearing to Adopt Tentative Budget for FY2014

Public Hearing opened.

Town Clerk Mayer read the title of Resolution 13-19:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TOWN OF FORT MYERS BEACH OPERATING BUDGET, REVENUES AND EXPENDITURES, AND CAPITAL BUDGET FOR THE FISCAL YEAR 2014; PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Stewart reviewed the effective dates of the 2013-14 Fiscal Year budget; and the public hearing requirements per State statute to adopt the operating and capital budget. He noted the following items pertaining to the proposed budget:

- Current fiscal year budget (General Fund \$5,779,529) and the proposed fiscal year budget (FY 2013-14 - \$6,135,321)
- Capital equipment and vehicle purchases
- Reserves – solid and Town in good financial position
- Utilization of less than 5% of total undesignated reserves; purpose of reserves; recommended reserves is usually three months of operating expenses, and the Town is at approximately nine months of operating expenses.

Council Member Andre questioned Page 3 regarding the Car Allowance and Other Benefit line item for the Town Manager.

Finance Director Wicks explained how the Town Manager was reimbursed for health insurance, by contract, and during the year staff charged the health insurance to the Health Insurance line item and then it was transferred to the Car Allowance and Other Benefit line item.

Council Member Andre questioned what would happen if the expense for the LCSO was not paid as it pertained to the mooring field.

Town Manager Stewart explained the LCSO would not perform the additional services called for within their contract. He noted the additional services performed by the LCSO was for special events and the mooring fields; and discussed his belief that the Town received good value for the LCSO services throughout the Island. He added that if it was Council's desire not to renew the contract with LCSO then he would meet with the LCSO, determine the impact to the Town, and report back to Council.

Council Member Andre questioned Page 8, LPA, budgeted funds last year for historical preservation (\$12,000) which had not been used and was budgeted again for the coming fiscal year.

Town Manager Stewart explained how the unspent funds were placed in the General Fund Reserves.

Mayor Mandel noted the mooring field issue would be coming before the Council and suggested the Town Manager have his discussion with the LCSO prior to the presentation on the mooring field to Council.

Town Manager Stewart pointed out the upcoming mooring field issue concerned the upland service provider and not the LCSO. He acknowledged the Mayor's suggestion.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Kosinski moved to approve Resolution 13-19 adopting the Town operating and capital budget for FY 2014, finding that it is consistent with the requirements of the Town Comprehensive Plan; second by Council Member List.

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

Public Hearing closed.

### **XIII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed

### **XIV. TOWN MANAGER ITEMS**

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

Town Manager Stewart pointed out that he had previously discussed most of the Mound House update at the Work Session earlier in the day.

### **XV. TOWN ATTORNEY ITEMS**

Town Attorney Miller – explained when the Interlocal Agreement with Lee County for building services was sent to the County she had received back an email from the County Attorney's Office raising concerns about 'dual office holding'. She reviewed the prohibition in the Florida Constitution that the same person could not serve in two separate offices; and her telephone call to the Attorney General's Office about the matter. She recommended that the Town seek an opinion from the Attorney General since the County raised a question. She stated she had the request ready to move forward to the Attorney General's Office; and added that the County had agreed to perform the building services on a

month-to-month basis until the opinion was rendered. She requested Council's permission to send the request to the Attorney General tomorrow.

Town Manager Stewart noted his belief that the Attorney General opinion would probably be in favor of the Town; and how there were other municipalities that utilized the same type of working relationship as it pertained to building services.

Consensus approved that the Town Attorney send the request for an Attorney General opinion about the Interlocal Agreement with Lee County for building services.

## **XVI. COUNCILMEMBER ITEMS AND REPORTS**

Council Member Raymond – no report or items.

Vice Mayor Kosinski – no report or items.

Council Member List – no report or items.

Council Member Andre – pointed out that Council had received an email regarding short-term rentals and that he had requested a written legal opinion regarding 'grandfathering'.

Town Attorney Miller reported she was working on the request.

Town Manager Stewart mentioned another email request, the review of the request with the Town Attorney, and the ultimate denial of the request to "*go back on the rolls after being off for two years*".

Town Attorney Miller noted according to State legislation it could cause problems to attempt to change the rules as currently written in the Code.

Council Member Andre – questioned if a prior request for funding from the Friends of the Matanzas Pass Preserve would move onto the new fiscal year.

Town Manager Stewart reviewed how the Council had previously held a discussion about the Friends of Matanzas Pass Preserve and the whole issue of providing funding to organizations in general. He added the matter was moved to a discussion at a future Work Session.

Discussion ensued as to a date for a Work Session to discuss funding requests from organizations, and it was decided to set a date during Agenda Management; and how staff worked with organizations as it pertained to in-kind services for the Town.

Mayor Mandel – distributed an example of how the Friends of the Arts was assisting the 'Paint the Beach' event to be held on November 5-10, 2013. He questioned the status of research from the Town Attorney regarding advertising on the bus benches.

Town Attorney Miller stated she was working to locate the County's agreement regarding the bus benches.

Mayor Mandel – questioned when the group regarding water rates would be coming back before Council.

Town Manager Stewart reported it was scheduled for the first Work Session in October.

Mayor Mandel – questioned the status of the TDRs.

Town Manager Stewart reported staff met and was working with Lee County on the matter; and added the transfer of the TDRs would eventually need to be approved by the Board of County Commissioners.

Mayor Mandel – questioned if there needed to be further action as it pertained to the Estero Boulevard improvements in the high-rise area.

Town Attorney Miller pointed out the discussion by Council and the vote taken on the matter.

Discussion was held concerning the high-rise area as it pertained to the Comprehensive Plan; and how Council had already given direction to staff to begin work regarding the changes to the Comp Plan as it pertained to the Streetscape Plan.

Mayor Mandel – suggested the Town should begin to consider plans for the opening of the Mound House even though it was about a year from now (i.e. advertising program, etc.).

Council Member Raymond suggested placing the plans for the opening of the Mound House on Agenda Management.

Mayor Mandel concurred.

Town Manager Stewart recommended that plans for the opening of the Mound House should go to CELCAB first and then be placed on Agenda Management. He reported the master contract with SEARCH, Inc. would appear on the October 7<sup>th</sup> Meeting agenda and Council would be asked to authorize certain services at that time (not all services at once).

Mayor Mandel – questioned the status of the “circle around Seafarer's idea” (TIF circle around the Seafarer properties).

Community Development Director Fluegel explained there had been a change of personnel (Project Manager) at the firm working on the matter; the company had gotten stuck on the tax increment projections because they needed information from the Property Appraiser's Office on historic trends and problems they encountered with the changes in the geographic area of the CRA over the years.

Mayor Mandel – questioned the timeline to receive information.

Community Development Director Fluegel asked the company representative today about the timeline and was awaiting a response; however, it was his belief that it would probably be within a month.

Town Manager Stewart stated he would work with the Community Development Director and the firm to decide on a projected date so at the October 7<sup>th</sup> Meeting it may be discussed during Agenda Management in order to schedule the matter for a Work Session.

## **XVII. AGENDA MANAGEMENT**

Town Manager Stewart reviewed Agenda Management items:

- Coastal Management Study – one element of the Big Carlos Pass area has proven to be a little bit more complex and was being worked on presently; the Study would probably require a Work Session to discuss the information in the report and decide on how to move forward.
- North Estero Vegetation Plan for the Island – turned over to MRTF
- Water Utility Rate Study – scheduled for 10/7/13
- Noise ordinance – consultant preparing to submit information the end of next week; intend to take matter to the LPA in October.
- Gazebo/Times Square – on hold until staff obtained the analysis of the underground in Times Square; ground-penetrating radar was utilized and problems were encountered due to heavy rains; analysis was being prepared and once submitted to the Town staff they would schedule the item for a discussion with Council.
- Mooring Field – was ‘off the street’ and staff would be preparing an analysis for Council.
- Public Information Officer Position – approval tonight of budget authorized funds for the position and staff would begin work on the matter; position responsibilities would cover all issues for the Town, including Bay Oaks; and Town Manager would first seek to contract the public relations services.

Council Member Andre questioned the status of outdoor displays.

Community Development Director Fluegel reported he just finished a draft and gave a copy to the Town Attorney for comment. He added that the issue would first go back to the working group and then to the LPA, so he did not feel it would be ready for Council in October.

Council Member Andre questioned when to address funding to organizations (#21); and suggested the taxi issue should be held in the near future.

Discussion was held regarding potential dates for items to be placed on a Work Session agenda.

Consensus approved the following items and dates:

- Funding requests from organizations – early November
- TDR, Tax Increment Financing, and annexation – addressed as soon as Council received information

## **XVIII. RECAP OF ACTION ITEMS**

Town Manager Stewart recapped the Action Items during the meeting:

- Staff to work with the Chamber regarding in-kind services as it related to Pirate Fest
- Staff would await direction from Council regarding Mr. Heim's request; staff had informed Mr. Heim that he also needed a permit from the Town for the event he was planning to hold at Crescent Beach Park
- Vice Mayor Kosinski was the new liaison to CELCAB and staff would process the change accordingly
- Consent Agenda Item A was approved and would be processed accordingly
- Resolution 13-18 was approved and would be processed accordingly
- Resolution 13-19 was approved and would be processed accordingly
- Town Manager would contact LCSO regarding the enforcement and the mooring field as discussed
- Town Attorney would forward the request to the Attorney General for an opinion regarding the ILA with Lee County for building services
- Town Attorney to prepare information on the Mayor's request regarding advertising on bus benches
- Staff was working on the Comp Plan changes needed to meet the variances from the Streetscape Plan, and the Town Manager would report back to Council with a recommended course of action
- Planning the opening of the Mound House would be forwarded to CELCAB first for their recommendations

Council Member Andre asked about the status of the window signage for the front of the Town Hall building.

Town Manager Stewart explained staff had questioned the language suggested by the Property Manager, and was awaiting a response from the Property Manager.

Mayor Mandel requested the Town Manager add to the list that he had received consent to attend the Washington DC hearing (discussed earlier).

Town Manager Stewart noted he would also add to the list the request for a written legal opinion on short-term rentals.

Planning Coordinator Overmyer displayed on the overhead screen a proposed Council District alignment entitled the "Village of Estero Council Districts". He pointed out that it did not include Mound Key.

Town Attorney Miller noted there was another document (also displayed on the overhead screen) which was the depiction of the boundaries of the Estero Planning Community which did include Mound Key. She added that she did not believe the final incorporation documents had been submitted to the State by the Village of Estero.

Discussion was held regarding of various islands displayed on the overhead screen; a proposed 'buffer zone' between municipalities (Bonita Springs and Estero Village); and the importance of quickly moving forward with annexation of Mound Key and possibly other small surrounding islands.

Town Manager Stewart thanked the Town staff for all of their work on the FY 2013-14 Budget.

**XIX. ADJOURNMENT**

Motion by Vice Mayor Kosinski; second by Council Member List. Meeting adjourned at 8:05 p.m.

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

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

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Michelle D. Mayher, Town Clerk

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