

## MINUTES

Tuesday, January 17, 2012

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

### **I. CALL TO ORDER**

Mayor Kiker called to order the January 17, 2012 Meeting of the Town Council at 6:37 p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Town Attorney Humphrey, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

### **II. INVOCATION – Town Manager Stewart**

### **III. YOUTH COUNCIL**

Council Member List explained how once a month representatives from the Fort Myers Beach Elementary School Youth Council and other fifth graders come to the Council Meeting to report on activities they have been involved in during the past month.

### **IV. PLEDGE OF ALLEGIANCE – Kevin Cherry and Tora List**

Kevin Cherry, Youth Council Clerk and Honorary Mayor, thanked Town Clerk Mayher for helping him take the Youth Council minutes at their meeting in October. He announced the school had been holding auditions for the school play, *Peter Pan*, and that he had been practicing twice per week. He stated the students participated in the Pancake Breakfast held at Red Coconut to raise money for needy families at Christmas.

Tora List, Youth Council Member, reported on November being Math Month answering questions reported on Best News; participated in Paint the Beach at Santini Plaza; held their annual music program just before Christmas break with everyone gathering at the school pavilion to sing holiday songs. Tora stated that she is proud to follow in her grandmother's footsteps by serving on the School's Youth Council.

## V. APPROVAL OF FINAL AGENDA

Mayor Kiker requested approval to move the Consent Agenda Item up as the first item before the Administrative Agenda.

## VI. PUBLIC COMMENT

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

Open Public Comment.

Roy Hinkleman, resident, discussed the Laguna Shores Project and presented Council with photos depicting low tide on a foggy day to demonstrate the failed dredging as it pertained to the Laguna Shores Homeowners Association. He noted the pictures were taken at mean low tide and they showed there was "no six feet". He stated he had been working with the Town Manager and staff, and he thanked the Council for working with the Association on the project.

Garr Reynolds, resident, discussed how former Council Members resisted requests to expand Consumption on Premises (COP) on the beach for various reasons; and addressed staff's work on re-writing the land development codes as they pertained to COP. He summarized his beliefs of why the upcoming proposed COP ordinance should not be approved.

Dane Easterbrook, resident, discussed the Town Hall location; explained his belief the Town owned the Bay Oaks Complex; and distributed copies of an aerial view of the subject site. He discussed his thoughts on how the Complex might be a viable site for a Town Hall.

Lt. Ron Martin discussed the "killer" characteristics of cardio-vascular disease and noted the Fire District had worked to increase the odds against cardio-vascular disease. He noted the importance of education and prevention of the disease; and announced that February was National Heart Disease Awareness Month. He requested the Council consider making, annually, every second Saturday in February the Town of Fort Myers Beach Heart Disease Awareness Day to increase awareness of heart disease prevention, public education, and screening. He invited the Town Council and the Town's executive managers to attend a CPR class.

### **Public Comment closed.**

Mayor Kiker asked if Laguna Shores was funded.

Town Manager Stewart stated the Laguna Shores project was funded through the WINDC and the permits were at the proper stage with the State, and were pending approval from the US Fish and Wildlife Service because the site fronts a preserve. He noted there may be some comments forthcoming regarding the small-tooth sawfish. He reported the response from USFWS must come back before all the permits were ready to go; and that the staff was working on this issue.

Mayor Kiker reviewed the process regarding the COP; and noted that the proposed ordinance had gone before the LPA last week, who held a meeting from approximately 9:00 a.m. to 2:30 p.m. in order to work out much of the details regarding COP. He reported the LPA approved moving the COP forward; that the matter would come before the Town Council who would hold a Work Session on the issue; and then there would be an announcement on when the hearing with public comment would be held. He suggested the public contact the Town Council regarding their views about the COP. Mayor Kiker gave a brief overview of the proposed COP ordinance in order to dispel any misunderstandings the public might have regarding the matter.

Town Manager Stewart reviewed which business owners did own a portion of the beach.

Mayor Kiker reminded everyone of the upcoming referendum on January 31, 2012 concerning the Town Hall facility. He explained there would be another public Town Hall Meeting this coming Monday so the public could ask questions regarding the referendum. He stressed that even though the referendum was on a ballot during a Republican Primary, everyone was allowed to vote on the referendum; and the referendum vote was not open to only Republicans. He pointed out the Council had requested the Town Manager present facts to the public about the referendum. He explained the reason why they used an "up-to-\$7,000,000 figure" in the referendum; why the referendum was written in such a manner; and what some of the options were regarding a Town Hall.

Mayor Kiker and Council Member Mandel noted the importance of Lt. Martin's request.

Discussion was held concerning Lt. Martin's request.

Assistant Chief White explained Lt. Martin was seeking a proclamation for the second Saturday in February annually to be designated as Heart Disease Awareness Day.

Council Member Mandel recognized the work of the Fire District in Fort Myers Beach.

Consensus was to schedule the proclamation as appropriate.

## **VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

None.

## **VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

Council Member Mandel recognized the members of the Friends of the Mound House who were in attendance and their President, Carrie Hill.

Carrie Hill, President of Friends of the Mound House, presented the Town with a check for \$10,000 for the landscape and lighting project; and noted the check now brought their efforts to a total of \$30,000. She thanked the Council for supporting their efforts for the vision of the Mound House and for their participation at their recent fund-raising luncheon.

Council Member List recognized the Chair of BORCAB, Betty Simpson, in the audience.

Betty Simpson, Chair of BORCAB, reported at their last meeting the members discussed 1) identification of all locations where public meetings were posted, and 2) reducing the number of members required for a quorum. She reviewed the background information as summarized in her memorandum through Town Manager Stewart, dated January 11, 2012 regarding the Agenda Item Request for January 17, 2012 Town Council Meeting as it pertained to location of public notices for BORCAB meetings and the definition of a quorum. She stated that BORCAB would like consideration given to expanding the number of locations as was reasonably possible for the distribution of posting of public meeting notices; and that a “simple majority” of four members of the seven member board constitute a quorum.

Vice Mayor Raymond asked if the Board was tracking attendance for each member; and noted possibly some of the members needed to be replaced if they were not going to attend the meetings.

Betty Simpson, Chair of BORCAB, responded in the affirmative.

Mayor Kiker clarified that BORCAB was the only Town board/committee that was not required to have a simple majority for a quorum.

Consensus was to change the quorum criteria for a BORCAB meeting.

Mayor Kiker informed Chair Simpson that Town Clerk Mayher was working to schedule a joint meeting with three committees (CRAB, BORCAB, and the Audit Committee); he requested Ms. Simpson to relay the importance of selecting a date for a joint meeting to her other members; and asked Town Manager Stewart to place on Agenda Management the request for a change to BORCAB’s quorum requirement and Town Attorney Humphrey to review the enabling legislation.

Discussion ensued regarding attendance requirements; it was noted there was an attendance requirement in the enabling legislation; and Ms. Simpson was requested to review that matter with staff.

## **IX. CONSENT AGENDA**

### **A. FY 2013 Beach and Shoreline TDC Funding Application**

Town Manager Stewart explained the function of the Tourist Development Council and the types of projects they support; and reviewed the background of how the Town traditionally sought support for beach and shoreline maintenance and shoreline capital improvement projects from the TDC, and that there needed to be a final decision to determine projects for this year’s funding requests. He noted that there were residents in the audience who wanted to address Council regarding the funding request pertaining to beach and bay accesses; and that included in the agenda packet were the recommendations from CRAB regarding beach and bay accesses. He added that Council had discussed this matter at a previous Work Session.

Mayor Kiker noted his belief that most of the public input was regarding a particular bay access point. He reviewed how the Council got to the point they were today so as to avoid any misinformation regarding beach and bay accesses and the purpose of the TDC funding request.

Public Comment opened.

Joe Workman, resident (Coconut Drive), discussed his concerns regarding government projects and spending money; and improving boating and fishing accesses for the general public on the bay. He noted that most of the public accesses on the bay and beach were at the end of narrow, residential streets and if they were advertised as such, they would most likely be used and abused by the public. He questioned if the Town would need to hire additional staff to maintain the accesses. He reported there was a dock at the end of his street where some people used it until midnight and even later which disturbed the neighborhood; and noted the lack of space for vehicles to turn on these streets and problems with boats being backed-in all the way down the street from Estero Boulevard. He stated that he objected to proposed bay access improvements and asked Council to take into consideration all the problems he mentioned before making a decision.

Bill Johnson, resident (Coconut Drive), stated he agreed with Mr. Workman's comments. He described the history of how the dock at the end of the street was constructed by residents. He noted the unsafe conditions at the site due to the narrow street and how there was insufficient room for a vehicle to turn around. He pointed out that the Lover's Key boat ramp was nearby if someone wanted to launch a boat. He stated he objected to any improvements or ideas of opening up the street for boating access.

Suzanne Ziemer, resident (Estero Boulevard), distributed a handout of her comments to the Council for a request to include the research for making Bayview Avenue a public, small, non-motorized watercraft launch site in the Phase 1 Planning Use of TDC funds for the upgrading of the beach and bay accesses. She recounted events that occurred at a CRAB meeting when the beach access was discussed. She agreed that the selection of Bayview Avenue as a model for a beach access was a good choice for a small, non-motorized (i.e. kayaks) launch site with the close proximity to Newton Park for parking purposes and the site had a 40' right-of-way. She noted that the launch for kayaks at the Mound House was gated and had specific hours for availability. She displayed an enlarged site map which indicated there was sufficient room for a "turnaround" on Bayview Avenue.

John King, resident (Coconut Drive), discussed his opposition to improving the bay access at the end of his street. He stated he was opposed to having any more people come down his street; noted he had to replace his mailbox at least 3-4 times per year due to the traffic on the narrow street; and he questioned the purpose of improving the access to the bay.

Neil Underwood, resident (Coconut Drive), described his experience with the bay access at the end of Coconut Drive during his tenure as a winter resident for 15 years. He explained how when the County was involved with the maintenance and listed the property as a launching site, it was a "horror show" at the end of the street. He recounted when he saw a 32' sailboat backed down the street and got stuck sideways between Mr. King's home and Mr. Workman's house. He discussed the reasons why he opposed Coconut Drive as a boat access to the bay.

Alex King, resident (Coconut Drive), explained that he believed acquiring some of the taxpayers' money which was available to the community was valid; however, he noted the residential area on the bay side had a different lifestyle than possibly other residential areas or other visitors, and explained that the bay side residents did not want to have their lifestyle changed for a boat launch. He discussed his opposition to using the bay access on Coconut Drive as a model site.

Judy Haataja, resident (Bayland Road), read the purpose of the proposed TDC application for bay side access and noted her disagreement with the TDC application. She questioned if there was an ordinance against parking on Town side streets.

Town Manager Stewart reported there was not an ordinance against parking on Town side streets, but there was an ordinance against parking in the road right-of-way.

Judy Haataja noted there were other areas in the Town that could be used for parking such as but not limited to marinas; and she explained why she believed the proposed access improvement was an intrusion into the quiet residential zones. She pointed out that the proposed TDC applications called the site to be "passive" but she disagreed and noted it would be advertised as part of the Town's tourism and posted on the streets. She explained how she believed the bay access for boats could turn into a safety issue and possible lawsuits for the Town and residents could occur; and described the lack of turnaround space on the street.

Mark McConnell, resident (Bay Lane), expressed his support of Mr. Workman's comments; and he asked if the funding was acquired by the Town, would there be any requirement that the residents of the particular street had any approval rights as to what would happen.

Carol Hornack, resident (Bayland Road), stated she was a permanent resident of Fort Myers Beach since 1974 and that she and Ms. Haataja have worked to maintain the end of the road for many years. She pointed out that the street was a residential area, and she opposed any proposed kayak launch or model bay access on her street. She recounted her experience with traffic problems due to the narrow street and lack of turnaround space, and encroachment by visitors on her and her neighbor's property.

Barbara Daniel, resident (Bayland Road), stated she agreed with her neighbors' comments and noted the road was a very quiet area. She reported the residents were happy with the way their road was and didn't want the area to change.

Deborah Johnson, resident (Coconut Drive), noted there was no place for parking a boat, car or trailer if the bay access was used for a boat launch.

Dan Daniel, resident, stated his street was quieter before Publix moved in nearby and noted issues with cars coming down their street when they missed the turn for the grocery store. He explained they didn't want any more traffic than they already had to deal with due to Publix.

Bill Simmons, resident (Bayland Road), explained that there were so many residents in the audience due to the way the newspaper story led the residents to believe the proposed project was already "written in stone". He mentioned how the residents already were dealing with the derelict boat problem, and if the

access was advertised it would bring even more problems with boats. He stated he opposed any proposed bay access improvements on his residential street. He noted it made more sense to use the funds for improvements to the bay access at the Mound House site.

Public Comment closed.

Mayor Kiker requested the Town Clerk to send a copy of tonight's meeting to every member of CRAB; and he asked the CRAB Chair to encourage the members watched it to see what the residents had to say on this matter. He pointed out that the Town Council was also concerned about derelict boats and mentioned that the County reduced their funding of removing derelict boats; he noted that the residents of the Mound House area did not agree when Council suggested the Mound House site as a kayak launch; and he explained that beside the fact that Council was now learning the neighborhood did not want the bay access improvement, the Council also learned the neighborhood was dealing with other issues (i.e. parking on the street) which appeared were not being addressed. He asked those concerns be placed on Agenda Management for when the Council met with CRAB.

Town Manager Stewart stated he took note of the other problems the neighborhoods were encountering. He described the one site (on the other side of Topps) where staff was investigating it as a site for motorized boats.

Mayor Kiker explained that originally CRAB was reviewing beach accesses and how they offered at the same time to research bay accesses.

Council Member List reviewed how the access improvement idea came about through a request from a citizen, then Council passed it onto CRAB for review, and this was the first public discussion on the idea. She stated she was very glad the residents came to voice their concerns.

Vice Mayor Raymond also reviewed why CRAB was tasked with the work and how the Council wanted information about the access before they made any decision.

Council Member Mandel stated he clearly understood the residents' concerns and echoed the comments by Council Member List.

Council Member Kosinski noted his belief that the survey and title work was a good idea and needed; however, he would never support any type of boat ramp and he would need to be convinced of a need for a kayak ramp at the end of a residential street.

Discussion ensued regarding whether or not to pursue the funding from TDC for survey and title work.

Town Manger Stewart explained that if Council did not want to do anything with the bay side accesses then there was some identified funding that could be backed out of the request. He stated the Council may desire to move forward with the survey and title work, which he recommended as did Council Member Kosinski.

Discussion was held regarding possible improvements to bay side accesses; the need for survey and title work; the recommended motion on Blue Sheet Number 2012-007; how accepting TDC/County funds could create general public access requirements or caveats; accepting funding for the beach accesses; and modeling for the beach accesses.

Town Manager Stewart suggested taking out “bay side right-of-way and” from the recommended motion.

**MOTION:** Council Member Kosinski moved to authorize staff to prepare three funding applications to the Lee County Tourist Development Council for 1) beach and shoreline operations and maintenance, 2) survey and title work for beach accesses where no survey exists, and 3) capital improvements for shade structures at the Newton Beach Park; second by Council Member List.

Town Manager Stewart requested that the funding amount requested be included in the motion, \$726,852.57.

Motion maker amended the motion to include \$726,852.57.

Second agreed.

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

*Recess at 8:40 p.m. – Reconvened at 8:58 p.m.*

## **X. ADMINISTRATIVE AGENDA**

### **A. Citizens of Distinction Program**

Town Manager Stewart reviewed the Town’s Citizens of Distinction Awards and how they were designed to annually recognize, outstanding citizens, groups, organizations or businesses that have brought credit to the Town. He reported this year three nominations were received of which two were in the same category, Arts and Culture, and for the same group (Fort Myers Beach Art Association). He stated Miss Bryanna Walker was nominated in the Youth category.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Motion by Council Member List to approve the Fort Myers Beach Art Association as the recipient of the Citizens of Distinction Arts and Culture Award and Miss Bryanna Walker for the Youth category award; second by Council Member Kosinski.

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

**B. Estero Boulevard Interlocal Agreement**

Town Manager Stewart explained that the Town would like to enter into an interlocal agreement with the County so that there was certainty as to when the Estero Boulevard Project would start and end, and how the Town and the County would coordinate efforts.

Public Comment opened.

No speakers.

Public Comment closed.

Town Attorney Humphrey pointed out that with the upcoming water and utility work there needed to be some definitive decisions since Estero Boulevard was a County road but it was going through the jurisdiction of the Town and they could be accomplished with an executed interlocal agreement. He noted that enclosed in the agenda packet was a broad draft of the proposed interlocal agreement and mentioned how the document included paving, curbing, sidewalk and gutter, bicycle lane, potable water line replacement, gravity sewer replacement, stormwater drainage improvements, the possible realignment to ease the bottleneck in Times Square, and landscaping. He addressed the connection of the proposed work to the Comprehensive Plan. He reviewed his notes concerning the matter with respect to level of service; and noted the fact that Estero Boulevard was the only entrance for tourism to the Town. He explained that at the Joint Meeting the Council would discuss the road, get some definitive policy decisions, and then the attorneys would reduce it to writing, or he could prepare an agreement the Council may prefer to adopt.

Mayor Kiker reviewed how this and other topics (i.e. parks and recreation) would be discussed at the Joint Meeting between the Town Council and the Lee County Board of Commissioners.

Discussion was regarding the level of service of Estero Boulevard.

**XI. PUBLIC COMMENT**

Public Comment opened.

Michael Dearden, resident, requested action on Town codes to be amended to approve pedi-cabs; he described how his transportation pedi-cab service business functioned; and the benefits of using a pedi-cab (i.e. keeping intoxicated people out of their vehicles and the creation of jobs).

Council Member List stated she was working with Mr. Dearden and Town staff on this matter; and reported Community Development Director Fluegel was working on a draft ordinance that should be presented on an agenda in approximately a month.

John Pohland, resident, asked if the Council would consider 4-laning Estero Boulevard, and described his research into increasing the lanes, as well as work on the sidewalks and bicycle paths. He addressed the level of service grade for Estero Boulevard and changes to the traffic counts.

Public Comment closed.

Town Manager Stewart addressed Mr. Pohland's comments regarding 4-laning Estero Boulevard and noted the key point of trolley pull-offs.

Discussion ensued regarding the planning and design of Estero Boulevard; and Town Manger Stewart reported the County put together a ranking order for engineering firms to do a preliminary design for the roadway.

Mayor Kiker requested inclusion in the proposed ILA wording that would basically state that the County could not move forward unless the Town gave prior approval.

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

Town Manager Stewart reported he previously wrote the Council about the request from the Audubon Society to use the Council Chambers to offer a class on shore bird identification on a Saturday, March 10, 2012.

Consensus was to approve the use of the Council Chambers by the Audubon Society as requested.

Town Manger Stewart discussed the present criteria for the special event ordinance and reported the Times Square Alliance wanted to provide entertainment in Times Square every weekend. He stated that presently the Alliance was required to obtain a separate permit for each weekend for the same exact thing, 52 times per year. He wondered if Council would be interested in modifying the current special event ordinance, and noted he did not believe it should be for any location in the Town, rather just specific to Times Square.

Consensus was to schedule the topic for a Work Session.

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

Town Attorney Humphrey reported White General Construction recently filed a lawsuit against the Town as it pertained to the Mound House in which they claimed they have not been paid all that was due them. He stated that White General Construction had still not completed the work; and he would defend the suit and believed the Town acted appropriately in not issuing the final draw. He noted the State Cultural Facilities Program had 18 grants, reviewed them, and wanted to approve them which totaled about \$5.9 million dollars. He announced the Mound House had been ranked #8 for \$445,000; and recommended that either the Mayor or the person who worked the closest with the Mound House join with the Mayor of Fort Myers to make a trip to where they could meet with the local legislative delegation regarding the funding.

Discussion was held regarding a letter to be prepared by the Town Attorney to the legislative delegation.

Town Attorney Humphrey reported that Lobbyist, Keith Arnold, had joined his law firm.

Discussion was held concerning meeting with the legislative delegation in Tallahassee regarding the grant funding.

Consensus was to have the Mayor and the City Manager discuss the matter with the legislative delegation when they go to Tallahassee.

#### **XIV. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member Kosinski – no items or report.

Vice Mayor Raymond – questioned the status of Ms. Yost's water problem.

Town Manager Stewart stated he obtained her phone number and would get with her tomorrow about her problem, and report back on the matter.

Vice Mayor Raymond – asked if Code Enforcement could do anything about the algae pond near Top O' Mast.

Town Manger Stewart reported he placed the liability questions regarding the algae pond in the lap of the Town Attorney's office who felt the liability was with the property owner.

Vice Mayor Raymond – noted his concerns regarding the poor public relations that was connected with the algae pond.

Town Manager Stewart stated he would work with the Town Attorney's office on the concept of attractive nuisance regarding the algae pond.

Council Member List – restated a rumor she heard regarding the cost and work that would be necessary to repair the whole in the beach (algae pond).

Town Manager Stewart explained how he and staff did everything possible to convince the subject property owner to participate in the beach renourishment program.

Council Member Mandel – no items or report.

Mayor Kiker - reported he attend the condominium association meeting where they discussed the COP and many other issues. He noted they discussed ideas about improving the image of Fort Myers Beach and one suggestion they had concerned safety while crossing the sidewalks; and it was mentioned in Canada there was a program called "point for safety" where people indicated they would cross the street by pointing.

**XV. AGENDA MANAGEMENT**

Town Manager Stewart recapped the Agenda Management issues added:

- Pedi-cab issue
- COP at a Work Session
- BORCAB ordinance regarding a quorum

**XVI. RECAP OF ACTION ITEMS**

Town Manager Stewart reviewed the Recap of Action Items:

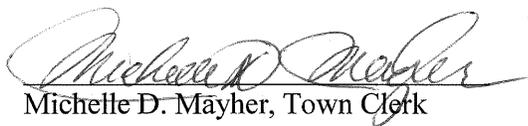
- Staff would work with Mr. Hinkleman and would report back to Council on the recommendation of the US Fish and Wildlife Service
- Mr. Easterbrook presented a picture of a potential Town Hall location; consensus was to wait until after the referendum results
- Bring forward a recommendation for a resolution or proclamation to make the second Saturday in February each year "Heart Awareness Day"
- Thank you to the Friends of the Mound House and the donation would be deposited tomorrow
- Move the TDC funding request forward
- Staff would address the concerns of the Coconut Drive residents as described tonight
- Report back on how to present the Citizens of Distinction Award; staff will notify recipients
- Town Manager to work with the Town Attorney on the Estero Boulevard ILA
- Work on the pedi-cab issue and bring it back to Council
- Notify the Audubon Society of the permission to use Council Chambers
- Work with Council Kosinski regarding the Estero Boulevard project

**XVII. ADJOURNMENT**

Motion by Council Member Kosinski, seconded by Council Member List to adjourn. Meeting adjourned at 9:50 p.m.

Adopted 2-6-12 With/Without changes. Motion by Kosinski / Mandel

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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