

**FORT MYERS BEACH  
TOWN COUNCIL**

**Town Hall- Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, Fl 33931  
August 21, 2006**

<b>Executive Session</b>	<b>Closed to the Public</b>	<b>5:30 PM</b>
<b>Regular Town Council Meeting</b>	<b>Open to the Public</b>	<b>6:30 PM</b>

Mayor Boback opens the meeting.

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

Ms. Dalton referred to the executive meeting she made last Monday on Utelco and requested for this meeting to be closed. Ms. Dalton announced the attendees are Mayor Dennis Boback, Vice Mayor Don Massucco, Councilman Garr Reynolds, Councilman Charles Meador, Jr., and Councilman Bill Shenko, Jr.; The Town Manager Rachel Lambert, George Knott who is the outside council on the Utelco litigation and our court reporter. Ms. Dalton stated the purpose of this meeting is to discuss litigation strategies in regards to the Utelco litigation against the Town of Ft. Myers Beach.

**I. CALL TO ORDER**

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

**Absent:** None.

**Town Staff Present:** Town Attorney Anne Dalton, Town Manager Rachel Lambert, Community Development Director Jerry Murphy, Public Works Director Jack Green

**II. PLEDGE OF ALLEGIANCE:**

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

**III. INVOCATION:** Reverend Tom Snapp, St. Peter Lutheran Church.

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

#### IV. CONSENT AGENDA

##### A. *Proclamation: Industry Appreciation Week*

Ms. Dalton read the Town of Ft. Myers Beach Proclamation in honor of Industry Appreciation Week. Whereas the economic vitality of a community is strengthened and enhanced by a strong industrial base; and whereas the existing future industries of Lee County are a key element of the prosperity of the quality of life for all citizens; and whereas the Town of Ft. Myers Beach recognized the contributions made by industry through their support of cultural and recreational events which attract tourism; and whereas it is deemed appropriate and proper the Town of Ft. Myers Beach resolve to maintain a strong relationship between the Town and the industrial community, and to educate the public as to the importance of that relationship. Now therefore, we the Town Council of the Town of Ft. Myers Beach to hereby proclaim the week of September 18 through 22<sup>nd</sup> 2006, as industry appreciation week, in the Town of Ft. Myers Beach and urge that all citizens salute industry and their employees for their important contribution to our community. Given under my hand and seal of the office of the Mayor this 21<sup>st</sup> day of August 2006, Mayor Dennis Boback.

**MOTION:** Councilman Shenko made a motion to accept the Proclamation: Industry Appreciation Week. Councilman Meador 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

##### B. *Proclamation: Recognition of Florida Heart Associates*

Ms. Dalton read the Town of Ft. Myers Beach Proclamation whereas Florida Heart Associates PL was created for cardiology practices merging together in 1996 to better serve their patients being represented by cardiologist that established in the area as early as 1973, and actively practices Ft. Myer, Cape Coral, Lehigh Acres and Bonita Springs; and whereas their board certified cardiologist have been serving Lee County for more than 33-years and is the only cardiology group available at all cardiology hospitals to care for patients; and whereas this is the only cardiology group that provided complete and comprehensive cardiac care including cauterizations, coronary intervention, EP studies with pace maker, ICD's, Diagnostic Peripheral Vascular Studies and all aspects of none invasive cardiology including EECp therapy; and whereas this facility has the benefit of an accredited ICANL nuclear lab and ICAEL Echo labs, and results are interpreted by a board certified cardiologist to provide prompt and efficient turn-around time; Now therefore, we the

Town Council of Ft. Myers Beach hereby proclaim the week of September 5<sup>th</sup> through 9<sup>th</sup> 2006 as Florida Heart Associates week and the Town of Ft. Myers Beach and urge that all citizens salute Florida Heart Associates PL and their employees for their important contribution to our community. Given under my hand and the seal of the office of Mayor this 21<sup>st</sup> day of August 2006. Mayor Dennis Boback.

*C. Approval of Minutes: April 10, 2006; July 11, 2006; July 24, 2006; August 1, 2006; August 7, 2006.*

Vice Mayor asked to pull the August 1<sup>st</sup> minutes.

Councilman Meador asked to pull for discussion the Florida Heart Associates Proclamation.

Councilman Reynolds asked to pull the April 10, as well as July 24, August 1, and August 7<sup>th</sup>.

Councilman Meador referred to the proclamation and recognizing real Ft. Myers Beach pioneers Mr. Roth Shell, and officially recognizes the founders of our Town. Mr. Meador would not like to adopt a commercial advertisement for a group of physician who do not practice on Ft. Myers Beach.

Councilman Shenko agreed with Mr. Meador and stated it sounded more like an advisement.

Vice Mayor Massucco stated he would like to know how it got there.

Ms. Lambert stated the Town Clerk accepted this request from them stating these are mostly routine, but that this one was the first.

Councilman Reynolds stated having no problems with the proclamation regarding Roth Shell; he feels it does not reflect at all. Mr. Reynolds stated he spoke with Ms. Lambert regarding this and that she was going to put the agenda Roth Shell, and deal with that, after she had the budget out first. Mr. Reynolds agrees in acknowledging the Town's people, but has no problem with this going through.

**MOTION:** Councilman Meador made a motion not to accept the Proclamation for the Florida Heart Associates. Councilman Shenko 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 4-1 with Mayor Boback, Vice Mayor Don Massucco, Councilman, Meador and Councilman Shenko in favor, and Councilman Reynolds dissenting.

Councilman Reynolds made corrections for April 10<sup>th</sup> minutes on page two, where Vice Mayor stated they had a quorum. Mr. Reynolds stated they had three as a quorum, but they didn't have a three for voting purposes unless the count was 3-0.

Page 9: Mr. Reynolds stated the minutes did not have the date and it did not appear to coincide with the rest, as there was four together at that meeting.

**MOTION:** Councilman Shenko made a motion to approve the minutes of April 10, 2006 with corrections. Councilman Reynolds 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

**MOTION:** Councilman Shenko made a motion to approve the minutes of July 11, 2006. Councilman Meador 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 4-1 with Councilman Reynolds dissenting.

Councilman Reynolds made corrections to July 24<sup>th</sup> minutes.

Members Present: Councilman Reynolds name was not written.

Page 6: Mayor Boback Councilman Reynolds stated on page under reentry.

Councilman Shenko made corrections on page 6: Councilman Shenko stated of a consensus for Mr. Melsek putting together this plan.

**MOTION:** Councilman Shenko made a motion to approve the minutes for July 10, 2006. Councilman Meador 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

Vice Mayor Massucco made corrections to the minutes of August 1<sup>st</sup> on page 9: Vice Mayor Massucco stated eliminating the concept of underground from our Com Plan. Correct to keeping the concept.

Councilman Reynolds made corrections on page 3: Mr. Reynolds stated the Crest from Red Coconut. Correct to request.

Page 5: they did not recommend that.

Vice Mayor Massucco made corrections on page 4: future discussion related to traffic litigation plans for the island. Correct to Mitigation.

**MOTION:** Councilman Reynolds made a motion to approve the minutes with corrections. Councilman Shenko 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

**MOTION:** Councilman Shenko made a motion to approve the minutes of August 7, 2006. Councilman Reynolds 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 5-0.

## **V. ADMINISTRATIVE AGENDA**

### **A. *Request for Hiring Special Risk Management Expert for Water Utility.***

Councilman Shenko announced he had requested this to be put on the agenda. Mr. Shenko asked for this to be delayed until a later meeting. He shared his concerns regarding the water utility not being owned by the Town of Ft. Myers Beach, but is owned by a non-profit corporation. Mr. Shenko requested the liabilities of the directors of that non-profit corporation, and states that Ms. Dalton has done some research but did not have the findings at this time. Mr. Shenko suggested hiring an outside risk manager, but Ms. Dalton has indicated getting more information before the next meeting.

Ms. Dalton confirmed with Mr. Shenko. She stated doing more research on the immunity issue stating her findings are favorable, but is not in any position to render an opinion at this time.

Mayor Boback stated having no problem continuing the matter to a later meeting.

Councilman Meador stated this being a pressing issue, and asked if this would be continued to their next scheduled meeting.

Ms. Dalton replied she was fine with it. The rest of the Council agreed to continue discussion on the request for hiring a risk manager until the next scheduled meeting.

### **B. *Update on Best Western Federally Funded Subgrant Agreement.***

Ms. Dalton announced the applicant has requested permission to speak.

*Mayor Boback opens public comment:*

- Ms. Beverly Grady of Roetzel & Andress representing FMB Associates, the Best Western Resort. Ms. Grady stating having the opportunity to review the agenda packet and stated the Best Western is requesting approval from Council regarding the contract between the Town and the Department of Communities Affairs placing the Town for administering a FEMA grant. This grant is to assist the cost in elevating below flood construction at the Best Western which would bring it back to compliance. Ms. Grady stated this would be a positive step as it would enhance the goals of the Comprehensive Plan. Ms. Grady mentioned there would also be a 2<sup>nd</sup> agreement which would be between the Town and the property owner; this would place obligations to the owner which will enforce the standards set forth in the agreement are complied by the property owner. Ms. Grady referred to concerns raised by the Town Manager and Ms. Dalton regarding administrative cost, and states these would be in the agreement as being paid for and will not be the responsibility of the Town for administrative cost.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Meador made a motion to deny the request based on no changes made since it was last presented to Council. Vice Mayor Massucco 2<sup>nd</sup> the motion for discussion.

*Discussion:*

Vice Mayor Massucco stated most of the problems are revolved around issues of future liability, and questioned if there was anything new found on that issue.

Ms. Dalton addressed Ms. Grady regarding some comments which were not accurate. Ms. Dalton stated the liability issue began when she brought forward to Council the issue of liability, and stated there were several discussions with the applicant regarding how to minimize the Town's risk. Ms. Dalton reported a letter of credit was suggested which would be an unconditional letter of credit for the time period of the agreement, but also for the time period the Town would be at risk, which would be 5-years following completion of the agreement. Ms. Dalton stated at no point she represented being comfortable with just a letter of credit, and states this would be a risk analysis on the part of the Town Council. Ms. Dalton reviewed there would be certain risks if there were a bankruptcy. Ms. Dalton states the indemnity issues have not gone away, and states this would be the only way to minimize the risk by having a letter of credit not only for the time period, but extending past the completion date. Ms. Dalton further stated it is a policy call.

Mayor Boback referred to Ms. Lambert for latest details.

Ms. Lambert stated at their last meeting she would get some information from other municipalities. Ms. Lambert contacted DCA to see whether they had a listing of people that they work with, but states she was unable to obtain their listing. Ms. Lambert attempted with Sanibel as well as Cape Coral and was not successful in getting replies. Ms. Lambert stated they were able to contact three similar municipalities Marco Island, Homes Beach and Island Morada stating they are reluctant to enter a grant processes with commercial entities, due to the amount of staff time required as well as the concern for liability. Ms. Lambert stated neither Marco Island nor Homes Beach has handled a commercial project, stating all three share the same liability concern. Ms. Lambert reported having discussions with DCA regarding altering their agreement, and they were not willing to do so. Ms. Lambert stated no progress has been made.

Vice Mayor Massucco pointed out the same issue of concerns remain out there, the liability as well as the procedural cost for them to handle the administrative cost. Vice Mayor Massucco agrees not progress has been made.

Councilman Reynolds asked Ms. Dalton if were possible for the owner to request an application to the Town, or the type of project that they want to pursue; if it is approved by the Town, can they get their financing from anywhere they choose even if it is from FEMA.

Ms. Dalton stated the funds as being Federal and state pass-through which means they are administered by the Department of Community Affairs. Then it is passed-through to the Town and then on to the recipient. Ms. Dalton approached the state the question if they can get out of the loop and have contract directly through DCA and the sub-recipient. They were denied, the state would not allow the Town out of responsibility because they want them for supervisory purposes, as well as if there are and problems or issues, it will be a liability question.

Councilman Reynolds stated the only way they could do anything with a project like this, would be by approving it. Mr. Reynolds stated by approving an application, they can only answer to what they have approved, but not for someone else's loan. Mr. Reynolds hoped this would help enlighten where we are coming from on this issue.

Councilman Meador stated to the applicant having no problem in theory with this process, but states there would be a problem if they put the tax payer's money at risk for 5-years after the continuation of a project. Mr. Meador pointed out the proposal brought forth this evening is the identical proposal they had the last time the applicant spoke to them and when Mr.

Rockwell spoke to us which only takes care of the liability up to the point of the issue in said of issue of occupancy; Mr. Meador stated it doesn't cover their potential liability and the potential liability to be expending other residents funds to make-up for a potential shortfall, should DCA should say something was not done. Mr. Meador stated the cost for staff can be dealt with accordingly and that aspect of the project minimized which can become manageable. Mr. Meador suggested if the applicant or their Council can come up with a more creative idea to make sure they are not putting the peoples' tax money at risk to cover someone else's project, he would be more than happy to review. Mr. Meador stated not having seen anything new today or seeing anything new that would guarantee our tax payer's money.

Councilman Shenko agrees with Mr. Meador stating the concept is great, but the application is not. The continuing obligation for 5-years is one thing, but Mr. Shenko looks at the staff's time up front. He reviewed Attachment C on page 25; stating it will comply with, stating it means us. Mr. Shenko reported 37 Federal regulations etc, and by signing this document they are indicating they will comply with all of those regulations. Mr. Shenko states the administrative burden is way too high during the course of construction. Mr. Shenko stated if something can be brought back that can provide for staff, provide for the indemnity through the 5-year construction he would be happy to review it, stating it sounds great in theory, but in practice the applicant are the ones who are obligated.

Mayor Boback agreed with Councilman Meador stating they can work through the staff issue, but the liability for 5-years is more than he would want to take in his position with the taxpayer's money.

Councilman Reynolds thanked Ms. Lambert for her efforts in trying to get the answers in order to move this forward. Mr. Reynolds also thanked attorney Dalton for her efforts in trying to help the owner, and stated it is too much of a liability to be indicated through our Town, and too much time required by the staff. Mr. Reynolds didn't see going in that direction.

**VOTE:** The motion passes 5-0.

**C. *Applicant for the Marine Resources Task Force.***

Mayor Boback announced a letter of interest regarding the Marine Resources Task Force, and reports they are one person short regarding the matter.

**MOTION:** Councilman Shenko made a motion to approve the applicant for the Marine Resources Task Force. Councilman Meador 2<sup>nd</sup> the

motion.

*Mayor Boback opens public comment:*

- No public comment was made.

*Mayor Boback closes public comment:*

Councilman Reynolds stated speaking with Alexis Galarza, and states he loves her background and would love to have her on such a committee, but by putting her on the committee they would be breaking their own rules. Mr. Reynolds noted they pushed for the owner could vote on some of committees, but we also had a rule stating we would not have two people from one entity which would be Mr. Boykin unless he is no longer on the committee. Mr. Reynolds asked if Mr. Boykin was on the committee.

Mayor Boback stated he didn't believe Mr. Boykin was on that committee as he is not a resident.

Councilman Reynolds pointed out not having to be a resident if you are the owner.

Ms. Lambert also confirmed that Mr. Boykin was not on the committee.

Councilman Reynolds stated he would stick to everything he has previously mentioned and would highly recommend Ms. Alexis Galarza.

Councilman Meador clarified if they had prohibited two people who are associated with the same entity unless they are married.

Councilman Reynolds stated having this further reviewed as they will be more applicants coming on board.

Councilman Shenko pointed out Ms. Galarza is very well qualified.

Vice Mayor Massucco stated having no objections.

Mayor Boback stated he had no objections as well.

**VOTE:** The motion passes 5-0.

***D. Discussion of Proposed Town Hall Search Committee***

Mayor Boback asked for this to be put on the agenda and felt it is time that they look at appointing a search committee to see what are options we may have in a Town whether by a vacant land, or a building that already exist that may need rejuvenating; Mayor Boback stated his reason for

placing this matter on the agenda to see whether Council would pursue this matter further.

**MOTION:** Councilman Reynolds made a motion to establish a five member committee, and allow each Councilman to appoint a person to the committee. Councilman Shenko 2<sup>nd</sup> the motion.

*Mayor Boback opens public comment:*

- Mr. John Gerola resident of the island for 28-years. Mr. Gerola suggested to Council if they did not want to purchase land, they should look into a Marina which has a large parcel of land which could be turned into a city municipal arena that could pay for cost of the building as Town Hall, and also pay for the cost for maintaining a facility.

*Mayor Boback closes public comment:*

*Discussion:*

Councilman Shenko stated this is past due, and this should have been done years ago. Mr. Shenko pointed out his only discussion would be whether each Council member appoint person, or whether we have five people that we can vote on. Mr. Shenko stated not having a strong feeling either way, but feels they should pursuer the matter of Town Hall.

Mayor Boback stated having any objections either way.

Vice Mayor Massucco stated he would consider applicants with a letter of interest and see how many they get and then narrow it down. Vice Mayor Massucco stated he didn't know whether they should exclude real estate people from that committee.

Mayor Boback replied who would have better knowledge of what they are looking for.

Vice Mayor Massucco stated not wanting to see a conflict of interest if a real estate was on a committee, and a state company would be the one to do the transaction.

Mayor Boback agreed that would be a conflict of interest.

Vice Mayor Massucco stated they should eliminate them from the beginning to avoid a conflict of interest and just get interested citizens.

Mayor Boback replied not having any objections either way, but believes

they would lose valuable knowledge of the island.  
Vice Mayor Massucco reiterated this would avoid conflicts in the future.

Councilman Reynolds stated he didn't believe they would be losing any knowledge on the island; they would have the opinion of five people. Mr. Reynolds stated it would be a good way to go.

Councilman Meador reflected on the motion made by Mr. Reynolds which was to create and to appoint this committee. Mr. Meador suggested backtracking; as it was done in all the other committees establish "via Ordinance." Mr. Meador suggested defeating the motion, and getting advice from the Town's attorney Ms. Dalton. Mr. Meador stated having no problem with a committee going out and searching, and didn't have a problem with Town Hall. Mr. Meador did however, state before they start spending big money on Town Hall, they should first start resolving some of the promises they made on improvements towards sidewalks and things to that nature.

Councilman Reynolds pointed out Mr. Meador misinterpreted the motion completely. Mr. Reynolds reiterated his suggestion was to get a consensus to establish a committee, and then to have each Councilmen to appoint a member appoint.

Councilman Meador stated they would establishing this committee tonight by vote.

Councilman Shenko stated knowing what we want, but not quite sure how to get there. Mr. Shenko stated this is not going to be a permanent committee, it would be temporary. Mr. Shenko asked for the motion to be amended to state the Council direct the attorney to draw a suitable ordinance to form a temporary committee to bring back information related to Town Hall. Mr. Shenko noted the selection process whether it is each Council member who appoints one, or whether the five Council votes on the five members. Mr. Shenko also pointed out this is way it has been done for previous committees and suggested they should continue to be consistent. Mr. Shenko was not sure if the amendment to the motion would be acceptable to the motion maker, and directs Ms. Dalton to go ahead to draw the ordinance to form the temporary committee.

Councilman Reynolds stated Mr. Shenko is the attorney and it is normal for it to be done in that manner, and stated having no problem with the appointed part of the motion being separated, but does not see anything wrong to indicate that they have agreed to establish the committee to search for a location for Town Hall.

Councilman Shenko stated for the motion maker to amend the motion so that it will indicate they are giving direction to the Town Attorney to draw the necessary ordinance, to create a temporary committee for its purposes to gain information on Town Hall selection and bring an ordinance at a later meeting.

Councilman Reynolds accepted the restatement. Councilman Shenko amended his 2<sup>nd</sup>.

Vice Mayor Massucco indicated in order to stay consistent they should vote by application and let them submit a letter of interest, and then they will make their selection.

Ms. Dalton asked if it was the will of Council the parameters that apply to advisory committees apply to this as well, no husband, wife, no one that serves on any other committee.

Mayor Boback agreed to that but felt that anyone who was on the committee for the short-term committee could be on there.

Ms. Dalton questioned about the realtors and where did that stand, or she could bring it back in an ordinance and discussed at that time.

Mayor Boback questioned the need for an ordinance to establish a temporary committee.

Ms. Dalton stated it is a temporary ad-hock committee there is no need to have one, but stated no harm in having one and it could be passed in one hearing.

Mayor Boback asked if this can be brought back at their next meeting.

Ms. Lambert pointed out September 5<sup>th</sup> would be the next meeting to do the introduction.

Ms. Dalton stated that would be enough time.

Mayor Boback suggested it can be posted on the Web as to what they were looking for.

**VOTE:** The motion passes 5-0.

***E. Proposes Merging of CELCAB and Newton Advisory Subcommittee.***

Mayor Boback announced he also put this on the agenda after he had a couple of approaches about doing this. He spoke to Ms. Schober who is the project manager for both the Mound House and the Newton, and she is in favor of this and thought it was an excellent idea.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Reynolds made a motion for CELCAB to look over the Mound House and Newton property. Mayor Boback 2<sup>nd</sup> the motion for discussion.

*Discussion:*

Vice Mayor Massucco pointed out they have only six members on the CELCAB committee.

Councilman Reynolds stated they have seven members.

Vice Mayor Massucco questioned the seven member committee representing both the Mound House and the Newton property. Vice Mayor Massucco announced having a letter from Fran Myers and Roxie Smith with interest to serving on the Newton property Subcommittee.

Mayor Boback stated he had a conversation with three members and Ms. Schober; Michelle is project manager for both projects and she stated this would streamline her operation. Mayor Boback stated is a cultural and environmental learning center, and their task is to take care of those issues. Mayor Boback stated it would be a smother transition if there were one committee addressing both the Mound House and the Newton property.

Councilman Meador referred to the motion stating it will be to combine the two CELCAB with the Newton Advisory Committee. Mr. Meador pointed out it was Matt Feeney who suggested looking into this, due to the staff commitment involved and staff time. Mr. Meador stated he was in favor of the motion.

Councilman Shenko also is in favor of the motion and bringing in Ms. Schober as a professional manager of both properties. Mr. Shenko questions whether the CELCAB members are ready to put in the extra efforts. Mr. Shenko pointed out Ms. Schober brought forward ideas as how the two properties could interrelate. Overall, Mr. Shenko believes

it is a good proposal.

Councilman Reynolds stated he had two members of the CELCAB committee who called him stating they had no problems with this, and that it is a good direction. Mr. Reynolds stated another person contacted him from another committee who wanted to remain on the Newton committee.

Mayor Boback stated he had three members from the CELCAB committee who spoke to him about it. Mayor Boback commented on concerns Ms. Schober had regarding some of the folks on the Newton Subcommittee who were not on the CELCAB committee, and wanted to know whether they could be ad-hock members, Mayor Boback stated yes they can; it would streamline the process, and would be better off. Mayor Boback pointed out they can make some of them Ad-Hock committees and still be active in the committee.

Councilman Reynolds stated the Newton committee has been inactive, as they have not met for two years.

**VOTE:** The motion passes 5-0.

Ms. Lambert asked if this would require the amendment of ordinance governing CELCAB.

Mayor Boback referred to the Ms. Dalton for the response.

Ms. Dalton responded no because it only talks about the Subcommittee And the subcommittee was never addressed in the CELCAB ordinance.

Councilman Reynolds states they will still have seven members on the CELCAB committee.

***F. Above Water Marketing Demand Letter.***

Ms. Dalton reported she had taken a strong stance as she outlined on her letter of July 31<sup>st</sup>. Ms. Dalton pointed out the firm has taken the position that the Town owes \$10,000 based on the fact the notice was sent out by Ms. Lambert prior to the event. Ms. Dalton pointed out an estimate on page three of this document stating an hourly fee of \$125 dollars per hour, and an estimate of approximately 200 hours, and stated it being ambiguous. Ms. Dalton read further indication of hours spent for running the festival will increase as needed stating did it mean beyond the schedule that is listed in the document. Ms. Dalton referred to page four which states PR March \$5,000, April \$5,000 festival PR and noted that is where the \$10, 000 came from. Ms. Dalton stated it appears to be estimate based

upon an hourly rate. Ms. Dalton further noted termination of the agreement by either party must be by 60-days notice, and states there is no statement of what happens in the event it is not a 60-day notice and points out it being an ambiguity of the hourly rate versus the lump sum.

*Mayor Boback opens public comment:*

- Charlotte Lure stated she partnered with Cindy Dobyms in the past. Ms. Lure stated that most of the money incurred was due to advertising expenses which Cindy purchased in advance.

*Mayor Boback closes public comment:*

Councilman Meador referred Ms. Dalton regarding the last paragraph of the agreement stating the party sign below agree to enter into a relationship.

Ms. Dalton replied that is a third point, and stated this is not a contract but only a proposal which was signed. Ms. Dalton stated she was not aware of any unpaid costs.

Ms. Lambert stated that every invoice which was sent was paid. The only request is for April and May above water services for PR, but all other invoices have been paid.

**MOTION:** Councilman Meador made a motion not to pay the above water marketing demand letter. Councilman Reynolds 2<sup>nd</sup> the motion for discussion purposes.

*Discussion:*

Vice Mayor Massucco asked to contact above water, to see whether this matter can be settled out of court; Vice Mayor Massucco stated it is a \$10,000 dollar item, and will probably cost \$20,000 before it is done and would prefer reaching some agreement with them having it settled it out of court.

Councilman Reynolds stated these were extenuating circumstances which any judge would realize with the reforming our situation here at Town Hall. Mr. Reynolds agreed with Ms. Dalton at this being a frivolous law suit. Mr. Reynolds suggested if Council must act, he would prefer Ms. Dalton to handle the situation without it leaving Town Hall.

Ms. Dalton replied yes if we get sued and would be glad to handle it.

Councilman Meador referred to a comment Councilman Reynolds made regarding pennies; Mr. Meador stated the pennies will continue to add up if we keep giving them away. Mr. Meador stated it may be settled out of court, but the motion made is not to write a check to pay the \$10,000 dollars.

Councilman Shenko stated he supports the motion and stated they need to face it as he refers this to being a target on their foreheads, and they have deep pockets. Mr. Shenko stated it would be like sending a message that everyone who writes a letter will get a check. Mr. Shenko referred to the message they sent over a previous litigation they were involved and saved the Town over a million dollars as a result. Mr. Shenko suggested following the advice of Ms. Dalton.

Mayor Boback also agrees they need to send the message they cannot come and ask for money all the time. Mayor Boback doesn't believe that the Town owes this money, based on conversations he had with Ms. Lambert. Mayor Boback also supports the motion.

**VOTE:** The motion passes 4-1, with Vice Mayor Massucco dissenting.

**G. Special Events-**

**1. Sandsculpting Permit and Funding Request**

- Lesley Corcelli chairman of the Sandsculpting Festival Committee.

**MOTION:** Vice Mayor Massucco made a motion to approve the application as written. Councilman Shenko 2<sup>nd</sup> the motion.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

*Discussion:*

Councilman Shenko asked is the Town of Ft. Myers Beach will be one of the names they carve in the sand.

Ms. Corcelli stated absolutely.

Councilman Shenko stated this being a great event and they should sponsor it.

Vice Mayor Massucco stated standing with his motion.

Councilman Reynolds asked if they tried to get the TDC to sponsor the extra needed Trolleys.

Ms. Corcelli stated they were given a special marketing budget.

Councilman Reynolds stated if their merchants who will have business here, will they be bringing any money into this event.

Ms. Corcelli stated based on event budget, the site sponsor is the Holiday Inn, the Outrigger Beach Resort and the Sun Stream which have two properties. They pay sponsorship fees, and the vendors also pay a fee to come in.

Councilman Meador is in support of the motion.

Mayor Boback asked is the Sand Magic Village was a new event.

Ms. Corcelli stated it has been there for four years.

**VOTE:** The motion passes 5-0.

**2. *National Estuaries Day: Monofilament Madness at Mound House.***

- Ms. Terrie Cain resident and also Board member of Keep Your County Beautiful. Ms. Cain pointed out that September begins with Coastal Week which will last until November. Ms. Cain reported the National Estuaries Day is day in which they celebrate the Coast. This involves volunteers to clean up the coast and provide education. Ms. Cain stated they do not request any funding due to their support, but they do request for the event to take place at the Mound House.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Shenko made a motion to approve the request as presented. Vice Mayor Massucco 2<sup>nd</sup> the motion for discussion.

*Discussion:*

Vice Mayor Massucco asked if the residents of the area been informed of the event.

Ms. Corcelli stated not as of yet, but they will be; she also stated the event as being a flux, where there are no full amount of people at the same time. She stated the neighbors are very supportive and get involved in the event. Ms. Corcelli pointed out the National Estuaries Day is an annual event, and has been held every year at the Mound House with exception this year they will be combining the two; National Estuaries Day and Monofilament Madness at Mound House.

Vice Mayor Massucco reiterated making sure the residents are aware of what will be taking place that day; Vice Mayor Massucco suggested sending a letter to notify the residents of the event.

Ms. Corcelli stated she will be happy to visit them.

Councilman Reynolds confirmed with Ms. Corcelli Monofilament Madness Day not being held at the Mound House.

Ms. Corcelli replied no National Estuaries Day has been held there.

Councilman Reynolds pointed out Monofilament being held at the marina, stating the marina would be a more appropriate place for this event to be held as it the place where the fishermen go in and out the waters. Mr. Reynolds questioned why the Monofilament event is not being held at those locations.

Ms. Corcelli spoke of the Mound House being more centrally located hoping the more residents in the center part of the island will be able to access this easier than they do at the south end of the island. Ms. Corcelli stated Mr. Reynolds is correct as the fishermen did start the event.

Councilman Reynolds expresses his concern of not appealing to the people who will be losing more filament than most people. Mr. Reynolds believes they are getting away from that source and they feel very strong about it. Mr. Reynolds also pointed out overloading the use at the Mound House with the traffic and people stating they had promised the residents they would not do so.

Councilman Meador stated his concern is the insurance and if there is coverage for the exposure. He would like to see the event move forward as planed and waive the \$30.00 dollar fee for it.

Councilman Shenko stated they are finally using the Mound House, stating it is a kind of event they need there, and they should have more of them. He states this is a family event, for boaters, they are cleaning the back bay and he is in favor of it.

**VOTE:** The motion passes 5-0.

**H. Temporary Parking Lots.**

- John Gerola resident of the island for 28-years, he owns two business and has a seasonal parking lot. Mr. Gerola requested Council to reinstate the extended operating dates on his seasonal parking lot. Mr. Gerola stated there will be no parking available for the Labor Day Weekend.

*Mayor Boback opens public comment:*

- Norm Primeau stated he is across the street from Mr. Gerola. Stating they have been there since 1984. Mr. Primeau stated they have earned the right to have this parking lot.
- Sandy Suiter resident on Palermo Circle supported Mr. Primeau. She is opposed of the temporary parking situation and stated they should keep the permanent parking lot.

*Mayor Boback closes public comment:*

Mayor Boback confirmed with Mr. Gerola if what he was asking Council was to allow for his parking lot to be open through Labor Day weekend.

Mr. Gerola responded yes and to also allow him to pursue the three year plan under the Parking Regulation.

Mayor Boback stated he would be able to get the permanent parking going through Town Hall.

Councilman Reynolds understood Mr. Gerola was asking to be open until August 15<sup>th</sup>, and then to be open during the Labor Day weekend.

Mr. Gerola stated in the past six years he was allowed to open from August 15<sup>th</sup> until the Labor Day weekend.

**MOTION:** Councilman Reynolds made a motion to allow temporary parking lot to be operated the Labor Day weekend. Vice Mayor Massucco 2<sup>nd</sup> the motion for discussion.

*Discussion:*

Vice Mayor Massucco asked if Mr. Gerola if he has opened his parking lot for Labor Day weekends in the past.

Mr. Gerola replied for the past six years after the Commission approved the variance on the extension yes, but not this year, and is the first time he was not allowed.

Vice Mayor Massucco reiterated he was opened for the past six years.

Mr. Gerola replied yes.

Councilman Reynolds stated he has read the extension regarding seasonal parking lots and pointed out Mr. Gerola has met all the requirements in that aspect. Mr. Reynolds also pointed out the need for his services during that particular weekend. Mr. Reynolds noted many existing parking lots in the area are without permits whereas Mr. Gerola did have one.

Councilman Meador asked if Mr. Gerola is currently operating as a temporary parking lot.

Mr. Gerola replied temporary seasonal parking lot for the last 17-years.

Councilman Meador asked if Mr. Gerola applies each year for a use permit.

Mr. Gerola replied for a renewal permit.

Councilman Meador asked Mr. Gerola, when the eight month of this year would run.

Mr. Gerola stated normally from November 15 through August 15 including the Labor Day weekend which was approved seven years ago by the County Commissioners. Mr. Gerola stated this year Community Development did not recognize the variance stating he had to close down August 15<sup>th</sup>.

Councilman Meador asked Ms. Lambert for the minutes for the previous approval.

Ms. Lambert stated it was given out during the last meeting Mr. Gerola was here.

Councilman Meador stated it was not in the packet for this meeting.

Mr. Gerola pointed out the need to get the cars off the streets in order to get the traffic moving.

Councilman Meador shared his concerns by making one exception then they would have to make other exceptions. Mr. Meador stated the permit period was for November 15<sup>th</sup> through July 15<sup>th</sup>, and stated they will be rewriting the code if they approve this extension.

Councilman Shenko shares the same concern as with Mr. Meador. Mr. Shenko stated this item had been addressed by prior Council and it is written in the Land Development Code stating it does exist. Mr. Shenko pointed out if these parking lots have been operating for 17-years they are in violation as they are only to operate for a period of three years. Mr. Shenko stated if they permit it to go beyond the code, they will be rewriting the code. Mr. Shenko stated they owe it to the people who play by the rules and go through the zoning, land use, buffering etc. Mr. Shenko is unable to support the motion.

Councilman Reynolds stated he will stand by his statement. Mr. Reynolds believes at this particular situation, he believes the need is there for Labor Day and they need the parking space. Mr. Reynolds stated Mr. Gerola has been allowed to operate on Labor Day in the past; Mr. Reynolds would go along with it at this particular time, which is what has as been happening and until they can put their books in order.

Vice Mayor Massucco asked if Mr. Gerola intended to apply for a permanent parking lot.

Mr. Gerola stated he will investigate the feasibility of it, as he does not own the property. Mr. Gerola further stated the property owner is concerned with how it will impact him, with his plans down the road.

Vice Mayor Massucco agrees with the Council members that it is totally unfair to impose a temporary lot.

Ms. Dalton stated she was not aware of any procedures that will allow Council to waive this provision on the Land Development Code. She stated a courtesy extension of one week done by the Town Manager is one thing, but states if the extension for Labor Day were approved, it would be a Ad-Hock waiver; Ms. Dalton doesn't see a procedure in the Land Development Code which will justify this.

Councilman Reynolds referred to Ms. Dalton as this being a one time allowance, stating this would not be breaking anything that has not already been broken for many years.

Councilman Meador replied to Mr. Reynolds as to wanting to follow the kiss-theory as much as possible. Mr. Meador announced he would rather keep it legal, rather than rewriting the code if they approve this.

Ms. Dalton reviewed the update which allowed Mr. Gerola to operate from 9 and 9.5 months November through August, and did not see any permit regarding to operate on Labor Day weekend.

Mr. Gerola replied he asked for an extension seven years ago for one month which was August 15<sup>th</sup>; He states the mayor suggested he stay open for the Labor Day weekend it was agreed upon and has been so for the past six years.

Ms. Dalton reviewed the update which read Mr. Gerola has been given a permit every year from 2001-2004 to operate between 9 and 9.5 months November through August. No documentation was found from 2004-2005 as he could not find a permit. Ms. Dalton reported the records show Mr. Gerola was issued a permit for 2005.

**VOTE:** The motion failed 4-1 with Councilman Reynolds in favor, and Mayor Boback, Vice Mayor Massucco, Councilman Meador and Councilman Shenko dissenting.

***I. Disaster Recovery Assistance Services Service Provider Agreement.***

Mr. Jack Green Pubic Works Director, stated working the contract with Ms. Dalton and Mr. Rockwell and the contract meet all the requirements previously discussed.

Ms. Dalton stated this is their standard Service Provider Agreement with specific provision regarding the NIMS and ICS training.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Vice Mayor Massucco made a motion to accept the Disaster Recovery Assistance Services Service Provider Agreement as written. Councilman Meador 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Shenko stated he is satisfied and on course with this matter.

Vice Mayor Massucco asked about the NIMS compliance and if only applied to Mr. Rockwell or to his workers.

Mr. Green replied Mr. Rockwell having three NIMS compliant individuals on his staff, and emphasized to Vice Mayor Massucco there is no requirement for a contractor to be NIMS compliant.

Ms. Dalton pointed out it is noted on paragraph 4-A in the Disaster Recovery Assistance Services Service contract that all persons or entities whose services are being provided here under to the Town by provider are fully compliant with NIMS requirement.

Councilman Reynolds stated it appears to be a good contract and had no further comments.

Councilman Meador suggested one thing Mr. Green may want to approach to Mr. Rockwell regarding the NIMS is the equipment provided and the way they categorize it by way of capacity. Mr. Meador suggested having the data at hand should they need to call on other resources.

**VOTE:** The motion passes 4-1, with Vice Mayor Massucco, Councilman Reynolds, Councilman Meador and Councilman Shenko in favor, Mayor Boback dissenting.

***I. Resolution for Mound House Restoration Grant Restrictive Covenants.***

Ms. Schober referred to the Resolution which was drafted by Ms. Dalton to adopt a set of restrictive covenants that is a requirement in order to receive the \$349,650 grant to restore the Mound House. Ms. Schober stated these were the same covenants currently recorded with the Clerk of Courts for the pool exhibit grant. Ms. Schober stated these extended covenants would extend it to 2016 giving two additional years. Ms. Schober noted they are the same covenants to the requirements that are in the grant agreement with Florida Communities Trust, and the property is bound by the same requirements.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Vice Mayor Massucco made a motion to accept the Resolution as stated, with revisions. Councilman Shenko 2<sup>nd</sup> the motion for discussion purposes.

*Discussion:*

Councilman Reynolds commented on a long told myth that Indians lived on the Mound House and stated nothing has been really found to that affect, but stated there is a myth about the architecturally significant Caloosa Indian Shell Mound.

Councilman Meador asked Ms. Dalton of the specific changes of the Resolution.

Ms. Dalton stated the subject property in 2004; the intent is the Restrictive Covenants would need to be recorded before the grant would be awarded.

Councilman Meador asked if it was handled that way the last time, or were the Restrictive Covenants attached to the actual grant award as an exhibit to the grant award.

Ms. Schober stated the Restrictive Covenants were filed on September 28 at the Clerk of Courts, and the certification of the copy has to be sent back to the state before executing the grant agreement.

Councilman Meador asked if the specific language for the Restrictive Covenants came from the state; verbatim.

Ms. Dalton stated yes these were in the packet, and further stated these Restrictive Covenants are identical to the ones recorded previously.

Councilman Shenko asked if they are currently in compliance with the Restrictive Covenants or they entering something might be questionable whether we are complying at this time.

Ms. Schober stated the Restrictive Covenants address following the Secretary of interior standards for rehabilitation. Ms. Schober also pointed out the Florida Communities Trust grant requires the Town to have all construction projects reviewed by Historical Division Resources which she notes is done on an ongoing basis.

Councilman Shenko pointed out his concern regarding a change in use with the Land Development Code, and if they were consistent. Mr. Shenko referred to events like the Monofilament Madness and if this could ever be questioned as it is being held there.

Ms. Schober stated the Secretary of Interior Standards deal with rehabilitation projects as well as changes to the archeological site.

Councilman Meador referred to the signature of the document, and questioned if it was set up by owner or by grant recipient. Mr. Meador asked if the Town were to be both.

Ms. Dalton replied yes they would. Ms. Dalton stated not knowing the scenario how the two parties would diverge, but states it does not diverge here.

Councilman Reynolds pointed out the document the owner would be Communities Trust, and they will continue being the owner. The Town is the grant recipient, and it should be stated on the paper.

Ms. Schober pointed out in this case the Town is both the grant recipient and the owner.

**VOTE:** The motion passes 5-0.

***K. Discussion of Town Manager's Letter of Resignation.***

Mayor Boback stated he spoke with two gentlemen in regard to applying for the Town Manager's position. Mayor Boback stated he had no knowledge this would transpire and that time, and is written in the Charter where he couldn't even if he wanted to. Mayor Boback brought this forward to inform everyone in advance.

Ms. Dalton read from Charter Section 4.04B at no point or elected Town Official may serve as a salary person with the Town of Ft. Myers Beach for a period of one year following the expiration of the term for which they were elected.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

*Discussion:*

Councilman Meador stated he requested Ms. Dalton contact Florida Legal Cities to see if they had anyone available for the position "Range Rider," which is basically a city manager in transition looking for temporary placement, and has not gotten an update from Ms. Dalton.

Ms. Dalton stated when she attempted she was told the person from the Florida Legal Cities was in a conference out of town, and did not receive any further update regarding that matter.

Councilman Meador stated they should accept the resignation as they do not have much choice in the matter. Mr. Meador stated his appreciation for

Ms. Lambert offering to stay on for the next 90-days, and the Town and the voters of the Town would be much better served if Ms. Lambert were replaced as quickly as possible.

Councilman Shenko agreed they need to accept the resignation, as they have no choice. Mr. Shenko stated going on the website for the Florida Cities and County Manager Association and found Susan Boyer as one of the managers in transition and is available; Mr. Shenko noted she declined the position due to health issues. Mr. Shenko also mentioned James Patrick Gallagher who indicated he is a manager in transition and is available. Mr. Shenko suggested following Mr. Meador lead in finding a transition manager who is available. Mr. Meador suggested moving forward in finding a suitable replacement.

Vice Mayor Massucco commented on Ms. Lambert's resignation letter and how strong the language was, but Vice Mayor Massucco felt that Council was very unfair and over burden her. Vice Mayor Massucco felt a combination of these responsibilities prompted this letter. Vice Mayor Massucco cautioned Council in being more reasonable with their next Town Manager. Vice Mayor Massucco stated he accepts Ms. Lambert's resignation with regret and states they need to take the necessary steps in finding another Town Manager.

Councilman Reynolds read a memo he presented to the Council. It appear that we as Council members have inadvertently over looked some common courtesies. All of us approved in the hiring of Ms. Lambert to run the Town of Ft. Myers Beach, she has not bee allowed to do so. We had too much advice to offer. Some of that advise come on too strong and may appear as orders. At any given time, either five of us were telling her what to do, how to do it and making continuous demands on her time to get the information doing this, and doing that. Men, we cannot do this. She was hired and given the responsibility of running the Town. Neither of us have the right to interfere with her decisions. She has been doing a great job, but has been overloaded with demands and special request. Although, we may mean well, we are nevertheless out of line when we do that. She must be allowed to call the shots, and if anyone of us do not like it there are procedures to follow. Some of us do not seem to realize that fact and it is past the time that we wake up and recognize that she does not have to respond to each of our whims and request individually on impulse. As a new Town Manger she inherited very difficult situations; employees resigning, one after the other, advertising, interviewing, finding and hiring replacements a lot of tasks, but she did it. Please keep in mind that three Councilmen are spanking new without any experience at all on how a Council really work, two have over two years on the job and the other is just nine month. There are many rules to be followed and many rules have been bent or broken in my

opinion during meeting and in between time. Cumulative, the most rule that has been broken is to our Town Manager, stand back permit that manager to do that intervention. No one in that position will ever satisfy all Councilmen. I suggest that we grin and bear it and allow her to do the job. We must have trust and faith that she and her staff will do the best that they can and for the best of the Town. If we cannot allow her the chance to did our Town out of the hole in which we find ourselves, then yes we should accept her resignation because no one can operate out of the micromanagement of five different people. Council can search the nation and I will guarantee that you will not find anyone who can run this Town or any other Town under those circumstances. We owe it to her and to the staff and the residents and give this Town Manager the chance to operate if she will consider that. With that said, allow me to state there some decisions that have been made that probably none of us will agree, but we must stop our action and in our interference. Don't blame the Town Manager, she is making the decisions as she sees them. Let us all begin by following procedure. If you believe strongly enough that something is not right put it on the agenda, and have it discussed before Council. This is the one and only way to deal with a situation. One or two Councilmen can do anything except, cause trouble and frustration. It takes three Councilmen to establish the recommend changes. The is the manner in which we need to assist this Town Manager or any other Town Manager if we feel that things are not going in the direction we desire. Especially, if it is not in the direction that is in benefit to the Town. As I see it this encroachment on her responsibilities did not just suddenly happen, and believe it has been happening for a while; this is history and we cannot change it however, we can become more aware of future behavior and actions. I only wish to firmly impress upon each Councilmen the importance knowing and practicing the general and specific rules that have be written for specific direction for running Council. Mr. Reynolds continued with the procedures which should be practice by Council.

Mayor Boback thanked Mr. Reynolds on his presentation. Mayor Boback also referred to Mr. Reynolds memo stating that he made a considerable amount of innuendos and assumptions on what other Councilmen have done and believes it is totally uncalled for. Mayor Boback regarded to the agenda at hand and agrees that Ms. Lambert was placed in a difficult position when she took over as Town Manger. Mayor Boback referred to the hurricane plan, the NIMS and the new budget with a new format. Mayor Boback doesn't question Ms. Lambert was under a lot of pressure. Mayor Boback stated Ms. Lambert has done an admirable job in the time, and what she had to work with and the pressure she worked under. Mayor Boback stated you can't un-ring a bell, and feels Ms. Lambert was angry and frustrated when she wrote the letter but states Ms. Lambert should have reflected a little more before writing the letter. Mayor

Boback states he would also have to accept Ms. Lambert resignation and wishes Ms. Lambert well on her future endeavors.

Councilman Meador began by apologizing to Mayor Boback and Councilman Reynolds for his interruption and was admits it was uncalled for. However, states the need to find someone to sit as interim Town Manager while they look for a permanent replacement. Mr. Meador Suggested in their future search for Town Manager they would not Consider at all hiring from within pointing out that it is a tough position to be placed as it take them out of position of being a friend and coworker, and it places them in a position of being the CEO. Mr. Meador suggested finding someone with current Florida assistant Town Manager in depth, and stated Ms. Lambert did as much as she could within her capabilities, they are still in need of someone to who has the ability to fulfill the task completely.

Councilman Shenko stated they need to go forward, and agrees that Ms. Lambert was put in a very difficult position however, believes she did the best of her abilities. Mr. Shenko stated they owe it to the Town in doing a diligent search in bringing someone who does have Florida experience, and to do it right as our manager is in transition. Mr. Shenko suggested the Head Hunters as the professional company to do the search for them.

Vice Mayor Massucco had no further comments.

Councilman Reynolds stated he will stand by his statement and would not change anything. Mr. Reynolds stated for whatever happens he wished Ms. Lambert the best.

Ms. Dalton stated it may be appropriate to accept the resignation and a vote.

Mayor Boback pointed out when then talk about Head Hunters, they will be looking at a lot of money stating \$20,000 up front.

**MOTION:** Councilman made a motion to accept wholeheartedly the resignation of Ms. Lambert. Councilman Shenko 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 4-1 with Councilman Reynolds dissenting.

Mayor Boback asked who will direct to look into the Range Rider if that would be the direction they are going.

**MOTION:** Councilman Shenko made a motion to direct Ms. Dalton to Look into managers in transition through the Florida Cities & County Managers Associations, and also to solicit the information regarding the Head Hunters and to bring the information back to Council at the next scheduled meeting.

Ms. Dalton announced it would be September 5<sup>th</sup>.

Councilman Meador suggested Mr. Shenko to amend his motion to include and contact Florida Legal Cities to see if they have a Range Rider available.

**AMENDED MOTION:** Councilman Shenko amended his motion to include the Florida Legal Cities if they have someone available. Councilman Meador 2<sup>nd</sup> the motion.

*Discussion:*

Vice Mayor Massucco had no comments.

Councilman Reynolds stated he read the paper regarding the Head Hunters, and suggested giving them a try.

Councilman Meador suggested to Ms. Dalton contacting Ms. Susan Boyer if she is still available.

Ms. Dalton stated her name is on the website, but did not know of her specific availability.

Councilman Meador referred to the reason given for declining was a family health matter, which may be resolved. Mr. Meador suggested following up with this as she is the number two candidate.

**AMENDED MOTION:** Councilman Shenko amended his motion to indicate the first contact should be Susan Boyer, and see if she is available if not then go to Head Hunter, or Florida Legal Cities and/or City County Manager Association. Councilman Meador amended his 2<sup>nd</sup>.

Mayor Boback suggested getting different proposals if they are going to use a Head Hunter.

Ms. Dalton stated she would contact the Mercer Group, as well as local Government to see what Head Hunters firms has had good experiences. Ms. Dalton stated if Council wanted to give Ms. Dalton parameters of this conversation with Ms. Boyer.

Vice Mayor Massucco stated presenting the same proposition to Ms. Boyer as they previously did.

Councilman Reynolds agreed with the direction of the Head Hunters, especially attempting with someone who rejected the position.

**VOTE:** The motion passes 4-1 with Councilman Reynolds dissenting.

Ms. Dalton questioned what parameters Council wishes to address for Susan Boyer if she were to take an interim position and the financial parameters. Ms. Dalton pointed out the Vice Mayor has addressed the financial parameters.

Councilman Meador stated having no problems starting where they left off the last time, and has no problems to have her step on an interim position and would be to her advantage for the permanent post.

Councilman Shenko agreed with Mr. Meador.

Councilman Reynolds had no further comment.

Vice Mayor Massucco had no further comment.

***L. Request for Sunshine Seminar.***

**MOTION:** Councilman Reynolds made a motion for Council to request that our Town Manager to follow through in setting up a Sunshine Seminar for all Council members.

**VOTE:** The motion dies for lack of a 2<sup>nd</sup>.

Councilman Reynolds stated he couldn't believe having four Councilmen on Council not wanting to take direction on a seminar and feels at lost.

***M. Sand Paper Request for Advertising.***

Ms. Lambert referred to the packet and the reason for not pursuing the advertisement.

*Mayor Boback opens public comment:*

- Paul Connor resident of 2915 Estero Boulevard stated this was a request to reinstate local notices for governmental action by this Council in both of the local papers. Mr. Connor stated there have been instances where the notices were failed to make the news press. Mr.

Connor requested for Council to reconsider, and if they decide not to put into both the local papers, that the Council goes back to their original decision of not using either one them at all.

*Mayor Boback closes public comment:*

**MOTION:** Vice Mayor Massucco made a motion to resume our older system of advertising in both local news papers. Councilman Meador 2<sup>nd</sup> the motion for purposes of discussion.

*Discussion:*

Vice Mayor Massucco stated they have \$50,000., dollars in their budget for the Town's advertising. Vice Mayor Massucco suggested getting the message out to the people in the papers they read.

Councilman Meador stated they have three local papers the Observer, The Beach Bulletin and the Sand Paper, and suggested if Mr. Massucco would amend his motion to include all three papers he would like to see their legal publication in the local papers. Mr. Meador stated they can set a schedule in which the papers can work along with us.

**AMENDED MOTION:** Vice Mayor Massucco amended his motion to include all three local papers. Councilman Meador amended his 2<sup>nd</sup>.

Councilman Reynolds referred to an ad which was put in the Observer. At the same time the Sand paper charged \$380 for ½ page unauthorized ad. Mr. Reynolds commented on some payments made to the Sand paper in the amount of \$302.00 which the Town refused to pay because they were unauthorized.

Councilman Shenko pointed out that they should have ads in all papers, or in no papers. Mr. Shenko's only concern about running the ad in three different papers would be that there would be chances where one of the papers giving out the wrong information, in which will question whether the Council meeting was held properly. Mr. Shenko asked the motion maker to amend his motion indicating that it is authorized by the Council, at the Town Managers discretion.

**AMENDED MOTION:** Vice Mayor Massucco amended his motion, and getting this behind us. Mr. Massucco stated having an agreement between all three parties.

Ms. Lambert stated the ad was put into the Observer when the website went down, and was paid for and was not a PSA. Ms. Lambert recommends that it should be a PSA.

Mayor Boback asked if the Observer is currently running ads.

Ms. Lambert stated they discontinued it when the website was up again, as they advertise on the website, and they continue to use the News Press.

Mayor Boback stated it is also in the Library and Post Office as well.

Ms. Lambert stated yes.

Mayor Boback pointed out the issue here is to whether to have advertising, the issues were not about what bills were paid or not paid. Mayor Boback stated the expenses of having ads run in three different papers.

Councilman Meador stated it is a policy issue as to how they want to get the notifications out to the citizens. Mr. Meador stated if this is a policy decision he was not sure he understood Mr. Shenko's motion.

Councilman Shenko stated the Town Manager has the ultimate decision on what is run, the Council has a policy which they would like to see in which a cost effective advertisement program in as many papers we are able to put in.

Councilman Meador suggested getting proposals from the papers in regard to cost. Mr. Meador stated not wanting to put the policy issue in the hands of the Town Manager, and would prefer to put it on hold. So we can solve Mr. Shenko's issues with the cost.

Mayor Boback suggested getting a format of what to put into the ad, how much of an ad do they want. Mayor Boback stated getting the size and the cost before making the decision. Mayor Boback stated providing the Town Manager more information as to what they want in the ad.

Councilman Meador stated the required legal meeting notice.

Michelle Mayher stated the New Press puts out a notice for regular Council meeting, date and time, the agenda available for Town Hall. Ms. Mayher stated only the public hearing, and ordinances are in the notices. Ms. Mayher stated the Observer has recently ran their PSA, due to the down website. She also pointed out the Bulletin was also running ads piggy back right along with the Observer. Ms. Mayher offered getting more information regarding the cost of ads, per column and also pointed she has some experience in advertising in a news paper in Lee County.

Mayor Boback stated this working for him.

Councilman Shenko stated that was his problem having the policy right now, and the policy is to advertise in the news press. Mr. Shenko stated he was unaware they were not following the policy.

Mayor Boback suggested getting the information with some samples, for Council to see.

Councilman Reynolds asked Ms. Mayher the size of these ads, and for how many days are they put into the News Press.

Ms. Mayher replied the News Press is a legal ad which is a line ad, not as a display ad. Ms. Mayher stated the length of the ad is determined by its content, and that the content is determined by the meeting agenda will be.

Councilman Reynolds asked whether she can get an annual contract on that.

Ms. Mayher stated she has not done so, but she can certainly look into it.

Vice Mayor Massucco stated they only need to put into the ad what is required by law.

Councilman Reynolds stated having a problem doing business with a newspaper that is anti Town, anti Council, and doesn't cooperate with Town staff.

Ms. Dalton stated if Council want to hold the matter, or does the motion maker want to withdraw the motion and it can be done fresh at another meeting when we have further information.

Mayor Boback stated the motion maker will withdraw his motion and this will be put on the next meeting agenda.

Councilman Meador agreed to withdraw his 2<sup>nd</sup>.

## **VI. COUNCIL MEMBERS ITEMS AND REPORTS.**

Councilman Shenko thanked Mr. Murphy and Mr. Green for putting all their efforts in the budget meeting they had. Mr. Shenko commented on the MPO meeting he attended and stated there was a controversy on the Park & Ride, and notes it did not involve Ft. Myers Beach. Mr. Shenko stated he voted yes, and Sanibel is not happy to be included in the Park & Ride. Mr. Shenko spoke about getting a brand new Estero Boulevard with bike paths, sewers and all the amenities, and negotiate a higher percentage of the gas tax. Mr. Shenko pointed out Lee County has not written off on doing that as they have done so for years, but it was done with Cape Coral.

Vice Mayor Massucco referred to the joint meeting with the Lee County commissioners, and stated part of the conditions were Estero Boulevard. Vice Mayor Massucco stated that Public Safety Taskforce provided a picture which was worth a thousand words.

Councilman Reynolds commented to Vice Mayor Massucco regarding the paper. Mr. Reynolds thanked Ms. Lambert for her efforts in the position of Town Manager. Mr. Reynolds shared his concerns regarding the road, and believes that county is not going to give them extra funds in order to take care of that road. Mr. Reynolds stated he hopes the Park & Ride doesn't come into play with free Trolleys.

Councilman Meador commented about the Park & Ride and the traffic stating that the traffic is not so pretty but they have a lot to be thankful for.

Mayor Boback asked if there are any changes regarding the Attorney General's opinion Ms. Dalton was getting.

Councilman Reynolds commented regarding the runoff of the April election and stated he and Vice Mayor will be one month short of a full 3-year term.

Mayor Boback mentioned a couple of issues which were brought up at the meeting with the County. Mayor Boback asked Ms. Lambert if she has any information by Florida Department of Transportation regarding the bridge.

Ms. Lambert stated she was still trying to contact the contractor and locate his report, but they were working on it.

Mayor Boback suggested this might be something for the TMA to look into this to follow up on this. Mayor Boback referred to the issue on the Beach Nourishment. He suggested giving this to the Marine Resources Taskforce so they can help gather the information that is needed in order to move forward with the county as well.

Councilman Meador stated they made need some clarification, and stated Lee County saying the sand can be wherever you want it, but if it is moved they will lose \$ .6 million of federal funding.

Mayor Boback stated getting the Marine Resources Taskforces help engaging them where to move the sand. Mayor Boback stated the Taskforce is to help take some of the workload off of the staff, and have them work together with the staff.

Mayor Boback asked about Salty Sam's.

Ms. Dalton stated that Mr. Green had spoken last the auditor and they should be receiving a report within a week.

Mayor Boback asked Councilman Shenko if he was talking about the Lee Tran coming back to the Town again, and asked if it was the same as the advisory board.

Councilman Shenko stated the advisory Board is the advisory group for the Lee County Transit Authority. Mr. Shenko pointed out it was presented to the Council by the County Commission, is different from the way it is written in the MPO's Plan. Mr. Shenko stated they will come in to make a presentation regarding this.

Mayor Boback asked if Council wanted to set a date for the Water Utility meeting, as they have been setting it off and they need to address the matter.

Councilman Shenko pointed out they were uninsured until he presented the question, and states they may be personally liable for acts on the Water Utility, and that Mr. Shenko is waiting for an opinion from the attorney regarding their protection under the Town's umbrella.

Mayor Boback stated Mr. Green had serious issues concerning the Water Utility which need to be addressed, and asked if they had any ideas.

Ms. Dalton stated this was addressed at the beginning of the meeting, stating having something for the next meeting which is September 5<sup>th</sup>.

Councilman Meador suggested if they are insured, four Council members will make a quorum.

Ms. Dalton confirmed they are insured but they need to close the loop, and stated Mr. Shenko concerns were the amount of the insurance as well as the immunity issue. Councilman Meador stated he understood.

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

Ms. Lambert reported none.

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

Ms. Dalton reminded Council of a proceeding they are involved under the Florida Land Use and Environmental Dispute Resolution Act, known as "FLUEDRA"

Ms. Dalton reported it involved Big Johns Boardwalk Eatery and is scheduled for August 31<sup>st</sup> at 9:30 AM, stating it is Hybrid mediation and Special Magistrate meeting. Ms. Dalton pointed out at the previous meeting, Council did not have a representative to attend the proceeding, and suggested for one member of Council to attend.

Mayor Boback asked if any Council member wishes to attend the meeting. Vice Mayor Massucco stated he will attend the FLUEDRA meeting.

**IX. FINAL PUBLIC COMMENT: Public comment at this time is heard on any item and/or concern.**

*Mayor Boback opens public comment:*

- Doris Coback Ft. Myers Beach noted for years she would come to Town Hall regarding any questions she had, and was always attended by Ms. Lambert who gave the answers. Ms. Coback thanked Ms. Lambert for her grace and her intelligence she has given the community and stated her leaving is their loss. Ms. Coback wished Ms. Lambert well.
- Dennis Coback spoke in reinforcement of his wife's statement regarding Ms. Lambert and gave his thanks to her as well.
- Lee Melsek spoke regarding the newspaper and why the Town would spend money on advertising when the Observer was giving the same advertisement for free.

*Mayor Boback closes public comment:*

**X. Adjournment.**

**MOTION:** Councilman Shenko made a motion to adjourn the meeting. Council Meador 2<sup>nd</sup> the motion.

**VOTE:** The meeting was adjourned at 10:43 PM.

*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](http://www.fmbeach.org).*

Respectfully submitted,

Debbie Cardoso