



MINUTES

Tuesday, February 21, 2012

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

I. CALL TO ORDER

Mayor Kiker called to order the February 21, 2012 Meeting of the Town Council at 6:32 p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Town Attorney Miller, Public Works Director Lewis, and Town Clerk Mayher.

II. INVOCATION – Pastor Lorrie Davison

III. PLEDGE OF ALLEGIANCE

IV. YOUTH COUNCIL – Cameron Walker and Bryana McCarthy

Council Member List introduced Cameron Walker and Bryana McCarthy who were fifth graders of the Town's elementary school; and noted that Ms. McCarthy serves as the Class Manager.

Class Manager McCarthy reported the members of the Estero Garden Club visited the school and they distributed a tree to each student and planted a tree at the school; the students celebrated Valentine's Day with a fundraiser to benefit the school's beautification efforts; and she thanked her mentor, Town Manager Stewart, for helping her to become an effective Class Manager.

Mr. Walker reported that the third, fourth, and fifth grade students were working hard in preparing for the upcoming FCAT tests; which type of test each grade would be taking in the coming weeks; and that the fifth grade class was anticipating a trip to Bush Gardens through the generosity of the PTO and the Kiwanis Club to celebrate their successes.

V. APPROVAL OF FINAL AGENDA

Mayor Kiker requested Agenda Item 10E be moved to the beginning of the Administrative Agenda. Consensus approved the requested change to the order of the Agenda.

VI. PUBLIC COMMENT

Mayor Kiker noted Public Comment time was scheduled for discussion of items that were not on the agenda.

Open Public Comment.

No speakers.

Public Comment closed.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Citizens of Distinction Awards

Mayor Kiker explained the Citizen of Distinction was an award that the Council presented on an annual basis and that tonight there were two recipients.

1. Fort Myers Beach Art Association – Arts and Cultural Award
2. Bryanna Walker – Youth of Merit Award

Council Member List reported that Sydney Monahan, a fifth grader at Beach Elementary, was recently noted in the newspaper for building a solar-powered Catamaran boat herself and raced in the first Annual Algenol Solar Boat Race.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Mayor Kiker noted they were in the process of scheduling joint meetings between the Town Council and the LPA, and another with BORCAB.

IX. APPROVAL OF MINUTES

A. February 1, 2012 Joint TC/Audit Committee Work Session

MOTION: Motion by Council Member List to approve all the minutes as presented; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

(Approved change in the Agenda order.)

X. ADMINISTRATIVE AGENDA

E. Request from Beach Lions Club to waive the fee charged to hang a special events banner for 2012 Shrimp Festival

Town Manager Stewart described the Lions Club work on the Shrimp Festival Parade each year; and explained that staff does not have the authority to waive fees as requested by the Lions Club to hang event banners over Estero Boulevard. He noted the Town's \$150 fee (per location) was due to the need to hire a private contractor who performed the services to the Town.

Public Comment opened.

Joellyn Reckwert, Lions Club member, reported the Club had worked on the Shrimp Festival for the past 54 years and noted the organization had never previously requested any type of financial assistance from the Town until now. She requested the Town Council approve their fee waiver request. She mentioned

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that the Club had no paid employees or members and was a 501-3(c) charity; and described how the \$300 fee waiver would enable the Lions Club to pay for three eye exams and glasses for needy residents. She recounted the other numerous charitable efforts of the Club such as but not limited to sponsor of a little league team and the Bay Oaks summer program. She noted the event's positive impact on Town's economy and tourism.

Bill Van Duzer, Lions Club member, described his involvement as a member of the Lions Club, and also requested the Town Council to approve the fee waiver.

Public Comment closed.

MOTION: Motion by Vice Mayor Raymond to approve the request from the Lions Club to waive the \$300 fee charged to hang the Shrimp Festival banners on Estero Boulevard; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

Mayor Kiker described the location of the proposed banners on Estero Boulevard and noted there would likely be other charitable organizations that would approach Council requesting a fee waiver for their event. He suggested the Council direct staff to prepare a policy regarding fee waiver requests from charitable organizations for Council's review.

Discussion was held and consensus approved the Mayor's suggestion.

Town Manager Stewart requested clarification that the direction was for staff to address requests from charitable organizations based upon the banner fee only.

Town Council responded in the affirmative.

X. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 12-01, Amendment to Ordinance 09-06, Establishing BORCAB

Town Attorney Miller explained the Ordinance was to change the quorum requirement for a meeting the same as other Town committees/boards which was a simple majority.

Town Clerk Mayher read the title of the Ordinance:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 2, ARTICLE IV, DIVISION 3 IN THE CODE OF ORDINANCES, "BAY OAKS RECREATIONAL CAMPUS ADVISORY BOARD", AMENDING SECTION 2-145(a), "COMPOSITION; APPOINTMENT PROCEDURE; TERM OF OFFICE; "BY AMENDING THE QUORUM REQUIREMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Mayor Kiker relayed to Town Attorney Miller the Council's discussion earlier at their Work Session regarding a review of all the Town's committees/boards for uniformity issues.

Public Comment opened.

No speakers.

Public Comment closed.

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MOTION: Motion by Council Member Kosinski to approve introduction of Ordinance 12-01, amendment to BORCAB, and set public hearing for March 5, 2012; second by Council Member Mandel.

VOTE: Motion approved, 5-0.

B. Special Event Permit Application – Waiver of Noise Ordinance

Mayor Kiker reported the waiver request was for relief from the maximum allowable noise level limits in Section 14-21 of the Town Code of Ordinances.

Town Manager Stewart stated requested waiver was for a St. Patrick's Day event at Nervous Nellie's on March 17, 2012. He advised that if Council decided to grant the waiver that it was not '*limitless*'; and reviewed a document he provided with information on noise decibel levels. He discussed the increase in noise levels with each five decibels increased.

Town Attorney Miller stated the Town Council did have the right to waive the maximum allowable noise level limits; however, she agreed with the Town Manager to confine the waiver to the hours of the event (11:00 a.m. to 10:00 p.m.).

Public Comment opened.

Doris Grant, resident on Crescent Street, noted the special event application by Nervous Nellie's indicated the event was a fundraiser for CERT which was a volunteer organization affiliated with the Fire Department for preparation before/after a hurricane. She noted the application did not appear to include a maximum decibel level. She reviewed the Town's current decibel noise level. She objected to the applicant's request to use the Town's fountain area; questioned the event layout as it pertained to blocking access to buses/trolleys, and pointed out the application had no indication of renting port-a-potties, no indication of additional security from the Sheriff's Department, no indication that the applicant would clean the area after the event, and no indication that the applicant has spoken with the adjacent residents and businesses. She questioned the amount or percentage of the funds to be donated to CERT. She requested the Town Council deny the waiver.

Frank Tomaiolo, resident of Third Street, asked Council to deny the request for waiver to the noise ordinance. He stated some of his neighbors who were in their 80s and 90s were unable to attend tonight's meeting; however, they did express their opposition to him. He reported that the past concerts held at the subject location were extremely loud even after 10:00 p.m. and then there was the noise to deal with from the attendees leaving the business (i.e. motorcycles noise, loud patrons). He reported the new hotel/condominium informed him that they were not pleased about the last two concerts held at Nervous Nellie's. He discussed his beliefs that the noise level did not need to be increased and how it would be a further intrusion on the nearby residents.

Jeanette Swensen, resident of Primo Drive, reported the music currently was loud and the sound traveled, and described her experience with the loud music. She asked Council to deny the request for a waiver.

Dave Ennis, resident of Primo Drive, concurred with the prior speakers; and he recounted his experience with loud music at an event last year held at Nervous Nellie's. He suggested the decibel levels be lowered instead of raised.

Karen Barrow, resident of Primo Drive, discussed her opposition to the request for a waiver.

Patricia Martino, manager of the Matanzas Inn, reported they were fully booked for the holiday weekend between their two resorts. She stated the noise was noisy enough and it didn't need to be increased.

Lee Melsek, resident, described his experience with the loud music from Nervous Nellie's in the past. He discussed the basis for his opposition to the noise waiver, and he requested the Council deny the request.

Rob DeGennero of Nervous Nellie's, explained that the police informed him that if they were to hold a fundraiser that they needed to address the noise ordinance because the way it was now if someone was to take a meter on the back patio during dinner without the music on it was already over 72 decibels. He listed all the other nearby establishments that created noise. He described how he ordered port-a-potties in the past and no one used them; however, if Council required it, he would order the facilities. He reported the concert would be self-contained between the two buildings; the music would be between 1:00 p.m. to 8:00 p.m. and that the police told him to request the waiver to 10:00 p.m. He stated he was not looking for an unlimited situation and would comply with whatever Council would grant; and that there had been no complaints since last October. He explained how his staff was working to keep the noise levels down.

Steve D'Angelis, manager at Nervous Nellie's, reported he was responsible for booking entertainment at Nervous Nellie's and he recounted how he has worked to reduce the intrusion of sound into the nearby residential area. He stated they did not plan on closing any streets and it would be consolidated to between the two buildings and the fountain. He described his responsible behavior with other events he worked on and stated he would apply the same attention to the subject event.

Public Comment closed.

Town Attorney Miller addressed Section 14-21(d) of the Town's noise ordinance as it pertained to granting waivers and noted other confusing sections under 14-22 Exceptions, § 6.

Town Manager Stewart strongly urged Council that if the waiver was approved that it should not be 'unlimited' and to keep in mind any increase was done using a logarithmic scale.

Mayor Kiker asked if there were staff recommendations.

Town Manager Stewart stated he did not believe under any circumstances the level should go above 80; however, he would not recommend going above 75.

Discussion was held regarding how decibels levels were measured; and Town Attorney Miller read the section of the code noting where the measure would be made at the receiving land use, and also how the decibel levels were measured under Section C from the noise source.

Town Manager Stewart pointed out that staff had indicated the need to address the noise ordinance at the Council's Work Session earlier today because of numerous conflicts in the ordinance.

Council Member Mandel questioned the methodology regarding measuring decibel levels and increased noise levels, and discussion ensued.

Council Member List recounted her experience with noise levels from Nervous Nellie's and other businesses in her neighborhood; she noted she was inclined to support an event that raised money for CERT; to place a cap on the permitted decibel level for this event; and to place a limit on the music to be 9:00 p.m.

Town Manager Stewart clarified that Council did have the authority for a waiver or an exception; and there were some conflicts within the current noise ordinance.

Vice Mayor Raymond questioned what would be gained by going over 72 decibel levels.

Steve D'Angelis explained it was just short of allowing them to have the music at all; and explained how it helped to get the sound properly mixed especially when there were more than 2-3 musicians. He reminded that the event was a fundraiser; and he explained the raised levels provided a better sound quality and helped to entertain more people.

Vice Mayor Raymond noted his belief that it was irrelevant that the request was for a fundraiser; and he did not support an increase in decibel levels.

Council Member Kosinski noted that March 17th would be a day of celebration on the island from one end to the other and thought it would be considered more of a daytime event. He asked if Council would consider and increase during the day until 6:00 p.m. with a reduction at 6:00 p.m. to the normal levels.

Mayor Kiker recounted his experience with noise levels heard in his neighborhood, and how things have changed on the Island as it pertained to things such as allowing restaurants to serve outside, serving alcohol outside, and playing music outside. He questioned how the Council was to determine the decibel level. He suggested there should be a little compromise on both sides with respect to the hours of operation for the music and the decibel level.

Council Member Mandel noted his concern with the impact to a noise level by raising the decibel level was unknown. He noted that all the stakeholders were great citizens of the community and it was difficult to make a decision and possibly set a precedent. He pointed out that the current noise ordinance needed to be fixed.

Discussion continued regarding unknown elements pertaining to decibel levels; and a compromise by both stakeholders regarding hours and increased decibel levels.

Recess at 8:10 p.m. – Reconvened at 8:20 p.m.

Mayor Kiker recognized Mr. DeGennero.

Rob DeGennero apologized for putting the Council in an awkward position. He suggested they not change anything tonight and that they understand as a community what they would do at Nervous Nellie's and what they would try to do. He stated they would work to keep the hours from approximately 1:00 p.m. to 6:00-6:30 p.m. and then at that point move it inside upstairs and with an acoustic on the back patio.

Mayor Kiker recognized Doris Grant.

Doris Grant reported she spoke with Mr. DeGennero about getting with the other restaurants that have outdoor venues to discuss the noise levels; and for changing the venue into more of a daytime event.

Mayor Kiker summarized the comments and decisions as follows:

- Event hours outside would be 1:00 p.m. – 6:30 p.m. (Mr. DeGennero agreed; Ms. Grant, speaking for herself, agreed)

Mr. DeGennero stated he would speak with Captain Powell about the decibel levels.

Discussion ensued again regarding decibel levels.

Mr. DeGennero stated the hours would be from 1:00 p.m. to 6:00-6:30 p.m. with the noise levels a little louder than usual.

Mayor Kiker recognized Frank Tamaiolo.

Frank Tamaiolo suggested that since it was a concert that the event be held on the baseball fields.

Discussion continued regarding decibel levels, increasing sound levels, logarithmic scale, and perceptible changes.

Mayor Kiker continued to summarize the comments and decisions as follows:

- Event hours outside would be 1:00 p.m. – 6:30 p.m.

Mr. D'Angelis requested 78 decibels for 1:00 p.m. to 6:30 p.m.; and stated they would bring in two regular port-a-potties with one handicap accessible.

Mayor Kiker questioned security measures.

Town Manger Stewart stated that LCSO reported there were no additional police services necessary.

Mayor Kiker question clean-up after the event.

Mr. D'Angelis stated he would take responsibility for the public clean-up and they would even empty the trash cans owned by the Town.

Discussion was held concerning the decibel levels at the receiving end of a complaint (either 72 or 75).

Mr. D'Angelis stated if the complaint was within one block of the commercial district it would probably exceed it, and that was why they were requesting the increase to 78 for the allotted time. He stated he knew of other businesses in the area that would be pulling permits for March 17th.

Mayor Kiker recognized Lee Melsek.

Mr. Melsek explained that the 72 decibel level in the current ordinance was based on research done by others such as Mr. Van Duzer. He noted the close proximity of the subject site to the surrounding residential areas on Crescent and Third Streets. He addressed the decibel levels in other Florida cities (i.e. Fort Lauderdale).

MOTION: Motion by Council Member Kosinski to approve the use of the Town's fountain right-of-way to Nervous Nellie's for their event; second by Council Member Mandel.

Mayor Kiker explained the motion would allow the event to happen on Town property and it would be within all the confines of the way the ordinance was written.

Council Member List defined the issues the motion did not address such as but not limited to hours, port-a-potties, etc.

Discussion ensued regarding the motion, decibel levels, and hours of operation.

Mayor Kiker summarized the motion would mean that the hours would be 11:00 a.m. to 10:00 p.m.; stays within the confine of the noise ordinance; the port-a-potties were not part of it; the security was noted by comments from the LCSO; and the 72 decibels would be measured from the receiving land use.

Town Attorney Miller stated the decibels would be measured from the closest residential land use property line.

Town Manager Stewart explained it was his experience that decibel level complaints had been from the property line of the complaint.

AMENDMENT: Motion maker amended the motion that the noise level be measured at the complaining property; second agreed.

Town Clerk Mayher restated the motion was to grant Nervous Nellie's use of the Town's right-of-way at the fountain for use at this event and an amendment that the noise level be at the address of the complainant.

Council Member List questioned who would speak to the Sheriff's Department about how to measure the decibel level; and she believed the residents would have been happier with the hours until sunset and then the music moved inside.

VOTE: Motion approved, 4-1; Council Member List dissenting.

Recess at 8:55 p.m. – Reconvened at 9:00 p.m.

Mayor Kiker pointed out that the previous applicant was introducing something new to the Town which was an outdoor concert; and noted the conversation at today's earlier meeting regarding the need to address the Town's noise ordinance 'sooner than later'.

Discussion ensued regarding a review of the noise ordinance.

C. Mulholland Stewardship Award

Approve MRTF recommendation to award the 2011 Mayor John Mulholland Stewardship Award to Carleton Ryffel and the Estero Island Historical Society.

Town Manager Stewart explained that the Marine Resources Task Force was requesting Council to approve their recommendations.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Motion by Council Member List to approve the MRTF recommendation to award the 2011 Mayor John Mulholland Stewardship Award to Carleton Ryffel and the Estero Island Historical Society; second by Council Member Mandel.

VOTE: Motion approved, 5-0.

D. Transfer of Funds from Beach Nourishment Fund

Town Manager Stewart reviewed how Council had directed staff to investigate alternative technology use for improved stewardship and monitoring of the beach; and how staff sent out an RFQ and Coast and Harbor Engineering was selected as the top ranked firm by the Selection Advisory Committee. He explained Phase I of the Coastal Management Plan which would identify known information, determine data gaps and needs, and to develop tasks and an approach for Phase II of the Coastal Management Plan. He requested Town Council approve the transfer of funds (\$25,000) from the Beach Nourishment Fund.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Motion by Council Member Kosinski to approve the transfer of \$25,000 from the Beach Nourishment Fund for Phase I of the Coastal Management Plan, thus allowing the Town Manager to enter into a Professional Services Agreement with Coast and Harbor Engineering; second by Vice Mayor Raymond.

Council Member Mandel commented on his attendance at the conference on beach restoration and the 'beach modeling' demonstration.

XI. PUBLIC COMMENT

None.

XII. TOWN MANAGER'S ITEMS

Town Manager Stewart noted that years ago there was an assessment placed on properties on Palmetto and Easy Streets for the paving of a roadway. He reported staff had received a number of complaints from people who lived on the street that the Town had stopped billing them a number of years ago and

then approximately 1.5-2 years ago the Town sent notices informing them that they needed to start paying and now there were fines and penalties. He added that there was one person who was scheduled to close on her home on February 29th; and he recommended the Council agree to forgive the fines and the penalties because the Town had some culpability, and give them a 3-6 months to bring it current or pay it off, and if they do not all fines and penalties remain, and approve forgiving the interest penalties.

Mayor Kiker asked what the average amounts owed for each residence.

Town Manager Stewart reported it averaged about \$1,200-1,500 on the original principle.

MOTION: Council Member Kosinski moved to approve the Palmetto and Easy Street assessments that the fines and penalties be forgiven, provided that the homeowner brings it current or pays it off within six months from today; second by Council Member Mandel.

VOTE: Motion approved, 5-0.

XIII. TOWN ATTORNEY'S ITEMS

Town Attorney Miller – reported Legal was working to schedule a meeting with the County to begin negotiation of the interlocal agreement for Estero Boulevard.

Council Member List asked if there was an update on Chapel Street.

Town Attorney Miller explained her attempts to send an email regarding the matter and noted in the email it stated that if they did not hear back by 5:00 p.m. tomorrow that the Town Manager would give direction to the Public Works Director to begin the installation of meters in that area.

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Kosinski – recommended that Agenda Management be set aside until the next Council meeting since they already reorganized it earlier in the day.

Town Manger Stewart stated staff had already begun work on that document and he would get it back to the Council as soon as possible.

Vice Mayor Raymond – noted emails received regarding using the Town's right-of-way for parking and he would like to see Council address that topic in the near future.

Council Member List – discussed a friend who had donated time to the Town for the past ten years in the area of the theater and was now experiencing various health issues. She reported there would be a fundraiser for her on Saturday at the Lighthouse Tiki Bar from 1:00 p.m. to 5:00 p.m.

Council Member Mandel – reported he was seeking consensus for Council and staff to do certain things pertaining to Seafarer's, and that the Town Attorney had identified the work necessary to 'draw a circle around that property'. He listed the work identified by the Town Attorney was:

1. A blight study
2. An overlay preparation of the area
3. The beginning of a draft ordinance to create the 'circle'

Town Attorney Miller briefly reviewed a document she received from the Town Clerk which described how the County had basically drawn a circle around the entire island in 1991.

Council Member Mandel suggested giving staff direction now regarding the blight study, overlay, and draft ordinance.

Discussion ensued regarding Council Member Mandel's suggestion.

Town Manager Stewart clarified that the Town Attorney would determine whether or not a blight study was necessary and if so, then staff would begin work on preparing an RFP.

Consensus was in the affirmative; and when appropriate the Mayor and Town Manager would write a letter to the County informing them of the Town's actions.

Council Member Mandel addressed parking for the Mound House and noted the Baptist Church has shown interest in allowing parking for the Mound House. He mentioned the Church would come back to the Town with dates to meet and discuss terms and conditions. He asked the Town Manger to continue to send the Council emails summarizing what was agreed to at the Town Council meetings.

Mayor Kiker – questioned a 'communications services tax' which appeared on a tax statement for people in San Carlos and noted it was for the Town of Fort Myers Beach.

Town Manager Stewart explained that on all communications bills there was a state-wide controlled communications service tax, and gave a detailed description of the tax collection process. He noted some people were erroneously designated as "Fort Myers Beach", and he suggested the Town place information on the website where people could file a complaint and make a request for reimbursement.

Consensus was to allow the Town Manager to proceed as requested with informing people on San Carlos, and placing the information on the website, etc. regarding the communications service tax issue.

Mayor Kiker requested an update on fireworks.

Town Manger Stewart reported he contacted the Semmers regarding the various aspects of the fireworks and then they could move forward with the permitting side.

Mayor Kiker noted the stakeholders between Bonita and Fort Myers Beach for navigational dredging was becoming a bigger issue. He suggested the Town contact Bonita Springs and the two work together in order to resolve the issue. Consensus was in the affirmative.

Mayor Kiker mentioned his trip to Tallahassee and noted the Town was still in good standing with the grant for \$440,000. He reported that Commissioner Manning was talking to Cape Coral to determine if they would relinquish their permanent seat on the TDC and if so, then they were contemplating a two year rotation with the four towns, or the seats might be increased by two. He noted there was a bill that would take away the Town's local vendor preference option; and he asked if the Council wanted to send a letter to the lobbyists. Consensus was in the affirmative.

Vice Mayor Raymond asked if the Lions Club was informed that the Town Council would be riding in the Shrimp Festival Parade, and what vehicle(s) would they be riding in. Town Manager Stewart was uncertain if the Club had been informed, but would follow up and would arrange for use of a fire truck again this year.

XV. AGENDA MANAGEMENT

No discussion or action – postponed.

XVI. RECAP OF ACTION ITEMS

Mayor Kiker requested a list from last meeting and tonight’s meeting and it would be covered the next time when they review Agenda Management.

XVII. ADJOURNMENT

Motion by Council Member List, seconded by Council Member Mandel to adjourn. Meeting adjourned at 9:35 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

- End of document.