MINUTES

Monday, April 16, 2012

FORT MYERS BEACH TOWN COUNCIL
MANAGEMENT & PLANNING
WORK SESSION

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

I. CALL TO ORDER

Mayor Kiker called to order the April 16, 2012 Meeting of the Town Council 9:00 a.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel; Also Present: Town Manager Stewart, Finance Director Wicks, Town Attorney Miller, Community Development Director Fluegel, and Town Clerk Mayher.

II. PLEDGE OF ALLEGIANCE

III. PRESENTATION BY SHINN & COMPANY, LLC

A. Town of Fort Myers Beach Annual Audit

Town Manager Stewart explained the purpose of the agenda item was to officially present the audit to the Town Council, and at tonight's Regular Meeting the Council would be asked to 'accept the audit'. He further noted that after the Council accepted the audit then it could be given to the Audit Committee for review/comment. He added that per State Statute audits were held to be confidential until the time they were presented to and accepted by the governing body.

Mr. Neil Unruh with Shinn and Company discussed the *Basic Financial Statements* for the Town and Public Works Services, Inc. He reviewed management's discussion and analysis which summarized the audit for the Public Works Services and noted the following highlights:

- As of September 30, 2011 assets exceeded liabilities
- Financial statements (Page 4 – overview of the utility)
- Summary of Changes of Net Assets (Page 5)
- Detail of Capital Assets (Page 6)
- Management's description of what they expected would happen next year (Page 7)

- Statement of Cash Flows (Page 10)
- Notes (Page 11 through 16)
- Internal Control Over Financial Report (Page 17 to end)

Finance Director Wicks introduced Lisa Kolar, the Town's new Accountant. She pointed out that the position had been approved in last year's budget and was filled in November. She complimented Ms. Kolar for her assistance since her arrival, and mentioned some of her new responsibilities would be working on grants and reimbursements.

Town Manager Stewart discussed the comment regarding software issues indicated on Page 21; and explained the Town was working to obtain the software to address those comments. He addressed the changes in operating expenses on Page 9, 'bulk water', and pointed out that Lee County raised the rates after the reporting period Shinn and Company audited.

Council Member Mandel asked 'under management fees on page 9' did it include the full impact of the increase from the management company.

Finance Director Wicks reported it was a partial increase.

Mr. Neil Unruh mentioned that new government standards have required them to report things a little differently this year (i.e. fund balance definitions).

Discussion ensued regarding the new government standards for reporting.

Mr. Neil Unruh continued his presentation with a review of management's discussion and analysis which summarized the audit for the Town and noted the following highlights:

- Explanatory paragraphs (Page 1)
- Net Assets of the Town; Deferred Revenue
- Summary of Net Assets (Page 5)
- Summary of Changes of Net Assets (Page 6)
- Major Funds (Page 8)
- Budgetary Highlights
- Capital Assets and Long-Term Liabilities (Page 9)
- Economic Factors to Next Year's Budget
- Detailed Statements, Government-Wide Statements, Balance Sheet of Governmental Funds, Reconciliation of Governmental Funds Up to the Government-Wide, Statement of Revenues and Expenditures, Budget Comparison (Page 11 through 22)
- Notes (Page 23)

Discussion was held concerning fund balance policies; and it was noted there had not been a formal, written policy adopted by Council that stated the Town would maintain a specific fund balance for funds other than emergencies.

Mr. Neil Unruh continued his presentation with a review of management's discussion and analysis which summarized the audit for the Town and noted the following highlights:

- Report on Internal Control over Financial Control on Compliance (Page 45)

- Internal Auditor's Report on Compliance over Major Federal Programs (i.e. FEMA)
- Schedule of Findings and Question Costs (Page 51)
- Management's Letter

Council Member Mandel asked, in general, what was the health of the Town.

Mr. Neil Unruh noted the net assets of the Town increased; therefore, the Town was a little better.

Mayor Kiker reviewed that the acceptance of the audit would be on the agenda tonight at the Regular Meeting, and questioned if the Council would then make a motion to forward the audit to the Audit Committee along with a deadline for them to review and return it to the Council.

Town Manager Stewart explained there was no set schedule; however, there was a deadline for the bond covenants for the utilities which required an 'acceptance' by the Council. Therefore, if the Council accepted the audit tonight, they would meet the requirement for the bond covenant. He added that Council may impose any deadline they wished on the Audit Committee; however, he suggested a time limit of 60 days.

Mayor Kiker recapped that after the audit was addressed under Consent Agenda, the Council would then make a motion to send the audit to the Audit Committee along with a 60-day review period.

Mr. Neil Unruh interjected that the audit should be returned by the Audit Committee before June 30th because the single audit requirements were that it was turned into the clearing house nine months after the Town's yearend.

Discussion ensued concerning a time limit for the Audit Committee review.

Consensus was to give the Audit Committee 30 days, and the Committee could request an extension if needed.

Discussion was held regarding the responsibility of the Audit Committee to offer input on selecting an auditing firm.

Finance Director Wicks reported she received six proposals which were forwarded to the Audit Committee, and they were currently working to evaluate, and rank the top three firms which they would bring back before Council for selection.

IV. TOWN MANAGER PERFORMANCE EVALUATION

Town Manager Stewart discussed the evaluation forms from the International City Managers Association (ICMA) and other sample evaluation forms which were assembled by the Finance Director/Personnel Officer. He added that the Council could accept a form, modify a form, or create a new review form.

Discussion was held regarding previous Council dialogue about an evaluation form for the City Manager on that was held on June 6, 2011; and it was determined that no formal action had been taken at that time to use that particular sample form.

Council Member List discussed her preference in selecting the least complicated and least convoluted form; and noted her concerns with the evaluation process.

Discussion was held regarding whether or not to use 'personal observations', statistics, the personal interaction of the Town Manager with the staff, and/or an anonymous '360° review' of the Town Manager by Town Department Managers in preparing the Town Manager's evaluation.

Finance Director Wicks explained that she had looked for best practices for evaluation of town/city managers over the past few months, and noted the most involved evaluation forms included 'goal setting' prior to the evaluation. She agreed with the suggestion by Council Member List, and that a quantitative evaluation should be completed after the Council '*set the bar*'.

Mayor Kiker explained there were two things the Council was attempting to accomplish: 1) to give a proper evaluation; and 2) to generate a certain type of behavior. He discussed how the Council needed to inform the Town Manager before the evaluation what they expected of him; how they could 'weight' aspects of the evaluation; and how they could include qualitative and quantitative elements.

Council Member Mandel referred to *Town Manager Performance Evaluation #2*, and discussed his belief on the importance of #3 and to rank that item 20-25%, and the rest should be equal in weight.

Council Member Kosinski suggested dropping #7 and #8 on the subject evaluation form.

Discussion ensued regarding the use of the subject evaluation form; whether or not to include statistics in the evaluation form; whether or not to give higher weights to #8 and #9 on the subject form and divide the remaining items; or leave the weights equal on each item and include comments in the narrative evaluation; and asking the Finance Director for information that was ratable in the evaluation form.

Consensus was that Council would review the form Council Member Mandel referred to as *Town Manager Performance Evaluation #2*, make changes they would like to suggest, and then Council would discuss and select a format for the evaluation form.

Finance Director explained that during the process Council needed to determine what the totals meant (i.e. a range for 'excellent').

Mayor Kiker asked if the Town Manager wanted to offer the quantitative data for which he would be held accountable.

Town Manager Stewart responded in the affirmative.

Finance Director Wicks offered to modify the subject evaluation form and then forward it to Council with boxes for each question, and then they could each rate them in order to determine what the Council wanted.

Discussion was held regarding qualitative and quantitative measures.

Mayor Kiker recapped that they would use the subject evaluation form as a boilerplate; the Town Manager and Finance Director would offer quantitative information for Council to follow; and the Finance Director would offer characteristics of what the ratings would represent.

Council Member List asked the Finance Director to give '*plus or minus budget on the line*' as it pertained to fiscal management.

Finance Director Wicks explained that she would find a '*balance*' regarding fiscal items because there could be factors which staff had no control over for a variety of reasons.

Town Manager Stewart reported that staff had some analysis on customer service surveys, and they were working on it, and Council would be receiving that information on a routine basis. He discussed why he would like to see the Council complete his performance evaluation and have parameters set.

Discussion continued regarding the possible elements to use in the evaluation form.

Recess at 10:33 a.m. – Reconvened at 10:45 a.m.

V. REVIEW OF SPECIAL EVENT ORDINANCE

Public Works Director Lewis addressed the proposed changes to the Fee Schedule which she deemed to be reasonable and had specific points. She noted in the current ordinance that churches were excluded from obtaining a special events permit; and now staff had modified the ordinance so that they were required to obtain a permit if the event was not on the church property. She noted that if there was an organizer other than the church utilizing church property that they would be required to file for a permit and be responsible for the fees. Also, if a church had an event off of their property, the same requirements would be in place. She explained there were provisions in the proposed ordinance for non-profit organizations to have the ability of having certain fees waived as approved by the Council and the Town Manager.

Town Manager Stewart cautioned Council that many of the special events held in the Town tag themselves along with a non-profit organization. He explained staff was noting in the ordinance that the event had to be organized by the non-profit and not just that they were receiving money from the organizers of the event.

Town Attorney Miller noted that the proposed ordinance contained the requirement for the Council to annually appropriate an amount of funding to be used for the fee waivers; and that there was a provision added that the Town Manager would have the authority to waive a permit fee if the non-for-profit group provided in-kind services to the Town that were equal to the amount of the fee.

Public Works Director Lewis reviewed the provision regarding budget requests. She reported they be re-inserting language for the standard annual budget request for other organizers that were not necessarily non-profit (i.e. fireworks, Sand Bash by the Chamber of Commerce). She noted that there was now language that if when the budget allocations could be rolled forward into the next year if they were not utilized. She discussed how if there was a consistent event (i.e. same people, same location, same duration, week after week, etc.), there was now a provision that would accommodate it which was brought forward by the Times Square group (i.e. Sunset Celebration).

Town Attorney Miller reviewed Section 22-7(b) in the proposed ordinance:

- "*Each event must be held at the same location at the same time of day and in accordance with the same site plan; all dates for the recurring event must be listed on the original application; each individual event must be of the same genre with similar anticipated attendance; and a recurring special event can occur no more often than weekly and for no more than one (1) year on a single application*".

Town Manager Stewart introduced Jeff Richard in attendance, who was the person who prepared the information on special events that the Town Manager forwards to the Council.

Town Attorney Miller reviewed language that was included in the proposed ordinance that was not in the previous ordinance:

- Section 22-7(a) "*the proposed activity must be compatible with the surrounding land uses, provided; however, that no special event permits shall be issued for events in areas zoned for single-family residential use*";
- Language addressing if it was property immediately adjacent to residential use then the applicant would have to give notice to the surrounding area within 500 feet;

Town Manager Stewart asked how the new language might impact the Town with respect to the Mound House property.

Town Attorney Miller stated the Town was exempt from permit fees under Section 22-5; however, if there was an event at the Mound House the new language requiring notification to the neighbors would apply.

Council Member Mandel asked if the new language for notification to the neighbors would apply to the Holiday Inn as it pertained to the condominiums.

Town Attorney Miller responded in the affirmative.

Public Works Director Lewis explained the notice would be sent to the condominium association and not each individual owner.

Town Manager Stewart reviewed "Exhibit A", Special Events Schedule of Fees.

Discussion was held concerning the proposed fees for the permit application according to the number of days before the event; how it would impact inexperienced and experienced event organizers; and how event permits pulled at the last minute impact the Town.

Mayor Kiker recounted his experience as it related to the views of special event organizers as it pertained to special event permit fees. He expressed his displeasure with the fee adjusted by the number of days before an event for submission when it involved other agencies in order to obtain a special event permit (i.e. Fire Department and LCSO).

Council Member List discussed her views on the fairness proposed fee schedule. She questioned if a permit would be needed for a fund raiser for a person in need due to illness that would be held in a restaurant.

Public Works Director Lewis explained that fund raisers in a business normally would be considered as part of the operation of the business; however, if the business wanted to extend the operation of their business for example into the parking lot, then it would require a permit. She noted that there was a definition for a "complete application" which did include the LCSO and the Fire Department.

Council Member List stated she agreed with the Mayor's comments and did not like to see a person's fee based upon what another agency was doing.

Public Works Director Lewis reported that events held on the beach needed approval from the State and that took a long time to obtain. She explained that an application would be considered complete if the applicant demonstrated they had made the application to the State.

Discussion was held regarding application requirements; and using proof of letters submitted instead of letters of approval from the Fire Department and LCSO (Section 22-8(b)(12)).

Vice Mayor Raymond asked if the ordinance was approved, could letters be mailed to all past event organizers to inform them of the changes.

Public Works Director Lewis reported that it was staff's intention to review the special event permit files and mail the new information to the organizers.

Mayor Kiker suggested the Town Manager discuss the length of time for the Fire Department's approval process with the Fire Department.

VI. LIEN REDUCTION PROCESS--

Town Manager Stewart referenced when staff brought this ordinance forward previously, Council was not comfortable with it, as the process was too complex and the amount of time and how much of a percentage to knock off was a concern. Being brought forward today is an ordinance from the City of Sanford, Florida which is similar to the Town's draft, but without the complexity.

Some of the important elements of this ordinance: it requires that when fines or penalties are levied and the lien is completely satisfied, the Town Manager has the authority to sign off without having to wait to bring it to Council. The proposed ordinance defines eight criteria to be considered in order for an applicant to seek a reduction.

The individual must, under oath, swear that the reason the reduction is being requested is true; currently, no such requirement is in place. The applicant must submit a one hundred dollar fee a the time of the application to cover the processing cost.

The Town Manager checks with Code Enforcement to ensure the violation has been corrected. No reduction can come unless the violation is corrected before any consideration is given. If the fine and lien are in place, they cannot come in after the fact.

If Town Council has previously provided a reduction in the lien amount, they cannot request a reduction.

If the Town Manager feels the conditions have not been met, the Town Manager can out-right deny the application; the appeal process will then be before the Town Council.

Section H of the Sanford ordinance sets in place what the Town Manager should take in to account to make the recommendation on the amount of the reduction. This section outlines the criteria.

Discussion ensued about whether the Town's legal expenses would be recoverable, and the wording that may or may not be used to identify that. Attorney Miller offered the wording that the Town can recoup all of its costs in processing the lien. She also offered that the Council has the final authority and can deny the complete request. Town Manager Stewart added that violation liens are secondary to other liens.

The discussion then turned to what notification the Town provides to the violator after the initial notice of lien. Town Manager Stewart indicated that he has put in place a process by which the Town will notify the party no less than once a year; after the initial notice, the party is then notified again after six months, so that in the first year, they receive two notifications, and then annually after that. Notification is sent return receipt requested.

Discussion then continued that the intent is to get violations corrected, and a reasonable fine has been imposed.

The Town Council agreed that the ordinance should contain a provision that if the Council granted a reduction, the fine must be paid within 30 days, or the fine amount reverts back to the original.

VII. ADJOURNMENT

Meeting adjourned at 12:12 PM

Adopted 5-21-12 With/~~Without~~ changes. Motion by Kasenski/Mandel

Vote: 4-0 Ust excused

Michelle D. Mayher, Town Clerk

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