



# MINUTES

**Monday, April 21, 2014**

**FORT MYERS BEACH TOWN COUNCIL  
WORK SESSION  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

## **I. CALL TO ORDER**

Mayor Cereceda called to order the April 21, 2014 Work Session of the Town Council at 10:02 a.m. Present along with Mayor Cereceda were: Vice Mayor Andre, Council Members Hosafros, Mandel, and Stockton. Also Present: Town Manager Stilwell, Town Attorney Rooney, Public Works Director Lewis, Planning Coordinator Overmyer, and Town Clerk Mayher.

## **II. PLEDGE OF ALLEGIANCE**

## **III. PRESENTATION – Water Conservation, Mr. Ray Judah**

Ray Judah, Coalition Coordinator for the Florida Coastal & Ocean Coalition (FCOC), offered a presentation on ‘preserving the sandy and saltier sides of Florida’. He discussed the impact of water releases from Lake Okeechobee on the Town’s back bay, estuaries, and beach (i.e. polluted water, red drift algae, fish kills, dead manatees, blue/green algae, etc.); aspects of the Okeechobee Watershed; and land-based nutrient runoff. He reviewed the water budget for the Lake Okeechobee Watershed; excessive runoff; and how the C43 and C44 Reservoirs would not solve the problem of the massive releases from Lake Okeechobee. He noted the South Florida Water Management District (SFWMD) managed Lake Okeechobee as a reservoir for agricultural runoff and how they managed the Everglades Agricultural Area (EAA). He pointed out a recent Federal District Court ruling that opined back-pumping was in violation of the Clean Water Act and it needed to stop. He reviewed water flow in the EAA and the solution to alleviate the massive discharges from Lake Okeechobee (Plan 6 Project – River of Grass, the Missing Link). Mr. Judah talked about recommendations to effectively manage the Lake Okeechobee Watershed and reduce adverse impact to the Caloosahatchee and coastal estuaries:

- Collaborate with Florida League of Cities, Florida Association of Counties and Legislative delegation to support legislation to implement the 1+96 Polluter Pays Constitutional Amendment.
- Coordinate with the Florida Department of Environmental Protection to support Basin Management Action Plan for Lake Okeechobee to include nitrogen.
- Coordinate with Congressional and Legislative delegation to support acquisition of 50,000 acres (20,000 US Sugar and 30,000 Florida Crystals) of land between the north New River and Miami canals and south of Lake Okeechobee for storage, treatment, and conveyance of water to the Everglades.
- Request that the SWFMD use the 35,000 acre “Holey Lands” for storage and treatment of water from Lake Okeechobee during times of emergency release of water from Lake Okeechobee in the wet season.
- Joint Resolution with Lee County and cities requesting water reservation for the Caloosahatchee to comply with minimum flows and levels. Further request that any new agricultural water consumption use permit applications for water withdrawal from Lake Okeechobee be placed in abeyance until completion of water reservation rule making.
- Coordinate with SFWMD and Legislative delegation to support sufficient funding for restoration of Lake Hicochee.
- Coordinate with SFWMD and the US Army Corps of Engineers to request storm water treatment area or water quality component for C-43 Reservoir.
- Support modification to the Lake Okeechobee Regulation Schedule that provides equitable water conservation practices for agriculture, utilities, and environmental release.
- Request that the US Army Corps of Engineers expedite their risk assessment study for spillway on the south side of Lake Okeechobee to alleviate pressure on the Herbert Hoover Dike thereby reducing reliance on the Caloosahatchee and St. Lucie Rivers as the relief valves during wet years for massive release of polluted water discharge to the estuaries on the west and east coast of south Florida.
- Collaborate with Lee County, SFWMD, and the Everglades Foundation using Algenol technology to support funding for a nutrient (nitrogen and phosphorous) removal project on the Caloosahatchee or Lake Okeechobee.

He reviewed how the State approved the Everglades Forever Act in 1994 which dealt with polluters and clean-up fees. He explained how Representative Caldwell worked to obtain the support of the Legislature at the last session to get the sugar industry to continue to pay the fee per acre (instead of letting it expire) until 2026; and suggested Representative Caldwell should have increased the \$25 per acre privilege fee.

Discussion was held concerning elements necessary for a solution such as but not limited to project funding, agency involvement (i.e. SFWMD and Army Corps of Engineers), and potential land acquisition.

Mayor Cereceda recognized Mayor Ruane of Sanibel.

Kevin Ruane, Mayor – City of Sanibel, explained how Sanibel had worked closely with Lee County regarding the environment. He talked about his experience dealing with economic and water quality issues and the related challenges such as cost and land acquisition. He discussed the Lake Okeechobee

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water release schedule, shared adversity for water distribution, and the C-43 reservoir. He noted that with each potential option available there was a challenge.

Council Member Mandel reviewed the actions taken by the prior Council on the issue; noted tourism in Lee County last year was \$3 billion dollars; and pointed out that C-43 and C-44 had not yet been appropriated. He discussed elements of both short-term and long-term solutions.

Kevin Ruane, Mayor – City of Sanibel, talked about ‘shovel-ready’ projects (i.e. C-44) and noted that long-term projects were 5, 10, or 15-year projects. He discussed ‘advocacy together’ (county and area mayors working together).

Discussion ensued concerning aspects of purchasing private lands to be placed in the public domain; political connections regarding the sugar industry; Plan 6 and C-43; and adaptive protocol and the strengthening of the Herbert Hoover Dike.

Ray Judah, Coalition Coordinator for the Florida Coastal & Ocean Coalition (FCOC), discussed his view on the need to purchase additional land for storage purposes.

Discussion was held regarding short-term solutions and the approaching rainy season; State priorities to purchase additional lands South of Lake Okeechobee at fair market value, acquiring private easements, and swapping land; and short-term solutions.

Council Member Hosafros discussed her hope for a solution to the issue.

Council Member Mandel discussed his view on the importance of getting all the stakeholders to work together.

Discussion ensued concerning the matter and a coalescing of ideas and stakeholders working together.

**Recessed at 10:08 a.m. – Reconvened at 10:13 a.m.**

#### **IV. PRESENTATION – FY 2012-2013 ANNUAL AUDIT, MAULDIN & JENKINS, CPA**

Leann Cross, Mauldin & Jenkins, reviewed the reports that were issued as a result of their audit for the Fiscal Year ending September 30, 2013 and required post-communications. She discussed the:

- Independent Auditor’s Report on the Financial Statements and the Unmodified Opinion.
- Report, Page 50 - internal control over financial reporting and the compliance portion; one finding related to a prior period adjustment (i.e. dredging costs should not be capitalized; Mound House should not have been depreciated). Discussion ensued concerning depreciation and the use of the Mound House; and Ms. Cross stated she would make a correction to the Report to reflect staff’s depreciation for the Mound House was correct.
- Findings – recommendations concerning year-end accrual; personnel action forms indicating a ‘sign-off’ on a salary increase were missing from individual personnel files; and utilization of the Uniform Chart of Accounts to coincide with State manual. She noted that management had responded to each comment in the Report.

- Presentation of Financial Statements.
- Estimates pertaining to the Town; and post-employment liability for retirees.
- No significant difficulties performing the audit; audit adjustments made as a result of the audit; no past audit adjustments as a result of the audit; and no disagreements with management.
- GASB standards in future years – net pension liability.

Council Member Hosafros recounted her experience attending her first Audit Committee Meeting and noted how impressed she was with Finance Director Wicks and the Audit Committee. She praised Town staff for their quick and thorough review and response to the Report since they did not receive it by the expected deadline of March 31<sup>st</sup>; and noted there had been some findings made this year for matters that were handled the same way last year but were not noted last year [by the same auditing firm].

Leann Cross, Mauldin & Jenkins, requested Council return the copies of both Reports so she could amend them accordingly.

Town Clerk Mayher questioned how the acceptance of the Audit would be handled at the Regular Meeting later today.

Town Attorney Rooney noted the statutory deadline as it pertained to the Audit; and recommended Council accept the Audit with a provision noted.

## **V. USE OF MEDIA CREDITS WITH WGPU**

Interim Town Manager Stilwell requested direction from Council as to what they wanted to do with the \$6,000 worth of media credits from WGPU as a result of the Town's funding of the documentary "Pink Gold Rush".

Vice Mayor Andre suggested someone from WGPU should be present to recommend 'drive time'.

Council Member Hosafros suggested a discussion on what topic to promote and then decide on the time period to use for the promotion.

Discussion was held regarding matters to possibly promote utilizing the \$6,000 in media credits from WGPU such as but not limited to the 4<sup>th</sup> of July event; public information/safety regarding fireworks; Bay Oaks programming and the swimming pool; and the grand opening of the Mound House.

Consensus requested a representative from WGPU to attend the May 5<sup>th</sup> Council Work Session to answer questions concerning use of the media credits and promotion of Town issues and/or events.

## **VI. DISCUSSION REGARDING JACARANDA TREE**

Mayor Cereceda questioned if there were any comments regarding suggestion concerning a Jacaranda Festival and/or adding the Jacaranda to the Town's list of trees.

Council Member Hosafros questioned if the Town's tree provider would offer the Jacaranda since it was a non-native tree.

Interim Town Manager Stilwell reported currently the provider did not have the Jacaranda available and there was some question regarding whether or not they would offer a non-native tree.

Discussion ensued regarding whether or not the current provider would offer a non-native tree.

Ms. Hill reported she had been in touch with several other nurseries and discussed 'supply and demand' as it related to the Jacaranda.

Mayor Cereceda asked if the Town did not offer a partial reimbursement for a Jacaranda, would that impact Ms. Hill and her efforts on behalf of the Jacaranda and a festival.

Ms. Hill responded in the negative.

Council Member Mandel pointed out the Town's ordinance as it related to use of 'native' vegetation.

Discussion ensued concerning the Town's native tree plan and supporting a Jacaranda festival.

Ms. Hill explained she spoke to a representative from the County's Extension Office who discussed with her the new catch phrase of "Florida-friendly" vegetation.

Discussion was held regarding possibly using a native tree instead of a Jacaranda for a festival.

Consensus was to support Ms. Hill's efforts; however, the Town would not offer reimbursement for a Jacaranda tree and Town staff would not be involved in Ms. Hill's efforts.

## **VII. PARKING AT 216 CONNECTICUT STREET**

Mayor Cereceda told of her meeting with Mr. and Mrs. Harner and their neighbors last week who opposed parking at 216 Connecticut Street due to the commercial intrusion into a residential neighborhood. She indicated her belief that it was a mistake for the Town to have brought forward a Commercial Planned Development to rezone the subject property. She shared her notes from her meeting with the Harners and their neighbors outlining their concerns – existing maintenance issues for the grounds and use of the site for parking other than the Mound House. She suggested the subject property function as a park for the area residents; offer shell or gravel-covered parking for the Mound House; not be used for any activity other than the Mound House; and there be no ability to rent or lease the property.

Council Member Mandel noted the concern prior Councils had for the area residents and how they had crafted an agreement to use the church property for Mound House parking. He mentioned the Town could decide to sell the subject property.

Discussion was held concerning use of the church parking lot.

Planning Coordinator Overmyer explained there was a Community Facility Zoning District that was intended to be used for parks; and reviewed the current zoning of the Mound House. He described the County's zoning called "Community Facilities Planned Development" and how it could be used and could be self-limiting.

Town Attorney Rooney reviewed the Future Land Use Map designation for the Mound House; commented about when the property at 216 Connecticut Street was presented to the LPA in 2011; and suggested there be a more detailed plan for the subject property.

Interim Town Manager Stilwell noted Council Member Mandel's suggestion that the Town could sell 216 Connecticut Street and continue to pay the nominal fee for using the church's property for parking.

Discussion was held regarding the potential residential development of the subject lot if it was sold by the Town.

Planning Coordinator Overmyer indicated the subject property was currently Recreation Future Land Use; and a property owner would have to go through a small-scale Comprehensive Plan Amendment to provide for any type of residential density on the site.

Town Attorney Rooney suggested using community outreach for area residents to meet with Town staff to voice their list of conditions concerning development of the property as a park and parking for the Mound House.

Council Member Stockton questioned why the Mound House was not zoned 'Institutional'.

Town Attorney Rooney explained the current zoning could be a result of the zoning at the time of acquisition.

Discussion ensued regarding the Future Land Use of the Mound House and the subject property; potential cost for landscaping and gates for 216 Connecticut Street; and extending the lease for parking at the church.

Mayor Cereceda reported she would discuss the matter further with Mr. and Mrs. Harner and their neighbors.

Council Member Hosafros explained she would support staff meeting with the area residents to determine if they would offer input; and discussed how the current Council should address the matter again after the community outreach. She noted the subject property's current zoning and the Future Land Use were not compatible which might devalue the land if the Town sold the property.

Interim Town Manager Stilwell suggested a meeting with the area residents, the Mayor, Planning Coordinator Overmyer, and himself.

## VIII. DISCUSSION REGARDING ORDINANCE 12-04, SPECIAL EVENTS

Council Member Hosafros commented on the Special Event permitting process and application and suggested to redefine 'special event' in Ordinance 12-04 and/or change the exemptions.

Town Attorney Rooney noted the current ordinance included garage sales; and discussed elements that could be included in the ordinance:

- Footprint of less than 200 square feet
- Use cannot be for something not permitted by the principal structure
- Restrictions regarding structures
- No additional signage
- First tier level of permits – 200-1,500 square feet
- Thresholds include size, attendance, and parking limitations

Council Member Hosafros suggested breaking out a category of small *de minimus* events such as but not limited to small weddings and garage sales where people would have to register their event with no fee.

Town Attorney Rooney discussed his experience with special events in Charlotte County (i.e. temporary use restriction). He suggested he be allowed to gather additional information on how other communities handle special events and permitting, prepare a cover memo, and submit it to Council to review prior to the next time they discuss the topic at a Work Session.

Mayor Cereceda requested the Town Attorney consider recurring annual events (i.e. Taste of the Beach, Shrimp Festival, etc.), and other recurring events (i.e. Sunset Festival).

Council Member Hosafros requested language in the ordinance that reflected if the recurring event would stay the same then there would be less 'hoops to jump through'.

Public Works Director Lewis explained that some events such as the St. Patrick's Day Parade would be simple if the applicant remained the same; however, applicants do change from year to year. She added the Shrimp Festival Parade was different because it involved other agencies (i.e. permission from the State to close the bridge); and the Taste of the Beach had to apply for an ABT license.

Discussion was held concerning the advantages of advanced event planning and advanced approval by certain other agencies; incentives to have organizations with recurring special events to plan early; zoning verifications required by ABT; possibly involving CRAB in the capacity of a 'clearing house' in the annual special event process; how Punta Gorda handled special events; thresholds for small and large-scale events; and if Council would support setting a special event process.

Council Member Hosafros wondered if CRAB could have a special event training program similar to what they held for Leadership.

Public Works Director Lewis expressed her belief that most of the outside agencies would probably be willing to attend such a training program.

Council Member Hosafros pointed out that the special event application could not be revised until the ordinance was updated.

Public Works Director Lewis noted that some organizations submit old application forms; however, staff processed them.

Discussion ensued regarding applicants using the form offered on the Town website.

Mayor Cereceda questioned if the Town Attorney wanted the Council to send each Member's comments regarding the special event process.

Town Attorney Rooney responded in the affirmative.

Mayor Cereceda requested the Town Attorney investigate further how Punta Gorda utilized a board to deal with special event permits.

Discussion ensued concerning the special event permit application form.

Public Comment opened.

Ceel Spuhler, resident, stated she learned a lot today as it related to 216 Connecticut Street; and encouraged the Council to pursue their idea regarding the subject property and obtain input from the area residents.

Bud Nocera, Fort Myers Beach Chamber of Commerce, explained he supported the idea of getting the special event permits done once a year; submitting the application on-line with the form forwarded to the Town and necessary agencies (i.e. Fire, Police, etc.). He added that water quality was probably the single-most biggest threat to area tourism; and noted a lot of the pollutants coming down the Caloosahatchee were added from the locks to the Gulf and there should be on-going education for new residents regarding fertilizer.

Public Comment closed.

## **IX. FURTHER DISCUSSION, RADAR/AGENDA MANAGEMENT**

Council Member Stockton requested the list spell out Public Information Officer (PIO) and right-of-way (ROW).

Mayor Cereceda read the list of issues on the Radar List and a discussion ensued on each item:

- Seafarer's – change Plan to “encourage proper redevelopment”
- Beach Management – under Plan mention Coast & Harbor contract; research minutes further
- Town Hall Lease – change Plan to “purchase/lease entire building”; timeline – immediate; and expected result would be “comfortable public hall for citizens and staff”; timeline - immediate
- Noise Ordinance – Plan remained the same

- Estero Boulevard – change Plan to “County Commissioner/BOCC”
- Sign Ordinance – Plan remained the same; staff to investigate matter further; timeline – immediate to a Work Session
- Gazebo Square – under Plan add waiting on water line replacement; timeline – future;
- QR Codes – Plan remained the same; timeline – continuing; expected results - all public buildings
- Mooring Field – Plan remained the same; Coastal Advisory Committee denied additional TDC funds for the mooring field
- Short-Term Rentals Ordinance – Plan remained the same; Vice Mayor Andre working on the matter; timeline - ongoing
- Fort Myers Beach Film Commission – Plan remained the same; suggestion of CRAB to send it to the Chamber
- Flood Insurance – Plan remained the same

Mayor Cereceda read the list of issues on the Agenda Management List and a discussion ensued on each item:

- Post-Disaster – under Plan include “emergency management presentation/Incident Command System (ICS)”;
- Beach Accesses – under Plan include “in planning stages”
- Right-of-Way Policy – Plan remained the same
- Stormwater – Plan remained the same
- Public Information Officer – Plan remained the same
- Code Enforcement – Plan remained the same
- Water Utility Management – Plan remained the same
- Annexation – Plan remained the same
- Outdoor Display – Plan remained the same
- Limiting Administrative Variances – Plan remained the same
- Charter Review Commission – Plan was “ads currently running”; applications already received from Dan Parker, Bob Raymond, Tom Babcock, and Jay Light
- Aviation Noise – Plan was “2<sup>nd</sup> Work Session in May”; timeline - May
- Lake Okeechobee
- Mound House
  - Parking/Rezoning
  - Grand Opening
- Seasonal Parking Lots & Sign Permits – Add this item; Plan was “Review/revise ordinance & fees”

## **X. COUNCIL MEMBERS ITEMS**

Council Member Stockton – pointed out the Code did not allow advertisement on bus benches and suggested the Council review the Code for issues they would like addressed further.

Council Member Hosafros questioned if the bus benches belonged to Lee County.

Council Member Mandel reported the prior Council had instructed the Town Attorney to bring that matter up with the County.

Vice Mayor Mandel pointed out how “non-profit” organizations were involved with the bus benches.

Town Attorney Rooney discussed the historical background of bus benches and non-profit organizations throughout the State. He explained how the Town regulated off-site signage.

Council Member Stockton – noted other aspects of the Code that could be reviewed (i.e. roof structure) and suggested the Council review the Code for potential amendments. She pointed out it would be a lengthy process that would need more than one Work Session.

Town Attorney Rooney explained ways in which Council could go about reviewing the LDC for possible amendments/changes such as but not limited to outside counsel and staff review. He requested he be allowed to discuss the matter with the Interim Town Manager and then schedule the matter for a Work Session where staff would bring forward options for Council’s consideration.

Discussion was held concerning a review of the Town Land Development Code.

Council Member Stockton – reported she had been contacted by many people regarding the enforcement of short-term rentals and discussed examples of some of the incidents reported to her.

Town Attorney Rooney reviewed the process to take when people wanted to report illegal short-term rentals, noise issues, and parking issues. He suggested the Town website include phone numbers for residents to call when encountering problems and include phone numbers for after-hours issues.

Discussion ensued regarding short-term rentals and dealing with illegal short-term rentals; and Code Enforcement staff coverage.

Council Member Stockton – reported she received a complaint from a neighbor regarding a nearby swale that caused flooding on their property and the potential encroachment of an air conditioning unit on the side setback.

Town Attorney Rooney stated he would address the issues with Council Member Stockton.

Public Works Director Lewis explained how the contractor had not maintained the subject property properly while construction was going on in order to prevent flooding on the neighboring property during the rainy season. She added that the contractor would include adequate drainage on-site as part of his plan for new construction.

Town Attorney Rooney talked about the Town codes pertaining to flooding issues.

Ken Miller, Building Safety Services Coordinator, explained how buildings plans were submitted for new construction which included stormwater management.

Council Member Hosafros – no items.

Council Member Mandel – no items.

Vice Mayor Andre – no items.

Mayor Cereceda – no items.

**XI. ADJOURNMENT**

Meeting adjourned at 1:23 p.m.

Adopted 519-14 With/Without changes. Motion by Hosafros/Andre

Vote: 4-0 (Mandel excused)

  
Michelle D. Mayher, Town Clerk

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