

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JANUARY 10, 2005
Town Hall-Council Chambers
2523 Estero Blvd.
FORT MYERS BEACH, FLORIDA 33931**

- I. **CALL TO ORDER:** The regular meeting of the Fort Myers Beach Town Council was called to order on Monday, January 10, 2005 at 10:05 a.m. by Mayor Bill Thomas.

Members present at the meeting: Mayor Bill Thomas, Vice Mayor Garr Reynolds, Councilman Bill Van Duzer, Councilman Howard Rynearson, Councilman Don Massucco.

Excused absence from the meeting: None.

Staff present at the meeting: Town Attorney Richard Roosa, Town Manager Marsha Segal-George, Josh Philpott

- II. **PLEDGE OF ALLEGIANCE:** All those present assembled and recited the Pledge of Allegiance.

- III. **INVOCATION:** The invocation was given by Mayor Thomas.

Prior to opening Public Comment, Mayor Thomas made a request for a special Executive Session to be scheduled as soon as possible. Town Attorney Roosa said he was going to address this under Town Attorney's Comments, but one is scheduled for January 24, 2005.

Mayor Thomas recognized a group of students called "The Monday Group," an environmental seminar group, who were in attendance to observe and support the Babcock resolution.

IV. **PUBLIC COMMENT:**

Bob Burgess came forward to speak in reference to the noise ordinance and loud music. He thanked the Council and complimented them on their efforts. He recalled the proliferation of rooftop bars and outdoor speakers and pointed out that it does not add to the enjoyment of the residents and is not prevalent in other communities. Mr. Burgess noted that calls to the Sheriff's Office or the business owners do not solve the problem. He and other neighbors present recommend adoption of an enforceable ordinance.

Jeff Fairfax, part of the environmental group in attendance, came forward and explained the purpose of his group, speaking in support of the Babcock property resolution and purchase.

Ofelia Ochoa, one of the students with the environmental group, came forward and spoke in support of the Babcock resolution.

Kimberly Mevers, another student with the above group, came forward and spoke in support of the Babcock resolution and described the group's educational and fund raising efforts.

Harry Heist, a FMB resident and business owner, came forward and wished everyone a Happy New Year and applauded the students present. He spoke concerning the lawsuit involving the Town Council's terms and asked that Council instruct the Town Attorney not to appeal or delay the Court's ruling.

Bill Shenko, Jr. came forward and said he agreed with both Mr. Burgess and Mr. Heist. He said he has filed a Notice of Appearance of Counsel in the matter of Charles Meador vs. the Town of FMB and asked for consent of Town Counsel to direct comments to the Council. After conferring with Mr. Roosa, Mr. Shenko asked that the Town hold an Executive Session ASAP and prior to January 24th, which would be after the qualifying time for the March election.

Mayor Thomas noted for the benefit of the visitors that the Council meeting would be rebroadcast on Wednesday at 1:00 p.m. There being no additional public to come forward, he then closed Public Comment.

V. RESOLUTIONS

A. In Support of Southwest Florida Local Emergency Planning Committee

MOTION: In the absence of a formal presentation, Councilman Van Duzer moved the item, commenting that it deals with hazardous material. Motion was seconded by _____.

VOTE: Motion was passed by unanimous vote, 5-0.

B. In Support of the Purchase of the Babcock Ranch by the State

MOTION: Motion was made by Vice Mayor Reynolds to accept the resolution as stated and offer support for the purchase of the Babcock Ranch by State and/or local governments. Motion was seconded by Mr. Van Duzer.

DISCUSSION: Mr. Reynolds observed that there was a great deal of public support for the acquisition of this large expanse of land for public retention. He encouraged the students in attendance to continue their efforts.

Mr. Massucco and Mr. Rynearson, as well as the Mayor, also thanked the students for attending and voicing support

VOTE: Motion was passed by unanimous vote, 5-0.

VI. VARIANCE REQUEST of David Winmill in ref. to pool screen enclosure

The applicant, David Winmill, came forward and was sworn. He described having bought a house on Shell Mound Blvd. from 2 brokers in February that had no pool screen enclosure. He was told that the previous owners had planned to construct a pool cage but had not gotten around to it, and he subsequently obtained estimates from 3 pool cage companies, none of which indicated that there would be a setback problem. Upon applying for a permit, he was told that the proposed enclosure does not meet setback requirements, which is his reason for applying for a variance. He pointed out that the pool cage would be visible to only one of his neighbors, who submitted a letter indicating no objection. He said that the house and pool were built in 1960.

Mayor Thomas asked whether there had been any ex parte communications. Councilman Massucco had visited the property but had no conversations. None of the other Council members reported having had any ex parte communications.

A. LPA Minutes of Winmill Request for Variance

B. Staff Report

Josh Philpott came forward representing Staff and presented the Staff Report. He called attention to one change in the Staff Report that had been discussed at the LPA hearing concerning Ordinance 03-03 which was amended May 5, 2003 to provide a 7.5 ft. setback instead of 20 ft. He acknowledged that the house and pool had been built prior to enactment of any setback regulations and described the dimensions and existing setbacks. He advised that Staff is recommending approval with conditions as outlined on page 2 of 4 because of extraordinary conditions that did not result from actions of the applicant.

Mr. Reynolds made reference to his visit to the property. At this time Mr. Van Duzer also reported having visited the site, but said he did not respond to the request for ex parte because he had not spoken with anyone. Mr. Roosa recommended that when Council members have visited a property it should be reported even if there were no conversations with the principals or others involved with the property, because those who make such visits obtain knowledge which

others do not have. The Mayor noted for the record that 3 of the Council members (Vice Mayor Reynolds, Councilman Massucco and Councilman Van Duzer) had visited the site.

The meeting was opened for Public Hearing at this time. There being no public comment, Public Hearing was closed.

C. Town Resolution 05-02

MOTION: Motion was made by Councilman Rynearson to approve the variance request with conditions as recommended by Staff. Motion was seconded by Councilman Massucco.

DISCUSSION: Mr. Massucco verified with the applicant that he was aware of the 3 conditions and agreed to abide by them.

VOTE: Motion was passed by unanimous vote, 5-0.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Vice Mayor Garr Reynolds commented on the ruling by Judge Corbin on the 3-year Council Terms. Mr. Roosa explained that he intended to explain the status of that litigation under Town Attorney's Items and asked that Council members not comment on the issue. He added that if there is discussion on the litigation it should be done in Executive Session. There was lengthy discussion about the appropriateness of Council members' making remarks on the issue at this time.

VIII. TOWN MANAGER'S ITEMS:

Ms. Segal-George advised that debris next to the Post Office that had been reported by the Vice Mayor has been removed.

She also reported that Damon Grant and Ed Lawler had arranged with the Sheriff's Office for inmate labor to clean drainage swales on Saturday.

Mr. Van Duzer requested and was given the floor for an item at this time. He wished Ms. Segal-George a Happy Birthday.

Mr. Reynolds inquired about the Film Festival which he was unable to attend last Friday. Ms. Segal-George advised that this was a reschedule of Elvis Week which was postponed due to Hurricane Charley and was put on by Diamond Head. The Town was involved in helping because this group is a strong sponsor of the Town's Film Festival. Mayor Thomas reported receiving complaints from neighboring residents and condos about the noise.

Mayor Thomas referenced a letter concerning trash on the beach under the bridge with respect to dredging by Lee County. The Town Manager observed that part of this area is County right of way.

IX. TOWN ATTORNEY'S ITEMS:

Mr. Roosa reported on the status of the litigation concerning Council terms. He emphasized that since this is not an Executive Session, Council should refrain from commenting or asking questions at this time. He noted that the court had only been provided a copy of the original Town Charter and that there has not been agreement on a Final Judgment at this time. He explained the reasons why he filed a Motion to Vacate, on which a case management hearing has been set for January 24th at 4:00 p.m. He observed that a crucial issue is determination of whether the finder of fact is the municipal Council or the court. He again stressed the reasons why he does not recommend a question and answer session with the Council.

Mr. Reynolds stated his position on the issue. There was discussion about the date for Executive Session.

X. PUBLIC COMMENT: None.

XI. ADJOURNMENT: Meeting was adjourned at 11:12 a.m.

Respectfully submitted,

Patricia L. Middlekauff