

## MINUTES

**Monday, August 5, 2013**

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

### **I. CALL TO ORDER**

Mayor Mandel called to order the August 5, 2013 Work Session of the Town Council at 2:00 p.m. Present along with Mayor Mandel were: Vice Mayor Kosinski, Council Members Andre, List, and Raymond. Also Present: Town Manager Stewart, Town Attorney Miller, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

### **II. PLEDGE OF ALLEGIANCE**

Mayor Mandel noted that one significant benefit to the Town, as it pertained to the discussion on annexation of Mound Key at the earlier Council Meeting, was that if the Town's current rating with FEMA was 7 then that acquisition would help the Town approach a rating of 5.

Planning Coordinator Overmyer explained how "*open space points are now doubled*" and the annexation of Mound Key would increase the Town's open space; thereby, lowering the rating to a possible 5 which would give a greater discount on flood insurance premiums to property owners.

Discussion ensued concerning a lower FEMA rating and how it would reduce flood insurance premiums for property owners.

### **III. INTERLOCAL AGREEMENT WITH LEE COUNTY FOR ESTERO BOULEVARD IMPROVEMENTS**

Town Attorney Miller reported that previously the Council had approved an Interlocal Agreement (ILA) between the Town and Lee County as it related to the Estero Boulevard Improvement Project; the ILA was forward to the County who in turn had concerns with the Agreement; and that one of the areas of contention had to do with enhancements the Town might request. She stated that she and Public Works

Director Lewis met the County staff who eventually requested revised language for the Agreement. She explained how she offered the County revised language and that the County did modify the new language; however, it seemed to be workable.

Public Works Director Lewis concurred with the Town Attorney.

Town Attorney Miller explained that her modified language included that the County “*would not reasonably withhold consent*” and now Section 6 read the Town could request reasonable changes, alterations or additions as long as it did not “*affect the functionality of Estero Boulevard (including unreasonably increasing the cost of maintaining the roadway)*” then they would consider the request and provide the Town with a written response as to whether the requested change was reasonable and acceptable to the County.

Discussion ensued about the County’s concern regarding maintenance costs for potential changes, alterations or additions by the Town.

Town Manager Stewart pointed out that the Town Attorney outlined two major concerns – long-term maintenance and functionality. He noted that the County Commission had not seen the ILA yet, and concerns that were raised came from the County staff.

Discussion ensued regarding the concerns raised from the County staff.

Mayor Mandel asked the Public Works Director and the Town Manager if they were comfortable with the proposed ILA.

Public Works Director Lewis responded in the affirmative, and noted it appeared to be a ‘workable’ document which allowed for amendment. She added that the document did allow for the Town to move forward with their water improvement projects that would impact Estero Boulevard.

Town Manager Stewart responded in the affirmative, and concurred with the Public Works Director.

Mayor Mandel questioned, if the Seafarer’s site was to be developed and redesigned in a way to impact a logical road design, then how would the ILA deal with that instance.

Public Works Director Lewis noted the subject ILA had the potential for amendment; and that the current project began at Crescent Street and did not involve the area from Crescent Street to the foot of the bridge. However, for future use the subject ILA (as the master document) would be able to cover that as well through an amendment.

Town Attorney Miller noted on Page 4 of the ILA, “*In the event Town retains the services, at its own expense, of a professional consultant to study and provide recommendations to try to alleviate traffic congestion on Estero Boulevard, including, but not limited to, the area of the Matanzas Bridge and Times Square, County agrees to consider those recommendations and may modify the preliminary design, if provided in a timely fashion and in sufficient detail.*”, and noted that the County had made it known they would not tackle that portion of Estero Boulevard until later.

Discussion was held regarding the proposed ILA and the potential for amendments to the document; a future workshop to discuss changes to the Streetscape Master Plan; the appearance of Estero Boulevard and conflicts with design and the Master Plan [right-of-way issues in the core area and the hi-rise section]; and possible modifications to the paved areas on Estero Boulevard.

Town Manager Stewart discussed how Estero Boulevard was a County road and that, 'technically speaking' the County made the decisions concerning the road; however, the County has approached the matter by accepting input and addressing the concerns of the Town's residents and Council.

Vice Mayor Kosinski asked if an alternate plan was produced, would the Public Works Director be made aware.

Public Works Director Lewis responded in the affirmative.

Discussion continued regarding the draft ILA between the Town and Lee County as it related to the Estero Boulevard Improvement Project.

Consensus approved that the proposed ILA be moved forward and presented to Council at a regular meeting.

#### **IV. INTERLOCAL AGREEMENT WITH LEE COUNTY FOR WATER UTILITY IMPROVEMENTS**

Town Manager Stewart reported the Council had selected a provider for the water utility improvements; that staff was in the midst of negotiations with the provider; and that the item would come before Council in September. He noted that the County was aware that the Town was moving forward with the water utility improvements; and how the County agreed to work in conjunction with the Town's water utility improvements as it related to the County's work on the sanitary sewer collection and distribution system improvements. He added that the proposed ILA basically laid out how this cooperative effort would work and the responsible parties.

Town Attorney Miller reported that the Town's contractor would do all of the work (improvements to the Town's water utility system and replace portions of the County's sanitary sewer collection and distribution system), and the County would pay their portion of the work.

Public Works Director Lewis explained that the Town would be providing the project management; the County would participate in the portion of the project associated with their infrastructure; and as a cost savings and convenience to the community that it made sense to do all of the work at the same time. She added that the County was aware that they may be required to relocate their existing facilities due to potential conflicts with either stormwater infrastructure or new water lines; and that the ILA included work that may occur on Estero Boulevard.

Discussion ensued regarding the proposed ILA as it related to the pace of County infrastructure work on Estero Boulevard in conjunction with the Town's work.

Public Works Director Lewis advised that the Town should not begin to replace water lines on Estero Boulevard because it would have the potential to be in conflict once the final design for Estero Boulevard was completed whereby the Town would have to go back and relocate infrastructure.

Discussion ensued concerning the Town's infrastructure on Estero Boulevard; and waiting for the County to complete the final design of Estero Boulevard.

Town Manager Stewart pointed out that the Town's contractor would be doing all of the work – both the Town's water utility improvements and the County's sanitary sewer collection and distribution system with the County paying for their portion of the work.

Council Member Raymond questioned the County's payment for their portion of the project.

Town Attorney Miller noted the proposed ILA covered cost and the deposit of funds by the County with the Town to pay the contractor.

Mayor Mandel recognized Kim Hoskins of Lee County Utilities.

Kim Hoskins, Lee County Utilities, complimented the Town staff on explaining the relationship between the Town and the County, and noted she looked forward to moving the project along.

Council Member Raymond asked if stormwater improvements would be done at the same time as the water utility and sanitary sewer work.

Public Works Director Lewis explained that Phase I Project included a component of stormwater within the Basin Based Program (Carolina Street to Tropical Shores Way) through a Hazard Mitigation Grant. She added that Bay Beach Lane had adequate stormwater within the development; and the Town made some stormwater improvements (post-Hurricane Charley) in Laguna Shores.

Town Manager Stewart noted that the Council had meetings regarding stormwater on the Island, the Stormwater Master Plan, and payment options regarding stormwater improvements. He reported he was obtaining information for Council regarding an assessment methodology.

Vice Mayor Kosinski questioned how the stormwater management would be structured.

Town Manager Stewart explained it would be part of the Public Works Department and more than likely it would be an enterprise fund.

Discussion was held concerning future stormwater work throughout the Island; and the 'flexi-pave' installed on the shoulders on Estero Boulevard.

Public Works Director Lewis pointed out that the proposed ILA would go to the BOCC first.

Town Attorney Miller suggested both proposed ILAs go to the County first and then come back to the Council for approval.

Public Works Director Lewis reported the ILA for Estero Boulevard needed to be approved by the Council prior to the BOCC.

Town Attorney Miller suggested sending both proposed ILAs to the County with a note that the documents were also going forward to the Town Council for approval.

Consensus approved that the proposed ILA be moved forward to the BOCC.

## V. POLICY DISCUSSION ON ELEVATED POOLS INTERPRETATION

Town Manager Stewart requested Council discussion which would lead to policy decisions concerning setbacks for elevated pools and the relevant code sections. He reported the Town Attorney's Office had been fully engaged with Community Development Department staff regarding this matter.

Community Development Director Fluegel offered a PowerPoint presentation entitled "Elevated Pools Interpretation" and discussed the following:

- **Issue** – Town Code currently required pools to have a five foot rear setback from canals, regardless of elevation of the pool.
- The Town had recently received numerous building permits on Palermo Circle, some of which included elevated pools.
- Current Code language (water body setbacks) – Land Development Code Section 34-638(d)(3), §34-1863 and Chapter 26, §(d)(3)a and (d)(3)b.
- Why pools were being elevated –
  - FEMA requirements that principal structures must be elevated above Base Flood Elevation (BFE);
  - Palermo Circle neighborhood BFE can range from 10-13 feet;
  - A normal single-family home, it is normal and customary for the pool and deck to be at the same exact floor level as the first habitable floor of the home, wherein the resident walks out their door to the pool deck without having to step up or down to the pool and deck.
- **Planning Considerations** –
  - Allowing elevated pools a 5' setback to the water body could interfere with view corridors along the water.
  - Code allows boathouses with 0' setback.
  - Sheds and garages are allowed 10' setback.
  - Landscaping is allowed with a 0' setback.
  - Difficult to argue the sanctity of the setback based upon the view corridor analogy.
  - Staff believed that consideration should be given to the Town's efforts to foster compliance with FEMA standards and encouraging redevelopment that complies with FEMA elevation requirements. It could be argued that onerous setbacks on elevated pools or discouraging elevated pools could serve as a disincentive to elevation.
  - The trend of elevated pools was market-driven.

- The issue would be reoccurring given the current level of redevelopment activity.
- **Requested Action** – Pursuant to Land Development Code Section 34-265(2), “Interpretations which, in the opinion of the Director, involve policy or legislative intent issues shall be placed on the agenda of the Town Council for its consideration (see Section 34-90)”. Further, pursuant to LDC Section 34-90, “Town Council may hear and decide applications for interpretations of this Code as provided in Section 34-265. Such applications shall not require a public hearing or recommendation from the Local Planning Agency...”
- **Recommended Action** – Town Council direct staff to prepare an ordinance to modify the current code language in LDC Section 34-638(d)(3) to eliminate any ambiguity. Staff suggested three potential approaches to regulate elevated pool decks for Council’s consideration:
  - Do not allow any elevated pools/decks (over 42” in height) in the rear yard setback of 25’ from a canal.
  - Allow elevated pools, regardless of elevated height to be setback 5’ from a canal.
  - Allow pools/decks (elevated up to 42”) to be setback 5’ from a canal and allow pools/decks (elevated between 42” and 10’) to be setback 10’ from a canal.
- Photographs displayed and discussed of examples of elevated pools and decks and setbacks (existing and under construction).

Discussion ensued regarding principal structure setbacks; an example of an Administrative Variance due to depth issues of the lot versus the platted lot; and potential problems with fence setbacks.

Council Member Raymond discussed his concerns regarding elevated pools.

Mayor Mandel questioned FEMA insurance rates as it related to elevated pools.

Planning Coordinator Overmyer reported FEMA’s National Flood Insurance Program did not insure pools or any accessory structure.

Discussion was held concerning a photograph displayed which indicated the construction of an elevated pool that was not in compliance since the structure was not constructed as approved by the Town; and the FEMA 50% Rule.

Vice Mayor Kosinski discussed the suggestion of *up to 42” elevated pools/decks to be setback 5’ from a canal.*

Town Attorney Miller pointed out that there were many platted lots in the Town that were small.

Community Development Director Fluegel discussed the increased redevelopment activity in Palermo Circle.

Town Manager Stewart talked about the three options staff offered for Council’s consideration and suggested they also consider the impact their decision may have in the future as it related to the sight corridor.

Discussion was held concerning the sight corridor; the current appearance of the backyards on the canals; elevated pools and decks and access from the primary structure; rear yard setbacks; redevelopment activity in neighborhoods and the potential for more building permit applications with elevated pools/decks; property rights; current principal structure and accessory structure setbacks; sight line and views; and setbacks for roofed and non-roofed accessory structures.

Town Manager Stewart explained how, in general, setbacks were established to have a reasonable separation between buildings, and how most rear setbacks for marine-oriented communities had to do with sight line on the water. He clarified that staff wanted to know from Council if the sight line issue was something they believed was important, enforceable, and did they want staff to move forward with the issue.

Discussion ensued regarding setback dimensions; the 'community character' of setbacks; sight lines; the construction of an elevated pool that was not in compliance since the structure was not constructed as approved by the Town; the redevelopment activity in the Town; and the waterfront property line of sight.

Vice Mayor Kosinski suggested getting information from Sanibel on their 35 degree line of sight as it pertained to setbacks.

Discussion was held concerning Consideration #3, to allow pools/decks (elevated up to 42") to be setback 5' from a canal and allow pools/decks (elevated between 42" and 10') to be setback 10' from a canal.

Community Development Director Fluegel explained that Council could suggest that staff work with the Local Planning Agency on Consideration #3.

Town Manager Stewart noted that Consideration #3 recognized that the Town had small lots, that bigger homes are being built, and it would allow some latitude to have a raised deck/pool. He stated staff would investigate Sanibel's 35 degree issue in order to see how it might impact Fort Myers Beach, if utilized.

Ken Miller, Building Safety Coordinator, detailed the corrections the subject property on Palermo Circle would have to perform in order to bring the property into compliance such as but not limited to creating two structurally independent structures, pilings, and tie beams.

Community Development Director Fluegel pointed out that there were permit requests in the office that staff would have to approve according to the existing rules.

Discussion ensued regarding the existing rules and the permit applications already submitted to the Town.

Town Manager Stewart requested permission to attend the meeting on Friday regarding Walmart in lieu of the Community Development Director.

Consensus approved the request.

Town Manager Stewart added that if any of the Council wanted to speak before the BOCC when they review the Walmart request, they must be in attendance and speak at the meeting with the Hearing Examiner on Friday.

Community Development Director Fluegel reviewed a request from the Outrigger to confirm that they did not require an administrative approval for COP on the beach; and noted the Outrigger was informed that they should submit an application for Administrative Approval and request an administrative interpretation. He reported staff worked with the Town Attorney and the Applicant's attorney on an interpretation (copies distributed to Council) which listed Outrigger's right to serve on the beach pre-existed by virtue of all the prior approvals and that the rules the Town put in place would not apply to them. He noted that the Council could appeal his administrative decision.

## **VI. COUNCIL MEMBERS ITEMS**

Mayor Mandel – reported the Council needed to consider a Charter review.

Town Attorney Miller explained that the review did not have to be something that would be on referendum for the upcoming election.

Town Clerk Mayher pointed out that the Charter Review Committee would need to be appointed and the Charter review had to be done in 2014 prior to the next election in 2016.

Council Member Andre asked about the status of the mooring field contract.

Town Manager Stewart reported the mooring field contract was scheduled for an upcoming Council meeting.

Council Member Andre questioned the status of the Water Rate Study.

Town Manager Stewart reported the Water Rate Study was scheduled for an upcoming Council meeting; and he would send an email to Council the dates of the two items.

Council Member Raymond – no items.

Council Member List – no items.

Vice Mayor Kosinski – no items.

Mayor Mandel questioned the status of the Town Hall lease.

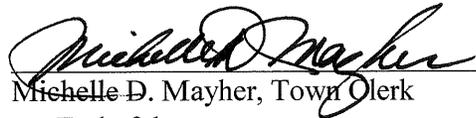
Town Manager Stewart reported staff was still working on the Town Hall lease.

**VII. ADJOURNMENT**

Meeting adjourned at 4:20 p.m.

Adopted 9-3-13 With/Without changes. Motion by Andre Kasinski

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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