

**MINUTES
LONGBOAT KEY TOWN COMMISSION
REGULAR MEETING
FEBRUARY 1, 2010 - 7:00 P.M.**

Present: Mayor Lee Rothenberg, Vice Mayor Robert Siekmann, Commrs. Jim Brown, Gene Jaleski, Hal Lenobel, Peter O'Connor, George Spoll

Also Present: Town Manager Bruce St. Denis, Town Attorney David Persson, Town Clerk Trish Granger

CALL TO ORDER

The Regular Meeting of the Longboat Key Town Commission was called to order at 7:00 p.m., in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida.

PLEDGE OF ALLEGIANCE

Mayor Rothenberg requested and Commr. O'Connor led the Pledge of Allegiance.

APPROVAL OF MINUTES

1. December 7, 2009 Regular Meeting and December 17, 2009 Regular Workshop Meeting Minutes

Vice Mayor Siekmann moved to approve the minutes as submitted. The motion, seconded by Commr. O'Connor, carried by a 7-0 roll call vote, as follows: Siekmann, aye; O'Connor, aye; Brown, aye; Lenobel, aye; Jaleski, aye; Spoll, aye; Rothenberg, aye.

COMMITTEE REPORTS AND COMMUNICATIONS

A. Outside Legal Request

Commr. Jaleski requested consideration to hold a discussion on obtaining expert legal advice specifically for the Town Commission during the Islandside public hearing process.

Vice Mayor Siekmann suggested that the matter be considered during Commission Comments later this meeting, without objection. (See item discussion later this meeting.)

B. Metropolitan Planning Organization (MPO) Meeting

Mayor Rothenberg noted attendance at the MPO meeting and advised that he would submit a written summary of the meeting to Commissioners at a later date.

C. Acknowledgment of Attendance

Vice Mayor Siekmann acknowledged the attendance of Manatee County Commissioner John Chappie and former Longboat Key Mayor Whatmough.

PUBLIC TO BE HEARD

2. Opportunity for Public to Address Town Commission

A. Public Works

The following individuals commented on the construction of the groins at the Islander Club:

Mr. Murf Klauber, 1620 Gulf of Mexico Drive
Mr. David Brenner, 2301 Gulf of Mexico Drive
Mr. Robert Appel, 7085 Gulf of Mexico Drive
Mr. Jeremy Whatmough, 6171 Gulf of Mexico Drive

Following comments, Commr. Spoll moved to add a discussion of the North end erosion to the agenda. The motion was seconded by Commr. Jaleski. Subsequent to discussion on the consideration of the issue, the motion carried by a 7-0 roll call vote, as follows: Spoll, aye; Jaleski, aye; Siekmann, aye; Rothenberg, aye; O'Connor, aye; Brown, aye; Lenobel, aye. (See item discussion later this meeting.)

Commr. Spoll moved to consider a discussion on the Islander groin issue. The motion, seconded by Commr. Jaleski, carried by a 6-1 roll call vote, as follows: Spoll, aye; Jaleski, aye; Lenobel, aye; Brown, aye; O'Connor, no; Siekmann, aye; Rothenberg, aye. (See item discussion later this meeting.)

CLOSING AND ACTION ON CONSENT AGENDA

3. Longboat Key Police Department Grant Request – Edward Byrne Memorial Justice Assistance Grant

The Town of Longboat Key Police Department is seeking \$2,200 from the Edward Byrne Memorial Justice Assistance Grant to fund the purchase of a citation printer for the Marine Patrol Unit. This grant requires no matching funds from the Town. Recommended Action: Approval of the Consent Agenda will authorize submission of the grant application.

4. Florida Department of Transportation (FDOT) Entryway and Wayfinding Signs Design

The Town was awarded a Federal Stimulus Project Grant that includes entryway and wayfinding signs to be placed in the FDOT or Town rights-of-way along Gulf of Mexico Drive. FDOT Representatives presented the conceptual sign designs at the January 21, 2010 Regular Workshop Meeting. This item is placed on the February 1, 2010 Regular Meeting Consent Agenda for formal action. Approval of the Consent Agenda will approve FDOT sign design.

5. Request for Waiver of Sound Regulations (Town Code Chapter 130, §130.02) for Florida Department of Transportation (FDOT) for Gulf of Mexico Drive (SR 789) Repaving Project

Staff is requesting Commission confirmation of the Town Manager's intention to issue a Waiver of Sound Regulations to allow FDOT extended work hours during the summer months. This waiver would expedite completion of the repaving project during the evening hours. Recommended Action: Approval of the Consent Agenda will acknowledge Town Manager waiver of sound regulations for FDOT Repaving project.

CONSENT AGENDA - Continued

Vice Mayor Siekmann moved to close and approve the Consent Agenda in accordance with Staff's reports and recommendations. The motion, seconded by Commr. Spoll, carried by a 7-0 roll call vote, as follows: Siekmann, aye; Spoll, aye; Jaleski, aye; Lenobel, aye; Brown, aye; O'Connor, aye; Rothenberg, aye.

ORDINANCES - FIRST READING

6. Ordinance 2010-03, Amending Chapter 34, Employment Policies – Firefighters' Retirement System

During the 2009 Legislative Session the Florida Legislature passed amendments to Chapters 175 and 185 which govern municipal pension plans. Proposed Ordinance 2010-03 provides for amendments to Town Code Chapter 34, Employment Policies – Firefighters' Retirement System in order for the Town to remain eligible for the receipt of State premium tax monies. Recommended Action: Pending first reading and discussion, forward Ordinance 2010-03 to the March 1, 2010 Regular Meeting for second reading and public hearing.

Town Clerk Trish Granger placed Ordinance 2010-03 on record by title only for first reading.

Commr. Lenobel moved to pass Ordinance 2010-03 on first reading and to forward to the March 1, 2010, Regular Meeting for second reading and public hearing. The motion was seconded by Commr. Brown.

Mayor Rothenberg noted that no requests to speak had been submitted.

The motion carried by a 7-0 roll call vote, as follows: Lenobel, aye; Brown, aye; O'Connor, aye; Rothenberg, aye; Siekmann, aye; Spoll, aye; Jaleski, aye.

7. Ordinance 2010-04, Amending Chapter 34, Employment Policies – General Employees' Retirement System

During the 2009 Legislative Session the Florida Legislature passed amendments to Chapter 2009-97, Laws of Florida which governs municipal pension plans. Proposed Ordinance 2010-04 provides for amendments to Town Code Chapter 34, Employment Policies – General Employees' Retirement System for consistency with legislative changes. Recommended Action: Pending first reading and discussion, forward Ordinance 2010-04 to the March 1, 2010 Regular Meeting for second reading and public hearing.

Town Clerk Trish Granger placed Ordinance 2010-04 on record by title only for first reading.

Commr. Spoll moved to pass Ordinance 2010-04 on first reading and to forward to the March 1, 2010, Regular Meeting for second reading and public hearing. The motion was seconded by Vice Mayor Siekmann.

7. Ordinance 2010-04, Amending General Employees' Retirement System - Continued
Mayor Rothenberg noted that no requests to speak had been submitted.

The motion carried by a 7-0 roll call vote, as follows: Spoll, aye; Siekmann, aye; Jaleski, aye; Brown, aye; O'Connor, aye; Lenobel, aye; Rothenberg, aye.

8. Ordinance 2010-05, Amending Chapter 34, Employment Policies – Police Officers' Retirement System

During the 2009 Legislative Session the Florida Legislature passed amendments to Chapters 175 and 185 which govern municipal pension plans. Proposed Ordinance 2010-05 provides for amendments to Town Code Chapter 34, Employment Policies – Police Officers' Retirement System in order for the Town to remain eligible for the receipt of State premium tax monies. Recommended Action: Pending first reading and discussion, forward Ordinance 2010-05 to the March 1, 2010 Regular Meeting for second reading and public hearing.

Town Clerk Trish Granger placed Ordinance 2010-05 on record by title only for first reading.

Commr. Spoll moved to pass Ordinance 2010-05 on first reading and to forward to the March 1, 2010, Regular Meeting for second reading and public hearing. The motion was seconded by Vice Mayor Siekmann.

Mayor Rothenberg noted that no requests to speak had been submitted.

The motion carried by a 7-0 roll call vote, as follows: Spoll, aye; Siekmann, aye; Rothenberg, aye; Lenobel, aye; O'Connor, aye; Jaleski, aye; Brown, aye.

9. Ordinance 2010-08, Request for Years of Service Credit - Dakel

Lt. Doug Dakel's request for years of service credit was forwarded from the January 21, 2010 Regular Workshop Meeting for Commission consideration. Recommended Action: Pending discussion, provide direction to Manager.

Town Clerk Trish Granger placed Ordinance 2010-08 on record by title only for first reading.

Commr. O'Connor moved to pass Ordinance 2010-08 on first reading. The motion was seconded by Commr. Jaleski.

Town Manager Bruce St. Denis noted receipt of additional information distributed to the Town Commission, advised of records review that would impact six additional employees that may be eligible for similar action if approved for Lieutenant (Lt.) Doug Dakel, and noted the Town's policy to allow employees to "buy back" earned time which 13 employees have done.

Ordinance 2010-08, Request for Years of Service Credit - Dakel - Continued

Discussion ensued with Town Manager St. Denis and Finance Director Thomas Kelley on the following topics/issues:

- total costs expended by the employees that bought back their earned time
- represented years of service for buy back funds expended
- Town's versus employee's contribution
- formula developed to determine buy back calculation based on future benefits to be received
- previous service dates/lack of pension contributions
- opportunity offered to Lt. Dakel to purchase previous time for years of service credit
- return of funds to non-vested employees who left Town employment
- number of employees impacted by decision to approve Lt. Dakel's request
- potential costs to return funds paid by other employees to purchase credited service time
- precedent setting on approval of request

- effect of a denial of the request (employee works additional four years or elects to take an early retirement).

Lt. Doug Dakel commented on the buy back time for other employees for service credited at other agencies and noted his belief that he could not purchase the time back in compliance with fire pension legislation.

Town Manager St. Denis advised that he was unaware of the legislation prohibiting the buy back.

Discussion continued with Town Manager St. Denis and Lt. Dakel on the following topics/issues:

- correspondence and opinion from the Firefighters Pension Board attorney
- previous Town procedures to allow buy back
- uncertainty of statutory restrictions on service credit purchase
- eligibility of Lt. Dakel to receive previous credited service
- option to continue consideration of the proposed Ordinance to clarify statutory restrictions and total impact on other employees.

Town Attorney David Persson commented on the options available to the Commission in consideration of the proposed Ordinance and the authority to continue the discussion of the item pending receipt of clarifying information. Subsequent to additional comments, Town Attorney Persson advised that the Firefighters Retirement System Board of Trustees may have to consider the issue if the Pension Code requires amendment.

Discussion ensued on the options/availability to purchase service credits, consideration by the Firefighters Retirement System Board of Trustees, and continuation of the issue until information stated could be clarified relating to statutory conflict.

9. Ordinance 2010-08, Request for Years of Service Credit - Dakel - Continued

Town Attorney Persson confirmed that an amendment to the Town Code through an Ordinance adoption would be applicable to all employees entitled to a similar benefit.

Town Attorney David Persson commented on consideration of the request and noted the authority to continue the first reading to obtain further information.

Discussion ensued on the following topics/issues:

- granting service credits without enumeration from an employee
- additional costs to the Town to provide the pension benefit for years of service
- lack of portability of the Town's Pension Plans.

Subsequent to comments on the procedure to continue the first reading, Mr. Keith Tanner, Firefighters' Retirement System Board of Trustees Chairman, commented on the proposed Ordinance, opined on statutory conflicts, eligible buy-back years, and the opinion of the Pension Board's attorney on the matter.

Subsequent to discussion on consideration of the proposed Ordinance, the motion to pass Ordinance 2010-08 on first reading failed by a 5-2 roll call vote, as follows: O'Connor, aye; Jaleski, aye; Spoll, no; Siekmann, no; Lenobel, no; Brown, no; Rothenberg, no.

Vice Mayor Siekmann moved to continue the discussion of proposed Ordinance 2010-08 to the February 18, 2010, Regular Workshop for additional discussion. The motion was seconded by Commr. Brown. Subsequent to comments on the information to be provided and attendance of Attorney Bob Sugarman, the motion carried by a 6-1 roll call vote, as follows: Siekmann, aye; Brown, aye; Spoll, no; O'Connor, aye; Lenobel, aye; Jaleski, aye; Rothenberg, aye.

Upon inquiry, the following issues were identified for discussion and additional information to be provided at the February 18, 2010, Regular Workshop meeting:

- financial impact to the Town if request is granted
- impact (financial) to provide to other employees in like situation
- clarification of statutory restrictions/compliance
- recommendation of Pension Board Attorney.

RECESS: 8:30 p.m. - 8:40 p.m.

ORDINANCES - FIRST READING AND PUBLIC HEARING

10. Quasi-judicial – Ordinance 2010-02, Cedars Tennis Club, 645 Cedars Court, Outline Development Plan Amendment

At their December 15, 2009 Regular Meeting the Planning & Zoning (P&Z) Board voted to recommend approval of Ordinance 2010-02 with an amendment to remove the reference to 'snack bar'. This item was forwarded to the February 1, 2010 Regular Meeting for Commission consideration. Recommended Action: The Town Commission will base their decision on competent substantial testimony presented at this meeting.

10. Ordinance 2010-02, Cedars Tennis Club, ODP Amendment - Continued

Town Clerk Trish Granger placed Ordinance 2010-02 on record for first reading and public hearing by title only and administered the oath to all wishing to present testimony.

Town Attorney David Persson inquired as to any potential conflicts in consideration of the request and advised that ex-parte communication should be noted at this time. No items were presented.

Mayor Rothenberg opened the public hearing.

Planning, Zoning, and Building Department Planner Steve Schield, duly sworn, presented an overview of the Cedars Tennis Club Outline Development Plan Amendment, and noted the Planning and Zoning (P&Z) Board's recommendation for approval.

Upon inquiry, Mr. Schield commented on the number of members in the Cedars Tennis Club and utilization of the restaurant by members only and not open to the public. Mr. Schield reviewed the determination of membership and Vice Mayor Siekmann requested that a clear definition of membership be established.

Discussion ensued on the following topics/issues:

- residents of Cedars East
- restrictions on restaurant utilization
- existing liquor license held by Cedars East
- previous history of restaurant viability at the facility
- definition of snack bar versus restaurant

- previous membership fees charged
- allow off-island members and to allow a restaurant for members only
- defining of "members" within the Ordinance.

Mr. Randy Langley, representing Cedars Tennis Club, advised that renters are extended the same privileges as the owner and discussed the previous regulations relating to membership privileges.

Ms. Mariellen Sabato, duly sworn, 670 Spanish Drive South, commented on the proposal.

Mr. Schield commented on the existing buffering with Spanish Main, the existing liquor license associated with the snack bar.

Mr. Langley noted the length of time the liquor license has been held by the facility.

Ms. Sabato continued her comments on the proposed Ordinance.

10. Ordinance 2010-02, Cedars Tennis Club, ODP Amendment - Continued

Mr. Jim Lopez, duly sworn, 594 Spanish Drive South, commented on the proposed Ordinance.

Town Attorney David Persson commented on the lack of a definition of a snack bar and options for Commission consideration.

Commr. Brown suggested that restrictions can be placed on the restaurant operations and the need for buffering from residential properties. Individual comments followed.

Discussion ensued on options to consider and consideration of the petition by the P&Z Board.

Town Attorney Persson suggested the deletion of the following:

- Condition No. 2, page 5 of the proposed Ordinance:
 2. Condition 11, of the Conditions of Approval for Resolution 84-23 is revised as follows:
The project's tennis facility may ~~shall not~~ include a ~~commercial~~ restaurant ~~but a snack bar may be permitted.~~
- the 9th Whereas Clause, page 1 of the proposed Ordinance:

WHEREAS, the Planning and Zoning Board at the December 15, 2009 public hearing also discussed and recommended that Condition 11 of Resolution 84-23 permitting a snack bar be amended to allow a restaurant; and

Ms. Patricia Knudson, 719 Spanish Drive South, commented on the concerns and the need to define a snack bar and supported a buffer.

Subsequent to comments, Vice Mayor Siekmann moved to amend Ordinance 2010-02 by deleting Condition No. 2 on page 5 and the 9th Whereas clause, and amendments to the Title of the Ordinance as appropriate, and to forward Ordinance 2010-02 to the March 1, 2010, Regular Meeting for second reading and public hearing. The motion, seconded by Commr. Spoll, carried by a 6-1 roll call vote, as follows: Siekmann, aye; Spoll, aye; Jaleski, aye; Lenobel, aye; Brown, aye; O'Connor, aye; Rothenberg, no.

ORDINANCES - SECOND READING AND PUBLIC HEARING

11. Ordinance 2009-22, Moore's Stone Crab Restaurant, Comprehensive Plan Amendment

The applicant, Moore-Hicks, Limited Partnership, LLC, property owner, is requesting consideration of an application for a Small Scale Comprehensive Plan Amendment to the Future Land Use Map for the property located at 800 Broadway Street, currently known as Moore's Stone Crab Restaurant, to amend the Future Land Use designation of the subject property from Limited Commercial (CL) to High Density Single Family / Mixed Residential (RH-6), limited to four dwelling units per acre. Recommended Action: Pending second reading, public hearing and discussion, adopt Ordinance 2009-22.

11. Ordinance 2009-22, Moore's Stone Crab Restaurant, Comprehensive Plan Amendment - Continued

Town Clerk Trish Granger placed Ordinance 2009-22 on record for second reading and public hearing by title only.

Commr. Spoll moved to adopt Ordinance 2009-22 on second reading and public hearing. The motion was seconded by Commr. O'Connor.

Mayor Rothenberg opened the public hearing.

Planning, Zoning, and Building Department Planner Steve Schield commented on the petition advising that additional information had been provided to the Commission by a member of the Planning and Zoning Board.

Mr. Dailey, representing Moore-Hicks Limited Partnership, commented on the request and supported approval.

Mr. Alan Moore, duly sworn, commended the help of Staff moving the issue forward and supported approval.

Commr. Brown noted his position on the request.

Mr. Victor Levine, 5444 Gulf of Mexico Drive, duly sworn, commented on the Ordinance.

Upon inquiry, Mr. Schield advised that if the request was approved, the existing restaurant could be maintained but no improvements or expansion could be made.

Mr. Moore commented on internal improvements that could be made under the proposal.

Mr. Schield advised that a new owner could utilize the zoning as long as the non-conforming use was not abandoned.

Following individual comments, the motion to adopt Ordinance 2009-22 carried by a 4-3 roll call vote, as follows: Commr. Spoll, no; Commr. O'Connor, aye; Jaleski, aye; Siekmann, aye; Brown, no; Rothenberg, no; Lenobel, aye.

12. Quasi-judicial - Ordinance 2009-21, Moore's Stone Crab Restaurant, Change of Zoning

Quasi-judicial public hearing to consider Ordinance 2009-21, a request to change the zoning of the property located at 800 Broadway Street. The applicant, Moore-Hicks, Limited Partnership, LLC, property owner, is requesting a Change of Zoning from Limited Commercial (C-1) to Single-Family High Density Residential (R-6SF), limited to four dwelling units per acre, for the property located at 800 Broadway Street, known as the Moore's Stone Crab Restaurant site. Recommended Action: The Town Commission will base its decision on competent substantial evidence presented at this public hearing.

12. Ordinance 2009-21, Moore's Stone Crab Restaurant, Change of Zoning - Continued

Town Clerk Trish Granger placed Ordinance 2009-21 on record for second reading and public hearing by title only and administered the oath to all wishing to present testimony.

Town Attorney David Persson inquired as to any potential conflicts in consideration of the request and advised that ex-parte communication should be noted at this time. No items were presented.

Planning, Zoning, and Building Department Planner Steve Schield commented on the petition advising that additional information had been provided to the Commission by a member of the Planning and Zoning (P&Z) Board after the P&Z Board hearing.

Mayor Rothenberg opened the public hearing.

Planning, Zoning, and Building Department Planner Steve Schield, duly sworn, advised that no new or additional information would be presented.

Mr. Peter Daily, duly sworn, commented on the proposed zoning and advised that only two residential units would be buildable.

Upon inquiry, Vice Mayor Siekmann suggested that the Ordinance stipulate a maximum of two units for the parcel. Discussion ensued on the Town's required setbacks and the maximum allowed density referenced in the Ordinance.

Town Attorney Persson advised that the language included in the Whereas clauses, if desired by the Town Commission, could be repeated in the Ordinance, as suggested the following language be added to the Whereas Clause and Section 3 of the Ordinance (shown as underlined text):

WHEREAS, the owners of the property, Moore-Hicks Limited Partnership, request approval of their application to change the zoning district of the property, consisting of approximately 0.89 acres, from Limited Commercial (C-1) to Single-Family High Density Residential (R-6SF), with a specific limitation to a maximum of two dwelling units per acre; and

SECTION 3. The maximum allowed density of the Property shall be limited to four dwelling units per acre, which will limit future development to a maximum of two single-family detached dwelling units on the Property.

Vice Mayor Siekmann moved to adopt Ordinance 2009-21, incorporating the language amendments submitted by the Town Attorney. The motion, seconded by Commr. Jaleski, carried by a 4-3 roll call vote, as follows: Siekmann, aye; Jaleski, aye; Lenobel, aye; Brown, no; O'Connor, aye; Rothenberg, no; Spoll, no.

RECESS: 10:05 p.m. - 10:15 p.m.

RESOLUTIONS

13. Resolution 2010-06, Budget Transfer in the Amount of \$125,000 for Longboat Pass Inlet Management Study

At the December 17, 2009 Regular Workshop Meeting the Town Commission provided direction to take the necessary steps to initiate an Inlet Management Plan funded jointly with Manatee County. The total cost of the study is approximately \$250,000. In the event the Town Commission elects to proceed with the Inlet Management Study a budget transfer will be needed for the Town's funding share. Recommended Action: Pending discussion, pass Resolution 2010-06.

Town Clerk Trish Granger placed Resolution 2010-06 on record by title only.

Commr. O'Connor moved to pass Resolution 2010-06. The motion was seconded by Vice Mayor Siekmann.

Commr. Jaleski noted concern with utilizing Coastal Planning and Engineering (CP&E) and Town Manager Bruce St. Denis advised that he has provided information to Commr. Jaleski on the project.

Discussion ensued with Town Manager Bruce St. Denis on the cost of the project, funding costs and reimbursements, the equity of returns of tax dollars to the Town by Manatee County, and consideration of the project by the Florida Department of Environmental Protection (FDEP).

Subsequent to comments, the motion carried by a 5-2 roll call vote, as follows: O'Connor, aye; Siekmann, aye; Rothenberg, aye; Jaleski, no; Spoll, aye; Brown, no; Lenobel, aye.

14. Resolution 2010-05, Budget Transfer in the Amount of \$103,879 for Sand Search in Federal Waters

Due to the Port Dolphin Memorandum of Agreement, the Town of Longboat Key is pursuing a Federal Sand Resource Mineral Lease for the borrow site identified as F-2. To fund the additional expense associated with this project a budget transfer of \$103,879 is required. Recommended Action: Pending discussion, pass Resolution 2010-05.

Town Clerk Trish Granger placed Resolution 2010-05 on record by title only.

Commr. Spoll moved to pass Resolution 2010-05. The motion was seconded by Commr. O'Connor.

Commr. Jaleski commented on the project and Town Manager Bruce St. Denis noted restrictions on the RFP (Request For Proposal) process and utilization of Coastal Planning and Engineering (CP&E), and advised that many surrounding governmental agencies are utilizing CP&E for their coastal and sand projects.

14. Resolution 2010-05, Budget Transfer in the Amount of \$103,879 for Sand Search in Federal Waters

Commr. Jaleski read a portion of Florida Statute 287.055(2)(g) relating to continuing contracts, and following comments, Town Manager Bruce St. Denis read a portion of Statute 287.055(2)(g) noting compliance with applicable laws.

The motion to pass Resolution 2010-05 carried by a 6-1 roll call vote, as follows: Spoll, aye; O'Connor, aye; Brown, aye; Lenobel, aye; Rothenberg, aye; Siekmann, aye; Jaleski, no.

15. Resolution 2010-07, Budget Transfer in the Amount of \$25,365 for Beach Nourishment Project Permitting

The continuing process to obtain a permit for the upcoming Town-wide beach nourishment project includes additional engineering work to respond to Florida Department of Environmental Protection Requests for Additional Information. The transfer amount required to continue this work is \$25,365. Recommended Action: Pending discussion, pass Resolution 2010-07.

Town Clerk Trish Granger placed Resolution 2010-07 on record by title only.

Vice Mayor Siekmann moved to pass Resolution 2010-07. The motion was seconded by Brown.

Vice Mayor Siekmann inquired and Town Manager Bruce St. Denis commented on the permitting process and the associated requirements for identifying sand sources. Discussions were held on the following topics/issues:

- time frame for completion
- progress of sand search efforts
- timeline for design
- future Commission determination on type of sand to be utilized (coarse versus sand / gray versus white)
- referendum and construction schedule
- determination of project costs.

The motion to pass Resolution 2010-07 carried by a 6-1 roll call vote, as follows: Siekmann, aye; Brown, aye; Jaleski, aye; Spoll, aye; Lenobel, aye; O'Connor, aye; Rothenberg, aye.

NEW BUSINESS

16. Discussion Regarding Early Voting for March 2010 Municipal Election

The Sarasota County Supervisor of Elections has advised that Florida Statutes require that municipalities must offer early voting consistent with the early voting offered by the County. Sarasota County intends to offer early voting for a two week period whereas the Town has scheduled for one week. Recommended Action: Pending discussion, provide direction to Manager.

16. Early Voting for March 2010 Municipal Election - Continued

Town Clerk Trish Granger provided an overview of the schedule for the Town's General Election and the Sarasota County Special Election to be held on March 16, 2010 and advised that the County's election, per Florida Statutes, takes precedence over a municipal election and that Sarasota County's Supervisor of Elections had notified the Town that a two-week early voting period for the county-wide election had been established and the Town could not offer only one week.

Discussion ensued on the following topics/issues:

- Town's cost for one additional week of early voting (both Counties)
- option for Manatee County to handle the entire election
- inclusion of tax issue on Sarasota County ballot
- options for voters to travel into County offices for early voting
- Commission schedule during the month of February and March
- options for utilizing absentee ballots
- associated costs for early voting
- sites for early voting within Sarasota County.

Vice Mayor Siekmann moved to offer early voting in the County's Supervisor of Elections offices in lieu of early voting on Longboat Key. The motion was seconded by Commr. Lenobel.

Ms. Lynn Larson, Yardarm Lane, commented on the early voting offered for the Preliminary Election in January, 2010.

The motion carried by a 5-2 roll call vote, as follows: Siekmann, aye; Lenobel, aye; Brown, no; O'Connor, aye; Rothenberg, aye; Spoll, no; Jaleski, aye.

(See item later this meeting.)

17. Appointment to Fill Vacancy of Zoning Board of Adjustment, Seat 2

A vacancy exists on the Zoning Board of Adjustment (ZBA), Seat 2. This item is placed on the February 1, 2010 Regular Meeting for appointment to Seat 2 with a term expiration of May 9, 2012. Recommended Action: Pending discussion, appoint individual to Seat 2 on the Zoning Board of Adjustment.

Town Clerk Trish Granger noted the receipt of a resignation from Mr. George Pasini, Seat 2, on the ZBA and noted four applicants were interested in serving on the Board.

Upon inquiry, Mr. Jack Brill noted he was present at the meeting. Town Clerk Granger noted Mr. Brill had also expressed an interest on the Code Enforcement Board.

Town Clerk Granger proceeded with a roll call for appointment to Seat 2, as follows:

- Commr. Jaleski cast a ballot for Mr. Andrew Aitken.
- Commr. Spoll cast a ballot for Mr. Jack Brill.

17. Appointment to Fill Vacancy of Zoning Board of Adjustment, Seat 2 - Continued

Vice Mayor Siekmann cast a ballot for Mr. Andrew Aitken.
Mayor Rothenberg cast a ballot for Mr. Andrew Aitken.
Commr. O'Connor cast a ballot for Mr. Andrew Aitken.
Commr. Brown cast a ballot for Mr. Andrew Aitken.
Commr. Lenobel cast a ballot for Mr. Andrew Aitken.

Mr. Aitken was appointed to Seat 2 on the ZBA to fill an unexpired term effective through May 9, 2012.

18. Appointment to Fill Vacancy of Code Enforcement Board, Seat 5

A vacancy exists on the Code Enforcement Board, Seat 5. This item is placed on the February 1, 2010 Regular Meeting for appointment to Seat 5 with a term expiration of May 11, 2011. Recommended Action: Pending discussion, appoint individual to Seat 5 on the Code Enforcement Board.

Town Clerk Trish Granger noted a vacancy exists on the Code Enforcement Board (CEB), Seat 5, with a term expiration of May 11, 2011.

Town Clerk Granger proceeded with a roll call for appointment to Seat 2, as follows:

Commr. Lenobel cast a ballot for Mr. Jack Brill.
Commr. Brown cast a ballot for Mr. Jack Brill.
Commr. O'Connor cast a ballot for Mr. Jack Brill.
Mayor Rothenberg cast a ballot for Mr. Jack Brill.
Vice Mayor Siekmann cast a ballot for Mr. Jack Brill
Commr. Spoll cast a ballot for Mr. Jack Brill.
Commr. Jaleski cast a ballot for Ms. Rosemary Dilgard.

Mr. Brill was appointed to fill Seat 5 on the CEB to fill an unexpired term effective through May 11, 2011.

16. Early Voting for March 2010 Municipal Election - Continued

Mr. Jeremy Whatmough, Gulf of Mexico Drive, commented on the Commission's decision relating to early voting and supported having early voting at Town Hall.

TOWN COMMISSION COMMENTS

A. Public Works

Commr. Jaleski requested consideration to hire the consulting firm of Holmberg Technologies, Inc., of Venice to review and advise on the options available to resolve the North end erosion issues. Discussions were held with Town Manager Bruce St. Denis, Town Attorney David Persson, Mr. Bob Appel, Mr. David Brenner, and Mr. Charles Juengling on the following topics/issues:

TOWN COMMISSION COMMENTS - Continued

A. Public Works - Continued

- option to utilize Holmberg's firm for \$5,000 for review of current program
- current proposed project for North Shore
- groin proposals
- breakwater options
- type of sand, placement of sand, and permitting requirements by the Florida Department of Environmental Protection (FDEP)
- Joint Coastal Planning (JCP) permit process time frame
- request to the West Coast Inland Navigation District (WCIND) to assist in the process to expedite permitting
- anticipated reimbursement/Beach Management Fund balance
- impact of turtle season on the project schedule
- option for permeable groin on North end
- Army Corps of Engineer dredging of Longboat Pass and possible sand source
- Longboat Pass channel location and possible impact on North end erosion issues
- Manatee County schedule for Coquina Beach renourishment
- sand cost and option to utilize channel sand for Longboat's beach areas
- option for temporary groins (tube structures) at North end/permitting requirements
- property owners ability to apply for permitting to place rip-rap on their private property
- temporary geotextile structures
- options to mitigate issues in the Periwinkle area
- process for declaring emergency situation for the area
- estimated loss of sand during recent week's storm activity
- sand loss due to storm impacts since 2008
- actions taken at the Islander Club property/permitting process
- action taken in 2005 by private property owners/action by Florida Department of Environmental Protection (fines assessed)
- options to declare "State of Emergency" at Longbeach/available land to place temporary structures
- existing rip-rap in front of Coquina building
- existing ECL (Erosion Control Line)/lack of public beach area to place structures
- short term solutions available to private property owners
- time frame for issuance of a permit by FDEP for private property owners to take action
- possible delay of Town project permitting if a new request is submitted for emergency relief
- Town action on a previous request for emergency relief from residents/State authority to override action
- process for residents to request emergency action on private property
- status of hiring an engineer by property owners.

TOWN COMMISSION COMMENTS - Continued

A. Public Works - Continued

Town Manager St. Denis requested confirmation of Commission direction, as follows:

- proceed with four breakwaters
- attempt to obtain a permit for placement of sand in front of Periwinkle and possibly further north to Broadway
- continue to try to permit to build a profile from Broadway to the north
- work with property owners' engineer to review project recommendations to ascertain Town's role.

Mr. Appel inquired as to review by Coastal Planning and Engineering (CP&E), Inc., and possible recommendations from CP&E, and Town Manager St. Denis commented on the time frame for the Town's project and CP&E review.

Ms. Barbara Wood, 7135 Gulf of Mexico Drive, inquired and Town Attorney Persson commented on the permitting process for private homeowners versus the Town's required process and the State's authority to override the Town's determination.

Commr. Jaleski noted the importance of protecting private property in lieu of following the permitting process. Discussion ensued on the time frame for review by the property owners' engineer, the State review process, and confirmation of action (noted by Town Manager St. Denis) to be taken by the Town.

Subsequent to comments, discussion ensued on the construction of the second permeable groin at the Islander Club, previous direction from the Town Commission for two groins, and project costs.

B. Outside Legal Counsel

Town Attorney David Persson noted Commr. Jaleski's request earlier this meeting to consider retaining expert legal counsel for the Town Commission and provided an overview of the representation of the Town Commission by the Town Attorney's office and retaining legal services for specific issues that require counsel in specific fields outside of the expertise of the Town Attorney.

Discussion ensued with Town Attorney Persson and Town Manager Bruce St. Denis on the following topics/issues:

- previous judgments against the Town for various law suits filed prior to retaining current legal counsel
- the process for Commissioners to follow in the consideration of quasi-judicial matters, code enforcement issues, and other issues considered by the Commission
- representation of Town Staff by outside legal counsel on a pending petition

TOWN COMMISSION COMMENTS - Continued

B. Outside Legal Counsel - Continued

- option for additional legal counsel for current application under consideration
- threat of litigation against individual Commissioners
- indemnification of Commissioners under Town Code if quasi-judicial process is followed under the scope of their elected office
- determination of a "specialist" in land use law
- willingness of Town Attorney to guide Commissioners on their required duties
- authority of Commission to hire additional experts as needed
- Town Attorney's duties to represent and advise Town Commission.

TOWN ATTORNEY COMMENTS - No items were presented.

TOWN MANAGER COMMENTS - No items were presented.

PRESS TO BE HEARD - No items were presented.

ADJOURNMENT

Mayor Rothenberg adjourned the February 1, 2010, Regular Meeting at 12:01 a.m.

/s/ Trish Granger
Trish Granger, Town Clerk

/s/ George Spoll
George Spoll, Mayor

Minutes Approved: 07/12/2010