



MINUTES

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

AGENDA

August 16, 2010

6:00 PM

EXECUTIVE SESSION

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 5:58 p.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel, Town Manager Stewart, Town Attorney Humphrey, Town Clerk Michelle Mayher and a court reporter.

II. ANNOUNCEMENT OF COMMENCEMENT OF EXECUTIVE SESSION

Case #10-CA-001727, Peter and Susan Lisich v. Town of Fort Myers Beach

EXECUTIVE SESSION CLOSED TO PUBLIC

ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION

III. ADJOURNMENT

Session adjourned at 6:30 p.m.

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 6:40 p.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel along with Town Manager Stewart, Town Attorney Humphrey and Town Clerk Mayher.

II. INVOCATION – Deacon “Scoop” Kiesel, Church of the Ascension

III. PLEDGE OF ALLEGIANCE

All stood for the Pledge of Allegiance.

IV. PROCLAMATION - National Alcohol and Drug Addiction Recovery Month
Town Clerk Michelle Mayher read the proclamation.

V. APPROVAL OF FINAL AGENDA

Mayor Kiker announced changes:

- Lisich Case to follow final agenda
- Move forward local achievements and recognitions followed by public comment
- Consent Agenda item A. Beach Access Restrooms moved to Administrative Agenda item E.

Town Attorney Humphrey commented on Case #10-CA-001727, Peter and Susan Lisich v. Town of Fort Myers Beach that Council had just completed their session and heard the recommendations from special counsel to the town, Richard Yovanovich. Mr. Humphrey requested that Council recognize special counsel to proceed with early mediation and then work with the interveners' counsel to move forward in prosecuting the case and assist the town.

MOTION: Councilmember List moved approval of the recommendation; second by Councilmember Mandel.

VOTE: Motion passed 5 to 0

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Presentation of Plaque to Dr. Slavens

Mayor Kiker presented a plaque to Dr. Slavens with appreciation for assisting to raise over \$8,000 for Bay Oaks.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

▪ **Jim Rodwell** Chair of CRAB reported last year's budget was \$2,500 with Council providing another \$2,500. \$3,200 was spent on the past Leadership Conference with the possibility of \$4,500 needed for the next conference. Mr. Rodwell made a request for an increase in funds.

Vice Mayor Raymond felt the past conference promoted volunteerism from the community and was in favor of providing additional funds; consensus from Council to authorize the additional funding.

▪ **Joanne Shamp** Chair of LPA and representing the HPB provided Council with an update report with some keynotes being:

- 31 Resolutions passed in 2009
- 8 Resolutions this year to date
- Time spent on ROW, Stormwater Management, Noise, Hours of Operation of COP and Historical recognition of structures by HPB
- Sub-Committee HHC – Historic Preservation – 11 HPB/LPA Resolutions in 2009 which included Newton Park
- HPB/HHC in process of placing historic designation plaques on structures
- Beginning process of Historic Significance Program which include 17 properties

Ms. Shamp indicated the HPB was seeking a \$2,000 line budget for the year for the plaques and brochures.

Ms. Shamp stated there were:

- 5 Resolutions for LPA Policies and Procedures
- 6 Resolutions of Recognition of changes in membership and staff
- 2 Hearings of Land Use 1 of which resulted in small scale amendment to Comprehensive Plan
- 2 Resolutions passed to update regulations for refuge management
- Seasonal Parking issue 2010-04, presently considering changes
- ROW and Stormwater Management ongoing issue
- Alcohol expansion and consumption on premises
- Noise, hours of operation, considerable hours of discussion
- 2009-04 LPA's opposition to expansion of services of alcohol onto the beaches of the town.
- 3 Hearings regarding COP

Ms. Shamp requested LPA or two representatives be allowed to attend Council's worksession on ROW and Stormwater management as well as Council's input on COP, noise and hours of operation. Ms. Shamp indicated the sign ordinance was brought before the LPA recently and then removed from their action list; the LPA requests that any proposed revisions to the sign ordinance be scheduled through the LPA when it comes up again. Rochelle Kay was designated as the CIP representative for the LPA. Items of importance were Post Disaster Reconstruction, LDC Chapter 10, beach technology and beach raking.

Town Attorney Humphrey discussed the LPA's work on the sign ordinance as well as counsel's work on updating the ordinance; he recommends a joint meeting between Council and the LPA to expedite the ordinance.

Town Manager Stewart reminded Council there were only minimal changes being made for constitutionality issues.

Mayor Kiker reminded every one of the 3 issues that were to be achieved.

1. For LPA to provide a representative for CIP which they have with Rochelle Kay
2. LPA to join Council budget work sessions
3. Town to supply copy of agenda management to LPA

Ms. Shamp also stated that the town's LPA representative to the County LPA was now Carleton Ryffel.

VIII. CONSENT AGENDA

- A. Special Event Permit Application – 2nd Annual Bikes on the Beach
- B. Special Event Permit Application – 9/11 Veteran's Club of America

MOTION: Council member Babcock moved approval; second by Vice Mayor Raymond.

Public Comment Opened
No Public Comment
Public Comment Opened

VOTE: Motion passed 5 to 0

Steve DeAngelis spoke representing Bay Walk Group and Yucatan Beach Stand inviting all to the event benefiting Bikers for Babes.

Jerry Shenchel spoke representing the 9/11 Veterans event.

IX. PUBLIC COMMENT
Public Comment Opened

▪ **Joanne Shamp** spoke regarding beach nourishment easements, her disappointment in the letter that went out regarding rescissions of the federal easements and expressed concern whether town owned properties had been rescinded.

▪ **Keri Hendry** suggested hammocks be used in the new Gulf front county park.

▪ **Roy Hinkelman**, Laguna Shores, thanked staff for their work.

Public Comment Closed

Councilmember Mandel questioned Ms. Shamp's comment on the easement letter asking if a public notice might also be needed.

Town Manager Stewart updated Council on the letters sent to property owners and status of the project.

Council member Babcock understood that the letters would be sent out return receipt requested, expressing a need to be sure every person given the opportunity to rescind had received the message. Councilmember Babcock also questioned providing the county with a list by October 1st and if there needed to be an amendment to the interlocal agreement.

Town Manager Stewart responded that Mr. Boutelle said October 1st was a target date and not a drop dead date with no work proposed until after the 1st of the year, stating there was a time latitude for dealing with the issue.

Attorney Humphrey stated it could be accomplished with something in writing with no need for a formal amendment.

X. ADMINISTRATIVE AGENDA

A. Introduction to 10-09, Ordinance Amending Chapter 34 of the LDC,
Parking Regulations

Town Manager Stewart informed Council that this ordinance is before them as a result of changes by the LPA regarding parking regulations on temporary parking lots.

Public Comment Opened
No Public Comment
Public Comment Closed

Town Clerk Michelle Mayher read the ordinance title:

**Town of Fort Myers Beach ORDINANCE NO. 10-09
AN ORDINANCE AMENDING REGULATIONS IN CHAPTER THIRTY-
FOUR OF THE TOWN OF FORT MYERS BEACH LAND
DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING
AMENDMENTS TO DIVISION 26 (ENTITLED PARKING) OF ARTICLE
IV (ENTITLED SUPPLEMENTAL REGULATIONS) OF CHAPTER 34
(ENTITLED ZONING DISTRICTS, DESIGN STANDARDS, AND
NONCONFORMITIES); PROVIDING FOR SEVERABILITY; AND
PROVIDING FOR AN EFFECTIVE DATE.**

MOTION: Council member List made a motion to move Ordinance 10-09, Amendment to LDC Chapter 34, Parking Regulations to a first public hearing on September 7, 2010 at 6:30 p.m. Second by Council member Babcock.

Attorney Humphrey indicated the LPA provided Council with options to consider and with the June 8th LPA minutes had made recommendations to which option(s) they preferred. During the September 7th meeting Council could address the issue deleting the options they do not select.

LPA representative Rochelle Kay stated the options had been Frank Shockey's options and the LPA had provided their decision. Mr. Stewart indicated the options had been put together by staff and felt Council should be able to review those as well as the decision of the LPA.

VOTE: Motion passed 5 to 0

B. Approval of Interlocal Agreement, Lee County Solid Waste
Town Manager Stewart indicated the interlocal was a continuation of an agreement between the town and Lee County with a provision for solid waste collection and disposal, and cooperation on the solid waste facility. Mr. Stewart noted the county had gone out to bid which resulted in a better rate for the town.

Public Comment Opened
No Public Comment
Public Comment Closed

MOTION: Council member Mandel made a motion to approve the interlocal agreements; second by Council member List.

Council member Mandel questioned times for pickups and whether there was any one else doing pickups on the island other than who was covered in the interlocal.

Bill Newman, Lee County Solid Waste Division stated pickup could begin no

earlier than 6 a.m. with the only entity able to do solid waste pickup under the contract was Viola, however there were other entities that were allowed to pick up recyclables such as cardboard and there were no controls over those people. Discussion ensued regarding commercial pickup around the island as well as the business district in Times Square.

Council member Babcock continued by questioning the fees in the contract with Mr. Newman reviewing fee schedules pertaining to residential, condos and commercial.

Mr. Stewart offered clarification that there were 2 agreements before Council for consideration one being the First Amended and Restated Solid Waste Facilities and second the Solid Waste Disposal Interlocal Agreements with Lee County.

VOTE: Motion passed 5 to 0

C. Approval of Interlocal Agreement, Lee County Animal Control Services

Town Manager Stewart reviewed the information for fiscal year 2011; there could be a reduction to \$66,392 if the town were to adopt the county's ordinance, however there were policies in the county's services that would not work well for the island.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Council member List moved approval of the 2010-2011 Interlocal Agreement Stray Animal Control Services with a second by Vice Mayor Raymond.

Councilmember List noted the hard work and attention to detail that was given to the town's animal control ordinance then continued by questioning the title of 'Stray Animal Control Services'. Town Manager Stewart indicated that was the terminology used on the interlocal agreement. Councilmember List asked if there was any difference due to the word 'stray' being used.

After discussion Town Manager indicated he was not recommending Council adopt the county's ordinance as he had issues with the county's cost of services. Mr. Stewart noted he would like Council to approve the agreement as well as provide him with a consensus to move forward and work with other communities to settle the cost issues of animal control.

Councilmember Babcock discussed formula calculation and the data it was based on.

Mayor Kiker also requested copies of the statistical and financial reports from the county.

VOTE: Motion passed 5 to 0

Vice Mayor Raymond mentioned his discussion with Mr. Mahon, the son of a woman who was mauled on the island.

Mayor Kiker stated he had written a letter to the offering the Town's support, asked whether this was a repeat problem and suggested that the dog owners have a discussion with the county.

Mr. Stewart spoke to the county and was provided with a packet of materials which was sent on to the victim to provide them with all procedures needed to move forward.

D. Approval of Resolution 10-21, Estero Bay Minimum Flow Level
Town Manager Stewart reviewed the issues with water quality.

Public Comment Opened

▪ **Jessica Stubbs**, Conservancy of Southwest Florida. Ms. Stubbs provided Council with information on estuaries and water sheds protecting Estero Bay as an important ecosystem.

Public Comment Closed

MOTION: Council member Mandel made a motion to approve resolution 10-21; second by Council member List.

Keith Laakkonen, Environmental Sciences Coordinator, provided Council with a summary of Estero Bay Estuary, South Florida Water Management District goals, 5 tributaries and the impact on all.

Council member Babcock felt the issue was greater than the oil spill and voiced his concern over the brown water stream in the Gulf and his desire for more to be done than just a resolution.

VOTE: Motion passed 5 to 0

Recess: 8:30 PM Reconvene: 8:45 PM

E. Beach Access Restrooms

Town Manager Stewart reviewed the placement of the restrooms, the additional \$10,000 each needed if there were no lateral hookups available, the need for beach accesses to be large enough to accommodate the facilities. It was also noted that the TDC had turned down the Town's request for additional funding for the hookups.

Public Comment Opened

▪ **John Pohland** asked if the units could also be used for emergency situations.

Public Comment Closed

Town Manager Stewart stated there was only 1 unit with a holding tank. Public Works Director Cathie Lewis provided more in depth information on the units and how they could be used as well as all the necessary hookups that would be needed.

MOTION: Council member Mandel made a motion to approve the placement of the mobile units; seconded by Vice Mayor Raymond.

Council continued to discuss the handicap unit, lost parking spaces, TDC funding for maintenance, plantings around the units, and designation showing the public where the units were.

VOTE: Motion passed 5 to 0

XI. TOWN MANAGER'S ITEMS

A. Set Date for Grand Opening Ceremonies

A consideration for March was discussed with staff to bring back dates.

B. Newton Park Beach Renourishment Easement

A discussion of beach nourishment easements with a request for release of easements.

XII. TOWN ATTORNEY'S ITEMS

Town Attorney Humphrey reviewed the refinance of the water utility on August 6 and stated the Water Capital Improvements Report would be delayed due to the need for a financial consultant and should be ready in October since Town Manager Stewart was interviewing for a consultant.

Attorney Humphrey suggested dissolving the corporation that governed the utility and creating an enterprise fund to accomplish the financing. Mr. Humphrey said they could then proceed with the bond issue and the validation of the referendum.

Discussion continued regarding bond documents and the validation.

Town Manager Stewart spoke regarding the decommissioning of the water utility asking Council to put the issue on an agenda for future discussion.

XIII. COUNCILMEMBERS ITEMS AND REPORTS

Council member Mandel indicated he was still working on the oil spill issue, and the hope for the TDC to continue working on the promotion of clean beaches.

Councilmember List addressed Bay Oaks issues which included a new logo for the recreational board, B.O.S.S. member Mr. Hibler's passing with donations on his behalf totaling over \$400 to Bay Oaks as well as the need for transportation for Bay Oaks.

Vice Mayor Raymond had nothing to report.

Council member Babcock requested a summary on beach nourishment and new

technology per Steve Boutelle.

Mayor Kiker commented on his continued discussions regarding Seafarer's, the repaving of Estero Boulevard, county funding for work done on the preserve, and the Taxing Authorities Day which would be a question and answer session to be held at Town Hall.

Council discussed a possible date for the event could be in November when the tax bills were mailed.

XIV. AGENDA MANAGEMENT

- COP Discussion
- Sign Ordinance
- Trash Pick Up Time
- Short Term Rental
- Storm Water & ROW

XV. RECAP OF ACTION ITEMS

- Provide additional funding for CRAB
- LPA provided with copies of Agenda Management documents
- Move forward on beach access restroom placement
- Interlocal Animal Services request quarterly reports from county
- Cost allocation with county regarding Animal Services
- Estero Bay Minimum Flood Levels
- Date Options on grand opening ceremonies for parks
- Staff to request relinquishment of nourishment easements

XVI. PUBLIC COMMENT

Public Comment Opened

- **Frank Schilling** commented on getting information out to the public regarding beach nourishment.

- **Paula Kiker** stated the name of the artist providing the logo for Bay Oaks was Anna Smith.

Public Comment Closed

XVII. ADJOURNMENT

MOTION: Council member List made a motion to adjourn with a second by Council member Babcock

Meeting Adjourned at 9:55 p.m.

Adopted 9-7-10 With/Without changes. Motion by Raymond/Babcock

Vote: 4-0 (List absent)

Michelle D. Mayher
Michelle D. Mayher, Town Clerk

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