MINUTES

Monday, January 6, 2014

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 January 6, 2014 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 Attorneys Miller, Humphrey, and Rooney, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, Parks and Recreation Director Norton, and Town Clerk Mayher.

II. INVOCATION – Rev. Jeanne Davis, Beach United Methodist Church

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Mandel requested to add a report on the findings of the independent counsel regarding accessory structures/elevated pools; and a presentation by Kate DeCarlo (after the Consent Agenda).

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.

Frank Tomaolio, resident, presented two petitions; one petition requested the removal of a speed bump on 3rd Street and the other petition requested trucks to be re-routed off of 3rd Street (instead of going

down the north end of 3rd Street to continue down Old San Carlos and go left on 1st Street for entry to Moss Marina and/or the Big M).

Annie Babcock, resident, told of her experience with aircraft noise at her residence and similar experiences relayed to her by other Town residents. She requested the Council become more pro-active regarding this matter, and requested Council schedule a meeting with the Regional Southwest Airport as quickly as possible.

Lance King stated he owned the property facing Canal Street and described the improvements he made to many of the buildings on Canal Street. He expressed his opposition to the proposed portable restroom facilities for Canal Street.

Joanne Shamp, resident, discussed her views on elevated pools, and requested the agenda item regarding the elevated pools appeal be denied on the basis that it would be disadvantageous to the health, safety, and general welfare of the public based upon the Town's Comprehensive Plan and FEMA regulations and recommendations. She noted the Town's Comp Plan future land use elements and policies which defined future development; and addressed FEMA regulations as they pertained to the elevated pools.

Public Comment closed.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Mayor Mandel recognized the:

- Town's Civic Association and Community Foundation for their participation with the Town's 'cupcake birthday party' and the event clean-up.
- Fireworks display and the staff's work and involvement with the fireworks.
- Fire Department and Lee County Sheriff's Office for their work on New Year's Eve; and requested the Town Manager compile follow-up information on how the LCSO dispersed the vehicular traffic so quickly after the completion of the fireworks.
- Everyone who assisted with the birthday party for Bruce Cermak.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No speakers.

VIII. APPROVAL OF MINUTES

A. December 2, 2013 Regular Town Council Meeting
B. December 2, 2013 Town Council Work Session
C. December 16, 2013 Regular Town Council Meeting
D. December 16, 2013, Council Work Session

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

VOTE: Motion approved, 5-0.

IX. CONSENT AGENDA

Town Manager Stewart noted the Town had maintained their sponsorship level for the Horizon Council.

Council Member Raymond questioned Consent Agenda Item B and the cost of the pump-out service.

Town Manager Stewart reported it was $15 per ticket; and the pump-out for the Lynx would be approximately $60 per week.

Council Member Raymond noted his concerns about Consent Agenda Item B.

Town Manager Stewart suggested Consent Agenda Item B be pulled from the Agenda for a separate vote.

A. Town Council Meeting Schedule Change
Request to reschedule the March 17, 2014 Council Meeting and Work Session to March 18, 2014.

B. Privateer Lynx – Pump Out Services
Request to provide direction to staff to authorize/not authorize no fee pump-out services to the Privateer Lynx while it is berthed at Fort Myers Beach.

C. Horizon Council Sponsorship
A request to approve the Town's annual sponsorship of the Horizon Foundation in the amount of $2,500.

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

VOTE: Motion approved; 5-0.

Discussion was held concerning Consent Agenda Item B.

MOTION: Vice Mayor Kosinski moved to approve Consent Agenda Item B as presented; second Council Member Andre.

VOTE: Motion approved; 4-1; Council Member Raymond dissenting.

Presentation by Kate DeCarlo, Events Coordinator the National Air, Sea and Space Foundation, who was planning to bring the Nao Victoria [replica of the ship Magellan used to sail around the world] to visit Fort Myers Beach from February 13-March 17, 2014 at the same space the Privateer Lynx was now occupying at Nervous Nellie's. She distributed a packet of information to Council on the ship and introduced Brian Lilly who was the Chair of the Board for the National Air, Sea and Space Foundation.

Brian Lilly, Chair of the Board for the National Air, Sea and Space Foundation, gave a brief presentation on The Nao Victoria Experience – Tall Ship Tour 2014, which included but was not limited to the historical background of the ship, benefits of hosting the ship to the community, and the 'Future Explorers Education Program'. He requested the Town assist them with the ship's visit through promotion. He asked if the Town would approve the placement of banners on the street poles in advance of the visit and during the visit of the tall ship. He added that they would pay the cost to create the banners.

Consensus agreed to allow banners on the street poles at the expense of the presenters.

Mayor Mandel reported that the Privateer Lynx had made a request to the Town for a gift from the Town to offer the city the tall ship visited next which was the port of Tampa.

X. ADMINISTRATIVE AGENDA

Mayor Mandel read an excerpt from the opinion provided by the independent counsel, Attorney Bannon:

> *"It is our opinion that under the LDC an elevated, non-roofed swimming pool and deck that is not enclosed except by a fence or open-meshed screening which is not made of opaque material on more than one side, and does not rely on the principal building for structural support is permitted to be placed up to but not closer than five feet from a seawalled canal or seawalled natural body of water without the need of a variance from the Town Council."*

He indicated there were comments related to view-corridors included in Attorney Bannon's letter. Mayor Mandel reviewed some questions concerning elevated pools with staff and the following was determined:

- There were two pools constructed on Palermo Circle with the 5' setback.
- The two constructed pools on Palermo Circle met the conclusion described by Attorney Bannon.
- One of the two constructed pools had an approved permit (561 Palermo Circle).
- Other permits were pending, subject to the appeal.

He asked if the application for permits would continue under the Town's current Resolution.

Town Attorney Humphrey responded in the affirmative; pursuant to the Resolution.

Mayor Mandel noted that Sanibel dealt with the issue of elevated pools and reviewed key points from Sanibel's regulations.

Town Attorney Miller reviewed when public comment should be taken as it pertained to an appeal process; and noted her belief that the matter was quasi-judicial and the Council should follow that process (i.e. the Applicant would give their presentation, anyone who wanted to testify would be sworn in, etc.).

A. Palermo Circle Elevated Pools Permits Appeal
   A request to approve/deny an appeal made by Mr. Joe Orlandini to issue permits for elevated pools at 455, 221, 263, 551 and 301 Palermo Circle. Resolution 13-26 precluded the issuance

of any permits for elevated swimming pools until Town Council adopts regulations for such pools.

Mayor Mandel asked if any Town Council Member had ex-parte communication regarding this item. Council Member Andre – review discussions with the developer; Council Member List – discussion with developer and constituents; Council Member Raymond – site visits and a discussion with the developer; Mayor Mandel – review discussion with the developer; Vice Mayor Kosinski – review discussion with the developer.

Town Attorney Miller swore in the witnesses.

Beverly Grady, Attorney with Roetzel and Andress, noted her representation of the Applicants for building permits and their request for relief from a moratorium established by Resolution 13-26. She discussed her opinion as it related to the Town's process to amend their Codes and adopt a moratorium. She explained her belief that Resolution 13-26 was null and void; and noted the building permit requests noted in the Request for Relief were filed months prior to Resolution 13-26. She requested a copy of the report from the independent counsel be included as an exhibit. She stated she wrote to the Town Attorney objecting to the Notice; and requested the Notice to the surrounding property owners also be incorporated as an exhibit; and she objected to the designation of today's hearing as being quasi-judicial. She discussed her views of today's hearing, and noted objection to participation by others than staff and the Applicant(s). She distributed copies and reviewed a draft of the counts that would be filed should the relief not be granted. She pointed out that she had filed a Request for Relief from Moratorium by Resolution 13-26 [November 26, 2013] and a Request for Relief form Moratorium established by Resolution 13-26 for 301 Palermo Circle [December 20, 2013] with the Town Attorney. She requested to also incorporate as exhibits the Minutes of the Council Work Session of November 18, 2013; the Minutes of Council Meeting of December 4, 2013 with the draft ordinance; the January 6, 2014 Agenda; and the plans for the permits for 455, 551, 263, 221, and 301 Palermo Circle and the staff review comments on each permit. She added that she would file the August 5, 2013 Work Session Agenda and back-up as an exhibit. She discussed her views on violation of property rights; and requested the parcels, as requested, be released from Resolution 13-26. Attorney Grady asked Mr. Orlandini if he reviewed the draft claim she prepared and distributed, and did it accurately state the facts.

Mr. Orlandini responded in the affirmative.

Town Council did not ask clarification questions of Attorney Grady or staff.

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

There was no representative from the LPA present for comment.

Public Comment opened.

Town Attorney Miller explained the Council was giving residents the opportunity to be heard so they could consider everything before making a final decision; but they were not conceding that Attorney Kayusa or his clients had any type of intervener status.

Discussion ensued regarding the types of elevated accessory structures.

Council Member Andre noted the question of the appropriateness of Resolution 13-26.

Michael F. Kayusa, Attorney representing residents of Palermo Circle and Primo Drive, noted that the appropriateness of Resolution 13-26 would be a decision by the Circuit Court with a Writ of Certiorari.

Discussion ensued concerning the process to follow during the meeting such as but not limited to quasi-judicial procedures and time limits during public comments.

Attorney Kayusa expressed his interpretation of the Code as it pertained to items such as but not limited to 'accessory structures, non-roofed structures, swimming pools, patios, decks, non-roofed accessory structures, etc.' with respect to measurement of 3.5' above grade to the top of the enclosure.

Gerry Trantina, resident, noted his educational and employment background as it pertained to being a structural engineer. He discussed his opinion regarding the elevated pool at 301 Palermo Circle; using the measurement of 3.5' above grade; and how he believed the elevated pool at 301 Palermo Circle was structurally attached to the principal structure and the inaccurate measurement of the pool to the seawall (4 feet).

Pat Powers, resident, stated she had photographs of her home and what she would experience if the elevated pools continued to be allowed. She noted she opposed allowing the pools to be permitted only five feet away from the seawall.

Dave Innis, resident, explained the subject property did not impact him at this time, but he was concerned about how these types of elevated pools would eventually impact him living on Primo Drive.

Karen Barrow, resident, questioned the interpretation of the plans for the elevated pool on Palermo Circle.

Chris Riley, resident, conceded his time to Attorney Kayusa.

Morris Curtis stated he owned the property at 459 Palermo Circle; and gave an update on the condition of 455 Palermo Circle during the past two years (only improvement was a seawall). He noted his view was that it was wrong to allow an elevated pool less than 25' from the seawall and how it would take value away from his property.

Jane Plummer stated she was a resident and a member of the LPA. She explained how when the matter came before the LPA she was not happy with the wording of the moratorium for the pools because she thought it should have been opened up for discussion. She stated she was not against elevated pools as long as they were built according to the Town's code and setbacks. She explained she felt the moratorium should have been according to setbacks; and indicated her belief that the subject structure was a wall. She discussed her belief that the subject structure was not built as an accessory structure and was a 'single pour'; and noted the structure was not on pilings and only had footers.

Doris Grant, resident, explained her interpretation of the code as it pertained to elevated pools and accessory structures. She questioned if the Town was presented with architectural drawings or an artist's rendering of the subject structure at 301 Palermo Circle. She noted her belief that the subject structure would set a precedent for the entire island.

Gail Manner, resident, addressed a newspaper article regarding elevated pools and property values. She displayed a photograph of a structure which she claimed had taken away her property value and view; and questioned where this type of structure was allowed in the Town building codes. She discussed the permit applications for other elevated pools; a recent newspaper article concerning the Seafarer's property; and the negative impact of the elevated pools similar to the photographs she displayed.

Dan Hughes, resident, gave a brief background on his education and experience with serving on the LPA and Town Council, and assisting with the drafting of the Town's land development codes. He noted his belief that the issue before Council was the right of the appeal. He indicated his view was that the structures at issue should not be permitted; and that the Council had to consider not only the rights of the applicants, but also the adjacent property owners, and the interest of the community as a whole. He urged denial of the appeal.

Tracey Gore, resident, noted that Attorney Grady had represented a former owner of the subject property (301 Palermo Circle) in 2003 regarding a variance for an elevated deck. She discussed her views on the prior interpretation of Town codes regarding setbacks and variances for elevated pools; and the recent code interpretation by Town staff and counsel. She discussed her opposition to the elevated pools as requested.

Tom Potter of Potter Homes noted there was 'unintended fallout' that Resolution 13-26 created. He reported he had eight pool permits submitted and all the pools had been rejected due to the *zoning in progress*. He requested Council give direction to staff on the elevated pool issue; and noted all of his permits were for in-ground pools and complied with the existing code.

Jessica Titus, resident and realtor, noted she had been on the LPA for several years and understood the Town's codes. She expressed her belief that there was nothing wrong with the Town's codes; and that she felt the properties adjacent to the subject properties had their property rights violated due to the setback issue and property values were reduced.

William Shenko, Jr., attorney and resident, discussed his views on the issue Council had before them; prior interpretations of the Town Code by prior Town and County staff, counsel, and Town Council versus current Town staff and counsel. He noted his belief that the issue before Council was critical to the Town.

Mark Ludvigsen, resident, noted that he was present to speak for both sides of the issue. He reported he was a contractor; and that Mr. Orlandini and many of the people present were his neighbors. He expressed his views regarding the interpretation of the building codes; and stated he felt the interpretation of the codes were wrong and that many other issues for the Town would arise from this matter.

Bob Moore stated he was a general contractor; that he was the general contractor performing the work for Mr. Orlandini; and that he currently had seven projects in the Town. He reported he concurred with Mr. Potter's comments; and pointed out that all of his pool projects on the island have been stopped, and requested relief.

Summer Stockton stated she was the authorized agent speaking on behalf of Lawrence and Gloria Abramoff (126 Palermo Circle). She read a letter which outlined the basis for the objection to elevated pools by Mr. & Mrs. Abramoff. The letter noted that Mr. & Mrs. Abramoff's property directly faced an elevated pool located at 551 Palermo Circle which was approximately 13' in height and 6' from the canal; and requested that the Town Council did not allow any more building permits for elevated pools or other structures to be constructed within 25' of the canal and urged Council to deny any permits for elevated pools.

Summer Stockton, resident, distributed information to the audience. She explained that she approved of elevated pools/structures, as long as they followed Town codes requiring a 25' setback if taller than 3.5'. She discussed her view of the findings by the independent counsel; and her remarks made at a prior Council Work Session. She addressed Section 34 of the Town codes pertaining to elevated enclosures. She requested Council deny the appeal and to not re-define Fort Myers Beach.

Anita Cereceda expressed her belief that there was no 'ambiguity' in the Town's land development code. She briefly outlined the process that should be taken when changes were to be made to the land use codes and Comprehensive Plan which would have begun with the Local Planning Agency. She stated that the only reason why the Town incorporated in 1995 was to control land use. She recommended the Council deny the appeal because it was wrong to be issued.

Joseph Beasley, resident, reported he lived on Palermo Circle since 1950 and questioned what was happening in the Town with respect to elevated pools and how many more would be constructed. He explained his belief that the elevated structures would channel water flow onto the adjacent property and the island in a storm. He stated he did not believe there was any reason why these structures were allowed; and the appeal should be denied.

Carol Morris, Fire Commissioner Fort Myers Beach, explained that she lived in Fort Myers Beach, but it was off-island on the bay; and that she had built a home with an elevated pool that was set-back 28' from the seawall. She described her experience as it pertained to construction of the elevated pool at her residence and meeting FEMA regulations and Lee County building codes; and how she discovered the elevated pool constructed almost up to the seawall in the Town. She discussed her review and interpretation of the Town's building codes as it pertained to elevated pools/structures.

Garr Reynolds, resident, discussed his views on elevated pools/structures, Town staff, and Town Council. He recounted his experience, as a long-time resident, with the incorporation of the Town.

David Tezak stated he owned the property at 505 Palermo Circle and that he would be directly impacted by the property located at 551 Palermo Circle. He expressed his opinion that the permits issued were invalid.

Tammy Stockton noted that Attorney Grady had described the proper way to create a moratorium and asked the Council '*to do something before it was too late*'.

Attorney Kayusa stated he wanted to discuss some basic points – 1) it was an appeal and the applicant had the burden of proof; 2) structures were being called 'accessory structures'; and 3) the definition of 'grade'.

Public Comment closed.

Recess at 11:39 a.m. – Reconvened at 11:55 a.m.

Attorney Beverly Grady, with the law firm of Roetzel & Andress represented the applicant. Attorney Grady indicated that she had filed with the clerk the authorizations for representation regarding permit applications for pools for 301 Palermo, 263 Palermo and 557 Palermo Circle. It is her opinion that the process for interpretation was not conducted as a public hearing, and that resolution 13-26, putting in place a moratorium prohibiting the issuance of permits on pools, is null and void. The applications were made with a good faith reliance on the Town's land development code prior to October 2013.

No rebuttal from staff.

Town Attorney Miller requested that Attorney Kayusa disclose who he represents, and Mayor Mandel directed that he send that information to the Town Clerk.

Mayor Mandel sought consensus from the Council to delay the decision on the appeal until the Council has an opportunity to further discuss in a work session.

Town Attorney Miller stated that delay of a decision was permissible; however, it would not forestall some type of claim being filed against the Town. She explained a mandamus action was a writ issued from a court to an official compelling performance of a ministerial act that the law recognized as an absolute duty.

Vice Mayor Kosinski questioned the use of a moratorium.

Town Attorney Miller reviewed that when she brought the resolution forward she stated there needed to be an ordinance adopted with the same formality as a zoning ordinance. She added that she quickly prepared the ordinance which went before the LPA and was scheduled for the December 2, 2013 Council Meeting at which time the ordinance was tabled.

Council Member Raymond reviewed why he had made the motion to table the ordinance.

Mayor Mandel asked if Council needed to go forward with a way to put a moratorium in place.

Town Attorney Miller responded in the affirmative.

Discussion was held concerning the next step to be taken for a moratorium; potential estoppel actions and damages; the need for direction to staff as it pertained to pools above-grade; the need to insure no more controversial structures were built until specifically codified; and the need to allow contractors to build structures which currently met the code.

Town Attorney Humphrey explained that the matter was a quasi-judicial process; and Council needed to focus on the fact that the Applicant had asked them to remove those restrictions as it related to the present unit and some others. He added that a delay would be to a time certain; if Council felt there was enough evidence presented to respond to this particular petition then they could take action; and if Council decided they needed to look at the broader issue of other developments and health, safety, and welfare issues it could be discussed later. He recommended Council address the basic reason of the appeal; and that some of the discussions as to the resolution or future ordinance should be taken separate and apart.

MOTION: Council Member Andre moved to deny the appeal applications; second by Council Member List.

Discussion was held.

Town Attorney Miller noted that the basis for denial needed to be stated; and suggested the applications did not comply with setbacks.

Council Member Raymond questioned the moratorium.

Town Attorney Miller explained the resolution put people on notice and gave the Town a legal argument that they were on notice and they just could not run in for a permit to attempt to avoid the moratorium.

Discussion was held concerning Resolution 13-26; zoning in progress and the appeal process pursuant to Resolution 13-26; the issue before Council and the validity of Resolution 13-26; the separate issue of the two existing elevated pools; the opinion of the independent counsel and the height of the pools and open-mesh screened enclosures.

Town Manager Stewart addressed some of the comments made during Public Comment.

Discussion was held.

AMENDMENT: Motion maker moved to deny the appeal based on setbacks [25' setback and 42" height].

SECOND: Agreed with the amendment.

Council Member Raymond discussed his concerns regarding Resolution 13-26 and a moratorium.

Town Attorney Humphrey stated counsel had taken the position that the Town had a moratorium and it was legal. He explained Council would always receive recommendations to take it on a case-by-case basis and look at the Resolution; and recommended to proceed with an ordinance.

Council Member Raymond questioned the status of the elevated pool permits in progress.

Community Development Director Fluegel reported one was already built that was issued a permit prior to the 'zoning in progress' declaration; 301 Palermo Circle was under construction that received a permit for a deck structure/retaining structure for the pool, but did not receive a pool permit and applied after the 'zoning in progress' declaration.

Council Member Raymond discussed his view that the issue dealt with accessory structures.

Discussion was held concerning what action(s) Council could take at this time.

Mayor Mandel asked the status of the other four permits.

Community Development Director Fluegel reported that accessory structures had not been built on the four sites.

Discussion ensued regarding which properties had begun construction and which properties did not begin construction.

Town Attorney Rooney explained that the Council had serious questions as a result of the pool permits being issued and the construction that raised a question of interpretation in the code; that the Resolution was the quickest way to put the community on notice that the Council needed to address the issue; that the Resolution took staff review of permits away from staff and the appeal process meant that the Council was ruling on each permit; and that there was a *de facto* moratorium in place. He recommended that counsel would take the Council's interpretation (i.e. 25' setback and 42" height) to draft revised regulations.

Discussion was held concerning potential action for 301 Palermo Circle; whether or not 301 Palermo Circle was constructed according to plans; the five properties listed in the appeal; and the lack of materials submitted by the Applicant with the appeal application.

Council Member List reviewed her thoughts on the matter beginning when it arose back in June 2013.

Mayor Mandel noted that the motion to deny included all five subject properties.

VOTE: Motion approved, 3-2; Vice Mayor Kosinski and Council Member Raymond dissenting.

Mayor Mandel noted that Council could now look at the policy going forward and urged Council to have a Work Session as soon as possible to determine what the policy should be going forward.

Recessed at 1:00 p.m. – Reconvened at 1:16 p.m.

Discussion was held; and consensus approved delaying the Work Session today until 2:30 p.m.

Mayor Mandel mentioned the contractors who noted 'unintended consequences', and asked if Council wanted to approve a motion that would allow pools within 42" of grade as defined in the Town code.

Town Attorney Rooney suggested Council look at those permit applications individually.

Discussion was held concerning in-ground pools and measurements according to grade, crown of the road, and setbacks.

Mayor Mandel explained that pools with a 25' setback would be approved, and those pools that were 5' from a canal would be based on grade no more than 42" above the crown of the adjacent roadway.

Town Attorney Rooney recommended that Council move forward with a Work Session as quickly as possible.

Council Member List pointed out that contractors for pools could come before Council with their requests.

Discussion was held concerning contractors with pending pool construction.

Mayor Mandel clarified that pools with a 25' setback would be approved and those pools that were 5' from a canal would be based on grade no more than 42" above the crown of the adjacent roadway.

Council Member Andre recognized Mr. Moore in the audience.

Mr. Moore, Woodwind Contracting, discussed how the Code treated the condition of the lot and measurement from crown of the road.

Discussion was held concerning appeals; holding a special meeting; and an interpretation of grade for staff (i.e. natural grade).

Mayor Mandel re-clarified that pools with a 25' setback or 5' from a seawall would be approved if they were within 42" of natural grade.

MOTION: Vice Mayor Kosinski moved to approve pools with a 25' setback or setback 5' from a seawall would be approved, and if they were no more than 42" above natural grade; second by Council Member Raymond.

VOTE: Motion approved; 5-0.

Consensus approved holding a Special Meeting on Friday, January 10, 2014 at 10:00 a.m. to discuss possible amendments to the LDC related to accessory structures.

B. Investment Policy
Request to approve and implement the new Town investment policy, which has been developed in conjunction with the Town's Audit Committee.

Mayor Mandel noted the Town's Audit Committee had developed a comprehensive investment policy for the Town.

MOTION: Council Member Raymond moved to approve and implement the new Town investment policy which has been developed in conjunction with the Town's Audit Committee; second by Council Member List.

Town Manager Stewart reported staff fully supported the Investment Policy developed in conjunction with the Town's Audit Committee.

Public Comment opened.

Dan Hughes, Audit Committee, indicated the Committee requested the Council's approval of the Investment Policy presented.

Annie Babcock, resident, echoed the comments of Mr. Hughes.

Public Comment closed.

VOTE: Motion approved; 5-0.

C. National Science Foundation Grant Letter of Support
A request to approve the writing of a letter in support for the National Science Foundation Grant. The grant is for the Southwest Florida Barrier Islands' Sustainability.

Town Manager Stewart pointed out that the Town was not applying for a grant rather they were requested to provide a letter of support for the National Science Foundation Grant.

Environmental Sciences Coordinator Laakkonen reported the University of South Florida, Florida Gulf Coast University, and the University of Tampa Museum of Science and Industry were collaborating on a grant application to the National Science Foundation. He explained that some of his time would be involved with sharing data with the principal investigators on the study.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Mayor Kosinski moved to approve the writing of a letter in support for the National Science Foundation Grant, and the grant is for the Southwest Florida Barrier Islands' Sustainability Study; second by Council Member Andre.

VOTE: Motion approved; 5-0.

XI. PUBLIC COMMENT

Public Comment opened.

Bob Moore, Woodwind Contracting, reported he worked with the Town's Building Department staff on a daily basis and complimented the Council on a great staff. He added that he believed the Town staff needed additional help due to an influx of permits; and mentioned how he received emails from staff on weekends, after-hours in the evening, and even when staff was sick and working from home.

Jane Plummer, resident, noted her belief that staff was aware of the problem with elevated pools in February. She questioned a staff investigation, the cost of the investigation, and how to rectify the use of her name on the news as it pertained to the investigation.

Annie Babcock, resident, stated she was pleased with the members of Council who voted for denial of the appeal. She discussed her views on 'interpretation by Council and implementation by staff'.

Tracey Gore, resident, stated she supported Ms. Plummer's comments; and believed the members of Council who voted for denial of the appeal were correct. She discussed her thoughts on the historical interpretation of the Town codes as it pertained to accessory structures.

Summer Stockton, resident, echoed Ms. Babcock's comments.

Public Comment closed.

Mayor Mandel explained the purpose of hiring the independent counsel.

Town Manager Stewart stated the Town did not retain an attorney to defend a staff member; and recounted how once the counsel was retained he turned the matter over to the Finance/Personnel Director.

Discussion was held about Mr. Plummer's concerns to rectify the use of her name on the news as it pertained to the investigation.

XII. TOWN MANAGER ITEMS

B. Action Items Recap

Town Manager Stewart reported that Item #8 was completed; and the Work Sessions were scheduled as listed in Item #15.

A. Mound House Update

Town Manager Stewart stated staff reported they were working on two different sign packages (Newton Park and Mound House landscape signage). He anticipated placing the bid for the deck 'out on the street' by the end of January. He noted the contractor was working to complete the lead-paint removal; and SEARCH, Inc. was working on the museum action plan, etc.

XIII. TOWN ATTORNEY ITEMS*

*Item discussed after Agenda Item XIV – Council Member Items and Reports.

Town Attorney Humphrey – no items.

Town Attorney Rooney – reported he had prepared a rough draft of the Mound Key annexation issue and a pre-annexation agreement. He stated after looking at Attorney Miller's research that if the State was paying for the underlying property, then a part of the compensation could be allowing them to transfer any development rights off. He noted that issue, from a policy perspective, needed to be flushed out and an ordinance prepared so that both they and the Town know how those rights could be used elsewhere. He suggested the matter should be discussed at a workshop. He reported he was still working on the eviction from the mooring field matter.

Town Attorney Miller – no items.

XIV. COUNCIL MEMBER ITEMS AND REPORTS*

*Item discussed after Agenda Item XVI – Recap of Action Items.

Council Member Andre – questioned the status of relocating the dumpsters from BORC.

Town Attorney Rooney noted the current lease had some provisions that conflicted with the intention:

- Hazardous materials provision
- Use restrictions on the common areas

Mayor Mandel asked the status of the other potential sites.

Town Manager Stewart reported he had one more site he needed to re-visit because the representative asked him to wait until after the first of the year.

Council Member List – urged the staff and Mayor to schedule a meeting with the representatives of the airport concerning aircraft noise, times, and heights over the island.

Council Member Raymond – questioned the email he received about the Town Hall window banner/decoration and the potential cost.

Town Manager Stewart stated the estimated cost was $1,500-1,600.

Council Member Raymond – questioned the email he received about the transfer of development rights.

Mayor Mandel explained that the Town would not be buying or selling development rights.

Town Manager Stewart explained there was a provision in the Town codes for the transfer of development rights (i.e. originating site and a receiving site).

Discussion was held concerning a request from Mr. Jameson's representative for a Comprehensive Plan Text amendment to create an overlay on their property and recognize forty TDRs.

Vice Mayor Kosinski – no items or report.

Mayor Mandel – noted he received a request from the Governor's Office through the Florida League of Cities for a proclamation against human trafficking.

Consensus agreed the proclamation should be prepared and read at the next Council meeting.

Mayor Mandel – reported he received material from a resident requesting a bandstand or amphitheater; and he questioned if the Town should consider a mobile stage.

Town Manager Stewart offered to gather information for Council on a mobile stage.

Mayor Mandel – asked if the Horizon Council luncheon had been arranged.

Town Manager Stewart stated he would research the Horizon Council luncheon and report back to Council.

Mayor Mandel – explained he was working with the Town Manager on the matter of customer service, especially in the area of permitting, and information on the topic would be brought back to Council. He added that Council would discuss at the next meeting having one extra meeting per month to follow-up on issues with the Town Manager. He reported that the Town did request a meeting with the airport representatives; however, he had not heard back from them. He recapped the actions Council had taken over the past 1-1.5 years as it pertained to aircraft noise, routes, height, and flight times over the island. He reported he recently received notice asking him to serve on the National League of Cities Energy, Environment, and Natural Resources Committee, and requested approval to accept the invitation.

Consensus agreed to approve the Mayor's request to serve on the on the National League of Cities Energy, Environment, and Natural Resources Committee.

XV. AGENDA MANAGEMENT

Council Member List noted Agenda Management Item #22, FMB Film Commission, and mentioned the people interested in this item wanted to make a presentation before Council. She requested, if possible, that the item be scheduled for an evening Council meeting for the second meeting in February.

Consensus approved to have Agenda Management Item #22, FMB Film Commission, on the second Council meeting in February.

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

- Town Manager goals – Work Session 1/21/14

XVI. RECAP OF ACTION ITEMS*

*Item discussed after Agenda Item XII – Town Manager's Items.

Town Manager Stewart recapped the Action Items as follows:

- Staff would proceed to remove the speed bump as requested by Mr. Tomaolio and approved by Council; discussion held concerning Mr. Tomaolio's request to re-route traffic and Town Manager Stewart would research if 1st Street was a dedicated street.
- Portable restrooms at Canal Street; discussion was held and Planning Coordinator Overmyer explained CRAB had provided notice to property owners regarding the proposed portable restrooms; Council Member Andre requested that the proposed portable restrooms at Canal Street be placed on a temporary hold until he had the opportunity to visit the site and consensus agreed to the request.
- Staff would process the approval to reschedule the March 17th Council meeting and work session to March 18th.
- Staff would process the Council approval of the *Privateer Lynx* pump-out; and place this expense in the budget for next year, if the *Lynx* made the Town its home port.
- Staff would process the approval of the Town's annual sponsorship of the Horizon Foundation.
- The request by the Nao Victoria to place banners on the street poles was approved as long as they covered their cost.
- Staff would notify the applicant of the appeal denial.
- Staff would implement the Investment Policy as approved by Council.
- Staff would process the approval of the letter of support for the National Science Foundation Grant as approved by Council.
- Staff would process Council's direction regarding pool permits.
- Staff would schedule a Special Meeting on January 10, 2014 at 10:00 a.m.

XVII. ADJOURNMENT

Motion by Council Member Andre; second by Council Member List. Meeting adjourned at 2:21 p.m.

Adopted 2/3/14 With/~~Without~~ changes. Motion by Andre / Kosinski

Vote: 5-0

Michelle D. Mayher, Town Clerk

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