

MINUTES

KEY COLONY BEACH
CITY COMMISSION REGULAR MEETING
Thursday, August 27, 2015 9:30 a.m.
City Hall Auditorium

1. **Call to Order, Pledge of Allegiance, Prayer, and Roll Call:** The Regular Meeting of the Key Colony Beach City Commission was called to order by Mayor Ellis at 9:30 a.m. followed by the Pledge of Allegiance and Prayer.

Present: Mayor Jerry Ellis, Vice-Mayor Ed Wovas, Secretary Treasurer Jim Pettorini, Commissioner Ron Sutton. *Excused* Commissioner Zahn and Chief John Johnson. *Also Present:* Attorney Tom Wright, City Clerk Cathy Henninger, Police Chief Kris DiGiovanni and Building Official Ed Borysiewicz. *Public:* 13

2. **Approval of Minutes:** Commission Meeting August 13, 2015 Approved as submitted.

3. **Special Request:** Rotary Club –fee waiver for Marble Hall September 26, 2015 John Johnson, President of the Rotary asked Cathy to request on his behalf a fee waiver for their fund raising event. The hold harmless insurance requirement and application are forthcoming. The Rotary Club will clean the hall after their event.

Motion: Made by Commissioner Sutton, seconded by Commissioner Pettorini to waive the fee for the Rotary fundraising event on 9/26/15.

On the Motion: Unanimous approval by consent.

4. **Committee and Staff Reports:**

A. Marathon Fire/EMS –No report.

B. Recreation Committee – No report.

C. Beautification Committee –

D. Disaster Preparedness Committee – Ed reported the Public Works staff has oiled the hurricane shutters. A new battery was purchased for the generator.

E. Planning & Zoning Committee – Mayor Ellis stated that he has two names of individuals who have agreed to serve on the P & Z Board for the Commissions consideration. They are Joey Raspe and John Dalton. The next meeting will be September 16, 2015. Mayor Ellis stated that some reorganization of the Board will need to be addressed shortly.

Motion: Made by Commissioner Sutton, seconded by Vice-Mayor Wovas to appoint John Dalton and Joey Raspe to the Planning and Zoning Committee.

On the Motion: Unanimous consent.

F. Utility Board – No report.

G. Police Department – Chief DiGiovanni reported on 2 cases: a DUI case and fleeing and eluding an officer. One boat trailer parking citation was issued for parking on the right of way in this reporting period. Officers assisted with 2 medical/alarm calls. 19 miscellaneous calls were handled 5 of which were noise complaints; some of the other calls are: 6 suspicious persons or situations; 4 resident assistance; welfare checks and palm fronds sparking electric wires. Officers are participating in the Labor Day Impaired Driving Crackdown from August 21 to September 7, 2015. The watch order program; daily business checks; traffic enforcement, bicycle and vehicle patrol continue as well. Marathon has experienced a large number of vessel thefts; please contact the police department if you see activity that does not look right. Please prepare your home and

property for the pending storm. If you need assistance with the storm shutters please let the officer on duty know that you need assistance.

H. Building and Public Works –Ed Borysiewicz reported the causeway mangrove trim is complete. Field inspections are ongoing for commercial, vacation and long term licenses. 41 garbage can tickets were issued in the past two weeks. 36 building permits for various size projects were issued in the past two weeks. A proposed revision of the Ordinance for garbage can compliance will be submitted to the City Attorney for review and then will come to the Commission for their consideration.

I. City Secretary/Treasurer –Commissioner Pettorini stated he apologized for the errors in the Keynoter article. He will address a correction with the reporter. He acknowledged the July expenses exceeded the income for the month. The City remains in good financial condition.

J. City Clerk- Cathy Henninger reported that the Utility Clerk is moving forward with the schedule of advertising and public notices for the addition of the storm water annual fee to the Ad Valorem tax bill. The interviews for the part-time position begin this afternoon. The City has received confirmation that the FRDAP Grant application for the next cycle (pickle ball upgrades) has been accepted by the State. The budget with the updated changes will be available to the Commission on late Monday or Tuesday of next week.

5 **Unfinished Business:** None.

6. **Items for Discussion/Approval:**

A. Budget Question-Commissioner Sutton asked for confirmation that the flat rate of 3% will be applied across the board as a one-time payment for all the staff. He also asked for confirmation that the City Clerk would be compensated for the increase to 40 hours effective October 1, 2015. Mayor Ellis confirmed that is correct.

7. **City Administrator Items for Discussion/Approval**

Mayor Ellis explained the meeting in Tallahassee scheduled for 3:00 p.m. Monday, August 17th with the DEO and Representative Raschein and the Consultants was cancelled. A new meeting was scheduled and held Tuesday, August 18th in the office of Representative Raschein. Present for that meeting were Representative Raschien, Jessie Panuccio, Bill Wilson, Bill Killingsworth, Colleen Castille and Mayor Ellis. Mayor Ellis stated the City does not want to be in a position of a land takings lawsuit. The DEO affirmed they clearly understood that. Mr. Panuccio offered a solution of allowing the City to continue to issue permits if the City will remain in the MOU. This offer of a solution required higher level approval from Mr. Panuccio's superior which Mayor Ellis received today, prior to this meeting. Attorney Wright stated this is far superior to previous offers if this offer will be provided to the City in writing. Commissioner Sutton asked if it will state there is no ROGO in the City. Mayor Ellis explained the City's agreeing to remain in the MOU is the bargaining chip to this negotiation. Mayor Ellis stated he will request a letter detailing this offer for the Commission to review. Vice-Mayor Wovas stated he is at odds that they gave a presentation without any documentation of their offer. He requested the following comments be included in the minutes verbatim: *As submitted to Representative Raschein: As you could sense from the discussion, the MOU is of vital concern to the citizens of Key Colony Beach. Unless changed, it has been confirmed through several financial analysis as having a potential to bankrupt the city. This is not intended as an inflammatory comment but simply a statement of fact. The objective of our city is to have our building*

*rights recognized consistent with the city's Comprehensive Development Plan (1991) that predates the recent ROGO initiatives. One of the ROGO initiatives is to ensure mass evacuation of the Keys within 24-hours of a major storm. The city's 1991 Comprehensive Plan which was approved by the state acknowledges/concurs that KCB evacuation plan already meets the states 24-hour objective, measured at 13 hours and 17 hours for Cat 1 and Cat 3 storm respectively. Our concerns are heightened by the fact that DEO entered into an agreement April 29, 2013 with Pumpkin Key "to "exempt the entity from a ROGO regulation (and) restore/recognizes their rights to full-build- out". It's of great disappointment additionally that Key West and Layton each respectively with 84 and 13 individually-owned vacant developable lots were awarded 900 and 30 building rights respectivelynumbers far greater than vacant individually-owned lots. It's incomprehensible that the DEO's actions to date have been so punitive toward Key Colony Beach when history confirms that our city has been the most progressive and cooperative of all the municipalities in the Keys. This one sidedness has already cost our city in excess of \$200,000 in consultant fees, attorney fees, travel expenses, etc. I am hopeful the DEO will find a means to end this insanity and return to normalcy by simply completing an agreement with our city no more or less that their 2013 agreement with Pumpkin Key. I was pleased to learn yesterday that you have arranged a meeting for this coming Monday, August 17 in Tallahassee to include yourself, DEO representatives and hopefully Mr. Panuccio. You were unable yesterday to advise the time, meeting location, room number for this meeting. I do plan to attend the meeting at my own travel expense. To assist my travel planning, I would appreciate if you would confirm to me today, time and location of the meeting. Thank you in advance.
Sincerely,*

*Ed Wovas
Vice Mayor, City of Key Colony Beach*

Vice-Mayor Wovas stated part 3 of the MOU, stating there is no imposition of liability on the State for the MOU is where he has the largest issue. He make no apology for belaboring his comments, he states it is the only way to get his points into the minutes. He mentioned at the last meeting, Attorney Wright gave an impassioned plea concerning the liability to the City. Vice-Mayor Wovas reiterated he still wants out of the MOU and will be making that motion. Mayor Ellis stated that he agrees with the Vice-Mayor's comments and we have a choice, we can withdraw from the MOU now and go to the mat or we can go ahead issuing permits as we are allowed and when we are stopped from issuing permits withdraw at that time. Mayor Ellis stated he thinks there are further moves to negotiation. Mr. Teague, 11th Street stated that this is a legal agreement that the City can take action on now to withdraw or kick the can down the road. He stated if the City withdraws we can let the state do what they are going to do. Attorney Wright reminded the Commission that the States position is that Key Colony Beach is not giving anything up, in that, the State is not recognizing the vested building rights of each lot in the City. The State has stated in several conversations they will impose a rule on the City, should we withdraw from the MOU. It remains an unknown what the imposed rule will contain. Bill Knickman, 9th Street, expressed concern of a class action lawsuit. Attorney Wright stated until the first property owner is denied a building permit, there is no cause for a lawsuit. John DeNeale 10th Street suggested using the Pumpkin Key case, unfair distribution and the comp plan and request a judge to stay this action, should it be imposed upon us and we want to sue the State. Mayor Ellis stated from his perspective and experience, litigation should be the

last resort. Lois Krause, 5th Street asked if the State can go against the Comp Plan in place. Attorney Wright stated that is what they are doing. Mayor Ellis stated he spoke with Representative Raschein and Colleen Castille this morning and both are stating the Commission should take this offer from the DEO. Commissioner Pettorini asked if the agreement with Pumpkin Key is in writing. He views the decision as arbitrary as to the permits being allocated to the cities throughout the Keys. He stated the City needs written confirmation from the DEO releasing the City from the MOU limitations. John DeNeale suggested Mayor Ellis contact his counterpart in Key West to determine if there is a willingness to exchange transient for residential building rights. Attorney Wright stated he spoke with the Key West City Attorney several months ago and was told he did not have the authority to make that decision. Vice-Mayor Wovas stated the driving force on his motion is the 3rd portion of the MOU referencing no liability on the State.

Motion: Made by Vice-Mayor Wovas, seconded by Commissioner Pettorini to release the letter to withdraw from the MOU.

Discussion: Vice-Mayor Wovas stated he is requesting that Commission Sutton recuse himself from this vote based upon his signing the original MOU on behalf of the Commission. Commissioner Sutton disagrees that he should recuse himself. Attorney Wright stated that Commissioner Sutton signed the MOU on behalf of the Commission and that is not a valid reason to recuse him from this vote.

On the Motion: Sutton: No; Pettorini: Yes; Wovas: Yes; Ellis: No

Motion fails in deadlock.

Mayor Ellis stated he will seek written confirmation from the DEO within a short time. He will circulate the draft of the letter to the Commission prior to submission.

8. Ordinances and Resolutions-

Second Reading Ordinance 437-2015 Use of Fireworks.

Attorney Wright read Ordinance 437-2015 by title only.

Motion: Made by Commissioner Pettorini and seconded by Vice-Mayor Wovas to approve Ordinance 437-2015 Use of Fireworks.

On the Motion: Unanimous approval by consent.

Second Reading Ordinance 446-2015 – Administrative Fee

Attorney Wright read Ordinance 446-2015 by title only.

Motion: Made by Commissioner Pettorini, seconded by Vice-Mayor Wovas to approve Ordinance 446-2015 Administrative Fee.

On the Motion: Unanimous approval by consent.

Second Reading Ordinance 447-2015 Utility Late Fee Procedures

Attorney Wright read Ordinance 447-2015 Utility Late Fee Procedure by title only.

Motion: Made by Commissioner Sutton, seconded by Commissioner Pettorini to approve Ordinance 447-2015 Utility Fee Late Procedure.

On the Motion: Unanimous approval by consent.

9. Commissioner Reports & Comments: Vice-Mayor Wovas recommended a pre-meeting at 12:30 pm September 3, 2015 to prepare for the conference call with the Mittauer Engineer and the DEP concerning the wastewater plant upgrades. The Commission agreed by consensus to the pre-meeting. Vice-Mayor Wovas brought up an optional item from the Mittauer Contract-a resident observer. Mayor Ellis stated this item will need to be an agenda item and closed the discussion.

10. **City Attorney Report:** No report.

11. **Correspondence and Citizen Comments:** Cathy reported that the City received 3 emails

during the past two weeks. They are: Tucker DeGraw, complaint on the delay of posting the Commission minutes; Jack McKinstry request for information on a 1963 Key Colony Beach Sailfish Tournament and Mary Kohl requesting a copy of the draft ordinance on use of fireworks.

Meeting adjourned at 11:25 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cathy Henninger". The signature is written in a cursive, flowing style.

Cathy Henninger, City Clerk

Note: These minutes are unofficial and have not been formally approved by the Commission. The approval will be at the next scheduled Commission meeting.
