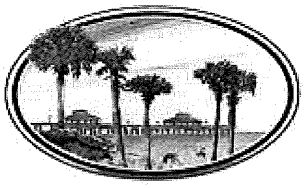

MINUTES

Monday, September 4, 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 September 4, 2012 Regular Meeting of the Town Council at 5:40 p.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 – Rev. Jeanne Davis, Beach United Methodist Church

III. PLEDGE OF ALLEGIANCE

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.

Catherine Wallace, resident, thanked the Town for holding the 'Spirit of '45' ceremony and event, and for commemorating the members of the armed forces both past and present.

Public Comment closed.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Mandel thanked the Town Manager and staff for expeditiously cleaning up the beach after Tropical Storm Isaac in time for the Labor Day Weekend. He noted that at a recent visit to the grocery store he was informed by the cashier that their first six customers that day consisted of three people from Europe and three from the other side of the State.

Vice Mayor Raymond complimented the staff for being well prepared for Tropical Storm Isaac.

Council Member Kosinski presented a Certificate of Appreciation from the organizers of the 'Spirit of '45' event to Mayor Kiker and the Town of Fort Myers Beach.

VII. IMAGE OF FORT MYERS BEACH

Town Manager Stewart asked Environmental Scientist Laakkonen to brief the Council on how Tropical Storm Isaac impacted the Town.

Keith Laakkonen, Environmental Scientist for the Town of Fort Myers Beach, noted that the Town did not experience as much impact from Tropical Storm Isaac as they had from Tropical Storm Debby. He reported on TS Isaac as followed:

- Surge was higher but not as much wave energy with TS Isaac;
- Some impact to the critical wildlife area;
- Closed off some of the inlet by Leonardo Arms;
- Impact to sea turtles from both tropical storms, lost 44 of 65 nests
- University of South Florida conducted beach profiles both before and after TS Debby/Isaac and the Town does have copies of the pre- and post-storm profiles as it pertained to erosion

He reported the Army Corps of Engineers intended to place the dredged sand from the Matanzas Pass in the near-shore area. He stated the Town had discussed with the Army Corps about the possibility of moving the sand further south off-shore.

Town Manager Stewart added that in regard to the conversations with the Army Corps of Engineers about the dredged sand, the Corps indicated that placing the dredged sand near Newton Park would be out of the permit area; therefore, the permit would need to be amended, and it could add some additional cost to the project. He noted that if the Army Corps was unable to absorb the additional cost, staff would inform the Council of that cost.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

No advisory committee speakers.

Council Member Mandel reported that he and Town Manager Stewart met with Barbara Hill, Chair of CELCAB, and discussed all the areas of concern she had mentioned at the August 6th Council Meeting.

IX. APPROVAL OF MINUTES

A. August 6, 2012 Town Council Meeting

MOTION: Council Member Kosinski moved to approve the minutes of August 6, 2012 as presented; second by Council Member List.

VOTE: Motion approved, 5-0.

X. CONSENT AGENDA

A. Authorization to Award Contract to GAI Consultants for the Water Rate Study
A request to authorize the Town Manager to enter into a Service Provider Agreement with GAI Consultants of Orlando, Florida to develop a Water Utility Rate Study; cost not-to-exceed $74,500.

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

VOTE: Motion approved, 5-0.

XI. ADMINISTRATIVE AGENDA

A. Lee County Bulk Water Rate
A request to authorize staff to move forward with the preparation of the petition for a rate adjustment to reflect the increase to the wholesale water rate that will be charged by Lee County.

Town Manager Stewart explained that the County informed the Town that they would be adjusting their water rates again this year, and similar to last year, the County had not properly notified the Town of the proposed increase with sufficient notice. He pointed out the increase was to the cost of bulk water for the Town.

Public Comment was opened.

No speakers.

Council Member Mandel discussed his concern that the Town should inform the residents and condominiums of the proposed increase from the County as soon as possible and of any potential impact from the Rate Study for their budgeting purposes.

Public Comment closed.

MOTION: Council Member Mandel moved to authorize staff to move forward with the preparation of the petition for a rate adjustment to reflect the increase to the wholesale water rate that will be charged by Lee County; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

B. Introduction of Ordinance 12-07, Amendment of Chapter 10, LDC, Vacation of Plats

Town Clerk Mayer read the title of Ordinance 12-07:
AN ORDINANCE AMENDING CHAPTER 10, ARTICLE II, DIVISION 5, SUBDIVISION II OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "VACATIONS;" AMENDING THE TITLE TO "VACATION OF PLATTED RIGHTS-OF-WAY AND EASEMENTS; AMENDING SECTION 10-218, PURPOSE AND INTENT, BY CHANGING THE WORDING TO REFLECT THE CHANGE IN TITLE; AMENDING SECTION 10-219, BY REVISING THE REQUIREMENTS FOR PETITIONS TO VACATE PLATTED RIGHTS-OF-WAY AND EASEMENTS; AMENDING SECTION 10-220, "PROCEDURE" BY REVISING THE PROCEDURE TO OBTAIN A VACATION OF A PLATTED RIGHT-OF-WAY OR EASEMENT, REVISING THE CRITERIA TO BE CONSIDERED FOR A PETITION TO VACATE, PROVIDING FOR THE RECORDING OF A RESOLUTION VACATING A PLATTED RIGHT-OF-WAY OR EASEMENT, AND PROVIDING FOR RESERVATION, IN CERTAIN INSTANCES, OF A UTILITY EASEMENT OVER A VACATED RIGHT-OF-WAY; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Miller reviewed attempts to apply for a vacation of plat and how the process in the Land Development Codes (LDC) was cumbersome. She noted that a platted right-of-way or easement was not owned by the Town, rather the Town held that in trust for the public. She added that there was no provision for recording of the resolution because recording the resolution would be picked-up by the Property Appraiser. She stated she attempted to streamline the process and meet the requirements of Chapter 177.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member Kosinski moved to introduce Ordinance 12-07, Vacation of Plats and set a Public Hearing date for September 17, 2012; second by Council Member Mandel.

Town Attorney Miller requested the date be changed to October 1, 2012.

AMENDMENT: Motion maker changed the date from ~~September 17, 2012~~ to October 1, 2012. Second agreed.

VOTE: Motion approved, 5-0.

XII. PUBLIC HEARINGS

A. Final Public Hearing, Ordinance 12-03, Amendment to the LDC for Consumption on Premises in the EC Zone

Mayor Kiker opened the Public Hearing at 6:00 p.m.

Town Clerk Mayher read the title of the Ordinance:
AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONNG DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BENEVERAGES" AS PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES", AMENDING SECTION 34-1261, DEFINITIONS: AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart noted this was the fifth meeting and the third Public Hearing on Ordinance 12-03, and briefly reviewed the background of COP. He recapped the public input received on the matter, staff's extensive work, the work completed by the COP Task Force, and the great deal of discussion and work of the Town Council. He asked if Council would prefer for the staff to make their presentation on the COP first.

Community Development Director Fluegel gave an overview of the staff's report on *COP in EC Zoning District* and a summary of the ordinance as proposed with revision made after Council's input at the August 20, 2012 Work Session. He reported and reviewed the amendments from the Work Session were as follows:

1. Establish side setback standards for area of service
2. Establish maximum area standards
3. Add DCD ability to require Special Exception
4. Prohibit dispensing of alcohol in glass or aluminum containers
5. Establish signage requirement for area of service
6. Establish no additional COP outside of Downtown

He stated staff recommended on Page 13, Subsection 2(a), Administrative Approval, that the date highlighted in red ~~September 4, 2012~~ be changed to March 4, 2012.

Town Manager Stewart pointed out that the revisions outlined by Director Fluegel were not all encompassing of the proposed ordinance rather they were the recommendations that grew out of the last Work Session. He noted that the Work Session on August 20, 2012 afforded the public to visit the sample COP sites on the beach, and an opportunity to offer public comment during the meeting; however, no public comment was given at the meeting. He discussed questions that had arisen concerning hours of service as it related to 'one hour after sunset' in relation to longer daylight hours in the summer months and the potential impact to sea turtle nests. He stressed that ordinances related to the sea turtle nests would prevail.

Mayor Kiker asked if the proposed ordinance included language that indicated the protection of the sea turtle nests as it related to hours of service and sunset.

Town Manager Stewart responded in the negative, and stated Council could include language that described the ordinance regarding sea turtles took precedence.

Town Attorney Miller explained the Council could add Subsection 9 – "the property shall comply with all requirements contained in Chapter 14 of the Land Development Code".

Vice Mayor Raymond questioned the proposed expansion size as depicted at two of the sites visited by the Council.

Community Development Director Fluegel explained that based on Council's input at the last Work Session staff put in the standard as a base of a maximum of 2,500 for the first linear feet fronting on the Gulf and for each additional foot thereafter was an additional 10 square feet.

Mayor Kiker reviewed highlights of the Work Session on August 20, 2012 and the various sites they visited where dimensions, as recommended by staff and the COP Task Force, were marked off with green and red indicators.

Community Development Director Fluegel explained that the proposed measurement was a little different from the red and green marked areas; however, it would be closer to the red marked area.

Vice Mayor Raymond noted his preference for a measurement to be closer to the green marked area (the smaller of the two areas).

Council Member List stated she would ask some questions on behalf of her constituents who had contacted her over the past few weeks. She questioned why the Town did not place in the ordinance language for a leasing agreement by the businesses to use the space.

Town Manager Stewart explained that the businesses would be operating on their own property on which they paid property taxes.

Town Attorney Miller noted on Page 11, "Standard Conditions of Approval", "*the area of expansion of licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premise.*"

Discussion ensued regarding the proposed ordinance as it related to the proposed expansion on the limited area of private property.

Council Member List noted that there were many people who visited the beach and brought with them coolers filled with bottles/cans of alcohol which was not related to the proposed ordinance. She discussed her hope was that as a result of the ordinance there would be more concern and effort by the stakeholders to curtail disorderly conduct, beautify the beach, and control litter.

Council Member Mandel thanked the Community Development Director for changing the date. He addressed Page 12, #6, and asked if they needed to include "amplified music" or did 'entertainment' cover it.

Town Attorney Miller stated they could include "amplified music"; however, this was already required to go for a special exception or a special permit.

Council Member Mandel requested the wording be added; and noted that there was only one site out of the 16 that could have entertainment. He discussed the original proposed dimensions for the COP, and dimensions for a resort.

Mayor Kiker asked if there was any member from the Local Planning Agency who wished to comment.

No representative from LPA was present.

Public Comment opened.

Tracey Gore, resident, stated she was in opposition to the COP and offered reasons why she believed the matter should be tabled. She discussed an email she forwarded to Council regarding her belief that there was a conflict for the Town Attorney's firm. She also noted her belief that the Public Hearing should be held at a later date because she felt many residents who opposed the ordinance were out-of-town; and the matter should be addressed after the residents elect a Council replacement due to the Mayor's approaching departure. She reported that she had not received responses to her questions regarding the proposed ordinance (i.e. how did the matter start; where were the public meetings held; and which Council Members initiated the proposed ordinance).

Eve Haverfield, resident, recounted her experience with sea turtle monitoring for the past 33 years, and reported that since 1989 Fort Myers Beach had become a model for marine turtle conservation efforts throughout Florida and an ecotourism destination. She asked that the proposed ordinance be consistent with the conservation achievements. She discussed her concern that it was her understanding the expansion COP area extended into nesting habitat; and potential problems with posts that could interfere with the sea turtles. She hoped the Town would continue to require the removal of furniture on the beach in the evening during sea turtle nesting season. She discussed her concern regarding the length of the evening hours of service time during the nesting season and asked the Council to maintain the conservation efforts the Town has made for the sea turtles. She noted her impression that the proposed ordinance was flawed.

Dick McDole, Bonita Springs Building Consultant, offered his impression of the restrictions in the proposed ordinance as it related to the designated areas for COP. He discussed the staff's investigation of the approximate 18 businesses as it pertained to COP; the historical background of the Lani Kai and Top 'O Mast as it related to COP and licensing; and indicated his belief that staff was incorrect about no prior documentation for the Lani Kai as it pertained to COP. He stated he was authorized by Outrigger and Lani Kai Resorts and Top 'O Mast to place on record their intention to continue their legally non-conforming status and not comply or make application for the amendments as proposed which would increase their enforcement and reduce their use from the mean high tide, and as allowed by their deeds of record. He predicted that Code Enforcement would be required to file Notices of Non-Compliance citing the establishments to comply or be fined. He discussed private property rights as it pertained to carry and consume alcohol beverages on their beach.

Kelly Leary, resident, stated she had read a list at the two previous Public Hearings and would not read them again, and remained in opposition to the proposed ordinance. She explained how long it took for plastics and styrofoam to photo-degrade. She asked that the Council not move forward with the proposed ordinance.

Gary Ciniello stated that in addition to Nemo's on the beach, the same owners operated bowling centers from Collier County through Charlotte County. He added that they were responsible owners and were only looking for a level playing field so they could operate their business in a similar fashion as their competitors.

Cam Marstellar, Pinscher's Crab Shack at the Holiday Inn on Fort Myers Beach, noted they were not part of the Downtown area. He stated they were licensed and explained where they were permitted to serve on their property. He added that they were responsible owners that had many of customers who came to their business to have dinner or events such as weddings and wanted to be able to sit on the beach and have a drink. He reported they would not be encroaching on any wildlife on the beach and there would be plenty of room for people to pass around their property.

Jason Camp discussed the basis for his support of the proposed ordinance. He stated that the businesses were reputable and responsible which created a responsible professional atmosphere. He explained the proposed ordinance would allow them the ability to serve alcohol on their own property on which they pay property taxes. He pointed out examples of responsible businesses that serve on the beach such as but not limited to the Ritz Carlton.

Rob DeGenero, Nervous Nellie's, discussed his belief that the proposed ordinance should not be discussed during this slow time of the year, and that the Council was missing a lot of voters and public comment. He suggested the Council table the proposed ordinance. He stated that he experienced a very busy weekend; that he asked the customers why they came to Fort Myers Beach; and they responded it was for the 'family environment'. He felt the proposed ordinance would turn into an open container issue and there needed to be a way to enforce drinking on the beach. He suggested tabling the matter until the residents were back in a few months.

Dennis Boback, resident, stated he agreed with the comments made by the previous speaker. He asked, if the Town could not enforce the current drinking on the beach, how the proposed ordinance would be enforced. He reported he was a member of the COP Task Force; he attended all the meetings; he suggested the Council look at all the Task Force recommendations; and noted that all the recommendations were unanimously voted on by the Task Force (i.e. the measurement/dimensions recommended by the businesses) and asked the Council take that into consideration.

Tree Andre, resident, expressed her belief that with the exception of one business there was a great effort by the other businesses to control the alcohol coming out of the businesses onto the beach. She discussed controlling consumption; and the importance of protecting the sea turtles, and monitoring and cleaning up the trash.

Public Comment closed.

Council Member Mandel discussed his belief that the Town had incorporated what the COP Task Force had recommended. He noted that prior to Public Comment that the Council pointed out that the laws pertaining to the sea turtles and their nests did prevail over the proposed ordinance and added language to emphasis that fact. He commented on his understanding that Ordinance 12-03 provided clear rules up and down the beach that the businesses could understand; it provided the opportunity for people to walk along the shoreline; and he pointed out that he did want to include language about not allowing amplification of entertainment in that area and that the Council would be tackling noise as a separate issue in another ordinance. He added that he would agree to 1,500 square feet and the proposed date change.

Council Member List noted the request to add a Subsection 9 to indicate the overriding Chapter 14 of the LDC as it pertained to the sea turtles; and suggested changing the evening time to 9:00 p.m. so the hours of service would not change from season to season.

Town Attorney Miller pointed out that changing the hours of service to end at 9:00 p.m. would allow COP on the beach in the dark in the winter months.

Council Member List reviewed her concerns pertaining to the need for strong enforcement on and off the beach; and felt that there could be more enforcement by the business owners with patrons and drinking as a result of the proposed ordinance.

Town Attorney Miller reported there were provisions within the ordinance that provided for a person or entity to be granted COP who violated any of the requirements that their entire license could be revoked, and the matter would come before Town Council.

Town Manager Stewart added that patrons who leave an establishment with an open container would be dealt with the same way it was handled now. He reviewed that State statutes leave the burden of controlling someone leaving a premise with an open container upon the owner of the business, and that it was the responsibility of the Sheriff's Office if they see someone with an open container or in areas where they should not be to handle that situation. He recounted his conversations with the Sheriff's Office regarding the proposed ordinance and informed them that the Town was <u>not</u> allowing 'open containers'.

Council Member List concurred with Council Member Mandel regarding amplified entertainment, and questioned the loud 'piped' music (i.e. radio).

Mayor Kiker asked to discuss Council Member List's concern at a later time during the Council input session regarding the proposed ordinance. He requested advisement from the Town Attorney regarding the conflict mentioned by Ms. Gore pertaining to the Town Attorney's firm.

Town Attorney Miller explained there was no conflict of interest and noted that the section noted by Ms. Gore with respect to conflict of interest only applied to public officers and employees, and that she and her firm were independent contractors (State Statute Chapter 112). She reviewed the types of conflicts that could be waived and could not be waived per statute. She added that since she provided legal

advice pursuant to a retainer (not hourly) and that she only gave advice and was not voting or advocating there was no conflict.

Mayor Kiker addressed the comments regarding the 'timing of the hearing' and explained that the Town could not wait until February/March to deal with Town issues because nothing would get done. He noted that this was the third Public Hearing which did begin in season, and that it had lasted this long due to a legal challenge which was forwarded to the State and it took longer than anticipated to receive an opinion which found there was no conflict.

Town Manager Stewart reviewed the historical and chronological background of how the COP ordinance originated in 2008 as a result of a resolution created by the LPA prior to his tenure. He added that when it was brought before the Town Council, they rejected it and asked him to have staff begin from a new prospective. He addressed Mr. McDole's comment regarding staff's comment about past documentation for the Lani Kai, and stated the comment was incorrect and that was not what staff reported. He noted that staff did report the Lani Kai had a documentation of their prior history.

Mayor Kiker explained it was now up to the Council to determine if they wanted to move forward or not on the matter.

MOTION: Council Member Kosinski moved that the Council proceed with making a motion to adopt Ordinance 12-0; second by Vice Mayor Raymond.

Town Attorney Miller suggested instead of a motion that the Council have consensus or comment whether or not they wanted to move forward with the ordinance.

Motion Maker and second withdrew the motion and second.

Consensus was to proceed with a discussion on proposed Ordinance 12-03.

Recess at 7:10 p.m. – Reconvened 7:25 p.m.

Mayor Kiker addressed Ms. Gore's question regarding how the COP topic started or any subject was started with Town Council; and explained how Agenda Management (which began approximately 4-5 years ago) was included in each Council agenda packet which enabled Council to track all the issues they needed to work on. He reviewed the process Council would follow to continue with their discussion and evaluation of the proposed ordinance.

Vice Mayor Raymond addressed Page 12, #8, that it be changed from ~~2,500 square feet~~ to 1,500 square feet.

Council Member Kosinski disagreed; Council Members Mandel concurred; Council Member List concurred as long as "an additional ten square feet may be added…" remained; and Mayor Kiker suggested it remain at 2,500 square feet.

Discussion ensued regarding the proposed square footage; Council Member Kosinski discussed the basis for his belief that it should be the 2,500 square feet and the additional 10 square feet for each additional foot of frontage on the Gulf.

Town Attorney Miller noted it would be limited because it could not go more than one-third of the distance, so it did not mean that all businesses would get a minimum of 2,500 square feet.

Discussion continued regarding the proposed square footage and how it would affect various sites.

Mayor Kiker asked if it should be "*up to* 2,500 square feet" with the formula of one third as stated by Town Attorney Miller.

Town Attorney Stewart explained that would be applicable to Page 11, Section b, Defined Area.

Vice Mayor Raymond reviewed the basis for his desire to see the square footage be changed from 2,500 to 1, 500.

Mayor Kiker questioned if there was a delineator included in the ordinance as it related to where business was conducted came first in relation to the water line.

Community Development Director Fluegel noted that was the 'one-third' verbiage.

Town Attorney Miller explained a business could go up to 2,500 square feet of area but they could not go any further than one-third of the way from the EC Line down to Mean High Water.

Discussion ensued regarding the provision for the Town Manager to pull back the dimensions when there was an unusual tidal event; the 'one-third, up to 100 feet' measurement; and the right of passage along the water and the minimum or adequate number of feet to allow for public passage.

Council Member Kosinski reported the COP Task Force did review the issue of 'right of passage' at the Diamond Head Resort area, and it was recommended that 50 feet would be adequate at that site and for others along the beach.

Discussion continued regarding 'right of passage' at the 50 feet dimension; the 'up to 100 feet' measurement; differentiators between resorts and restaurants; and the dimensions of the Council Chambers and the Beach Pub and other existing establishments.

Council Member List and Kosinski and Mayor Kiker were in agreement with the language as written on Page 12, #8, and Council Member Mandel and Vice Mayor Raymond were in favor of the smaller measurement of 1,500 square feet.

Council Member Kosinski noted to include the 'right of passage' dimension of 50 feet.

Town Attorney Miller reported that the Gulf Shore Grill had a small area off to the side that would preclude them from expansion since they had only approximately 50 feet from the EC Line to the Mean

High Water Line. She recommended that the 'minimum of 50' feet' for passage language be included on Page 11, Section b, Defined Area, at the end of the first sentence (*and provided further that at least 50 feet remains for the public's right of passage along the beach).*

Consensus agreed with Town Attorney Miller's recommendation.

Vice Mayor Raymond discussed his concerns regarding the sea turtles and recommended language to indicate 'one hour after sunset or 9:00 p.m., whichever comes first'. He also requested that the posts are removable.

Town Attorney Miller suggested to add that language as Paragraph 9 "that all properties shall comply with the requirements contained in Chapter 14 of the LDC" so it would include everything related to the sea turtles such as but not limited to the removal of beach furniture.

Council Member Mandel requested that "Chapter 14 and the sea turtle protection language as stated in the LDC" be included as requested to him by a resident.

Consensus agreed with Vice Mayor Raymond's suggestion and Council Member Mandel's request.

Vice Mayor Raymond questioned which side of vegetation would being the space for a business and used the Diamond Head Resort as an example.

Community Development Director Fluegel reported the business could relocate the vegetation or they could start their calculation on the seaward side of it.

Discussion ensued regarding the vegetation as it related to the dimension calculation; the change of the date to March 2013; and the six month period for the administrative process.

Council Member Mandel requested language to curtail amplified entertainment whether live or recorded; and noted if already given, it could not be changed; and noted the special exception process as it pertained to amplified music.

Town Attorney Miller pointed out Page 12, #6, as it related to entertainment.

Discussion ensued regarding the difference between entertainment and music, and the difference between special exception and special permit.

Mayor Kiker asked if the proposed ordinance addressed mandatory recycling.

Community Development Director Fluegel responded in the negative.

Discussion was held concerning mandatory recycling.

Council Member Kosinski suggested that mandatory recycling be addressed beach-wide and be placed on Agenda Management.

Consensus was to place mandatory recycling on Agenda Management.

Mayor Kiker recounted a problem condominium residents experience when attempting to walk through the Holiday Inn area and onto the beach.

Council Member Kosinski explained a special exception would have to come through the Town (Community Development Department) who would note that the property could not rope off an area as it pertained to the 'right of passage' for the public.

Community Development Director Fluegel noted there were 'minimum access requirements' throughout the Code.

MOTION: Council Member Kosinski moved to adopt Ordinance 12-03, amendment to LDC Section 34-1264 with the provisions stipulated at the Council Meeting

Town Attorney Miller advised that the motion should include that the Council was including the clarifications that were disseminated to Council which were the 'red' items:

- Page 11, b, Defined Area – at the end of the first sentence language would be added "*and provided further that at least 50 feet remains for the public's right of passage along the beach*".
- Page 12, #5, Hours of Service – after the word 'sunset' add "*or 9:00 p.m. whichever is earlier*"
- Add Paragraph 9 - that "*properties shall comply with all sea turtle protection requirements contained in Chapter 14 of the Land Development Code*"
- Page 13, #2, Procedure for Approval of COP in the EC Zoning District – change the September 4, 2012 date (fourth line down) to March 4, 2013
- Page 13 – correct typographical error; second "b" should be "c"

AMENDMENT: Motion Maker amended the motion to include the clarifications as noted by the Town Attorney. Second by Vice Mayor Raymond.

VOTE: Motion approved, 5-0.

Public Hearing closed at 8:10 p.m.

Mayor Kiker thanked Town Manager Stewart and his staff, and Town Attorney Miller for their work during the past 14 months. He also thanked the people who offered input at each meeting, the LPA for their work, and the members of the COP Task Force.

PUBLIC HEARING FY 2013 TENTATIVE MILLAGE AND BUDGET - 6:30 P.M.

B. Resolution 12-13, First Public Hearing to Adopt Tentative Millage for FY 2013
Approve Resolution 12-13 adopting and levying ad valorem taxes within the Town of Fort Myers Beach for the tax year 2013, in the tentative amount of .____ mills ($0._____ per $1,000) and taking other action as authorized in such resolution.

Mayor Kiker opened the Public Hearing at 8:10 p.m.

Town Clerk Mayher read the title of Resolution 12-13:
A RESOLUTION ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE FOR THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA FOR THE FISCAL YEAR 2013; DETERMINING THAT THE PROPOSED OPERATING MILLAGE RATE IS ___% LESS THAN THE ROLLED-BACK RATE; ESTABLISHING THE DATE, TIME, AND PLACE FOR HEARING TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE FOR THE FISCAL YEAR 2013; AND PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart explained that the Florida State Statutes required the Town to have two public hearings to adopt an operating ad valorem millage rate as part of the annual budget process and that this was the first of the two hearings. He noted the millage needed to be adopted prior to the budget. He pointed out that Council held a Work Session a few days ago, asked for some changes, and those changes were reflected in the document submitted to Council.

Finance Director Wicks reported that staff incorporated the changes discussed by Council at the August 30th Work Session. She noted that Council was given a memorandum which indicated the tentative millage set in June was .79 and as a result of the changes the new tentative millage rate was .7687 which reduced the tax levy by 5.61% from the current rate and did not pull any money out of reserves.

Public Comment opened.

No speakers.

Public Comment closed.

Mayor Kiker reported that out of 379 taxing authorities in the State of Florida that the Town ranked number 369 which meant there were only ten other taxing authorities that had a lower tax rate in the State.

MOTION: Vice Mayor Raymond moved to approve Resolution 12-13 adopting and levying ad valorem taxes within the Town of Fort Myers Beach for the tax year 2013, in the tentative amount of .7687 mills ($0.7687 per $1,000) and taking other action as authorized in such resolution; second by Council Member Kosinski.

VOTE: Motion approved, 5-0.

Public Hearing closed at 8:15 p.m.

C. Resolution 12-14, First Public Hearing to Adopt Tentative Budget for FY 2013
Approve Resolution 12-14 adopting the tentative Town operating and capital budget FY 2013, finding that it is consistent with the requirements of the Town Comprehensive Plan, and setting the final budget hearing for September 17, 2012 at 6:30 p.m.

Public Hearing opened at 8:15 p.m.

Town Clerk Mayher read the title of Resolution 12-14:
A RESOLUTION ADOPTING THE TENTATIVE BUDGET FOR THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA FOR FISCAL YEAR 2013; PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart noted the Council's Budget Work Session last week and reported staff had made the appropriate changes to the budget as requested. He pointed out that the budget did not utilize any reserves. He complimented Council on their conservative and frugal approach to the budget. He mentioned that the proposed budget included a 2% raise for the employees who had not had a raise in four years, and he thanked the Council on their behalf.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member Kosinski moved to approve Resolution 12-14 adopting the tentative Town operating and capital budget for FY 2013, finding that it is consistent with the requirements of the Town Comprehensive Plan, and setting the final budget hearing for September 17, 2012 at 6:30 p.m.; second by Council Member List.

VOTE: Motion approved, 5-0.

XIV. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XV. TOWN MANAGER'S ITEMS

A. Mound House Update

Town Manager Stewart noted the Council was forwarded staff's latest update and asked if the Council had any comments or questions.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Miller – no items or reports.

XVII. COUNCILMEMBER ITEMS AND REPORTS

Council Member Mandel – no items or reports.

Council Member List – no items or reports.

Vice Mayor Raymond – reported that he and the Town Manager attended the Florida League of Cities last month; however, they did leave a day early due to the potential visit by Tropical Storm Isaac.

Council Member Kosinski – no items or reports.

Mayor Kiker – no items or reports.

XVIII. AGENDA MANGEMENT

Town Manager Stewart reported they added 'mandatory recycling' for commercial properties to Agenda Management. He noted at the next Council Work Session they would discuss the Town Manager's evaluation, and it should be placed on the Regular Agenda as well.

Discussion was held concerning a presentation by the Public Safety Task Force; and it was decided the Town Clerk would schedule a Work Session for the Public Safety Task Force in preparation of their presentation to Council.

XIX. RECAP OF ACTION ITEMS

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

- Consent Agenda – Rate Study: staff would process and prepare an estimate for the condominiums
- Bulk Water Rate – staff to begin preparation as approved
- Vacation of Plat ordinance shall come before Council on October 1st
- Staff to begin work on the processes as set for in Ordinance 12-03
- Staff to prepare notices to the State authorities regarding the millage

Motion by Council Member Kosinski, seconded Council Member List to adjourn. Meeting adjourned at 8:23 p.m.

Adopted 10-1-12 With/Without changes. Motion by List/Mandel

Vote: 5-0

Michelle D. Mayher, Town Clerk

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