



MINUTES

August 1, 2011

**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 August 1, 2011 meeting of the Town Council at 9:00 AM. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List and Mandel; Town Manager Stewart, Town Attorney Miller, and Town Clerk Mayher.

II. INVOCATION–Town Manager, Terry Stewart

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Agenda accepted as presented.

V. PUBLIC COMMENT

Open Public Comment

None.

Closed Public Comment

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Recognition of Council Member Kosinski – Florida Institute of Government, Certificate of Completion

B. Proclamation read into the record by Town Clerk Mayher proclaiming Sunday, August 14, 2011 as Spirit of 45 Day

Council Member Kosinski announced that ‘Spirit of 45’ was a national movement for recognition of World War II heroes. He reported there would be a celebration held at Crescent Beach Family Park on August 14, 2011 at 6:00 p.m. that included a fly-over and taps to be played at 7:00 p.m.

C. Recognition of Town of Fort Myers Beach – Distinguished Budget Presentation Award from the GFOA – Evelyn Wicks, Director of Finance

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Fort Myers Beach Town Council

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A. Community Resource Advisory Board Update – Miffie Greer, Chair

Chair Greer reported that the Community Resource Advisory Board (CRAB) had been tasked with reviewing and evaluating the various volunteer and citizen award programs for the Town. She discussed the Board's recommendations: 1) clarification of language regarding residency in the program descriptions so that it was clear the awards were available to part-time and seasonal residents as well as full-time residents, with the exception of the 'Heritage Award' which should be for full-time residents; 2) modification of award timelines so it could be publicized when more people were on the island; 3) and how to raise awareness of the Award Program such as but not limited to increased newspaper publicity, a tri-fold brochure, high visibility on the Town website, announcements at Town Council meetings, and a running leader on Comcast in advance of televised Town Council meetings.

Council Member List complimented Chair Greer and the Board's comments and suggestions.

Mayor Kiker questioned if changes were made to the dates, the process, or to the definitions of the Citizen Recognition Program, would it be necessary to go to the LPA or could it be handled administratively.

Town Attorney Miller recalled there were provisions in the Town code; however, proposed changes would not be required to go to the LPA.

Town Clerk Mayher noted the Award Program was created by resolution.

Consensus of the Council was to have Town Attorney Miller work with CRAB on the recommended changes to the Citizen Recognition Program and present the item at the next Town Council meeting.

VIII. APPROVAL OF MINUTES

- A. June 6, 2011 Regular Town Council Meeting
- B. June 20, 2011 Regular Town Council Meeting

MOTION: Motion to approve minutes without changes by Council Member Mandel; Second by Council Member List.

VOTE: Motion passed 5-0.

IX. CONSENT AGENDA

- A. Extension of FEMA Sub-grant Agreement #1539-102-R, North Estero
- B. Extension of FEMA Sub-grant Agreement #1609-48-R, Neighborhood Basin-based Project
- C. Acknowledge Receipt of Notice, Lee County Solid Waste Assessments and Disposal Rates

MOTION: Motion by Council Member List to approve Consent Agenda Items A, B, and C; Second by Council Member Mandel.
Mayor Kiker pulled Consent Agenda Item A for discussion.
Motion maker amended the motion to approve Consent Agenda Items B and C.
Second agreed.

VOTE: Motion passed 5-0.

Town Manager Stewart noted that the Lee County Solid Waste Assessment was a reduction.

A. Extension of FEMA Sub-grant Agreement #1539-102-R, North Estero

Mayor Kiker believed the language of the agreement was vague with respect to the amount to be approved.

Town Manager Stewart explained the agreement allowed the Town to seek greater reimbursement from FEMA, not a greater cost.

Public Works Director Lewis stated approval of the agreement would authorize an increase in the allocation approved by FEMA up to \$1.18 million dollars and did not require additional funding by the Town.

Town Manager Stewart assured the Council this action would not increase the scope of the project; and approving the action would increase the reimbursable amount to the Town from FEMA.

Mayor Kiker questioned if this action would impact the budget.

Town Manager Stewart stated the budget would be amended at the end of the budget year; and reimbursed funds would not go into the General Fund, but possibly the Gas Tax Fund.

MOTION: Motion by Council Member Mandel to approve Consent Agenda Item A; Second by Council Member List.

VOTE: Motion passed 5-0.

X. ADMINISTRATIVE AGENDA

A. Introduction of 11-06, Ordinance Creating an Audit Committee

Town Clerk Mayher read the ordinance title:

ORDINANCE 11-06

AN ORDINANCE CREATING CHAPTER 2, ARTICLE IV, DIVISION 11, IN THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, TO BE ENTITLED "AUDIT COMMITTEE"; PROVIDING FOR CREATION AND PURPOSE; MEMBERSHIP; DUTIES; MEETINGS; SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart stated the proposed committee was required by State Statute and briefly reviewed the purpose and responsibility of the Audit Committee.

MOTION: Motion by Council Member List to set a public hearing for Ordinance 11-06 for Monday, August 15, 2011 at 6:30 p.m.; second by Vice Mayor Raymond.

Public Comment Opened.

None.

Public Comment Closed.

VOTE: Motion passed 5-0.

B. Discussion Regarding COP Review Process

Town Manager Stewart briefly discussed the background of the COP Ordinance to implement Council's interpretation of LPA Resolution 2009-0024.

Public Comment Opened.

- Joanne Shamp, Chair of the LPA, noted that she was not speaking on behalf of the LPA, rather she wanted to comment on the process discussion. She noted the COP topic created heated discussion because it has a significant impact on 'community standard' and had a 'permanent' status because it dealt with commercial property rights that would overflow onto residential property rights. She recounted the LPA's experience with the COP as it pertained to policy direction, lack of information regarding proposed LDC changes, and the original proposed timeframe. She expressed her belief that September was not the proper time to have the LPA make a decision on such an important topic since most residents were away and many businesses were closed.

Discussion ensued: Mayor Kiker expressed his views on the importance of this topic. Ms. Shamp recognized Community Development Director Fluegel and Town Attorney Miller for working to provide the information that was needed for the LPA and the Council to make an informed decision. She suggested a joint Workshop between the Town Council and the LPA on this topic.

- Ed Scott, resident, reported that Carlton Ryffel had passed away and suggested some type of recognition for him since Mr. Ryffel donated a considerable amount of time to the Town.
- Ms. Shamp noted the huge loss to the LPA and the Town from the passing of Mr. Ryffel. She noted that the LPA was planning to recognize him appropriately at their next meeting.

Public Comment Closed.

Community Development Director Fluegel presented an update on staff's work effort to date and the preliminary working draft of one conceptual approach to regulate COP on the beach which was submitted to the LPA. He pointed out that staff was currently working to acquire documentation of previously approved COP's which included ones that were approved before and after incorporation of the Town. He discussed how staff needed to create a standard set of conditions that would apply to not only everyone in the future but also apply to everyone that was out there now. He reviewed the remaining work required which included defining what was a 'licensed premise to serve and consume

alcohol in the EC Zoning District'. He stated that staff was working to present a report to the LPA in September; have a working draft ordinance in October for a workshop; an LPA public hearing in November; and an introduction in December at a Town Council meeting.

Mayor Kiker suggested that staff consider not just the downtown area, but take into consideration all the way down the beach.

Discussion ensued: Vice Mayor Raymond addressed implementation and process; Council Member Mandel pointed out the need for consistency in the proposed ordinance; Council Member List noted she was favorable to the suggestion of a workshop with the LPA.

Town Attorney Miller described difficulties encountered with identifying properties that were non-conforming legal uses.

Town Manager Stewart addressed comments by LPA Chair Shamp and discussed how in April he believed it was clearly expressed to the LPA that staff was presenting one 'conceptual' approach for the purpose of generating discussion by the LPA that would help to formulate input on regulations for staff.

Mayor Kiker requested Town Clerk Mayher to produce a video copy of tonight's meeting for each member of the LPA. He asked Ms. Shamp if she had any further comments.

- Ms. Shamp stated the LPA looked forward to receiving additional information and the ability to work on the issue properly.

XI. PUBLIC COMMENT

Public Comment Opened.

None.

Public Comment Closed.

XII. TOWN MANAGER'S ITEMS

A. FMBFilmfest.org –Domain Name

Town Manager Stewart reported that in the past the Town sponsored a film festival which took place in Fort Myers Beach; however, the festival was shut down several years ago and the website became dormant. He stated a group comprised of local citizens has formed who intend to rebirth the festival, as well as other cultural events for the Town. He explained that the group was requesting surrender of the website domain name from the Town to the group.

Council Member List questioned if any public funds had been spent on the acquisition or maintenance of the domain name.

Town Manager Stewart reported that originally there was a minimal purchase cost for the domain name.

Council Member List explained that if the name was surrendered there should be a stipulation that the original purchase cost of the domain name be reimbursed to the Town.

Council Member List declared a voting conflict, and submitted **Form 8B, Memorandum of Voting Conflict for County, Municipal and Other Public Officers.**

MOTION: Motion by Vice Chair Raymond to approve the Town surrender the domain name of FMBFilmfest.org with the condition that the Town is reimbursed for the purchase cost; Second by Council Member Kosinski.

VOTE: Motion passed 4-0, with Council Member List abstaining (Filed Form 8B).

Town Manager Stewart recalled that the County had done a second phase of paving along Estero Boulevard, and at the time staff requested from Town Council that the paving be allowed during evening hours. He stated that the next phase of this project would begin soon and he requested permission from the Council to allow night paving again.

Consensus of the Town Council was to approve paving along Estero Boulevard in the evening hours as requested.

Town Manager Stewart reported that banner signs were beginning to be installed today at three locations along Estero Boulevard; the monument sign at Bay Oaks now had a sign over it indicating it was a Town facility; and mentioned the difficulties with obtaining quotes from sign companies for the signage for Town Hall and Bay Oaks, and that staff would move forward by the end of the week with this matter. He announced that the Parks and Recreation Manager resigned last Friday and he provided the Town Council with a copy of that notification. He explained how he found a retired Parks and Recreation Director from Orange County who was willing to work with the Town on an interim basis until the point when the Council finalized the budget. He discussed his previous request to Council for a structural organization change that would take Parks and Recreation from Public Works and blend it with Cultural Resources with one department director.

XIII. TOWN ATTORNEY'S ITEMS

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Raymond distributed copies and briefly reviewed his input for the budget discussion at the next work session.

Council Member List discussed her meeting with Principal Wood and one of the fifth grade teachers in preparation for their fifth grade government class. She explained that this would require the Town Council having a joint session with the fifth grade in October.

Council Member Mandel expressed his appreciation to the Council for releasing the Fort Myers Beach Film Festival domain name.

Mayor Kiker questioned the status of bridge improvements.

Vice Mayor Raymond explained that the bridge painting should be completed in November; the safety rail would be installed on the other side which would allow for a direct trolley lane.

Mayor Kiker noted there were properties in the process of a short sale that had overgrown vegetation reaching heights of 5-6 feet. He questioned Town Attorney Miller how the Town could address this problem.

Town Attorney Miller discussed how in her former community there was a 'foreclosure mortgagee' responsibility because most mortgages required the mortgagor to maintain the property. She explained that even though the property was in the owner's name, the bank still had the ability to go in and maintain the property. She noted that the City of Cape Coral adopted an ordinance which required the mortgagees to register and basically promise they would maintain the property until such time as they took it back. She suggested that the Town look at a similar ordinance.

Town Manager Stewart agreed with Town Attorney Miller's suggestion and added that staff had tentatively scheduled on the next Town Council Meeting a presentation about the process coupled with the lien mitigation process.

Mayor Kiker discussed his viewpoint on having an aggressive plan to deal with properties having vegetative overgrowth. He noted his complaint regarding the Town's IT Department as it pertained to the computers for the Town Council. He noted that there was a December deadline concerning the sign ordinance and requested from the Town Manager a status report on signage that included which signs were in compliance and which were not.

Town Manager Stewart reported that he spoke with Code Enforcement and learned that most people were cooperative and working with the Town very well, and that he would bring back to the Council a specific report on the signage as requested.

Mayor Kiker pointed out that the Town Council Members have been inundated with calls about mosquitoes, and suggested the Town Council write a letter to the Mosquito Control Board asking them to investigate what was happening on the Beach and what action they would take to address this matter.

Town Manager Stewart confirmed that staff was receiving many telephone calls regarding mosquitoes and recounted a conversation he had with a resident who pointed out that the information on the Town's website was incorrect. Staff has taken steps to update the information on the Town's website to clarify mosquito control was an independent district and the correct contact information was listed. He retold his conversations with Ms. Watson, Executive Director of the Mosquito Control Board pertaining to treatments for mosquitoes and the problems with treating some areas such as the animal preserve.

Mayor Kiker suggested writing a letter to the Mosquito Control Board requesting they take a serious look at mosquito issues and to follow-up with phone calls. He reported that on Wednesday there were two meetings – CELCAB and Anchorage Advisory Committee; also, he and Town Manager Stewart would be attending a 'potluck' with the seniors at Bay Oaks. He questioned if it would be appropriate

for the Town Council, through Town Manager Stewart, to have a staff member assigned to assist the Historical Advisory Group with their project of recording the Town's history utilizing current technology within the Group's previously approved allocated budget funds.

Town Manager Stewart stated he already had a staff member assigned to the Historical Advisory Group and that he would have that staff member focus on the Council's request.

Mayor Kiker requested a written update on the progress of the staff member and Historical Advisory Group. He recounted his experience at "Mango Mania" and their use of a stage/pavilion at the event. He asked Council Members if they believed they would want to direct staff to investigate a stage/event pavilion at a Town facility and possibly have fund raising events such as they did with the 'van'. He explained it could be at Bay Oaks or another site where staff felt it was appropriate.

Consensus of the Town Council was to request the Town Manager have staff investigate the stage/event pavilion at a Town facility, as well as what type of fund raising events might be held to fund the project.

Mayor Kiker stated he would be willing to work with the LPA to formally recognize the passing of Carlton Ryffel.

Consensus of the Town Council was without objection for the Mayor to work with the LPA.

Council Member Mandel noted that prior to the Council's hiatus he had requested staff to investigate with Florida Power and Light why the Beach was experiencing so many power outages; and that he also had asked a letter to be written to the Library District regarding a Facilities Report. He questioned if there was a response from FP&L, and if Town Attorney Humphrey had received the Facilities Report and if it was acceptable

Town Manager Stewart explained staff did work with the Town Attorney to craft a letter to the Library District through his office and a response was received from the Chair of the Library District Board. He explained that additional information to the original Facilities Report was included in the letter; however, an amended facilities report was not submitted to the Town. He noted the County had not received the additional information and in speaking with the Town Attorney they believed the Library District had fallen short of what they should do.

Council Member Mandel noted the Council has not yet taken a position as to whether they were for or against the library. However, he pointed out that State Statute (Chapter 189) required compliance by Special Districts which says that they either get what they need from special districts or they have to refer it to another group within government. He suggested the Town end their involvement with the issue and forward it to the County.

Town Manager Stewart agreed with Council Member Mandel's comments and stated the Town was not the General Oversight; however, he pointed out that the Library District boundaries go beyond the Town of Fort Myers Beach, so the County would be the General Oversight to determine what action was necessary.

MOTION: Council Member Mandel moved to approve the Town carry out their duties under Chapter 189 and pass this subject onto the County. Second by Vice Mayor Raymond.

VOTE: Motion passed 5-0.

Mayor Kiker discussed his experience in questioning the County about conducting an Oversight Committee Review for Special Taxing Districts.

Vice Mayor Raymond announced there would be a Short-Term Rental Workshop held on August 17, 2011 at 9:00 a.m. He requested that staff from the Department of Community Development, Legal, and Code Enforcement be present to answer questions, and the City Manager to attend, if possible. He also requested the Town Clerk advertise the meeting next week and the week after.

XV. AGENDA MANAGEMENT

None.

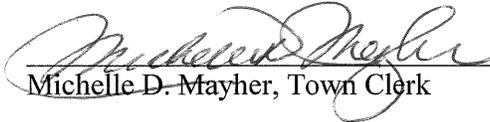
XVI. RECAP OF ACTION ITEMS

- Audit Ordinance to the August 15, 2011 agenda.
- Work with FEMA on the Sub-grant Agreements
- Advise Lee County Solid Waste the Town Council had reviewed and authorized the matter of the reduction of disposal rates
- Surrender of the Film Festival domain name and require payment of the initial registration fee at a pro-rated amount
- Ordinance on foreclosures for banks/lending institutions to register foreclosed properties
- PC's for Council Members
- Letter to Mosquito Control District with signatures of both Town Manager and Mayor
- Staff to work with Historical Advisory Group and prepare proposal on how the Group may accomplish their goals for Town Council
- Staff to investigate feasibility of an event pavilion, and possible funding events with a report to Town Council
- Advertise the Short-Term Rental Workshop
- Letter to County regarding the Library District
- Letter to FP&L concerning numerous power outages with signatures of both Town Manager and Mayor

Motion by Council Member Mandel, seconded by Vice Mayor Raymond to adjourn. Meeting adjourned at 11:28 a.m.

Adopted 9-26-11 With/Without changes. Motion by Hist / Mandel

Vote: 5-0-


Michelle D. Mayher, Town Clerk

- End of document.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME List Joanne Barnard	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Ft. Myers Beach Town Council
MAILING ADDRESS PO BOX 2851	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY FMB, FL Lee	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED August 1, 2011	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Joanne List, hereby disclose that on August 1, 20 11:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Gift of Ft. Myers Beach Film Festival domain name to private group reviving Film Festival once run by Town. My husband Mark List is the chairman of this private film festival group, and it could be perceived that he would gain by this vote, although not financially.

August 1, 2011
Date Filed

Joanne B. List
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.