



MINUTES

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

MINUTES

March 15, 2010

9:00 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 9:07 a.m. Present with Mayor Kiker was Vice Mayor Acken, Council members Babcock, List and Raymond along with Town Manager Terry Stewart, Town Attorney Anne Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

Invocation was led by Deacon Scoop Kiesel from the Church of the Ascension

III. PLEDGE OF ALLEGIANCE

All present stood to recite the Pledge of Allegiance

PRESENTATION – Friends of the Mound House

Carrie Hill, President of the Friends of the Mound House acknowledged out going Councilman Herb Acken for supporting the Mound House and serving the beach during his time as Vice Mayor as well as congratulating Larry Kiker and Alan Mandel for winning the two Council seats. Miss Hill then presented the Town with a check for \$10,000 from the Friends of the Mound House to be used for the underground exhibit room at the Mound House. Miss Hill noted that in the last 6 months the Friends of the Mound House had contributed \$20,000 to the Mound House restoration.

Councilmember Babcock requested the members of the Friends of the Mound House to please stand and be recognized for their contributions.

Mayor Kiker asked exiting Vice Mayor Acken to speak.

Vice Mayor Acken thanked all who supported him during his time on Council specifically noting Don Massucco, Anita Cerecita and Dan Hughes.

Town Clerk Michelle Mayher read a proclamation honoring exiting Vice Mayor Herb Acken. Mayor Kiker then presented Mr. Acken with a key to the Town.

IV. RESOLUTIONS

A. Resolution 10-11, Certification of Election Results

Town Manager Terry Stewart read the certifying election results indicating 847 votes for Alan Mandel, 795 votes for Larry Kiker and 539 votes for Joseph Kosiniski.

MOTION: Vice Mayor Acken moved for approval with a second by Councilmember List.

VOTE: Motion passed 5 to 0

Mr. Acken left the dais.

V. INAUGURATION

A. Recognition of out-going Council Members

B. Oath of Office in-coming Council Members

Town Attorney Dalton administered the oath of office to Alan Mandel who was accompanied by his wife Carla.

Town Attorney Dalton administered the oath of office to Larry Kiker who was accompanied by his wife Paula.

C. Reorganization of Council

1) Selection of Mayor, Vice Mayor

Attorney Dalton opened nominations for Mayor.

Councilmember Raymond nominated Larry Kiker for Mayor with no other nominations being made.

MOTION: Councilmember Raymond made a motion for Larry Kiker to continue as Mayor with a second by Councilmember List.

VOTE: Motion passed unanimously

Attorney Dalton opened nominations for Vice Mayor.

Councilmember List nominated Councilmember Raymond.

MOTION: Councilmember List moved to elect Bob Raymond as Vice Mayor with a second by Councilmember Babcock.

VOTE: Motion passed unanimously

VI. PUBLIC COMMENT

Public Comment Opened

▪ **Dan Andre** owner of the Mango Street Inn spoke to Council regarding issues he was having with a nuisance neighbor residing across the street from their Inn. The individual was continually intoxicated and yelling nonsense. Mr. Andre stated there had been 54 recorded sheriff's visits, 6 arrests and numerous fines and the problem still continues. It was noted by Mr. Andre that he has had to refund monies to guests and had experienced cancellations after his guests witnessed episodes from the neighbor. Mr. Andre asked the Council for their help and to enforce ordinance 96-24-Section 10.

▪ **Lewis Marone** representing the Laguna Shores Homeowners Association indicated the homeowners of Laguna Shores were concerned about the filling in of areas, which had occurred since the dredging, making it difficult for boats to gain access to the Gulf.

▪ **Steven Roberts** brought it to the attention of Council that the seawall along the Mosquito Control Property and another 50 feet along Lazy Way were up for sale to whom ever would like to buy it for access to waterfront, asking Council to look into it.

Public Comment Closed

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember Babcock recognized Herb Acken for his work on Council. Councilmember Babcock also stated that on March 30th the Little Estero Critical Wildlife Area would be staked out.

Vice Mayor Raymond acknowledged Herb Acken and his consistency in working for his constituents.

Councilmember List voiced her thoughts on serving with Mr. Acken.

Councilmember Mandel congratulated Mr. Acken for always doing what he thought was the right thing, indicating he looked forward to working with Council.

Mayor Kiker recognized Joe Kosinski for running for Council and then presented exiting Vice Mayor Acken with 'The Worst Case Scenario Survival Game'.

Mayor Kiker then acknowledged the Lions Club for great achievements for the Shrimp Parade and Festival as well as the Queen's Pageant

Cathie Lewis was then acknowledged as there was a problem with the permit for the parade with the state and county with her making sure all issues were addressed and remedied.

Mayor Kiker then reminded all about the St. Patrick's Day Parade.

VIII. CONSENT AGENDA

- A. Approval of Minutes: February 16, 2010
- B. Approval of Minutes: February 24, 2010 M & P Worksession
- C. WCIND Grant Applications
- D. Florida Humanities Grant Agreement
- E. Special Event Permit Application – Cruisers' Appreciation Day
- F. Special Event Permit Application - Third Annual Kingfish Shoot-out

MOTION: Councilmember Listed moved for approval of Consent Agenda with a second by Councilmember Babcock.

VOTE: Motion passed 5 to 0

IX. PUBLIC HEARING

- A. 1st Public Hearing Ordinance 09-08 Amendment to LDC, LPA Membership

Mayor Kiker opened the hearing at 10:10 a.m.

Town Manager Stewart indicated Ordinance 09-08 was an amendment to the LDC, LPA membership requirements.

Town Attorney Dalton read the Ordinance: **ORDINANCE 09-08 AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY, AMENDMENTS TO SECTIONS 34.113 AND 34.114, DIVISION 3 LOCAL PLANNING AGENCY, ARTICLE II ZONING PROCEDURES, WHICH ARE TITLED, RESPECTIVELY, "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS", AND "MEMBERS TERMS AND VACANCIES", PROVIDING FOR CHANGE IN DATE OF APPLICATION FOR LPA MEMBERSHIP, CHANGE IN THE DATE OF APPOINTMENT TO THE LPA AND CHANGE IN THE TERMS OF LPA MEMBERS; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.**

Community Development Director Frank Shockey stated Council had discussed changing the advisory committee ordinances to allow for members to serve on multiple committees with Council approval, including the LPA. Since

requirements for LPA members are located in the LDC certain formalities needed to be observed when amending requirements for LPA members which followed on the policies Council had already taken on other committee membership ordinances. The LPA had held a hearing and recommended approval by a vote of 6 to 1 on December 15, 2009.

Public Comment Opened
No Public Comment
Public Comment Closed

Joann Shamp, representative from the LPA indicated the LPA did adopt Resolution 2009-26 on December 15, 2009 by a vote of 5 to 1 in support of Town Council's policy direction.

MOTION: Councilmember Babcock made a motion to move forward ordinance 09-08 to the final hearing on April 5 at 9 a.m. with a second by Vice Mayor Raymond.

VOTE: Motion passed 5 to 1

Hearing concluded.

X. ADVISORY COMMITTEES ITEMS AND REPORTS

• **Jim Rodwell** addressed Council regarding the Beach Leadership Conference, indicating with the assistance of the Town the dates would be May 12, 15 and 19 stating the schedule was nearly complete and would be dispersed to Council the following week.

XI. ADMINISTRATIVE AGENDA

A. Appointment to Advisory Committee(s)

Town Manager Stewart indicated there was one applicant requesting to serve on both the Anchorage Advisory Committee and the LPA and asked Council to determine if they wished to have the applicant serve on one or both committees.

Attorney Dalton stated until the ordinance passed allowing for an individual to serve on two committees he would not be permitted to be placed on both committees.

Councilmember Babcock indicated he would appoint the applicant to the Anchorage Advisory Committee and then advertise to fill the two positions on the LPA.

Mayor Kiker indicated he knew the applicant and felt he would make an outstanding LPA member with Vice Mayor Raymond stating he too knew the applicant Mr. Kakatsch and wanted to see the seats filled on the LPA.

Councilmember Babcock questioned the fact that Mr. Kakatsch did not live on the beach, stating he would like to see people who live on the island occupy the seats on the LPA.

Councilmember List indicated she did not know Mr. Kakatsch but would vote him in on the recommendation of the Mayor and Vice Mayor; however, made it known that she has been uncomfortable with the process of putting people on the committees since she never had an opportunity to meet them.

MOTION: Vice Mayor Raymond made a motion to accept Mr. Kakatsch on the LPA with a second by Councilmember Mandel.

VOTE: Motion passed 5 to 0

Town Manager Stewart asked for confirmation that Council wished to advertise for the opening on the Anchorage Advisory Committee as well as the new opening on the LPA with a response in the affirmative.

B. Selection of Council Representative & Alternate to Outside Committees

Discussion was held regarding the committees, topics covered, and prior participation of Town Council members. Each Council member stated their preferences for participation and agreed upon committee participation.

MOTION: Councilmember List moved for the following assignments as Council representatives with a second by Councilmember Babcock.

- 1) Charlotte Harbor National Estuary Program – **Mandel, Babcock**
- 2) Coastal Advisory Committee – **Mandel, Babcock**
- 3) Horizon Council – **List, Mandel**
- 4) Human Services Council – **List, Raymond**
- 5) Metropolitan Planning Organization – **Raymond, Kiker**
- 6) Southwest Florida Regional Planning Council – **Babcock, Kiker**

VOTE: Motion passed 5 to 0

Council then began discussion as to their associations with the Towns Advisory Committees.

MOTION: Councilmember List made a motion to approve the following Council members as liaisons to the Town's Advisory Committees with a second by Vice Mayor Raymond.

Anchorage Advisory Committee – **Larry Kiker**
LPA – **All Council members**

CRAB - **Raymond**
MRTF - **Babcock**
CELCAB - **Mandel**
Bay Oaks – **List**

VOTE: Motion passed 5 to 0

XII. PUBLIC COMMENT
Public Comment Opened
No Public Comment
Public Comment Closed

XIII. TOWN MANAGER'S ITEMS

Town Manager Stewart commented that it was his first Shrimp Festival Parade and was impressed with the event as well as the community participation.

Mr. Stewart then addressed the sign in front of Town Hall which indicated the site was available but was unable to provide Council with any additional information at the present time; however he did indicate that the Town lease would expire in July with staff being in the process of dealing with the property managers to determine what the course of action would be on the extension of the lease.

The seaweed issues experienced on the island were brought up by Town Manager Stewart with him stating he had had a meeting with John Albion from the Chamber. It was noted that Mr. Albion had ideas of how to go about handling the problem. Mr. Stewart indicated staff had modified how they would be notifying the public of the events and had put together a media release each time an event occurred with the amounts, the types and whether or not it was toxic and whether it could be raked. Mr. Stewart also indicated staff was amassing a data base of emails so the information could be emailed out to the businesses and interested parties on the island.

Mr. Stewart then addressed the hippo slide in the Times Square area, noting the code enforcement officer found that the individual was operating two other events there, one being a gyro chair and a battle box which were not authorized. The owner was given an order to cease and desist and had come to Town Hall with a request that that he administratively be given permission to operate those until the end of the season. Mr. Stewart indicated he had taken a look at the special exception that had been given to him finding that no others were authorized and decided not to issue a permit to operate until the end of the season. Mr. Stewart then asked Council if they had any further direction for him regarding the matter.

Councilmember List stated she was happy that Council had issued the special exception to the slide and felt the owner ran a clean business, indicating she

would like an opportunity to see what else he wanted to run until the end of season, although noting she understood some residents feared the area taking on a carnival atmosphere.

Vice Mayor Raymond indicated he had talked to the Town Manager and the owner of the events and felt it offered something good for the kids to do, and was a positive contribution to the Town.

Councilmember Babcock asked if the special exception had a date on it, with Attorney Dalton indicating it ran as long as the property owner allowed.

Councilmember Mandel felt Mr. Stewart had followed the direction of Council.

Mayor Kiker agreed stating Mr. Stewart had done his job.

Mr. Stewart stated he took action by looking at the special exception and indicating he did not have enough clarity on the issue. Mr. Stewart noted he could give a special permit for the remainder of the season however, would require the applicant to come back next season to make a request again.

Mr. Stewart then addressed the chimney at Newton Park, stating at some point there was a decision made when demolishing the structure to allow the chimney and fireplace to remain. Mr. Stewart indicated the demolition cost a little over \$3,000 over what it would have cost without retaining the fireplace and chimney and the shoring up of the fireplace and chimney was an additional cost of roughly \$3,500, so before any repairs to the fireplace was made the cost was approximately \$7,000. The estimates received to save the fireplace was running \$20,000 to \$27,000 with the cost being approximately \$15,000 if you cut the chimney down to half it's height. Mr. Stewart stated the property was in the midst of a landscaping phase and the work was being held up because there was no decision made as to what to do with the chimney. Mr. Stewart felt the overall cost was too great with the value not being there to keep the chimney.

Mayor Kiker asked if after spending the \$35,000 to \$40,000 on the fireplace and chimney if that included anything else that would be done around it with Mr. Stewart indicating no, it did not.

Vice Mayor Raymond indicated he would like to lose the chimney but keep the fireplace. Mr. Stewart then noted that it would be approximately \$20,000 to keep the fireplace. Again Mr. Stewart indicated he did not see the value in keeping the fireplace.

Vice Mayor Raymond felt the fireplace was a unique structure, noting he didn't even care if it worked, that it could be filled in with cement, but he was concerned about the chimney, with the fear it could fall and hurt someone.

Councilmember List asked if there was anyone in Chambers that could speak to

the value of the fireplace. Theresa Schober gave a brief background of the structure as well as the method of securing the fireplace which increased the costs.

Discussion continued on the different paths to take regarding the fireplace and chimney along with the costs and whether anyone would be interested in taking it. Councilmember Babcock indicated he could not justify keeping it. Mayor Kiker then questioned the area surrounding the fireplace and the additional monies required to bring the landscaping up to the fireplace.

Mayor Kiker indicated he wanted to have a look at the current status of projects at the at the Newton Property. Mayor Kiker stated he wanted to see the fireplace removed and the park completed for the use of the people.

Town Manager Stewart gave his reasons for bringing the issue before Council since the dollar amount for retaining the fireplace was above his limit for making final decisions.

Mayor Kiker polled Council for their choices:

Councilmember Babcock – Remove the fireplace and move forward

Vice Mayor Raymond – Keep the fireplace

Councilmember List – Keep the fireplace

Councilmember Mandel – Remove the fireplace

Mayor Kiker – Remove the fireplace

Council gave Town Manager Stewart direction to make calls to the county and the local historic cottage to see if they would be interested in the fireplace and if not to demolish and dispose of it so the project could move forward.

XIV. TOWN ATTORNEY'S ITEMS

Attorney Dalton reminded Council that next session which would be April 5th, there would be an 8 a.m. Executive Session in the matter of SWFL Beach Bay Inc., and 151 Old San Carlos LLC vs. Town of Fort Myers Beach and John Richard as Trustee for the John W. Richard Irrevocable Trust, Circuit Court Case 10-CA-484 with the Executive Session being held as the limited exception to the Sunshine Law which was permitted for the purposes of active litigation involving litigation strategy and other similar items.

Attorney Dalton then advised Council that Bob Janes was the liaison to the Human Services Council of which Attorney Dalton was the co-chair and to advise the Town and Council that there would be a public ceremony honoring the life of Commissioner Janes March 22nd, at 4 pm at the Harbor Side Event Center in downtown Fort Myers.

XV. COUNCILMEMBERS' ITEMS AND REPORTS

Councilmember Babcock thanked staff for the press release regarding the algae on the beach and indicated his desire to put together a release of information on the air traffic over the beach.

Vice Mayor Raymond thanked Cathie Lewis, Public Works Director for saving the Shrimp Festival due to permit issues.

Councilmember List thanked Town Manager Stewart for the reporting process he had initiated.

Mayor Kiker referenced his dealings regarding Seafarer's Mall indicating Lee County had agreed to pay for an appraisal of the property which would include the information of who owns the property and the disposition of the property. Mayor Kiker stated there were a few local business people who had volunteered their time to assist with discussions regarding the property. Mayor Kiker also asked Council for their permission to do a press release with Lee County, with Council agreeing to the request.

XVI. AGENDA MANAGEMENT

Councilmember Babcock questioned the dates for the Leadership Conference to be held by CRAB as one of the dates would conflict with an M & P Meeting.

Mayor Kiker suggested a meeting for Council efficiencies, scheduling and operation.

XVII. RECAP OF ACTION ITEMS

- Publish a notification for individuals to the boards
- Take Action for a temporary permit for the hippo slide operator
- Demolition of fireplace at the Newton Property
- Organized Town representation for the Bob Janes' Memorial

XVIII. ADJOURNMENT

MOTION: Councilmember List moved to adjourn the meeting with a second by Councilmember Babcock

VOTE: Motion passed 5 to 0

Meeting adjourned at 12:23pm

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Michelle D. Mayher, Town Clerk

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