



# MINUTES

**Monday, December 2, 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 December 2, 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 Rooney, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, Parks and Recreation Director Norton, and Town Clerk Mayher.

## **II. INVOCATION – Town Clerk Mayher**

## **III. PLEDGE OF ALLEGIANCE**

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

Mayor Mandel requested to add a discussion for letters of support to the FAA and Senators Rubio and Nelson.

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.

A.J. Bassett, Curator of the Estero Island Historic Society, reviewed a new walking/bicycle tour program entitled “Footprints in Time”. She displayed a copy of the Society’s new logo; and noted the new map located in the library with QR codes indicating historic vistas. She distributed copies of the Society’s new brochure with QR codes to be used for a self-guided tour.

Town Manager Stewart offered to place a link on the Town's website to the Historic Society site.

Gayle Manner, resident, expressed displeasure regarding staff's request for an investigation into allegations of unethical actions.

Gerry Trantina, resident, referenced code violations at 301 Palermo Circle (elevated pools) and noted he would speak during the Public Hearing for Ordinance 13-10.

Charlie Whitehead, 20 Emily Lane, expressed his displeasure with the dumpster storage at BORC; and objected to plans to fence the dumpster area. He requested the dumpster storage be relocated to a more suitable place.

Public Comment closed.

Council Member Andre noted the Council had a prior discussion on the matter of the dumpster at BORC.

Town Manager Stewart explained that other than purchasing a site there was no other Town-owned site where the dumpster could be relocated.

Council Member List pointed out that staff had asked the property owner of the Town Hall site about placing the dumpster in the parking lot, and the request was denied.

Discussion was held concerning potential alternate sites for the dumpster; and consensus approved to place the matter on a Council Work Session agenda and for staff to investigate possible locations for the dumpster that were both on and off the island.

Town Manager Stewart asked if staff should postpone the planned improvements to the dumpster area (i.e. fence, etc.).

Consensus agreed to postpone the planned improvements until the matter was discussed further.

Discussion continued regarding the dumpster transfer site and storage of dead fish.

Community Development Director Lewis reported the compactor pick-up was a minimum of once a week; through season it could be 2-3 times per week; and staff called for vegetative waste when the dumpsters were full. She added there were two dumpsters for recycling which was collected once per week.

Mayor Mandel addressed Ms. Manner's comments.

Discussion was held concerning unsubstantiated rumors and code interpretations.

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

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None.

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

Anchorage Advisory Committee Member, Sam Lurie, distributed a copy of a letter from the AAC Chair and requested a replacement or transfer of \$1,400 to the AAC fund for an advertising expense.

Town Manager Stewart noted the invoice for the advertising expense came in after the end of the last fiscal year.

**MOTION:** Council Member Andre moved to transfer \$1,400 back into the AAC account; second by  
Council Member List.

Public Comment opened.

No speakers.

Public Comment closed.

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

AAC Member Lurie advised the Council that mooring ball (#1) was delinquent in rent payment and requested legal action.

Town Attorney Rooney stated he would review the lease agreement and work with staff on the matter of the delinquent rent.

Discussion was held concerning delinquent rent, the lease agreement, and carry-over tenancy.

## **VIII. APPROVAL OF MINUTES**

- A. November 1, 2013 Special Meeting
- B. November 4, 2013 Town Council Meeting
- D. November 6, 2013 Work Session

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

Council Member Andre requested a change to the minutes of November 4, 2013, Page 8:

- Change references to ~~MRTF~~ to AAC.

Motion maker agreed to the requested change.

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

## **IX. PUBLIC HEARINGS**

### A. DCI2012-0003 Lighthouse Resort CPD Amendment

Request to amend the Lighthouse Resort CPD to add an additional deviation from LDC Sec.

30-154(a) to allow the existing internally illuminated signs to remain.

Mayor Mandel opened the Public Hearing.

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 – stated he would abstain because he had a longstanding professional relationship with the owner.

Vice Mayor Kosinski completed Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers, and submitted the form to the Town Clerk which listed Disclosure of the Local Officer's Interest:

I, Joseph C. Kosinski, hereby disclose that on December 2, 2013; a measure came or will come before my agency which inured to my special private gain or loss; the Lighthouse Resort CPD Amendment; and I must abstain from this issue due to my longstanding professional relationship with the owner.

Town Attorney Rooney swore in the witnesses.

Attorney Beverly Grady, authorized agent for Lighthouse Resort, Inc., explained how when the Applicant appeared before Town Council that it was realized there was an additional deviation that needed to go back to the LPA (11/12/13). She requested an additional deviation from LDC Sec. 30-154(a), the requirement for illumination of letters through an opaque background to allow the existing internally illuminated signs to remain (Signs A, B, C, & D). She requested approval of the Applicant's request, LPA's recommendation for approval, and staff's recommendation for approval.

Planning Coordinator Overmyer entered into the record the affidavit of publication for the CPD Amendment request. He presented comments for DCI2012-0003 Lighthouse Resort CPD Amendment (Sign Deviations), deviation from LDC Sec. 30-154(a), the requirement for illumination of letters through an opaque background to allow the existing internally illuminated signs to remain on behalf of the Town of Fort Myers Beach. He reviewed the deviation requested:

- Deviation #17 – relief from LDC Sec. 34-154(a) for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only

from the letters and symbols of the sign face; staff recommended **approval** of this deviation.

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

No LPA representative was present.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Council Member Andre moved to approve the Applicant's request to amend the Lighthouse Resort CPD to add an additional deviation from LDC Sec. 30-154(a) to allow the existing internally illuminated signs to remain and with the condition that once the signs are replaced that they would come into compliance with the illumination of the signs; second Council Member List.

**VOTE:** Motion approved; 4-0 and one abstention; Vice Mayor Kosinski abstained.

Public Hearing closed.

B. Introduction and First of Two Public Hearings of Ordinance 13-10, Prohibition of Elevated Pools

Public Hearing opened.

ORDINANCE 13-10, PROHIBITION OF ELEVATED POOLS AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Manager Stewart gave a brief overview of the issue of elevated pools and "zoning in progress" and cautioned Council of '*unintended consequences*'.

Council Member Raymond questioned if the proposed ordinance addressed every possible situation as it related to pools.

Town Manager Stewart explained how the proposed ordinance prohibited pools; no exceptions. He indicated Council had discussed elevated pools on August 5, 2013 and recommended to send the matter to the LPA for their recommendations based upon some guidelines staff had provided for Council's consideration.

Discussion ensued regarding variances and pool permits.

Town Attorney Rooney explained the use was not appropriate for a variance; and how the ordinance could be part of an interim development plan.

Discussion was held concerning accessory structures, elevated pools, view corridors, crown of the road measurement, and review/interpretation of the applicable codes by an independent attorney.

Town Attorney Rooney reviewed options available to the Town:

- Resolution 13-26 did not have an 'expiration' date and the interim process of coming before Council could remain; however, it was only applicable to elevated pools and no other accessory structures.
- Staff would look for direction if Council wanted to include other accessory structures.
- Ordinance 13-10 only dealt with height and not setbacks.

Town Manager Stewart noted the current codes lacked the definition of an 'enclosure'.

Town Attorney Rooney suggested one 'hybrid solution' might be to adopt a portion of the proposed ordinance, exclude the pool portion; but to maintain the accessory height limitation.

Discussion continued regarding accessory structures, height restrictions, view corridors, setbacks, lack of consistency within the codes, and the pool permits in process.

Mayor Mandel recapped the Council's comments/suggestions:

- Anything dealing with accessory structures to come before Council.
- Ordinance 13-10 was not ready to come before Council at this time.
- Wait for the report by the independent attorney.

Town Attorney Rooney cautioned Council regarding 'opening it up to all classes of accessory structures'.

Town Manager Stewart reviewed staff's prior recommendations to Council regarding elevated pools.

Town Attorney Rooney asked if Council wanted to apply 'zoning in progress' rules to all accessory structures.

Discussion was held regarding the interpretation of the code and an appeal process.

**MOTION:** Council Member Raymond moved to table Ordinance 13-10 until receipt of a report from independent counsel; second by Council Member List.

Council Member Andre asked if the motion was approved, would accessory structures be able to be constructed.

Town Attorney Rooney responded in the affirmative.

Discussion was held regarding accessory structures, permitting, and the appeal process.

Town Manager Stewart recommended that the tool in place (zoning in progress) and staff's recognition and implementation of Council's policy would give the Town the time necessary to have the LPA work through the matter and provide the guidance necessary; and requested Council to allow that to happen.

Mayor Mandel asked if the 'zoning in progress' could remain in place until the Town received the report from the attorney.

Town Attorney Rooney responded in the affirmative.

Discussion ensued concerning the anticipated report from the independent attorney; and the current 'zoning in progress' resolution.

Town Manager Stewart recommended the LPA continue working on the matter while the independent attorney prepared their report.

Public Comment opened.

Greg Stuart, Stuart Associates, distributed copies of information and discussed his experience with the "Matlacha Overlay" and his meetings over a 3-year period with pool contractors, architects, engineers, planners, marine contractors, and others as it pertained to elevated pools/accessory structures and view corridors. He reported three major issues arose from the process: 1) health and safety issues; 2) effectiveness; and 3) public policy component. He recommended setting aside any radical pool height reduction.

Christian Andrea, landscape architect, distributed copies of information and discussed his company's projects in Fort Myers Beach as they pertained to the design and permitting process. He described his belief that pools came in three different sizes (grade, mid-level, and elevated); and reviewed various examples of pool sizes, site grading, and the uniqueness of sites.

Beverly Grady, attorney, commented on the motion to table the matter, and requested the proposed ordinance be eliminated because it created uncertainty in the community. She noted that communities were governed by their Comprehensive Plan and land development codes; and if there was an interpretation issue there was a process within the code to address that matter.

She explained how to go about changing the codes with public input and LPA review. She requested Council eliminate the motion and the ordinance.

Steve Dodge, developer, complimented the Town staff for their work. He discussed his experience with constructing homes in the town; and how homes without a pool, especially on the Gulf side, did not sell. He explained how contractors needed clarity and certainty, and a rational set of rules.

Albert Corricelli echoed the comments by Mr. Dodge.

Michael Gargiula, builder, discussed his experience with design and construction, and how not all properties were the same.

Summer Stockton, resident, stated her neighbor wanted to know the addresses of the houses that the Town considered 'under construction' on Palermo Circle. She noted her belief that the proposed ordinance was not the answer; and commented on her observations with respect to a boat ride through canals as it pertained to accessory structures built prior to incorporation. She discussed her view on the Town codes, interpretations, and intent of codes.

Gerry Trantina, resident, stated he opposed to utilizing the services of an independent counsel. He displayed photographs (301 Palermo Circle) and discussed physical separation between a primary structure and accessory structure; rules and setbacks; and solid walls on accessory structures.

Art Monahan, builder, noted his experience with construction in coastal communities. He suggested pools should be a separate definition from accessory structures; and discussed recommendations for definitions involving the crown of road and setbacks as they pertained to pools.

Public Comment closed.

Council Member Andre questioned the photographs displayed of 301 Palermo Circle.

Zoning Coordinator Overmyer reported the subject property had separate structures and separate building foundations.

Discussion was held concerning structural connections, structurally independent, attachment to a principal building, and building codes.

Mayor Mandel recapped the Council's discussion and intentions:

- If someone wanted to come before Council, they had that right.
- Referring the matter back to the LPA.
- Waiting for the review by the independent attorney.

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

Public Hearing closed.

Recessed at 11:16 a.m. - Reconvened at 11:30 a.m.

**X. ADMINISTRATIVE AGENDA**

**A. Refresh Water Lines Phase I Construction Engineering Inspection (CEI)**

**Supplemental Task Authorization, Tetra Tech**

Request for approval of a Supplemental Task Authorization with Tetra Tech, Inc. in the amount of \$50,000.00 to begin the Construction Engineering Inspection (CEI) for the upcoming segment of the Phase I - Basin Based Neighborhood water and stormwater improvements.

Community Development Director Lewis reviewed the request was for up to 750 hours of construction activities of the first segment of Phase I which would get the initial work started.

Town Manager Stewart noted that staff would come back with requests for proposals so that inspection services were covered under the contract; and it would be paid for out of water utility.

Vice Mayor Kosinski asked if the amount was for a lump sum or hourly.

Community Development Director Lewis stated it was hourly and was a not-to-exceed dollar amount.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Vice Mayor Kosinski moved to approve a request for Supplemental Task Authorization with Tetra Tech, Inc. in the amount up to \$50,000 to begin the Construction Engineering Inspection (CEI) for the upcoming segment of the Phase I – Basin Based Neighborhood water and stormwater improvements; second by Council Member Andre.

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

**B. Driveway Apron Restoration Resulting from Town Construction Activities**

Requested approval of a policy related to structures and landscaping within the public right-of-way and for providing restoration of driveway aprons resulting from construction activities by the Town.

Town Manager Stewart reviewed the request which dealt with the potable water project; and recommended driveway aprons be replaced with what existed unless it was in violation of code.

Mayor Mandel asked if code required a porous material.

Public Works Director Lewis stated the code was silent on that matter.

Public Comment opened.

Diane Eisenhower, resident, questioned if pavers would be replaced.

Town Manager Stewart explained if the driveway had concrete, it would be replaced with concrete; and if there were pavers, then pavers would be replaced; if Council approved the item.

Public Comment closed.

Discussion was held concerning construction work on public rights-of-way and private property; and driveway apron restoration (i.e. concrete versus porous materials, alternative materials, etc.).

Town Manager Stewart requested a motion to approve where the Town could replace/restore the driveway apron with what had existed as long as it met code.

**MOTION:** Council Member List moved to approve a policy related to structures and landscaping within the public right-of-way and for providing restoration of driveway aprons resulting from construction activities by the Town; second by Vice Mayor Kosinski.

Town Manager Stewart noted if structures were in Town right-of-way, then it would be the property owner's issue.

Consensus agreed that structures in Town right-of-way would be the property owner's issue.

Town Manager Stewart questioned how to handle vegetation in the right-of-way; and mentioned that the Town was giving people the option to move the vegetation before the work was done.

Consensus agreed that people should be given the option to move the vegetation before the work was done.

Town Manager questioned the policy to be used for trees in the right-of-way.

Public Works Director Lewis reviewed the policy that was utilized during improvements in the north end of the island.

Town Attorney Rooney recommended that he prepare a generic waiver of liability for the Town.

**AMENDMENT:** Motion maker amended the motion to include: and to follow the policies used in north Estero. Second agreed.

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

## **XI. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

Mayor Mandel noted the FAA in Washington DC was conducting a public hearing on the Part 150 Study. He suggested the Town send a letter to the FAA noting their support of the Part 150 Study, as well as letters to Senators Rubio and Nelson. He reported he had been contacted over the weekend regarding the noise study and wanted to know who to contact in Washington DC. He suggested adding that information to the Town's website.

## **XI. TOWN MANAGER ITEMS**

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

Public Works Director Lewis reported that Fowler Construction had begun some of the lead paint remediation work; and it was anticipated that would be completed this week. She anticipated receipt of the building permit very soon. She announced the Town received the modification to the Army Corps of Engineers permit for the pier.

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

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

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

Town Manager Stewart stated that Town Attorney Miller was working on language for the agreement between the Lessor and the Town.

## **XII. TOWN ATTORNEY ITEMS**

Town Attorney Rooney - no items or report.

## **XIII. COUNCILMEMBER ITEMS AND REPORTS**

#### A. Annexation – Mayor Mandel

Mayor Mandel recounted a conference call held last week regarding annexation and reported the Town was proceeding with a pre-annexation agreement with the McGee Family and a voluntary annexation with the State. He stated he spoke with Senator Benaquisto who indicated favorably to the idea of a passive park on Mound Key; and apparently the State was also in favor of a passive park on the subject site. He noted it was his understanding that it appeared Estero had no interest in trying to incorporate Mound Key into their area. He added that the topic of annexation would be discussed at the delegation meeting tomorrow. He mentioned the Florida League of Cities had adopted major initiatives of which one of them was a sales surtax on transportation; and noted the FLC had supported the Town's idea that any municipality would be able to propose a sales surtax for infrastructure. He added that there were other major cities in the State that supported this initiative. He reported the FAA was working to come up with a meeting date in January; and reviewed the steps taken by the Town and residents on the matter of aircraft noise and what was anticipated to happen during the next 6-12 months. He announced the Spirit of the Holidays event was tomorrow night.

Council Member List – reported she was asked to provide a sound system at the Spirit of the Holidays; and noted the Council would be at the event.

Mayor Mandel – announced that today the Town would have a ground breaking ceremony for the potable water project.

Council Member Andre – no items or report.

Council Member Raymond – no items or report.

Vice Mayor Kosinski – no items or report.

#### **XVII. AGENDA MANAGEMENT**

No discussion.

#### **XVIII. RECAP OF ACTION ITEMS**

Town Manager Stewart recapped the Action Items as follows:

- Estero Island Historical Society's new walking/bicycle tour program entitled "Footprints in Time" – staff to post a web link and place brochures in the Town Hall lobby.
- Town Manager would follow-up with Ms. Manner regarding her comments concerning a seawall and her attempts to contact staff.
- Staff to investigate the code issues which Mr. Trantina claimed existed at 301 Palermo Circle.

- Staff to postpone installation of the enclosure of the dumpster at BORC and place the item on a Work Session agenda.
- Staff to transfer \$1,400 to the AAC for advertising purposes.
- Staff to process DCI2012-0003 Lighthouse Resort CPD Amendment as approved.
- Ordinance 13-10 tabled until information received from independent attorney; and issue to be sent back to the LPA for input.
- Staff to process Refresh Water Lines Phase I Construction Engineering Inspection (CEI) Supplemental Task Authorization, Tetra Tech as approved.
- Staff to proceed with policy on driveway replacement as approved.
- Staff to prepare letter of support to the FAA and Senators Rubio and Nelson as approved; and place contact information on the Town's website.

Town Attorney Rooney stated he would follow-up on the delinquent rent issue as noted by the AAC.

### **XIX. ADJOURNMENT**

Motion by Vice Mayor Kosinski; second by Council Member List. Meeting adjourned at 12:04 p.m.

Adopted 1-6-14 With ~~Without~~ changes. Motion by Andre Kosinski

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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