



MINUTES

Monday, August 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 August 6, 2012 Regular Meeting of the Town Council at 9:02 a.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, List, and Mandel. Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

II. INVOCATION – Michelle Mayher, Town Clerk

III. PLEDGE OF ALLEGIANCE

Town Manager Stewart reviewed some of the improvements and work completed during Council's hiatus such as but not limited to a new wall in the Council Chambers, and soon to be installed new carpeting, and forthcoming new chairs for the audience and Council.

IV. APPROVAL OF FINAL AGENDA

Consensus approved the Agenda as presented.

V. PUBLIC COMMENT

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

Public Comment opened.

No speakers.

Public Comment closed.

VI. IMAGE OF FORT MYERS BEACH

Council Member Kosinski reported that Junkanoo's was hosting the "Keep the Spirit of '45 Alive" on August 12, 2012 beginning at 6:00 p.m.; and he invited the public to attend the event to honor World War II veterans.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Mandel congratulated NASA on the successful landing on Mars; and he congratulated Mayor Kiker for the endorsement he received pertaining to the office he was running for in Lee County.

Council Member List noted the Town Manager's daughter, Veronica, had been selected to go to Tallahassee and participate in government activities.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Barbara Hill, Chair of CELCAB, noted that Tropical Storm Debby visited Fort Myers Beach in June bringing strong winds and unusually high tides. She reported the Mound House's underground exhibit was damaged due to severe flooding; and that Town staff had contacted Dr. Snapp at FGCU to evaluate the damage. She stated that Dr. Snapp found six areas of concern and described three of the six: 1) mold growing on the soil; 2) shell walls of the exhibit were impacted by the water and were under-mind, as well as the concrete floor; and 3) the shell mounds of the exhibit were nearly vertical with little dirt to hold the shells in place. She reported that Dr. Snapp recommended convening a group of professionals to include a structural engineer, an archeologist, a historic preservationist, an architect, and a museum expert to assess the damage and provide recommended solutions for a course of action. She noted CELCAB expressed their concerns regarding the damage to the underground exhibit at their recent meetings and she asked that Council: 1) treat this matter as an emergency situation requiring immediate attention; 2) restore the current damaged areas according to the historic preservation standards; and 3) safeguard the exhibit from future storms on August 12, 2012 through effective and efficient drainage systems and disaster preparedness procedures.

Town Manager Stewart explained that problems occurred from Tropical Storm Debby when the water table rose and created hydro-static pressure in the ground area when the exhibit was located; and that the float on the sump pump had been improperly adjusted when originally installed and failed to operate until there was a substantial amount of water in the exhibit. He added that staff had corrected this problem; and that he instructed staff to determine if they could install a higher capacity sump pump. He reported the Town had already obtained the services of an architectural engineer who would determine the integrity of the walls and if the flooring had been under-mind. He stated the Town would be obtaining the services of a contract archeologist. Town Manager Stewart described the flooring composition/structure and the damage in the exhibit, and how it would be examined and assessed. He explained that staff would be reviewing preventive action such as but not limited to draw-down wells around the excavation to keep the water level at an appropriate level during times of rising water. He

added that the staff was treating the incident as an emergency and the Town had filed with FEMA for some reimbursement for costs for making corrections at the site.

Council Member Mandel stated as Liaison, he attended the CELCAB meetings and had subsequent meetings with the Town Manager on the matter. He explained how the contract archeologist would help to enable the Town to make the appropriate corrections to the site; and that the structural engineer would be able to advise whether the draw-down wells would be viable.

Council Member List questioned anticipated cost.

Town Manager Stewart explained at this point the cost was unknown until the structural engineer assessed the site.

Discussion ensued regarding communication and information available between the Town and CELCAB concerning the Mound House.

Mayor Kiker recognized Ms. Hill.

Ms. Hill stated the information offered by the Town Manager today was new information for CELCAB since their July meeting. She questioned if there was a disaster preparedness plan as it pertained to future storms/hurricanes and protecting the Mound House. She asked about the process to obtain a contract archeologist.

Mayor Kiker requested Ms. Hill and CELCAB, the Town Manager, and Council Liaison meet next week to discuss the Mound House.

IX. APPROVAL OF MINUTES

- A. June 4, 2012 – Town Council Meeting
- B. June 4, 2012 – Town Council Work Session
- C. June 18, 2012 – Town Council Meeting
- D. June 18, 2012 – Town Council Work Session

MOTION: Council Member List moved to approve the minutes as presented; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

X. CONSENT AGENDA

- A. Proclamation: Lee County Coalition for a Drug-Free Southwest Florida “National Recovery Month”
- B. Emergency Replacement of Video Broadcast Equipment

Authorize the completed emergency purchase and installation of the Tricaster TC-450-Extreme HD production and recording platform, software, and accompanying accessories.

MOTION: Council Member List moved to approve Consent Agenda Item A and B; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

XI. PUBLIC HEARINGS

A. REZ2011-001 Paine/Purtell Rezoning

Mayor Kiker opened the hearing at 9: 30 a.m.

Mayor Kiker asked if any Council Member had ex-parte communication regarding this item. Council Member Kosinski – yes, approximately two years ago he was asked by the owner to issue an engineering report on the subject property unrelated to the current issue; Vice Mayor Raymond – site visits and spoke with applicant; Council Member List – yes, spoke with one of the owners several times during the past four years and email from owner this past June which was sent to Council; Council Member Mandel – yes, site visit at the owner’s request; Mayor Kiker – yes, over the years he has had conversations with the owner but not on the current issue.

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

Ms. Alexis Crespo of Waldrop Engineering representing the applicant, Messrs. Paine and Purtell, and noted Mr. Paine was present. She presented comments for REZ2011-0001 – Paine/Purtell Rezoning for a rezoning request of Residential Conservation to Downtown for the 0.33+/- subject site to reinstate commercial uses that were previously approved on the property under the Lee County C-1 zoning district which was in place until 2004 when the Beach adopted their own zoning maps. She noted the applicants were able to obtain a Future Land Use Map Amendment in 2010 for the subject property to Pedestrian-Commercial; and that the subject property was currently located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan. She displayed an aerial location map of the subject property and discussed the frontage along the arterial roadway, and proximity to the Old Sand Carlos Boulevard, Estero Boulevard, and Times Square, pedestrian-commercial designation. She used a PowerPoint presentation to review the existing condition of the property; the history of the property which included zoned C-1 per Lee County prior to the Town’s incorporation; designation in the urban Community Future Land Use; rezoning to Residential Conservation per 2004 Fort Myers Beach Zoning Map, and Mixed Residential Future Land Use. She reviewed the existing uses of the surrounding properties; the subject property as it appeared on the Town of Fort Myers Beach Future Land Use Map (FLUM), and the land use designation for surrounding properties; and the existing zoning designation for the subject property and surrounding properties along the Lagoon Street area. She displayed on an aerial photograph how the subject property was the only property fronting on Estero Boulevard within the Lagoon Street block that did not have commercial use at the present time; and reviewed the slides that depicted the types of existing businesses and uses, residential properties, and

vacant lots that surrounded or were nearby the subject property. She explained the applicant was seeking a conventional rezoning request, therefore, there was no Master Concept Plan or Schedule of Uses included in the agenda packet and the applicant would comply with all of the regulations in the Town's Land Development Code for that specific zoning district. Ms. Crespo reviewed the rezoning request which included 1) implementation of the 2010 Pedestrian Commercial FLUM change; 2) reinstatement of commercial property rights; 3) the subject property was similar to the former C-1 zoning; 4) the request allowed for both office and retail; 5) how the request was a logical extension of the Downtown District; 6) the request would comply with Downtown District design regulations when developed; 7) the request would adhere to commercial design standards to ensure quality development; 8) the request would help to bring back some of the commercial and mixed-uses in the area after the demolition of the Seafarer's; 9) the rezoning would encourage pedestrian-oriented mixed-use development. Ms. Crespo noted the area of the town where the subject property was located had sufficient infrastructure to handle the rezoning and the applicant had acquired the appropriate letters to support the request of availability based on maximum attainable density (1.4 FAR) and letters from Beach Water, sanitary sewer from Lee County Utility Department. She stated the applicant requested a TIS waiver that was approved by the Community Development Director; and discussed how the subject property was 1) 'grandfathered' for higher density than permitted in the Downtown District and there was no risk of increased density upon approval of the rezoning request; 2) the subject site as a 'once a park destination'; 3) transit facilities at Lynn Hall; 4) bike/pedestrian facilities on Estero Boulevard; and 5) and that a TIS would be a requirement of a Development Order process. Ms. Crespo reviewed the rezoning request as it pertained to compatibility with the surrounding properties, and compliance with the Comprehensive Plan (Policies 4-B-6, 4-A-1, 4-A-3, 4-C-3). She noted the Staff Report indicated the request was consistent with the Town's Growth Management Plan, that it implemented the 2010 Future Land Use Map Change to Pedestrian-Commercial, approved the TIS Waiver, and recommended approval of the rezoning. She restated highlights of her presentation in her conclusion; pointed out the LPA recommended approval; and requested the Town Council approve the rezoning request.

Zoning Coordinator Chapman presented comments for REZ2011-0001 – Paine/Purtell Rezoning on behalf of the Town of Fort Myers Beach. She explained that the applicant's representative gave a thorough presentation, and that she would review highlights of the staff's recommendation. She noted the subject property was located within a six parcel loop that was enclosed by Estero Boulevard and Lagoon Street; and that rezoning the property to Downtown would shift the balance of land uses within the loop from a majority of residential parcels to a majority of commercial parcels. She reviewed considerations with respect to compatibility with surrounding properties and pointed out that the property owners had no immediate intention to develop the subject site. She explained that if the owner wanted to change the uses of the property they would not be required to come back before the LPA or Town Council for additional approvals; however, the development orders, building permits, and impact fees may be required for any land use change on the parcels or existing structures. Zoning Coordinator Chapman reviewed staff's concern for the two remaining residential parcels which would not be adequately buffered. She continued with a review of the access onto Estero Boulevard and the applicant's request for a TIS waiver until the time of development which the staff approved. She stated approval of the request would give the applicant the most intensive land use and zoning because the property was located at the western edge of the future land use category; and reviewed aspects of a conventional zoning and a commercial planned development, and how the small size of the subject parcel would limit future redevelopment on the site. It was noted that conventional zoning requests do

not allow for conditions of approval; therefore, staff could not recommend requirements above and beyond those set forth in the Downtown zoning district regulations. Staff remained concerned about adequate buffering between the residential parcels and this could be considered intrusion into an established residential neighborhood; and that the traffic issue would be discussed at the time of development. She added that the request would be a reasonable request for consistency between the future land use and zoning that was a reasonable motive to request a rezoning; therefore, staff recommended approval of the request. She reported the request was heard by the LPA on June 12, 2012 at which time there was a 5-1 vote for recommendation of approval.

Mayor Kiker asked if there was a representative from the LPA.

LPA representative was not present.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member Kosinski discussed how the Town had rezoned certain properties in 2004, and how it had impacted the property owners.

Discussion ensued regarding the logic of the zoning request; and it was noted that no correspondence or comments were received from surrounding property owners to the subject site.

MOTION: Council Member List moved to approve the rezoning the request to rezone 821 and 831 Estero Boulevard from Residential Conservation (RC) to Downtown Zoning District and the Town Council approves the request to rezone the subject property to the Downtown zoning district for the Paine/Purtell Rezoning per Resolution 12-12 and all Findings and Conclusions 1-9 have been approved; second by Vice Mayor Raymond.

VOTE: Motion approved, 5-0.

Mayor Kiker closed the Public Hearing at 10:00 a.m.

B. VAR2011-0006 Pierview Hotel & Suites Sign Variance

Mayor Kiker opened the hearing at 10:01 a.m.

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

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

Josh Overmyer, Planning Coordinator for the Town of Fort Myers Beach, reported the applicant was not in attendance and presented the request for the Pierview Hotel Sign Variance, FMBVAR2011-0006. He displayed and described slides depicting the location of the subject property and the surrounding properties. He reviewed the three variances requested:

- Variance from LDC Sec. 30-154(c) sign height maximum of 5' to permit the existing monument sign to be raised to 8' in height
- Variance from LDC Sec. 30-154(b) requirement of a 3' setback from any public right-of-way or roadway easement for a monument sign to permit the existing sign to be setback 12 inches from the right-of-way
- Variance from LDC Sec. 30-154(c) requirement that the bottom of elevated monument signs can be no more than 18 inches above the highest adjacent grade to permit the existing monument sign to be elevated 48 inches above the highest adjacent grade

He displayed photographs of the existing sign and the previous sign by the Ramada Inn in 2000; and noted the existence of the above-ground public and private utility poles (i.e. cable box) on-site obstruct the sign. He discussed the supporting regulations Section 30-154(b) (location); Section 30-154(c) (height); Section 34-87; Section 34-87(3)(a); Section 34-87(3)(b); Section 34-87(3)(c); Section 34-87(3)(d); Section 34-87(3)(e); and discussed staff's findings such as but not limited to the existence of exceptional or extraordinary conditions or circumstances that were inherent to the property in question, the variance was the minimum variance that would allow relief, and how granting the variance would not be injurious to the surrounding neighborhood and adjacent properties. He reported the applicant's requested variances were reasonable, given the location of the adjacent building to the north, and the above-ground public and private utilities at the sign location. He reported staff and the LPA (vote of 5-1) both recommended approval of the applicant's requested variances for overall sign height of 8', for the sign pedestal height of 48", and to decrease the setback from Estero Boulevard right-of-way to 1'. He added that on the day of the public hearing at the LPA meeting for the variance request he had received a letter from Mr. Ganim who owned 1240 Estero Boulevard stating he opposed the granting of all three variances.

Mayor Kiker asked if there was a representative from the LPA.

LPA representative was not present.

Public Comment opened.

No speakers.

Public Comment closed.

Mayor Kiker noted the location of the utilities on both sides of the subject sign and questioned if there was a possibility that the utilities would be removed/relocated when Estero Boulevard improvements were completed at a later date.

Discussion was held concerning if the utilities may or may not be relocated when future Estero Boulevard improvements occurred.

Mayor Kiker questioned if the approval could be conditioned based upon relocation/removal of utility obstacles in the future.

Town Attorney Miller stated the approval could be conditioned upon the existing utilities remaining 'as is', and if there were changes to the cable box and/or standpipe, the variance would expire which would make the property owner come back to the Town.

Vice Mayor Raymond noted how cooperative the property owner had been with conforming to the Town's new sign regulations.

MOTION: Council Member Kosinski moved to approve the applicant's request for three variances from Section 30-153(b) and Section 30-154(c) of the LDC, with any approval subject to the following conditions:

1. The sign must be set back a minimum of 1 foot from the Estero Boulevard right-of-way.
2. The sign pedestal must be a maximum of 4 feet in height, so as to allow the sign to be seen over the above-ground utilities on-site.
3. The maximum sign height is 8 feet, as measured from the adjacent grade or crown of the road;
4. and if the existing utilities shall change, the variance would expire and seek realignment to the requirements of the sign ordinance.

Mayor Kiker suggested an amendment to the motion that if the variance expired and the realignment was necessary, the Town would waive the associated fees with the change according to the sign ordinance.

AMENDMENT: Motion maker agreed to include Mayor Kiker's suggested fee waiver if the variance expired due to a potential future change in the utilities.

Town Manager Stewart requested more specificity regarding future utility changes (i.e. cable box and fire connections).

Town Attorney Miller suggested tying the variance to 'as shown' on an exhibit, and she would tie it to the utilities depicted. She explained the fourth condition could be "*should be the existing utility shown on the attached exhibit 'D' change in location the variance expires and any reapplication fee for a variance would be waived*".

AMENDMENT: Motion maker amended the amendment to include the recommended language by the Town Attorney: "*should be the existing utility shown on the attached exhibit 'D' change in location the variance expires and any reapplication fee for a variance would be waived*".

MOTION: Motion maker continued the motion to include the Findings and Conclusions:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance to protect public safety by not obstructing access to the public utilities and fire protection facilities.
- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Second by Vice Mayor Raymond.

VOTE: Motion approved, 5-0.

Mayor Kiker closed the Public Hearing at 10:16 a.m.

C. DCI2012-0002 CVS Pharmacy CPD Amendment

Mayor Kiker opened the hearing at 10:17 a.m.

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

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

Mr. Burt Saunders of the Gray Robinson Law Firm, representing the applicant, noted the local Store Manager, Ed Cooney, was present to answer questions if needed. He mentioned that the CVS store had been under the impression it could operate from 7:00 a.m. to midnight and had done so for the past eight years; however, a disgruntled employee had reported the error in hours of operation to the Town. He pointed out the CVS Pharmacy began operation of the store in 2004 which was formerly operated by Eckerd Drugs who had operated under the 7:00 a.m. to midnight schedule and CVS continued to do so; however, the notification to the Town regarding the hours of operation was made by a disgruntled employee and not a nearby resident. He requested Council approve the request to allow CVS to operate from 7:00 a.m. to midnight.

Town Manager Stewart confirmed that he had received an anonymous letter from a CVS employee concerning the hours of operation.

Mr. Overmyer displayed a zoning map of the subject property located in Santini Plaza; and indicated the location of the subject property and surrounding properties. He described the subject property location on the zoning map and on the Future Land Use Map. He stated the applicant was requesting to amend

Condition #2 of Resolution FMB 97-35, restriction on hours of operation from 8:00 a.m. to 9:00 p.m., to allow CVS to operate from 7:00 a.m. to midnight. He reviewed the property details which was formerly operated by Eckerd Drugs, CVS began operation at the site in 2004, the property was currently zoned Commercial Planned Development, and the Future Land Use was Pedestrian-Commercial. He stated that staff and the LPA both recommended approval of the requested expansion of hours of operation since the hours had been in place since August 2004 with no complaints from neighboring property owners; and the expanded hours would allow additional hours of service to residents and visitors which would keep vehicular trips on the island.

Mayor Kiker asked if there was a representative from the LPA.

LPA representative was not present.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member Kosinski moved to approve the applicant's request for an amendment to the existing CPD, formerly known as Eckerd's, to allow hours of operation to continue from 7:00 AM to 12:00 Midnight and Findings and Conclusions Items 1 through 10 all being marked as favorable for approval; second by Council Member List.

VOTE: Motion approved, 5-0.

Mayor Kiker closed the Public Hearing at 10:25 a.m.

Recess at 10:25 a.m. – Reconvened at 10:45 a.m.

XII. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 12-06 Public Safety Committee, Repealing Ordinances 98-02 and Ordinance 04-19

AN ORDINANCE REPEALING CHAPTER 2, ARTICLE IV, DIVISIONS 7 AND 10 OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, "PUBLIC SAFETY TASK FORCE" AND "TRAFFIC MITIGATION AGENCY;" AND ESTABLISHING A NEW CHAPTER 2, ARTICLE IV, DIVISION 7 TO BE ENTITLED "PUBLIC SAFETY COMMITTEE;" PROVIDING FOR CREATION OF THE COMMITTEE; PURPOSE AND SCOPE; COMPOSITION, APPOINTMENT PROCEDURE AND TERM OF OFFICE; AND FORFEITURE OF OFFICE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Town Clerk Mayher read the title of Ordinance 12-05:

Town Manager Stewart relayed the community's strong concern about safety for traffic, pedestrians, and bicyclists along Estero Boulevard; and also noted the Council's great concern on this matter and their desire to reinstate the Public Safety Committee which would be accomplished by Ordinance 12-05.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Motion by Council Member List moved to approve the Introduction of Ordinance 12-05, establishing a Public Safety Committee and setting the first and final Public Hearing date for August 20, 2012 at 6:30 p.m.; second by Council Member Mandel.

VOTE: Motion approved, 5-0.

B. Approval of Estero Boulevard Interlocal Agreement with Lee County

Town Attorney Miller reported she previously forwarded to Council a draft ordinance and recently added one revision to Section 4 (Consideration of Alternate Design) since that time. She explained the revision addressed if the Town decided to hire its own professional transportation or engineering consultant that the County would agree to consider any recommendations or modifications in design that the consultant might provide. She described how the agreement provided that the Town would coordinate with the County since the Town would be replacing some of the utilities, and contained language for a dispute resolution process. She stated that if approved, she would forward the agreement to the County.

Public Comment opened.

No speakers.

Public Comment closed.

Town Attorney Miller noted there were some slight changes to the agreement she made in accordance with discussions with Public Works Director Lewis.

Public Works Director Lewis reviewed the changes made as noted by Town Attorney Miller:

- Section 4, she did not want the Town to be limited to hiring a consultant for just the area at Matanzas Bridge and Times Square; she preferred it encompass anywhere in the project area.
- Section 3, language associated with the Town being required to provide to the County the utility relocation and construction drawings; she asked the Town Attorney to make the language a little broader.

Mayor Kiker asked who should sign off on the agreement first.

Town Attorney Miller stated the Town should sign the agreement and then forward it to the County.

MOTION: Motion by Council Member Kosinski moved to approve the Estero Boulevard Interlocal Agreement and forward to Lee County for their consideration with the aforementioned revisions; second by Council Member List.

VOTE: Motion approved, 5-0.

XIV. PUBLIC COMMENT

Public Comment opened.

Ceel Spuhler reported that the reconstruction at the Mound House was occurring and that the site had the integrity of a 1921 home. She recounted that at the July 26th meeting of CELCAB, with the help of Bill Grace, he put together the application that would enable the Mound House to be on the National Register of homes. She explained that once the application is approved in Tallahassee, it would come back here, and it would enable the Town to apply to Washington.

Town Manager Stewart explained the application to Tallahassee would be required to come before the Council for approval and the Town would serve as the applicant.

Discussion was held regarding contacting a person who had an authentic Calusa kayak.

Public Comment closed.

XV. TOWN MANAGER'S ITEMS

A. Mound House Update

Town Manager Stewart stated he provided copies of an update on various Mound House projects, and asked if there were any questions regarding the list. He noted since the underground exhibit was discussed earlier in the meeting, so he would not review it further at this time. He mentioned that there was a projected date to install the mural included in the update, however, it would be postponed until there was better information about the mold, etc. He reported the Town had Andy Moss, who was a member of the Florida Humanities Council Board of Directors, visited and toured the complete underground exhibit, landscaping, etc. to see how the work was coming along. He commended Ms. Spuhler for the excellent tour she gave to Mr. Moss and himself. He stated Mr. Moss was very excited about the visit and tour and was pleased with the site.

Vice Mayor Raymond asked for confirmation that the anticipated completion date for the observation deck was April 2013.

Town Manager Stewart reported the construction permits were not quite complete.

Public Works Director Lewis stated she was in the process of placing the contract with the consultant to develop and finalize the construction plans and get them out for bid. She anticipated a 4-5 month construction period. She noted the project could not go out for bid until there was a set of construction drawings.

Mayor Kiker asked if all the materials for construction would be delivered from the water-side.

Public Works Director Lewis explained her belief that it would not be necessary to close the Mound House completely; there might be sections closed while construction occurred; and that some deliveries would be via water, but most would be land-side.

B. Cost of Animal Control Services

Town Manager Stewart noted the memorandum he provided Council concerning a problem with the cost of Animal Control Services. He reviewed how the County charged each municipality it provided services based upon a 'full cost allocation'; however, the method was not extended to revenues (i.e. grants for spaying/neutering). He stated he has been working with the County administration to resolve the matter which has so far been unsuccessful. He requested the Town Council forward a letter to the BOCC that identified the issue and ask for their attention to the matter and ask the County staff to work together with the Town on this matter. He also asked that the Town Council send letters to the other municipalities asking them to join the County with this issue.

Consensus was to authorize the Town Manager to create the letters requested on behalf of the Town with the Mayor's signature.

Council Member List noted the Town staff had researched many of the Town agreements during the past few years and successfully renegotiated many of them and save the Town money in doing so.

C. Discussion Regarding the Selection of Members of Advisory Committees and Boards

Town Manager Stewart pointed out that Town Clerk Mayher sent information to the Council regarding the terms for members on the Town's various boards and committees, as well as vacancies, which would need to be addressed in the coming months.

Town Clerk Mayher reported she had contacted the advisory board members that had terms expiring in October; and the advisory board members were asked to submit a letter through the Town Clerk to the Council on or before September 1st to seek re-appointment.

Discussion was held concerning re-appointments and vacancies on the advisory boards; and consensus was to have an advertisement placed in both Town newspapers notifying the public of the advisory board openings.

D. Transportation Engineering Consultants

Town Manager Stewart reported there was a major development happening across the bay called 'Ebb Tide' and the Town had been asked to provide their thoughts and ideas. He stated that staff had taken a look at their Transportation Impact Study (TIS) and felt that the study did not adequately address how the project would impact Fort Myers Beach; therefore, the Town retained the services of a traffic engineer to review the study in order to provide the Council with factual information.

Community Development Director Fluegel reported that the TIS stated that "only 20%" of the trips would be coming towards the Beach, and the rest would go towards Fort Myers.

Town Manager Stewart the traffic engineer services would also be used for the improvements to Estero Boulevard. He noted that at the present time the services of the traffic engineer fell within his signing authority; however, if in the future it was determined that the services exceeded the amount of his signing authority, he would bring the matter back to Council for review.

Vice Mayor Raymond voiced his concerns regarding the trips associated with the 'Ebb Tide' project and how it would impact the Beach. He requested a copy of the TIS to review.

Town Manager Stewart reported the Town had placed the County on notice that the Town was acquiring the traffic engineer consultant, and the County was moving very quickly towards approval of the subject project. He pointed out that the Town was not trying to stop the 'Ebb Tide' or any other project rather they just wanted to make sure that as they develop the necessary actions were taken to mitigate the impact to the Beach.

Vice Mayor Raymond discussed how he believed it was important to plan and consider impact to the Beach well in advance (i.e. 10, 15, 20 years).

Council Member List thanked Council Member Kosinski for the copy of the drawings for the development at Seafarer's. She mentioned there was a study done years ago with drawings that showed various street/traffic designs, and indicated she would like to have someone find the drawings for her review.

Town Manager Stewart reported staff was already proceeding with Council Member List's request.

Council Member Mandel pointed out there were both sides to the equation as it pertained to the impact to people coming on and off the Beach regarding the 'Ebb Tide' project. He asked if the Town had rights to make sure the Town's issues were addressed before the project moved forward.

Community Development Director Fluegel reported that since the Council's last meeting in June, staff had issued a Request for Qualifications for a land use consultant to help study Seafarer's, downtown, and to work with the traffic consultant.

Mayor Kiker recounted how when he first became Mayor there was a meeting with the County that resulted in an interlocal agreement regarding notification and communication between the County and the municipalities on things such as developments that would impact a community. He suggested the

Town Attorney write a letter to the County informing them of the subject interlocal and that the Town wanted to be kept informed and offer input.

Town Manager Stewart reported the Town was in receipt of a letter from the Director of Community Development for Lee County that stated they were reviewing the subject interlocal agreement and determining whether or not they want to let it expire.

Discussion ensued regarding the subject interlocal agreement; and Mayor Kiker asked the Town Attorney and Community Development Director to investigate the matter and report back to the Council at the next meeting.

Town Attorney Miller recounted the issues years ago with the Midpoint Bridge construction and the opposition by Fort Myers; and she noted that Fort Myers Beach would not be without potential remedies.

Town Manager Stewart stated that on the Work Session Agenda this afternoon there was the Seafarer's appraisals which came to the Town during Council's hiatus; and they were currently locked in the Town Clerk's office. He stated that he had not seen the appraisals for the four pieces of property, nor had the Finance Director. He suggested that he make an individual appointment with each Council Member to review the appraisals and then they could determine the next time they all met whether or not they wanted to keep the appraisals confidential.

Town Attorney Miller concurred with the Town Manager; she noted at this point the appraisals were confidential; and from a legal standpoint it was acceptable that each view them individually with him.

Consensus was to cancel this afternoon's Work Session meeting; schedule the individual meetings with the Town Manager; and place the item on the next Regular Meeting.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Miller reported she received the formal opinion from the Ethics Commission on the COP Task Force in which it was deemed there was not a voting conflict for the two members who were employed at alcohol establishments on the beach; and the Commission declined to issue an opinion on the 2500 Estero Boulevard property (FEMA regulations and the higher based elevation requirements). She explained that the Town did extend 2500 Estero Boulevard's permit subject to them complying with the FEMA requirements and under that State legislation the maximum length of the extension was four years, which meant the permit expired in September if they did not commence construction.

Town Manager Stewart explained his belief that if the property owner proceeded with a court action, that the Town should definitely pursue it.

Discussion was held regarding FEMA, flood insurance protection, and events that occurred in Mississippi regarding flood insurance.

Town Clerk Mayher reminded the Town Manager about scheduling a Budget Work Session with Town Council.

Town Manager Stewart reported there were two budget meetings scheduled in September, and asked if the Council wanted to consider an additional work session. He noted the Property Appraiser informed the Town that they would see an approximate property value reduction of 1.73%; and that the communication services tax projection increased.

Discussion ensued regarding an August date for a budget work session; consensus was that the Town Clerk would schedule the budget work session.

XVII. COUNCILMEMBER ITEMS AND REPORTS

Council Member Kosinski – no items or reports.

Vice Mayor Raymond – no items or reports.

Council Member List – reported she and the Beach Elementary School Principal were getting ready for another year of Fifth Grade Council and she would ask the Town Council to participate in a joint meeting with the school. She gave a brief update on the artwork project to be placed around the Seafarer's property, and explained that a local artist was preparing to go forward working with the local students and it was anticipated that the art would be installed after Labor Day.

Council Member Mandel – reported he attended a conference several months ago on beach preservation and renourishment; and noted there would be another conference in Naples on September 26-28, 2012, and one held in Jacksonville in February 2013. He added that hotel accommodations would not be required for either conference; and he requested Council's approval to attend the conferences.

Consensus was to approve that Council Member Mandel attend both conferences as requested.

Council Member Mandel reported he was approached by some residents of the Island who asked him questions regarding taxes and millage rates as it pertained to the campaign for a Lee County Commission seat. He discussed the historical data regarding taxes and millage rates for the Town.

Discussion was ensued regarding the millage rate formula, ad valorem taxes, the statutory definition of tax increase, and the Town's ability to maintain their budget within 1%.

Mayor Kiker – reported there was great attendance and representation from the County and business and private sectors at the Public Safety Task Force; the Task Force had requested a meeting with Florida Power and Light to discuss a lighting situation; the group reviewed signage issues along Estero Boulevard; and how the Task Force had set a goal of October 15th for implementation. He stated that Lee County had approved expenditures for three lighting crosswalks in the County and one would be in Fort Myers Beach. He announced the next meeting of the Public Safety Task Force would be held tomorrow, August 7th. He added that the Task Force would make a presentation to Council in the near

future, and they would probably request some funding for marketing/public education. He reminded everyone that August 14th was an election day for everyone, regardless of party affiliation.

XVIII. AGENDA MANGEMENT

Consensus was to cancel this afternoon's Work Session.

Town Manager Stewart reported there was an items scheduled for the August 20th meeting (Agenda Management List Item #14).

Discussion ensued regarding the Agenda Management List; and consensus was to allow the Mayor and Town Manager to adjust the scheduled list if necessary.

XIX. RECAP OF ACTION ITEMS

Town Manager Stewart recapped the Action Items added during the meeting:

- Town Manager Stewart and Council Member Mandel to meet with the Chair of CELCAB to review what staff was working on regarding the Mound House; and to keep CELCAB fully in the loop of what was happening at the Mound House
- Proclamation for the Lee County Coalition for a Drug-Free Southwest Florida "National Recovery Month" would be forwarded to the Coalition
- Staff would notify the applicants for the rezoning, variance, and CPD amendment requests accordingly
- Staff would bring to Council on August 20th the final hearing on Ordinance 12-05
- Staff would forward the Estero Boulevard Interlocal Agreement to the County
- Staff would prepare the letters to the County Commission and neighboring municipalities regarding Animal Control Services

Motion by Council Member List, seconded Vice Mayor Raymond to adjourn. Meeting adjourned at 12:07 p.m.

Adopted 9-4-12 With/Without changes. Motion by Kosinski/List

Vote: 5-0



Michelle D. Mayher, Town Clerk

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