



## MINUTES

**Monday, November 4, 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 November 4, 2013 Regular Meeting of the Town Council at 9:00 a.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Raymond. 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. Lorrie Davison, St. Raphael’s**

### **III. PLEDGE OF ALLEGIANCE**

### **IV. APPROVAL OF FINAL AGENDA**

Consensus approved the Agenda as presented.

### **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.

Ed Scott, resident, reported he recently received his property tax bill, and commended Council since it was the lowest tax bill he had received in six years. He discussed his concerns regarding the potential annexation of property by the Town, and other “gifts” given to the Town which appeared to him to turn into liabilities (i.e. mooring field, Bay Oaks, etc.). He requested research of all the aspects of the possible annexation of Mound Key.

Town Manager Stewart noted that the potential annexation would include additional islands other than Mound Key; and the potential flood insurance savings due to increasing 'open space' was approximately 5% and had been calculated into a dollar amount.

Ceel Spuhler, resident, reported that Marty Weslow, who was a very active member of CELCAB, unexpectedly passed away.

Public Comment closed.

## **VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Mayor Mandel noted "*local achievements that were in the making this week*":

- Paint the Beach Week - Friday (6:00-9:00 p.m.) an award ceremony
- Pancake Breakfast & Jazz Cafe – benefits to the Beach Elementary School
- Matanzas Pass Benefit Dinner
- Art Sale in Santini Plaza for Paint the Beach Week

Council Member List reported Bruce Cermak was facing a big personal challenge and that he could use everyone's support. She encouraged people to send cards and well wishes to him.

Mayor Mandel congratulated the volunteers who worked on the Monofilament Madness event.

Vice Mayor Kosinski mentioned the Beach Marathon on Saturday and the temporary bridge closing for the event.

Council Member List noted the successful event, "Surfers for Autism", held at Crescent Family Beach Park.

Council Member Andre mentioned the farewell to retiring Town employee, Rick Sebastian, last week.

Mayor Mandel thanked the Town's Congressional leaders and representatives for beginning to work on the delay of the FEMA flood insurance rates; and mentioned the importance of making senators and representatives from other states aware of the issue. He congratulated staff for their efforts on seeking an additional grant for the Mound House. He noted a recent excavation tour of the Mound House.

Town Manager Stewart noted the bipartisan effort in Washington DC to deal with the Biggert-Waters National Flood Insurance Reform Act.

Discussion ensued regarding the NFIP Reform Act; and consensus was to discuss the matter further during the Town Manager's Report.

## **VII. ADVISORY COMMITTEES ITEMS AND REPORTS**

Rexann Hosafros, Vice Chair of the Public Safety Committee, reviewed the work of the Committee on three locations along Estero Boulevard; and discussed how the Committee looked at several other

intersections along the Boulevard. She requested the Town ask Lee County to evaluate the installation of a flashing device at the pedestrian walkway for the Bay Beach Community at this time. She added that Mr. Phelan of Lee County DOT was not recommending a concrete island for that walkway at this time due to spacing. She reminded everyone that they needed to push the button for the beacons to flash when crossing the road which would alert cars.

Council Member Andre noted he had suggested moving the crosswalk at Crescent Street to the other side of the intersection.

Ms. Hosafros explained that his suggestion had been discussed and was being evaluated.

### **VIII. APPROVAL OF MINUTES**

- A. October 7, 2013 Town Council Minutes
- B. October 7, 2013 Work Session Minutes
- C. October 21, 2013 Town Council Minutes
- D. October 21, 2013 Work Session Minutes

**MOTION:** Vice Mayor Kosinski moved to approve the minutes as written; second by Council Member Andre.

Mayor Mandel requested to change “~~Florida~~ League of Cities to National League of Cities” on Page 17 of the October 7, 2013 Town Council Minutes.

Motion maker and second agreed to the requested change.

**VOTE:** Motion approved, 5-0.

### **IX. CONSENT AGENDA**

- A. Stewardship of Beach Nesting Birds at the Little Estero Critical Wildlife Area Grant Application  
A request for approval for staff submission of grant application.
- B. Resolution 13-27, Calling for Election  
A resolution of the Town Council calling for election; qualifying; applicable law; polling places; notice; canvassing; declaration and providing an effective date.
- C. Agreement for Tourist Development Funding  
A request for authorization to execute the 2013-2014 Agreement for Tourist Development Tax Funding for the following projects; Beach & Shoreline Maintenance, Coastal Management Plan, Bayside & Beach Access Improvements, ADA Public Comfort Station and Newton Park Shade Structures.

Town Manager Stewart briefly outlined the request by staff for approval to submit a grant application which dealt with the cost of handling the bird nesting site on the south end of the island; the Resolution calling for the election in March 2014; and the approval to sign the documents associated with the TDC grant funding.

**MOTION:** Vice Mayor Kosinski moved to approve Consent Agenda Items A, B, and C; second by Council Member List.

**VOTE:** Motion approved; 5-0.

## **X. PUBLIC HEARING**

### **A. First and Only Public Hearing: Ordinance 13-08, Mobile Tourist Information**

Mayor Mandel opened the Public Hearing.

Town Clerk Mayher read the title of Ordinance 13-08:

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 37, SUBDIVISION II, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AMENDING SECTION 34-3051, TEMPORARY WELCOME STATIONS; RENAMING THAT SECTION TO "MOBILE TOURIST INFORMATION CENTER;" AMENDING THE PERMITTED ACTIVITIES TO ALLOW THE SALE OF TICKETS FOR LOCAL ATTRACTIONS; AMENDING THE LENGTH OF PERMIT TO ONE (1) YEAR AND LIMITING THE NUMBER OF MOBILE TOURIST INFORMATION CENTERS TO TWO (2) AT ANY ONE TIME; REMOVING SPECIAL EXCEPTION AND LOCATION REQUIREMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Public Comment opened.

No speakers.

Public Comment closed.

Town Manager Stewart explained the proposed ordinance would allow for two mobile stations where they may sell tickets to local attractions and events; and that staff recommended approval.

Council Member List recognized Mr. Nocera, and asked if the ticket sales and information at the mobile stations were for the Greater Fort Myers Beach area.

Bud Nocera, President of the Fort Myers Beach Chamber of Commerce, stated they would sell tickets to the Edison Home, but generally speaking the vast majority of ticket sales would be for attractions and events on the beach.

Town Attorney Miller noted the ordinance stated "local".

**MOTION:** Council Member Andre moved to adopt Ordinance 13-08, amendments to the LDC relating to the mobile tourist information centers; second by Council Member List.

Council Member Raymond commended the Chamber of Commerce moving to Fort Myers Beach.

**VOTE:** Motion approved; 5-0.

B. First and Only Public Hearing: Ordinance 13-09. Community Redevelopment Agency

Mayor Mandel opened the Public Hearing.

Town Clerk Mayher read the title of Ordinance 13-09:

AN ORDINANCE READOPTING AND RECONFIRMING, BY ORDINANCE, ALL PRIOR LEE COUNTY AND TOWN OF FORT MYERS BEACH RESOLUTIONS RELATING TO THE CREATION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE TOWN OF FORT MYERS BEACH, FORMERLY KNOWN AS THE ESTERO ISLAND COMMUNITY REDEVELOPMENT AGENCY; PROVIDING FOR PURPOSE, POWERS, FUNCTIONS AND DUTIES OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE TOWN OF FORT MYERS BEACH; PROVIDING FOR GEOGRAPHIC BOUNDARIES OF THE AGENCY; AUTHORITY OF THE AGENCY; STATEMENT OF WHY THE AGENCY IS THE BEST ALTERNATIVE; GOVERNING BODY MEMBERSHIP, ORGANIZATION, COMPENSATION AND ADMINISTRATIVE DUTIES; FINANCIAL DISCLOSURE, NOTICING AND REPORTING REQUIREMENTS; METHODS OF FINANCING; CONSISTENCY WITH THE ADOPTED COMPREHENSIVE PLAN; SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Miller explained there were questions about the status of the Town's CRA as it pertained to the original adoption by Lee County and what transpired when the Town was incorporated. She pointed out there had been a bond validation where a judge had confirmed the Town's CRA was a valid and existing entity. She added that she had worked with the Town's consultant on this matter and created the proposed ordinance which met the requirements of State Statute Chapter 163. She pointed out that a copy of the adopted ordinance would be forwarded to the State agency that administered all special districts. She reported the Town's consultant would make a presentation to Council at their next Work Session.

Mayor Mandel questioned how far back in time would the ordinance confirm the CRA existed.

Town Attorney Miller stated it would be back to when the County created the CRA (1990).

Mayor Mandel asked if there should have been payments made to the CRA since 1990.

Town Attorney Miller stated “*arguably, yes*”; since the Town was incorporated.

Discussion was held concerning the CRA.

Town Manager Stewart explained tax increment financing and how payments were made to a CRA.

Discussion was held concerning CRA boundaries; the upcoming presentation to Council by the consultant; and property valuations.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Kosinski moved to adopt Ordinance 13-09, which documents and memorializes the history of the Town’s Community Redevelopment Agency; second by Council Member List.

**VOTE:** Motion approved; 5-0.

## **XII. ADMINISTRATIVE AGENDA**

### **A. RFQ-13-02-PW Design-Build Services for Phase I Water Distribution System Improvements – Amendment #2**

Request for approval of Amendment #2 to the Design-Build Agreement between the Town and Mitchell & Stark Construction Company to establish the next project GMP in the amount of \$2,415,928.14

Town Manager Stewart reviewed that Amendment #1 was for the pre-construction services; and that the request for approval of Amendment #2 would provide funds to help pay for the first piece of construction. He anticipated the commencement of construction the first week of December. He added that Council would have a number of these requests come before them as they are ready to go forward with parts of the construction.

Vice Mayor Kosinski questioned if this was focused in the North Basin Area.

Town Manager Stewart responded in the affirmative; and noted the FEMA grant work for stormwater improvements would occur at the same time.

Discussion was held concerning the stormwater improvement element as it related to the water utility work; how resurfacing of the roads would depend upon how much stormwater/utility work was performed in an area; and the lack of speed limit signs on side roads/streets.

Mayor Mandel requested a correction on Page 3 from ~~Pear~~ Street to Pearl Street; and questioned the chart on Page 2 as it pertained to permitting for Bayview Drive.

Public Works Director Lewis explained that the street had not been permitted yet because they were looking at alternatives in the area from what was originally permitted.

Mayor Mandel asked if the Basin Project would be completed in time for the FEMA grant.

Public Works Director Lewis stated she was very comfortable that the Town would meet the deadline.

Town Manager Stewart added that the contractor was also comfortable with meeting the deadline.

Mayor Mandel questioned the 'public relations' cost.

Town Manager Stewart explained the public relations cost covered someone to answer all the phone calls, questions, complaints, public meetings, etc.

Public Works Director Lewis reviewed the 'guaranteed maximum price' and the contingencies.

Mayor Mandel questioned if December 2<sup>nd</sup> was the "*shovel in the ground*" date.

Public Works Director Lewis responded in the affirmative.

Mayor Mandel requested notices be sent to the former mayors and council regarding the ground-breaking ceremony.

Discussion ensued as to invitees to the ground-breaking ceremony; it was determined to invite former Town mayors and council, Lee County Commissioners, and appropriate legislators and County staff; and the ceremony would begin approximately 12:30-1:00 p.m.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Kosinski moved the approve of Amendment #2 to the Design-Build Services for Phase I Water Distribution System Improvements between the Town and Mitchell & Stark Construction Company to establish the next project Guaranteed Maximum Price (GMP) in the amount of \$2,415,928.14 and authorize the Town Manager to execute the documents; second by Council Member List.

**VOTE:** Motion approved; 5-0.

B. Service Provider Agreement, Management and Operation of the Municipal Anchorage – Estero Bay Hotel d/b/a as Matanzas Inn

Request for approval of the service provider agreement between the Town and Estero Bay Hotel Company

Town Manager Stewart reported the staff had successfully reduced the percentage paid to the provider.

Public Works Director Lewis reviewed that the proposed agreement was for upland services for the mooring field; and that it was for a 3-year period commencing December 1, 2013 with the ability to renew for another two years. She noted the Town would pay the provider 65% of the net revenues.

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AAC  
Council Member Andre described a conversation he had with the Town Manager concerning the loss of \$1,400 in the ~~MRTF~~ budget, which they used to advertise the mooring field. He asked if there was a way for ~~MRTF~~ to get back the \$1,400 in their budget.

Town Manager Stewart reported he had requested the Finance Director to investigate the matter.

Council Member Andre expressed his belief that the entire amount allocated to the LCSO should not appear in the MRTF budget since it included police services other than the mooring field.

Discussion was held concerning budget allocations for LCSO and the mooring field; TDC funding pertaining to police services in the mooring field; and pump-out services.

Public Comment opened.

Ed Scott, resident, noted his agreement with Council; and asked if the agreement with the State could be re-stated as it pertained to the mooring field, and suggested if there was a surplus, that it could be given to the State.

Town Manager Stewart reviewed 'revenue over cost' and Council's previous discussion on rates at the mooring field.

Public Comment closed.

**MOTION:** Council Member Andre moved to approve the Service Provider Agreement for the Management and Operation of the Town of Fort Myers Beach Municipal Anchorage (SPA-13-06-PW) between the Town of Fort Myers Beach and Estero Bay Hotel Company; d/b/a Matanzas Inn and authorize the Town Manager to execute the Agreement on behalf of the Town; second by Vice Mayor Kosinski.

**VOTE:** Motion approved; 5-0.

C. Mound House Restoration Phase II – Amendment No. 3, Manager at Risk Agreement  
Request for approval of the Construction Manager at Risk Agreement FRQ 13-08-PR,  
Mound House Restoration Phase II, Amendment No. 3 between the Town and Fowler  
Construction and Development

Town Manager Stewart reviewed how the request was a ‘language change’ and did not change the cost.

Town Attorney Miller explained the minor language modifications associated with the processing time for progress payments; and timing for issuance of the notice-to-proceed when the project building permits were issued.

Town Manager Stewart questioned if the contract language required the contractor to proceed in an orderly and expeditious manner to obtain the building permit.

Town Attorney Miller responded in the affirmative.

Public Works Director Lewis pointed out that some work did not require a building permit (i.e. lead paint abatement) and would begin before the permit was issued.

Discussion ensued concerning the building permit issuance and inspection process through Lee County; and progress reports the Town would receive from the contractor prior to payment.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member List moved to approve the Construction Manager-at-Risk Agreement RFQ-13-08-PR Mound House Restoration Phase II, Amendment No. 3 between the Town and Fowler Construction and Development (CM) to delete and clarify certain contract language; second by Vice Mayor Kosinski.

**VOTE:** Motion approved; 5-0.

### **XIII. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

#### **XIV. TOWN MANAGER ITEMS**

##### **A. Mound House Update**

Town Manager Stewart discussed the following items related to the Mound House:

- Museum Action Plan – SEARCH Inc. was working to define ways to save cost on design, etc.; and working on the design of the landscaping signage which was funded by a TDC grant and was expected to come before Council in the next few weeks.
- Underground exhibit lighting – new subcontractor was working on coordinating the lights with the film and there may be some additional costs; and staff knew of no additional version of the film but will investigate further to verify whether or not there was a different version of the film.

Council Member Raymond questioned the completion date for the pier/dock.

Town Manager Stewart noted that staff had previously reported there had been a difference between the DEP and the Army Corps of Engineers permits.

Public Works Director Lewis reported the permit was still in review and estimated it would be about another month before the Army Corps of Engineers modified the permit and approved it.

Town Manager Stewart pointed out that the ‘federal government shutdown’ also delayed the permit approval; and discussed how they had to re-engineer the design of the deck in order for it to fall within the budget expectations.

Council Member Raymond questioned the status of the TDC funding for the pier/deck.

Town Manager Stewart explained the funding still existed.

##### **B. Action Items Recap**

Town Manager Stewart asked if Council had any questions on the information submitted on prior Action Items.

Council Member Andre questioned the status of the pictures for the front of Town Hall.

Town Manager Stewart reported the Town was still in contact with the leasing manager regarding legal questions about the pictures, and explained the lessor’s concerns regarding liability and indemnification issues since the subject area was a vacant portion of the building.

Mayor Mandel questioned the status of the inquiry to Lee County regarding water rates charged to the Town.

Public Works Director Lewis explained how the Town purchased water from the County at a ‘bulk water rate’ and components of the bulk water rate versus the retail rate.

Town Manager Stewart explained his belief that the rate charge the Town was satisfactory based upon the analysis of the bulk water rate versus the retail rate.

#### **XV. TOWN ATTORNEY ITEMS**

Town Attorney Miller – explained that Attorney Humphrey was unable to attend; however, they would place an item on the next meeting agenda regarding options for the Council to consider as it pertained to more services from the law office.

Town Manager Stewart announced the ‘kick-off’ meeting for the water utility project for the public would be held on November 21<sup>st</sup> between 4:30-7:30 p.m. at Chapel by the Sea for the Basin Based Area Phase I.

Mayor Mandel questioned the status of the annexation issue.

Town Attorney Miller reported the State had indicated interest in a ‘pre-annexation agreement’; however, the State’s biggest concern was about potential development of the parcel. She suggested that the Mayor, Attorney Humphrey, the private property owners, and she meet to learn the intentions of the private property owners. She noted the Town could offer the transfer of development rights off the island as consideration.

Mayor Mandel requested the Attorney Miller schedule the meeting as discussed.

Town Attorney Miller explained she was still reviewing the State statute regarding bus benches and she would be discussing the matter with the new County Attorney this week.

#### **XVI. COUNCILMEMBER ITEMS AND REPORTS**

Council Member Andre – suggested that Public Comment be included at the next Council Work Session.

Discussion ensued regarding Public Comment at the next Council Work Session; and consensus approved to include Public Comment at the Work Session on November 6<sup>th</sup> with the 3-minute rule.

Town Manager Stewart announced the agenda item for the Affordable Care Act would be pulled from the Work Session agenda because the representatives were unable to attend.

Council Member List – suggested staff contact condominium association presidents to schedule some type of information exchange for returning ‘snowbirds’ to bring them up-to-date on the Biggert-Waters National Flood Insurance Reform Act.

Town Manager Stewart reported Director Lewis was scheduled to speak at the Council of Condominiums meeting and staff would ask if Planning Coordinator Overmyer could speak at the meeting.

Discussion was held concerning the Biggert-Waters National Flood Insurance Reform Act and the negative economic impact to the Town, Florida, and the nation.

Council Member Raymond – reported he met with the developer of the properties with the above-ground pools who relayed to him that he was experiencing a financial hardship due to above-ground pool permits on hold. He suggested allowing the permits already submitted to go through and not allow new permits.

Town Attorney Miller noted that the resolution approved for ‘zoning in process’ did allow for a procedure for the developer to come before Council for permit applications already submitted which had not been issued.

Discussion ensued regarding the above-ground pool developer; the number of above-ground pool applications already submitted; and the current code as it pertained to accessory structures (attached and detached) and setback requirements.

Town Manager Stewart recapped the prior discussions with the pool developer and staff; discussions regarding the issue at Community Development Department staff meetings along with the Town Attorney; Town code as it applied to attached and detached accessory structures regarding setback; prior public concern regarding above-ground elevated pools; and FEMA rules and base-flood elevation issues.

Vice Mayor Kosinski – no items or report.

Mayor Mandel – reported NFIP Reform Act was discussed at the Horizon Council Meeting and how the Town and other lobbying groups would like to have copies of insurance policy declaration pages from property owners impacted by the Biggert-Waters NFIP Reform Act.

## **XVII. AGENDA MANAGEMENT**

Town Manager Stewart updated the following items for the upcoming Work Session agenda:

- Presentation on the Affordable Care Act would be removed from the Work Session agenda since the Florida Municipal Trust representatives could not attend and would be rescheduled.
- Pink Gold – representatives confirmed.
- Water Utility Management In-House – staff presentation.
- Entertainment District Presentation – representatives confirmed.
- County Proposal on Estero Boulevard – TBD.

Discussion ensued regarding topics and potential meeting dates and the following was approved:

- Item #16, Mooring Field – remove.
- Town Investment Policy – currently in the Audit Committee review.
- Mooring Field – add analysis regarding law enforcement services cost; information to help with the funding request to TDC.
- Enforcement of various codes and efficient ways to accomplish – agreement to add item to Agenda Management.
- Flood Insurance – agreement to add item to Agenda Management.

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- Annexation Meeting Follow-Up - agreement to add item to Agenda Management.

**XVIII. RECAP OF ACTION ITEMS**

Town Manager Stewart recapped the Action Items during the meeting:

- Town would send a note of condolence and flowers for Marty Weslow.
- Public Safety Committee request to Council to send a letter to Lee County DOT regarding the pedestrian walkway for the Bay Beach Community – approved to forward.
- Staff to process amendment to October 7, 2013 Town Council Minutes as requested.
- Staff to process Ordinance 13-09 as approved.
- Staff to process Consent Agenda items as approved.
- Staff to prepare for December 2<sup>nd</sup> ground breaking ceremony as approved.
- Town Attorney to schedule meeting regarding Mound Key annexation as approved.
- Public Comment approved for any item on Work Session agenda for November 6<sup>th</sup>.
- Staff to contact condominiums regarding flood insurance rate issues; staff to speak to island newspaper regarding article on flood insurance rate issues and contacting legislators.
- Upcoming Council discussion on elevated pool issue.
- Enforcement of various codes and efficient ways to accomplish – agreement to add item to Agenda Management.
- Flood Insurance – agreement to add item to Agenda Management.
- Annexation issue.
- Check on the Mound House movie.

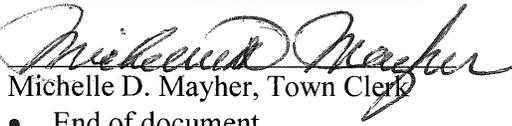
Mayor Mandel questioned the status of the Event Sponsorship Operational Policies.

Town Attorney Miller indicated she would work to have them submitted by Wednesday to the Town Clerk for the next meeting.

**XIX: ADJOURNMENT**

Motion by Council Member Andre; second by Council Member List. Meeting adjourned at 11:16 p.m.

Adopted 12-2-13 ~~With~~ Without changes. Motion by Kasinski/Andre  
 Vote: 5-0 pg 8 of 13

  
 Michelle D. Mayher, Town Clerk

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