MINUTES

Monday, March 3, 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 March 3, 2014 Special Meeting, Closed Attorney-Client Session, of the Town Council at 8:32 a.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, and Raymond; Council Member List arrived during the attorney/client session. Also Present: Interim Town Manager Stilwell, Town Attorney Rooney, and Town Clerk Mayher.

Mayor Mandel indicated a certified court reporter was present to take notes and transcribe the same. He stated the following attorneys were attending the session: Mark Ebelini, Aaron Hack, and James Humphrey.

Attorney Hack reported that as of January 21, 2014 his firm was retained by the Town as special counsel as it pertained to legal issues regarding properties located on Palermo Circle and the litigation filed in Lee County Circuit Court [Case No 4-CA-000148, Orlandini vs. the Town of Fort Myers Beach]. He reviewed the basis for the ability of Town Council to meet in a closed session with their attorneys; and how the court reporter would record and transcribe the attorney/client session.

EXECUTIVE SESSION CLOSED TO THE PUBLIC

Lee County Circuit Court Case No 4-CA-000148, Orlandini vs. the Town of Fort Myers Beach

ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION

Mayor Mandel announced the Special Meeting adjourned at 9:18 a.m.

Recessed at 9:19 a.m. – Reconvened at 9:26 a.m.

II. CALL TO ORDER

Mayor Mandel called to order the March 3, 2014 Regular Meeting of the Town Council at 9:26 a.m. Present along with Mayor Mandel: Vice Mayor Kosinski and Council Members Andre, List, and Raymond. Also Present: Interim Town Manager Stilwell, Town Attorney Rooney, Finance Director Wicks, Public Works Director Lewis, Community Development Director Fluegel, and Town Clerk Mayher.

III. INVOCATION – Rev. Lorrie Davison

IV. PLEDGE OF ALLEGIANCE – Principal Wood and Beach Elementary School Students

Principal Wood presented Council Member List with a Certificate of Appreciation for involving the Beach Elementary School students in local government during the past six years. He also presented her with a painting of the school's pavilion.

V. APPROVAL OF FINAL AGENDA

Consensus approved the Agenda as presented.

VI. LEE COUNTY STATUS REPORT OF ESTERO BOULEVARD

VII. 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.

John Heim, resident, discussed 'activism as it related to water quality'. He read a pledge for clean water and requested the Town Council sign the 'Floridians for Clean Water Declaration' pledge.

Public Comment closed.

Council Member Andre reviewed the matter of HB703 which was on the last Council Meeting's Consent Agenda and how Council had agreed not to support HB703.

Mayor Mandel noted that he may make another trip to Washington DC concerning appropriations that were needed as it pertained to clean water issues; and added that he and other area mayors were working together on flood insurance and water quality issues and releases from Lake Okeechobee.

VIII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Andre thanked the host of the candidate forums and the candidates.

Council Member List echoed Council Member Andre's comments.

Mayor Mandel thanked Chair Greer for starting the candidate forum; and explained the active roles the Florida League of Cities and the National League of Cities were taking with the issues of flood insurance rates and clean water.

IX. ADVISORY COMMITTEES ITEMS AND REPORTS

Keri Hendry Weeg, CRAB, reported she finished working on the beach access and Council Liaison Andre should receive that information soon.

X. PROCLAMATION

A. Mayor's Day of Recognition for National Service

Mayor Mandel noted there was no one present to receive the proclamation; however, he read the proclamation and thanked everyone who served on Town committees and other committees in the Town which helped the Town's "fabric of life".

XI. APPROVAL OF MINUTES

A. January 21, 2014 Regular Town Council Meeting
B. January 21, 2014 Town Council Work Session

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

VOTE: Motion approved, 5-0.

XII. PUBLIC HEARING

A. Quasi-Judicial Hearing: Case Number REZ2013-0001, Houseboat, LLC Rezoning
Case Number SEZ2013-0005, Houseboat, LLC Special Exception
Case Number VAR2013-0006, Houseboat, LLC Variance

Mayor Mandel opened the Public Hearing at 9:50 a.m.

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

LPA Attorney Rooney swore in the witnesses.

Attorney Grady, representing the Applicant (Houseboat, LLC – John Richard, Managing Member), reviewed the rezoning request for four parcels located at 420, 430, 440 Old San Carlos Boulevard and 1010 Second Street from Commercial Planned Development to the Downtown Zoning District. She described the subject property; and original zoning designation and prior CPD amendments by Town Council. She noted the Matanzas CPD was not contiguous to the remainder of the CPD; and that the subject property was located in the heart of the downtown. She explained the changing condition that made the rezoning appropriate was that the Town did not have the downtown district available at the time the property was originally rezoned a CPD; that the request was consistent with the Comprehensive Plan and the intent of the LDC. Attorney Grady utilized a PowerPoint presentation to review the special exceptions for a retail store, large, as defined in LDC Chapter 34 with floor area larger than 5,000 square feet – staff recommended approval; and parking lot, shared and permanent – LPA recommended approval. She reviewed the Applicant's request as follows:

1. Section 34-676(b), parking lot location, to permit off-street parking in the side yard as depicted on the site plan *Exhibits A & E* - LPA recommended approval.
2. Table 10-8 Type D buffer, Section 10-416(d) requiring a buffer between the parking lot and ROW, Section 34-677(b)(3) from a Type D buffer to 2.5' buffer with a minimum height of 41" (Exhibit A – Buffer Exhibit; and photograph of skim boards with plants in front) - LPA recommended approval.
3. Section 10-416(d) requiring a type C/F buffer along the rear property line to allow an existing six (6') foot fence along rear property line. - LPA recommended approval.
4. Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8.5' x 16'	10'	20'
60°	8.5' x 16'	12'	20'
75°	8.5' x 16'	15'	20'
90°	8.5' x 16'	18'	20'

- LPA recommended approval with the exception of parking spaces to be 8.5' X 18'. Applicant requested that the compact spaces be limited to 25% - 8.5' X 16'.

5. Section 34-622 (b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in the exhibits displayed (Page 14 of handout).
6. Section 10-416 that Administrative Variance might be permitted for relief from internal landscape requirements (2a – no tree requirement internally; 2b – no landscape bylands internally; 2c – no 10' minimum width of landscape islands; 2d - no requirement every 10 spaces; 2e – no internal medium required; 2f – no interior landscape; and 2 g – no tree grates) this relief was authorized to be granted administratively by staff – the LPA recommendation to staff to grant the relief.

She reviewed the request under LDC 34-674(a) for an overhang of the building onto the right-of-way for a dimension of 12 feet which LPA recommended approval.

Alexis Crespo of Walthrop Engineering representing the Applicant, reviewed the planning consistency of the subject application and how the requested variances, special exceptions, and rezoning would directly implement the intent for the Pedestrian-Commercial Future Land Use designation, as well as the

Town's Downtown Zoning District, and specific regulations for the Old San Carlos Boulevard. She reviewed the following:

- Comprehensive Plan Compliance
  - Most intensive future Land Use Category where commercial uses are intended and encouraged
  - Available infrastructure and separated from lower-density residential
  - Policies direct streamlined approval process for new and expanded commercial uses
  - Requests are consistent with Comprehensive Plan policies
- Downtown Zoning Request
  - Old San Carlos Boulevard is town's 'Main Street'
  - "Park-Once" emphasis
  - 1.8 Floor Area Ration (FAR)
  - 0' build-to lines for Old San Carlos Boulevard
  - 0' to 5' build-to lines on Third and Second Streets
  - 0' side yard setbacks
  - Reduced parking and buffers
  - Commercial Design Standards
- Concluding Remarks
  - Logical extension of the Downtown zoning district
  - Appropriate based upon the property location, surrounding zoning, land uses and infrastructure
  - Special Exception and Variances acknowledge existing conditions and CPD approval
  - Variance request for parking space dimensions limited to 25% of spaces – a lesser request than current CPD approval
  - Consistent with LDC and Comprehensive Plan
  - Local Planning Agency recommended approval of all requests

She requested Town Council approve the subject application.

Zoning Coordinator presented comments for Houseboat, LLC, REZ2013-0001, SEZ2013-0005, and VAR2013-0006, on behalf of the Town of Fort Myers Beach. She displayed a survey of the property location at 420, 430, 440 Old San Carlos Boulevard and 1010 Second Street and reviewed the property history:

- Originally part of the Matanzas CPD, approved by Lee County Z-95-074 (Exhibit B)
- Amended by Town Council in Resolution 99-05 (Exhibit C)
- Amended again by Resolution 03-35 (Exhibit D)
- Property sale in spring of 2013 created separate ownership within a single CPD
- New owner applied for rezoning (resulted in need for SEZ and VAR applications)

She continued the review of the Applicant's request:

- REZ2013-0001 – to rezone four parcels from Commercial Planned Development zoning to the Downtown Zoning District.
- SEZ2013-0005 – to include "retail store, large' as defined in LDC Chapter 34 as gross floor area larger than 5,000 square feet, as permitted use; *a request for a special exception to allow a parking lot, shared and permanent.*
- VAR2013-0006 – Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way

45°	8.5' x 16'	10'	20'
60°	8.5' x 16'	12'	20'
75°	8.5' x 16'	15'	20'
90°	8.5' x 16'	18'	20'

Section 34-622(b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in sketch.

She briefly noted the supporting regulations and request for REZ2013-0001 – to rezone four parcels from Commercial Planned Development zoning to the Downtown Zoning District. She reported that staff recommended approval of the request for a rezoning to the Downtown Zoning District; and noted that conditions were not permitted on a rezoning request. She continued her presentation with a brief notation of the special exception request for SEZ2013-0005 – to include 'Retail Store, large' as defined in LDC Chapter 34 as gross floor area larger than 5,000 square feet as a permitted use (*A request for a special exception to allow a parking lot, shared and permanent*). She stated staff was generally supportive of the uses on the subject property and mentioned the options available to the Council for the Special Exception request:

- Approve
- Approve with conditions
- Deny
- Noted that denial created existing non-conforming conditions

She continued her presentation with a review of the variance requests; stated that staff recommended approval with conditions for the location of the parking lot. She stated staff was generally supportive of the uses on the subject property and indicated the options available to the Council for the Variance request:

- Approve
- Approve with conditions
- Deny
- Noted that denial created existing non-conforming conditions

She explained that staff did recognize that the Downtown core area was inherently different from the buffer requirements in other parts of the Town. She pointed out that some of staff's recommendations had been altered by the LPA; and noted the LPA held a Public Hearing on January 14, 2014; heard Public Comment; discussion centered on buffers and alternative buffer options, non-conformities, and parking space sizes and aisle widths; and voted as follows:

- 7-0 for recommendation of approval for REZ2013-0001
- 7-0 for recommendation of approval for SEZ2013-0005
- 7-0 for recommendation of approval with conditions for VAR2013-0006 with the Recommended Conditions of Approval as follows:
    1. 8.5' x 18'
    2. The applicant shall install a 2.5' wide buffer with a minimum height of 41."
    3. The Applicant may utilize the parking dimensions described in the variance recommended approval #4 above, provided; however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must come into compliance with all provisions of Section 34-2016.
    4. At the time of redevelopment, the parking lot variance allowing a front and side lot will expire and the property must come into compliance and the parking lot must be located in the rear of the subject property.

5. The LPA grants approval for a building overhang extending up to 12' into the right-of-way.

Council Member Andre congratulated the LPA on a great job vetting the subject applications.

Mayor Mandel pointed out the Applicant was request 25% of the spaces be for compact cars at 8' x 16' and the regular spaces were 8.5' x 18'; and the LPA had not designated a specific percentage.

Zoning Coordinator Dulmer responded in the affirmative; and noted the LPA had not heard the request for 25% of the spaces.

Vice Mayor Kosinski noted that he had done the engineering on Shipwreck; however, it was about ten years ago; and he was retained through the designer and did not know Mr. Richard at the time.

Town Attorney Rooney explained there would be no conflict unless Vice Mayor Kosinski had planned to perform engineering for the subject site in the future.

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

Mr. Bodenhafer, LPA, stated he was not authorized by the LPA to speak on their behalf; however, he noted the basis for the LPA's support of the project by a unanimous vote of approval.

Public Comment opened.

No speakers.

Public Comment closed.

Attorney Grady stated she had no changes to the rezoning or special exception resolutions; however, she noted in Variance Resolution 2014-05 (Page 2, Conditions of Approval #2) that if the Council approved 25% of the parking spaces to be compact, she offered the following:

- The Applicant may utilize the parking dimensions described in the variance recommended approval #4 above, provided; however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must *be limited to 25% of the total parking spaces for the relief of #4 above* come into compliance with all provisions of Section 34-2016

She noted that the LPA resolution under approval or denial of the variance that the LPA had an additional #6, Section 10-416(c) that Administrative Variance might be permitted for relief from internal landscape requirements.

MOTION: Vice Mayor Kosinski moved to approve **REZ2013-0001**, Resolution 14-03, Houseboat, LLC; second by Council Member Andre.

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Kosinski moved to approve **SEZ2013-0005**, Resolution 14-04; second by Council Member Andre.

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Kosinski moved to approve **VAR2013-0006**, Resolution 14-05, to allow 25% compact vehicle parking, 8' X 16', balance in compliance with Code; second by Council Member Andre.

VOTE: Motion approved; 5-0.

Mr. Richard, Applicant, asked if he would need a permit for the buffer or could he install it.

Zoning Coordinator Dulmer reported there was no permit required for buffer installation.

Mayor Mandel closed the Public Hearing.

B. Quasi-Judicial Hearing: Case Number REZ2013-0002, Rusty's/Shipwreck Rezoning
Case Number SEZ2013-0006, Rusty's/Shipwreck Special Exception
Case Number VAR2013-0007, Rusty's/Shipwreck Variance

Mayor Mandel opened the Public Hearing at 10:30 a.m.

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

LPA Attorney Rooney swore in the witnesses.

Attorney Grady, representing the Applicant (Rusty's Shipwreck – John Richard, Trustee), reviewed the rezoning request for parcels located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard from Commercial Planned Development to the Downtown Zoning District. She noted that much of the description of the Comprehensive Plan and land development code of the core was previously stated; and she requested that the Council approve that she incorporate that information by reference. She outlined the request of rezoning from CPD to the Downtown zoning with a special exception for shared and permanent parking, for retail large, for the south parcel (existing and future) and valet parking on the south parcel. She reviewed the Applicant's request as follows:

- **South Parcel** - Variance #1: from Section 34-676(b) parking lot location, to permit off-street parking in the side/front yard as depicted on the site plan displayed – LPA recommended approval.
- Variance #2: from Section 34-676(b)(3) and 10-416(d) and Table 10-8 the required Type D buffer to 2.5' buffer and height of at least 41" – LPA recommended approval.

- Buffer to be immediately installed along the side lot lines and along Old San Carlos in two years, if no building is constructed.
- Variance #3 – from Section 34-676(c) requesting no interconnection to south – LPA recommended approval.
- Variance #4 – from Section 34-622(b) and 34-3131 to no visibility triangle on Third Street (see site plan) – LPA recommended approval.
- Variance #5 - from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8.5' x 16'	10'	20'
60°	8.5' x 16'	12'	20'
75°	8.5' x 16'	15'	20'
90°	8.5' x 16'	18'	20'

  LPA recommended approval with the exception of parking spaces to be 8.5' x 18'. She recognized a 50% compact car area.
- Variance #6 – from Section 10-416(c) internal landscape improvements to parking lot:
  - 2a – no tree requirement internally; 2b – no landscape bylands internally; 2c – no 10' minimum width of landscape islands; 2d - no requirement every 10 spaces; 2e – no internal medium required; 2f – no interior landscape; and 2 g – no tree grates. This relief is authorized to be granted administratively by staff – the LPA recommendation to staff to grant the relief.
- **North Parcel** – Special Exception for shared and permanent parking, "retail, large" wholesale use – north parcel (existing and future).
  - Variance #5 - from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8.5' x 16'	10'	20'
60°	8.5' x 16'	12'	20'
75°	8.5' x 16'	15'	20'
90°	8.5' x 16'	18'	20'

  LPA recommended approval with the exception of parking spaces to be 8.5' x 18'. She recognized a 50% compact car area.
  - Variance #6 – from Section 10-416(c) internal landscape improvements to parking lot: 2a – no tree requirement internally; 2b – no landscape bylands internally; 2c – no 10' minimum width of landscape islands; 2d - no requirement every 10 spaces; 2e – no internal medium required; 2f – no interior landscape; and 2 g – no tree grates. This relief is authorized to be granted administratively by staff – the LPA recommendation to staff to grant the relief.

Attorney Grady noted the Applicant was also requesting an overhang (12' into the right-of-way) consistent with other development along San Carlos Boulevard for which LPA recommended approval.

Alexis Crespo of Walthrop Engineering representing the Applicant stated her PowerPoint presentation and testimony was basically the same for Shipwreck as it was for Houseboat. She explained that the subject property was located within the Pedestrian/Commercial Future Land Use designation. She reviewed the following:

- Comprehensive Plan Compliance

- Most intensive future Land Use Category where commercial uses are intended and encouraged
- Requests are consistent with Comprehensive Plan policies

- Downtown Zoning Request

She reviewed how the alternative buffer request was appropriate; how they would screen the current parking use on a temporary basis until redevelopment occurred; and how variances would address existing conditions on the site (i.e. visibility triangle, location of existing parking, and lack of landscaping within parking areas). She noted the request for the compact car area was 50% for Shipwreck which pertained to the current CPD Resolution 01-03 (Deviation #5). She offered concluding remarks which included but was not limited to:

- Logical extension of the Downtown zoning district
- Appropriate based upon the property location, surrounding zoning, land uses and infrastructure
- Special Exception and Variances acknowledge existing conditions and CPD approval
- Consistent with LDC and Comprehensive Plan

She pointed out that the Local Planning Agency recommended approval of all requests and Town staff in agreement.

Zoning Coordinator Dulmer presented comments for Rusty's Shipwreck, REZ2013-0002, SEZ2013-0006, and VAR2013-0007, on behalf of the Town of Fort Myers Beach. She displayed a survey of the property location at 237, 245, 309, 320, and 330 Old San Carlos Boulevard (north and south parcels) and briefly reviewed the Applicant's request:

- SEZ2013-0006 – to add to the South parcel the following uses: parking lot, shared and permanent, on the south parcel and retail store, large, on the south parcel as permitted uses on the subject property.
- VAR2013-0007 - Section 34-676(b) parking lot location, to permit off-street parking in the front and side yards as depicted on the site plan in *Exhibit E;* Table 10-8 Type D buffer, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW, and Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height; Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property.

She noted the LPA held a Public Hearing on January 14, 2014; heard Public Comment; discussion centered on buffers and alternative buffer types, non-conformities, uses, including marina uses, parking space size and aisle widths and voted as follows:

- 7-0 for recommendation of approval for REZ2013-0002
- 7-0 for recommendation of approval for SEZ2013-0006
- 7-0 for recommendation of approval with conditions for VAR2013-0007 with the Recommended Conditions of Approval as follows:
    1. 8.5' x 18'
    2. The applicant shall install a 2.5' wide buffer with a minimum height of 41."
    3. The Applicant may utilize the parking dimensions described in the variance recommended approval #5 above, provided; however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must come into compliance with all provisions of Section 34-2016.

4. At the time of redevelopment, the parking lot variance allowing a front and side parking lot must come into compliance and be relocated to the rear of the subject property.
5. The LPA grants approval for a building overhang extending up to 12' into the right-of-way pursuant to Section 34-674(a).

Council Member Andre questioned the 'marina use' for the north parcel.

Zoning Coordinator Dulmer reviewed the Code for the Downtown Zoning District as it pertained to 'existing' marina uses; and noted the Applicant had provided documentation that there were boat slips on the subject property prior to August 1, 1986. She indicated the limiting factors for any expansion of the marina had to do with its location and size/depth of the canal.

Vice Mayor Kosinski asked if the delay in installing the buffer was along Old San Carlos Boulevard.

Zoning Coordinator Dulmer responded in the affirmative.

Mayor Mandel asked if staff had a comment on the request for the 50% parking area for compact cars.

Zoning Coordinator Dulmer explained that staff could be supportive of the request.

Discussion was held concerning the request for the 50% parking area for compact cars.

Mr. Richard, Applicant, explained how the Houseboat and Shipwreck properties had two different configurations as it related to the requested percentage of area for compact cars.

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

Mr. Bodenhafer, LPA, stated he was not authorized by the LPA to speak on their behalf; however, he complimented staff and the Applicant for working together for making the development a good project.

Public Comment opened.

No speakers.

Public Comment closed.

Council Member List noted her belief that deferring the installation of the buffer was logical.

MOTION: Vice Mayor Kosinski moved to approve REZ2013-0002, Resolution 14-06; second by Council Member Andre.

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Kosinski moved to approve SEZ2013-0006, Resolution 14-07; second by Council Member Andre.

VOTE: Motion approved; 5-0.

MOTION: Vice Mayor Kosinski moved to approve VAR2013-0007, Resolution 14-08, with the stipulation 2-year delay of the installation of the 2.5' buffer along Old San Carlos and to allow 50% compact car spacing; second by Council Member List.

VOTE: Motion approved; 5-0.

Public Hearing closed at 10:59 a.m.

Recessed at 10:59 a.m. – Reconvened at 11:12 a.m.

XIII. ADMINISTRATIVE AGENDA

A. SEARCH, Inc. Master Contract Amendment No. 2
Request to approve Amendment No. 2 to the Master Contract between the Town and SEARCH, Inc. establishing the Guaranteed Maximum Price for Phase 2 and Phase 3.

Parks & Recreation Director Norton explained that the request was for approval of the amendment (#2) to the Master Contract that had been approved on October 7, 2013 for the Mound House exhibits. He pointed out how the Master Contract was structured and that the subject amendment was for Phase II of the museum exhibits and Phase III installation.

Mayor Mandel noted there was a savings of almost $148,000 and that the savings should be applied to the General Fund source of revenue.

Public Comment opened.

Ceel Spuhler, resident and member of CELCAB, expressed her pleasure with the work done by SEARCH.

Public Comment closed.

Council Member List noted she was impressed with the work conducted by SEARCH.

MOTION: Vice Mayor Kosinski moved to approve amendment #2 to the Master Contract between the Town and SEARCH, Inc. to establish the next project Guaranteed Maximum Price in the amount of $150,000 for Phase 2 and $105,000 for Phase 3 and authorize the Town Manager to execute the documents; second Council Member List.

VOTE: Motion approved; 5-0.

B. Special Event Permit Application – St. Patrick's Day Festival
A request for approval for the "4th Annual St. Patrick's Day Festival" Special Event Permit to be held on March 16-17, 2014 at Nervous Nellie's and authorize open containers of alcohol at this event in the designated area of the Town right-of-way.

Town Attorney Rooney explained that approval of the requested permit would have two parts:

1. The allowance of alcohol in the rights-of-way and parking lots
2. Placing conditions on a special event permit which is normally approved by the Town Manager unless there was an objection by a neighboring property owner

He noted there were objections received from neighboring property owners regarding the requested special event permit.

Public Works Director Lewis explained this was the fourth year for the subject event; and it was set-up a little different and the applicant was requesting use of the grass area adjacent to the bay side fountain. She indicated the applicant was scheduling two sheriff deputies for the duration of the event (noon to 8:00 p.m. on Sunday and Monday – including 30 minutes prior and 30 minutes post-event).

Public Comment opened.

Allen Duncan, Chair of the Board of Directors for Marina Village, reviewed the life of St. Patrick and expressed his opinion that 16 hours of noise and drinking from the proposed special event was probably an inappropriate celebration of St. Patrick's life. He stated he was present on behalf of the residents of Marina Village and expressed opposition to the requested special event permit. He requested the Council take the following action regarding the special event permit application:

- Confine the celebration to Monday, March 17th, St. Patrick's Day
- Applicant reimburse the Town for an appropriate fee for the public park/right-of-way
- Code Enforcement Officer be on-duty to monitor noise levels
- Concur with the intention to have two sheriff deputies on-duty
- Applicant be responsible for all clean-up costs

He indicated it was his opinion that Times Square might be a better venue for these types of celebrations.

Frank Tomeolo, resident, concurred with the comments and request of Mr. Duncan. He requested a limit of one day for the special event permit; to place limitations on the noise; and to have code monitoring during the event.

Gloria Tomeolo, resident, expressed her opposition to the requested special event permit; and suggested decreasing the number of hours requested for the event.

Doris Grant, resident, expressed opposition to the requested 2-day special event permit; and suggested decreasing the number of hours requested for the event. She recounted her experience with the loud noise generated from live bands. She suggested that if these types of event were to benefit the Town then they should be held at Times Square or Bay Oaks.

Karen Stipanik, resident, expressed opposition to the requested special event permit.

Paul Rosen, resident and member of the Board of Directors for Marina Village, noted the bandstand was five feet from the condominium building; and expressed opposition to the requested special event permit.

Dave Ennis, resident, requested denial of the special event permit request.

Summer Stockton, resident, echoed the concerns of the neighbors and noted her belief that the request should be for only one day (3/17).

Bonnie Ennis, resident, stated she agreed with all the previous comments.

Public Comment closed.

Council Member Raymond concurred that, if the application was approved, the special event should be for one day on St. Patrick's Day. He questioned the benefit to Fort Myers Beach CERT and the Lynx Foundation. He discussed his concerns regarding the application (i.e. number of hours, etc.). He suggested if a Code Enforcement Officer was present at the event that it should be paid for by the event organizer.

Discussion was held concerning beneficiaries of the special event; effectiveness of having a Code Enforcement Officer stationed at the event with a decibel meter; and the loudness of live music at the event in the subject location.

Town Attorney Rooney suggested, if necessary, a code enforcement case should be followed through to a finding by the Code Enforcement Magistrate.

Council Member List noted the Town's current noise ordinance was unenforceable; the application did not indicate the type of band/music at the event; and that Mr. DeGenero had informed her that after their last event they would not do these types of events any longer. She discussed her concerns regarding the special event application (i.e. 2-day event; length of event, etc.). She suggested that Council should be given information as to how the event beneficiaries were aided by the event.

Town Attorney Rooney suggested, if approved, the Council included the presence of a Code Enforcement Officer and that the applicant cover the cost of the Officer, and that there was no waiver from the restrictions of the noise ordinance.

Council Member Andre asked if the subject application was complete.

Public Works Director Lewis responded in the affirmative; and reviewed the required "sign-offs".

Council Member Andre discussed his concerns regarding noise levels with the proposed special event; use of the Town property; and suggested non-amplified music.

Mayor Mandel asked if there was an engineering firm that could be hired at someone else's expense to monitor noise levels.

Town Attorney Rooney noted his concern with how an engineering firm would be selected and due process issues.

Mayor Mandel reported he spoke with the Applicant last night who indicated there would be a band with amplified music, and they were willing to reduce the hours of the event to 7:00 p.m.

Discussion was held concerning the Pirate Fest which was held in the same location.

Mayor Mandel recapped that it seemed to him that Council would consider a 1-day event instead of two days; that a Code Enforcement Officer be present at the event at the applicant's expense and that the Officer start now to acquire ambient noise levels; reduce the event hours to end at 7:00 p.m.; no sound checks prior to noon; and to have acoustical music instead of live music.

Discussion was held concerning hours of the event; acoustical music; and the open container request.

MOTION: Vice Mayor Kosinski moved to approve the special event permit application with the following conditions: 1) a Code Enforcement Officer to perform ambient noise testing and be present and paid for by Applicant; 2) acoustic music only; 3) one-day event only, March 17th only; 4) set-up begins at noon, event from 1:00 p.m. to 6:00 p.m. only; and 5) denial of the open container request; second Council Member Raymond.

AMENDMENT: Motion maker amended the motion to include: to allow use of the fountain area at a rate of $4.50 per square foot, and Applicant was responsible for all clean-up; second agreed to the amendment.

VOTE: Motion approved; 5-0.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. INTERIM TOWN MANAGER ITEMS

Interim Town Manager Stilwell – no items or report.

XIII. TOWN ATTORNEY ITEMS

Town Attorney Rooney — stated as he worked on the noise ordinance that he would combine Ordinances 96-24, 99-15, and 12-04 into a single application process.

XIV. COUNCIL MEMBER ITEMS AND REPORTS

Mayor Mandel reported a concrete pad would be installed for the dumpster at Town Hall; and that the compactor was double-hulled to prevent leaks and had an anti-odor feature. He added fencing would eventually be installed for the dumpster. He announced there was a meeting scheduled with the Port Authority, the FAA, and the airport noise group; and noted they would meet with the Port Authority before the FAA ruled. He explained the three major questions to be asked of the FAA, if they ruled in the Town's favor, would be:

1. Does the Port Authority agree that they would act to enforce those rulings and make the flights coming over the Town use the back bay, predominantly?
2. Would the flights that have to come over the island be at 3,000 feet?
3. Would flights during the hours of 10:00 p.m. to 6:00 a.m. use runway #24?

He explained funding changes to Good Wheels and noted he was going to meet about the issue.

Council Member Raymond – noted today was his last 'working' meeting as a Council Member; and thanked residents and business owners in the Town for allowing him to be their representative for the past six years. He read a summation of his six years on Council and offered advice to the current and incoming council members.

Vice Mayor Kosinski – no items or report.

Council Member List – commented on her experience as a Council Member and serving her community during the past six years.

Council Member Andre – told of a constituent's experience in attempting to permit and construct a chiki hut.

Mayor Mandel – thanked the current Council for their work and noted current projects which included but were not limited to the Estero Boulevard Improvement Project, Potable Water Improvement Project, Stormwater Improvement Project, and the Mound House Project. He pointed out the need for the Town to continue to pursue water quality issues in Tallahassee and FEMA Flood Insurance Rates in Washington DC.

Mayor Mandel noted the upcoming election.

Town Clerk Mayher reported the Town adopted Ordinance 12-11 which indicated the Town's Canvassing Board should consist of the Mayor or a Council Member designated by the Mayor; the Town Clerk; and the Lee County Supervisor of Elections. She reviewed the duties of the Canvassing Board.

Mayor Mandel announced that Council Member Raymond had volunteered as a 'non-candidate' and member of the Council to participate in the Canvassing Board; and he selected Council Member Raymond as the member of the Canvassing Board.

XV. AGENDA MANAGEMENT

Discussion was held concerning the March 18, 2014 Work Session at 10:00 a.m.

Consensus approved the cancellation of the Town Council Work Session on March 18, 2014 at 10:00 a.m.

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

Interim Town Manager Stilwell reported everything was 'signed and sealed' with the landlord; however, it was now a matter of installing the images.

Mayor Mandel noted the upcoming Shrimp Festival this weekend and discussed participation in the parade by Council.

XVI. RECAP OF ACTION ITEMS

No discussion.

XVII. ADJOURNMENT

Motion by Council Member Andre; second by Council Member List. Meeting adjourned at 12:30 p.m.

Adopted 4-7-14 With/Without changes. Motion by Andre/Mandel

Vote: 5-0

Michelle D. Mayher, Town Clerk

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