

**MINUTES OF THE
TREASURE COAST REGIONAL PLANNING COUNCIL
JANUARY 20, 2012**

Chairman Foley called the meeting to order at 9:30 a.m. and welcomed everyone to the meeting. He led the pledge of allegiance and requested roll call.

The following members and alternates were present:

Indian River County: Commissioner Wheeler (Alternate)
 Vice Mayor Fletcher

St. Lucie County: Commissioner Mowery
 Commissioner Perona

Martin County: Commissioner Hayes
 Commissioner Smith
 Commissioner Krauskopf

Palm Beach County: Commissioner Taylor
 Commissioner Marcus
 Councilwoman Webster
 Mayor Ferreri
 Mayor Golonka
 Mayor Pro Tem Dr. Priore
 Mayor Pro Tem Brinkman (Alternate)
 Vice Mayor Norris (Alternate)
 Vice Mayor Pro Tem Andel (Alternate)
 Mayor DuBois (Alternate)

Gubernatorial Appointees: Kevin Foley
 Bill Hall
 Susan Hershey
 Reece Parrish
 Peter Sachs
 Robert Stork
 Ramon Trias

Ex-Officios: Pam Mac’Kie, South Florida Water Management District
 Ann Benedetti, St. Johns River Water Management District
 Lois Bush, Department of Transportation (Alternate)
 Mary Murphy, Department of Environmental Protection (Alternate)
 Lynda Westin, South Florida Regional Transportation Authority

Council Staff: Kate Boer
 Michael Busha
 Kim DeLaney
 Eloine del Valle
 Anthea Gianniotis

Sandy Gippert
Liz Gulick
Stephanie Heidt
Dana Little
Peter Merritt
Greg Vaday

Council Attorney: Roger Saberson

The Executive Director announced a quorum was present.

AGENDA AND CONSENT AGENDA

Chairman Foley noted several requests for amending the Agenda. Staff listed the following changes:

- New Agenda Item 6 - Contract amendments and Council direction with respect to the cleanup loan to the West Palm Beach Community Redevelopment Agency.
- New Agenda Item 7 - an informational presentation regarding legislation dealing with online travel companies.
- Agenda Item 6 was renumbered as 8.
- Agenda Item 7 was renumbered as 9.
- Agenda Item 8 was renumbered as 11.
- Agenda Item 9 was renumbered as 12.
- Agenda Item 11 was renumbered as 13.
- Agenda Item 12 was renumbered as 14.

Mr. Saberson explained that to amend the agenda there needs to be good cause. With respect to new Agenda Item 6, Mr. Saberson noted that he required Council direction on the loan documents to the West Palm Beach Community Redevelopment Agency. With respect to new Agenda Item 7, information on the online travel companies is being presented because it will be addressed in the current legislative session.

Commissioner Smith moved approval of the amended Agenda and the Consent Agenda. **Motion** Commissioner Marcus seconded the motion, which carried unanimously.

Items on the Consent Agenda were: 5A, Financial Report – October 31, 2011; 5B, Financial Report - November 30, 2011; 5C, Minutes – December 9, 2011; 5D, Town of Orchid Comprehensive Plan Amendment No. 12-1ER; 5E, Village of Palm Springs Comprehensive Plan Amendment No. 12-1ESR; 5F, City of Port St. Lucie Comprehensive Plan Amendment No. 12-1ESR; and 5G, Village of Tequesta Comprehensive Plan Amendment No. 12-1ESR.

PUBLIC COMMENT ON CONSENT AGENDA ITEMS

None.

**PROPOSED CLEANUP LOAN TO WEST PALM BEACH COMMUNITY
REDEVELOPMENT AGENCY: CONTRACT AMENDMENTS AND
DIRECTION FROM COUNCIL**

Mr. Saberson explained that Council had previously directed the Executive Director and Council Attorney to negotiate and execute loan closing documents for a Brownfields loan for \$160,000 with the West Palm Beach Community Redevelopment Agency (CRA) at the June 17, 2011 Council meeting. During the loan negotiation process, the CRA had made unacceptable modifications to the documents, executed them, and then returned them to Council. Mr. Saberson requested that Council adopt a motion to authorize the Executive Director to send a letter to the CRA declining the offer to make a loan in accordance with the terms set forth in the loan documents.

Commissioner Marcus moved approval to authorize the Executive Director to send the correspondence. Commissioner Smith seconded the motion for discussion. **Motion**

Commissioner Smith asked if something could be done to modify the current documents, or if the process would need to be started again. Mr. Saberson indicated the returned loan documents would need to be re-executed and revised, but one last attempt could be made to see if an agreement could be reached. Commissioner Smith asked if Council could authorize the changes be done without having to bring the item before Council again. Mr. Saberson stated Council could approve to continue with the recommendation from the June 17, 2011 Council meeting to authorize the Chairman, Vice Chairman, and Executive Director, in consultation with Council's attorney, to propose, execute, modify and deliver the loan closing documents and sub-grant documents in such form that they would be determined to effectuate the loan and sub-grant. He noted the sub-grant was for approximately \$30,000 and has yet to be completed.

Chairman Foley stated he would instruct staff to try to negotiate with the CRA one more time to see if they agree with Mr. Saberson's proposed modifications. Councilwoman Webster asked if there was a time limit on when the documents needed to be executed. She noted that it was Council's responsibility to deny the loan if it was not acceptable. Mr. Saberson indicated that there is a stipulation in the grant agreement that if it is delayed too long then the loan cannot be completed. Chairman Foley called for a vote on the motion, which carried unanimously.

Commissioner Smith moved approval to authorize staff to re-negotiate the terms of the loan documents and, if acceptable, execute the loan closing documents. Commissioner Marcus seconded the motion, which carried unanimously. **Motion**

Mr. Saberson noted that under the loan documents it is provided that in the event of a borrower defaulting on the loan, and Council pursues remedies against the borrower, the borrower must pay Council's attorney's fees. He stated that the CRA had deleted that language and put in a provision that states in the event of litigation between the parties that each party would pay their own fees. He stated these fees are separate and distinct from fees that would be payable under an indemnification clause. Commissioner Smith asked if it was standard to have each party pay their own attorney's fees, and if that is how Council has done their contracts in the past. Mr. Saberson noted that this is the first loan of this type being issued, but it is standard in loan documents that the borrower pays all the attorney's fees.

Chairman Foley asked if the CRA board was elected officials. Commissioner Mitchell indicated the board is comprised of the City Commission and the Mayor.

Councilwoman Hershey made a motion that the borrower should pay the fees in case of default. Commissioner Marcus seconded the motion, which carried unanimously.

Motion

Mr. Saberson stated there was also an issue with the indemnification on the loan documents. He stated the CRA had expressed concerns, which he has attempted to address, related to 1) sovereign immunity amounts, and 2) their liability to Council under the indemnification. He stated part of that indemnification is related to the contamination on the property and Council's expectation was that it is the CRA's contaminated property, not Council's, and it is expected that, in the event of a lawsuit in which Council incurs damages and attorney's fees, then the CRA would be responsible. Commissioner Smith indicated that he did not feel that it was necessary for Council approval on each item of the contract as he felt Mr. Saberson was capable of doing what was appropriate and in the best interest of Council. Chairman Foley concurred with this. He stated a motion could be made for this item, but felt Mr. Saberson would represent Council on all other issues without further authorization. Commissioner Marcus so moved. Mayor Ferreri seconded the motion, which carried unanimously.

Motion

**ONLINE TRAVEL COMPANIES AND THE TOURIST DEVELOPMENT TAX AND
STATE SALES TAX – PRESENTATION BY ALBERT J. HADEED,
FLAGLER COUNTY ATTORNEY**

Staff noted this presentation had been provided at the Policy Board meeting of the Florida Regional Councils Association (FRCA) and staff wanted to bring the information to the attention of Council members. Mr. Hadeed presented a summary of proposed legislation to grant tax exemption or tax amnesty to online companies for local tourist development taxes (TDT) and the state's sales tax on transient rentals. He provided a summary of the existing tourist development statutes, tax exemption impacts, pending and settled court claims to collect the TDT taxes, tax exemption revenue impacts, and the Florida House of Representatives floor vote on the exemption.

Councilmember Sachs asked for clarification of the amount of the taxes being charged to the consumer. Mr. Hadeed indicated the amount is not known because the online companies have refused to disclose this information. He said the companies are sending back the TDT tax, the state transient rental tax, and local option tax to the hotel to be remitted to the state. Councilmember Sachs asked if the customer is being charged more than that for the taxes and keeping the difference. Mr. Hadeed indicated that is the allegation and what the case in Texas attempted to prove, but there was a settlement before the records were released.

Councilmember Sachs asked what the arguments are in favor of the exemption. Mr. Hadeed stated there are essentially two arguments. One, that this is a new tax. The response to this is if it is a new tax, then why would there need to be an exemption. The second argument is the companies are claiming they are increasing tourism in Florida.

Councilmember Sachs asked how it will be determined what is owed and how it will be enforced. Mr. Hadeed indicated there would need to be audits of company records. Councilmember Sachs asked how this relates to online shopping that is not taxed. Mr. Hadeed stated that state law taxes lodging regardless of the source.

Commissioner Mitchell asked for clarification of how the Department of Revenue collection process works and what information they are collecting from the online companies. Mr. Hadeed indicated that no information is being provided by the online companies to the Department of Revenue. Commissioner Mitchell asked if the Florida Chamber of Commerce and Florida TaxWatch have provided opinions on the issue. Mr. Hadeed indicated that Florida TaxWatch created a task force to study ways of reducing governmental expenditures and ways for the state to address these problems. In 2010, the task force issued a report on how the state could save \$3 billion. With respect to the state transient rental tax, it was estimated that there was \$25 million dollars at risk from these types of transactions. He stated that the Florida Chamber of Commerce, along with the Walt Disney Company, has sided with the online travel companies.

Commissioner Wheeler stated he would like to know how many rooms would be sold if they were charged the additional tax. He asked who benefits from the sales tax, the government or the consumer. He indicated he would be more comfortable with the consumer keeping the money rather than giving it to the government. Mr. Hadeed stated that the allegations are that the company is collecting the taxes and keeping them. He stated there is no way of knowing the number of customers who chose to come to Florida because of the online companies.

Mayor Ferreri stated he had heard the presentation at the FRCA meeting and because he had made his reservations for both his lodging and rental car through an online company he had reviewed his bill. He stated that he saved \$20 booking his room through the online company versus the hotel, and he was charged 8.5 percent for taxes and fees. He said the taxes are being collected, but it is not clear what the charges cover. With respect to the rental car, he saved \$25 and paid less tax, but he questioned if that money was being taken away from the local airport. He asked if any of this information is being collected. Mr. Hadeed stated he did not know of anyone working on this unless there is a tax collector in a local jurisdiction auditing this, but that would be confidential. Mayor Ferreri stated he did not see this as a regional planning issue, but more of one for the local and county governments and school districts that are losing out on their local option taxes.

Councilmember Hall expressed his opinion that this was good information for the elected Councilmembers to take back to their proper governmental bodies for consideration, but he felt there should be no more Council discussion on the topic.

Councilmember Hershey noted there is collection of sales tax occurring. Mr. Hadeed stated only the applicable sales tax on the whole price paid to the hotelier was being submitted to the Department of Revenue. Councilmember Hershey noted that sales taxes are a major revenue stream for education. Mr. Hadeed confirmed this, stating his presentation had not even addressed the losses to the state and the impacts to other entities such as educational institutions.

Councilmember Stork agreed with Councilmember Hall that the discussion should end on this topic.

Commissioner Marcus stated this was a good presentation and the Association of Counties is opposed to the exemption. She noted this was unsuccessful last year. She asked if the League of Cities was also opposed. Mr. Hadeed indicated yes.

Chairman Foley noted the purpose of the presentation was to provide information to the elected officials and thanked Mr. Hadeed for his presentation.

COMMITTEE APPOINTMENTS – 2012

Commissioner Marcus moved approval of the Committee Appointments. Councilmember Sachs **Motion** seconded the motion, which carried unanimously. Chairman Foley thanked those who offered to serve and invited interested Councilmembers to volunteer for a committee.

RESOLUTION SUPPORTING HOUSE OF REPRESENTATIVES BILL H.R. 3096 – RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES ACT OF 2011

Commissioner Marcus moved approval of the Resolution. Councilmember Trias seconded the **Motion** motion, which carried unanimously.

STATUS UPDATE REGARDING SOUTH FLORIDA EAST COAST CORRIDOR STUDY – PRESENTATION BY THE FLORIDA DEPARTMENT OF TRANSPORTATION

At the request of Council, Mr. Michael Melendez, representing the Florida Department of Transportation, presented an update regarding the status of the South Florida East Coast Corridor Study (SFECC). The scope of the study addresses both the 85-mile segment of the Florida East Coast (FEC) rail corridor as well as the 72-mile segment of the CSX rail corridor where Tri-Rail currently operates. The SFECC Study is nearing completion of its second phase of analysis, with the identification of a locally preferred alternative anticipated in the summer of 2012.

Commissioner Marcus stated that there are two proposals for passenger train service on the FEC system, the one just presented and the Fast Track Plan which was presented by the South Florida Regional Transportation Authority at the December Council meeting. She noted that at the Palm Beach Metropolitan Planning Organization (MPO) meeting the previous day, the board agreed to have a consultant see if they could bring both parties to the table and come to an agreement on what is the best plan of action. She stated that although everyone agrees that passenger service on the FEC system is the proper action, there are big differences between the two plans. Staff noted that all the MPOs, the Florida Department of Transportation and the South Florida Regional Transportation Authority have asked Council staff to be involved in facilitating these discussions. Mayor Ferreri noted that the deadline for an interim report to the MPO is April.

Mayor Golonka stated that she was very encouraged after hearing last month's presentation. She stated that as a planner she recognized the need to do appropriate studies, obtain funding, and have an implementation plan, but she felt this had been going on for too long and she was encouraged that the project finally seemed to be progressing.

RESOLUTION OPPOSING LEGISLATION REGARDING CHANGES TO SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

Commissioner Marcus moved approval of the Resolution. Councilmember Sachs seconded the **Motion** motion, which carried unanimously.

RESOLUTION ENCOURAGING INTERAGENCY COOPERATION BETWEEN SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY AND FLORIDA DEPARTMENT OF TRANSPORTATION FOR PASSENGER RAIL SERVICE

Commissioner Marcus moved approval of the Resolution. Councilmember Sachs seconded the motion, which carried unanimously. **Motion**

COUNCIL’S EMERGENCY PREPAREDNESS PROGRAM UPDATE

Staff presented an overview of Council’s Emergency Preparedness Program and projects. Topics covered included: planning, training and exercises to better prepare the region’s communities to mitigate and respond to disasters; an overview of the Local Emergency Planning Committee role and responsibilities to provide ongoing technical assistance to the region regarding the Emergency Preparedness Community Right-To-Know Act (1986) for hazardous materials; regional hazards analyses; regional vulnerability analyses; radiological training and planning agreement statewide; state homeland security grant program; and post-disaster redevelopment planning. Staff noted that the regional planning council provides services and a delivery system for local, state and federal programs.

COUNCIL ORIENTATION SERIES – PARKING: HOW TO HANDLE THE NECESSARY NEMESIS

Staff presented the tenth installment in the Orientation Series. These presentations are to provide information on planning techniques and research to give Council members additional insight and knowledge on how to promote sustainable growth in the region. Staff noted the Vero Beach Charter High School has offered to assist in making a video recording of the series. Over the next few weeks staff will be working with the High School to finish the video recordings and staff will advise Council members when and where the series will be available.

Chairman Foley encouraged all Council members to work with Council staff to supplement existing local staff, especially among the smaller municipalities, and use their expertise and experience.

ANNOUNCEMENTS

Staff noted that after sixteen years of public service, and twelve years of service on Council, Dr. Carmine Priore will be termed out in March and no longer able to serve as a Council member. Staff thanked him for his years of service.

Commissioner Smith noted that there has been a lot of discussion around the state of merging organizations and functions. He asked staff to report at the March meeting on activities that have been occurring related to workforce boards, MPOs, and regional planning councils.

COUNCIL MEMBER INFORMATION EXCHANGE

None.

STAFF COMMENT

None.

CHAIRMAN'S COMMENT

None.

ADJOURNMENT

There being no further business, Chairman Foley adjourned the meeting at 11:30 a.m. This signature is to attest that the undersigned is the Secretary or a designated nominee of the Treasure Coast Regional Planning Council, and that the information provided herein is the true and correct Minutes of the January 20, 2012 meeting of the Treasure Coast Regional Planning Council.

Date

Signature