



## **MINUTES**

**Monday, May 19, 2014**

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

### **I. CALL TO ORDER**

Mayor Cereceda called to order the May 19, 2014 Regular Meeting of the Town Council at 6:32 p.m. Present along with Mayor Cereceda: Vice Mayor Andre and Council Members Hosafros, and Stockton; Council Member Mandel was excused. Also Present: Town Manager Stilwell, Town Attorney Rooney, Finance Director Wicks, Public Works Director Baker, Planning Coordinator Overmyer, and Town Clerk Mayher.

### **II. INVOCATION – Rev. Jeanne Davis**

### **III. PLEDGE OF ALLEGIANCE**

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

**MOTION:** Vice Mayor Andre moved to approve the Final Agenda with the legislative hearing on Ordinance 13-10, Amendment to Chapter 34, Elevated Pools, be pulled from the agenda; second by Council Member Hosafros.

**VOTE:** Motion approved; 4-0 (Council Member Mandel was excused).

### **V. PUBLIC COMMENT – Agenda Items**

Mayor Cereceda requested Public Comment be concerned with Agenda Items.

Public Comment opened.

Hank Zuba, resident, congratulated Mayor Cereceda and Council Members Hosafros and Stockton on their election to the Council. He offered kudos to Joanne Shamp for her hard work on the amendment to Chapter 22, Historic Preservation.

Steven Lisay, resident, reported he lived near Times Square and indicated he supported and enjoyed the Times Square Sunset Celebration events.

Public Comment closed.

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

Vice Mayor Andre thanked the United States Coast Guard for their open house. He offered 'shout outs' to Building Safety Services Coordinator Miller and Town Manager Stilwell for resolving a resident's permitting issue and also to Public Works for repairing the hole in front of Nemo's.

Council Member Hosafros also thanked the United States Coast Guard for their open house; and noted she and several Town employees attended an APA zoning seminar in Cape Coral. She reported the seminar may be repeated soon and if so, she encouraged people to attend the seminar.

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

No speakers.

## **VIII. APPROVAL OF MINUTES**

- A. April 21, 2014 Regular Council Meeting Minutes
- B. April 21, 2014 Work Session Minutes
- C. May 1, 2014 Joint Town Council/Advisory Committees Minutes
- D. May 5, 2014 Town Council Meeting Minutes
- E. May 5, 2014 Work Session Minutes

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

**VOTE:** Motion approved; 4-0 (Council Member Mandel was excused).

## **IX. CONSENT AGENDA**

- A. Special Events Permit Application – Times Square Celebration

A request for approval of a recurring special event to the Times Square Merchant and Event Association, Inc. for the Times Square Sunset Celebration for the period of June 20, 2014 to June 13, 2015.

Mayor Cereceda questioned when matters involving Times Square were concerned, if she needed to recuse herself.

Town Attorney Rooney explained how the Mayor could recuse herself if she believed there was a conflict.

John Lallo [and Steve Malakakis] of the Times Square Merchant and Event Association gave a presentation on the request for approval of the Times Square Celebration recurring special event permit application. He explained how the event had been occurring for the past two and a half years, how it helped to draw people to Times Square, and described various aspects of the event.

**MOTION:** Council Member Stockton moved to approve the request for approval of a recurring special event to the Times Square Merchant and Event Association, Inc. for the Times Square Sunset Celebration for the period of June 20, 2014 to June 13, 2015 and authorize the Town Manager to sign the permit on the Town's behalf; second by Vice Mayor Andre.

**VOTE:** Motion approved; 4-0 (Council Member Mandel was excused).

## **X. PUBLIC HEARING**

### A. Legislative Public Hearing: Ordinance 13-10, Amendment to Chapter 34, Elevated Pools

#### **Agenda Item X, A, Pulled from Agenda.**

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

### B. Legislative Public Hearing: Ordinance 14-03, Amendment to Chapter 22, Historic Preservation

Town Clerk Mayher read the title of Ordinance 14-03:

AN ORDINANCE AMENDING CHAPTER 22 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "HISTORIC PRESERVATION;" AMENDING SECTION 22-1, "PURPOSE;" AMENDING HISTORICAL SIGNIFICANCE TO INCLUDE CATEGORIES OF HISTORICAL IMPORTANCE; AMENDING SECTION 22-3 BY AMENDING THE DEFINITION OF HISTORIC RESOURCE; AMENDING SECTION 22-74 "POWERS AND DUTIES;" AMENDING SIGNIFICANCE AND ELIGIBILITY TO EVALUATE LEVEL OF IMPORTANCE AND ELIGIBILITY; ADDING SECTION 22-85 "HISTORIC DISTRICTS" TO ESTABLISH FOUR HISTORIC DISTRICTS WITHIN THE TOWN; ADDING SECTION 22-76 "CATEGORIES OF HISTORIC IMPORTANCE;" ESTABLISHING AND DEFINING FOUR LEVELS OF HISTORIC IMPORTANCE; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

Public Comment opened.

Joanne Shamp, Chair of the Historic Preservation, explained that residents had approached her with their concern that the proposed ordinance might subject some properties to preservation regulations by the land development code which was not the intention of the HPB. She requested the Town Council send Ordinance 14-03 back to the Historic Preservation Board for further work. She encouraged residents to attend the Historic Preservation Board meetings to offer their input on the subject matter.

Public Comment closed.

**MOTION:** Council Member Stockton moved to rescind Ordinance 14-03, Amendment to Chapter 22, Historic Preservation, and send the Ordinance back to the Historic Preservation Board; second by Council Member Hosafros.

**VOTE:** Motion approved; 4-0 (Council Member Mandel was excused).

## **XI. ADMINISTRATIVE AGENDA**

### A. Appointment of Charter Review Commission

A request to appoint a five-member Charter Review Commission.

#### Comments by the Applicants to the Charter Review Commission

Tom Babcock  
Dennis Boback  
Al Durrett – no comment  
Miffie Greer  
Jay Light  
Bob Raymond

#### Applicants to the Charter Review Commission – Not Present

Dan Hughes  
Scott Safford  
Jessica Titus  
Dan Parker

Council Member Hosafros questioned if the Council could select five members and an alternate member.

Town Attorney Rooney noted the Council could select an alternate member for the Commission, and he would review the alternate position from a practical and legal standpoint.

Mayor Cereceda explained the voting process and requested Council sign their name to their selection; and noted the Town Clerk would tally and announce the votes.

Discussion was held concerning the number of applicants to select for appointment.

Town Attorney Rooney described the charge and importance of the Charter Review Committee. He noted that he, outside attorneys or a member of staff could attend to the Committee to assist them with their process to put forth recommendations.

Town Clerk Mayher read the vote tally as follows:

Tom Babcock – 4 votes	Miffie Greer – 4 votes
Dan Hughes – 3 votes	Jay Light – 3 votes
Dan Parker – 2 votes	Al Durrett – 2 votes
Dennis Boback – 1 vote	Bob Raymond – 1 vote
Safford – 0 vote	Titus – 0 vote

Council voted to select the fifth member and the alternate member for the Charter Review Committee.

Town Clerk Mayher noted the vote tally as follows:

Dan Parker – 2 votes	Al Durrett – 2 votes
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Mayor Cereceda questioned if either Mr. Parker or Mr. Durrett wanted to be the alternate member of the Charter Review Committee.

Mr. Durrett indicated from the audience that he would serve as the alternate member.

Town Clerk Mayher recapped that the 2014 Charter Review Committee would be comprised of Tom Babcock, Miffie Greer, Dan Hughes, Jay Light, Dan Parker, and Al Durrett as the alternate member.

B. Administrative Setback Variance, Case #ADM216-0001

A request to approve an administrative setback for the installation of an ADA chairlift at 602 Estero Boulevard.

Belinda Smith, Community Development Department, explained the owners of 602 Estero Boulevard were requesting administrative approval of a chair lift as an acceptable accessible means of entry for an ADA pool lift that would encroach two feet into the required 20 foot side setback. She reported the contractor determined the subject site was the only place for the lift because it allowed for proper clearance around the lift and sufficient depth in the water for the lift to operate.

Town Attorney Rooney explained the subject variance request was purely administrative and could be approved by the Interim Community Development Department Director; however, given the language for administrative approvals was very broad staff decided to bring the matter to Council.

Discussion was held concerning the subject site as the only place for the lift because it allowed for proper clearance around the lift and sufficient depth in the water for the lift to operate.

Council direction was for staff to move forward with the administrative approval of the subject request.

Planning Director Overmyer explained that staff had spoken with other applicants that would be requesting a variance which was *de minimus* in nature that would be coming before Council in the future.

C. Request for Guidance on Newton Park Seawall Replacement Project, ITB-13-13-PW

A request for guidance on the Newton Park Seawall Replacement project to either rescind the award of the bid and re-bid the project, or pursue an amendment to the permit to allow construction during turtle season.

Public Works Director Baker explained the State permit did not allow work on the seawall during turtle season. He reported staff met with the contractor who informed him that there would be a cost increase to postpone the work until October. He explained the Town could submit for a permit change to allow the work during turtle season; however, he noted that the Town was eco-friendly and he could re-bid the job for an October start. He requested guidance from Council.

Discussion was held concerning the relocation of a ramp that was formerly located at the Hyde Park beach access.

Town Attorney Rooney addressed the relocation of the ramp and the beach access.

**MOTION:** Vice Mayor Andre moved to postpone construction activities until after turtle season, rescind the award of Bid ITB 13-13-PW and rebid the project; second by Council Member Hosafros.

**VOTE:** Motion approved; 4-0 (Council Member Mandel was excused).

### **XIII. PUBLIC COMMENT – Any Items**

Public Comment opened.

Hank Zuba, resident, expressed his concern about the Seafarer's site and encouraged Council consider the appointment of an ad hoc committee for the issue which would allow for consideration of opportunities and options for the subject property and bring it back to Council. He pointed out that matters that were considered pertaining to the subject property were tax increment financing and transfer of density.

Tom Babcock, resident thanked the Council for the appointment of the five members to the Charter Review Commission. He discussed his belief that changes were needed in order to have additional convenient parking for Town Hall.

Public Comment closed.

### **XIV. TOWN MANAGER'S ITEMS**

Town Manager Stilwell – no items.

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## **XV. TOWN ATTORNEY'S ITEMS**

Town Attorney Rooney – noted at the May 5, 2014 Council Meeting that Council Member Stockton requested a reduction in fees for the Bay Oaks members under 18 years old at the pool. He explained they would need a resolution to amend the subject fees and at such time the Town Manager would discuss the budgetary implications. He requested an Executive Session to discuss the settlement with Mr. Orlandini and to tentatively set a special meeting the following week.

Discussion was held concerning a date and time for the Executive Session and Special Meeting with all five members to be present.

Town Attorney Rooney recommended setting an Executive Session, tentatively, for May 29, 2014.

Discussion continued regarding a date and time for the Executive Session and Special Meeting with all five members to be present; and an Executive Session was set, tentatively, for May 29, 2014 at 3:30 p.m. with only one attorney to be present.

## **XVI. COUNCILMEMBER ITEMS AND REPORTS**

Council Member Hosafros – no items and reports.

Vice Mayor Andre – questioned the status of the outdoor display issue.

Planning Coordinator Overmyer reported the issue was continued from the March LPA meeting to the LPA's June 10<sup>th</sup> agenda and then the matter would come before Council in August.

Mayor Cereceda questioned, as a business owner, if she should share her comments on outdoor displays with the LPA or wait until the matter came before Council.

Town Attorney Rooney suggested the Mayor share her comments with the Times Square Merchants' Association who would bring comments forward to the LPA.

Council Member Stockton – questioned a workshop to discuss the PWVL and PAL matter.

Town Attorney Rooney reported staff was working to schedule a special meeting with the LPA on May 30<sup>th</sup> concerning the PWVL and PAL matter.

Council Member Stockton – questioned the status of the noise ordinance.

Town Attorney Rooney indicated he was still awaiting further information from Lee County on the matter. He stated he would contact the Lee County Attorney's Office on the matter.

Council Member Stockton – concurred with Mr. Zuba's suggestion for an ad hoc committee to discuss the Seafarer's property and requested to place the matter on a Work Session.

Mayor Cereceda supported Council Member Stockton's request.

Council Member Stockton – questioned if Council wanted to give direction to the Town Attorney regarding the pool fees.

Town Attorney Rooney reviewed the possibilities for Council action concerning the reduction or elimination of pool fees for Bay Oaks members of a certain age as previously mentioned by Council Member Stockton.

Discussion was held concerning the reduction or elimination of pool fees for Bay Oaks members of a certain age; consensus was that Council wanted to hear the financial side of the matter.

Council Member Stockton – reminded Council that Commissioner Kiker suggested the Town give him a 'wish list' and she suggested Council discuss the matter. She recommended the Town have a Council member in attendance at the TDC meetings and offered to attend the meetings.

Mayor Cereceda agreed with having a Council Member in attendance at the TDC meetings and offered to attend.

Council Member Stockton stated she would serve as the alternate to the TDC meetings.

Mayor Cereceda – reported she met with a person who builds artificial reefs who indicated to her that he wanted to sink a submarine 30 miles offshore of Fort Myers Beach. She explained how the Town should be more active with Facebook/Instagrams, etc. She announced Commissioner Kiker would be at Newton House on May 29<sup>th</sup> at 9:00 a.m. to 3:00 p.m. and invited all to stop in to meet him. She reported a neighborhood meeting would be scheduled regarding 216 Connecticut Street to be held on June 2<sup>nd</sup> or 3<sup>rd</sup>. She elaborated further on her meeting with the person who constructed artificial reefs.

Council Member Mandel – was excused.

## **XVII. AGENDA MANGEMENT**

Town Clerk Mayher noted that earlier in the day Council indicated they wanted to add aviation noise (plan was an RFQ/RFP for a scope and a budget, the expected result would be a consultant); and from tonight's meeting there was an addition of an ad hoc committee on Seafarer's. She noted items scheduled for May:

- Right-of-way policy – May adoption
- Stormwater – timeline May or June
- Public Information Officer – May
- Water Utility Management – late May

Mayor Cereceda recommended moving the May issues to the fall.

**XVIII. RECAP OF ACTION ITEMS**

No discussion.

**XIX. ADJOURNMENT**

Mayor Cereceda adjourned the meeting at 7:48 p.m.

Adopted 6-16-14 With/Without changes. Motion by Cadre/Hasafros

Vote: 5-0

  
Michelle D. Mayher, Town Clerk

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