



MINUTES

Monday, June 2, 2014

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

I. CALL TO ORDER

Mayor Cereceda called to order the June 2, 2014 Regular Meeting of the Town Council at 9:02 a.m. Present along with Mayor Cereceda: Vice Mayor Andre and Council Members Hosafros, Mandel, and Stockton. Also Present: Town Manager Stilwell, Town Attorney Rooney, Finance Director Wicks, Public Works Director Baker, Planning Coordinator Overmyer, Parks & Recreation Director Norton, and Town Clerk Mayher.

II. INVOCATION – Town Clerk Mayher

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

MOTION: Council Member Hosafros moved to approve the Final Agenda as presented; second by Vice Mayor Andre.

Mayor Cereceda noted the LPA did not take action on Agenda Item XI, Administrative Agenda, Introduction of Ordinance 14-04, Amendment to Chapter 27 of the LDC, PWVL and PAL; therefore, it would be likely be pulled.

Town Attorney Rooney confirmed that the LPA had heard the matter; however, the LPA recommendation was to allow the industry to continue to work out a solution. He explained the LPA intended to address the matter at their August meeting which would leave sufficient time for the Council to take action on the Ordinance 14-04 before the expiration of all permits (9/30/14).

Consensus was not to remove the item from the Agenda and to allow discussion.

VOTE: Motion approved; 5-0.

V. PUBLIC COMMENT – Agenda Items

Mayor Cereceda reported she received comments from residents expressing their opinion that they preferred the way Public Comment was handled in the past where it allowed them to give input at the start of the meeting on any matter.

Public Comment opened.

Bob Moffa, owner of 1560 I Street, told of his experience over the years vacationing and ultimately purchasing properties on Fort Myers Beach. He indicated he met with Town staff [Environmental Sciences Coordinator and Planning Coordinator] and submitted a letter requesting a permit for rental of beachfront furniture or equipment on his property at 1560 I Street. He distributed and reviewed information handed out to the Council on the matter which included but was not limited to the request of allowing rental of beachfront furniture/equipment on the subject property. He discussed conditions at adjacent properties.

Mayor Cereceda informed Mr. Moffa that Council would not be approving his permit request and recommended he continued with the permit request with Town staff.

Mr. Moffa commented on Agenda Item XI, Administrative Agenda, Introduction of Ordinance 14-04, as it related to his permit request.

Dean Kerknesner owner of Rebel Water Sports discussed his belief that the PWVL and PAL matter probably could have been settled last Friday; however, he noted that the industry members could not schedule a meeting quickly enough to decide on the issue. He recounted highlights from the LPA Meeting on May 30th and noted the most controversial issue was Section 27-51. He offered his view of what the best option would be for the industry. He noted the industry would talk to each other and then meet to work out a solution.

Tracy Gore, resident, noted properties on Primo Drive that had received permits while in litigation. She pointed out her concern with a dock/fishing pier on Palermo Circle. She reported residents contact her constantly with concerns about various problems and she expressed her frustration with staff, her inability to help residents, and what she believed to be a lack of transparency with the Town staff.

Public Comment closed.

Town Manager Stilwell expressed his belief that he looked at everyone as staff (Town Manager, Town Attorney, and the people who report to them). He concurred that the subject permits should not have been issued last week.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

No speakers.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No speakers.

VIII. CONSENT AGENDA

A. Purchase of Replacement Vehicles

A request for approval to purchase five replacement vehicles.

B. Contract #CC-14-05-PW, Preferred Materials, Inc. Asphalt Division

A request to approve a contract to resurface certain roadways and streets within the Corporate limits of the Town.

Vice Mayor Andre questioned if the roads to be resurfaced were in conjunction with the water utility project.

Public Works Director Baker responded in the negative.

MOTION: Vice Mayor Andre moved to approve Consent Agenda Items A and B; second by Council Member Hosafros.

VOTE: Motion approved; 5-0.

Mayor Cereceda noted Agenda Item VII, Local Achievements and Recognitions had been skipped.

Council Member Mandel mentioned that Phil Flood from the Southwest Florida Water Management District reported construction on C43 would begin in October.

Mayor Cereceda thanked everyone who came to Newton Park and met with Commissioner Kiker and herself. She noted Memorial Day last week and recognized the residents who have served and were serving the Country. She noted Agenda Item VIII, Advisory Committees Items and Reports had been skipped and asked if there were any committee members who wanted to offer a report.

No speakers.

IX. PUBLIC HEARING

A. Quasi-Judicial Hearing: DC12014-0001, Publix

A request to approve an amendment to the schedule of uses for the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies.

Mayor Cereceda opened the Public Hearing.

Mayor Cereceda asked if any Town Council Member had ex-parte communication regarding this item. Council Member Hosafros – site visit; Council Member Mandel – site visit; Council Member Stockton – site visit; Mayor Cereceda – site visit; Vice Mayor Andre – site visit.

LPA Attorney Rooney swore in the witnesses.

Austin Stone, Publix Manager, explained that the store was requesting to sell merchandise on the front sidewalks which they have done for many years until Code Enforcement conducted a sweep of the area and asked businesses to remove the outdoor display merchandise. He noted Publix complied with Code Enforcement and he requested Council approve the CPD Amendment request.

Planning Coordinator Overmyer presented comments on behalf of the Town of Fort Myers Beach for the request to amend the schedule of uses of the Publix CPD Amendment, DCI2014-0001, at 4791 Estero Boulevard to allow outdoor display of merchandise and to allow a temporary sign to be used during emergencies. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- Existing Conditions - subject property was 3.736 acres; property rezoned CPD in 1998 (amended CPD, sign, in 2001); developed as Publix in 2000; Code Enforcement CE13-0262 (excessive outdoor display and no permit, removed outdoor display to abate, and requested this amendment to allow outdoor display to resume)
- Request – to allow a temporary sign for use after emergencies or for posting of reduced/special holiday hours

He reported that staff recommended approval of both requests: 1) to amend the schedule of uses of the Publix CPD to allow outdoor display of merchandise; and 2) to allow a temporary sign for use during emergencies. He added the LPA heard the case on May 13, 2014 and recommended approval 6-0 with a recommendation for expedition of the case to Town Council.

Vice Mayor Andre questioned the cost of the CPD Amendment application.

Planning Coordinator Overmyer reported the application cost was \$6,000; and explained the difference between land development amendment requests.

Vice Mayor Andre noted his concern with the current outdoor display code and that the work on revising the code was almost complete. He discussed his views on government staying out of 'retail displays'.

Mayor Cereceda recognized Ms. Shamp, Vice Chair of the LPA.

LPA Vice Chair Shamp explained how the CPD amendment request was straightforward and did not relate to the forthcoming ordinance regarding the display of outdoor merchandise. She noted the Publix outdoor merchandise was under the roof overhang cover; and nothing was visible from the boulevard.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Andre moved to approve a request to amend the Schedule of Uses for the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for the use during emergencies and holiday hours; second Council Member Mandel.

Mayor Cereceda questioned if there was a need to designate the space where the outdoor display was permitted.

Planning Coordinator Overmyer explained, typically, that could be something Council may want to condition, but historically Publix had only used the area in front of the store entrance.

Mayor Cereceda questioned LPA Vice Chair Shamp if they thought the area should be conditioned.

LPA Vice Chair Shamp reported the LPA did not discuss that issue. She noted there had been discussion at the LPA meeting concerning the inflatable rings/rafts and the store representative stated those would no longer be placed outside.

AMENDMENT: Mayor Cereceda amended the main motion to condition the outdoor display to the the existing overhang area in front of the store where the merchandise had previously been displayed; second by Council Member Hosafros.

VOTE: Amendment to the Main Motion approved; 3-2 (Vice Mayor Andre and Council Member Mandel dissenting.)

VOTE: Main Motion approved; 5-0.

Public Hearing closed.

X. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 14-02, Amendment to Chapter 27, PAL, PWVL

An Ordinance amending Chapter 27 of the Town of Fort Myers Beach Land Development CODE, "PERSONAL WATERCRAFT AND PARASAILING;" AMENDING SECTION 27-47, "MEANS OF ENFORCEMENT" BY ADDING DESIGNATED TOWN CODE ENFORCEMENT OFFICERS AS PERSON WHO CAN ENFORCE THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 27-49 BY ADDING PROVISIONS RELATING TO SOLICITING AND PICKING UP CUSTOMERS; AMENDING SECTION 27-50 BY ADDING PROVISION RELATING TO SOLICITATION OF CUSTOMERS; AMENDING SECTION 27-51 BY CLARIFYING HOW THE 500 FOOT SEPARATION IS TO BE MEASURED AND BY PROVIDING THAT PWVL BUSINESSES MAY ALSO

RENT PADDLEBOARDS, KAYAKS AND OTHER NON-MOTORIZED WATERCRAFT; AMENDING SECTION 27-52 BY CHANGING THE NUMBER OF PWVL LICENSES THAT CAN BE OUTSTANDING ANY POINT IN TIME FROM TEN (10) TO ELEVEN (11); AMENDING SECTION 27-55 BY PROVIDING THAT A PWVL MAY BE TRANSFERRED TO A NEW CONFORMING LOCATION WHEN THERE ARE ELEVEN (11) OR FEWER PWVL LICENSES OUTSTANDING; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Cereceda noted the item would be postponed and questioned the Town Attorney for direction on the matter.

Town Attorney Rooney explained the Council could go ahead and offer comments and that the Public Hearing did not have to be opened if it was the intention of Council to table the matter.

Mayor Cereceda explained the Council could now indicate any of their concerns on the matter.

Council Member Stockton reviewed her list of concerns regarding the proposed Amendment to Chapter 27:

1. The 500' being measured from the narrowest point on Estero Boulevard.
2. The storage during business hours and non-business hours of the paddleboards and kayaks; and the lack of specific regulations for paddleboards and kayaks.
3. The removal of the requirement to 'bring in' the equipment after-hours.
4. Non-spill regulations and requirements for the storage of gasoline.
5. Inclusion of trashcan requirements.
6. 12' foot setback from the wet sand should be increased.

Vice Mayor Andre pointed out that paddleboards were considered a vessel by the US Coast Guard.

Discussion was held concerning paddleboards, safety concerns regarding paddleboards, and the use of a 'chase vehicle'.

Council Member Hosafros noted she shared many of Council Member Stockton's concerns.

Council Member Mandel indicated his concerns that the PWVLs and PALs adhered to US Coast Guard regulations.

Mayor Cereceda noted her concern regarding all the other types of rentals that were happening on the beach (i.e. chairs, umbrellas, etc.).

Environmental Sciences Coordinator Laakkonen explained how the rentals reflected the zoning district [Downtown]; offered some brief background information on rentals in the Downtown District; and reviewed where the other types of rentals were not permitted on the beach.

Discussion was held concerning visitors who come with their own chairs and were being told they cannot utilize them since the area was a beach chair and umbrella rental area; and applicable land development code, State land regulations, and potential private property issues regarding the matter.

Town Attorney Rooney noted that much of the issue depended upon whether the vendor was on State land or private property.

Mayor Cereceda questioned if a beachfront residence could offer beach chair rentals.

Environmental Sciences Coordinator Laakkonen explained how it could occur in the Downtown District.

Mayor Cereceda requested that the 'glitch' in the code be included in the list of her concerns.

MOTION: Council Member Hosafros moved to table Introduction of Ordinance 14-02, Amendment to Chapter 27, PAL, PWVL ; second by Council Member Stockton.

VOTE: Motion approved; 5-0.

XIII. PUBLIC COMMENT – Any Items

Public Comment opened.

Joanne Shamp, resident, noted her concern with chair rentals in her area where a vendor was bringing the chairs down the beach and placing them in front of rental houses. She discussed beach renourishment, property boundary lines on the beach, private property rights on the beach, the Erosion Control Line, and the need for sufficient space on the beach for people to walk.

Gail Mannor, resident, expressed her disappointment with the issuance of three permits to a builder she believed were not to be issued. She asked who issued the permits and would they be rescinded.

Dean Kerkesner of Rebel Water Sports explained he understood some of the Council's concerns regarding PWVLs and PALs. He noted the most important issue to him was fixing Section 27-51 before the end of September.

Tracy Gore, resident, requested a response as to whether the permits would be rescinded for Primo Drive. She questioned some possible litigation concerning outdoor displays; and questioned if Council might consider taking certain Community Development Department services back to the County.

Public Comment closed.

XIV. TOWN MANAGER'S ITEMS

A. Town Council Participation, Fourth of July Parade

Town Manager Stilwell – pointed out that typically in the past the Council had a float in the parade and questioned if Council wanted to do the same this year.

Discussion was held; and consensus was to participate with a float for Council in the parade this year.

Town Manager Stilwell – reported last year the Town staff selected the Grand Marshall for the parade and suggested it might be more appropriate for Council to select the person this year.

Discussion was held regarding the Grand Marshall; Town Manager indicated staff would prepare some selection criteria for Council to consider at their Work Session later in the day; and Council would make a selection at the Work Session.

Town Manager Stilwell – reported he and the Mayor had a conversation about relocating the podium in the Chambers and unless there was an objection it would be relocated at the next Council meeting.

Discussion and no objection.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Rooney – no items or reports.

XVI. COUNCILMEMBER ITEMS AND REPORTS

Council Member Mandel – discussed an email he received about property values going up and questioned if the preliminary number of 6.8% was accurate.

Town Manager Stilwell stated he could not confirm the accuracy of the preliminary number accurate at this time.

Council Member Mandel – reported he attended an informative MPO Meeting and described how the planning for transportation issues and the length of time it took to do projects. He suggested that everyone needed to think “20 years out” regarding transportation issues. He noted that for any person in the Town who was on Medicaid and used Good Wheels to get to doctors that there were some State changes that went into effect June 1st and they would no longer be able to do so.

Council Member Hosafros – noted Town Manager Stilwell’s earlier comments regarding the issued permits; her belief that the matter was not adequately addressed; and recommended the Town Manager convey to all Town employees that no comments about the pending litigation should be made. She noted the prior questions from the public as to the status of the subject permits.

Town Manager Stilwell discussed the employee comment that was inadvertently made regarding pending litigation.

Town Attorney Rooney reported he became aware of the issued permits on Sunday; he met with staff this morning and he was working to determine if the permits were tied to the litigation and when he had all the facts and he would be able to speak publically about the matter.

Council Member Hosafros offered her suggestions to the Town Manager regarding a follow-up discussion with the subject employee who made the comment concerning the pending litigation and to go back through the chain of comments made by others.

Discussion was held.

Council Member Hosafros discussed her opinion that the issued permits were inappropriate and Council was not aware of the issuance.

Discussion was held.

Vice Mayor Andre – no items or reports.

Council Member Stockton – questioned the scheduled order of the Council workshops and meetings.

Mayor Cereceda noted that the scheduled times for the workshops and meetings reversed at times.

Discussion was held concerning the workshops and regular meetings; how changing meeting times allowed each section of the public the ability to attend a meeting (i.e. mornings, afternoons, and evenings); and the selection of workshop agenda items.

Council Member Stockton – suggested reinstituting “Recap of Agenda Items” on the Agenda.

Discussion ensued concerning an emailed list of the action items after the meeting from the Town Manager; the action summary prepared by the Town Clerk after the meetings; and consensus was to have a summary of the meeting during the Town Manager’s Items.

Council Member Stockton – expressed her view that tying Mound Key to the Mound House was a good idea; however, she did not support the Town owning Mound Key. She requested the matter be taken off the Council’s Agenda Management/Radar list.

Mayor Cereceda requested Council Member Stockton’s request be discussed under Agenda Management.

Mayor Cereceda – apologized to the neighborhood for what had transpired with the issuance of the permits and noted how important this issue was to her and the residents. She reported she had met with staff this morning and there were more meetings to follow. She stated she would meet with the residents when she was ‘clear about it’. She commended Council Member Mandel for his patience with the traffic studies on Old San Carlos; and thanked Bruce Butcher and John Pohland from the Public Safety Committee for doing a great job.

XVII. AGENDA MANGEMENT

Council Member Stockton noted her previous suggestion to take Annexation (Mound Key) off the Council's Agenda Management/Radar list.

Council Member Mandel discussed the importance of Mound Key to the Mound House site and as an archeological site; and the purpose of the annexation as it related to open space and the calculation of reduced FEMA flood insurance rates for the residents.

Discussion ensued regarding TDRs; leaving Annexation on the list since it was an 'exploration'; and prior conversations with the McGee Family who owned one of the lots on Mound Key; potential to make the subject property into a passive park; the upcoming legislative update from Keith Arnold; and consensus was to leave Annexation on the list until at least the Council's June 9th Meeting.

Mayor Cereceda reviewed the Radar and Agenda Management List as follows:

- Estero Boulevard – presentation was received; make a tab for the item that the next issue was right-of-way issues for the first section.
- Town Hall Lease – Town Manager Stilwell reported Lessor has proposed a few lease options and staff was working on the issue. Issue to remain on Radar List.
- Sign Ordinance – remove “glitch” under plan action; Planning Coordinator Overmyer offered some historical information regarding a proposed “glitch” ordinance. Mayor Cereceda requested staff to bring the matter back to Council for review at a Work Session and then Council would decide whether to take action or send it back to the LPA.
- Fort Myers Beach Film Commission – staff requested to determine if CRAB was working on the issue; Vice Mayor Andre reported CRAB dropped the issue and that the Chamber of Commerce was not interested in the issue either.
- Right-of-Way Policy – Town Attorney Rooney reported language was not yet drafted and the item would be moved out to the fall.
- Public Information Officer – to be discussed during the Council Work Session later in the day.
- Code Enforcement – discussion was held; include this issue in budget discussions.
- Water Utility Management - discussion was held; include this issue in budget discussions.
- Limiting Administrative Variances – remove from Agenda Management List.
- Charter Review Commission - remove from Agenda Management List. Town Attorney Rooney was still researching the 'alternate' position for the Commission; he would prepare a background memo to give the Commission members at their first meeting that outlined their role and responsibilities; and noted Council should consider how to give the Commission advice (i.e. through the Town Manager). Town Manager and Council Member Hosafros offered to rotate attending the Charter Review Commission meetings. Town Attorney Rooney indicated Mr. Durrett could be included in the scheduling process of the meetings as an alternate until he had a final determination on the alternate position.
- Aviation Noise – workshop was held; and discussion of a consultant needed to be moved to budget discussions.
- Mound House – 150 invitations were mailed out to residents about a meeting on June 4th at the Newton House at 6:00 p.m. to discuss 216 Connecticut Street; CELCAB was working on a

January 2015 grand opening. Town Manager Stilwell announced the lead person on the Mound House had turned in her resignation.

- Seasonal Sign Permits – discussion was held; send matter to the LPA.
- Seafarer's – discussion was held regarding potential and proper redevelopment of the site; the definition, function, and potential use of an ad hoc committee as a fact finding group subject to the Sunshine Law; and the Seafarer's 2000 CPD. No action taken on the ad hoc committee at this time.

XVIII. RECAP OF ACTION ITEMS

No discussion.

XIX. ADJOURNMENT

Motion by Vice Mayor Andre; second by Council Member Hosafros. Meeting adjourned at 11:03 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

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