



MINUTES

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

EXECUTIVE SESSION

July 12, 2010

8:30 AM

I. CALL TO ORDER

Mayor Kiker called the Executive Session to order.

II. ANNOUNCEMENT OF COMMENCEMENT OF EXECUTIVE SESSION

Executive Session for SWF Beach Bay Management v. Town of Fort Myers Beach.

Mayor Kiker indicated present for the Executive Session were all Council members except for Councilmember Babcock, also present were the court reporter, Town Manager Stewart, the Town Attorney and Denise Wheeler.

Mayor Kiker concluded the Executive Session at 8:40 a.m.

July 12, 2010

10:00 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 10:05 a.m. Present with Mayor Kiker was Vice Mayor Raymond, Council Members List and Mandel, Council Member Babcock was absent. Also present were Town Manager Terry Stewart, Town Attorney Jim Humphrey and Town Clerk Michelle Mayher.

II. INVOCATION

Deacon “Scoop” Kiesel from the Church of the Ascension led the invocation.

III. PLEDGE OF ALLEGIANCE

All stood for the Pledge of Allegiance

IV. APPROVAL OF FINAL AGENDA

Agenda approved

V. PUBLIC COMMENT

Public Comment Opened

No Public Comment
Public Comment Closed

VI. PROCLAMATION

A. Florida Water Professionals Week

Town Clerk Mayher read the proclamation as Mayor Kiker presented it to Public Works Director Cathie Lewis.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

None Noted

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

None Noted

IX. APPROVAL OF MINUTES

A. May 17, 2010 Town Council Meeting

B. June 7, 2010 Town Council Meeting

C. June 21, 2010 Town Council Meeting

D. June 21, 2010 Town Council Work Session

Councilmember List made a spelling correction from May 17th, page 9 to **formally**, June 7th, page 9 spelling **Campofreadno**. Councilmember Mandel made a correction from June 21, page 3 to add language regarding the Town's cash match for the proposed grants, with Cultural Resources Director Schober responding it would be under \$50,000.00.

MOTION: Councilmember List made a motion to approve with corrections; second by Councilmember Mandel.

VOTE: Motion was approved 4 to 0

X. CONSENT AGENDA

A. North Estero Boulevard Change Order

**B. Special Event Permit Application "2010 Annual Firefighter Memorial"
Nervous Nellie's Restaurant**

**C. Request for Use of the Council Chambers "Commotion by the Ocean"
Fort Myers Beach Chamber of Commerce**

MOTION: Councilmember List made a motion to approve; second by Council Member Mandel.

VOTE: Motion approved 4 to 0

XI. PUBLIC HEARING

A. Case # SEZ2010-0007 Special Exception, Nemo's on the Beach

Mayor Kiker opened the hearing. Council indicated they had no ex-parte communication.

Town Manager Stewart swore in all persons intending to testify.

Town Manager Stewart presented the information to Council regarding Resolution Number 10-15, Nemo's on the Beach COP, to allow consumption on premises of alcoholic beverages in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership, including an existing patio surfaced with paver blocks located landward of an existing retaining wall but within the EC zoning district, to include beer, wine and liquor.

Mr. Stewart stated the LPA passed a resolution with a 3 to 2 vote, recommending Town Council approve the application. It was also noted there were no letters presented nor persons present to speak for or against the application.

Representative Joe Madden, spoke for Estero Beach Holdings, LLC requesting Dr. Shockey's staff report and the LPA conclusion both become part of the record noting they were in support of the resolution that was approved by LPA.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Vice Mayor Raymond moved to approve resolution 10-15 as written; second by Council Member List .

VOTE: Motion passed 4 to 0

Mayor Kiker closed the hearing at 10:22 a.m.

XII. ADMINISTRATIVE AGENDA

A. Resolution 10-16, Adoption of the Tentative Millage Rate, FY 2011

Town Clerk Michelle Mayher read the title:

RESOLUTION NUMBER 10-16 A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE FOR TAX YEAR 2010/2011 FOR THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA; DETERMING THAT THE PROPOSED OPERATING MILLAGE RATE EXCEEDS ROLLED-BACK RATE; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND THE BUDGET FOR THE TAX YEAR 2010/2011; AND VALOREM MILLAGE RATE AND THE BUDGET FOR THE TAX YEAR 2010/2011; AND PROVIDING AN EFFECTIVE DATE

Town Manager Stewart indicated the Council would be setting a tentative

millage rate, not a final millage rate, but one from which the Council could not go any higher, allowing Council to work its way through the budget.

Public Comment Opened

No Public Comment

Public Comment Closed

Council Member Mandel asked Town Manager Stewart how high of a rate would the Town need to cover the present budget deficit; Mr. Stewart responded the rate to be 1.0576.

Council Member Mandel suggested the rate be set at the 1.0576 number and then work to reduce it. Town Attorney Humphrey indicated to go to that number it would require a full Council consent. Vice Mayor Raymond stated he would be unwilling to go above the 1.0 mills. Councilmember List commented on the tax breakdown that had been provided to residents last year and was followed by Finance Director Wicks' response that approximately 4% of the local tax dollars stayed on the island with an assumption that this year would be the same.

MOTION: Vice Mayor Raymond made a motion to adopt resolution 10-16 setting the tentative operating ad valorem millage rate at 1.000 mills for tax year 2010/2011 for the Town of Fort Myers Beach; second by Councilmember Mandel.

Attorney Humphrey pointed out that section 2. had a fill-in-the blank; Mr. Stewart offered for the percentage to be 7.75%.

AMENDED: Motion was amended to include this millage exceeds the roll-back rate by 7.75%. .

VOTE: Motion passed 4 to 0 with Councilmember Babcock absent.

B. Appointment to Advisory Committee(s)

Town Manager Stewart stated 2 applicants had applied for one seat on the CELCAB Advisory Board; Carrie Hill and Margaret Weslow.

Public Comment Opened

No Public

Public Comment Closed

Carrie Hill spoke to Council representing her volunteer efforts for the Town as well as her desire to serve on CELCAB.

After a ballot vote by Council, Carrie Hill was selected to serve by a vote of 3 to 1.

C. Introduction of Ordinance, 10-08, Emergency Operations

Town Manager Stewart indicated this was the 1st of 2 sessions before Council with the 2nd being August 2nd at 9 a.m.

Town Clerk Michelle Mayher read the Ordinance title:

TOWN OF FORT MYERS BEACH ORDINANCE NO. 10-08; AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ESTABLISHING PROCEDURES FOR THE DECLARATION OF A STATE OF LOCAL EMERGENCY; PROVIDING DEFINITIONS; PURPOSE AND INTENT; AUTHORITY TO DECLARE A STATE OF LOCAL EMERGENCY; METHOD OF DECLARING AND TERMINATING A STATE OF LOCAL EMERGENCY; AUTHORITY OF TOWN COUNCIL; EFFECT OF DECLARATION OF A STATE OF LOCAL EMERGENCY; PROHIBITIONS DURING DECLARED STATE OF LOCAL EMERGENCY; ACCESS TO EMERGENCY PREPAREDNESS FUND; PENALTIES FOR VIOLATIONS; REPEAL OF PRIOR ORDINANCES; CONFLICTED AND SEVERABILITY; AND EFFECTIVE DATE.

Public Comment Opened

No Public Comment

Public Comment Closed

Council Member Mandel asked to have ‘or designee’ added to Section 8. page 4 after ‘Town Manager’.

MOTION: Councilmember Mandel made a motion to approve introduction and advertising of Ordinance 10-08, Emergency Operations and set Public Hearing date for August 2, 2010 at 9:00 AM including the above referenced change. Second by Council Member List.

VOTE: Motion passed 4 to 0 with Councilmember Babcock absent.

D. Resolution 10-17, Allocation of Cash Match for Florida Division of Cultural Affairs, Cultural Facilities Program Grant Application

Town Clerk Mayher read the resolution title: **RESOLUTION 10-17
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PROPER OFFICERS, OFFICIALS AND REPRESENTATIVES OF THE TOWN TO APPLY FOR A CULTURAL FACILITIES PROGRAM GRANT IN THE AMOUNT OF FOUR HUNDRED FORTY FIVE THOUSAND (\$445,000.00) DOLLARS FROM THE FLORIDA DEPARTMENT OF STATE, DIVISION OF CULTURAL AFFAIRS; AUTHORIZING THE USE OF THE GRANT FUNDS TO FABRICATE AND INSTALL PERMANENT MUSEUM**

EXHIBITS WITHIN THE WILLIAM H. CASE (MOUND) HOUSE; INCLUDING RESTORATION AND REHABILITATION TO SUPPORT THIS USE; COMMITTING A PORTION OF THE TOWN OF FORT MYERS BEACH GENERAL REVENUES TO COMPLY WITH THE CASH MATCH REQUIREMENT OF THE GRANT; PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart indicated Resolution 10-17 and Resolution 10-18 were being brought forward as the Town would not be eligible for both grants and would not know which could be forthcoming so both were being applied for. Mr. Stewart indicated there was a requirement by the State of Florida that Council had set aside funds earmarked to match what would be necessary for the particular grant. Mr. Stewart cautioned Council that it would affect the budget as the town moved into the next year as the funds needed to be specified and set aside.

Theresa Schober stated to Council that matching funds would need to be \$890,000 with the town's expended funds being nearly that already with just \$79,857 still needed to be earmarked. Ms. Schober felt the town should know by March 2011 if they would be receiving the grant.

Public Comment Opened

▪ **Ceel Spuhler** addressed Council voicing her support for Resolution 10-17 and encouraged Council to apply for the grant as well as stating her support for Resolution 10-18.

Public Comment Closed

Vice Mayor Raymond asked if the amount could be from the unreserved fund balance with Director of Finance, Evelyn Wicks, responding affirmatively. Council Member List indicated her support while Council Member Mandel, although in support of finishing the Mound House, stated his concerns with the financial issues. A discussion ensued as to the total amount needed to be set aside by the town along with a question as to the total amount needed to complete the Mound House. Conversation proceeded in regards to stipulations of the grants, time spans, funds reserved, and whether the project would sit idle until grant funds were received.

Town Manager Stewart stated it might be time to look beyond State of Florida grants to federal funds or possible private funding.

Mayor Kiker voiced his concerns regarding the grant process and the continued time delays and restrictions and noting his thoughts on pursuing other avenues for funding to complete the project. Town Manager Stewart then suggested staff put together a possible 3 year plan showing avenues for alternative funding moving toward completion of the project.

MOTION: Councilmember List moved to adopt Resolution 10-17 authorizing submission of a Cultural Facilities Program Grant in the amount of Four Hundred Forty Five Thousand (\$445,000.00) Dollars and committing Seventy Nine Thousand Eight Hundred Fifty-seven (\$79,857.00) Dollars from Town General Revenues. Second by Vice Mayor Raymond.

AMENDED: Motion was amended to include a review of the situation in April 2011 with approval by the motion maker and second.

VOTE: Motion passed 4 to 0 with Councilmember Babcock absent.

E. Resolution 10-18, Allocation of Cash Match for Florida Department of State, Division of Historical Resources, Special Category Grant Application

Town Clerk Michelle Mayher read the Resolution title:

RESOLUTION 10-18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE PROPER OFFICERS, OFFICIALS AND REPRESENTATIVES OF THE TOWN TO APPLY FOR A SPECIAL CATEGORY GRANT IN THE AMOUNT OF _____ DOLLARS, FROM THE FLORIDA DEPARTMENT OF STATE, DIVISION OF HISTORICAL RESOURCES; AUTHORIZING THE PERMANENT MUSEUM EXHIBITS WITHIN THE WILLIAM H. CASE (MOUND) HOUSE INCLUDING HISTORIC RESTORATION AND REHABILITATION TO SUPPORT THIS USE; COMMITTING A PORTION OF THE TOWN OF FORT MYERS BEACH GENERAL REVENUES TO COMPLY WITH THE CASH MATCH REQUIREMENT OF THE GRANT; PROVIDING AN EFFECTIVE DATE.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Council Member Mandel made a motion to adopt Resolution 10-18 authorizing submission of a Special Category Grant in the amount of \$350,000 and committing \$72,895 from Town General Revenues as cash match with a review in April 2011. Second by Vice Mayor Raymond.

VOTE: Motion passed 4 to 0 with Councilmember Babcock absent.

XIII. TOWN MANAGER'S ITEMS

A. Set Date for Storm Water Master Plan Work Session

To allow Council ample time to review the information the item was set for worksession on October 4th in the afternoon.

Council provided consensus for Council Chambers to be used for a Hazardous

Materials Class

XIV. TOWN ATTORNEY'S ITEMS

A. Request to Set Date and Time for Executive Session in the case of Peter and Susan Lisich vs. Town of Fort Myers Beach

Executive Session set for August 2nd, 2010 at 8:30 a.m.

B. Report to Town Council on Sign Ordinance Recommendations

Attorney Humphrey stated Attorney Marilyn Miller was working on the draft revisions which should be brought before Council in September.

Vice Mayor Raymond reminded Counsel that he wanted to see revisions indicating the historical signs to have final approval by Council and not the LPA/ HPB. Mayor Kiker asked for a plan to proceed in enforcing the sign ordinance.

C. Report to Town Council for Financing for Potable Water System Improvements

Attorney Humphrey reviewed a letter of proposal that had just been received from SunTrust regarding the financing of the water system in the amount of \$2,520,000.00 at 2.78% with no prepayment penalty.

Attorney Humphrey recommended Council approve allowing the Town Manager to accept the proposal and to permit the town Attorneys to prepare the documents to present to Council on the August 2nd meeting and close on August 6th. Attorney Humphrey stated the legal fees would be \$18,000.00 if the bank's attorney prepared the fees; however, the bank would charge \$5,000.00 to review the documents should the town's attorneys prepare the documents. Mr. Humphrey indicated his firm would prepare the documents for a fee not to exceed \$10,000.00 thus saving the town \$3,000.00.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember Mandel made a motion to authorize the Town Manager to accept the proposal by SunTrust Bank for a loan of \$2,520,000.00 at 2.78% with no prepayment penalty amortized over 14 years with a maturity date of 3 years from the date of closing with repayment terms to be as written in the proposal and to approve the town's counsel, Fowler White to prepare the documents for a fee not to exceed \$10,000.00 which should result in a reduction of fees from \$18,000.00 to \$15,000.00; further to direct the Town Manager to present the closing documents to Council for final approval on August 2, 2010. Second by Councilmember List.

VOTE: Motion passed 4 to 0 with Councilmember Babcock absent.

It was noted there would also need to be a meeting of the Public Works Services, Inc. on the August 2, 2010 meeting.

Attorney Humphrey recommended looking forward to establish permanent financing, to look at the bond issue and have Ms. Wicks to show financial direction as well as looking into validation proceedings.

There was consensus from Council to proceed.

XV. PUBLIC COMMENT

- **Roy Engleman** Laguna Shores addressed Council regarding the filling in of the dredged channel, noting the boaters that were getting stuck, the safety issues arising and the fact it was still posted as an open channel.

- **Lewis Marrone** thanked Council for all they do.

- **Ceel Spuhler** acknowledged Council's work in moving forward on completion of the Mound House.

- **John Albion** Fort Myers Beach Chamber, thanked Council for allowing use of Council Chambers and the completion of the Newton Property. Mr. Albion then discussed the need for additional funding for positive media alerting the public to the lack of oil and cleanliness of the local beaches.

Town Manager Stewart addressed the issue of the Laguna Shores dredging, indicating the town was looking for a different location for the dredging to keep it from filling back in, the town was attempting to deal with the state and to obtain funds for the dredging from the state as well.

Councilmember List asked who was responsible for remarking the channel and the liability since the fill in, indicating her concern for safety.

Council asked to have the issue placed on the agenda. Vice Mayor Raymond asked for assistance from the state representative.

Councilmember Mandel suggested contacting the town's lobbyist regarding media support for local business due to the oil spill.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Raymond noted the conference put on by the Florida League of Cities mid August and the need for a letter to be drafted and sent.

MOTION: Councilmember List made a motion to support sending

representatives to the Florida League of Cities Conference to apply for funds.

VOTE: Motion passed 4 to 0 with Councilmember Babcock absent.

Councilmember List noted her experience at the 4th of July parade, thanking the Civic Association, thanking Bill Semmer for the fireworks and her attendance at the Horizon Council and the Change of Command at the Coast Guard Station.

Councilmember Mandel asked for staff to proceed with the pedestrian safety signs information and to report back to Council. Vice Mayor Raymond commented on his desire to see a light at each crosswalk.

Mayor Kiker stated he would be meeting with Lee County regarding Seafarers.

XVII. AGENDA MANAGEMENT

Councilmember List brought up the noise ordinance and her desire to have it addressed.

Mayor Kiker asked for a time to review Town Manager Stewart’s work and decide on his continued employment. Councilmember List felt that after the final budget meeting seemed to be an appropriate time with a decision made to talk about it in August and schedule it in October.

Mayor Kiker then asked for information on the ROW survey as well as presenting a reminder to Lee County that it was time for the next section of paving on Estero Boulevard.

Mayor Kiker then addressed possible aging permit applications.

XVIII. RECAP OF ACTION ITEMS

None

XIX. ADJOURNMENT

MOTION: Councilmember List made a motion to adjourn with a second by Vice Mayor Raymond.

Meeting adjourned 12:45 PM

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

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