



MINUTES

Monday, December 16, 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 16, 2013 Regular Meeting of the Town Council at 6:33 p.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, Parks and Recreation Director Norton, and Deputy Town Clerk Bargmann.

II. INVOCATION – Deputy Town Clerk Bargmann

III. YOUTH COUNCIL – Fort Myers Beach Elementary School

Hayleigh Keith, Fort Myers Beach Elementary School Youth Council, reported that the students were busy helping to make sure everyone had a great holiday season; the success of the holiday luncheon; students were selling candy-grams; and that the students assisted in serving at the recent Pancake Breakfast fund raising event.

Leann Wheeler, Fort Myers Beach Elementary School Youth Council, reported how the students would be hosting their annual holiday program tomorrow night, and how the students were learning songs that would be performed at the event. She added that 20 students from the University of Georgia would have lunch tomorrow with the Beach Elementary School students after they helped clean-up the Matanzas Pass Bridge Preserve.

IV. PLEDGE OF ALLEGIANCE

V. APPROVAL OF FINAL AGENDA

Mayor Mandel requested to add a status report on the dumpsters at Bay Oaks to the Agenda; possibly following the Approval of Minutes.

Consensus approved the Agenda as amended.

VI. 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.

Charlie Whitehead, Little League Board, thanked the Council for their efforts on the relocation of the dumpsters and all residents who expressed their views on the same matter. He expressed the views of the Little League Board were against having the dumpsters placed at BORC and how fencing would make them a permanent fixture. He requested the dumpsters be removed as soon as possible.

Rae Sprole, resident, voiced her concern over the location of the dumpsters at BORC; health issues her son(s) had experienced when there were dead fish in the dumpster and red tide; and expressed her belief that the dumpsters should be moved to another location.

Rick Loughrey, President of the Little League and Soccer Club, noted the organizations' belief that the dumpsters posed a hazard to health and safety and should be relocated. He gave a brief update of upcoming Little League and Soccer Club events.

Annette Dwyer and Bo (son) Dwyer, residents, recounted an experience she encountered last season at BORC when the dumpsters were filled with dead fish due to red tide. She conveyed their feelings that the strong odor from the dumpsters during sporting events was an embarrassment for the Town.

Ed Scott, resident, voiced his dissatisfaction with the Farmer's Market and vendors on 2nd Street; and his belief that the traffic and backing out of cars posed a hazard and was an unsafe situation for those travelling and living on both 2nd and 3rd Streets.

Public Comment closed.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Andre complimented the company who was handling the Phase I Water Distribution Project for their efficiency, cleanliness, and great work thus far.

Mayor Mandel applauded the Spirit of the Holiday event; thanked citizens who sent letters to the FAA; and noted the Boat Parade was a success with a record of 34 decorated boats. He announced that the tall ship, *Privateer Lynx*, would be returning to its winter home in Fort Myers Beach.

Town Manager Stewart reported there would be a welcome reception for the *Privateer Lynx* at noon on December 20th at the docks near Nervous Nellie's; and noted the *Privateer Lynx* had invited Council to the event and requested the Mayor to present them with a new flag for the ship.

Mayor Mandel suggested along with the flag to present a proclamation welcoming the ship back to Fort Myers Beach.

Council Member Raymond announced a correction to the day for the 'gift wrapping' event at Red Coconut which would be on Wednesday night.

Town Manager Stewart described an event held last weekend called "Wreath Across America" which worked to have holiday wreaths placed on all military graves across the country. He added that the Fort Myers Beach area was the first place in the nation where there would be a floating wreath.

Mayor Mandel recognized the Real Estate Association of Greater Fort Myers/Fort Myers Beach named Karen Swanbeck of Fort Myers Beach as their president; and Realtor of the Year was Paula Kiker of Fort Myers Beach. He added that at the Council Work Session earlier there was consensus for the Town to send an expression of sympathy on the passing of Barbara B. Mann to Commissioner Mann.

Council Member List reported there would be a birthday party held for Bruce Cermak on January 5, 2014 at the Surf Club from 2:00-8:00 p.m.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

Miffie Greer, Chair of Community Resource Advisory Board (CRAB) reported that CRAB, after much research and work, recommended the placement of two comfort stations at beach accesses on Canal Street and Avenue C; and that the property owners at the proposed access were notified and invited to the CRAB meeting. She noted no one came to the meeting; however, since the meeting she had heard there was one disgruntled resident. She added that the Board would look at ways to beautify the subject sites if the comfort stations were installed as recommended; and CRAB would bring their beautification suggestions back to Council. She added that CRAB would like to hold a forum to meet the Town Council candidates, and proposed a Town Council Candidate Forum to be held in February. She asked if the Town had received any response regarding the lighting situation at Crescent Beach Park.

Council Member Andre requested Chair Greer to describe the two proposed sites for the comfort stations.

Chair Greer explained the proposed non-residential locations; and added if there were three comfort stations available the third site would be at Gulf Road.

Discussion was held concerning the request for a Town Council Candidate Forum; and potentially coordinating the event with the Chamber of Commerce and televising the Forum.

Town Manager Stewart reported staff had contacted the Lee County Parks & Recreation Director concerning the lighting issue and was told that any lighting improvement would be restricted due to turtle nesting season;

that additional lighting was not in their current budget; however, the County would investigate potential costs.

Council Member List suggested CRAB work with Town staff (i.e. Town Clerk) to schedule the Candidate Forum.

Town Manager Stewart recommended CRAB work closely with the Town Attorney's Office on the Candidate Forum.

Consensus approved CRAB's request to host a Town Council Candidate Forum.

IX. APPROVAL OF MINUTES

- A. November 18, 2013 Regular Town Council Meeting
- B. November 18, 2013 Town Council Work Session

MOTION: Vice Mayor Kosinski moved to approve the minutes of both meetings; second by Council Member List.

Council Member Andre requested a change to the November 18, 2013 Town Council Meeting minutes on Page 10 – "~~Horizon Council~~" to "Spirit of the Holidays".

Motion maker and second agreed to the requested change.

VOTE: Motion approved, 5-0.

AGENDA ITEM ADDED – Dumpster Issue at Bay Oaks

Mayor Mandel offered an update on the six locations that were currently being considered to relocate the dumpsters from Bay Oaks. He reported he spoke with the Elementary School Principal who expressed his concern regarding the safety of the students in the parking lot area when the trucks were present. He recognized Advanced Disposal agreed to change the pick-up time for the existing dumpster and have offered to change the current dumpster to one that had an odor control feature for the contents.

Town Manager Stewart reportedly he spoke with representatives from five of the potential sites; that the Town had not looked at or explored any sites on San Carlos Island; that staff was taking into consideration the impact of trash pick-up during season; and the matter should come back before Council with a recommendation in January.

Council Member List recounted the discussion of the dumpster issue at the BORCAB meeting and how they were intent on solving the problem.

Town Manager Stewart discussed the potential location at the Mosquito Control District site; and how site access was a concern to Homeland Security. He noted the Mosquito Control District Board would need an official request from the Town to consider the matter.

Consensus approved to have staff draft a letter for the Mayor's signature and submit the request to the Mosquito Control Board to allow placement of dumpsters on their site. He added that when the dumpsters were relocated to another site that it was staff's intention to keep using the odor control dumpster. Town Manager Stewart indicated staff would continue to study and consider additional sites.

X. CONSENT AGENDA

A. Special Event Permit Application – Town's 18th Birthday

Request to authorize open containers of alcohol at the Town's 18th Birthday Party within the area of Times Square.

B. Request Approval of Service Provider Agreement Renewal with Garden State Fireworks for New Year's Eve

Request approval of Agreement Renewal and authorize Amendment #1 in the amount of \$30,000 for the New Year's Eve Fireworks display.

Town Manager Stewart described the Town's birthday celebration event and the request for an open container permit.

Parks & Recreation Director Norton announced the cupcakes would be available at 1:00 p.m. on New Year's Day and the fireworks would occur after the ball dropped after midnight (at approximately 12:02 a.m.).

MOTION: Council Member List moved to approve Consent Agenda Items A and B as presented; second Vice Mayor Kosinski.

VOTE: Motion approved; 5-0.

XI. ADMINISTRATIVE AGENDA

A. Approval of Agreement with Fowler White Boggs for Legal Services

Proposed agreement provides for an increase in the retainer and provides for special projects to be billed outside the monthly retainer and at a reduced, blended rate.

Town Attorney Humphrey of Fowler White Boggs reviewed the proposed agreement which provided for an increase in the retainer and provided for special projects to be billed outside the monthly retainer and at a reduced, blended rate. He reviewed highlights of the current agreement such as but not limited to the current numbers of hours which last year was 804 or approximately 68 hours a month; and the new request to consider a retainer increase which would increase the hours per month within the retainer to 80 hours or 960 per year. He added that Fowler White Boggs was always prepared during the year to re-examine the agreement and the quality of their work with the Town. He indicated his belief that the Estero Boulevard improvements would cause staff to spend a significant amount of time on the matter.

Council Member Raymond explained his main goal was to receive a faster turnaround time.

Town Attorney Humphrey noted the firm had brought on-board Attorney Rooney who was a former attorney from Charlotte County and pointed out that he had attended last month's Council meeting.

Discussion ensued regarding the request to approve the proposed agreement.

Town Attorney Miller explained that Attorney Humphrey would distribute copies of the language that would guarantee the minimum hours which was indicated in red on the last page.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the agreement for legal services with Fowler White Boggs to increase the monthly retainer (\$12,500 monthly) and to include a special provision for special projects and to provide for a minimum 960 attorney hours for the year; second by Council Member Andre.

VOTE: Motion approved; 5-0.

B. Marina and North Booster Station, Power Level Controllers Replacement

Request to waive provisions found in Ordinance 07-01 for sealed bids and to accept the quotation provided by BCI Technologies in the amount of \$47,480 to replace both the Marina & North Booster Station Programmable Logic Controller (PLC).

Town Manager Stewart explained the power level controllers replacement had been fully and completely vetted.

Public Works Director Lewis explained that the programmable logical controller operated and how the Town's booster stations functioned; why they were needed; and the importance of having the Town's system compatible with the County's system. She indicated that once the equipment was in place she intended to enter into a service agreement with BCI for maintenance.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the request to waive provisions found in Ordinance 07-01 for sealed bids and to accept the quotation provided by BCI

Technologies in the amount of \$47,480 to replace both the Marina & North Booster Station Programmable Logic Controller (PLC); second by Council Member List.

VOTE: Motion approved; 5-0.

- C. Interlocal Agreement between the Town and Fort Myers Beach Fire Control District
This agreement will allow the Town and the FMB Fire Control District to work jointly to provide effective enforcement of the applicable fire and life safety codes.

Mayor Mandel noted this item was discussed earlier during the Work Session and Chief White was present to answer any questions.

Chief White explained how the District had certified inspectors through the State's Fire Marshal Office; the Town had a Code Enforcement aspect in place; and how the interlocal agreement's purpose was to combine the two together so the Fire Inspectors could be Code Enforcement Officers. He reviewed how the inspectors currently had the ability to find violations but not cite the violations.

Discussion ensued regarding highlights of the topic from the Work Session discussion such as but not limited to the code enforcement process and abatement of any fire code violations, and fire codes that would come before the magistrate that had fines would be split 50% between the Town and the FMBFCD.

Town Attorney Miller noted in Chapter 162 there was reference to Code Enforcement, County and Municipal Code Enforcement [not special districts].

Council Member Andre noted the lengthy discussion on the matter which was held at the Work Session earlier in the day which included the Town Attorney and Fire District Attorney.

Town Manager Stewart indicated that the majority of the work on the agreement had been handled by the Town Attorney and Fire District Attorney.

Public Comment opened.

No speakers.

Public Comment closed.

Town Attorney Miller noted on Page 1, Paragraph #2, a change was necessary: "~~Section 633.121~~ to line 631.118" and on Page 2, Paragraph 3, a change was necessary: "~~Section 633.081~~ to 633.216".

Council Member Andre pointed out the change discussed at the Work Session in #8: "*by agreement of the ~~Town Manager and Fire Chief~~*" was for process only, and to: "*by agreement of the ~~Town Manager Town Council and Fire Chief~~*".

MOTION: Council Member List moved to approve the Fire Control and Prevention Interlocal Agreement between the Town and the FMB Fire Control District with the changes mentioned; second by Vice Mayor Kosinski.

Council Member List noted her appreciation of the Fire District and how they interacted with the Town's children and adults.

VOTE: Motion approved; 5-0.

Recessed at 7:55 p.m. – Reconvened at 8:16 p.m.

D. Stormwater System Funding Mechanism

A request for approval of funding in the amount of \$21,500 to Government Services Group for the completion of a stormwater assessment analysis to identify necessary charges to support the impending infrastructure work.

Town Manager Stewart briefly described the request for funding of a stormwater assessment analysis to identify charges to support the impending infrastructure work. He explained how the stormwater project had begun as part of the first phase of the potable water system improvements that was funded through a FEMA grant; however, the grant did not pay for all of the stormwater improvements and that there was no funding mechanism in place in order to accomplish all of the stormwater work necessary. He noted the request was for Council to approve an expenditure that would allow the Town to hire a firm to complete an assessment evaluation and in conjunction the firm would need certain engineering information gathered. He reported the assessment analysis would be \$21,500 (flat fee) and the engineering work would be essentially the same cost (not-to-exceed \$21,500). He added that whatever the Town paid for this type of 'set-up work' would be reimbursable to the Town's General Fund.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve funding in the amount of \$21,500 to Government Services Group for the completion of a stormwater assessment analysis to identify necessary charges to support the impending infrastructure work; second Council Member Andre.

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Kosinski moved to approve funding not-to-exceed \$21,500 to CDM Engineering to provide impervious area calculations necessary for GSG to complete its assessment analysis; second Council Member List.

VOTE: Motion approved; 5-0.

Mayor Mandel reported there were two people from the Bay Beach Condominium Association who wanted to know what would be involved to connect to the Town's stormwater system. He requested staff compile general information as to what might be involved.

Town Manager Stewart requested the Mayor forward the contact information for the two people from the condo; staff would contact them to determine what they were seeking; and then staff could answer their questions.

E. Parcel Acquisition - Mound Key

A request to begin negotiations with the property owners of the only privately owned parcel located on Mound Key. (*Appraisals could be reviewed at Town Hall during normal business hours, 8:30 a.m. - 4:30 p.m., Monday through Friday*)

Mayor Mandel explained how Council learned earlier today that part of the calculation information on FEMA insurance reductions which they used for the past few months was incorrect. He reviewed the relationship of Mound Key to Mound House. He stated that the Town would not negotiate on the property until they were sure of the calculation information pertaining to the FEMA insurance reductions for the residents.

Town Manager Stewart reported he asked staff to compile information clarifying the actual numbers and to provide information on other things that the Town might do to lower the CRS classification rating (i.e. free-board). He discussed the classification ratings; the difficulty with obtaining a rating of 5; and how without the annexation it would be unlikely for the Town to reach a rating of 5.

Discussion ensued regarding the potential savings to property owners for FEMA flood insurance premiums; potential steps/actions that could be taken to obtain a reduction in the CRS rate; the number of flood insurance policies in force in the Town; and the potential for changes in future base flood elevations.

Mayor Mandel noted that anything discussed with the Magee Family concerning the property on Mound Key would have to come back to Council for approval.

Public Comment opened.

No speakers.

Public Comment closed.

Consensus approved the Mayor and Town Manager to begin negotiations with the property owners of the only privately owned parcel located on Mound Key.

XII. TOWN MANAGER ITEMS

A. Mound House Update

Town Manager Stewart noted there was an updated Mound House Report and briefly reviewed highlights of the Report:

- Landscape signage matter remained; Council authorized staff to work with SEARCH, Inc. on the signage; currently SEARCH, Inc. was performing value engineering.

Parks and Recreation Director Norton reviewed what staff had requested from SEARCH, Inc. for the landscape project (i.e. expedite the Museum Action Plan and have it ready by the end of February).

Town Manager Stewart continued to briefly reviewed highlights of the Mound House:

- Town received the amended permit from the Army Corps of Engineers; staff working to put the matter out to bid by the second week of January.
- Work to be done in the Period Room (donated by Mr. Hughes) would be coordinated with what the Town had planned for the other work at the Mound House.
- Marketing plan for the opening of the Mound House was on staff's Action Register.

Parks & Recreation Director Norton reported that in order to accommodate the grant the completion date was July 29, 2014 (for construction and one-third of the furnishings).

Discussion was held regarding the marketing plan for the Mound House; and the potential of having a 'soft opening' in July versus a 'hard opening'.

Council Member Andre asked if there was an update on the Florida Historical Commission Grant.

Town Manager Stewart stated the grant was in 'process' and there was no update at this time. He briefly reviewed the background of the grant.

Parks & Recreation Director Norton reported the State's funding cycle for budget approval was in June 2014.

B. Action Items Recap

Town Manager Stewart reported that Council Member Andre had questions about some of the Action Items so it responded to him in writing and copied the Council.

XIII. TOWN ATTORNEY ITEMS

Town Attorney Miller – noted at the first meeting next month the Council would see Attorney Grady on behalf of Mr. Orlandini regarding the 'zoning in process' and a request that some of his permits be issued. She reported that Benson Enterprises filed a declaratory action concerning a code enforcement lien as it pertained to an outdoor display.

Town Manager Stewart reported he received a telephone call late this afternoon from Mr. Conidaris, Sr. of the Lani Kai about their sign issue. He gave a brief overview of his telephone conversation about the sign issue; and noted Mr. Conidaris did not meet the timeline for an appeal to Council; and did not want

to go through the application process again and go before the LPA; asked why he could not just come before Council to ask them for what he wanted.

Town Attorney Miller reviewed the dimensions for the sign that was approved for the Lani Kai by Town Council; and noted the property owner wanted to keep the existing sign which was too tall and had too many square feet for the variance. She reported that the attorney in her office was handling the lawsuit and would prepare a Motion to Dismiss. She explained Mr. Conidaris could file for a variance for the existing sign again; and she did not support individual meetings with Mr. Conidaris.

Discussion was held concerning the amount of signage removed from the subject property (Lani Kai).

Town Manager Stewart recommended that Council be careful about doing anything special with this case.

Discussion continued regarding the ability to file another variance application; the Town moving forward with the code violation case; and the Town's efforts to have the suit dismissed.

XIV. COUNCILMEMBER ITEMS AND REPORTS

Mayor Mandel explained there had been communication with the County regarding lighting at Crescent Beach Park, increasing LeeTran service on the Beach, and the signs on the bus benches.

Town Attorney Miller reported she would be meeting with County staff and Commissioner Kiker tomorrow about another matter; however, she would ask for an update on the matter of the bench signage.

Town Manager Stewart reported he met with County staff regarding the LeeTran service and they informed him the County was looking at all of the routes in light of available funding; however, he had not heard anything further on the matter.

Council Member Raymond discussed his thoughts on some type of partnership regarding trolley transportation between the County and the Town.

Town Manager Stewart reviewed that the Town had previously approved a policy to subsidize the County's trolley service during season, and in 2011 the Town reversed their decision and did not subsidize the trolley service.

Discussion was held concerning trolley service; and discussing with the County the core level of trolley service, as well as the times of demand level.

Mayor Mandel noted there had been two vehicle accidents within a short period of time in front of the Church of the Ascension that were not related to the roadway or lighting. He pointed out there was a lack of guard rails in front of the church on one side of the Estero Boulevard, and requested that be added to the list of items to address with the County.

Council Member List – reported a merchant in Times Square had asked if the pavers in Times Square were going to be replaced, and if so, would it be in conjunction with water pipes being changed out; and if so, when.

Town Manager Stewart reported staff would bring to Council a proposal to install new pavers in Times Square; the plan was to do it when the water pipes were changed out; and he would forward an email to the Council with a further update on the matter.

Council Member Andre – questioned the status of the photographs for the front window of Town Hall.

Town Attorney Miller requested the name and phone number for the leasing agent’s attorney and stated she would contact them.

Council Member Andre revisited ‘accessory structures’ and expressed his belief that if corrections were needed or ambiguities needed to be cleared, then they should be fixed.

Town Manager Stewart reviewed Council Member Andre’s request to establish a policy that aims to protect the view corridor; and he explained the steps needed to establish a policy.

Council Member Andre explained how someone could come before the LPA and Council if it were an unusual shaped piece of property.

Discussion ensued regarding prior discussions and action by Council on the matter; rules governing setbacks for accessory structures; height versus setback measurements; and whether or not the LDC should attempt to protect the view corridor.

Vice Mayor Kosinski suggested two special meetings - one to receive public input and one special meeting for Council to discuss the matter.

Discussion ensued regarding special meetings to discuss accessory structures and view corridors.

Town Manager Stewart suggested a special work session for the one topic.

Consensus approved a special work session to discuss accessory structures and view corridors; and discussion ensued concerning taking public comment at the special work session.

Mayor Mandel suggested discussing the upcoming funding requests to the TDC (in March) at a Work Session in January, as well as including anything that the Town may need to submit the requests to the TDC.

Mayor Mandel – reported he would be meeting with Attorney Humphrey and the FDOT to determine what could be done regarding traffic on the island. He noted he met with Mr. Orlandini; and he was approached by the Film Festival group to see if Council would revisit a fee waiver for last year’s Festival.

Discussion was held concerning the fee waiver request from the Film Festival; the Town's current policy for fee waiver requests and criteria to be met; and it was suggested that the Film Festival complete and submit an application.

Council Member Raymond – no items or report.

Vice Mayor Kosinski – no items or report.

XV. AGENDA MANAGEMENT

Discussion was held concerning Agenda Management and the following items were added:

- Noise & Code Enforcement – first Work Session in January
- Water Management presentation – second Work Session in January
- Accessory Structures and View Corridor - Special Work Session in January
- TDC Funding Requests – second Work Session in January

XVI. RECAP OF ACTION ITEMS

Town Manager Stewart recapped the Action Items as follows:

- Staff would address and resolve Mr. Scott's issue with the Farmer's Market and vendors and traffic/safety issues.
- Staff would work with CRAB on their recommendation on the comfort stations; and the Candidates Forum.
- Staff would process the Council Regular Meeting and Work Session Minutes for 11/18/13 as approved by Council.
- Staff would prepare the letter to the Mosquito Control District as directed by Council.
- Staff would process Consent Agenda items A and B as approved by Council.
- Staff would process the Agreement with Fowler White Boggs for legal services as approved by Council.
- Staff would process the replacement for both the Marina & North Booster Station Programmable Logic Controller (PLC) as approved by Council.
- Staff would process the Interlocal Agreement between the Town and the Fort Myers Beach Fire Control District as approved by Council.
- Staff would address Bay Beach Condominium's inquiry into the Town's stormwater system; contact information for the Bay Beach Condominium would be provided by Mayor Mandel.
- Staff would begin negotiations with the property owners of the only privately owned parcel located on Mound Key as approved by Council.
- Town Manager to discuss with the County the difference in the core level of trolley service that currently existed.
- Inquire as to whether guard rails could be installed on the s-curve in front of the Church of the Ascension on Estero Boulevard.
- Staff to prepare a timeline on the expected Times Square improvements.
- January Work Session to discuss TDC funding; noise and code enforcement discuss at a January Work Session; and a Special Work Session on a sight corridor policy.

- Storefront display on Town Hall.

XVII. ADJOURNMENT

Motion by Vice Mayor Kosinski; second by Council Member Andre. Meeting adjourned at 9:51 p.m.

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

Vote: 5-0


Derek Bargmann, Deputy Town Clerk

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