

MINUTES

Monday, August 19, 2013

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

I. CALL TO ORDER

Mayor Mandel called to order the August 19, 2013 Regular Meeting of the Town Council at 6:30 p.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Also Present: Town Manager Stewart, Town Attorney Miller, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, Acting Parks & Recreation Director Norton, and Town Clerk Mayher.

II. INVOCATION – Deacon “Scoop” Kiesel, Church of the Ascension

Deacon Kiesel thanked the Town Council, noting Vice Mayor Kosinski and his wife, for their work and dedication for the Spirit of '45 event alive. He offered appreciation to the Town Manager for singing the National Anthem at the event. He repeated his comments he made a meeting at Junkanoo which included a poem entitled *Flanders Field*.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Mandel requested to pull Consent Agenda Item ‘A’, Resolution 13-15 for discussion.

Consensus approved the Agenda as amended.

V. PUBLIC COMMENT

Mayor Mandel noted Public Comment was a time for the public to discuss Consent Agenda Items and issues currently not on the agenda.

Public Comment opened.

Michael Roeder, resident, spoke on behalf of Tim Williams regarding 'Local Motion and Paradise Cab' and discussed how the 7-11 located at 1301 Estero Boulevard had served as an informal taxi stand for many years. He reported that four months ago the new 7-11 management indicated they would only allow Beach Cab to use their property on an exclusive basis and the other companies would not be allowed. He reported Mr. Williams' concern on this decision and recounted how Mr. Williams met with Town staff about the matter. He reported staff believed that since the use pre-dated the incorporation of the Town that it was 'grandfathered' in, and that since it was a private business it was not a zoning issue. He noted a letter Mr. Williams sent to the Town about the matter (dated 7/26/13) and his understanding that for a use to be 'grandfathered in' it should be a 'legal non-conforming use' which he felt the taxi stand was not. He reviewed suggestions for a permitted 'transit terminal' at the 7-11 or how the Town might create a true transit terminal for the cabs. He requested Council give staff policy guidance on the matter.

Public Comment closed.

VI. IMAGE OF FORT MYERS BEACH

Vice Mayor Kosinski thanked everyone who participated in the Spirit of '45 event (Council, Town staff, Lee County Sheriff and Fire Departments, Deacon Kiesel, and Junkanoo for hosting the event).

Mayor Mandel thanked Vice Mayor Kosinski for his work on the Spirit of '45 event, as well as Representative Rodriguez, Commissioner Kiker, Lee County Sheriff's Office, Deacon Kiesel, and the Color Guard. He offered appreciation to the Kiwanis for funding programs at Bay Oaks for some of the student participants; and to Acting Parks & Recreation Director Norton for his work at Bay Oaks.

Town Manager Stewart acknowledged the Chamber of Commerce for bringing the School Superintendent to visit the Town and especially on the first day of school.

Council Member List reported that the Beach Elementary School earned an 'A' rating for the past school year; and acknowledged the principal, his staff and the students for achieving the rating.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

No items.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Keri Hendry Weeg, Vice Chair for the Marine Resources Task Force informed the Council of their intention to bring forward a recommended name change for the committee to the 'Beach Environmental Advisory Committee'.

Mayor Mandel recounted a discussion concerning the outflow from Lake Okeechobee at the Florida League of Cities conference. He noted that he and the Mayor of Sanibel spoke with US Senator Nelson

and Governor Scott. He reported the Senate had passed a very large appropriation which would give Florida funds for strengthening construction for Lake Okeechobee Dam; the Senate had passed the appropriation and it was now in the House; and he indicated Senator Nelson hoped that people would contact their House Representatives to urge them to pass the appropriation. He added that the Governor encouraged people to contact the Army Corps of Engineers about the issue.

IX. CONSENT AGENDA

Consent Agenda Item A was pulled for discussion.

- B. Request for approval of FY2014 WCIND Funding for Marine Law Enforcement
Request to authorize the Town Manager to execute the agreement for West Coast Inland Navigational District Subgrant Funding in the amount of \$27,000.

MOTION: Council Member List moved to approve to authorize the Town Manager to execute the agreement for West Coast Inland Navigational District Subgrant Funding in the amount of \$27,000; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

- A. Resolution 13-15. Biggert-Waters National Flood Insurance Reform Act of 2012
A Resolution urging the United States Congress to take immediate action to delay or repeal the Flood Insurance Reform Act of 2012.

Mayor Mandel noted the resolution was urging the United States Congress to take immediate action to delay or repeal the Flood Insurance Reform Act of 2012. He explained how the Town was concerned about the new rules that would cause dramatic increases in flood insurance rates. He mentioned at the Florida League of Cities there was a discussion about the possibility for a 'national disaster fund', and asked if Council wanted to add that suggestion to the Resolution.

Discussion ensued regarding the addition of wording to include '*to consider legislation to establish a national disaster fund*' within Section 2 of the proposed Resolution.

Council Member Andre noted that US Representative Radel's name was missing from Section 3.

MOTION: Council Member List moved to approve Resolution with a change to add language for Legislature to consider establishing a National Disaster Fund, and add US Representative Trey Radel to Section #3; second by Council Member Andre.

VOTE: Motion approved, 5-0.

X. PUBLIC HEARING

Mayor Mandel opened the Public Hearing at 6:53 p.m.

A. Quasi-Judicial Hearing: VAR 2013-0001, Lani Kai Sign

A sign variance from Section 30-154(c) requiring a maximum height of 5' and from Section 30-154(b) of the LDC.

Mayor Mandel asked if any Town Council Member had ex-parte communication regarding this item. Council Member Andre – site visit; Council Member List - drive-by; Council Member Raymond - drive-by; Mayor Mandel – drive-by; Vice Mayor Kosinski – drive-by.

LPA Attorney Miller swore in the witnesses.

Attorney Burandt, representing the Applicant, pointed out that when the Lani Kai was constructed in the 1970's there were four signs [he indicated the location of the signs on the image projected on the overhead screen]. He noted that the Applicant had appeared before the Local Planning Agency who approved to permit a sign variance of 9' tall and the sign area not to exceed 64 square feet and include the setback of 1'7". Attorney Burandt pointed out the Applicant was entitled to 64 square feet of signage; and described problems the Applicant encountered with the electrical box in front of a sign and the electrical box behind the sign also caused problems. He reported the Lani Kai had eight 'businesses within a business' and 12 businesses that were operated under the Lani Kai Island Resort title; and that the Lani Kai did amend all their wall signs pursuant to Code. He described how the subject sign location was the only location suitable at the main driveway. He pointed out there were other signs taller than the proposed sign such as but not limited to the signs at Red Coconut and Diamond Head. He reviewed the taxes paid by the Applicant (i.e. property tax, sales tax, payroll taxes, tangible taxes, etc.); and the significance of the Lani Kai to the community. He requested the variance be approved as requested at 9'7".

Zoning Coordinator Dulmer reported that the Town received a letter objecting the variance request dated May 10, 2013 from Mr. & Mrs. Zeigler:

"We are owners of a unit in the Batiki West Condo. We would like to oppose the variance asked for by the Lani Kai. We have watched as they have done other things 'not by the letter of the law' but according to how they want to do it. We feel strongly that the Lani Kai should be held to the same conditions that all the other owners on the beach have to abide by. They have had more than their share of 'exceptions'!"

She presented comments for VAR2013-0001, Sign Variance for the Lani Kai, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 1400 Estero Boulevard in the Downtown Zoning District. She reviewed the application requested a variance from:

- Section 30-15(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way.
- Section 30-154(c) requiring a maximum height of 5', as measured from the crown of the road or adjacent grade, for a monument sign to allow a maximum height of 9'7" as measured from the adjacent grade.

She discussed highlights of the background of the request which included that the property was issued a Notice of Violation and went before the Special Magistrate on January 30, 2013; property owner complied with the ruling (removed three non-compliant signs and applied for a variance for the

remaining monument sign); and property owner applied for a Historically Significant/Landmark Sign 2007 which was denied by the LPA (2008-016) and Town Council (08-45). She pointed out the setback variance was for Section 30-154(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way. She displayed 'Exhibit I' depicting the existing conditions. She stated staff had no real objections to the particular request regarding the setback, and noted the Neptune sign variance case where a setback variance had been granted. She reviewed the height variance request and displayed photographs of the existing conditions which also depicted some of the sign obstructions (i.e. FPL transformer, fire hydrant, backflow device, etc.). She displayed renderings of sign Option 1 [Applicant's preference] and Option 2. Zoning Coordinator Dulmer pointed out the two issues were the height and the setback, and no other requests for a variance from other sections of the sign code were included. Zoning Coordinator Dulmer continued her presentation and displayed a rendering of the Applicant's 'Option 2'. She briefly reviewed the supporting regulations pertaining to the sign:

- Section 34-87(3)(a) – *that there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*
 - Staff found that the location of the FP&L transformer and the backflow device and the fully developed site configuration of the subject property are circumstances unique to the property and do obstruct compliance with the sign ordinance.
 - Staff recommended the finding that there are exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance, therefore, is justified.
- Section 34-87(3)(b) – *that the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*
 - The subject property was initially developed in the 1970s and the existing sign was in place prior to the adoption of the Town's original sign ordinance and Ordinance 11-01.
 - Therefore, staff recommended that the conditions justifying the variance are not the result of actions of the Applicant taken after the adoption of the regulations in question.
- Section 34-87(3)(c) – *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*
 - The Applicant has provided two options, one reducing the height from 11'7" to 9'7" and the other reducing the sign further to 8'6". Staff finds that neither are the minimum variance necessary to clear the obstruction of the FP&L transformer and backflow device.
 - As to the setback request, the Applicant provided little justification other than a desire to utilize the existing sign base. Staff does not feel that these requests reflect the minimum variance necessary as required by this code.
 - Staff recommended that the variance requested was not the minimum variance necessary to relieve an undue burden.
- Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*
 - The current sign's height is well above the 5' maximum height allowed under the current code, and the two options offered by the Applicant do not meet the minimum variance

necessary obligation. The setback request is minimal but the Applicant does not provide any strong justification for the need.

- It was staff's opinion that the Applicant has not provided an application reflecting the minimum variance necessary. There are obstacles in place on the subject property that could warrant granting a variance; however, the Applicant was asking for more than the minimum.
- Staff, therefore, recommended that granting the variance (either Option 1 or Option 2) as requested by the Applicant would be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.
- Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.*
 - With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance, Town Council has addressed the issue of signs (including height) and has made a decision to enact and enforce a uniform sign code.
 - Staff finds that the circumstances on the specific piece of property which the variance is sought are general in nature, and, therefore, do not demonstrate a verifiable hardship.

She reported staff recommended **approval** of a sign variance request from Section 30-154(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way; and staff recommended **denial** of a sign variance request from Section 30-154(c) requiring a maximum height of 5', as measured from the crown of the road or adjacent grade, for a monument sign to allow a maximum height of 9'7" as measured from the adjacent grade. She noted that staff offered an **alternative recommendation** for a sign height variance from Section 30-154(c); keeping the most similar previously approved variance requests in mind (VAR2011-0004 and VAR2011-0007), and recognizing the obstruction of the FP&L transformer equipment, staff would recommend that the minimum variance necessary would be between 7' and 7'6", not to exceed 7'6" in overall height as measured from crown of road or adjacent grade. Staff believed that this alternative recommendation reflected the true minimum variance necessary. She added that the variance request was heard by the Local Planning Agency on June 11, 2013 (LPA Member Plummer – excused absence) where discussion centered on sign height, internal illumination, and new sign requirements. She reported the LPA voted 4-2 for recommendation of approval with a 1'.7" setback, total height of 9', and added one condition to require landscaping around the base of the sign (on the side that did not have the transformer and the backflow device).

Vice Mayor Kosinski questioned the height dimensions approved for the Dolphin Inn.

Zoning Coordinator Dulmer reported the Dolphin Inn had a base height 2'10" and an overall height of 9'. She suggested the difference was that the Dolphin Inn was setback dramatically from the right-of-way.

Council Member Andre questioned the overall height of the Pierview.

Zoning Coordinator Dulmer stated the overall height of the Pierview sign was 8'; and both signs were 32 square feet.

Discussion ensued concerning the Applicant's requested sign dimensions and staff's proposed sign dimensions (base height of 42" and the 7' or 7.5' sign).

Town Manager Stewart thanked Attorney Burandt for working together with staff on the signage.

Discussion was held concerning Exhibit 'F' - Option 1 and Exhibit 'G' – Option 2.

Community Development Director Fluegel explained how staff made recommendations that were their most "conservative" recommendations.

Council Member Andre questioned if the Applicant approved of the LPA's recommendation.

Attorney Burandt reported he really wanted to have the 9'7" dimension approved. He noted that the property owner placed the permitted sign in its current location approximately 40 years ago. He expressed his preference for Exhibit 'F' – Option 1. He pointed out that the subject business was forced to take down three sign in order to come into compliance.

Vice Mayor Kosinski questioned if the sign depicted in Exhibit 'F' – Option 1 utilized the existing sign base.

Attorney Burandt responded in the affirmative.

Mayor Mandel asked if there was a representative from the LPA for comment.

No speaker from the LPA was present.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding the removal of three other signs at the Lani Kai; the dimension request of 9'7" and the condition recommended by the LPA; potential for precedent with a 9'7" height; and the reduced sign width.

Town Attorney Miller noted that since the Applicant would install the narrower sign that the Council may want to consider a maximum square footage (8'2" width, 6'1" height, and 49.68 square feet). She added that the Applicant would have an extra 14 square feet of signage (wall sign) if Council used these dimensions.

Discussion ensued regarding proposed dimensions for the Lani Kai sign.

MOTION: Council Member Andre moved to approve the Applicant's request for a variance from Section 30-154(b) to allow a right-of-way setback of 1.7' as depicted in Exhibit 'H' and from Section 30-154(c) of the LDC and to allow a sign height of 9'7" and no wider than 8'2" as measured from the adjacent grade or crown of road whichever is higher subject to the condition proposed by the LPA and contained in the draft Resolution 13-14 and the Recommended 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 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 requested **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: Council Member Raymond.

VOTE: Motion approved, 5-0.

Mayor Mandel noted he had a constituent tell him that the advertising on bus benches appeared to be in conflict with Town regulations.

Town Attorney Miller stated she would investigate the status of the bus bench advertising with the County and report back to Council.

Recessed at 7:40 p.m. – Reconvened at 7:51 p.m.

XI. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 13-07, Bulk Water Increase

Town Clerk Mayher read the title of Ordinance 13-07:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INCREASE IN POTABLE WATER RATES FOR POTABLE WATER UTILITY CUSTOMERS OF THE TOWN OF FORT MYERS BEACH BY AN AMOUNT THAT IS EQUAL TO THE AMOUNT OF THE LEE COUNTY WHOLESALE WATER RATE INCREASE APPROVED BY LEE COUNTY; PROVIDING AN EFFECTIVE DATE.

Town Manager Stewart reviewed an inquiry from Mr. Steele concerning a possible discrepancy in the rate amount and staff was provided with the corrected rates.

Fort Myers Beach Town Council Meeting

August 19, 2013

Page 8 of 18

Town Attorney Miller explained how the original ordinance incorrectly related that increase.

Town Manager Stewart noted Council would be introducing Ordinance 13-07 and scheduling the Public Hearing for a future date.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Council Member List moved to introduce Ordinance 13-07, Bulk Water Increase to bring forward the proposal to increase the potable water rate resulting from the Lee County Utilities bulk water rate increase and set September 3, 2013 at 6:30 p.m. for Public Hearing; second by Vice Mayor Kosinski.

VOTE: Motion approved, 5-0.

Mayor Mandel thanked Mr. Steele for his input on this matter.

B. Introduction of Ordinance 13-06, Flood Plain Regulations

Town Clerk Mayer read the title of Ordinance 13-06:

AN ORDINANCE BY THE FORT MYERS BEACH TOWN COUNCIL AMENDING THE FORT MYERS BEACH LAND DEVELOPMENT CODE TO REPEAL LDC SEC. 6-401 THROUGH 6-474; TO ADOPT A NEW LDC SEC. 6-401 THROUGH 6-528; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO REPEAL AND REPLACE SEC. 6-111 TO ADOPT LOCAL ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODE AND TO ADOPT LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE; PROVIDING FOR APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

Town Manager Stewart noted Council would be introducing Ordinance 13-06 and requested Council to schedule the Public Hearing for a future date. He reported that Planning Coordinator Overmyer had worked diligently on this matter.

MOTION: Council Member Andre moved to set a Public Hearing date of September 3, 2012 at 6:30 p.m. for Ordinance 13-06 amending the Flood Plain Regulations of the Town of Fort Myers Beach; second by Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

VOTE: Motion approved, 5-0.

C. Interlocal Agreement with Lee County for Community Development

Community Development Director Fluegel reviewed how the Town had renegotiated their contract with Lee County for Building Department services two years ago which had lowered the Town's monthly fixed contract price (monthly cost of \$25,962 to \$3,720). He reported that the proposed Interlocal Agreement was a continuation of the terms of the prior agreement and extended the term for another two years until September 30, 2015.

Town Manager Stewart pointed out that the renegotiated agreement had saved the Town over half a million dollars over the past two years.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the interlocal agreement with Lee County BOCC relating to the County providing Building Department services to the Town of Fort Myers Beach; second by Council Member List.

VOTE: Motion approved, 5-0.

D. Estero Boulevard Rehabilitation Project

A request for Town Council to provide direction to Lee County DOT related to Estero Boulevard Improvement Projects.

Mayor Mandel noted this item was discussed at the Council Work Session held earlier today. He reported Council's conclusions from the Work Session would be forwarded in writing to County staff and Commissioner Kiker.

Town Attorney Miller noted that option selected for the High Rise Area was a deviation from the Master Plan and should have a formal action.

Town Council reviewed their conclusions from the Work Session:

- 3-lanes on Estero Boulevard
- Sidewalks on both sides of the street
- Dedicated bike paths wherever possible, and if not the streets would be marked as well as a shared sidewalk
- Maintain the center turn lanes and add center turn lanes where possible

- Review of adding trolley pull-offs where possible
- Acquisition of extra square footage for bus/trolley stops
- Maintain existing pedestrian refuge islands in the street, and identify other locations
- Use of chicanes where possible

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to provide direction to Lee County related to the Estero Boulevard projects and to allow for a deviation to the Estero Boulevard Streetscape Master Plan adopted by the Town of Fort Myers Beach Council on June 12, 2000 and to provide a center turn lane in the High Rise segment, and within where sufficient right-of-way exists to meet minimum roadway design in the Quiet and South End segments; second by Council Member Andre.

Town Manager Stewart noted the motion dealt with the deviation from the Streetscape and the other items Council requested would be included in a letter to the County detailing which staff would formulate for the Mayor's signature.

VOTE: Motion approved, 5-0.

E. Lien Reduction Request, 5545 Avenida Pescadora, CE #2006-43F

A lien reduction request on a lien against the property located at 5545 Avenida Pescadora, Code Enforcement Case #2006-43F. Said approval is conditioned upon full payment being received by the Town within thirty (30) days of approval.

Town Manager Stewart reviewed the Council's lien reduction request process. He pointed out that he provided Council with a thorough analysis of the circumstances of the case along with his recommendation for the lien reduction request. He noted that the fine itself had to do with securing the building permit. He added that he had contacted the Applicant's attorney to make sure he was aware of his recommendation for the lien request which was a mitigation of the lien for no greater than 50% of the lien amount (\$10,500) and to add the \$285 prosecutorial fee to be paid within 30 days, or the total amount of the lien plus prosecutorial fee would remain in force and no future lien reduction requests may be considered.

Public Comment opened.

Matt Uhle, Attorney representing the Applicant, stated his view that this was not a legal issue but a matter of fundamental fairness. He explained how the Applicant did not know he needed to obtain a permit to perform work on his property's fascia, and stopped work and sought to obtain a permit as soon as he was informed of the matter.

Paul Minor, owner of the subject property, explained when he acquired the subject property and the reason why he attempted to improve the building. He stated he did not obtain a permit because he did not think the work involved anything 'structural'. He reviewed his attempts to hire an architect and obtain a permit. He opined that the fine was extreme and asked for relief.

Public Comment closed.

Vice Mayor Kosinski disclosed that in 2006 a measure came before him regarding the subject property and noted there could be a possible permitting conflict. He noted he would abstain [Form 8B Voting Conflict Form filed and "hereby disclosed that in August 19, 2013 a measure came or will come before the Vice Mayor Kosinski that inured to the special private gain or loss; possible permitting conflict CE#2006-43F, Lien Reduction for 5545 Avenida Pescadora"].

Council Member Andre questioned if there was good service on the case since the certified mail had been returned.

Town Attorney Miller noted that if the certified mail was return, then the property would have been posted which was sufficient under State statute.

Attorney Uhle reported the Applicant did not receive the Notice of Hearing since he spends most of time in Wisconsin and did not appear before the Magistrate.

Discussion was held concerning the procedure for service of a Notice of Hearing; and various elements of the subject code case such as but not limited to commencement of the fine, attempts to obtain an architect and permits by the Applicant; and the Town Manager's considerations and recommendation regarding the lien reduction request.

Council Member Andre questioned if the property owner or his representative were present at the Magistrate hearing.

Town Manager Stewart responded in the negative. He reported the property owner was notified of the findings after the hearing and a lien was filed on October 9, 2007 that has remained in existence and unpaid to this date.

Discussion ensued regarding the length of the subject lien; and the amount of the lien.

Town Manager Stewart noted usually all of the lien reduction requests to date involved the sale of the subject property.

Mayor Mandel requested a review of the timeline of the facts for the case.

Town Manager reviewed the timeline of the facts for the case as requested (i.e. Applicant did not appear at the hearing, Town took action according to State statute, etc.).

Discussion was held concerning the length of time for the Applicant to receive a building permit.

Mr. Minor stated his tax bills were sent to his home in Wisconsin, and reviewed his understanding of code enforcement and the lien process. He reported he made every effort to come into compliance; and he discussed his belief that the lien amount should be reasonable for what was done.

Town Attorney Miller noted Exhibit D which revealed the property owner had his Property Tax Collector invoices sent every year to the Fort Myers Beach address and not the Wisconsin address since at least 2005.

Discussion was held concerning the length of time the property owner waited until he addressed the lien; and notification to the property owner of the hearing and the lien.

Town Manager Stewart mentioned that the Town could compel compliance through foreclosure under certain circumstances. He requested a motion with a lien amount and added that the prosecutorial fee be included and be paid separately. He added that the ordinance stated the lien reduction be conditioned for full payment to be received by the Town within 30 days, and failure to pay in full within 30 days would cause the full amount to remain in force and no future lien reductions may be considered. He reported the property owner mentioned he offered to pay a fine of \$1,000 and a prosecutorial fine of \$285.

Discussion was held regarding the amount of a possible lien reduction; and the history of the building permit (Exhibit C).

MOTION: Council Member Andre moved to approve a lien reduction request on a lien Against the property located at 5545 Avenida Pescadora, Code Enforcement Case #2006-43F in the amount of \$5,000; said approval is conditioned upon full payment being received by the Town within thirty (30) days of approval; failure to pay in full within thirty (30) days will cause the full amount of the lien to remain in force and no future lien reductions may be considered; and in addition a separate check in the amount of \$285.00 for prosecutorial fee shall be paid; second by Council Member List.

Discussion was held regarding the proposed lien reduction amount.

VOTE: Motion approved, 3-1; Council Member Raymond dissented and Vice Mayor Kosinski abstained.

F. Discussion Regarding Possible Annexation of Mound Key

Town Attorney Miller offered a brief legal analysis of the potential for the Town to annex Mound Key; and explained the difference between voluntary annexation and involuntary annexation:

- Involuntary annexation required more than 50 percent of the land owners would have to consent to adoption because there were no voters on Mound Key. She added that for an involuntary annexation a report on the Town's plan to provide urban services was required and the report needed to be filed with the Board of County Commissioners.

- Voluntary annexation required all the owners of the property had to consent. She reported that she had contacted an attorney in her Tallahassee Office to contact the Division of State Land to determine if they would consent to a voluntary annexation.

She pointed out that it would be in the best interest of the Town to annex Mound Key because it would increase the Town's 'open space'.

Town Manager Stewart requested a formal action regarding the matter.

MOTION: Council Member List moved to direct staff to proceed with determining whether the State was agreeable to voluntary annexation; second by Council Member Andre.

Council Member List explained why she supported the annexation of Mound Key which was due to increasing the Town's 'open space' which helped to obtain a better rating from FEMA.

Town Attorney Miller pointed out that the annexation would include land/islands in addition to Mound Key because it had to be contiguous.

VOTE: Motion approved, 5-0.

XIV. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed

XV. TOWN MANAGER ITEMS

A. Mound House Update

Town Manager Stewart noted the Council had received a copy of the Mound House Projects Update Report dated August 7, 2013. He reported the kayak building was ready for final inspection; the dock/pier was ready for the Town to send out Requests for Proposals; the negotiations for the restoration of the Mound House have been completed; and he explained the negotiation process.

Discussion was held concerning the Mound House pre-construction services; Fowler Construction; a contract amendment to establish the Guaranteed Maximum Price (GMP); the grant for the Mound House restoration; and negotiating the final issues of the contract this week.

Town Manager Stewart explained that if staff and the contractor agreed on the language of the contract format and all the other things except for the price, then they would ask the contractor to start developing a price based upon what was in the contract.

Town Attorney Miller recounted how she learned earlier in the year that companies would not do a historic restoration with a 'hard bid' and only with a 'construction manager-at-risk'.

Council Member Raymond explained how he would like to see people who contacted him for assistance to also contact the Town Manager at the same time if it was an issue that the Town Manager would be involved in too.

Town Manager Stewart reported staff had located a 25' high Gumbo Limbo tree that would be purchased and planted at the Mound House property.

XVI. TOWN ATTORNEY ITEMS

Town Attorney Miller – no items.

XVII. COUNCILMEMBER ITEMS AND REPORTS

Council Member Andre – pointed out how the Council discussed issues at Work Sessions and then took formal action at their Regular Meetings; and how they did think and struggle over issues such as but not limited to the lien reduction request tonight. He reported he had photographs of the windows in the front of the Town Hall building from Planning Coordinator Overmyer, and requested the Town Manager have staff forward the photos to the rest of Council

Council Member Raymond – no report or items.

Vice Mayor Kosinski – reported he was contacted about the DUI checkpoint on Friday nights.

Council Member List – addressed the concerns of the speaker during Public Comment earlier in the meeting regarding the taxi stand at the 7-11; and noted that the 7-11 was a private business. However, she suggested the topic be included on Agenda Management so the Council could discuss the matter further.

Council Member Raymond pointed out that the taxi stand issue was a matter between two private businesses.

Mayor Mandel – reported at the Florida League of Cities the only resolutions passed were:

- Florida City Government Week (October 20-26, 2013)
- Viva Florida 500!
- Recognition of the Florida City Clerk's 40th Anniversary
- Municipal financing – took a stand to help protect municipal bonds
- Advocating collection of sales tax from internet companies
- Favorable to CDBG funding

He added that the FLC Board would be traveling to Washington DC to lobby for some of the legislation that had been stalled. He added that, locally, the Mayor of Sanibel was elected to the Board of Directors of the Mayors.

XVII. AGENDA MANAGEMENT

Council Member List noted 'taxi licensing' (#23) was already on Agenda Management and then all related topics could be discussed.

Council Member Andre questioned the status of the Mooring Field contract (#16).

Public Works Director Lewis reported proposals were due around September 15th; then the proposals would be reviewed; and the contract negotiated prior to coming before Council.

Mayor Mandel noted a Budget Work Session on August 22nd.

Town Clerk Mayher reported the next regularly scheduled Work Session was September 3rd at 10:00 a.m.; and the public hearing for the budget and the millage was on the same day at 6:30 p.m. She noted the Work Session agenda items would include the Joint Session with the Audit Committee for the investment policy and a discussion on Crescent Beach Family Park development rights.

Town Manager Stewart mentioned that he forwarded the document Council requested to the County Manager regarding Crescent Beach Family Park development rights. He added that the County Manager had assigned staff to the issue and Community Development Director Fluegel had been assigned to work with the County.

Mayor Mandel questioned the status of the Town Hall lease.

Town Manager Stewart reported that he had not received a response on the lease.

Mayor Mandel questioned if the Council would receive an outline of the fireworks sponsorship by the September 3rd meeting.

Town Manager Stewart expressed that it seemed possible to have a final document on the fireworks sponsorship ready for the September 3rd Council Work Session.

Council Member Andre requested placing 'parking alternatives' (#20) on the September 3rd Work Session to determine interest to open up Center Street in order to get an initiative to the Florida DOT.

Discussion was held concerning 'Stormwater Projects' (#8).

Council Member Andre reported that 'Beach Management' (#2), North Estero Vegetation Plan for the whole island was tasked to MRTF.

XIX. RECAP OF ACTION ITEMS

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

- MRTF Committee Member reported MRTF would be coming to Council with a request for a name change; Town Attorney noted an amendment to the ordinance would be required for a name change.
- Letters of support regarding the appropriations to the US House would be prepared concerning Lake Okeechobee water releases
- Resolution 13-15 was approved with an amendment and would be processed accordingly
- Consent Agenda Item B was approved and would be processed accordingly
- VAR 2013-0001, Lani Kai sign, was approved and would be processed accordingly
- Ordinance 13-07 was introduced and public hearing was scheduled
- Ordinance 13-06 was introduced and public hearing was scheduled
- Interlocal agreement with Lee County for Community Development services was approved and would be processed accordingly
- Estero Boulevard Rehabilitation Project was approved and provide direction to Lee County related to Estero Boulevard projects; would be processed accordingly
- Lien Reduction Request, 5545 Avenida Pescadora, was approved for \$5,000 plus \$285 prosecutorial fee to be paid within 30 days (if full amount not paid within 30 days then the full amount of the lien would remain in force and no future lien reductions may be considered)
- Annexation of Mound Key – staff instructed to proceed with the voluntary annexation process
- Town Manager to determine if the LCSO had a DUI checkpoint on Sanibel or the Causeway
- Sponsorship for fireworks issue to be on the 9/3/13 Council Work Session
- Opening up Center Street to be on the 9/3/13 Council Work Session

Mayor Mandel reported the airport requested letters of support for a commendation.

Town Manager Stewart asked if Council preferred future lien reduction requests to be presented first at a Work Session.

Discussion was held regarding whether or not to place lien reduction requests on a Work Session agenda first.

Consensus approved placing future lien reduction requests on a Work Session agenda first.

Council Member Andre noted an article in The Observer about construction and permits, and suggested the Town come up with a list of pitfalls based on the experience of staff to include in the permit package.

Discussion was held concerning construction and permits.

Town Attorney Miller noted there were 'fact sheets' and they were discussed during pre-application meetings.

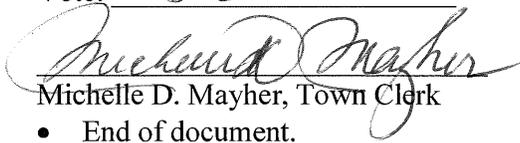
Town Manager Stewart stated that Council Member Andre's suggestion was doable; however, he cautioned there also needed to be a disclaimer. He noted that staff was always working to refine the checklist and it was on staff's Action List.

XX. ADJOURNMENT

Motion by Vice Mayor Kosinski; second by Council Member List. Meeting adjourned at 9:55 p.m.

Adopted 9-16-13 With/Without changes. Motion by Andre/Kosinski

Vote: 5-0


Michelle D. Mayher, Town Clerk

- End of document.