

APPROVED FEB 05-07
w/ADDENDUM

**FORT MYERS BEACH
TOWN COUNCIL**

Town Hall- Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Fl 33931
January 22, 2007

EXECUTIVE SESSION **Closed to the Public** **6:00 PM**

CALL TO ORDER

Executive Session

Attorney Dalton requested for the Executive Session to be closed to the public Straub versus Town of Fort Myers Beach regarding litigation strategies.

AGENDA **Regular Town Council Meeting** **6:30 PM**

I. CALL TO ORDER

Members Present: Mayor Dennis Boback, Vice Mayor Don Massucco, Councilman Garr Reynolds, Councilman Charles Meador, Jr., Councilman Bill Shenko, Jr.

Absent: None

Town Staff Present: Town Attorney Anne Dalton, Town Manager David Sallee, Community Development Director Jerry Murphy, Public Works Director Jack Green, Finance Director Evelyn Wicks, Town Clerk Michelle Mayher.

II. PLEDGE OF ALLEGIANCE

All present stood for the recitation of the Pledge of Allegiance.

III. PUBLIC COMMENT: Please note that public comment will be heard at the time the agenda item is discussed.

IV. CONSENT AGENDA

- A. Letter to BOCC and TDC regarding funding request**
- B. Approval of minutes December 18, 2006**
- C. FLA DOT Agreement**

MOTION: Councilman Shenko made a motion to approve the consent agenda. Vice Mayor Massucco 2nd the motion.

Councilman Reynolds pulled item B. December 18, 2006.

AMENDED MOTION: Councilman Shenko amended his motion to approve items A & C. Vice Mayor Massucco amended his second.

VOTE: The motion passes 5-0.

Councilman Reynolds pointed out that the minutes are not complete or in verbatim form, stating that there should be no need to have minutes if they already have a video.

MOTION: Councilman Meador made a motion to approve the minutes for December 18, 2006. Councilman Shenko 2nd the motion.

V. READING AND PUBLIC HEARING OF THE FOLLOWING ORDINANCE

A. Ordinance 07-01; Purchasing Ordinance

Mayor Boback directed Ms. Dalton to proceed. Ms. Dalton read Ordinance 07-01, Purchasing Ordinance.

Ms. Dalton announced the requirement of the Roll Call vote.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

MOTION: Vice Mayor Massucco made a motion to adopt Ordinance 07-01, Purchasing Ordinance. Councilman Shenko 2nd the motion.

Discussion:

Councilman Reynolds expressed that he was happy to see the Purchasing Policy in the procedural manual.

Councilman Meador thanked Mr. Sallee and Department heads who had made contributions to this Ordinance.

Council Shenko pointed out that it is a 20-page Ordinance for the benefit of the public, stating that a lot of work went into it with an excellent final product.

Mayor Boback concurs.

Michelle Mayher called for the Roll Call.

| | |
|---------------------|-----|
| Councilman Meador | Aye |
| Councilman Shenko | Aye |
| Councilman Reynolds | Aye |
| Councilman Massucco | Aye |
| Mayor Boback | Aye |

VOTE: The motion passes 5-0.

Ms. Dalton announced the Resolution was put on the Consent Agenda and was passed unanimously by Town Council's vote. Ms. Dalton read the caption for the record.

Resolution of the Town Council; Town of Fort Myers Beach Fl, Resolution 07-07. The Resolution of the Town of Fort Myers Beach Fl approving the renewal of the FL DOT maintenance Agreement with the Town and authorizing the Town to perform necessary ancillary action to implement same, providing an effective date. Ms. Dalton announced there is no Roll Call due to this being a Resolution and that it was adopted at the time the Consent Agenda was passed on Motion by Councilman Shenko, and second by Vice Mayor Massucco with a unanimous vote.

VI. MAYOR AND COUNCILM MEMBER ITEMS AND REPORTS

A. Reconsideration of Motion to pursue the award of Shenko vs. Werner et al. Attorneys' Fees- Councilman Reynolds

. Ms. Dalton noted the Policy and Procedures Manual adopted by the prior Town Council requires the Town Council to follow Robert's Rules of Order.

Councilman Shenko announced filing form 8-B voting conflict of interest indicating he is the plaintiff in the litigation of Shenko vs. Werner et al, and will abstain from voting.

Mayor Boback opens public comment:

- Jeanette Massucco, resident. Ms. Massucco referred to the recall Committee and asked Council members to reconsider ending the matter with the recall Committee.
- Joanne Shamp, resident expressed that she did not have anything to do with the Recall Committee. She also asked Council to move forward with the matter.
- Pat Smith, resident expressed that the tax payers should not be the ones to pay the bill for the action, stating that the ones who started all of this should be the ones who should pay the bill.

- Dave Ostieck also spoke about the recall Committee.
- Dolores Grant spoke on behalf of Councilman Shenko and is in favor of paying the attorney fees.
- Tom Babcock spoke about the recall Committee whether or not it was valid.
- Annie Babcock requested that laws of civility be enforced, referring to those who were booing and clapping during public comment.

Mayor Boback closes public comment:

Councilman Reynolds read a statement regarding efforts in recovering the attorney fees.

MOTION: Councilman Reynolds made a motion to waive the policy and procedures manual requiring Council to follow Robert's Rules of Order that governs the action of revisiting Shenko vs. Werner et al litigation. Councilman Meador 2nd the motion.

Discussion:

Councilman Meador expressed that he was in favor of the motion for reconsideration.

Councilman Shenko expressed that he will be filing forms 8-B voting conflict of interest and will abstain from voting.

VOTE: The motion passes 3-1; with Vice Mayor Massucco dissenting, and Councilman Shenko abstaining.

MOTION: Councilman Reynolds made a motion for Council to discuss and reconsider Council action of January 8, 2007 regarding Shenko vs. Werner et al Recall Committee, and take note to rescind that decision.

The motion dies for lack of a second.

MOTION: Councilman Meador made a motion to authorize Counsel to pursue an award of attorneys' fees and costs against Mr. Werner and if possible the committee and individual members of the committee who recalled Mr. Shenko in connection with the Shenko vs. Jeff Werner et al litigation. Councilman Reynolds 2nd the motion.

Discussion:

Councilman Meador pointed out that the Recall petition was done without merit.

Vice Mayor Massucco expressed that he did not want to be a part of this matter anymore, and asked for Council to end the matter by not entering into any new litigation.

Mayor Boback expressed that a person who takes an action should be responsible for his actions; and feels they should be prepared to pay the consequences that they had taken.

VOTE: The motion passes 3-1; with Vice Mayor Massucco dissenting, and Councilman Shenko abstaining.

Ms. Dalton requested Council for the authority to move forward with the Town Manager in pursuit of the matter; Ms. Dalton also requested authorization to obtain outside Counsel.

MOTION: Councilman Meador made a motion to authorize Ms. Dalton and their Town Manager to pursue an amicable settlement of the attorney's fees with Mr. Werner et al. Councilman Reynolds 2nd the motion.

Council Shenko announced he will file form 8-B voting conflict of interest as he is the plaintiff of the litigation titled Shenko vs. Werner et al, and will abstain from voting.

Discussion:

Vice Mayor Massucco responded that it is futile, and expressed he cannot support anything that would prolong it.

VOTE: The motion passes 3-1; with Vice Mayor Massucco dissenting, and Councilman Shenko abstaining.

Councilman Shenko announced on Friday 26, 2007 there is an MPO Special Meeting called by the Mayor of Sanibel. Mr. Shenko announced that he will be unable to attend, and asked if any Council member would like to attend. Mr. Shenko asked for consensus to add that any special event with amplified music be brought before council, along with those requesting funding, extension of licensed premise, or waiver of open container ordinance.

Vice Mayor Massucco referred to letter of compliment to Mr. Shockey Town staff for his dedication Vice Mayor Massucco also gave compliments to the Chamber for a successful Gala evening at DiamondHead.

Councilman Reynolds gave acknowledgement to Ms. Reid, 1st grade teacher who sent 20 letter and drawings in appreciation to Town Council.

Mayor Boback referred to the County Commissioners joint meeting, and announced they will be meeting again in March at Edison College. Mayor Boback congratulated Vice Mayor Massucco for receiving the Citizen of the Year Award at the Gala at Diamondhead.

VII. TOWN ATTORNEY'S REPORT

A. *Chapel by the Sea Update*

Ms. Dalton reported update on Chapel by the Sea.

Councilman Meador reported meeting with Captain Powell where they spoke of the neighborhood watch program which would be set up at no charge, and noted that they were in the process of doing that in the Fairweather, Chapel, Mango, Cottage area.

Mayor Boback opens public comment:

- Eddie Foster thanked Council for keeping Chapel by the Sea on the agenda, and recommended to have the Trolleys be terminated.
- Dave Ostek referred to Bonita Beach, and how they are proactive with the homeless.

Mayor Boback closes public comment:

B. *Wilker Foreclosure*

Ms. Dalton announced that she has contact Attorney Merran, regarding the foreclosure. Ms. Dalton announced that the situation has not moved forward regarding the property owner attempting to secure the needed permits which will bring them into compliance. Ms. Dalton asked for Council's direction.

Councilman Reynolds responded that he was appalled to see that there is no one to help the gentleman, and wishes they could do more.

MOTION: Councilman Meador made a motion to authorize Ms. Dalton to proceed with the foreclosure.

The motion dies for lack of a second.

Ms. Dalton will advise Mr. Merran that the matter in question will be revisited one last time in February 5, 2007.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

C. *Straub vs. Town of Fort Myers Beach Update*

Ms. Dalton requested Council to consider a Resolution based on the matter. She noted there would be a stipulation between the Town and the Plaintiff. Ms. Dalton has requested for a formal vote to move forward with the matter.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

MOTION: Councilman Shenko made a motion to accept the Settlement offer as outlined by Ms. Dalton and prepared by Denise Wheeler in the Straub vs. Town of Fort Myers Beach, which includes Mayor Boback's signature on the Summons Stipulation. Councilman Reynolds 2nd the motion.

Vice Mayor Massucco pointed out that they will be looking at \$35,000.00 to \$50,000.00 to come into compliance with ADA, but states they have no other alternative other than to comply.

VOTE: The motion passes 5-0.

VIII. TOWN MANAGER'S REPORT

A. *IT Update: Phase II- Hardware*

Mr. Sallee requested approval for funds for phase II of the IT upgrade.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

Councilman Meador expressed he was happy to see that they came in under Budget.

Councilman Shenko also concurs, and was pleased with what he was looking at.

Vice Mayor Massucco expressed that without the state-of-the-art IT System nothing will work.

Mayor Boback questioned if this will affect the cameras working.

Mr. Sallee responded that they will have a hardware upgrade for the cameras.

MOTION: Councilman Shenko made a motion to approve the expenditure as outlined by Mr. Sallee. Councilman Reynolds 2nd the motion.

Nicole Olsen reported they had gone out for proposals stating that these were part of those numbers. Ms. Olsen noted that phase II was included in the original request of proposals.

VOTE: The motion passes 5-0.

B. Quarterly Financial Statements

Mr. Sallee reported to Council their quarterly financial statement.
Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

Vice Mayor Massucco referred to Community Services which were budgeted at \$128,000.00, and pointed out the quarterly statement shows \$4,819.00 for the first quarter.

Ms. Wicks responded this was for after school programs, and for the Historic Preservation Programs.

C. Red Drift Algae

Mr. Sallee referred to the Red Drift Algae and deferred to Mr. Jack Green.

Mr. Green reported he has been monitoring the beach to see the status of the Red Drift Algae. Mr. Green reports that there is no health or safety

issue. Mr. Green also reported that Lynn Hall and Bowditch also have the same problem. Mr. Green reported that they needed approval from DEP in order to rake the beach, adding this would have to go to Tallahassee for approval.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

Vice Mayor Massucco was concerned if this was going to become a health and safety issue.

Councilman Meador pointed out that the Tourist Development Council paid for the raking in the past, and suggested inquiring if they would be willing to do so again.

Councilman Shenko pointed that they are not allowed to rake below the wrack line according to their Beach Raking Ordinance.

Ms. Dalton reported the matting will be coming forward to Council shortly to amend.

Mr. Sallee announced there will be a meeting on Monday the 29th of the Public Works Services at 4:00 o'clock.

IX. PRESENTATIONS

A. Politically Active Property Owners (P.A.P.O.) Future for Town/Pedestrian and Traffic Plan

- Maria Humphrey made a presentation regarding the vision for 2025 for the Politically Active Property Owners.
- Bill Van Duzer also represents P.A.P.O, and spoke about bringing a vision for the Town's future by building a picture for the year 2025. Mr. Van Duzer asked Council to support the exchange at the present locations of Estero Blvd and Seafarers' Mall. Asking Council to file a request with the County Commissioners to insert a line item in the Capital Budget to move the Blvd in the Times Square area. Develop a plan to move Estero Blvd. Get the job done making this project a top priority.

Mr. Sallee read a letter from Mr. Scott Gilbertson regarding relocation of Estero in 1979.

X. FINAL PUBLIC COMMENT: Public comment at this time is heard on any item and/or issue of concern.

Mayor Boback opens public comment:

- Dave Ostick referred to the P.A.P.O., and asked Council to address the issue with Estero Blvd.
- Betty Simpson read a letter to Council she wrote to the Observer.
- Tom Babcock addressed the ethics issue regarding the LPA.
- Pat Loffreno referred to P.A.P.O., and suggested prioritizing the vision now when it can be appreciated, and not wait until 2025.
- Dave Tezak agreed with P.A.P.O with the plan of a long range of 2025, but recommends getting the community involved.
- Lee Melsek suggested using caution.
- Jane Plummer requested Council to put on their agenda when the three Councilman terms will be up.
- Tom Myers referred to the proposal which was made in the past to solve the traffic problem. He suggested taking advantage of a second chance.

Mayor Boback closes public comment:

XI. ADJOURNMENT

MOTION: Councilman Meador made motion to adjourn. Councilman Shenko 2nd the motion.

VOTE: The motion passes 5-0.

Mayor Boback adjourned the meeting at 9:50 PM

NEXT MEETING: February 5, 2007

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that a verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based. Please note: Agendas will be available on the Friday prior to this meeting at www.fmbeach.org.

Respectfully submitted,

Debbie Cardoso


Town Clerk

2-5-07
Date Approved

with addendum

ADDENDUM TO TOWN COUNCIL MINUTES

January 22, 2007

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issue. Mr. Green also reported that Lynn Hall and Bowditch also have the same problem. Mr. Green reported that they needed approval from DEP in order to rake the beach, adding this would have to go to Tallahassee for approval.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

Vice Mayor Massucco was concerned if this was going to become a health and safety issue.

Councilman Meador pointed out that the Tourist Development Council paid for the raking in the past, and suggested inquiring if they would be willing to do so again.

Councilman Shenko pointed that they are not allowed to rake below the wrack line according to their Beach Raking Ordinance.

Ms. Dalton reported that suggested revisions to the beach and dune ordinance as they pertain to the beach raking have been brought forward from the MRTF to the LPA, and that the matter will be coming forward to Council shortly to amend.

Mr. Sallee announced there will be a meeting on Monday the 29th of the Public Works Services at 4:00 o'clock.

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