



## **MINUTES**

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

**April 19, 2010**

**6:30 PM**

**I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 6:32 p.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel along with Town Manager Stewart, Town Attorney Dalton and Town Clerk Michelle Mayher.

**II. INVOCATION**

Invocation was led by Councilmember List.

**III. PLEDGE OF ALLEGIANCE**

All stood for the Pledge of Allegiance.

**IV. YOUTH COUNCIL**

Youth Council was represented by Jackson Owen and Caleb Kane. The two students reviewed happenings at the school including time with Joann Semmer learning about Ostego Bay, cooking with the sun, Mound House visits, beach clean up for Earth Day, landscaping and tree planting on school grounds as well as working with the Pilot Club in the butterfly garden.

**V. PROCLAMATIONS:**

**A. Water Conservation Month**

Town Clerk Michelle Mayher read the proclamation with Mayor Kiker presenting the proclamation to Public Works Director Cathie Lewis.

**VI. PUBLIC COMMENT**  
**Public Comment Opened**  
**No Public Comment**  
**Public Comment Closed**

**VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Councilmember List recognized the Civic Association for the 50's Dance held to benefit Bay Oaks.

Councilmember Babcock echoed Councilmember List's thanks to the Civic Association and noted the Island's recognition of their rain barrels at the Southwest Florida Regional Planning Meeting.

**VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

**A. Bay Oaks Advisory Committee Sign and Banner Request**

Representatives from the Bay Oaks Advisory Committee, Tom Mizwa and Nicole Olsen, provided a power point presentation with a sign and banner request for consideration by Council.

There was consensus within the Council for the Committee to move forward by obtaining estimates for the signs and banners, checking with Community Development for any restrictions and returning before Council with the acquired information.

**IX. MINUTES ADOPTION:**

**A. Approval of Minutes: March 15, 2010**

**B. Approval of Minutes: March 24, 2010 Work Session**

**MOTION:** Councilmember Babcock moved for approval of minutes with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

**X. CONSENT AGENDA:**

**A. Pension Plan Amendment**

Councilmember Mandel questioned the need for information as noted on the first page of the VALIC paperwork, wanting to make sure everything was ok with the plan.

Town Manager Stewart indicated he had looked it over, stating the changes were necessary to meet Federal law, particularly addressing the Final 415 Regulations Amendment, stating he would have all necessary information sent by the 30<sup>th</sup> of April with Council's approval.

**MOTION:** Vice Mayor Raymond made a motion to update and authorize

necessary changes to the Town's pension plan with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

**XI. PUBLIC HEARINGS:**

**A. Ordinance 10-02, Small Scale Comp Plan Amendments**

Mayor Kiker opened the Hearing for Ordinance 10-02 at 6:55 p.m.

Attorney Dalton read the Ordinance: **“ORDINANCE #10-02 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROVIDING FOR A SMALL SCALE AMENDMENT TO THE COMP PLAN OF THE TOWN OF FORT MYERS BEACH TO RECLASSIFY CERTAIN PROPERTY FROM MIXED RESIDENTIAL CATEGORY TO THE PEDESTRIAN COMMERCIAL CATEGORY ON THE FUTURE LAND USE MAP, PROVIDING FOR CONFLICTS, SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.”**

Dr. Shockey on behalf of staff indicated what was before Council was a privately initiated request for a small scale Comprehensive Plan Amendment to the future land use map and the Town's Comprehensive Plan. The properties in question being 821 and 831 Estero Boulevard were requested to be changed from the Mixed Residential to the Pedestrian Commercial Category by the owners. Mr. Shockey indicated the term 'small scale' came from State law not a Town policy to divide different types of amendments up as to whether they are small scale or not. The point for this purpose was to be able to adopt a small scale amendment and submit it to the State when wished during the course of a year rather than together with other amendments that might be considered during the year.

Dr. Shockey noted for an amendment to be a small scale amendment there had to be a number of criteria met with the most important being that the amendment itself must involve a land area of less than 10 acres, this partial was approximately one third acre. Other criteria did not apply to this property per Dr. Shockey.

Dr. Shockey discussed the Mixed Residential category which the property was now and gave an overview and examples of Pedestrian Commercial which was the requested change. Dr. Shockey indicated there were two buildings on the property now that were built before flood regulations went into affect, noting the lowest levels were not elevated to the height which would be required now stating the reuse of the buildings would be limited as to the extent of remodeling that could be done without elevation and any new construction would be required by flood regulations today. Both properties were in Flood Zone VE, indicating anything below approximately 8 or 10 feet would need to be open to allow water to pass through during a flood, or enclosed with break away walls making

it usable for only parking, building access or storage.

Dr. Shockey stated an important policy to consider in the Comp Plan that directly addressed the issue was policy 4C10 which addressed changes to the Comprehensive Plan that would allow changes to the intensity or density. The matter of intensity could be greater in the Pedestrian Commercial category with policy 4C10 stating the proposed changes must be shown to be clearly in the public interest not just the private interest of the petitioning land owner. Mr. Shockey indicated that in accordance with the surrounding properties and their varied uses staff felt approving the amendment would be in the public interest.

Mike Roeder representing the two properties addressed Council regarding the change requested from Mixed Residential to Pedestrian Commercial, noting it was felt it was more in keeping with the use of the area in question. Mr. Roeder indicated the LPA had reviewed the amendment stating they too felt it was in the Town's best interest to adopt the change. Mr. Roeder also discussed the request for refund of application fees due to prior changes in the area, with prior Councils indicating no fee would be charged for a change in the properties' designation.

Rochelle Kay from the LPA reviewed the two part request, one being does the property meet the criteria for small scale amendment and second was the change in the best interest of the health and safety of the Town. Miss Kay indicated there was a consensus for small scale amendment with the majority feeling there would be a positive impact due to additional uses, likely to contribute to walk ability and positive pedestrian impact.

**Public Comment Opened**  
**No Public Comment**  
**Public Comment Closed**

Attorney Dalton reviewed the procedure for Council.

Councilmember Babcock asked the applicant when the property located at 821 Estero was purchased with the reply from Mr. Roeder being April 2, 2001 and 831 Estero purchased November 3, 1997. Councilmember Babcock then noted the Comp Plan was approved January 1, 1999 but the Future Land Use Map wasn't approved until February 2003 asking for confirmation from staff if those were the correct dates.

Dr. Shockey indicated the Comp Plan and Future Land Use Map both took effect the same time, January 1, 1999 but there was a time when the Town developed its own zoning code to address the future land use categories it had created so in 2003 all land in the Town was rezoned to new categories that matched up with the Future Land Use Map.

Councilmember Babcock asked if that was the same Land Use that existed today with Dr. Shockey stating there had been some changes due to all the rezoning that had taken place. Councilmember Babcock then reviewed Mr. Roeder's previous statement that the applicant had applied in 2003, with a hearing in 2004 and was rejected at the time. Councilmember Babcock inquired as to why the applicant waited so long in coming forward with the request again. Mr. Roeder indicated that previously additional properties to the rear of the Estero Boulevard properties had been included in the request and after the denial the owners were shocked with the decision as well as financially affected, so in the present request made the decision to concentrate on only the two properties fronting on Estero Boulevard. Councilmember Babcock noted that staff did not reference Ordinance 97-21 asking Dr. Shockey to explain what that covered. Dr. Shockey felt Councilmember Babcock was referencing the ordinance that amended the transitional Town Land Development Code which was the Lee County Code with certain amendments adopted by the Town Council over the years between incorporation and the Town's own complete replacement chapters. Mr. Shockey said it specified in the C1 zoning district new or expanded Commercial uses would have to pass through the land development process before acquiring a development order for development which was adding specificity to the zoning for the C1 district on Estero Island to clarify that the earlier policy from 1991 which was amended in 1992 was suppose to apply and prevent new commercial uses to be developed without passing through the planned development zoning process. Councilmember Babcock indicated that would apply to one property but not the other since one was purchased after the ordinance was put in place.

Councilmember Babcock continued by asking staff how this change would be in the public interest. Dr. Shockey indicated he did not feel the history of the properties played a major part in the public interest question in the view expressed by the applicant about the County's Comp Plan amendment in 1992. Mr. Shockey stated regardless of that issue the policies cited in the staff report regarding maintaining the small Town character of Fort Myers Beach in the pedestrian oriented public realm that allowed people to move around without their cars, providing shopping and services for residents and overnight guests that are to be preferred over shopping and services to additional day visitors, the neighborhood context of proposed commercial uses should be considered. Dr. Shockey stated this area consisted of residential, commercial and civic uses.

Councilmember Babcock asked what had changed from 2004 when staff's recommendation was to deny the request and now when staff's recommendation was to approve the request. Dr. Shockey indicated it was fair to say that a major issue was the additional properties had been removed from the request as well as the parcel now designated as parking. Councilmember Babcock asked Dr. Shockey if there had been any comments from the public with Dr. Shockey indicating he had not received any written or verbal comment. Mayor Kiker then asked if there had been a change of operating hours from 2 a.m.

until 12 p.m. Mr. Roeder stated there was no development proposal for the property and didn't think there were any discussion of that issue and that it would come up in the zoning.

Town Manager Stewart noted that there was no public comment at the LPA meeting, indicating that in all future hearings of this nature staff would include information on any public comment received, pro or con, indicating also it would be good for the LPA to include that information as well.

**MOTION:** Councilmember List moved to approve the Small Scale Amendment on April 19, 2010

- (1) the proposed amendment **DOES** involve a use of 10 acres or fewer;
- (2) the cumulative annual effect of the acreage of all small scale amendments **DOES NOT** exceed certain the statutory threshold of 80 acres;
- (3) the proposed amendment **DOES NOT** involve the same property granted a change within the previous 12 months;
- (4) the proposed amendment **DOES NOT** involve the same owner's property within 200 feet of a property granted a change within the previous 12 months;
- (5) the proposed amendment **DOES NOT** involve a text change to the goals; policies and objective of the Town's Comprehensive Plan and **DOES** only involve a change to the FLUM;
- (6) the property **IS NOT** located in an "are of critical state concern";
- (7) any proposed residential use involved **DOES** have a density of 10 units or less per acre
- (8) Applicants' application **DOES** meet the statutory requirements to be considered for a small scale amendment.

Section 3.

- (1) The proposed amendment will likely have **POSITIVE** impact on affected traffic, utilities, other services, and future capital expenditures.

Section 4.

The Council hereby **GRANTS** applicants' request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

Vice Mayor Raymond seconded the motion.

**VOTE:** Town Clerk Michelle Mayher conducted a roll call on the motion to adopt Ordinance 10-02.

Councilmember List	Aye
Vice Mayor Raymond	Aye
Councilmember Babcock	Aye
Councilmember Mandel	Aye
Mayor Kiker	Aye

Motion passed 5 to 0

Mayor Kiker closed the hearing at 7:47 p.m.

B. Ordinance 10-06, Amending Chapters 6-11, 34-1744, and 34-1745  
(Refuse Container and Fence Height/Location)

Mayor Kiker opened the hearing at 7:48 p.m.

Attorney Dalton read the Ordinance: **Town of Fort Myers Beach  
ORDINANCE NO. 10-06 AN ORDINANCE AMENDING REGULATIONS  
IN CHAPTER SIX AND THIRTY-FOUR OF THE TOWN OF FORT  
MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING  
AUTHORITY; ADOPTING AMENDMENTS TO ARTICLE I (PROPERTY  
MAINTENANCE CODE) OF CHAPTER SIX WHICH IS ENTITLED  
MAINTENANCE CODES, BUILDING CODES, AND COASTAL  
REGULATIONS; ADOPTING AMENDMENTS TO DIVISION 17  
(ENTITLED FENCES, WALLS AND ENTRANCE GATES) OF ARTICLE  
IV (ENTITLED SUPPLEMENTAL REGULATIONS) OF CHAPTER 34  
(ZONING DISTRICTS, DESIGN STANDARDS, AND  
NONCONFORMITIES); PROVIDING FOR SEVERABILITY; AND  
PROVIDING FOR AN EFFECTIVE DATE.**

Town Manager Stewart asked if Council wished to move the issue forward.

Rochelle Kay of the LPA indicated the subject came up following recommendations of an ad hoc committee who did considerable work for the safety, appearance and hygiene of the Town. Miss Kay reviewed the decisions of the LPA.

A decision was made to address at a later time the responsibility of property owners in making sure trash receptacles are placed on the curb and returned to the structure at the appropriate times if the property was rented.

**Public Comment Opened**

▪**Lee Melsek** chairman of the ad hoc committee indicated he joined the LPA in recommending approval. Mr. Melsek stated the ad hoc committee did not address rental agents indicating it was his understanding that Code Enforcement notified owners of the home. Mr. Melsek indicated the desire of the committee was to work to maintain a clean appealing place for residents and tourists.

**Public Comment Closed**

**MOTION:** Councilmember Babcock made a motion to move Ordinance 10-06, amending Chapters 6 and 34 of the Land Development Code, to a second hearing at the Town Council meeting of May 3, 2010 at 9 a.m. with a second by Councilmember List.

**VOTE:** Motion passed 5 to 0

Mayor Kiker closed the hearing at 8:01 p.m.

Mayor Kiker voiced his thanks from Council to Joanne Shamp and Rochelle Kay for their work on the LPA.

C. Ordinance 10-07, CIP Amendments

Mayor Kiker opened the Hearing at 8:02 p.m.

Attorney Dalton read the Ordinance: **ORDINANCE NO. 10-07 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO UPDATE THE CAPITAL IMPROVEMENT PLAN; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

Town Manager Stewart stated staff was asking Council to incorporate the current CIP into the Table 11-7 of the Comprehensive Plan's Capital Improvement Element as is required.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Councilmember List moved to adopt Ordinance 10-07 to incorporate the current CIP into Table 11-7 of the Comprehensive Plan's Capital Improvements Element with a second by Councilmember Mandel.

**VOTE:** A roll call vote was conducted by Town Clerk Michelle Mayher to the motion to adopt Ordinance 10-7.

Councilmember List	Aye
Councilmember Mandel	Aye
Mayor Kiker	Aye
Vice Mayor Raymond	Aye
Councilmember Babcock	Aye

Motion passed 5 to 0

Mayor Kiker closed the Hearing at 8:05 p.m.

**XII. ADMINISTRATIVE AGENDA**

A. Appointment to Advisory Committee(s)

Town Manager Stewart asked Council to consider the appointment to the LPA of Joseph Kosinski

**Public Comment Opened**

**No Public Comment**  
**Public Comment Closed**

**MOTION:** Councilmember Babcock made a motion to approve Mr. Kosinski's appointment to the LPA with a second by Vice Mayor Raymond.

**VOTE:** Motion passed 5 to 0

B. Approval of Town Council Policies and Procedures

Mayor Kiker stated Council did not complete their discussions on Policies and Procedures at their earlier worksession so item B would not be addressed.

**XIII. PUBLIC COMMENT**

**Public Comment Opened**

▪ **Joseph Salvagio** questioned Council regarding the faulty dredging job in Laguna Shores.

Town Manager Stewart indicated the dredging job itself was not faulty as the company did the work as designed, and that it was the location that was faulty. Mr. Stewart stated Council would be bringing the issue to a workshop for discussion which would include the DEP. Mr. Stewart noted he hoped to schedule the meeting within the next 30 days depending on the success in contacting the DEP.

▪ **Mike Roeder** addressed Council by again asking Council to consider the application fee waiver.

Town Manager Stewart indicated he would recommend that Council not wave the fees as there was work done by staff previously as was contemplated for the charges in the first place, there was work done this time around by staff which was successful so a waiver of fees would not be recommended.

Councilmember List indicated she had read volumes of material regarding the case, feeling one of the citizens had expended a lot of money to get it accomplished and asked Council to look at the figures and give it some consideration.

Mayor Kiker asked Attorney Dalton if there were things Council needed to consider regarding the issue. Attorney Dalton indicated it had not be noted for discussion so should be addressed at another time.

Councilmember Babcock indicated he supported the decision of the Town Manager and felt it would be wrong of Council to set this precedent. Councilmember Babcock noted there was certainly cost to the applicant but there was also cost to the staff as well stating as far as he was concerned the issue should be closed.

**Public Comment Closed**

**XIV. TOWN MANAGER'S ITEMS**

Town Manager Stewart thanked Council for the opportunity to attend the Tax and Finance Seminar hosted by Nabors, Giblin.

Mr. Stewart indicated he had a follow up conversation with the landlord representing the Town Hall building, stating the Town needed to have a statement to them by the end of the month regarding what the Town intended to do as far as remaining in the building.

**XV. TOWN ATTORNEY'S ITEMS**

Attorney Dalton echoed Mr. Stewart's comments on the Seminar indicating it was an excellent workshop.

Attorney Dalton indicated April 4<sup>th</sup> marked her 5<sup>th</sup> anniversary with the Town and noted her submitted resignation letter was for April 12<sup>th</sup>, stating representing the Town had been a very joyful and challenging experience while at the same time making her a better attorney. Attorney Dalton stated she was leaving to pursue community service in other areas with her intention to do affordable end of life legal issues for folks who don't have a lot of money. Attorney Dalton stated she would give the Town the necessary time to do what they needed to do to acquire a new Town Attorney.

Mayor Kiker expressed Council's thanks for the work Attorney Dalton had done.

Councilmember Mandel volunteered to be the liaison in searching for a new Town Attorney.

**XVI. COUNCILMEMBERS ITEMS AND REPORTS**

Councilmember Mandel also felt the Tax and Finance Seminar was very good. Councilmember noted his report on a meeting with Dr. Beazer of Charlotte Harbor. Councilmember Mandel then asked for Attorney Dalton to bring an opinion back to the April 21<sup>st</sup> meeting regarding his question, if the Water Utility borrowed funds but did not have the full faith and credit of the Town or any Town involvement in the negotiation would the Corporation be able to borrow for any length of time. Councilmember Mandel then addressed Town Manger Stewart's comments regarding negotiations on the building by asking if they needed plans if there was no resolution on the current site on an interim basis as well as the need to ask an architect if it would be feasible to put two or three floors on top of Bay Oaks for Town Council since that would not take any property off the tax rolls and it might improve safety and activity at Bay Oaks.

Vice Mayor Raymond agreed with Councilmember Mandel concerning the

possibility of utilizing the Bay Oaks property.

Councilmember List felt it would be prudent to gather information on the different options Council would need to consider.

Town Manager Stewart indicated it was a process that was already in the works.

Councilmember List thanked Attorney Dalton for all her assistance, and informed everyone of the Horizon Council Meeting.

Vice Mayor Raymond commented on the Tax Seminar as well as voicing his thanks to Attorney Dalton.

Councilmember Babcock voiced his pleasure in working with Attorney Dalton, thanking her for her hard work and ethics.

Mayor Kiker thanked Attorney Dalton then asked Council for their consensus on setting up worksessions with the County Commissioners.

#### **XVII. AGENDA MANAGEMENT**

Mr. Stewart indicated there was a meeting scheduled for the 5<sup>th</sup> of May to discuss the Mound House.

April 21<sup>st</sup> will be a session on the Water Utility.

Town Manager Stewart noted staff had provided Council with specific dates when final decisions needed to be made for the budget asking Council when they wanted to start having budget meetings.

Councilmember Babcock indicated his desire to finish Policies and Procedures.

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

- Staff will work with BORC for assistance in signs and banners
- Address Councilmember Mandel's concerns on the Pension Issue in paragraph 4
- Move forward 10-06 for the 3<sup>rd</sup> of May
- Town Manager to work together on Ordinance 10-02 and 10-07
- Notify Mr. Kosinski on Council's approval to his membership on LPA
- Councilmember Mandel designated to work with staff on gathering information on locating a new Town Attorney as well as assistance from Attorney Dalton
- Town Hall Issue, provide additional information to Council
- Work with Mayor Kiker to set up co-meetings with County Commissioners
- Prepare a memorandum regarding the participation of Mr. Spikowski

**XIX. ADJOURNMENT**

**MOTION:** Councilmember List made a motion to adjourn with a second by Councilmember Mandel.

*Meeting adjourned at 9:18 p.m.*

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

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

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

- End of document.