

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
February 22, 2006**

**I. CALL TO ORDER**

Mayor Garr Reynolds called a regular meeting of the Town Council to order on Wednesday, February 22, 2006 at 6:55 PM.

**Members Present:** Garr Reynolds, Don Massucco, Dennis Boback, Charles Meador and Bill Shenko

**Staff Present:** John Gucciardo, Interim Town Manager; Anne Dalton, Town Attorney

**II. PLEDGE OF ALLEGIANCE**

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

**III. INVOCATION**

Reverend David Uhl of Chapel by the Sea gave the invocation.

Mayor Reynolds announced that Rachel Lambert had been named the Interim Town Manager.

Vice Mayor Massucco announced that Ms. Dalton had won the Paulette Burton Citizen of the Year Award and presented her with flowers.

Mayor Reynolds announced that the vagrancy issue would appear on the March 20<sup>th</sup> Council agenda.

**IV. PUBLIC COMMENT**

**Tom Myers** came forward. Mr. Myers spoke in support of funding for the Crescent Street rerouting.

**Trudy Edelman** came forward. Ms. Edelman spoke in support of funding for the Mound House pool project.

**Dan Hughes** came forward. Mr. Hughes spoke in support of funding for the Mound House pool project. In closing, Mr. Hughes complimented both Mr. Gucciardo and Ms. Paulauskas in the work they had done as public servants, in acknowledgement of their last day as FMB Town Staff.

**Tom Babcock** came forward. Mr. Babcock gave a prioritized list of Town projects he felt should be funded before others: 5) Beach renourishment; 4)

down payment on a town hall; 3) Mound House restoration projects; 2) Estero Boulevard improvement and beautification; 1) Construction of a pedestrian overpass in front of Seafarers Mall.

**Barbara Hill** came forward. Ms. Hill spoke in support of funding for Mound House projects. She spoke favorably about her fellow CELCAB members, and expressed her proud in the group's accomplishments.

**Ceel Spuhler** came forward. Ms. Spuhler spoke in support of funding the Mound House pool project, which, when completed, would be one of two walk-in archeological exhibitions in the country.

**Betty Simpson** came forward. Ms. Simpson spoke in favor of the LPA recommendation before the Council at this meeting, especially with regard to their desire to have 9 members on the LPA.

**Sandy Suter** came forward. Ms. Suter spoke in favor of the Crescent Street rerouting.

## **V. CONSENT AGENDA**

### **A. APPROVAL OF MINUTES**

- 1. January 28, 2006**
- 2. February 2, 2006**
- 3. February 6, 2006**

**MOTION:** Councilman Dennis Boback made a motion to accept the minutes of 1/28/06, 2/02/06 and 2/06/06. Mayor Garr Reynolds seconded the motion.

**VOTE:** The motion carried unanimously.

### **B. CRESCENT STREET RE-ROUTING**

Vice Mayor Massucco spoke in support of the rerouting plan, which he said would cost only \$3100 to implement. He said both FDOT and LeeDOT supported the idea.

**MOTION:** Vice Mayor Massucco made a motion that the \$3100 requested by the TMA for the Crescent Street rerouting test be approved. Councilman Shenko seconded the motion.

There was a question raised regarding the conversion of the lanes on the Matanzas Bridge so that two lanes were designated exit lanes, one lane was designated for travel onto the Island, and the trolley lane eliminated.

Mr. Gucciardo said LeeDOT was in the process of preparing a position paper on the elimination of the trolley lane which would be brought to the Council when complete.

Councilman Shenko was concerned that the rerouting would create “road rage” at the foot of the Bridge without a dedicated exit lane directly from 5<sup>th</sup> Street, and while in support of the rerouting test, felt the Council should be ready to stop the test if it created more problems than it solved.

Councilmen Boback and Meador spoke in support of the rerouting test.

Mayor Reynolds agreed with Councilman Shenko that two exit lanes on the Bridge were needed.

Vice Mayor Massucco said adding the lane designation issue to the test would necessitate bringing the issue back to FDOT and LeeDOT for further consideration, and which he felt would push the timeframe back too far to run the test during this high traffic season.

Councilman Shenko asked that the motion be amended to direct Town Staff to actively pursue the lane redesignation issue concurrent to the implementation of the Crescent Street rerouting test; also, that if any member of Council felt the test was not working, that the Town Manager could be contacted, a Special Council Meeting could be called quickly, so as to end the test as fast as possible.

**AMENDED MOTION:** Vice Mayor Massucco made a motion that the \$3100 requested by the TMA for the Crescent Street rerouting test be approved; Town Staff to actively pursue the lane redesignation issue concurrent to the implementation of the test; if any member of Council felt the test was not working, the Town Manager was to be contacted, and a Special Council Meeting called quickly, so as to end the test as fast as possible. Councilman Shenko seconded the motion.

**VOTE:** The motion carried unanimously.

### **C. ST. PATRICK’S DAY PARADE**

Ray Murphy came forward as the Chairman of the St. Patrick’s Day Parade Committee. Mr. Murphy said this year’s was the 9<sup>th</sup> Annual Parade; he gave a brief history of the parade, described the parade route and schedule, and spoke of some of the participants over the years. Mr. Murphy said all the required paperwork had been completed, and all requisite permits had been issued. He requested that the Town provide the required certificate of insurance, which the Town had always done in years past. He invited all Councilmen to participate in the parade, and invited all public to do so as well. He gave a

phone number where he could be reached (591-8803). He said the parade was on St. Patrick's Day, Friday, March 17<sup>th</sup> at 10 AM, starting at Santini Plaza.

**MOTION:** Councilman Boback made a motion to approve the request for the insurance certificate. Councilman Shenko seconded the motion.

**VOTE:** The motion carried unanimously.

#### **D. SPRING HURRICANE PREPAREDNESS SEMINAR**

Mr. Gucciardo said the owner of Santini Plaza, Al Durrett, had donated the entire cost of the seminar – around \$4000.

Vice Mayor Massucco thanked the Public Safety Task Force (PSTF) for their work in organizing the seminar.

Councilman Shenko asked that a sign be put up at the seminar, or a note of recognition be placed in the program, that acknowledged the donation of the entire funding for the seminar from Mr. Durrett.

Mr. Gucciardo said the seminar was scheduled for either March 19<sup>th</sup> or March 26<sup>th</sup> – Sundays.

#### **E. REVIEW OF FINANCIALS**

- 1. Quarterly Summary**
- 2. Month of October**
- 3. Month of November**
- 4. Month of December**

Councilman Meador asked this item be pulled from the Consent Agenda, and discussed in connection with Item H in the Administrative Agenda. The consensus was to do so.

### **VI. ADMINISTRATIVE AGENDA**

#### **A. FOLLOW UP TO LEGISLATIVE SESSION ON FEMA MAPS – CARL CONLEY**

Carl Conley of Ft. Myers Beach came forward. Mr. Conley recapped the history of what the former Mayor Bill Van Duzer, Fran Myers of the TDC, Matt Feeney, formerly of Town Staff, and he, as part of the Chamber of Commerce's legislative committee, had done with regard to the FEMA maps issue. Mr. Conley recounted how he had called Senator Bill Nelson and arranged a meeting with the senator in his office in Washington D.C. for the above group. Senator Nelson's staff had contacted Brad Loar, FEMA's Region 4 Branch Chief for Community Mitigation, on behalf of the FMB delegation. Based in Atlanta, GA, Mr. Loar is charged with explaining the

implications of FEMA remapping and insurance matters to communities to be impacted by such remapping.

Mr. Conley reported that Senator Nelson had called about three weeks ago and asked if the Town would be interested in hosting FEMA, rather than making the trip to Atlanta, as Mr. Loar had to make a trip to Collier County during the week of March 7<sup>th</sup>. Susan Wilson, an expert in insurance rate hikes, was also slated to arrive with Mr. Loar. It had been explained to Mr. Conley that FEMA wanted to deal directly with an elected Town official, and as neither Mr. Van Duzer nor Mr. Feeney were Town officials anymore, Mr. Conley had asked Vice Mayor Massucco to take over the setting-up of the meeting, but that the Vice Mayor wanted the entire Council to decide whether he should be the point man or not. Mr. Conley pointed out that FEMA would be happy to simply deal with the County officials alone, but felt it would be in the Town's best interest to stay actively involved and to host the meeting.

Mayor Reynolds felt Mr. Conley should contact the Interim Town Manager, Ms. Lambert, so that she could set up the meeting with FEMA. He didn't believe the Council members should set up the meeting.

Mr. Conley said he would be happy to do so, but FEMA had wanted to hear from an elected public official to facilitate and set up the meeting, as FEMA was a public agency.

Councilman Meador didn't see any problem with Vice Mayor Massucco being the point man. He believed nothing but good could come from meeting with the FEMA officials.

Councilman Shenko pointed out that the Town had hired an expert, Mr. Tomasello, and was paying him "good money" to report to Council on his findings regarding the FEMA maps. He was concerned about meeting with FEMA before the report from Mr. Tomasello was filed. He wanted the meeting with FEMA set up concurrent with a Council meeting or workshop, so that Council members could participate fully in the discussion.

Mayor Reynolds thought Councilman Shenko's analysis of the situation had been excellent. He believed FEMA would only deal with elected officials. He said the Town had had two recent meetings about the FEMA maps, and that Town Staff had spent a lot of time on the issue.

Councilman Meador asked Mr. Conley if the proposed meeting with FEMA was for educational purposes for the Town and its citizens. Mr. Conley said he was correct, and that the FEMA officials would be available during the week of March 7<sup>th</sup> if the Town officials would like to take advantage of it.

Councilman Meador felt the Council owed it to the members of the community to set up the informational meeting, which he felt would also help the Council in their decision-making process with regard to how far the Town should go with Mr. Tomasello, and to determine whether or not to pursue litigation regarding the maps.

Mayor Reynolds asked if the meeting could be put off until Mr. Tomasello and Mr. Spikowski could address the Council with regard to the proposed meeting.

Mr. Conley said he had spoken with both Mr. Tomasello and Mr. Spikowski, and he knew they were both very interested to hear what the FEMA officials had to say. He reiterated that he wanted to step out of the process of arranging the meeting, and didn't see how the Town could lose by having the meeting.

Councilman Shenko asked if Mr. Tomasello and Mr. Spikowski could be present at the next Council meeting so that the Council members could hear what they think about the idea. He wanted them to personally say the meeting was important, and if they thought it was, Councilman Shenko felt it should then be set up.

After some discussion as to the involvement of Mr. Tomasello and Mr. Spikowski in the setting up of the meeting with FEMA, Councilman Boback made a motion.

**MOTION:** Councilman Boback made a motion that Vice Mayor Massucco be given the go-ahead to contact FEMA and arrange for the meeting; also, the Vice Mayor should contact Mr. Tomasello and Mr. Spikowski for their input and if they didn't think the meeting was a good idea, it should be cancelled. Vice Mayor Massucco seconded the motion.

Councilman Shenko asked that the meeting be set up as an advertised workshop so that the Council members could speak with each other and the experts at the meeting. Councilman Boback agreed.

Councilman Meador wanted to be sure that both Mr. Tomasello and Mr. Spikowski felt the meeting with FEMA was a good idea, and felt that information could be obtained by Vice Mayor Massucco via a phone conversation with each of them.

It was determined that if the meeting were to take place, it should be televised.

Mayor Reynolds objected to Mr. Conley having approached Vice Mayor Massucco on the matter rather than the Mayor. He said it had been inappropriate for him not to have gone through the Chair.

**VOTE:** The motion carried unanimously.

**B. BRIEF PRESENTATION ON THE MULHOLLAND STEWARDSHIP AWARD – TERRY CAIN**

Terry Cain, Chair of the Marine Resources Task Force (MRTF), came forward and gave a brief history and explanation of the Mayor John Mulholland Stewardship Award. She listed some of the former honorees and their contributions to the Town with regard to the protection and enhancement of the Island's natural resources.

Ms. Cain requested approval from Council for the continuation of the award program, which would include placement of a PSA in the local newspapers requesting nominees for the award, and distribution of flyers at both Town Hall and the public library which included nomination application forms.

She said traditionally the award was given in a ceremony prior to the Council meeting closest to Earth Day in April each year.

Mayor Reynolds asked that a copy of the nomination application form be supplied to Council, which Ms. Cain she would do.

Ms. Cain's request was that Council approve the funds to pay for the ad placement and the engraving of the leaves for the tree sculpture, displayed in Council chambers, which held the names of the award recipients.

**MOTION:** Councilman Boback made a motion to approve the funds to pay for the ad placement and the engraving of the leaves for the tree sculpture. Mayor Reynolds seconded the motion.

**VOTE:** The motion carried unanimously.

**C. PUBLIC HEARING CONTINUED – ORDINANCE 06-01 ANCHORAGE ADVISORY**

Town Attorney Dalton read the caption of the ordinance.

Jay Light, Vice Chair of the Anchorage Advisory Committee, came forward. Mr. Light said the Town Attorney had been directed by Council, at the first hearing on this ordinance, to determine if their were DEP requirements regarding membership qualifications for the committee, the outcome of which he said would impact his comments.

Ms. Dalton said she had received an e-mail from Mark Miller of the DEP, which had been copied and distributed to the Council prior to this meeting. She advised the Council that, based on that e-mail, it was okay for Council to proceed with the ordinance as written. In summary, Mr. Miller said the proposed changes to the ordinance were not in conflict with the intent of the

DEP permit, and adoption of the ordinance would not necessitate a formal modification of that permit. Mr. Feeney, before leaving Town Staff, had told Ms. Dalton that it was unlikely there would be any more communication from the DEP about it.

Mr. Light didn't think the designations listed in the ordinance, with regard to membership requirements, would enhance the operation of the committee. He felt that, due to the residency restriction, many of the proposed requirements would be difficult to fulfill anyway. He felt if the DEP didn't have a problem with the ordinance, the Council should do away with the specific qualifications for membership as currently listed in it.

The public hearing was closed when it was determined by the Mayor that no other public wished to address Council on this matter.

**MOTION:** Councilman Boback made a motion to accept and approve the proposed Ordinance 06-01 as written. Vice Mayor Massucco seconded the motion.

Ms. Dalton pointed out that, if the ordinance were to be passed, there would be only seven days in which to advertise for committee openings and to receive applications by the deadline of March 1<sup>st</sup>. Ms. Dalton she said she would either change that date in the ordinance or not, at the will of the Council.

Councilman Boback thought the deadline for receipt of applications should be extended to March 15<sup>th</sup>, as no advertising had been placed as yet. Ms. Dalton pointed out that all the ordinances would have to be changed individually to reflect the extension.

There was some discussion as to whether applications could be accepted after the March 1<sup>st</sup> deadline without changing the ordinance language. Ms. Dalton suggested, as an option, that specific ordinance could be reworded to accommodate the later deadline date for this year only, with its reversion back to the March 1<sup>st</sup> deadline date for subsequent years.

**AMENDED MOTION:** Councilman Boback made a motion to accept and approve the proposed Ordinance 06-01 as written except for the deadline for application submissions, which would be changed to March 15<sup>th</sup> for this year only, and would revert back to the March 1<sup>st</sup> deadline for subsequent years. Mayor Reynolds seconded the motion.

Ms. Dalton said another option would be to delete the language regarding mandatory application by March 1<sup>st</sup>, and make the appointment at the earliest Council meeting in April, as indicated later in the ordinance. This suggestion was not acknowledged or acted upon.

Vice Mayor Massucco proposed, applicable to all the committee ordinances: if a committee position remained unfilled for fourteen days, the position may be filled by a resident already serving on another committee if they so desired; a resident could not serve on more than two committees in this circumstance; if that position remained unfilled after the fourteen days had elapsed, then it could be filled by a non-resident.

Councilman Meador said all the committees were designed to give the Council input, and felt the Council was entitled to the best advice available. He felt FMB residents should be given preference in filling the committees, but because the new ordinances prohibited non-residents from participating, he felt the ordinances limited the Council's choices.

**VOTE:** The motion carried 4 – 1, with Councilman Meador dissenting.

Mayor Reynolds did not wish to take up Vice Mayor Massucco's proposal, as he felt the Council had already decided how the ordinances would read. Ms. Dalton said that, with respect to Ordinance 06-01, the motion and vote had passed the ordinance into being. She added that the motion could be reconsidered and amended if it was the consensus of Council to do so. Ms. Dalton said that legally, the ordinances required that there be 7 members on the committees, and said if there were not 7 members on the day of appointment, the Council could address it at that point, or they could address the possibility now.

**MOTION:** Vice Mayor Massucco made a motion to reconsider the motion.

Motion failed for lack of a second.

Vice Mayor Massucco said his proposal was so to avoid any committee having less than seven members, as legally required per the new committee ordinances.

#### **D. INTRODUCTION OF LOCAL PLANNING AGENCY ORDINANCE 06-09**

Ms. Dalton explained that this was an introduction, so that a public hearing would not be opened on the issue at this meeting. She pointed out that there were two versions of the proposed ordinance – one written prior to the LPA recommendation; one written after.

Ms. Dalton read the caption for the ordinance, which was the same for both versions of the proposed ordinance.

Ms. Dalton pointed out that it would not be possible to have the ordinance passed by March 1<sup>st</sup> because of the notice requirements. She asked if the

consensus of the Council was for her to modify the March 1<sup>st</sup> application deadline in each version of the ordinance and then bring them back to Council.

Mayor Reynolds called a ten-minute recess at this time.

Upon return, Ms. Dalton reiterated her request for Council direction with regard to changing the application deadline date of March 1<sup>st</sup> in the proposed ordinance. This was not immediately addressed.

Councilman Shenko said he was concerned that while Council members' terms were two years, the LPA recommended the terms on their committee be three years.

Mayor Reynolds pointed out that the proposed ordinance by the Council was that the LPA member terms be two years, not three, as the LPA had recommended.

Councilman Boback expressed extreme disappointment in the LPA's recommendation, which he felt was to continue as they had been, with no changes. He said he had made the terms on the LPA two years, instead of one year as in all the other ordinances, based on counsel from the Town Attorney. Ms. Dalton clarified that Mr. Spikowski had told her that the norm was two-year terms on Florida LPA's but that it was not a legal requirement.

It was determined that the issue of the March 1<sup>st</sup> deadline for applications would be addressed at the next Council meeting at which the public hearing on the LPA ordinance would take place.

Councilman Boback wondered how they would achieve staggered terms on the LPA if all members had to be newly appointed this year. Ms. Dalton said there were several options on how to address that, which she had laid out in detail in a memo she had written to Council on that subject. She pointed out that three current LPA members' terms would expire in May 2006, three would expire in 2007, and one in 2008. She asked, on behalf of the LPA members, if they should all reapply this year or only when their terms expired.

Councilman Boback felt they should all reapply, and then the determination as to how the LPA terms would be configured could be determined at the hearing on the ordinance. Mayor Reynolds hoped everyone would include a resume with their application.

The hearing for the ordinance was set for March 6, 2006 at 6:30 PM.

Councilman Shenko asked if the hearing was for the ordinance as proposed by Council, and not per the recommendations from the LPA. Ms. Dalton pointed

out that the recommendation from the LPA needed to go forward for a full hearing.

There was a question as to where the advertisement for the application for committee membership was being placed. Due to time constraints, Ms. Lambert said she had placed it in the Island Sand Paper.

#### **E. NEXT BUS AGREEMENT**

Mayor Reynolds said he had met with John Gucciardo, Ray Judah, Steve Meyers, and Tom Myers, with Ms. Lambert coming in later, with regard to this issue. He explained that the Next Bus program was installed at three locations, and gave information as to when the next bus would be at the location to pick up and drop off passengers.

**MOTION:** Councilman Boback made a motion that the Town not put any funds into the Next Bus system, as it was in connection with the Park & Ride trolleys, which the Town did not fund. Councilman Shenko seconded the motion.

Mr. Gucciardo said the Town had already made payments on the previous Next Bus system agreement, and that a pending bill of approximately \$17,000 had already been presented by the County to the Town. He asked for clarification as to whether the Council planned to pay the bill or not, as a separate issue as to whether the Town would help pay for the Next Bus system in the future. He believed the \$17,000 was all that was owed by the Town on the previous agreement, and said he had asked Damon Grant to look into previous payments that had been made on that agreement, to determine if the Town had received any reimbursements from the Congestion Mitigation grant money, and to determine if the Town would be reimbursed for the \$17,000 payment.

**AMENDED MOTION:** Councilman Boback made a motion that the Town not put any funds into the Next Bus system, as it was in connection with the Park & Ride trolleys, which the Town did not fund; also, for the Town to pay the approximate \$17,000 bill already presented on the previous agreement. Councilman Shenko seconded the motion, based on input from both Mr. Grant and the Town Attorney.

Mayor Reynolds noted that Mr. Grant felt the Town was under no obligation to renew an agreement with regard to the Next Bus funding.

Ms. Dalton cited Section 5c of the Next Bus agreement, with regard to the fact that either party could terminate the agreement for any reason by giving 30 days written notice. She assumed the motion had the intent of terminating the agreement and to give 30-day notice to the County.

**AMENDED MOTION:** Councilman Boback made a motion that the Town not put any funds into the Next Bus system, as it was in connection with the Park & Ride trolleys, which the Town did not fund. A written notice of intent to terminate the agreement, as per Section 5c of the Next Bus agreement, to be sent immediately; the Town to pay the approximate \$17,000 bill already presented on the previous agreement. Councilman Shenko seconded the motion, based on input from both Mr. Grant and the Town Attorney.

**VOTE:** The motion carried unanimously.

#### **F. BEACH RESTORATION INTER-LOCAL AGREEMENT**

Mr. Gucciardo summarized the situation, which was explained in detail in a memo included in the Council members' packets for this meeting. He said the original Inter-local agreement had expired, and the Town Attorney had advised that the Town was under no legal obligation with regard to the beach restoration project, although a new agreement had been proposed. Based on prior conversations and input from residents, Mr. Gucciardo said there had been questions as to whether the project design could be altered at this point, and had learned that the County had very little ability to modify the fill placement design.

Mayor Reynolds said many residents objected to the fill placement design, and gave examples of different locations on the beach where sand was not needed. He said the beach tended to renourish itself.

Vice Mayor Massucco said everyone was in favor of beach renourishment, but everyone had differing opinions as to where the sand should be placed. As was pointed out in a memo supplied to Council on the subject, he said the likelihood of getting the fill placement design changed was slim to nonexistent. Based on comments from many residents, Vice Mayor Massucco did not believe they would sign easements for the project with its existing design. He wondered if the project could move forward without the signed easements.

Mr. Gucciardo said there was language in the Inter-local agreement which would address that. He said if a certain number of easements were not obtained, it could jeopardize the entire project, although he felt it was more likely that fill placement would be done around the areas for which no easements had been obtained. He pointed out that the Town would be responsible for any lost federal funding on the project as a result of the missing easements.

Ms. Dalton cited Section 2 of the Inter-local agreement, wherein it was stated that the Town would be liable for obtaining the necessary easements; as it was mandatory language in a legal sense, it could lead to a mandatory eminent domain action on a limited basis to acquire the easements. Citing Section 8 of

the Inter-local agreement, Ms. Dalton said it provided for cancellation of the agreement if a written 60-day notice was given via certified mail.

Councilman Boback pointed out that, within the Inter-local agreement, the canceling party would bear any costs incurred on the project up to the point of cancellation.

Mayor Reynolds said many Townspeople were distrustful of the agreement.

Ms. Dalton requested that, if the Council chose to move forward with the project, that the final decision be postponed until such time as the status of how many easements had been obtained, and how many more might be acquired, could be ascertained. Additionally, she felt it should be learned what the County would do prior to obtaining the easements, if the Town entered into the agreement, so as to determine how much expense would be incurred.

Councilman Shenko felt signing the agreement as written would be like signing a blank check; additionally, he was not comfortable with the language about the easements. He speculated that if the Town did cancel the agreement, it would be hit with a million dollar bill for the engineering already done on the project by the Army Corps of Engineers. He said that, while the easement language had been amended, he could not, in good conscience, recommend that people sign them because they didn't limit the parameters of access to one's property.

Councilman Meador said the people of the Town did not want the project as it was designed. He said unless the project was redesigned, it wouldn't matter what the Inter-local agreement said.

Vice Mayor Massucco cited Section 4, Item G of the Inter-local agreement, wherein the storm protection benefits (12%) vs. recreational benefits (88%) data was delineated. He said this information did not lend support to the design of the project. He did not agree with Councilman Meador that the Island residents didn't want renourishment, but that they didn't support the design of the renourishment project. Councilman Meador agreed.

Councilman Shenko agreed with both Vice Mayor Massucco and Councilman Meador, regarding their reasons for not supporting the proposed renourishment project design.

Ms. Dalton understood Council's direction to be that no action should be taken with regard to entering into an Inter-local agreement unless or until the County approached the Town with a different agreement, which would be brought before Council for their consideration.

### **G. SELECTION OF CANDIDATES FOR TOWN MANAGER**

After some discussion, it was determined that the list needed to be pared down to 5 candidates at this meeting. Using the list of 20 finalists compiled by vote at a previous Council meeting, in several rounds of voting, the Councilmen indicated by show of hands which of the candidates they were for so as to determine the five finalists. After two rounds of voting, the following 6 finalists were named:

#### **ROUND TWO RESULTS**

<b>Applicant Name</b>	<b>Votes Received</b>
Charles Sadler	5
Jim Gallagher	3
Kenneth Sauer	3
Larry Stover	3
Susan Boyer	3
Dennis White	3

Ms. Dalton said the six finalists had all filed “original” signed applications, which gave consent for background checks to be done on them. Council consensus was that background checks should be run before conference calls took place with each of the finalists. Mayor Reynolds asked for the list of six finalists to be supplied to the Councilmen.

Councilman Shenko thought they should give the six finalists the choice of coming before the Council, at their own expense, or being interviewed via phone; once the top three candidates had been named, the Town could pay their expenses in order to appear before Council for the final interview.

After some discussion, a Special Town Council Meeting was set for 6:00 PM on Tuesday, March 7<sup>th</sup> at which the candidates would be interviewed by phone, via conference calls to be amplified for the public in Council chambers, in 25-minute intervals with 5-minute breaks between each call. The candidates were to be called in alphabetical order. Ms. Lambert was to set up the interviews and handle the setting up of the phone system in Council chambers.

### **H. INTERIM FINANCE DIRECTOR**

Councilman Shenko recapped his reasons for having asked that the monthly financials be placed on this agenda. He had subsequently contacted the Clerk of the Circuit Court of Lee County, Charlie Green, with regard to financial matters of government. He said Mr. Green was an elected official who audited Lee County, in terms of money as well as policies and procedures. Councilman Shenko hoped for Mr. Green’s assistance in terms of having the Town’s books and records reviewed, as well as in terms of doing an operational audit and an internal audit of the Town’s policies and procedures. Councilman Shenko expressed great discomfort with the information that had

been provided to him with regard to the finances of the Town. Ms. Dalton had looked into this idea for him, and had reported to him that Mr. Green's office could not provide anyone on a day-to-day basis, but would be willing to meet with Council to help determine what kind of assistance would be available to the Town.

**MOTION:** Councilman Shenko made a motion that Council pursue contacting the office of the Clerk of the Circuit Court of Lee County to have Mr. Green's staff, as directed by him, enter into an Inter-local agreement with the Town of FMB to perform an internal audit of the Town's policies and procedures (an operational audit) and, as soon as possible, the Inter-local agreement be brought to the Council, along with the approximate cost of such, and that Council address it as soon as the information is received, at an emergency meeting if necessary. Mayor Reynolds seconded the motion.

Ms. Dalton said Councilman Shenko had accurately summarized the conversation she had had with Mr. Green. Subsequent to her conversation with him, he had had a meeting with his finance director, Donna Harne, Chuck Short, head of Internal Audit, and the Town's auditor, Marty Rederman. At that meeting, although the audit would not be completed for another few weeks, Mr. Rederman had indicated that he had not seen any evidence of malfeasance on the part of anyone on Town Staff. Citing a memo she had written to Council on February 17<sup>th</sup>, Ms. Dalton recapped the various forms of assistance offered by Mr. Green. Ms. Dalton pointed out that Mr. Green had volunteered himself and his staff to come on a Saturday to conduct a workshop, with Council and Town Staff, to go through the standard government accounting and auditing procedures, and all present at the meeting (as named above) had indicated that the first Saturday in March was convenient for such a workshop.

Councilman Shenko expressed his great appreciation for the help Mr. Green had offered to the Town. Councilman Shenko reiterated his preference that an audit of the Town's Finance Department be conducted as quickly as possible; additionally that an internal audit of policies and procedures be conducted, along with a recommendation, if possible, as to whether more needed to be done beyond the initial evaluation. He felt a workshop would be more valuable once the new Town Manager chose a permanent Finance Director to replace the one who had tendered her resignation recently.

Councilman Meador noted that Mr. Green and his staff would only be available by phone. Ms. Dalton said if an internal audit were to be conducted, it would be done on site at Town Hall. Councilman Meador wondered with whom that person would coordinate in Town Hall, because the Town's Finance Director had resigned. Mr. Gucciardo indicated that both Ms. Lambert and "Amanda" – Ms. Paulauskas' assistant – would be the ones with whom County personnel would coordinate.

Mr. Gucciardo said that, while Ms. Paulauskas' resignation was not convenient, he felt confident that she had set in place policies, procedures and personnel sufficient to carry on with the Town's business.

Councilman Meador asked if monthly financial reports, and a quarterly report, such as had been presented with regard to the Town, had been prepared for the water utility as well. Mr. Gucciardo said they had, and added that from here on, the monthly financial reports would be placed on the Council's agenda at the second meeting of the following month (example: March financials would appear on the Council's second April meeting agenda). He said the quarterly report summarized any anomalies and/or oddities in terms of revenue or expenditures, and any questions raised by Council would be sent back to the Finance Department for review, with further information/answers to be given back to Council.

**VOTE:** The motion carried unanimously.

Ms. Dalton asked if a Special meeting had to be called so that she could bring forward an Inter-local agreement for consideration of Council.

**MOTION:** Councilman Shenko made a motion that a Special Town Council meeting be scheduled immediately after the next scheduled Executive Meeting in order to discuss any matters that may come forward from Mr. Green or any other matters that may concern the financials and the Financial Director of the Town. Councilman Boback seconded the motion.

The Special Meeting was scheduled at 7:30 PM on Monday, February 27<sup>th</sup>, immediately after the Executive Session.

Ms. Dalton requested an Executive Session to be held on Monday, February 27<sup>th</sup> at 6:30 PM for the purpose of discussing litigation strategy and related matters regarding the UTELCO litigation

**AMENDED MOTION:** Councilman Shenko made a motion that an Executive Session to be held on Monday, February 27<sup>th</sup> at 6:30 PM for the purpose of discussing litigation strategy and related matters regarding the UTELCO litigation; additionally, that a Special Meeting be advertised to be held at 7:30 PM, on that same date, for the purpose of discussing the review of financials and any role of or agreement with the Clerk of the Circuit Court of Lee County as it relates to the finances of the Town of FMB. Councilman Meador seconded the motion.

**VOTE:** The motion carried unanimously.

It was determined that a review of the financials would be done during the Special Meeting on February 27<sup>th</sup>, as indicated in Councilman Shenko's motion.

Regarding an Interim Finance Director, Councilman Boback suggested a Town resident, Pat Smith, be named as such, as she appeared to know more about the Town budget than anyone. Councilman Boback noted that he had included information about this suggestion in a memo to the Council members which was included in their packets at this meeting.

Mayor Reynolds agreed that Ms. Smith was qualified.

Councilman Shenko pointed out that the Council did not have the authority to hire Ms. Smith, as it was the Town Manager's job to hire Town Staff.

**I. OLD BUSINESS – MOUND HOUSE REQUEST (12-19-05 & 1-23-06)**

Ms. Schober explained why the requested amount had been reduced by \$10,000 on the original contract, which would give the Town two options:

- 1) Put out the project to bid, with changes in the methodology in the specifications, then waiting to receive new bids, then responding to them;  
or
- 2) With the contractor's already-obtained agreement to extend the original contract bid, which if executed in a contract with the Town, a change-order amendment would be produced by the architect, and then the contractor would then have to provide the reduced price for the particular helical anchor installation.

Ms. Schober requested between \$20,000 and \$23,000 from the Town's contingency funds.

Mayor Reynolds pointed out that the grant for the Mound House was in jeopardy, and asked the Council to consider moving forward with Ms. Schober's request for an amount of \$25,000.

Councilman Boback believed it would be foolish to lose the grant for lack of granting the request. He said for \$25,000 the Town would be throwing away \$500,000 in grant money.

**MOTION:** Councilman Boback made a motion to grant Ms. Schober the money needed, up to \$25,000, to finish the shell mound project at the Mound House. Vice Mayor Massucco seconded the motion.

Vice Mayor Massucco echoed Councilman Boback's earlier comment.

Councilman Meador asked how much of the \$200,000+ grant money had been spent thus far. Ms. Schober said the project expenses had thus far had totaled \$66,000 to date, with an additional \$38,000 or \$39,000 awarded in contracts, for a total of approximately \$95,000 that had been dedicated and/or spent and reimbursed.

Councilman Shenko said he had requested the financials on the Mound House some time ago, and as yet had not received them, although the information to hand indicated that the personnel costs at the Mound House were the highest expense. He said he was not comfortable spending money on the Mound House until it was known how much it cost the Town to run it. Councilman Shenko was also uncomfortable with the one-bid contract, so that if Council moved forward with the request, he recommended that Attorney Knott review the contract before it was signed. He also questioned the helial anchors being drilled into the shell mound if it was so important.

Ms. Schober said there had never been more than a single bid for any of the construction projects at the Mound House, because they have either been fairly small, or required special expertise. Regarding the significance of the mound itself, Ms. Schober said the Town had received the various grants for the property because of its significance. She said the state believed creating an exhibit in a previously-disturbed area in the mound was a good mitigation of the damage that had already been done to it, and that it would provide an educational outreach opportunity to the public, which was why the grant had been awarded for the creation of the shell mound exhibit. Ms. Schober said she had provided all the financial data she had knowledge and/or possession of with regard to the property. She said she had never been provided with budget numbers with regard to maintenance costs at the Mound House.

Councilman Shenko said the questions unanswered about the Mound House financials would be directed to Charles Green because the Council had not been given the figures either.

Mayor Reynolds asked how often the lawn was cut at the property, and how long it took. Ms. Schober estimated that it took about 3 ½ hours to mow the lawn, and that it was done every 2 – 3 weeks in dry season, and every week during rainy season. She believed yard maintenance was done on Sundays so as to not interfere with Mound House programs, but felt the maintenance director should be asked about it for more details.

Councilman Meador asked if the Town was allowed one 6-month extension on the grant, and Ms. Schober confirmed that, adding that it would expire on June 30<sup>th</sup>, and an extension would have it expire on December 31<sup>st</sup>, before which all funds had to be spent so that they could be reimbursed.

Ms. Schober said if her request were granted at this meeting, because of back-orders on materials, the contractor would not be able to commence the work until September. She said the project had to be completed, billed and paid by the Town by December 31<sup>st</sup> in order to be reimbursed.

Ms. Dalton said she had reviewed the contract and was satisfied with it.

**VOTE:** The motion carried 3 – 2, with Councilman Shenko and Councilman Meador dissenting.

#### **J. NEW BUSINESS**

Vice Mayor Massucco brought up an outstanding bill of \$33,807 billed by Salty Sam's to the Town for five months of service provided in the anchorage. He felt Salty Sam's should be paid for services rendered, and then the Town should negotiate a new agreement with Salty Sam's.

It was determined that the issue should be placed on the agenda of the February 27<sup>th</sup> Special Council meeting. Ms. Dalton said she could provide a legal memo before Monday on the issue, which Council directed her to do.

Vice Mayor Massucco, citing a memo from Mr. Gucciardo dated 2-16-06 regarding VOICE traffic control detail concerns, said it was more and more difficult to get VOICE volunteers to cover the Beach detail. He felt enticement and appreciation needed to be given to them, in order not to lose the few who did agree to cover the Beach detail.

Mr. Gucciardo said Captain Powell had met with the VOICE volunteers, and he had found there was no animosity toward the Beach from them, for the most part, although it was a difficult detail, and was becoming more and more of an issue. Captain Powell made some recommendations as to ways the Town could show its appreciation for the work the volunteers had been doing, in addition to the annual luncheon co-sponsored by the Chamber and the Town held for the volunteers. Some recommendations:

- 1) Provide parking passes to the volunteers
- 2) Funds given to the Sheriff's Department in support of the VOICE program – uniforms, vests, etc.

It was determined that the issue would be placed on the agenda of the February 27<sup>th</sup> Special Council meeting.

Vice Mayor Massucco brought up a request from a resident regarding crosswalks. Mr. Gucciardo said the request had been forwarded to the PSTF, which would hear the person's request, and then make a recommendation to Council regarding it.

#### **VII. COUNCIL MEMBER ITEMS AND REPORTS**

Vice Mayor Massucco's items:

- 1) He had been invited by the Chamber of Commerce Legislative Committee to attend one of their meetings on February 15<sup>th</sup>. He had given them a brief update on the Town, which he said they had appreciated.
- 2) He had participated in the Edison Festival of Light parade with the VFW.
- 3) He had attended the Paulette Burton Citizen of the Year awards ceremony on February 21<sup>st</sup>, at which the Town Attorney had been named Citizen of the Year.
- 4) Al Oerter, a 4-time Gold Medal Olympian and resident of the Beach, who was having prior Olympians visit the Beach, had asked if the Town could erect a banner welcoming them. Vice Mayor Massucco said a banner could be made for \$220, and the Town maintenance crew could put it up. This issue was put on the agenda for the February 27<sup>th</sup> Special Council meeting.

Mayor Reynolds' items:

- 1) Ms. Lambert had supplied Council with an interim plan of action, and thanked her for taking the time to formulate and communicate it.
- 2) He congratulated Ms. Dalton for having received the Paulette Burton Citizen of the Year award.
- 3) He said Tammy Hall, the Chairman of the Board of County Commissioners, had initiated Mayors' meetings specifically with regard to the Lake Okeechobee water releases and their deadly effects. He said the Town Manager and the Town Attorney were welcome to attend these meetings.
- 4) He said he had received several letters in support of the Mound House.

Councilman Shenko's items:

- 1) He announced that he would be attending a joint meeting of the MPO with Collier County. He said the hot button issue was the proposed new interchange on the interstate at Coconut Road. He said there was \$10 million federal money available to conduct a study about it. He said FMB voted no on the interchange, and it could be the swing vote. He said he would furnish the information he had to date to the other Council members, and suggested it might be on a future agenda item so that he could get direction from Council as to how they would like him to proceed on the issue. He said Bonita was basically for it as a form of traffic mitigation, but the residents of the community most directly impacted were against it.

Councilman Meador's items:

- 1) He asked Mr. Gucciardo if there was any update with regard to opening Center Street. Mr. Gucciardo believed an update would be given to Council at the March 6<sup>th</sup> Council meeting.

Councilman Boback's items:

- 1) He congratulated Ms. Dalton on her receipt of the Citizen of the Year award.
- 2) He asked Mr. Gucciardo how long Center Street had been closed. Mr. Gucciardo thought it had been closed when the Matanzas Bridge had been built. He asked if the people who owned the adjacent parking lot had been using the street as part of their business. Mr. Gucciardo believed the meters on the Center Street right-of-way were the Town's meters, and that there would be no encroachment from the La Playa parking lot.

#### **VIII. TOWN MANAGER'S ITEMS**

John Gucciardo had no items.

#### **IX. TOWN ATTORNEY'S ITEMS**

##### **A. UTELCO UPDATE**

Ms. Dalton requested an extension of the arrangement with Attorney Knott, previously engaged by the Town with regard to the UTELCO matter, so that he would be on board through the conclusion of the litigation.

**MOTION:** Councilman Shenko made a motion to continue with the representation provided by Attorney Knott as co-counsel in the UTELCO matter through termination of the case. Councilman Boback seconded the motion.

Councilman Meador asked about Attorney Knott's trial fee. Ms. Dalton said Mr. Knott had not indicated to her that there would be additional trial fees, but said if the issue were placed on the February 27<sup>th</sup> Special Council Meeting agenda, she could get that information for Council by then. She was directed by Council to do so.

**AMENDED MOTION:** Councilman Shenko made a motion to continue with the representation provided by Attorney Knott as co-counsel in the UTELCO matter through termination of the case, contingent upon review of confirmation of his fees as trial counsel. Councilman Boback seconded the motion.

**VOTE:** The motion carried unanimously.

#### **X. PUBLIC COMMENT**

Mayor Reynolds said Mr. Vukovich had a large volume of materials he wished to present to Council, and asked the Council for consensus that he be allowed to have more than the allotted three minutes in which to make his comments.

Councilman Shenko had no objection. Councilman Meador pointed out that the issue had been going on for years, and there was nothing Council could do

about it, and a decision had already been made. Consensus was reached that he would be given more time.

**George Vukovich** of 4531 Bay Beach Lane came forward. Mr. Vukovich said he was a tax-paying property owner. Citing the packet of information he had provided to Council, Mr. Vukovich proceeded to summarize his case with regard to the Royal Pelican dock issue.

**Lee Melsek** came forward. Regarding background checks to be done on Town Manager candidates, Mr. Melsek said it could save the Town a lot of embarrassment if the background checking firm hired by Council was directed to, and did, make calls to the local newspapers where the candidates currently reside, to determine if there were any stories that had been published on them. Mr. Melsek asked who had given the Friends of the Mound House the authority to schedule events at the Mound House, or to raise funds on behalf of the Town-owned facility, and wanted to know if their records would be part of the public, in terms of expenses, funds raised, etc.

**Jack Bright** of 146 Del Mar came forward. Mr. Bright recounted an experience he had had with regard to interviewing for a position. He talked about enthusiasm evident in many Town Staff, and said that Mr. Gucciardo had had that same enthusiasm for eleven years, but that five weeks ago, the Council had “whipped it out of him” because they didn’t want to pay him an additional \$1200 - \$1800 for the additional responsibility of running the Town as Interim Town Manager. Mr. Bright thanked Mr. Gucciardo for all he had done for the Town in his eleven years as Deputy Town Manager.

**Pasqual Loffreno** came forward. Mr. Loffreno said he would not sign an easement for the beach renourishment project. Mr. Loffreno spoke against the project. He said construction of jetties around the Island should take place instead. Mr. Loffreno asked the public to apply for the open positions on the Town’s volunteer committees.

## **XI. ADJOURNMENT**

Vice Mayor Massucco noted that Sand Paper reporter Sean Carney, in attendance at this meeting, was going to be leaving his position on the newspaper, and wished him the best of luck, and said he was an excellent musician as well. Mayor Reynolds wished him luck, too.

**MOTION:** Councilman Shenko made a motion to adjourn the meeting. Councilman Meador, Shenko and Vice Mayor Massucco seconded the motion simultaneously.

No vote was taken.

Mayor Reynolds adjourned the meeting at 10:57 PM.

Respectfully submitted,

Jo List  
Transcribing Secretary