MINUTES

Monday, February 6, 2012

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

I. CALL TO ORDER

Mayor Kiker called to order the February 6, 2012 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 Humphrey, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

II. INVOCATION – Town Clerk Mayher

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.

Open Public Comment.

No speakers.

Mayor Kiker recognized the Semmer Family (Shirley, Bill, and Joann).

Mrs. Semmer described her family's participation with the fireworks display at the Fort Myers Beach 4th of July celebration for the past 23 years. She reported the family was retiring from the fireworks; acknowledged that her family was honored to participate and serve on the event committee over the

years; and she recognized the great support the local business gave to them and the event during the past 23 years.

Mr. Semmer stated he was honored to be a part of the event over the years and thanked the Town for their support.

Mayor Kiker expressed appreciation from the Town to the Semmer Family. He requested consensus from the Council to have him work together with them on the transition.

Ms. Semmer stated they would be willing to train the appropriate person or persons on the aspects of the firework displays (i.e. permitting).

Public Comment closed.

VI. PROCLAMATION

A. Heart Awareness Day

Town Clerk Mayher read the Proclamation for the Fort Myers Beach Heart Disease Awareness Day.

Town Council presented the Proclamation to members of the Myers Beach Fire Control District that proclaimed the second Saturday of February annually would be designated as *Fort Myers Beach Heart Disease Awareness Day.*

Lt. Ron Martin thanked the Council for their support and commitment to raising awareness in the community about heart disease.

Discussion ensued regarding heart disease and related heart disease programs.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

None.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Mayor Kiker reported the Council did meet jointly with the Audit Committee; noted the knowledgeable experience and background of the committee members; and mentioned there was still one vacancy on the committee.

IX. APPROVAL OF MINUTES

A. January 3, 2012 Town Council Meeting
B. January 3, 2012 Town Council Work Session
C. January 10, 2012 Town Council Special Meeting
D. January 17, 2012 Town Council Meeting
E. January 17, 2012 Town Council Work Session

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

VOTE: Motion approved, 5-0.

X. CONSENT AGENDA

A. Release of Lien, Code Enforcement Case No. 2001-1045
Property located at 136 Primo Drive, Fort Myers Beach; payment in full of the outstanding prosecution costs plus interest in the amount of $668.55.

B. Approval of Professional Service Agreements for On-going Miscellaneous Professional Services
Pursuant to the Request for Qualifications 11-02-PW On-going Miscellaneous Professional Services with the 32 firms as identified in the attached spreadsheet and authorize the Town Manger to execute the Agreements for a 3-year term expiring on December 31, 2014 with the ability to renew for two additional years.

MOTION: Council Member Kosinski moved to approve the release of lien related to Code Enforcement Case No.2001-1045 for property located at 136 Primo Drive, Fort Myers Beach upon payment of the outstanding prosecution costs plus interest in the amount of $668.55; and to approve the Professional Service Agreements pursuant to the Request for Qualifications 11-02-PW On-going Miscellaneous Professional Services with the 32 firms as identified in the attached spreadsheet and authorize the Town Manger to execute the Agreements for a 3-year term expiring on December 31, 2014 with the ability to renew for two additional years; second by Vice Mayor Raymond.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved, 5-0.

XI. PUBLIC HEARING

A. Case No. FMBSEZ2011-0003, Paradise Tropical Wines

Mayor Kiker opened the public hearing at 9:16 a.m.

Mayor Kiker asked if any Council Member had any ex-parte communication regarding this item. Mr. Mandel – none; Ms. List – none; Vice Mayor Raymond – none; Mr. Kosinski – none; Mayor Kiker – a brief telephone conversation.

Mayor Kiker asked the Town Attorney to swear in the witnesses; and Town Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for FMBSEZ2011-0003, Paradise Tropical Wines, on behalf of the Town of Fort Myers Beach. She displayed a map of the subject property located at 159 Old San Carlos Boulevard. She reported the applicant was requesting the Special Exception in a location that currently had a land use of Pedestrian-Commercial and was in the Downtown zoning district in order to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises and package sales of specialty fruit wines for a retail specialty wine shop in an existing retail location. She added that the only component of the special exception was the request for consumption on premises with wine tastings that involved consumption of one-half to one ounce portions and the package sale of wine in sealed containers of the proposed use. She displayed the applicant's proposed floor plan in a unit known as Tropical Sunset, and noted the applicant was not requesting any outdoor consumption and the hours would be 10:00 a.m. to midnight. She explained the special exception request was required because the subject site was located within 500 feet of another site that had consumption on premises. She briefly reviewed the supporting regulations for special exceptions which the Town Council would hear and decide:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate* – no request for a change to the existing property and the request remains consistent with the intended use of the area.
2. *Whether the request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan* – the subject property is located in the Downtown Core and the Comprehensive Plan envisions the area as a vibrant area with a mix of uses.
3. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use* – the special exception request was due to a locational standards and was consistent for request.
4. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources* – proposed use should have no negative effects on the environmentally critical areas or natural resources. She noted the subject property was already located in one of the Town's most highly developed areas and the request was compatible and appropriate within its neighborhood.
5. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property* – staff did not anticipate any damage, hazard or nuisance and the LPA was able to condition the request.
6. *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34* – the consumption on premises of alcoholic beverages on the subject property would be required to comply with the applicable standards in the Fort Myers Beach LDC.

She stated that staff recommended approval of the special exception in the Downtown Zoning District to allow 2-COP [beer and wine] alcoholic beverage license in conjunction with wine tasting and package sales at the location of 159 Old San Carlos Boulevard with six conditions:

1. That the special exception be approved only for a 2-COP [beer and wine] alcoholic beverage permit to allow consumption on premises of specialty fruit wines and the package sales thereof. If an increase in the alcoholic beverage licenses series is sought, a new approval in accordance with the LDC will be required.
2. Consumption on premises is limited to the retail package store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan Exhibit C.
3. The 2-COP for consumption on premises is limited to tastings of one-half [1/2] to one [1] ounce servings to adults age 21 or above, who are interested in purchasing the specialty Florida fruit wines.

4. Sales of specialty wines for consumption off the premises must be in factor-sealed containers. At no time shall alcoholic beverages be sold "by the glass" for consumption on premises.
5. Hours of operation for consumption on premises shall be limited to the hours of 10:00 a.m. to 10:00 p.m., daily. The package store may be open during hours outside of this restriction, but consumption on premises shall be limited to the hours listed herein.
6. The subject application does not include consumption on premises in conjunction with the outdoor seating areas. All consumption (tasting) activities must take place inside the retail store.

She reported the application was reviewed by the LPA on January 10, 2012 and they voted 6-0 to approve the Special Exception with conditions as listed in the staff report; and one condition was to replace "specialty fruit wines" with "specialty wines".

Discussion ensued regarding the subject property which had two addresses; it was noted that the applicant agreed with the proposed conditions; and Ms. Chapman noted that the public comments at the LPA meeting were in support of the applicant's request.

Mayor Kiker asked if there was a member of LPA in attendance; there was no representation from the LPA.

No public comment.

Eric Malasky, applicant, thanked Zoning Coordinator Chapman for presenting the information on his behalf; and he displayed a sample cup indicating the size he would use for the wine tastings.

Community Development Director Fluegel clarified that the condition related to any new approvals would require additional hearings before the LPA and Town Council.

Public Comment closed.

MOTION: Motion by Council Member Mandel to approve Resolution 12-03 granting a Special Exception in the Downtown zoning District to allow a 2-COP alcoholic beverage license in conjunction with the consumption on premises (wine tasting) and package sales of specialty wines with the recommended conditions of approval and the recommended Findings and Conclusions:

1. Changed or changing conditions do not exist that make the request approval, as conditioned appropriate;
2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

Public hearing closed at 9:31 a.m.

XII. ADMINISTRATIVE AGENDA

A. Appointment to the Local Planning Agency

Town Manager Stewart reported there was a vacancy on the Local Planning Agency (LPA); and originally there were two applicants (Mr. Tibbs and Mr. Andre); however, Mr. Tibbs withdrew his application. He noted that Mr. Andre still wished to be considered for appointment to the LPA. He described how this item was originally scheduled on a previous Council agenda, postponed, and had been advertised for approximately a month since that time; however, no other applications were received.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member List noted that Mr. Andre through his volunteer work and his business demonstrated he was a dedicated and reliable member of the community.

MOTION: Motion by Council Member List to approve the appointment of Dan Andre to the Local Planning Agency; second by Council Member Kosinski.

Town Clerk Mayher noted that Mr. Andre was aware that if appointed to the LPA, he would be required to resign from his other volunteer position on the Marine Resources Task Force.

VOTE: Motion approved, 5-0.

B. Discussion follow-up from Joint Town Council/BOCC Meeting on January 24, 2012

Mayor Kiker reported the Town Council held a Joint Meeting with the Lee County Board of Commissioners last week.

Town Manager Stewart stated that he had since then received a telephone call from the County Manager's Office with a commitment to follow through on the issues that were raised and the County and Town staffs were putting together some teams to accomplish that work. He noted the issues that were raised at the meeting:

- Interlocal agreement for Estero Boulevard
- Parks & Recreation – a team to investigate the Town taking over the operation of County parks within the Town; findings will be presented to the two elected bodies.
- Transportation issues
- Water system issues

Mayor Kiker noted at the meeting they discussed the disposition of the Seafarer's site and how the Town expected the site to be more geared toward a traffic resolution.

Discussion ensued regarding the various topics and issues which were debated and questioned at the joint meeting with the BOCC (i.e. parks and recreation, Seafarer's).

Council Member Mandel reviewed his suggestion to "draw a circle" around some of the properties in the area of the Seafarer's to create a tax increment funding area in order to set-up a mechanism to capture future taxes that would help pay for the public part of a partnership. He noted the importance of also communicating with the surrounding properties owners and developers to bring a program to the BOCC.

Consensus was to place on Seafarer's on Agenda Management.

Council Member List gave an update and reviewed events surrounding the request to have art work by children at Bay Oaks affixed to the fence around the Seafarer's property.

Vice Mayor Raymond concurred with Council Member Mandel's comments; and thanked the Town Manager for presenting his issues and concerns to the BOCC in his absence.

Council Member Kosinski noted the productivity of the joint meeting.

Mayor Kiker discussed a letter to the editor regarding painted poles; questioned shade at Seafarer's and potential art structures; and the possibility of creating a policy and/or committee regarding art in public places.

Town Manager Stewart suggested the Council may want to consider having CELCAB investigate the matter.

Consensus was held considering a committee regarding art in public places on Agenda Management.

Council Member List stated that the reason she felt very well prepared and ready for the Joint Meeting with the BOCC and all meetings by the Council was due to the work done by the Town staff and Town Attorney.

XIII. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

Town Clerk Mayher reported consideration was necessary for Resolution 12-04, the results of the January 23, 2012 referendum.

Town Manager Stewart explained that after an election the Council needed to approve or validate the election.

Town Clerk Mayher read the title:
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CERTIFYING THE RESULTS OF THE REFERENDUM HELD ON JANUARY 31, 2012; DECLARATION; PROVIDING AN EFFECTIVE DATE.
Section Three. Referendum Regarding The Issuance by the Town of Revenue and/or General Obligation Bonds to Finance the Acquisition and Construction of a Town Hall. This Referendum inquired as follows: shall the Town of Fort Myers Beach issue bonds, including general obligation bonds, maturing not later than 30 years from their issuance, in a principal amount not exceeding $7,000,000, bearing interest at market rates, to finance the acquisition and construction of a Town Hall, which bonds may be secured by and payable from ad valorem property taxes levied without limit on all taxable property within the Town in addition to other available revenue sources? The votes received for this Referendum question are as follows:

275 - Yes

1,736 - No

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Motion by Council Member Kosinski for the adoption of Resolution 12-04 certifying the results January 23, 2012 referendum; second by Council Member List.

VOTE: Motion approved, 5-0.

XIV. TOWN MANAGER'S ITEMS

Town Manager Stewart reported he and staff had been working to determine what the Town's responsibility might be if they become involved with the 4th of July and New Year's Eve fireworks. He asked if the Council wanted staff to find a sponsor who would take over the role of managing one or both of the events.

Consensus was in the affirmative.

Discussion was held regarding the "Special Events Permit Coordinator" position; and consensus was to place a special events coordinator on Agenda Management.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Miller – no items to report.

Mayor Kiker asked for an update on the ILA with the County.

Town Attorney Miller stated she would ask Town Attorney Humphrey concerning the status of the ILA.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Mandel – no items or report.

Council Member List – no items or report.

Vice Mayor Raymond – questioned the status of banners for the Shrimp Festival.

Town Manager Stewart reported he received a telephone call from woman who was working with the Lions Club on that particular matter; and there was a request to place banners on Town property. He noted the Town's ordinance outlined the rate fee for such a request, and that staff did not have the authority to waive or forgive the fees. He stated he informed the requestor to make a formal request to the Council for their decision on whether or not to waive the fees.

Discussion ensued regarding charitable events and fee waivers; a restriction by the current ordinance which does not allow the Council to give the authority to the Town Manager as it pertained to waiving fees; and it was noted the review of the special events ordinance was already on Agenda Management.

Town Manager Stewart reported the request by the Lions Club would be on the next Council agenda, assuming the Lions Club submitted a letter of request.

Council Member Kosinski – no items or report.

Mayor Kiker – asked Council for permission to make travel arrangements to go to Tallahassee on Wednesday, along with Town Attorney Humphrey and the Fort Myers' Mayor to discuss the Mound House grant. He explained he would also be meeting with legislators concerning the Town's participation at the TDC; and the disposition of the Fertilizer Bill.

Consensus was to approve the Mayor's request to make travel arrangements to Tallahassee.

Mayor Kiker reminded everyone that they would be discussing COP this afternoon at the Work Session.

Council Member Mandel noted he would be attending the Beach Renourishment Conference later in the week which had already been approved.

XVII. AGENDA MANAGEMENT

Town Manager Stewart recapped the Agenda Management issues added and requested dates assigned to certain items:

- Review of the Special Events Ordinance – Council Member List requested the item be discussed as soon as possible.
- Seafarer's – Council Member Mandel requested the item be discussed as soon as possible.
- Shrimp Festival Banners – Vice Mayor Raymond requested to discuss the matter this afternoon.

Vice Mayor Raymond noted that if the appraisals and other information were received, the Mound House should be discussed relatively soon.

Town Manager Stewart mentioned that the other item for the Agenda Management was:

- Art in the community or public places

Discussion was held concerning "art in the community"; and it was decided that item would be separate from the Special Events ordinance.

Mayor Kiker asked if the Town Manager could give an approximate time that would be required in order to present the new items on Agenda Management.

Discussion was held regarding Agenda Management issues; Council Member List recommended "art in public places" be placed on an agenda (either regular or work session) to decide on whether or not to create a policy; and consensus was to place the item on the February 21st Work Session.

Discussion ensued regarding the work at the Mound House and the appraisals received and the parking issue; and Mayor Kiker requested the Town Manager create a recommended list with each item at the Mound House with a scheduled date.

Town Manager Stewart explained that the Special Events ordinance entailed work between staff and the Town Attorney and they were already in the midst of making recommended changes to present to Council.

Discussion was held concerning the Special Events ordinance and art in public places, and if the two items were related; improving the image of Fort Myers Beach; and the potential role of the Town as it related to 4th of July fireworks.

Consensus was to discuss the special events ordinance and art in public places during this afternoon's Work Session.

Discussion was held regarding the issue of "pedi-cabs" and when to bring the matter forward.

Council Member List reported at a recent BORCAP meeting one of the members mentioned a former pool support group that had raised funds for the pool, and questioned where the funds were utilized. She requested permission from the Council to pursue her investigative work to approach the County to determine the location of the funds.

Town Manger Stewart noted that he had staff research the matter, and in the Town records, it did not reveal any substantial sum of money that was turned over to the Town. He stressed that the group who worked at raising the funds was an independent group, not affiliated with the Town or Town Council.

Consensus was to approve that Council Member List would act as a liaison on behalf of the Council and work with the Town Manager after reviewed by the Town Attorney to determine the Town's role or responsibility and to sort out the matter.

Discussion was held regarding Seafarer's (i.e. consider the entire property and possibly creating a tax increment district, working with existing owners in the area and developers to do a significant project); and how Council Member Mandel would be the liaison on the topic and work to create a proposal on how the Council might approach subject property.

XVIII. RECAP OF ACTION ITEMS

Town Manager Stewart reviewed the Recap of Action Items:

- Staff to determine necessary action regarding 4th of July and New Year's Eve fireworks
- Council approved the Special Exception, and staff would process appropriate paperwork
- Staff to notify Mr. Andre of his appointment to the LPA
- Town Manager would work with Council Member List on the issue of pool group and funds raised
- Town Manager would work with Council Mandel regarding the Seafarer's

XIX. ADJOURNMENT

Motion by Council Member List, seconded by Council Member Mandel to adjourn. Meeting adjourned at 10:40 a.m.

Adopted 3.5.12 With/Without changes. Motion by Kosinski / List

Vote: 5-0

Michelle D. Mayher, Town Clerk

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