



MINUTES

Monday, September 26, 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 September 26, 2011 Meeting of the Town Council at 6:30p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Town Attorney Miller, and Town Clerk Mayher.

II. INVOCATION – Deacon Keisel,

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Agenda accepted as presented.

V. PUBLIC COMMENT

Open Public Comment

Pat Smith, resident, attempted to correct some misinformation about the new extension at the library. She stated the new construction was engineered for and can accommodate books. She discussed the public service tax and stated the Council had previously heard her opinion in objection to the PST. She addressed the topic of acquiring a Town Hall; she noted she always felt the Town should move in that direction; however, before going to a referendum she hoped there had been preliminary research and planning done to ascertain approximate costs, possible site locations, staffing needs, and resident needs.

Roy Hinkleman, resident and President of Laguna Shores, thanked the Town Manager and staff for keeping him updated on the dredging project.

Rick Loughrey, resident, thanked the Mayor and Town Council for listening to the residents with respect to the rental ordinance.

Ollie Curran, resident on Connecticut Street, discussed the basis for her objection to the proposed public service tax, and she believed the residents cannot afford any more taxes. She also discussed problems with the signage at Sea Grape Plaza because it only identified the Plaza and not the businesses in the Plaza; and the problems she had with a new signage. She noted the need for Code Enforcement to be more business-friendly.

Jessica Titus, resident, asked that the Council revisit the Short-Term Rental Ordinance and rescind the entire ordinance. She stated the ordinance did not do anything for the Town and had created hardship and an unfair advantage in the real estate market. She reported she had copies of petitions which opposed the Short-Term Rental Ordinance. She commented on Town rules related to signage and alcohol consumption; and cited an example of unfair advantage, in her opinion, between the ABC Café and DEF Cafe.

Tom Cameron, resident, determined he would wait to discuss the Town Hall acquisition at the appropriate time on the agenda; however, he addressed comments by the previous speaker, Jessica Titus, with a question asking who the “unfair advantage” people were.

Garr Reynolds, resident, discussed his concerns regarding the number of vehicles the Town owned; the small proposed millage rate reduction and public service tax; problems with enforcement of the sign ordinance; short-term rentals issues; and vendor parking on the beach.

Kathleen Cameron, resident, stated she attended a Council meeting last month when the PST was discussed, and she was still trying to understand the proposed PST. She expressed her hope that the Council would explain the proposed public service tax a little more before they voted on the item.

Closed Public Comment

Town Manager Stewart addressed comments regarding the sign ordinance, and pointed out the Council did amend the sign ordinance that was focused around correcting language so it would not violate some Constitutional issues. He added that within the ordinance businesses were given until December 31st to accomplish what was necessary, so until after that date the Town could not cite a code violation. He reported the Town had sent written communication to the businesses which are not in compliance, and the Town was working with them so they are in compliance by December 31st.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

None.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

None.

VIII. APPROVAL OF MINUTES

A. August 1, 2011 Town Council Meeting

- B. August 1, 2011 Work Session
- C. August 15, 2011 Town Council Meeting
- D. August 15, 2011 Work Session

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

VOTE: Motion passed 5-0.

IX. CONSENT AGENDA

No items.

X. PUBLIC HEARING

- A. Final Public Hearing Case Number FMBSEZ2010-0005, Surf Club Special Exception for Outdoor Consumption on Premises

Mayor Kiker asked if any Council Member had ex-parte communication regarding FMBSEZ2010-0005; Council Member Mandel – none; Mr. Zuba – none; Council Member List – reported she had conversation with the owner of the club; Council Member Kosinski – reported he had a business relationship with the owner and declared a voting conflict, and submitted **Form 8B, Memorandum of Voting Conflict for County, Municipal and Other Public Officers**; Vice Mayor Raymond –none; Mayor Kiker - reported he had numerous conversations with the applicant.

Mayor Kiker opened the hearing and asked Town Attorney Miller to swear in the witnesses.

Planning Coordinator Ekblad presented staff's report on the subject special exception beginning with a description of the location on Estero Boulevard. Utilizing a PowerPoint presentation, she noted there was a residential area along the northeast boundary of the site; the Future Land Use was Pedestrian Commercial; zoning was in the Downtown District, and the current use was consistent with the zoning. She stated the applicant's request was to *allow consumption on premises of alcoholic beverages in a restaurant providing an outdoor seating area within 500 feet of dwelling unit under separate ownership*. She added the applicant was proposing to add a 645 square foot wood patio over an existing dry retention area with a service bar and a 375 square foot paver patio on the subject property, and was requesting a special exception for outdoor consumption on premises for the proposed wood and paver patio areas. She gave a brief history of public hearings at the LPA for the proposed special exception which included the location of the outdoor consumption, change in hours of operation, and a minor revision to a second access point which was a *de minimus* amendment and did not change any recommendations or mitigation factors that were discussed. She noted the support regulations and Comprehensive Codes which promoted outdoor seating and uses of this type. Ms. Ekblad displayed the recommendations for approval subject to certain conditions from the LPA, and pointed out condition #2 had a typographical error and should be corrected to 9:00 a.m. and end no later than 2:00 a.m. It was noted the LPA also recommended a condition to include a 36 inch hedge along the 42 inch railing that enclosed the service deck; and music and audible entertainment was restricted to 11:00 a.m. to 9:00

p.m. She reported staff was recommending approval and noted that sales, service and consumption should be between 11:00 a.m. to 10:00 p.m.

Council Member List clarified the sales, service and consumption would be from 11:00 a.m. to 10:00 p.m.

Ms. Ekblad clarified that was staff's recommendation because of the nearby residential neighborhood; however, the LPA had recommended 9:00 a.m. to 2:00 a.m.

Discussion ensued regarding the operating hours most similar businesses were abiding by currently; and Council questioned the operating hours of neighboring businesses; however, information was unavailable since staff would have to research individual businesses according to what was approved for their individual site by Lee County or the Town.

Community Development Director Fluegel explained the restrictive nature of staff's recommendation was due to the uniqueness of the site which was located at the head of the canal which had the potential for sound to travel.

Discussion was held regarding amplified music versus non-amplified.

Mr. Kakatsch, LPA Member, noted his support of staff's recommendation because the subject site offered opportunity for sound to travel down the canal. He reported the LPA approved recommending 9:00 a.m. to 2:00 a.m. with a 3/2 vote. He questioned the repositioning of the deck over the dry retention area.

Ms. Ekblad explained the deck was appropriately located, and the paver area would fill in existing ground-level material.

Discussion ensued concerning the dry retention area as it related to mosquitos; and regarding staff's recommendation for the sale, service, and consumption of alcohol.

Ms. Ekblad reported Merlot's hours of operation for sale, service and consumption of alcohol were 7:00 a.m. to 2:00 a.m. and the music followed the noise ordinance; and for the Mermaid it was 9:00 a.m. to 2:00 a.m. and their music varied during the week.

Dave Easterbrook, Easterbrook Consulting and Applicant, clarified that what he applied for was what he was seeking - 9:00 a.m. to 2:00 p.m. for service of food or alcohol; on the deck the same thing; patio the same thing as far as serving food and alcohol. He noted he was in compliance with the music recommendations (11:00 a.m. to 9:00 p.m.) because he didn't want to send music down the canal either.

Public comment opened.

Garr Reynolds, resident, noted his concerns regarding traffic along the street and taking business outside the building (i.e. outdoor music); and he questioned how the residents would benefit from this special exception.

Public comment closed.

Council Member List stated she does sing at Nervous Nellies, and occasionally she has visited the Surf Club along with her husband and friends where she sings/plays for free. She added that no matter the outcome of the vote, it would not impact her income or livelihood.

Vice Mayor Raymond noted his preference for the sale, service, and consumption of food/alcohol to be 9:00 a.m. to 2:00 p.m. and the music should be 11:00 a.m. to 9:00 p.m.

Discussion ensued regarding consistency when it comes for sale, service, and consumption of food/alcohol and music; and the Town's noise ordinance.

MOTION: Motion by Vice Mayor Raymond to approve Special Exception FMBSEZ2010-005, Surf Club in the Downtown Zoning district to allow consumption on premise of alcoholic beverages in a restaurant providing an outdoor seating area within 500 feet of a dwelling unit under separate ownership with regular outside seating from 9:00 to 2:00 p.m. and 11:00 a.m. to 9:00 p.m. for music; second by Council Member Mandel.

Town Manager Stewart requested the motion maker amend the motion to be specific with 9:00 a.m. to 2:00 p.m.

AMENDMENT: Motion maker amended the motion to "...9:00 a.m. to 2:00 p.m...".

Second agreed.

Town Attorney Miller mentioned there were other recommended conditions.

Motion maker stated it was his belief those conditions would automatically be included since he was only changing the hours.

Discussion ensued; Town Attorney Miller expressed it was a proper motion.

VOTE: Motion passed 4-0; Council Member Kosinski abstained.

Mayor Kiker closed the hearing at 7:32 p.m.

B. Final Public Hearing, Ordinance 11-07, Telecommunications Facilities

Town Clerk Mayher read the ordinance title:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CREATING ARTICLE 1 IN CHAPTER 26 OF THE CODE OF ORDINANCES TO BE ENTITLED "COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY"; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGISTRATION WHEN PLACING OR MAINTAINING COMMUNICATIONS FACILITIES

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IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR NOTICE OF TRANSFER, SALE OR ASSIGNMENT OF ASSETS LOCATED IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SUSPENSION OF PERMITS; PROVIDING FOR APPEALS; PROVIDING FOR INVOLUNTARY TERMINATION OF REGISTRATION; PROVIDING FOR EXISTING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAYS; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Town Attorney Miller explained she became aware of this topic when Embarq requested installation of fiber optic lines, and then learned the State adopted the Telecommunications Act and there was federal legislation that provided for the same treatment of all telecommunications providers. She mentioned in the past the Town had separate franchise agreements for use of the right-of-way with each communication provider, and now this ordinance would treat all providers the same.

Public Comment Opened.

No Speakers.

Public Comment Closed.

MOTION: Council Member Mandel moved to adopt Ordinance 11-07, Telecommunications Facilities; second by Council Member Kosinski.

VOTE: Motion passed 5-0.

Mayor Kiker noted the hearing closed at 7:37 p.m.

C. Resolution 11-16, Final Public Hearing to Adopt Millage for FY 2012

Town Clerk Mayher read the resolution title:

A RESOLUTION TO ESTABLISH AND LEVY AD VALOREM TAXES WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH, FLORIDA, FOR THE TAX YEAR 2012; PROVIDING FOR THE LEVY OF AD VALOREM TAXES IN THE AMOUNT OF .8144 MILS (\$.8144 PER \$1,000) BASED ON THE ASSESSED VALUE OF NON-EXEMPT REAL AND PERSONAL PROPERTY LOCATED WITHIN THE TOWN LIMITS OF THE TOWN OF FORT MYERS BEACH, FLORIDA; PROVIDING FOR THE MANNER OF ASSESSMENT AND COLLECTION; PROVIDING FOR AN ADJUSTED MILLAGE RATE; PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart explained why the millage rate was discussed and approved before the budget. He explained the millage rate, the statutory requirements, pertinent information from the Tax Collector. He reported the proposed millage rate was .8144 and reviewed how staff was able to arrive at that number (i.e. the Town's budget was less this year than the previous year, and the use of a public service

tax). He gave an informative review of the public service tax, which included but was not limited to how and when it would be implemented; an example of an average electric bill and how the PST would impact it; and fuel surcharge exemptions for residential units. He reported staff recommended approval with an exemption of the first 200 kilowatt hours. He discussed the stability of the subject revenue stream. He noted the Council was able to reduce the millage rate or accept the proposed rate tonight; however, they could not increase it.

Discussion ensued which explained that the PST would not commence until April because there were timelines for notifications to the State, and FP&L which required them to receive a 180-day notice in advance of implementation, and implementation could only be accomplished quarterly.

Council Member Mandel noted the purpose of the PST was to be an equal offset and not to change income. He explained that with the proposed millage rate, the taxes coming to the Town would be less this year than last year; and reviewed an example of how the proposed millage rate would impact a home with an assessed \$100,000 value.

Discussion was held regarding a telecommunications tax which was regulated and administered by the State; the public service tax; and diversity of revenue sources.

Public Comment Opened.

Debbie Bryan stated her and her husband just opened the Sea Catch business located in Sea Grape Plaza. She noted they were not residents of Fort Myers Beach. She questioned how the PST would affect businesses and reported the proposed PST would negatively impact her business.

John Pohland, resident, stated he spoke in opposition of the PST before, and he would continue to do the same this evening. He described why he believed this to be a bad plan; and how this would decrease the amount of property taxes he paid and therefore, lower the amount he could deduct from his income tax.

Garr Reynolds, resident, thanked the Town Council and Town Manager for explaining the PST well and for 'airing' it well. He noted his concern if there was to be an increase in Town employees next year; and wondered how many employees were part-time or permanent.

Betsy Meaghan, resident, discussed her concerns regarding the millage rate and the impact the public service tax would have on condominium owners since they would pay their own electric bill and cover the bill for the condominium association's bill. She stated she preferred the ad valorem taxes as a revenue source for the Town instead of a public service tax.

Harry Lefferts, resident, addressed his concerns regarding the budget and explained what he believed to be the perception of other residents as it pertained to budget limitations.

Lee Melsek, resident, discussed his concerns regarding the proposed public service tax and how it would negatively impact business owners. He commented on the PST and the ad valorem taxes and how they would be addressed in the budget next year.

Ollie Curran, resident, discussed her concerns and objection to the public service tax.

John Albion, Fort Myers Beach Chamber of Commerce, noted that some of the public's concerns tonight regarding the PST might be valid in his opinion, and questioned if someone had investigated the impact to residential versus commercial. He noted his concern with respect to the maximum ceiling placed on the budget, the anticipated approximate revenue amount from the PST, and what might happen if the PST did not pass. He stated he was concerned with the amount of power usage by commercial versus residential and questioned if this was the right time to put an additional burden on the business community.

Public Comment Closed.

Town Manager Stewart addressed public comments regarding the public service tax; he explained the utility bill cited was an example in order to show the percentage amount applied to a portion of the bill; he discussed how many businesses have "triple net leases" and when ad valorem taxes are reduced the business accrues the benefit.

Council Member Mandel clarified a previous statement to be "*the taxes paid by someone who owns a \$100,000 home this coming year will be \$40.72, which is over \$5.00 less than a year ago and he previous reported that if your home value was more than \$100,000 you can multiple it times two, if it is \$200,000...*".

Mayor Kiker noted that he heard some new comments this evening about the PST and how it would impact condominium owners through the utility bill their association pays. He pointed out that this has been discussed on at least three other occasions and hearing comments at the last minute make it tough for the Council.

Discussion ensued regarding the PST; how it would be used in the budget; monitoring the PST throughout the year, and the PST as an alternative revenue source.

MOTION: Council Member Kosinski moved to approve Resolution 11-16 adopting and levying ad valorem taxes within the Town of Fort Myers Beach for the tax year 2012 in the amount of .8144 mills (\$0.8144 per \$1,000) and taking other action as authorized in such resolution; second by Council Member Mandel.

VOTE: Motion passed 5-0.

D. Resolution 11-17, Final Public Hearing to Adopt Budget for FY 2012

Town Clerk Mayher read the resolution title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TOWN OF FORT MYERS BEACH OPERATING BUDGET, REVENUES AND EXPENDITURES, AND CAPITAL BUDGET FOR THE FISCAL YEAR 2012; PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Stewart reviewed the proposed budget, which was less than the budget approved last year. He explained the change to the number of employees over the past three years was related to Bay Oaks; what was meant by employees classified as full time equivalent; how the number of full time equivalent employees over the past three years had really not fluctuated greatly, other than due to Bay Oaks; the budget did not include any raises for employees for the fourth year in a row; and he added there were no capital projects or major purchases in line with the proposed budget. He mentioned that the proposed budget had been on the Town's website for the public.

Mayor Kiker mentioned there was not enough money in revenues to cover the budget and they would be using reserves.

Town Manager Stewart explained they budgeted for the use of \$185,000 in reserves.

Discussion was held regarding the possibility of not having to use reserves, but that would not be known until later in the fiscal year; budget predictions; and project-oriented use of reserves.

Mayor Kiker announced that the Town had been approved for funding of the renovation of Estero Boulevard and was included in the County's 5-Year CIP. He discussed the added expenses associated with the addition of Bay Oaks. He stated he would not support the budget because he did not believe in balancing the budget with reserves.

Discussion ensued regarding the additional expenses associated with Bay Oaks.

Public Comment Opened.

No speakers.

Public Comment Closed.

Vice Mayor Raymond explained the use of reserve funds was due to Bay Oaks.

MOTION: Council Member Kosinski moved to approve Resolution 11-17 adopting the final Town operating and capital budget for FY 2012, finding that it is consistent with the requirements of the Town Comprehensive Plan; second by Vice Mayor Raymond.

VOTE: Motion passed 4-1; with Mayor Kiker dissenting.

Recess at 8:45 p.m. – Reconvened at 9:10 p.m.

XI. ADMINISTRATIVE AGENDA

Mayor Kiker reported he had been asked if the Council would move up Item D on the agenda.

Consensus was to move Item D to before Item A.

D. Release of Liens Relating to Code Enforcement Case No. CE 2000-770 and Case No. CE 2004-004F

Town Manager Stewart reported the lien was against property located at 126 Palermo Circle for violations written in 2000 and 2004 related to a fence in need of repair, and overgrown grass and trash. He noted the daily fines have been running since 2000 and 2004 with fines well over \$200,000; and based upon validated evidence it was determined the violations were corrected very shortly after the property was cited. He explained staff was recommending actual fines due as \$200 (Case No. 2000-770 for \$50.00 and Case No. 2004-004F for \$150.00); and noted these cases were originally cited by the County.

Public Comment Opened.

No speakers.

Public Comment Closed.

Discussion ensued regarding a timeframe for violations and compliance of past cases.

MOTION: Council Member List moved to approve Release of Liens relating to Code Enforcement Case No. CE 2000-770 and Case No. CE 2004-004F for property located at 126 Palermo Circle, Fort Myers Beach, Florida upon payment to the Town of a fine in the amount of \$200.00; second by Council Member Kosinski.

VOTE: Motion approved 5-0.

B. Introduction of Ordinance 11-08, Creating Town Clerk and Parks and Recreation Departments

Town Clerk Mayher read the ordinance title:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 2, ARTICLE III IN THE CODE OF ORDINANCES, "OFFICERS AND EMPLOYEES", AMENDING SECTION 2-42, "FINDING OF NECESSITY", BY ADDING TOWN CLERK AND PARKS AND RECREATION DEPARTMENTS; ADDING NEW SECTIONS 2-47 AND 2-47 RELATING TO CREATION OF TOWN CLERK AND PARKS AND RECREATION DEPARTMENTS; RENUMBERING SECTIONS 2-46 AND 2-47 TO 2-48 AND 2-49; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Town Attorney Miller explained the Town Charter provided that Town departments must be created by ordinance.

Public Comment Opened.

No Speakers.

Public Comment Closed.

MOTION: Motion by Council Member List moved to introduce Ordinance 11-08, creating Town Clerk and Parks and Recreation Departments and set a public hearing on October 3, 2011 at 9:00 a.m.; second by Council Member Kosinski.

VOTE: Motion passed 5-0.

C. Introduction of Ordinance 11-09, Public Service Tax

Town Clerk Mayher read the ordinance title:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 24, ARTICLE II IN THE CODE OF ORDINANCES, 'PUBLIC SERVICE TAX'; AMENDING SECTION 24-19, 'DEFINITIONS', BY DELETING UNNECESSARY DEFINITIONS; AMENDING SECTION 24-21, 'LEVY OF TAX', TO PROVIDE FOR A TEN PERCENT (10%) PUBLIC SERVICE TAX ON ELECTRICITY AND DELETING PROVISIONS RELATING TO NATURAL AND LP GAS; AMENDING SECTION 24-22, 'DUTY OF SELLER' SECTION 24-23, 'REQUIRED RECORDS, SECTION 24-24, 'DUTY TO COLLECT', AND 24-25, EXEMPTION FROM TAX', BY DELETING ALL PROVISIONS RELATING NATURAL AND LP GAS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Mayor Kiker noted that a motion would be to set a public hearing for the ordinance.

Public Comment Opened.

No Speakers.

Public Comment Closed.

MOTION: Motion by Council Member Kosinski moved to introduce Ordinance 11-09, amending Public Service Tax and set a public hearing on October 3, 2011 at 9:00 a.m.; second by Vice Mayor Raymond.

VOTE: Motion passed 5-0.

D. Resolution 11-18, Referendum for Town Hall Acquisition

Town Clerk Mayher read the resolution title:

A RESOLUTION ORDERING AND CALLING FOR A BOND REFERENDUM ELECTION TO BE HELD IN THE TOWN OF FORT MYERS BEACH, FLORIDA TO DETERMINE IF THE QUALIFIED ELECTORS RESIDING IN THE TOWN APPROVE THE ISSUANCE BY THE TOWN OF REVENUE AND/OR GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF A TOWN HALL WHICH BONDS SHALL

MATURE NOT LATER THAN 30 YEARS FROM THEIR DATE OF ISSUANCE IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$ _____ PAYABLE FROM AD VALOREM TAXES LEVIED WITHOUT LIMIT ON ALL TAXABLE PROPERTY WITHIN THE TOWN IN ADDITION TO OTHER AVAILABLE REVENUE SOURCES, PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart gave an overview of past discussions and actions as it pertained to the present Town Hall building which the Town leased (currently in the first of a 3-year lease), and the acquisition and/or construction of a Town Hall. He explained the Town decided to remain in the existing building because there were not readily available buildings on the island that would fit the Town's size and needs; and they were able to negotiate with the owner for a substantial lease reduction. Per Council's direction, Town Manager Stewart contacted the current property owner to determine whether or not they were interested in selling the building, or negotiating a lease/purchase agreement. He reported the landlord had no desire to sell the property. He briefly reviewed the information contained within his memo regarding the Town Hall. He noted Town Attorney Miller had provided the Council with a resolution that would authorize a referendum on the next election which would probably be in January 2012. He explained that Council would need to decide tonight whether to place this question on the ballot for the next election.

Town Attorney Miller noted the date for the Presidential Preference Election was not determined yet; therefore she would like to change the language from January _____, 2012 to a referendum election will be held on the date set for the Presidential Preference Primary. She mentioned with regard to the long-term lease discussion earlier during the Work Session that it was fairly common with local governments in Florida when they do long-term contracts of any type to insert a "fiscal non-funding clause". She pointed out that the proposed referendum wording was at 74 words and the State limit was 75 words. She recommended keeping the language as proposed, and if the Town decided to do a long-term lease it would be acceptable as long as the "fiscal non-funding clause" was included.

Vice Mayor Raymond pointed out that if the referendum could be included on the Presidential Preference Primary, there would be no cost to the Town.

Town Attorney Miller reminded the Council they were required to decide on an amount to place in the referendum.

Discussion ensued regarding the Town's square footage needs, both currently and in the future; and the ability to keeping the option open to lease if the referendum did not pass.

Mayor Kiker explained that the Council only had this evening to decide whether or not to move forward with a referendum for the residents to vote on; and he noted the Council had to decide on an amount to insert in the referendum; and he noted the many choices available regarding the Town Hall.

Discussion was held concerning a problem with the live broadcast feed of tonight's meeting; and Mayor Kiker suggested that due to the problems with Comcast, that if a resident requests a copy of the meeting that they not be charged.

Town Manager Stewart explained that normally staff would have more detailed information for the Council and public prior to deciding whether or not to go to a referendum; and that Council was acting with such urgency because of the election cycles offered a very narrow window with respect to delivering the wording to the Supervisor of Elections; and there were timelines associated with the terms of the current Town Hall lease. The next available election when the Town could have a referendum would be March 2013, if they do not meet the Election Office deadline for the Presidential Preference Primary in 2012.

Public Comment Opened.

No Speakers.

Public Comment Closed.

MOTION: Council Member Kosinski moved to approve Ordinance 11-18, Bond Referendum and setting the aggregate principal amount as not exceeding \$7,000,000 along with the deletion of January __, 2012 to reference it as the Presidential Preference Primary date to be held in 2012; second by Vice Mayor Raymond.

VOTE: Motion passed 5-0.

**RECESS AS THE TOWN COUNCIL AND
CONVENE AS THE PUBLIC WORKS SERVICES INC.**

I. CALL TO ORDER

Chairman Kiker called to order the September 26, 2011 Meeting of the Public Works Services Inc. at 9:40 p.m. Present along with Chairman Kiker: Vice Chair Raymond, Directors Kosinski, List and Mandel; General Manager Stewart, Corporate Attorney Miller, and Corporate Clerk Mayher.

II. PUBLIC COMMENT

Public Comment Opened.

No Speakers.

Public Comment Closed.

III. APPROVAL OF MINUTES

A. August 15, 2011 – PWSI

MOTION: Motion by Director Member Kosinski to approve the minutes without changes; second by Director Mandel.

VOTE: Motion passed 5-0.

IV. ADMINISTRATIVE AGENDA

A. Resolution 11-03-U, Authorization to Petition the Town Council Regarding the Wholesale Water Rate Adjustment

Corporate Clerk Mayher read the resolution title:

RESOLUTION OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC., A FLORIDA NOT FOR PROFIT CORPORATION, APPROVAL OF REQUEST FOR HEARING ON PETITION FOR RATE ADJUSTMENT AND RELATED MATTERS.

General Manager Stewart discussed the resolution was due to a notice received from Lee County Utilities concerning the implementation of an increase in the wholesale water rate.

Public Works Director Lewis explained that Lee County had taken action which included a wholesale water rate increase to the Town of Fort Myers Beach; and the customers would be impacted by the sanitary sewer increase also. She reviewed the effective dates for the increases according to the Town's interlocal agreement with the County. She reported the resolution would approve the petition to move this item forward to Town Council requesting that they hold a public hearing to approve a rate increase to reflect the wholesale water rate adjustment.

Public Comment Opened.

No Speakers.

Public Comment Closed.

MOTION: Motion by DirectorMandel to adopt Resolution No. 11-03-U, approving the request for a public hearing on a Petition for a rate adjustment, authorizing staff to incur the costs associated with processing the rate adjustment and move the same to Town Council; second by DirectorList.

VOTE: Motion passed 5-0.

B. Resolution 11-04-U, Approving Articles of Dissolution

Corporate Clerk Mayher read the resolution title:

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. APPROVING THE ARTICLES OF DISSOLUTION AND PLAN OF DISTRIBUTION OF ASSETS PURSUANT TO SECTIONS 617.1403 AND 617.1406, FLORIDA STATUTES; AUTHORIZING THE PRESIDENT TO EXECUTE THE ARTICLES OF DISSOLUTION AND PLAN OF DISTRIBUTION OF ASSETS AND AUTHORIZING SUCH OTHER ACTIONS AS MAY BE NECESSARY OR CONVENIENT TO ACCOMPLISH THE DISSOLUTION OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES INC.; PROVIDING AN EFFECTIVE DATE.

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General Manager Stewart gave a brief historical background on the creation of the water system for the Town and how a separate corporation was created. He noted how the budget which was approved earlier actually absorbed the PWSI into that budget as an enterprise fund; he explained the way an enterprise fund was treated within the budget; and he noted State statutes required approval and filing with the State, Articles of Dissolution and a Plan for Distribution of Assets when a corporation was dissolved. He asked if the resolution set a specific date for the dissolution to take place.

Corporate Attorney Miller responded in the negative; however, it could be included.

General Manager Stewart requested the effective date be midnight on September 30, 2011 to avoid a lapse.

Corporate Attorney Miller stated she would amend Section 5 to reflect the effective date as requested.

Public Comment Opened.

No Speakers.

Public Comment Closed.

MOTION: Director Mandel moved to approve Resolution 11-04-U, approving the Articles of Dissolution, Public Works Services, Inc. effective midnight on September 30, 2011 and it includes the Plan for Distribution of Assets; second by Director List.

VOTE: Motion passed 5-0.

V. ADJOURNMENT

RECESS AS THE PUBLIC WORKS SERVICES INC. AND CONVENE AS THE FORT MYERS BEACH TOWN COUNCIL

Mayor Kiker called to order the September 26, 2011 Meeting of the Town Council at 9:50 p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Town Attorney Miller, and Town Clerk Mayher.

XI. ADMINISTRATIVE AGENDA, (continued)

- E. Approve the Petition Regarding the Wholesale Water Rate Adjustment and Set the Date for the Public Hearing

Public Comment Opened.

No speakers.

Public Comment Closed.

MOTION: Council Member Mandel moved to approve the Petition from the Fort Myers Beach Public Works Services, Inc. to move the request for a rate increase forward to a public hearing and schedule the public hearing for November 7, 2011 at 9:00 a.m.; second by Council Member List.

VOTE: Motion approved 5-0.

F. Resolution 11-19, Assuming the PWSI Note with SunTrust

Town Clerk Mayher read the resolution title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CONFIRMING THAT THE TOWN OF FORT MYERS BEACH WILL ASSUME ALL ASSETS AND LIABILITIES OF THE FLORIDA NOT FOR PROFIT CORPORATION KNOWN AS “THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC.” UPON DISSOLUTION OF THAT CORPORATION; CONFIRMING THAT, TO THE EXTENT THAT SAID NOT FOR PROFIT CORPORATION WAS ALSO CONSIDERED TO BE AN AGENCY OF THE TOWN, THAT THE AGENCY IS LIKEWISE DISSOLVED; PROVIDING AN EFFECTIVE DATE.

Public Comment Opened.

No speakers.

Public Comment Closed.

MOTION: Council Member List moved to approve Resolution 11-19, assuming assets and liabilities of PWSI effective midnight on September 30, 2011; second by Council Member Mandel.

VOTE: Motion approved 5-0.

XII. PUBLIC COMMENT

No speakers.

XIII. TOWN MANAGER’S ITEMS

Town Manager Stewart addressed comments made earlier by Ms. Smith dispelling rumors concerning the library extension. He noted an email he had been sent to the Town Council regarding information he received from the Town’s Building Official, Mr. Miller, outlining the request by the Library to utilize two mobile trailers to hold books while renovations were being done to the existing building. He reviewed information obtained from Mr. Grant of Manhattan Kraft who commented that the building was not engineered to hold books. Town Manger Stewart wanted to make it clear that the Town wasnot

spreading this information rather it was from the Library's own contractor. He announced the BORC Bash would be held on October 1, 2011 from 11:00 a.m. to 3:00 p.m.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Miller reviewed State statute, Chapter 106.13, *"a local government, or a person acting on behalf of a local government may not expend or authorize expenditure of, and a person or group may not accept public funds for political advertisement, electioneering, communication concerning an issue, referendum, or amendment including any State question that is subject to the vote of the electors and the subsection does not apply to an electioneering communication from a local government or a person acting on behalf of a local government which is limited to factual information."* She explained the Town could expend public funds to disseminate factual information.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Mandel – no items or reports.

Council Member List – reminded everyone that on October 18th at 11:00 a.m. would most likely conduct the joint meeting with the fifth grade class. She discussed highlights of the day's events.

Council Member Kosinski – no items or reports.

Vice Mayor Raymond – reported he spoke with Mr. Albion of the Chamber of Commerce earlier regarding the Chamber's Sand Sculpting Event on November 2nd. He stated the Chamber requested support from the Town similar to the past with regard to the LeeTran trolley service; and he believed the cost would be approximately \$4,000.

Discussion ensued whether or not the Town participated in the event last year; and Mayor Kiker pointed out that the Town had informed organizations earlier this year that if they were going to request support from the Town, they needed to do so months ago when the budget was being prepared. Mayor Kiker added the support was not planned for in the FY2012 budget.

Discussion continued regarding Town funding for special events; and Town Manager Stewart reported he did speak to the Chamber previously when he informed them there would not be funds allocated in the budget for their event this year.

Mayor Kiker announced the Volunteer Appreciation Dinner was scheduled for October 27, 2011 and asked that if any committee members were listening, would they inform the other members of their group of the date. The venue was not determined as of yet; and invitations would be mailed when a site was selected. He reported the Council agreed this morning to conduct a Town Hall Meeting on October 21st for the Paint the Beach event, instead of conducting a Work Session. He added there may also be a special guest and representatives from other taxing districts at the event.

XVI. AGENDA MANAGEMENT

Town Manager had no new items.

XVII. RECAP OF ACTION ITEMS

- Staff and Council would work together with the folks at Santini Plaza for the Town Hall meeting to make sure everyone was appropriately notified.
- Staff would finalize all the appropriate documents regarding the resolution of PWSI, and appropriately file.
- Town Clerk would submit to the Supervisor of Elections the referendum language for inclusion on the Presidential Preference Primary.
- Town Manager would work with the Town Attorney on clean-up ordinances that pertain to the PWSI dissolution; they would probably be forthcoming in December.

Town Manager Stewart thanked Council for approving the creation of the Parks and Recreation Department and formalizing the Town Clerk Department. Due to comments by the public earlier in the meeting, he asked if Council wanted staff to revisit the short-term rental ordinance because of wording in the ordinance concerning a revisit of the ordinance within a certain time period.

Mayor Kiker stated that topic should be placed under Agenda Management for discussion at a Work Session.

Vice Mayor Raymond noting problems with Comcast, he asked staff to investigate whether or not the meeting could be broadcast by Century Link.

Discussion ensued regarding communication efforts for the public (i.e. a newsletter); and it was requested to place the item on Agenda Management.

XVIII. ADJOURNMENT

Motion by Council Member Mandel, seconded by Council Member Kosinski to adjourn. Meeting adjourned at 10:12 p.m.

Adopted 10-19-11 With/Without changes. Motion by Kosinski / Raymond

Vote: 5-0


Michelle D. Mayher, Town Clerk

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