



MINUTES

Tuesday, February 18, 2014

**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 February 18, 2014 Regular Meeting of the Town Council at 5:34 p.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Raymond. Also Present: Interim Town Manager Stilwell, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

<p>EXECUTIVE SESSION CLOSED TO THE PUBLIC Lee County Circuit Court Case No. 13-CA-003042, Lani Kai, LP, LKLB of Florida, Inc. and Lani Kai Island Resort, Inc. v. The Town of Fort Myers Beach ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION</p>

Mayor Mandel announced the Attorney-Client Session was closed at 5:57 p.m.

Recessed at 5:58 p.m. – Reconvened at 6:30 p.m.

II. INVOCATION – Town Clerk Mayher

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Mandel requested to add ‘announcements’ after the Lee County presentation.

Consensus approved the Agenda with the requested change.

V. LEE COUNTY STATUS REPORT OF ESTERO BOULEVARD

He thanked Lee County Commissioner Kiker for his work on the wording for the Big Carlos Pass funding; for his efforts in Washington DC to change the Biggert-Waters National Flood Insurance Reform Act; and his work for pulling together the funding for Estero Boulevard.

Lee County Commissioner Kiker briefly described his trip to Washington DC as it pertained to the Biggert-Waters National Flood Insurance Reform Act. He gave a brief history of the Estero Boulevard Improvement Project; and noted that the improvements to six miles of Estero Boulevard might take close to a decade.

Doug Meurer, Assistant County Manager, reported the County had separated the Beach Renourishment Projects (Bonita Beach and Lovers Key); and would look at the Big Carlos Pass as an independent dredging project. He added that the County would seek funding through WCIND for the Big Carlos Pass dredging, and expectations were about nine months for the start of the project.

David Loveland, Lee County DOT Director, gave a presentation on the preliminary plans for Estero Boulevard which included but was not limited to:

- Estero Boulevard Timeline
- Preliminary Design
 - Currently in preliminary design process; picked up from 2008 effort that was halted in order to complete the right-of-way survey
 - Based on cross sections in Town's Streetscape Master Plan with changes approved by Town Council in August 2012
 - Will result in 30% design plans for entire six miles from Crescent Street to Big Carlos Pass Bridge
 - Public workshop was held on the Beach in February 2013
 - Based on comments, presented options/limitations to Town Council in August 2013
- Town Council Direction
 - Provided direction on plans in August 30, 2013 letter which included: sidewalks – both sides entire length
 - Dedicated bike lanes where ROW allowed
 - Use shared bicycle lanes “sharrows” and wider sidewalks where separate bike lane could not be provided
 - Center lane/three lane section entire length; and minimize interruption during tourist season
- Addressing Council Requests
 - Sidewalks, both sides entire length, included (widths vary 9’ to 6’)
 - Dedicated bike lanes where ROW allowed, included in all segments except for the 1.4 miles of the Core/Civic Section
 - Shared bicycle lanes “sharrows” with wider sidewalks where bike lanes could not be provided, included sharrows in Core/Civic Section and 9’ sidewalks typically

- Center-Lane/3 Lane Section Entire Length – included except for locations where chicanes used for trolley stops, and quiet center 50' ROW section (Avenida Pescadore to Lazy Way, approximately 1/3 mile).
- Minimize Interruption during Tourist Season – will be a goal, but construction will carry into tourist season
- Design Issues to be Resolved –
 - Drainage
 - Trolley stops
 - Street lighting
 - Landscaping
 - Overhead utilities
 - ROW encroachments
- Outstanding Design Issues
 - Issues can be resolved in subsequent design phases
 - Assistance from Construction Manager-at-Risk
 - Will require significant coordination with Town and possible amendments of the Interlocal Agreement
- Project Approach
 - Sequential design and construction for each segment, starting at north and working south
 - Funding every other year
 - Intend to hire a Construction Manager-at-Risk to oversee efforts and ensure coordination
- Next Steps
 - Finalize Preliminary Design Plans
 - Segment I selection consistent with Town Council 2008 recommendation
 - Funding for Segment I Design and Construction Phases in current Fiscal Year
 - Contract with TYLin allowed issuing STA to proceed with final design of first segment
 - Design scope drafted, being finalized
 - STA required BOCC approval – 2 months, funds remaining in preliminary design allowed TYLin to get started while awaiting STA approval
 - Proceed with advertising for and hiring Construction Manager-at-Risk (process can take six months between advertising/selection/approval process)
 - Construction Manager-at-Risk to participate in the Segment I Design Process
 - Scope for RFQ drafted, and being refined
 - Hire Construction Manager-at-Risk for Segment I with option to add additional segments

Vice Mayor Kosinski questioned if the County had recently received a \$10 million dollar grant for sidewalks and bike lanes.

David Loveland, Lee County DOT Director, responded in the affirmative; and added the funds were for a specific set of dedicated improvements.

Mayor Mandel reported that the dumpsters at Bay Oaks have been relocated to the Town Hall campus and the new deodorized compactor would also be moved to the site. He announced he had received a telephone call last Friday from the Florida Department of Transportation and was informed that they would study traffic at the Florida DOT's expense on San Carlos, the bridge, and the part of Fort Myers Beach not covered by Lee County. He also reported that one of the developers interested in the Seafarer's site had submitted a Letter of Intent to Helmrick Estate. He requested consensus by the Council to approve sending a letter to the House of Representatives requested that they include all property owners (i.e. commercial, residential) in their delay of the Biggert-Waters Flood Insurance Reform Act.

Consensus approved the Mayor's request regarding the letter to the House of Representatives.

Mayor Mandel noted his next announcement pertained to the meeting with attorneys on the strategy session concerning litigation expenditures associated with elevated pools. He stated the following action should be considered by Council:

1. Issue revised letters denying the permits based on current land development codes for 455, 551, 221, 263, and 301 Palermo Circle and staff to work with Attorney Ebelini to send letters regarding this as soon as possible.
2. Retain expert witness consultant Bill Spikowski at a rate of \$2,000 retainer and \$200 per hour and instruct special counsel to execute the retainer letter.
3. Issue a 'stop work order' for 301 Palermo Circle.
4. Rescind Resolution 13-26 calling for a moratorium on elevated swimming pools.
5. Table Ordinance 13-10 for three months to May 19, 2014.

MOTION: Vice Mayor Kosinski moved to discuss the five steps outlined by Mayor Mandel as a follow-up of the meeting with attorneys pertaining to the strategy session related to litigation expenditures on elevated pools; second by Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

Mayor Mandel explained his next announcement pertained to the meeting with attorneys on the strategy session regarding litigation expenditures concerning the Lani Kai. He stated the following action should be considered by Council:

1. To continue with dismissal of the Lani Kai's claim as a course of action.

MOTION: Vice Mayor Kosinski moved to continue with dismissal of the Lani Kai's claim as a course of action; second by Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

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. He mentioned that since the Town was a member of the National League of Cities, the NLC offered a free prescription discount program and that the cards were available at Town Hall.

Public Comment opened.

Bruce Butcher, resident, commented on the County's presentation on Estero Boulevard, specifically traffic congestion, pedestrian/bicycle safety issues, and street lighting. He suggested stopping left-turns off Estero going to North Estero; and stop left-turns off of Crescent Street and onto Crescent Street.

Scott Van Selow, resident, expressed his opposition to public restrooms being placed in front of his property; and asked Council to come visit his property to see what he was describing.

George Ganim, resident, stated he supported Mr. Van Selow and expressed his opposition to the proposed location for public restrooms near the Beacon Motel.

Charlie Whitehead, Fort Myers Beach Little League, reminded everyone of the Little League Opening Day this coming Saturday.

Tom Clift, resident, expressed his disapproval of the decision made to relocate dumpsters and a trash compactor adjacent to his property.

Public Comment closed.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Andre thanked Mayor Mandel for his recent trip to Washington DC on behalf of the Town. He explained the purpose of the survey stakes at comfort station areas.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Miffie Greer, Chair of CRAB, reported the Board had considered a program to encourage Beach residents to donate benches for beach accesses; and requested Council give the Board permission to continue working on the program that would encourage residents to donate benches with a memorial plaque.

Consensus approved Chair Greer's request for CRAB to continue working on a program encouraging residents to donate benches with a memorial plaque.

IX. PRESENTATION

A. Fort Myers Beach Film Commission

Elizabeth Holladay presented a proposal requesting approval for the Town to create a film commission to actively pursue the entertainment industry to come to Fort Myers Beach and update the resource guide. She noted the core strengths of a Fort Myers Beach Film Commission would be locations, tax incentive extras, and permit availability; and the goals would be advertising shoots/music video/new media, independent film productions, and television and/or major film productions. She reviewed the economic benefits for the Town from a film commission; and the operating expenses for a film commissioner/liaison. She explained that the Town would need to form a film commission, create travel and entertainment policies, supply office space, and hire a film liaison or commissioner.

X. APPROVAL OF MINUTES

- A. February 3, 2014 Regular Town Council Meeting
- B. February 3, 2014 Town Council Work Session

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

VOTE: Motion approved, 5-0.

XI. CONSENT AGENDA

- A. Lobbying Services Agreement with Keith Arnold
Request approval of a Consultant Agreement between the Town and Fowler White Boggs with an effective date of October 1, 2013.
- B. Resolution 14-02, Opposing House Bill 703, Environmental Regulation
House Bill 703 was filed in Tallahassee; this proposed Bill would pre-empt home rule for local governments.

Mayor Mandel indicated there was a typographical error on Page 2 of the agreement - ~~\$58,000~~ should be \$48,000.

MOTION: Vice Mayor Kosinski moved to approve the Consent Agenda with a correction to the Consultant Agreement between the Town and Fowler White Boggs on Page 2 of 4 for a total fee of \$48,000; second by Council Member List.

VOTE: Motion approved, 5-0.

XII. PUBLIC HEARING

Mayor Mandel opened the Public Hearing at 7:44 p.m.

Town Clerk Mayher read the title of Ordinance 13-10:

ORDINANCE 13-10, PROHIBITION OF ELEVATED POOLS AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member List moved to continue the Public Hearing for Ordinance 13-10 to May 19, 2013 at 6:30 p.m.; second Council Member Raymond.

VOTE: Motion approved; 5-0.

Mayor Mandel closed the Public Hearing.

XIII. ADMINISTRATIVE AGENDA

A. Town of Fort Myers Beach Stormwater Master Plan

Request to adopt the Stormwater Master Plan as prepared by CDM Smith in accordance with Chapter 9 of the Comprehensive Plan.

Mayor Mandel noted the Council had received the presentation on the Stormwater Master Plan from CDM at the Work Session earlier in the day.

MOTION: Council Member Andre moved to adopt the Stormwater Master Plan as prepared by CDM Smith; second Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

Public Works Director Lewis distributed copies of a “*breakout of an estimate for the costs built into the Master Plan documents that included Estero Boulevard*”. She noted that this represented just the collection of the water on Estero Boulevard; and the Town was providing all of the infrastructure to convey and outfall the stormwater; and indicated there an opportunity for the Town to have the County share in some of the costs.

B. Potable Water Meters Locations

Request to determine placement or possible relocation of water meters as part of the reFRESH Waterlines Project.

Mayor Mandel noted this item was also discussed during the Work Session earlier in the day; and it was his understanding that Council had concurred that the meter location should be where the existing meters were located. He added that Council wanted to see an educational program for the property owners who may want to change their pipe from the residence to the meter.

Council Member Andre explained the Town was responsible regarding the waterlines.

MOTION: Council Member Andre moved to approve to leave the water meters in their current location; second Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

C. TDC Applications for FY 2015

A request for authorization to prepare and submit five funding applications to the Lee County Tourist Development Council totaling \$1,045,432.00.

Mayor Mandel asked if the mooring field was included in the TDC request for funding.

Public Works Director Lewis responded in the affirmative; and noted the amount listed was an approximate number because she was awaiting receipt of a firm number for the coastal management plan.

Discussion was held concerning the funding applications; and programs funded and approved by the TDC last year.

Town Attorney Miller explained that what the TDC funded was restricted by statute (i.e. beach improvement, shoreline protection, etc.). She stated she would work with Public Works Director Lewis to craft language regarding additional beach ambassadors to include in the TDC funding request.

MOTION: Council Member Andre moved to authorize staff to prepare and submit five funding applications to the Lee County Tourist Development Council with the possible addition of a beach patrol increase and also on the coastal management plan; second Vice Mayor Kosinski.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

D. First Amendment to the Utility Interlocal Agreement with Lee County

A request to approve the First Amendment to the Interlocal Agreement between Lee County and the Town for a Utility Relocation Project within the corporate limits of the Town.

Town Attorney Miller reviewed provisions of the Interlocal Agreement which included that once the scope of services was completed for the design of the system that the Agreement would be amended to identify the portion of the design costs the County would be responsible for reimbursing the Town.

MOTION: Vice Mayor Kosinski moved to approve the First Amendment to the Interlocal Agreement between Lee County and the Town of Fort Myers Beach for a Utility Relocation Project within the corporate limits of the Town; second Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved; 5-0.

E. Proposal for Legal Services from Knott, Ebelini & Hart

Mayor Mandel noted receipt of the letter from Knott, Ebelini, & Hart for Professional Legal Services to the Town of Fort Myers Beach (dated 2/10/14).

Discussion ensued regarding the proposal for legal services from Knott, Ebelini, and Hart to the Town of Fort Myers Beach.

Consensus agreed to add this item to Agenda Management for a Work Session after March 18, 2014.

XI. PUBLIC COMMENT

Public Comment opened.

Keri Hendry Weeg expressed her support for the creation of a Town film commission.

Public Comment closed.

XII. INTERIM TOWN MANAGER ITEMS

Interim Town Manager Stilwell – no items or report.

XIII. TOWN ATTORNEY ITEMS

Town Attorney Miller — no items or report.

XIV. COUNCIL MEMBER ITEMS AND REPORTS

Council Member Andre – explained he would like to have Council consider limiting administrative variances for a period of time.

Consensus agreed to place the matter on Agenda Management.

Council Member List – requested Council and the residents give serious thought to the idea of creating a film commission. She described the advantages to the Town with having a pro-active film commission.

Discussion was held concerning whether or not Council should have CRAB investigate creating a film commission.

Town Attorney Miller noted the possibility of a conflict as it pertained to the Ms. Holladay being a member of CRAB; and she would contact the Ethics Commission regarding the matter and, if advised, pursue an opinion on the matter.

Discussion continued whether or not Council should have CRAB investigate creating a film commission.

Vice Mayor Kosinski – questioned if the Town was losing any of the mooring field balls.

Council Member Andre noted there was a replacement program for the mooring field balls.

Mayor Mandel suggested staff may want to check with the Auxiliary Coast Guard regarding the mooring field balls.

Council Member Raymond – no items or report.

Mayor Mandel – noted there was an issue with the north end of the Island where there was a permit in place for dredging with the Army Corps of Engineers, and that it was important to get the permit modified so that when they do dredge next that the Town can locate the sand where it was needed.

XV. AGENDA MANAGEMENT

Council Member Andre pointed out the addition of a discussion on ‘Town right-of-way’.

Town Clerk Mayher reported there were no items assigned to the March Work Sessions.

Discussion ensued regarding discussion items for March Work Sessions and it was decided to:

- ‘Town right-of-way’ and obstructions (3/3/14)
- TDC funding requests (3/3/14)

XVI. RECAP OF ACTION ITEMS

No discussion.

XVII. ADJOURNMENT

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

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

- End of document.