

**MINUTES
LONGBOAT KEY TOWN COMMISSION
REGULAR MEETING
OCTOBER 1, 2012 - 7:00 P.M.**

Present: Mayor Jim Brown, Vice Mayor David Brenner, Commrs. Jack Duncan, Terry Gans, Lynn Larson, Phill Younger, Pat Zunz

Also: Town Manager Dave Bullock, Town Attorney David Persson,
Present: Town Clerk Trish Granger

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Brown called the meeting to order at 7:00 p.m. in the Town Commission Chamber, 501 Bay Isles Road, Longboat Key, Florida and Commr. Gans led the Pledge of Allegiance.

Mayor Brown noted that Manatee County Commission Chairman John Chappie was in attendance.

PROCLAMATIONS AND SPECIAL PRESENTATIONS

1. Proclamation - Fire Prevention Week - October 7-13, 2012

Vice Mayor Brenner read and presented the Fire Prevention Week Proclamation to Fire Chief Paul Dezzi. Chief Dezzi commented on the history of the designation of National Fire Prevention Week and noted the importance of pre-planning escape routes in the event of a fire in an individual's residence.

APPROVAL OF MINUTES

2. September 4, 2012 Special Workshop Meeting Minutes

Vice Mayor Brenner noted that he had some inquiries on the Minutes and suggested deferral of consideration until the November 5, 2012, Regular Meeting.

There was consensus to defer consideration of the September 4, 2012, Special Workshop Meeting Minutes until the November 5, 2012, Regular Meeting.

PUBLIC TO BE HEARD

3. Opportunity for Public to Address Town Commission

A. Planning, Zoning, and Building Department/Resolution 2012-07

Mr. Michael Lendrihas, Tarrowit Drive, commented on the consideration of the Colony Beach and Tennis Resort property later this meeting.

COMMITTEE REPORTS AND COMMUNICATIONS

A. Organizations

Vice Mayor Brenner noted attendance at the Sarasota County Tourist Development Council (TDC) meeting, noting the appointment of Nicole Rissler, Director of Sports for the Sarasota County Sports Commission.

COMMITTEE REPORTS AND COMMUNICATIONS - Continued

B. Government Entities

Commr. Duncan noted the Joint Meeting held earlier this date with the Sarasota Board of County Commissioners and reviewed the issues discussed.

CONSENT AGENDA

4. Fiscal Year 2012-2013 Holiday Schedule

Each year the Town Commission approves a list of scheduled holidays in accordance with the Town's Personnel Rules and Regulations and Resolution 99-19. Resolution 99-19 provides that the Town Commission may approve one additional holiday, usually the day before or after Christmas. This year Christmas falls on Tuesday, and as such Town offices will be closed on Tuesday, December 25th. The Manager recommends the additional holiday as Monday, December 24th. Recommended Action: Approval of the Consent Agenda will approve the Fiscal Year 2012-13 Holiday Schedule.

There was consensus to approve Consent Agenda Item 4 in accordance with Staff's report and recommendation.

ORDINANCES - FIRST READING AND PUBLIC HEARING

5. Ordinance 2012-19, Amending Chapter 158.152, Maximum Hedge Heights

The Planning and Zoning (P&Z) Board recommended denial of Ordinance 2012-19 (previously numbered 2012-15) due to a number of conflicting areas and issues that need to be addressed. The P&Z Board requested that Ordinance 2012-19 be remanded to staff for further review and amendment. Recommended Action: Pending discussion, provide direction to Manager.

Town Clerk Trish Granger placed Ordinance 2012-19 on record for first reading and public hearing by title only.

Mayor Brown opened the public hearing.

Upon inquiry, Planning, Zoning, and Building (PZB) Department Planner Steve Schield commented on consideration of the proposed Ordinance by the Planning and Zoning (P&Z) Board.

Town Attorney David Persson advised that the P&Z Board does not have the authority to supersede the Code which requires that the document be presented to the Town Commission outlining the P&Z Board's recommendation. Town Attorney Persson advised the Commission could accept the recommendation as presented or has the authority to consider the Ordinance and pass it on first reading as presented or as amended, or may accept the P&Z Board's recommendation.

Mr. Schield gave a PowerPoint presentation on consideration of the Ordinance by the P&Z Board, noting previous amendments to Section 158.152 in 2008 and the basis for the amendments. Discussions were held on the following topics/issues:

- determination on the use of the word "selective"

5. Ordinance 2012-19, Amending Chapter 158.152, Maximum Hedge Heights - Continued

- street versus waterfront hedge height restrictions
- perceived disadvantages of the proposed amendments
- determination by the Town Commission to forward the hedge height issues to the P&Z Board for consideration.

Mr. Michael Freed, Harbourside Drive, commented on the proposed Ordinance.

Commr. Duncan noted that he had visited the site as President of Marina Bay Condominium Association and commented on the number of units that have an obstructed view due to a hedge planted on Harbour Court property.

Ms. Marie Watts, Harbourside Drive, commented on the proposed Ordinance.

Upon inquiry, Mr. Schield noted the date of the previous amendments in 2008 which removed the six (6) foot hedge height restriction and the basis for the amendments made. Discussions were held with Town Attorney Persson and Mr. Schield on the following topics/issues:

- legal considerations in amending the Code to include restrictions
- uniform enforcement requirements
- options to move forward with the Ordinance as presented by Staff
- impact if a tree is planted in the waterfront yard
- lack of clear definition of measuring point.

Mr. Randy Langley, Norton Street, commented on recent plantings on his property and inquired as to the impact of the proposed Ordinance.

Mr. Schield noted that the required setbacks for the current property on Norton Street. Discussion ensued on the lack of specific definition of the beginning measuring point in the Ordinance.

Mayor Brown requested consensus to remand the Ordinance to Staff to address the issues raised by the P&Z Board.

Town Manager Dave Bullock requested clarification on the inclusion of existing hedges in the Ordinance and providing a period for compliance if included.

Upon inquiry, PZB Department Director Robin Meyer advised that he was not aware of any complaints filed since he began employment in May 2012, opined that the amendment in 2008 created the unintended consequence for certain properties on Longboat Key.

Discussion ensued on the following topics/issues:

- opportunity for the Bay Isles Master Association to attempt to resolve the issues between the two properties

5. Ordinance 2012-19, Amending Chapter 158.152, Maximum Hedge Heights - Continued

- the impact of the Ordinance amendment to the Harbor Court property
- enforcement of the Ordinance if a complaint is received
- timeframe for consideration of the Ordinance relating to waterfront views
- importance of waterfront views when purchasing a residence on an Island community
- existing restrictions for waterfront lots/current enforcement measures
- issues to be considered by the P&Z Board
- lack of enforcement for a mediation session.

Discussion ensued on existing waterfront yard hedge height restrictions and the intent of the Ordinance.

Mayor Brown moved to remand the Ordinance back to the P&Z Board. The motion was seconded by Commr. Younger.

Following additional comments on the consideration of the Ordinance and the issues to be considered by the P&Z Board, Mayor Brown amended his motion to approve Ordinance 2012-19 on first reading and public hearing in accordance with discussions held this date. Commr. Younger noted agreement to the amended motion if language to define waivers is clearly identified.

Discussion ensued on the waiver allowance identified in Ordinance 2012-19.

Commr. Duncan suggested that the time frame be reduced from three years to two years for compliance.

Mayor Brown amended his motion to incorporate a two year time frame for compliance, with agreement by Commr. Younger.

The motion to pass Ordinance 2012-19, as amended, carried by a 4-3 roll call vote, as follows: Brown, aye; Younger, aye; Larson, no; Gans, aye; Brenner, no; Zunz, no; Duncan, aye.

RECESS: 8:27 p.m. - 8:39 p.m.

ORDINANCES - SECOND READING AND PUBLIC HEARING

6. Ordinance 2012-10, Future Land Use Map Amendments, 4110 and 5810 Gulf of Mexico Drive

At their June 19, 2012 Regular Meeting the Planning and Zoning (P&Z) Board recommended approval of Ordinance 2012-10 as written. First reading and public hearing was held at the September 4, 2012 Regular Meeting. Ordinance 2012-10 was forwarded for second reading and public hearing at the October 1, 2012 Regular Meeting. Recommended Action: Pending second reading, public hearing, and discussion, adopt Ordinance 2012-10.

6. Ordinance 2012-10, Future Land Use Map Amendments, 4110 and 5810 Gulf of Mexico Drive - Continued

Town Clerk Trish Granger placed Ordinance 2012-10 on record for second reading and public hearing by title only.

Commr. Gans moved to adopt Ordinance 2012-10 on second reading and public hearing. The motion was seconded by Commr. Duncan.

Mayor Brown opened the public hearing. As no one wished to be heard, the public hearing was closed.

The motion carried by a 7-0 roll call vote, as follows: Gans, aye; Duncan, aye; Larson, aye; Younger, aye; Zunz, aye; Brenner, aye; Brown, aye.

7. Ordinance 2012-17, Pass-Through of Manatee County Wholesale Water and Wastewater Rate Increases

On October 25, 2011, the Manatee County Board of County Commissioners enacted Resolution R-11-208 which authorized two consecutive yearly wholesale water and wastewater rate increases. The Town Code provides for a pass-through of Manatee County rate changes to the Town's utility ratepayers. The first Manatee County rate increase was effective on November 1, 2011 and the second will be effective on November 1, 2012. Ordinance 2012-17 formalizes the November 1, 2012 utility rate change as provided for in the Town Code. First reading and public hearing was held at the September 4, 2012 Regular Meeting. Ordinance 2012-17 was forwarded for second reading and public hearing at the October 1, 2012 Regular Meeting. Recommended Action: Pending second reading, public hearing, and discussion, adopt Ordinance 2012-17.

Town Clerk Trish Granger placed Ordinance 2012-17 on record for second reading and public hearing by title only.

Commr. Younger moved to adopt Ordinance 2012-17. The motion was seconded by Commr. Larson.

Mayor Brown opened the public hearing. As no one wished to be heard, the public hearing was closed.

The motion carried by a 7-0 roll call vote, as follows: Younger, aye; Larson, aye; Brenner, aye; Brown, aye; Duncan, aye; Zunz, aye; Gans, aye.

RESOLUTION AND PUBLIC HEARING

8. Quasi-judicial – Resolution 2012-07, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures

Chapter 158.138(B)(8)(b) of the Town's Zoning Code provides for property owners to file a petition to the Town Commission seeking a time extension for the legally nonconforming land use/structures. A nonconforming use not used for a period of one year is considered an abandonment of the legally nonconforming use. At the May 2, 2011 Regular Meeting the Commission adopted Resolution 2011-17 providing the Colony Beach and Tennis Club Association, Inc. an extension of time to comply with regulations

8. Quasi-judicial – Resolution 2012-07, Colony Beach and Tennis Club Association, Inc. for Request for Time Extension - Continued

governing nonconforming uses and structures. On July 27, 2012, the Colony Beach and Tennis Club Association, Inc. petitioned the Town Commission to extend the time from December 31, 2012 through June 30, 2014. Public Hearing and discussion of this request was continued from the September 4, 2012 Regular Meeting and September 24, 2012 Special Meeting. Recommended Action: The Town Commission will base its decision on competent substantial evidence presented at this public hearing.

Town Clerk Trish Granger placed Resolution 2012-07 on record for public hearing by title only and administered the oath to all those wishing to speak.

Mayor Brown provided an overview of the quasi-judicial public hearing process. Town Attorney David Persson inquired on ex-parte communications and any perceived conflicts relating to the extension request.

Vice Mayor Brenner noted he responded to an e-mail from Dr. Murf Klauber and advised that he has received a phone call from Mr. Greg Rusovich, a member of the Blue Ribbon Panel with assurances that the Panel will continue to work towards resolutions of issues. Town Attorney Person inquired, and no questions were raised for Vice Mayor Brenner on the items noted.

Commr. Larson noted conversations with parties involved in the legal proceedings advising that the extent of the conversations were to express frustration with the non-resolution of the legal process. Town Attorney Person inquired, and no questions were raised for Commr. Larson on the items noted.

Commr. Gans noted a response to Dr. Murf Klauber relating to his e-mail. Town Attorney Person inquired, and no questions were raised for Commr. Gans on the items noted.

Mayor Brown opened the public hearing and noted the established time lines for presentations.

Following comments on the time frame for presentations, Town Attorney Persson noted that if there were no objections, the time limits could be reduced due to the number of previous hearings.

Town Manager Dave Bullock noted that a revised Resolution was provided to the Commission and to all identified parties and reviewed the amendments made to the Resolution considered at previous public hearings, as follows:

- combination of two options for the time extension for entire property
- inclusion of a condition for quarterly reports to be filed by the Association describing progress in attempts to resolve pending litigation beginning in January 2013
- inclusion of a condition requiring that within 90 days from the court determination of who controls the property, a development plan for the property will be submitted
- inclusion of a review process by the Town Manager

8. Quasi-judicial – Resolution 2012-07, Colony Beach and Tennis Club Association, Inc. for Request for Time Extension - Continued

Town Attorney Persson noted an additional grammatical correction on page three of the Resolution advising that the word "order" should be plural (orders).

Upon inquiry, Town Attorney Persson advised that the utilization of the terminology identifying "the Colony" as the responsible party was to provide for changes in ownership based on the outcomes of the legal issues.

Discussion ensued on the lack of definitive terminology to determine if the development plan "appears to be feasible, reasonable, and practical."

Attorney Don Hemke, duly sworn, advised that the Colony Association would be the party complying with Section 4 of the revised Resolution 2012-07, and requested consideration to amend Section 3 relating to the case number identified, amendments to the Whereas clauses, additional case numbers outlined in Section 3, pertaining to the phrase "appears to be feasible, reasonable, and practical," and the ability to appeal to the Town Commission if the Town Manager does not approve a development plan.

Town Attorney Persson noted that Section 3 could be expanded to include all of the pending litigation. Commr. Larson inquired and Town Attorney Persson advised that the Commission would need to make a determination on whether to include the entire parcel or just the portion controlled by the Association.

Attorney Hemke noted the intent to include the entire parcel but advised that his client has only 15 acres assigned to the Association at the current time and did not have control of the entire parcel.

Mayor Brown noted that the Town Commission is seeking resolution of issues on the entire property.

Upon inquiry, Town Attorney Persson noted the extension would be granted for the entire property, providing significant time to resolve the outstanding legal issues and time to accomplish the redevelopment. Discussion ensued with Town Attorney Persson on the following topics/issues:

- the inclusion of 18 versus 15 acres in the extension request
- the request to delete the word "Restore" from Section 4.3 (page 4 of the Resolution)
- option to modify the language for Section 4.3 to reflect "Restore to an acceptable level"
- option to include the language in Section 3 identifying the Town Manager to be added to Section 4
- cost to the Town to supervise the activities required in the Resolution/lack of fee for oversight services
- previous legal case relating to charging for administrative services/fees in Code Enforcement cases
- lack of substantive confidence in the Association's efforts to date
- identification of vendors to be utilized in the upkeep of the property

8. Quasi-judicial – Resolution 2012-07, Colony Beach and Tennis Club Association, Inc. for Request for Time Extension - Continued

- timeframe outlined of the year 2015 versus length of time required to process through the Court system
- option for determination of a rebuild versus a rehabilitation by December 31, 2012, followed by short term extensions
- expected timeframe to process the legal cases through the Court system.

Attorney Charles Bartlett, duly sworn, commented on the previous presentations and the lack of specific requirements to be fulfilled by the Association, reviewed the actions of the Court processes, advised that the Association has been in control of the property for the past two years, timeframe outlined in Section 3 of the Resolution. Discussion ensued on the following topics/issues:

- determination on whether to approve an additional extension
- recommendation to set a definitive timeframe to begin rebuild/rehabilitation
- impact of delays pending resolution of court rulings
- current status of communication between the parties
- preference to grant extension or sunset the grandfathering
- control of the parties to resolve the issues
- option to reduce the time frame for the extension.

Mr. Larry Grossman, St. Judes Drive, duly sworn, commented on the proposed extension and other options to consider in lieu of an extension. Individual comments followed.

Mayor Brown closed the public hearing.

Discussion ensued on the following topics/issues:

- reducing the timeframe for the extension
- option to hold a referendum relating to the redevelopment and/or the Town's purchase of the property
- options to require more frequent reporting requirements (monthly or quarterly)
- designation of units as tourism in lieu of residential
- inclusion of enforceable conditions for the property.

Commr. Duncan moved to pass Resolution 2012-07. The motion was seconded by Commr. Younger.

Upon inquiry, Town Attorney Persson reviewed the following items included in the revised Resolution 2012-07, distributed to the Commission for consideration this date:

- inclusion of underlined language in Resolution 2012-07
- page 3 of 5, second "Whereas" clause modifying the word "order" to "orders"
- page 4 of 5, first paragraph of Section 3, to read:
"An extension of time is granted until a final determination is made concerning control of the Colony (the entire site including the condominium parcel and out parcels) either as a result of pending litigation (inclusion of litigation case numbers) or until a negotiated settlement is reached by the parties. (Note: Remainder of Section 3 as presented)."

8. Quasi-judicial – Resolution 2012-07, Colony Beach and Tennis Club Association, Inc. for Request for Time Extension - Continued

- page 4 of 5, second paragraph, fourth sentence of Section 3, to read:
"Once the development plan is approved by the Town Manager or Town Commission compliance with it shall become a condition of this extension."

Discussions were held on the following topics/issues regarding Resolution 2012-07:

- page 4 of 5, second paragraph, first sentence of Section 3, relating to the phrase "feasible, reasonable, and practical"
- lack of timeframe to submit regular reports on status of litigation or negotiations
- weight of "Whereas" clauses and options to clarify that the property is a tourist/tourism facility/inclusion of language in Section 6 (page 5 of 5) designating the units as tourism units
There was consensus to incorporate an additional "Whereas" clause emphasizing the units are tourism units.
- Section 4 (pages 4 and 5) designed to protect abutting property owners
- option to modify the date in Section 7 (page 5 of 5) from 2015 to 2013.

Attorney Hemke advised that the timeframe, if modified from 2015 to 2013, would not provide adequate time for the property owners to accomplish the necessary tasks/conditions.

Discussion ensued on the timeframe modification suggested for the extension.

Mayor Brown noted a proposed amendment motion by Commr. Gans to amend the extension deadline from December 31, 2015 to December 31, 2013. The motion was seconded by Commr. Zunz. Following discussion, the motion carried by a 7-0 roll call vote, as follows: Gans, aye; Zunz, aye; Duncan, aye; Brown, aye; Brenner, aye; Larson, aye; Younger, aye.

Town Attorney Persson submitted the following language for incorporation as the last "Whereas" clause in Resolution 2012-07:

Whereas, the extension granted herein is for tourism units and uses as defined by the Town Zoning Code.

There was consensus to include the Whereas clause, as submitted, in Resolution 2012-07.

The motion to pass Resolution 2012-07, as amended, carried by a 7-0 roll call vote, as follows: Duncan, aye; Younger, aye; Larson, aye; Gans, aye; Zunz, aye; Brenner, aye; Brown, aye.

RECESS: 10:31 p.m. - 10:41 p.m.

NEW BUSINESS

9. Legislative Priorities

Each year the Town establishes legislative priorities for submittal to the Sarasota County Legislative Delegation, Manatee County Legislative Delegation, and the ManSota League of Cities. The Town Manager will seek Commission direction regarding issues to be brought forward for consideration during this legislative session. Recommended Action: Pending discussion, provide direction to Manager.

Following comments by Commr. Duncan, there was consensus to include support for continued red tide funding and sea grass funding.

Vice Mayor Brenner noted Item 9, relating to Home Rule, was critical to municipal governments and requested to move the issue as the first on the list and to add Items 4, 5, and 8 as bullet points under the Home Rule item, without objection.

Mayor Brown noted the Legislative Priorities list was to be a topic of discussion at the Council of Governments meeting scheduled for October 2, 2012.

Commr. Duncan inquired and Vice Mayor Brenner suggested that local support for civility be established prior to inclusion on the current list.

Commr. Larson moved to approve the Legislative Priorities list as amended. The motion, seconded by Commr. Younger, carried by a 7-0 roll call vote, as follows: Larson, aye; Younger, aye; Gans, aye; Zunz, aye; Duncan, aye; Brown, aye; Brenner, aye.

Vice Mayor Brenner requested that Town Clerk Trish Granger prepare the revised list and distribute to the Town Commission via e-mail on October 2, 2012.

10. Appointment to Fill Vacancies on the Firefighters' Retirement System Board of Trustees and Police Officers' Retirement System Board of Trustees

Appointments for the expiring or open seats on the Firefighters' Retirement System Board of Trustees and the Police Officers' Retirement System Board of Trustees will be considered at the October 1, 2012 Regular Meeting. Recommended Action: Pending discussion, appoint Retirement System Board members.

Following comments by Mayor Brown on the procedure for filling vacancies, Town Clerk Granger proceeded with a roll call for the appointment to Firefighters' Retirement System Board of Trustees, as follows:

- Commr. Younger cast a ballot for Gerald Feder.
- Commr. Larson cast a ballot for Joseph Iannello.
- Vice Mayor Brenner cast a ballot for Gerald Feder.
- Mayor Brown cast a ballot for Gerald Feder.
- Commr. Duncan cast a ballot for Joseph Iannello.
- Commr. Zunz cast a ballot for Gerald Feder.
- Commr. Gans cast a ballot for Gerald Feder.

10. Appointment to Fill Vacancies on the Firefighters' Retirement System Board of Trustees and Police Officers' Retirement System Board of Trustees - Continued

Mr. Feder was reappointed to the Firefighters Retirement System Board of Trustees for a term effective through September 30, 2014.

Town Clerk Granger proceeded with a roll call for the appointment to Police Officers' Retirement System Board of Trustees, as follows:

Commr. Larson cast a ballot for Joseph Iannello.
Vice Mayor Brenner cast a ballot for Frank Cona.
Mayor Brown cast a ballot for Frank Cona.
Commr. Duncan cast a ballot for Joseph Iannello.
Commr. Zunz cast a ballot for Joseph Iannello.
Commr. Gans cast a ballot for Joseph Iannello.
Commr. Younger cast a ballot for Joseph Iannello.

Mr. Iannello was reappointed to the Firefighters Retirement System Board of Trustees for a term effective through September 30, 2014.

Upon inquiry, Town Clerk Granger reviewed the term expirations, the composition of the Boards (two resident members, two employee members of the retirement fund, and one at-large member) and discussed the upcoming Board vacancies.

TOWN COMMISSION COMMENTS

A. Civility

Vice Mayor Brenner commented on civility issues and commended Mr. Bradford Saivetz on his recent article.

Commr. Zunz noted that Mr. Saivetz voted in favor of the Longboat Key Club application when he was a member of the Planning and Zoning Board.

TOWN ATTORNEY COMMENTS

A. Litigation

Town Attorney David Persson noted distribution of the quarterly litigation update and noted and reviewed that the final orders have been submitted on the Longboat Key Club litigation case.

TOWN MANAGER COMMENTS - No items were presented

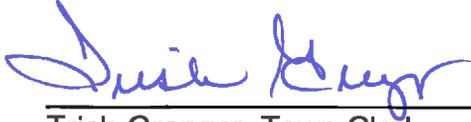
PRESS TO BE HEARD - No items were presented.

ADJOURNMENT

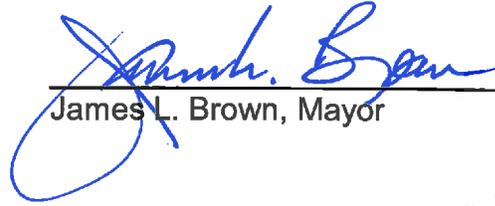
Mayor Brown advised that a group photo would be taken at the October 15, 2012, Commission meeting.

ADJOURNMENT - Continued

Mayor Brown adjourned the October 1, 2012, Regular Meeting at 10:56 p.m.



Trish Granger, Town Clerk



James L. Brown, Mayor

Minutes Approved: 1-7-13

