



## **MINUTES**

**Monday, December 5, 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 December 5, 2011 Meeting of the Town Council at 9:00 a.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 “Scoop Kiesel”, Church of the Ascension**

### **III. PLEDGE OF ALLEGIANCE**

### **IV. APPROVAL OF FINAL AGENDA**

Agenda approved as presented.

### **V. PUBLIC COMMENT**

Mayor Kiker noted Public Comment time was scheduled for discussion of items that were not on the agenda. He anticipated that some of the speakers present in the audience would discuss the airport/air traffic noise. He reported that he and the Council were keenly aware of the problem; he noted that they had received an email from Mr. Bob Miller who was seeking Council’s support to adopt a resolution similar to the one they adopted last year, or a brand new resolution, or referencing last year’s resolution with an addendum regarding this issue. Mayor Kiker reported he was, again, selected by the Council to be the liaison regarding the airport, and would like to receive any information regarding this matter directly.

### **Open Public Comment.**

Tom Babcock, resident and former Town Council Member, thanked Town Manager Stewart and the Mayor as Liaison for getting the airport noise issue onto this afternoon's work session. He addressed the request for a resolution, and explained why they were making their request since there was a resolution passed in March of 2009 (Res. 09-03) which had been effective in the Town's dealings with the Lee County Port Authority and FAA. He explained there has been new information garnered since that resolution was approved, which he believed could be addressed in an addendum to Resolution 09-03 or in a new resolution (i.e. recent noise study by LCPA). He discussed the urgency of the matter due to the FAA's timeline of March 2012.

Dan Hughes, resident and former Town Mayor, stated he strongly supported the draft resolution to decrease the number of aircraft flights over the Town, and to increase the altitude of aircraft. He discussed his opinion that the draft resolution merited adoption and that it represented the concerns of other residents. He urged Town Council to approve the draft resolution and forward it to the appropriate authorities at the earliest possible date.

Tom Merrill, resident, noted he had 15 years of experience regarding the airport/aircraft noise issue. He pointed out that 20 years ago there were no flights over Fort Myers Beach; discussed how traffic patterns changed over the years; and explained the details of these facts using a visual aid.

Tom Cameron, resident, discussed how the FAA had changed aircraft landing patterns and caused an increase in flights over Fort Myers Beach/Estero Island. He discussed flight patterns, pilot approach points, and aircraft altitude/elevations over Fort Myers Beach and used the same visual aid presented by Mr. Merrill.

John Pohland, resident and private pilot, discussed the approach plates for Southwest Regional Airport (RSW). He reviewed altitudes currently used by pilots as they approach RSW and suggested a higher elevation of approximately 4,000 feet. He explained how increasing the altitude lowered the aircraft noise. He noted that the FAA had autonomy; however, when they accept input, it was from local governments.

Hank Zuba, resident, reported where he now resided was once called the "quiet zone"; however, it could no longer be called that due to aircraft noise. He hoped that the Town could raise their "decibel level" with the Port Authority who was preparing a flight status system. He hoped the Town could get actual data on the flight status system; and that the Town would urge the Port Authority to establish a citizens' information advisory group to help advise them from a community prospective on an on-going basis.

Joann Knobloch, resident, reported that approximately six years ago she became involved with the trapping of cats and at that time Lee County Animal Control Services was not part of the "trap, neuter, return" program. She stated that she was not receiving any assistance from Lee County Animal Control and noted there were hundreds and hundreds of cats on Fort Myers Beach. She stated on "Main and Buttonwood" there were probably 150 cats on that island. She discussed the money she had spent on the cats (i.e. food, mileage costs, veterinary costs, etc.), and asked for assistance with her attempts to control the cat population on Fort Myers Beach.

Suzanne Ziemer, resident, urged Council to make a recommendation for a “phase one” of financial planning to augment the Bayview launch area that was adjacent to Ocean Harbor. She thanked the Council for their support of the Newton Beach Park and noted it was getting better and better. She discussed how augmenting the Bayview launch area for non-motorized watercraft would complement Newton Beach.

Mayor Kiker thanked Ms. Ziemer for her input, and suggested she also address CRAB who was tasked by Council to investigate beach and bay accesses.

James Harner, resident, reported his property abuts the property located at 216 Connecticut Street which he heard had been possibly considered to be turned into a parking lot. He noted his opposition, as well as other residents, to the concept of turning 216 Connecticut Street into a parking lot. He reminded Council that it was his understanding that when they took office they took an oath to protect him as a property owner. He mentioned that he believed the Mound House should have been designed differently so it would have been able to accommodate 10-12 parked cars.

Mayor Kiker noted it may be of interest to Mr. Harner that a discussion by CELCAB concerning parking at the Mound House was scheduled on today’s agenda.

Nancy Harner, resident, asked if the Council had received the letter from the Harner Trust and asked them to please read the letter because it made sense to her.

Ed Brown, resident, asked if the sign ordinance would be discussed today since he did not see the item on the agenda.

Mayor Kiker reported the sign ordinance was on this afternoon’s Work Session agenda.

Ed Brown, resident, stated he lived on Bayview and the residents had a problem with people driving down the street and knocking down mailboxes because the street was narrow. He reported that people were docking watercraft at the end of the street and parked cars and left trash.

Tom Luke, resident, reminded Council that when they discuss the sign ordinance at their Work Session later today to keep in mind that they also represent commercial property owners. He asked the Council to consider not only aesthetics of the sign ordinance, but also the importance of proper signage for commercial property so that the tenants could stay in business.

**Closed Public Comment.**

**VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Council Member Mandel recognized that the Beach Friends of the Arts have been assisting and funding some of the other organizations on the Beach; Beach Arts Cooperative and Orpheus Players have put on a play; Laurie Neinhaus Beach House Productions would be having a play at Santini Plaza; the Art

Association at the Beach held an exhibit; and there was the Art of the Olympians event, all of which have helped the Beach's economics. He also mentioned the work being done to get the film festival back.

Vice Mayor Raymond discussed his participation in the Boat Parade this past weekend. He congratulated the organizers and participants for a great job.

Mayor Kiker stated he attended a gala for the Florida Realtors Association in Fort Myers Beach which was a very positive event. He noted the organization has 13 members on the Board of Directors and of that Fort Myers Beach was represented by four members.

## VII. ADVISORY COMMITTEES ITEMS AND REPORTS

### A. CELCAB Position on Mound House Parking

Barbara Anderson- Hill, Chairperson for CELCAB, reported the Mound House currently had 9 on-site parking spaces; and she explained why no more spaces could be added due to environmental and code issues. She read a portion of the Vision for the Mound House which was adopted by Council last October: "...from the second floor of the Mound House, at the screened porch visitors will enjoy a pristine view of the Mound, than mangroves, and the waterways, and the highest elevation on the island much as the Calusa and ancient pioneers experienced". She explained that CELCAB felt that if there were additional parking there would be no "pristine view" and the bay front portion of the site was designated for special events and programs with lush landscaping and walkways. She referred to the Town's Management Plan adopted in 1999 which included off-site parking once the Mound House was fully opened to the public; and a few years ago the Town purchase 216 Connecticut Street as the recommended parking site. She explained that last year CELCAB reviewed the Master Plan draft which was presented by David Sacks, who with input from the neighbors had recommended a landscaping plan for the property. She stated that CELCAB recommended the Master Plan and to move forward with the rezoning of the property at 216 Connecticut Street. She thanked the Council for their work to make the Mound House a reality.

Mayor Kiker asked if the Mound House landscaping was completed.

Town Manager Stewart stated the landscaping was completed and staff was working to make it better.

Mayor Kiker asked if the toxic paint removal was completed.

Town Manager Stewart reported the toxic paint removal was just finished and the dumpster should be removed this week. He added that the underground exhibit was opened and some minor work would be completed in January.

Mayor Kiker noted there were still three projects for Council's decision: 1) the observation deck/fishing pier; 2) the parking situation; and 3) the opening of the Mound House.

Town Manager Stewart explained there was one other item which was the kayak building; and he stated the Town just received the final approval last week from the State to move forward with the kayak building. He reported that regarding the Mound House renovation itself, that staff was awaiting a final report from the architect so staff could send it to the State to get final approval to move ahead.

Council Member Mandel asked what days of the week was the underground portion of the site open to the public.

Brent Newman reported it was opened to the public on Tuesdays, Wednesdays, and Saturdays from 10:00 a.m. until 2:00 p.m.

Mayor Kiker questioned if there was property next to the Mound House for sale.

Town Manager Stewart stated he spoke to the owners of the property adjacent to the current parking area; and the property owners would be willing to speak to the Town if they were interested in purchasing the property for parking.

Keri Hendry, member of CRAB, reported that the committee would like to schedule a joint meeting with the Council soon.

#### **VIII. APPROVAL OF MINUTES**

- A. November 7, 2011 Town Council
- B. November 7, 2011 Work Session

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

**VOTE:** Motion approved, 5-0.

#### **IX. CONSENT AGENDA**

- A. Approval of Supplemental Task Authorization #1 Laguna Shores Access Channel Maintenance
- B. Approval of Professional Service Agreements for On-Going Miscellaneous Professional Services
- C. Acceptance of SAC Recommendations and Authorization to Negotiate – RFQ 11-01-CD, On-Going Coastal Engineering Consulting Services

**MOTION:** Motion by Council Member List to approve the Consent Agenda as presented; second by Council Member Kosinski.

Public Comment opened.

No speakers.

Public Comment closed.

**VOTE:** Motion approved, 5-0.

**X. PUBLIC HEARING**

None.

**XI. ADMINISTRATIVE AGENDA**

A. Auditing Services Fiscal Year 2011

Town Manager Stewart explained this item was to inform the Council about the auditing services and to make sure staff was headed in the direction Council prescribed. He remarked that the recently formed Audit Committee met and that Council Member Mandel was their Liaison. He added that the Committee's main function was to review qualifications for an auditor and make recommendations to the Town Council; however, since the committee was just formed, there was insufficient time for them to perform that duty in a timely manner. He reported that staff recommended to the Committee that the Town retain the same auditor as last year.

Council Member Mandel reported the Audit Committee was definitely in favor of moving ahead. He stated the Audit Committee currently had four members (two members were CPAs, one was an attorney, one was a retired former CFO of the City of Indianapolis who was also in charge of the city's three utilities, and one of them had federal auditing experience). He explained in the future Council may want to consider tasking the Audit Committee with auditing the water utility as an enterprise fund.

Mayor Kiker requested Town Manager Stewart to place on Agenda Management tasking the Audit Committee with other projects.

Town Clerk Mayher reported one vacancy remained on the Audit Committee.

Mayor Kiker asked Town Clerk Mayher to advertise the one vacancy on the Audit Committee.

Town Manager Kiker requested clarification that the item for Agenda Management would be to task the Audit Committee with the water utility.

Mayor Kiker responded in the affirmative.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Kosinski moved to approve retaining the same auditor the Town used last year and then have the Audit Committee work on recommendations for next year; second by Vice Mayor Raymond.

**VOTE:** Motion approved, 5-0

## **XII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

## **XIII. TOWN MANAGER'S ITEMS**

### **A. Update on Parks & Recreation Director Hire**

Town Manager Stewart stated the Town hired a Parks and Recreation Director from a field of 60 applicants, and he described the interview and selection process. He added that Ms. Anderson-Hill of CELCAB and Mr. Mizwa of BORCAB sat in during the interviews and offered their insight and comments. He announced that Patti Evans of Fort Morgan, Colorado was selected as Parks and Recreation Director and she would commence employment on December 19, 2011. He added that they were still seeking a person who would serve at the mid-level management position in the Parks and Recreation Department.

Council Member List mentioned how she would like to see the new director re-charge the BORCAB group; she requested a meeting with Town Manager Stewart to discuss the matter; and suggested having a "meet-and-greet" for the new director and BORCAB.

Town Manager Stewart acknowledged the request.

### **B. Schedule of Upcoming Council Meetings**

Town Manager Stewart explained that the two Town Council meetings in January were both moved to Tuesdays due to legal holidays which were on a Monday - New Year's Day and Martin Luther King Day.

Discussion ensued to determine if there was any conflict with other meetings scheduled in the Council Chambers.

Town Clerk Mayher reported she had already notified the Fire District of a conflict on January 17, 2012.

Consensus accepted the Tuesday meeting dates in January 2012.

Town Clerk Mayher noted there would be the same situation with the February 20<sup>th</sup> meeting date due to Presidents' Days, so the meeting would be moved to Tuesday, February 21<sup>st</sup>.

Discussion ensued regarding the proposed Joint Meeting with the Board of Lee County Commissioners. Town Manager Stewart confirmed the Joint Meeting with the BOCC was on January 24, 2012 at 2:00 p.m. at Bay Oaks. He also noted a request by some Council Members to keep the amount of agenda items for upcoming December 19<sup>th</sup> Council Meeting to a minimum.

Discussion ensued concerning the December 19<sup>th</sup> agenda.

Consensus was to cancel the December 19, 2011 Town Council meeting.

Town Manager Stewart noted Town Clerk Mayher had provided Council with dates for potential meetings to inform the public on the Town Hall referendum.

Discussion ensued regarding potential meeting dates in January.

Town Clerk Mayher reviewed the possible meeting dates.

Discussion continued regarding the potential meeting dates in December and January; budgeted funds for advertising information concerning the referendum election; and it was decided the Town Clerk would email the Council with an updated list of potential January dates.

Town Manager Stewart reported the seawall work at the end of San Carlos next to Nervous Nellie's was completed. He added that the business owner next to the work was happy and the last item to be completed was the railing which was satisfactorily completed. He informed the Council and the public that the Town would be handling the New Year's/Birthday Celebration and the people involved in certain portions of the celebration would still be involved (i.e. Civic Association and Times Square merchants).

Council Member List stated she belonged to a group called the "Community Foundation" and one of the members asked her if they could go to Times Square to do some caroling and raise money for Relay for Life. She reported during her research of the request it came up as to possibly inviting all the Town civic groups/non-profit organizations to take turns doing the birthday celebration each year in Times Square. She noted the permitting process was simple and the group could possibly earn funds while distributing cupcakes or cookies.

#### **XIV. TOWN ATTORNEY'S ITEMS**

Town Attorney Miller had no items to report.

Mayor Kiker mentioned that it had been discussed during Agenda Management to develop a process for when Council Members abstain from voting (i.e. Ganim code case). He asked to add that if there was an objection or someone questioned the processes or procedures during a meeting, that they formalize a way for that to be addressed.

Discussion ensued concerning developing a process to handle questions that could arise about processes or procedures at Council meetings; and it was agreed to add the topic to the abstention item already listed on the Agenda Management.

Town Attorney Miller added she could explain about voting conflicts for “special private gain” and when someone must abstain.

Discussion continued regarding potential voting conflicts if there were more than two Council Members who wanted to abstain.

## **XV. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member Kosinski – no items or report.

Vice Mayor Raymond – thanked Finance Director Wicks for the expenditure/revenue information for Bay Oaks for October 2011 versus October 2010. He added that he would like a list of programs offered at Bay Oaks. He pointed out that Bay Oaks was 20% of the Town’s budget and he wanted to be informed on that center monthly.

Council Member List – referred back to Public Comment about feral cats at the start of the meeting, and she noted the Town had an Interlocal Agreement with Lee County. She questioned if the feral cat program that residents were doing for free was a service that might come under the agreement.

Town Manager Stewart reported he contacted the County Manager’s Office regarding this matter and received a message on his voice mail today. He explained he would follow-up on this issue and then inform the Council of his findings.

Mayor Kiker asked Town Manager Stewart to place the item on a future agenda, if his findings were appropriate.

Council Member Mandel – asked Vice Mayor Raymond that as he learned about the Bay Oaks programs, if he could also determine where the programs were being held. He reported he would like to attend an upcoming beach preservation/new technology conference.

Town Manager Stewart reported a staff member would also be attending that conference.

Consensus was to approve Council Member Mandel attending the conference.

Council Member Mandel noted the conference had concurrent sessions and he would not be attending the same sessions as staff.

Mayor Kiker asked the status of the Town's beach renourishment project.

Town Manager Stewart reported the work should be at the pier now and should be getting near the last big property that has not authorized access.

Discussion was held concerning the beach renourishment program; and how staff informed, visited, and contacted property owners regarding access authorization.

Mayor Kiker noted Town Manager Stewart spoke with Mr. Perry about future renourishment efforts possibly at Newton Beach.

Town Manager Stewart stated he was still working with the DEP on that issue.

Vice Mayor Raymond questioned if the renourishment sand at Bowditch Point was going back around and blocking the channel coming in near the new jetty.

Town Manger Stewart acknowledged Vice Mayor Raymond's concern and stated he would investigate and inform the Vice Mayor of his findings.

Discussion was held concerning the sand at the south end.

Council Member List recounted her brief conversation with Lee County Commissioner Judah about the matter mentioned by Vice Mayor Raymond, and a telephone call might be needed to remind him.

Council Member Mandel gave a little background on Florida Power & Light (FP&L) regarding frequent power outages when there was no storm. He stated he learned there were some major submerged lines with problems that run along the back bay; and was informed by FP&L that they were in the process of obtaining the necessary permits to work on these lines (i.e. DEP). He suggested the Town support FP&L with their work and assist, if needed, in obtaining the necessary permits to repair the lines.

Mayor Kiker discussed the Town Hall Meeting held in November and noted there was also representation from the State, the Fire Department, and Mosquito Control. He added there was information dispersed to Senator Richter regarding the "lack of balance" as far as Town representation with the TDC, MPO, and similar organizations because representation was based on population and not the amount of tax revenue generated by the Town. He reported the Senator stated he would look into the matter. He asked if Council would approve directing the Town Manager to draft a letter for their signature that stated the Council's intention to pursue that matter.

Consensus was to direct Town Manager Stewart to prepare the letter as described by Mayor Kiker.

Mayor Kiker reported that he accepted an invitation to visit with the Condo Association of Fort Myers Beach on January 12, 2012. He reported the Estero Island Historical Society was having their Annual Open House this coming Saturday; and that he and Town Manager Stewart would be meeting with county commissioners on December 14<sup>th</sup>.

Mayor Kiker reported the Town corresponded with the Library District to determine if they would participate in a joint meeting; and the response was that if the Town provided them with an agenda they might consider a joint meeting. He asked for Council input since usually a meeting was scheduled first and then the agenda was set.

Discussion ensued regarding a joint meeting with the Library District; and it was decided the Town Manager would forward a letter to the Library District stating the Council was always willing to have a joint meeting and the Council's preference was a meeting with an open agenda.

Council Member List mentioned two upcoming events – Spirit of the Holidays auction event, and the Pancake Breakfast by the Kiwanis Club and Fire Department.

Council Member Mandel remarked that there was a play at Santini Plaza this coming Saturday.

## **XVI. AGENDA MANAGEMENT**

Town Manager Stewart noted he added from today's meeting:

- Audit Committee review of water utility
- Methodology to handle objections to Council actions (add to Policy on abstention voting)

Vice Mayor Raymond suggested prior to an ordinance coming before Council that the draft ordinance be discussed first at a Council Work Session to make sure it was headed in the right direction.

Town Manager Stewart agreed that when there are certain ordinances which would set major policy, that the Council place it on a Work Session.

## **XVII. RECAP OF ACTION ITEMS**

Town Manager Stewart reviewed the Recap of Action Items:

- Staff would address items from Public Comment at the Work Session later today
- Staff would acquire necessary information on the upcoming conference for Council Member Mandel
- Staff would work to schedule a joint meeting as requested by CRAB
- Staff would move forward with the Consent Agenda Items as approved
- Staff would contact the auditor from last year; and staff would move forward working with the Audit Committee
- Staff would provide Council with a list of all the programs offered at Bay Oaks
- Town Manager would provide Council with the response received from Lee County Animal Control regarding the cats

- Staff would prepare the letter to Senator Richter regarding representation on the TDC, MPO, and similar organizations
- Town Manager would prepare a letter to the Library District indicating the Council's desire for a meeting with an open agenda

Mayor Kiker reminded Town Manager Stewart of his intention to email Action Items to them after each meeting.

#### XVIII. ADJOURNMENT

Motion by Council Member List, seconded by Vice Mayor Raymond to adjourn. Meeting adjourned at 11:00 a.m.

Adopted 1-3-12 With/Without changes. Motion by List/Kasinski

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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