

**FORT MYERS BEACH  
TOWN COUNCIL**

**Town Hall- Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Fl 33931  
November 13, 2006**

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<b>AGENDA</b>	<b>Regular Town Council Meeting</b>	<b>3:00 PM</b>
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**I. CALL TO ORDER**

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

**Absent:** Councilman Garr Reynolds

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

**II. PLEDGE OF ALLEGIANCE:**

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

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

Mayor Boback announced that Councilman Reynolds entered the building.

**IV. CONSENT AGENDA**

- A. Approval of Minutes October 16, 2006**
- B. Approval of Minutes October 23, 2006**
- C. Approval of Minutes October 31, 2006**

**MOTION:** Vice Mayor Massucco made a motion to approve the minutes of October 16th, 23<sup>rd</sup>, and 31<sup>st</sup> of 2006. Councilman Meador 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Shenko pointed out that he did not attend the October 31<sup>st</sup> meeting, and would like it to be noted correctly.

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

**V. ADMINISTRATIVE AGENDA**

**A. *Public Hearing-VAR2006-00041-Leonardo Arms Covered Parking.***

Mayor Boback declared the public hearing open, and asked if any Council members had any ex-parte communication with the property owners or any other person regarding this case.

Council members expressed they had no ex-parte.

Mayor Boback reported he has filed a conflict of interest with the Town Attorney.

Ms. Dalton read form 8-B regarding the conflict of interest. Ms. Dalton announced that she will file the document with Town Clerk and added that Mayor Boback will not be voting on this item.

Mayor Boback directed Ms. Dalton to swear in those testifying, and added that Vice Mayor Massucco will be handling the meeting.

Vice Mayor Massucco ask for the applicant to present first.

Mayor Boback announced that he and Ms. Betty Lopreski will be representing the applicant. Mayor Boback added the contractor could not attend the meeting, but points out that all necessary materials have been submitted.

Ms. Dalton reported that the applicant will be resting on the materials which have been previously submitted to the Town, and Ms. Dalton suggested if there any questions that this would be the appropriate time in doing so.

Ms. Elizabeth Lopreski announced she is a member of the Board of Leonardo Arms, and Treasurer.

Councilman Meador questioned Ms. Lopreski if the parking structure is going to be in the identical location.

Ms. Lopreski responded yes.

Councilman Meador questioned if this would be of the same construction type.

Ms. Lopreski responded no; she added that it will be out of cement.

Councilman Reynolds reiterated that the parking structure is going to be in the same location. Mr. Reynolds questioned if there will be extra parking spaces along the wall that will not be covered.

Ms. Lopreski responded that there will be guest spots at the far end. Ms. Lopreski added towards Estero, there will be several guest spots that will not be covered.

Vice Mayor Massucco directed staff to proceed.

Lisa Hines, Senior Planner with Lee County, Community Development representing the Town of Ft. Myers Beach. Ms. Heinz pointed out some corrections which needed to be made on the Resolution on page one, second paragraph regarding the property address 7400 Estero Blvd. Ms. Heinz announced staff is approval of the variance request to permit a 7-foot side setback in lieu of the required 20-foot side setback as required by the Town of Ft. Myers Beach Land Development Code. Ms. Heinz reported the covered structure will be in compliance with building standards and codes. Ms. Heinz reports the property complies with the Comprehensive Plan of Ft. Myers Beach. Ms. Heinz reported that there are four conditions outlined in the Resolution, which staff is recommending approval.

*Vice Mayor Massucco opens public comment:*

- No public comment was given.

*Vice Mayor Massucco closes public comment:*

**MOTION:** Vice Mayor Massucco made a motion to accept the Resolution with the four conditions set forth in Resolution 06-24 as presented. Councilman Shenko 2<sup>nd</sup> the motion.

Ms. Dalton pointed out to Vice Mayor Massucco if his motion was to approve the Variance. Ms. Dalton reported by approving the variance one, “are exceptional” two, the request “is”; three, exceptional condition “are not” four the variance recommended “is”; the granting of the variance “will not” be injurious to the neighborhood. Number five, circumstances for which the variance is sought “are not” general in nature.

*Discussion:*

None was given.

**VOTE:** The motion passes 4-0; with Mayor Boback abstaining.

Ms. Dalton reported the Resolution presented to Council indicates it would be signed by the Mayor, and Ms. Dalton will modify it to state it will be signed by Vice Mayor Massucco.

***B. Public Hearing-DCI2005-00038- Shamrock Beach Resort***

Mayor Boback declared the public hearing open, and asked if any Council members had any ex-parte communication with the property owners or any other person regarding this case.

Councilman Meador responded that he is familiar with the establishment, and is a patron. Mr. Meador reports he did represent a prior owner, but reports he does not represent the current owners of the property. Mr. Meador reports he has had several discussions with Mr. VonPlinsky, but nothing of substance.

Councilman Shenko reported he also represented the prior owner, prior to Councilman Meador representing the prior owner, stating that was quite some time ago, and has had no discussion with anyone regarding this development.

Vice Mayor Massucco responded that he has had no ex-parte communications.

Councilman Reynolds responded that he has had no ex-parte communications.

Mayor Boback announced that he has visited the site, and also has been a patron; Mayor Boback reported that he has not spoken to anyone regarding this hearing.

Mayor Boback directed Ms. Dalton to swear in those testifying.

Mr. Mike VonPlinsky, owner of the Shamrock Pub. Mr. VonPlinsky discussed with Council the proposal to redevelop the existing structure into the Beach Deli Company.

Ms. Tracy Bean; Certified Planner with Bean, Whitaker, Lutz and Kareh represents Mr. VonPlinsky. She is presenting his application to rezone the Shamrock Irish Pub from Commercial Boulevard and Residential Conservation, to a Commercial Planned Development. Ms. Bean reviewed the packed with Council and reports their intentions are to redevelop the ground floor commercial area into a Deli type retail market with four residential units on the second and third floors. Ms. Bean reported the

LPA's Resolution granted approval of this request. Ms. Bean reports they are asking for six parking spaces, for the commercial use, one space for storage and one bike rack which will count for one space giving a total of seven spaces for the commercial use. Ms. Bean reported there will be an additional five spaces for the residential use. She pointed out a clarification which was left out of the LPA's Resolution, which was a dumpster pad with a five-foot side setback. Condition # five, where the applicant agrees to provide pervious parking. Ms. Bean read deviation section 342017A of the Ft. Myers Beach Land Development Code requirement that high turnover parking lots be paved to allow a pervious surface for enhanced drainage. Ms. Bean further read section 34 regarding the pervious parking area; See Attached. Ms. Bean referred to condition # six where the applicant agrees with the condition to partner with the Town for future improvement in the right-a-way. Ms. Bean reported the applicant would like to have language added that limits it to the frontage of his property along Delmar and Estero. Ms. Bean requested Council to consider the clarification to the conditions and deviation she has presented. Ms. Bean reports the agreement to conditions provided in the staff report verifies the LDC and policy of the Comp Plan have been met. Ms. Bean added the development meets or exceeds all performance in location and standards, the principle structure as proposed meets the setback of the Commercial Boulevard district; the mix use meets the objective of the Boulevard Land Use, and as a planned development application it meets the requirement for expansion of existing Commercial uses.

Vice Mayor Massucco questioned Ms. Bean if the deviation has been approved by staff or the LPA?

Ms. Bean indicated that it has not been approved by Lee County staff. Ms. Bean also indicated that one of the conditions they were agreeing upon was for pervious parking, which was recommended by Town staff. She noted that due to the high overturn on parking this would require a deviation for an alternative surface. Ms. Bean was asking Council to accept this deviation, or eliminating the deviation altogether as it is Town staff who believes it is a policy they want to pursue.

Vice Mayor Massucco responded if this should not have been part of the Resolution.

Ms. Bean responded if they had to have the four, it will be four deviations.

Vice Mayor Massucco reviewed the recommendations made by the LPA, stating they had recommended 13 conditions and three deviations; pointing out that this would be the fourth. Vice Mayor Massucco referred

to page 10 of 11, and pointed out that staff had recommended approval for two of the requested deviations.

Ms. Bean reviewed the report made by staff, she noted that there were three deviations which were approved by staff; noted pages 3 and 4 of 11.

Vice Mayor Massucco responded that it is contradicting on page 10 of 11, where it also states that staff is approving two of the requested deviations.

Ms. Dalton responded that they can go back and check it. Ms. Dalton noted as it was set out on the Resolution of the LPA, it was two that were approved by the LPA not three.

Councilman Meador pointed out the following sentences referred to specific deviations requested for bar and cocktail lounge operation. Mr. Meador pointed out the following sentences is referring to specific additional deviations, and were not the ones that they were currently discussing.

Ms. Bean reported that they revised their Master Concept Plan taking out the bar and cocktail lounge as they still had a deviation for parking.

Vice Mayor Massucco questioned one parking spot to be used as a bicycle rack and asked Mr. Murphy if that was a standard procedure.

Mr. Murphy responded that it is provided for in the Land Development Code.

Vice Mayor Massucco expressed that he was happy to see the project moving forward.

Councilman Reynolds asked Ms. Bean to calculate 85x100 asking how many square feet are in it.

Ms. Bean responded 8500.

Councilman Reynolds referred to one that was 75x 100 questioning why it is 11,000 or over 11,000 square feet.

Ms. Bean pointed out that it was 110, stating that there are four lots.

Councilman Reynolds pointed out there is 75 feet minimum lot width, minimum and depth 100 feet.

Ms. Bean responded that was a minimum requirement for site regulations.

Councilman Reynolds questioned again how they got 12,000 square feet on a 75x100 lot.

Ms. Bean's response regarded to the site development regulations.

Councilman Reynolds questioned the size of the lot.

Ms. Bean responded 87.82 x 12811, stating that is the frontage; the east long side is 160. The acreage is .27 acres and square footage according to the survey is 11,780 more or less.

Councilman Reynolds questioned how far the setback is from Estero and Delmar.

Ms. Bean responded from Delmar the setback is 10 feet, and from Estero the setback is 10 feet, and are the minimal requirements.

Ms. Bean reported the water management being in the back and sides, and on the Delmar side. Ms. Bean noted that there will not be any swales.

Mr. Rod Ashmore with RK Design Architect referred to the two units as the pre-disaster build back which were maximized to 456 square feet. Mr. Ashmore noted these would be on the second level towards the back of the deli. Mr. Ashmore reviewed with Councilman Reynolds the Master Concept Plan for further explain.

Councilman Reynolds questioned Mr. Ashmore why was the square footage of the third and second floor intermingled.

Mr. Ashmore noted due to the shape of the building it is not conventional, with many angles, stating that they had redesigned it three times to maximize the building size.

Councilman Reynolds expressed the deviation currently being presented to Council should have gone through staff, and County.

Councilman Meador had no questions for the applicant.

Councilman Shenko referred to the 2,700 square feet, and 624 square feet is going to be used for storage. Mr. Shenko questioned if there would be a problem with the developer to have that as a condition of the 2,700 square feet 600 of it to be for storage, and points out that would eliminate two of the parking space problem.

Ms. Bean responded that the storage was included in the commercial count, but indicated due to the nature of the business they do require quite a bit of storage.

Mr. VonPlinsky reported they have addressed three different categories of commercial space; storage, retail and deli. Mr. VonPlinsky pointed out that parking plays the entire site. Mr. VonPlinsky further reported that they have done the most they could to minimize the parking deviation with the commercial space.

Councilman Shenko referred to the roof deck questioning if that was only for the residential use.

Ms. Bean responded that it is not a roof deck.

Mr. Ashmore reported that this is for maintenance use and directed to the Master Concept Plan to further explain.

Councilman Shenko questioned if there would be any problem with the condition that the outside access of the roof be for residential and/or maintenance purposes.

Mr. Ashmore responded that he didn't see a problem with that.

Councilman Shenko referred to the configuration of the three bedroom units and expressed his concern regarding the bedroom upstairs which has a door, stating that it can be considered as a lock off unit.

Mr. Ashmore responded every master bedroom has a door used as for privacy purposes.

Councilman Shenko referred to the water retention stating that it is on the north side, and asked Ms. Bean if they would consider including the north side as part of working with the Town along with the street frontage.

Ms. Bean responded that they can look into that. She did point out they have not done any engineering studies, but admits it has been suggested by Mr. Murphy.

Mayor Boback referred to the spiral staircase which leads to the roof. Mayor Boback questioned if this also allowed for both units to gain access to the spiral staircase.

Ms. Bean responded that was correct.

Mayor Boback pointed out if the area of the roof could be closed off to the residents, and have access use only for maintenance purposes; in order to avoid it being used for sunning and avoiding possible risks of someone falling.

Mr. Ashmore acknowledged the concerns and suggested putting a railing across at 42 inches tall.

Mayor Boback questioned what the retail consists of.

Mr. VonPlinsky responded their intention is having a gourmet type of deli, including fine wine, breads, cheese, etc.

Mayor Boback questioned if they had any intention of having tables set at the retail side of the deli.

Mr. VonPlinsky responded that they are strictly regulated to what is in a deli proceeding and the retail.

Mayor Boback directed staff to proceed with their report.

Mr. Josh Philpot reported the request is to rezone approximately 11,800 square feet from Commercial Boulevard and Residential Conservation to Commercial Planned Development. Mr. Philpot reports the applicant has requested rezoning to permit both commercial and residential uses on the same property. Mr. Philpot noted with the proposed development the Shamrock Pub will be eliminated with a construction of 2,700 square foot convenience food and beverage store including a 540 square foot deli. Mr. Philpot reviewed with Council the uses of this property and the hours of operations will be limited between 10:00 AM to 10:00 PM, Monday through Sunday. Mr. Philpot reviewed the deviations with Council, and noted that they are recommending approval with conditions and finds the proposed development as conditioned will be compatible with surrounding uses and is consistent with the Town of Ft. Myers Beach Comprehensive Plan.

Mayor Boback proceeded with questions for staff by Council.

Councilman Reynolds questioned Mr. Murphy if there were any partnering with the development.

Mr. Murphy responded they were not partnering with the developer, but they were asking the developer to partner with them. Mr. Murphy further explained to Councilman Reynolds by doing this may be an opportunity to utilize the same engineers in order to save some money.

Councilman Reynolds questioned if this will affect anything that they would be doing on their own.

Mr. Murphy responded their intention is to improve the storm water and save costs.

Councilman Reynolds questioned Mr. Philpot regarding selling alcohol in a deli setting.

Mr. Philpot responded that this is not uncommon in conjunction with a retail establishment such as the request today.

Councilman Reynolds questioned if any of Mr. Philpot's Senior Planners could provide some more insight as to that question.

Mr. Philpot introduced Nettie Richardson Principle Planner.

Ms. Richardson responded that this request is not an unusual request with retail, pointing out the subject use has previously been a bar with consumption on premises. Ms. Richardson noted that there not many here on the island.

Councilman Reynolds questioned if this was a café or a restaurant.

Ms. Richardson responded that this is a deli that provides sandwiches and beer or wine.

Councilman Reynolds questioned Ms. Richardson is she saw any conflicts of having children ages 10 or 11, exposed to a setting where there is a bar and people are drinking.

Ms. Richardson responded that the drinking on the premises are to be in conjunction with the food service, pointing out is it not a bar atmosphere and their number one feature is the deli.

Councilman Reynolds questioned what is the applicant going to do about the 4-COP.

Mr. VonPlinsky responded that they are beer and wine only and they do not serve hard liquor.

Councilman Reynolds expressed that he was disappointed that Lee County would permit to have this type of an establishment, and would be more disappointed if Ft. Myers Beach allows it.

Councilman Reynolds referred to the designs of the rooms stating the way there are designed it appears the residents cannot get into the other units.

Mr. VonPlinsky reports the rear master suit of the second floor is connected to the spiral staircase which goes into the third floor. He also indicated that there are sliding glass door which opens to the bedrooms for fire code.

Councilman Meador questioned if sunning on the roof top is prohibited by code.

Mr. Philpot responded that the use of the roof top is limited as proposed by the applicant, and points out that they have agreed to condition include the use of that would be for maintenance and the residents use noting that there is a limit in the square footage.

Mayor Boback pointed out that they have agreed to lock off this area and it use limited to maintenance only.

Councilman Meador pointed out that this was not in the Resolution and that it had not been voted on yet.

Councilman Meador referred to other water management on the property on the northern side.

Mr. Philpot responded that was correct stating as part of the buffer they can use the ground area to handle water management.

Councilman Meador also questioned the units have proposed to them constitute a lock off. Mr. Meador asked if this can be addressed and if Council approves the Resolution as proposed to them today, this would not necessarily mean they are approving potential lock off units.

Mr. Philpot responded that that will be reviewed during the building permit. Mr. Philpot pointed out as it is conditioned in the Resolution it limits it to four dwelling units and states that would not permit for a lock off.

Councilman Meador referred to the deviation number three and four, and questioned if staff did not see any problem with those deviations.

Councilman Shenko referred to deviation four; pervious parking. Mr. Shenko questioned if it were possible they may be able to pick up the two additional parking spaces.

Mr. Murphy responded that it is possible, but that they would not know until they do the storm water calculations.

Mayor Boback pointed out that it appeared the applicant previously applied for a bar and cocktail lounge instead of the deli.

Mr. Philpot responded that the applicant did apply for that, but that staff did not feel it was appropriate and they denied the request. He noted the requested was amended to include the convenience food and beverage store and eliminate the bar.

Mayor Boback pointed out he was concerned due to there will be a considerable difference between a restaurant, lounge or cocktail bar as far as a deli.

Mayor Boback referred to no outdoor seating or entertainment, and questioned if this would allow for indoor entertainment.

Mr. Philpot responded that it is nonspecific and does not preclude it, stating that yes it would allow it.

Vice Mayor Massucco questioned if it were unusual to have a COP in building with residential units.

Mr. Philpot responded somewhat, but points out due to the mixed use development, it would not be that odd.

Vice Mayor Massucco expressed looking forward to future land use cases for pervious pavement requirement.

*Mayor Boback opens public comment:*

- Nancy Van Oyen resident expressed she was very happy to see the Shamrock take a turn for improvement, and is looking forward to seeing it move forward.
- Dian Eisenhower resident also expressed that this is going to be a good asset to the community.
- Angel Sinclair resident reports the excitement in making the change.
- Beverly Grady read a note which was written by Chris Loffreno; See attached.

*Mayor Boback closes public comment:*

Mayor Boback asked if Council had any further questions.

Vice Mayor Boback referred to the name of the deli “Beach Deli Co,” and the building was going to be called the “ Shamrock Beach Resort.”

Mr. VonPlinsky responded that he was not sure as to what name he was going to give for the Shamrock. Mr. VonPlinsky did however; confirm the deli will be the Beach Deli Co.

Councilman Reynolds announced that he was pleased see that there are efforts being made to changing the development, but expressed that he was not in favor for approval due to alcohol is going to be used in a public deli and beer. Mr. Reynolds also expressed that he is unable to approve a presentation which was not previously submitted and approved by our planners.

Councilman Meador pointed out that there is no motion on the floor. Councilman Meador added he had no further questions.

Mayor Boback also expressed no further questions, and added if the applicant had any other comments to do so at this time.

Mr. VonPlinsky pointed out that most of the questions were asked and answered, but added that he believes what they are requesting can be realized as long as the right controls are in set into place, which is what they intended to do.

Councilman Reynolds referred to staff about the last minute deviation number four and asked if this is a prelude to their continued future to this sort of thing.

Mr. Philpot responded that was not they way they typically request deviations. Mr. Philpot further explained the pervious parking with Council.

Councilman Reynolds questioned Mr. Philpot if they were looking forward to the requirements deviations to come forth in time for LPA to act upon.

Mr. Philpot responded yes.

Mayor Boback clarified if this deviation is being brought forward by the Town and not the applicant, and is the reason why it was brought up at the last minute.

Mr. Murphy responded the need for the deviation is based on precautions on part of the applicant to make sure they don't get stuck on a glitch based on provisions on the Land Development Code.

Mayor Boback reports technically it is being brought fort by staff and not by the applicant.

Mayor Boback also pointed out on receiving the LPA minutes in order to understand the reasoning.

Ms. Dalton questioned Mayor Boback if Council wanted to have staff address deviation number three and reasons why it was not included in the Resolution.

Mayor Boback responded yes.

Mr. Murphy suggested addressing the language modified based on their discussion.

**MOTION:** Councilman Meador made a motion to approve Resolution 06-25 with the following addition of deviation three to read identically to staff's approved deviation number two, page 4 of 11. 34-074B which requires a side yard setback of five feet to allow a zero foot set back with an additional deviation four.

Ms. Dalton suggested a modification to the last paragraph in that deviation. The design of the pervious pavement must be acceptable by the Town.

**MOTION:** Councilman Meador added to his motion to include deviation number four as presented by the applicant with the wording modification provided by Ms. Dalton. Mr. Meador also pointed out on page three of five of the Resolution where it reads the developer will partner with the Town in the adjacent public right-a-way naming Delmar and Estero. Councilman Shenko 2<sup>nd</sup> the motion for purposes of discussion.

*Discussion:*

Councilman Shenko questioned if Council would want to address the roof as an additional condition to be used solely for access for maintenance, or maintenance and the residential. Mr. Shenko noted that he doesn't have a problem with it being accessed for maintenance and the residents. Mr. Shenko suggested for it to be made clear that Council is not approving the floor plan today, if there is an issue to lock off it will be addressed by staff.

**AMENDED MOTION:** Councilman Meador amended his motion to include an additional condition that the use of the roof area would be for

maintenance and residential unit users only. Councilman Shenko amended his 2<sup>nd</sup>.

Vice Mayor Massucco had no comments.

Councilman Reynolds questioned if it was Ms. Bean who brought about the last minute deviation, and was not the Town who brought it up.

Ms. Bean responded that they had presented, and had discussion about it with the Town.

Councilman Meador pointed out that several proprietors in Ft. Myers Beach do serve wine and beer along with the food service, and mentioned several known businesses which fall in that category. Mr. Meador expressed that he was very happy to see this project move forward and believes that it does deserve to get the Council's vote.

Mayor Boback agreed with Councilman Meador that this is an area that is in need of much attention, and expressed that he is happy to see the property owners are behind the project.

Councilman Reynolds pointed out that this is a deli that will be serving a residential area. Mr. Reynolds concerns deal with the idea of having alcohol around the youngsters.

Mr. Murphy referred to the condition regarding the outside roof and recommended that the condition to residential be removed, and be limited to maintenance only.

Councilman Meador pointed out to Mayor Boback amending his motion.

Councilman Shenko clarified if there would be no restrictions on the use of the roof.

Councilman Meador noted that if staff saw it as a problem, they would have addressed in the staff report.

Ms. Dalton reiterated if Councilman Meador is suggesting deleting condition 14.

Councilman Meador responded that the motion stand as made. Mr. Meador stated that he saw no need to restrict it to maintenance access only.

Ms. Dalton suggested to Councilman Meador using the language in his motion thus so far in accordance with the Land Development Code.

Councilman Meador responded that he had no problem with that.

**AMENDED MOTION:** Councilman Meador amended his motion to state in accordance with the Land Development Code. Councilman Shenko amended his 2<sup>nd</sup>.

Councilman Reynolds questioned Councilman Meador if he meant for residents in general, or for building residents.

Councilman Meador responded residential users.

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

Mayor Boback concluded the Shamrock hearing.

***C. Town Manager Search Update from Colin Baenziger & Associates***

Mayor Boback directed Mr. Baenziger to proceed with his presentation.

Mr. Colin Baenziger with Baenziger & Associates reported to Council that he has approximately 60 applicants. Mr. Baenziger reported that he has picked out 10 candidates with the most potential, and had done extensive interviewing, checking credentials, etc on each candidate. Mr. Baenziger has provided Council the final result of these 10 candidates for review and final approval to be made by Council. Mr. Baenziger suggested for Council to review each packet and to pick out six candidates where he would be able to provide a tally for each candidate.

Ms. Dalton reported in order to comply with the Sunshine law, she requested the Mr. Baenziger to provide each Council member copies of all the résumé, pointing out that each Council member could do their own review as it is one of the requirements of the Sunshine law.

Mr. Baenziger proceeded in announcing the votes for each candidate:

Mr. Bartalotta = five votes.  
Mr. Beard = three votes.  
Mr. Cottrell = three votes.  
Ms. Davis = three votes.

Mr. Baenziger pointed out these candidates had the majority of votes, and announced the candidates with two votes each:

Mr. Ankaitis = two votes.  
Mr. Casey = two votes.  
Mr. Parker = two votes.

Mr. Baenziger suggested interviewing the four votes, and suggested if Council felt strongly about one of other the candidates with two votes, he would bring them in. Mr. Baenziger suggested having five candidates and an alternate, and suggested they can also go with four and an alternate. Mr. Baenziger suggested giving another ballot in order to decide an alternate.

Mr. Baenziger announced the candidates.

Mr. Ankaitis = two votes  
Mr. Parker = two votes

Mayor Boback suggested redoing the ballot with Mr. Ankaitis and Mr. Parker.

Mr. Baenziger announced the votes for the candidates.

Mr. Parker = four votes.

Mr. Baenziger announced he would be the 5<sup>th</sup> finalist, pointing out that if Mr. Parker drops out, they will then invite Mr. Ankaitis. Mayor Boback asked Mr. Baenziger to go over the interview weekend in order to make sure that Council agrees with the planned event.

Ms. Dalton responded that they have a meeting on December 4<sup>th</sup>, and that they will notice the meeting on December 2<sup>nd</sup>.

Councilman Shenko suggested that they can notice the meeting as a workshop so they cannot vote that day for their selection, and would have to wait until Monday to make their final selection.

Vice Mayor Massucco pointed out that as an open public event the media would be attending.

#### ***D. Referenda 2007***

##### ***Introduction of Ordinance 06-19 Amending Charter***

Mayor Boback directed Ms. Dalton to proceed with the introduction of ordinance 06-19, Amending Charter.

Ms. Dalton read the introduction of Ordinance 06-19, Amending Charter: Ms. Dalton reported that if Council moves this forward there will be one mandatory hearing regarding the matter.

Mayor Boback questioned this is in regards to the Election.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

MOTION: Councilman Meador made a motion to move Ordinance 06-19 forward. Vice Mayor Massucco 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Meador referred to balance stating he likes where the amendments are going, but didn't like the wording. Mr. Meador referred to Section 401.B, Section 5.01, and Section 5.03., and suggested rewriting the entire section.

Ms. Dalton referred to staggered terms and questioned would it be delineate to group A or group B.

Councilman Meador suggested currently occupied as seats.

Ms. Dalton also questioned if Council agrees to move this forward there would be a Resolution with the actual ballot questions.

Councilman Shenko responded that the Ordinance is a direct reply to the Supervisor of Elections not wanting to run their Elections. Mr. Shenko suggested having a date certain, and to take the Supervisor of Elections out. Mr. Shenko expressed he is in favor of moving this Ordinance forward.

Mayor Boback referred to Section 5.03, where it states that the Elections would be conducted in March 2007; this shall not change the Council members in office prior to the March 2007. Mayor Boback questioned if this would include that they would not be extending their own terms.

Councilman Meador responded yes. Mr. Meador also questioned Ms. Dalton if they are voted on, but the Council had not changed yet to four years and it is all on the same day.

Ms. Dalton pointed out that there were different pieces which will be a complex policy issue.

Mayor Boback pointed out the Election of at least two gentlemen are two seats, and asked if they would be serving a four year term or a two year term.

Councilman Meador reports the amendment states effective with the Elections conducted in March 2007.

Ms. Dalton reported she was not happy with the language in her draft regarding the seating Council members stating that if any member of the Council today was to be reelected, she would not want the ambiguity in the Charter.

Councilman Meador suggested having some transition and discussing it further.

Ms. Dalton questioned Councilman Shenko regarding the date certain and asked if he wanted to leave the language that is currently in the Charter; the 2<sup>nd</sup> Tuesday in March.

Councilman Shenko responded that Sanibel does the 1<sup>st</sup> Tuesday in March, stating the Supervisor prefers that. Mr. Shenko suggested looking into how the other cities are doing in order to be consistent.

Vice Mayor Massucco agrees, but questioned if they should eliminate seat designation, or can they do it arbitrarily.

Ms. Dalton reported that this body did not have the ability to do so, she pointed out that it would have to be done to a referenda.

Councilman Meador reports all of this goes to referenda. Mayor Boback agreed.

Councilman Shenko reports that they have a secession order that is based on seat number, stating that if the Mayor or Vice Mayor is not available they would go by seat number. Mr. Shenko points out they would probably need to keep in the seat number.

Vice Mayor Massucco agreed with Councilman Shenko.

Mayor Boback pointed out that they have a consensus to move it forward, and questioned Ms. Dalton if she was provided the direction she requested.

Ms. Dalton responded yes, and also reminded Council that they need a date and time for the Ordinance hearing. Ms. Dalton suggested November 20<sup>th</sup> at 6:30.

Mayor Boback suggested putting it on the next meeting.

***Introduction of Ordinance 06-20 Acquisition of  
Financing – Town Attorney***

Mayor Boback directed for Ms. Dalton to proceed with introduction of Ordinance 06-20 Acquisition of Financing.

Ms. Dalton read Ordinance 06-02 Acquisition of Financing.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

*Discussion:*

Vice Mayor Massucco suggested moving it forward.

Councilman Reynolds referred to Section two of 06-20, stating that they should keep their debts paid.

Councilman Meador referred to the materials the Finance Director presented would be great if there were other options other than to write a check. Mr. Meador pointed out that the idea is good, but they need to be broader on the language. Mr. Meador points out that they appear to be a guarantor of a debt that has been acquired by someone else. Mr. Meador suggested not making an exact decision as to how it is financed, how it's guaranteed, and what the debt looks like. Mr. Meador did point out having the approval of their voters to exceed three years on the water utility and for Capital Improvement, and hopes that the votes will give them the authorization to proceed.

Councilman Shenko pointed out that they have long-term debt, they have violated the Charter, and they have to write a check for \$3.6 million in April. Mr. Shenko also agrees to broaden the language to authorize the Council to borrow money, suggesting to make it as generic as they can and let the voters decide if that is something they want to give Council to have to ability to do or not.

Mayor Boback agrees to broaden this; stating that there are other financing vehicles that they have other than bonds. Mayor Boback questioned Ms. Dalton of the alternate number four if it was not included in the Ordinance

Ms. Dalton responded that the Ordinance was provided last week, but did not make it into the packet, was not advertised, but has been handed out. Ms. Dalton pointed out there were some modification, and now they have two versions of this Ordinance which have not been advertised.

Mayor Boback questioned that they were not going to do anything with it at this time.

Ms. Dalton responded they will not.

Ms. Dalton reported the hearing on Ordinance 06-20 would be on Monday, November 20 at 6:30.

Mayor Boback questioned if those were all the referenda questions they can put on there at this time.

#### ***E. Mooring Field Provider Agreement***

Mr. Green reports they have an agreement for 90-days with the Matanzas Inn to provide them with the upland facilities for the Mooring fields. Mr. Green reviewed with Council what the upland facilities included reporting that the Town has now taken possession of the pump out boat, and as of Wednesday they have been providing that service.

Mr. Sallee commended Mr. Green and Ms. Lewis for all the work they did in order for all to work out smoothly. Mr. Sallee also pointed out that Mr. Green is the contact person the people will see first, and points out that he is the person they would want to have as their ambassador to the boaters. Mr. Sallee pointed out that staff should be highly commended for their work.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Shenko made a motion to approve the Municipal Anchorage Agreement as presented. Vice Mayor Massucco 2<sup>nd</sup> the motion.

*Discussion:*

Mr. Green responded that Salty Sam's did do some maintenance.

Councilman Reynolds read a statement regarding assignment or shareholders, and questioned Mr. Green to further explain in detail exactly what it meant.

Ms. Dalton responded that Mr. Green did not have anything to do with it directly. Ms. Dalton explains if a shareholder buys out another shareholder it not in the provision that it has to be discussed with the Town.

Councilman Reynolds questioned Ms. Dalton to the language used "cure." Mr. Reynolds also added that the marina should be under one management, and questioned Mr. Green of his intentions.

Mr. Green recommended that the Town retain the pump out service.

Councilman Reynolds questioned Mr. Green if the company was going to collect all the revenues and not the Town.

Mr. Green responded that they fill out the agreement with the boaters, and they take the money. Mr. Green pointed out that they will pick up on a daily basis with all copies of the agreements, and indicated that Ms. Wicks has already opened an account to begin deposits. Mr. Green indicated that the accounting would be done by the Finance Director, Ms. Wicks, and her staff.

Councilman Reynolds pointed out to Mr. Green that the company is not an agent of the Town.

Mr. Green responded that they are a concessionaire.

Councilman Reynolds referred to item 19, inspections; Mr. Reynolds believed that the Town agrees to do the services.

Ms. Dalton reported that it the marina is required to provide under the agreement, and noted that they will tighten the language up. Councilman Reynolds referred to administration asking Ms. Dalton to review it.

Councilman Meador questioned if she reviewed the agreement on behalf of the Town.

Ms. Dalton responded that she did, and did write most of it.

Councilman Meador questioned if they have the insurance certificate on hand.

Ms. Dalton responded that they do not.

Councilman Meador in reviewing the agreement, states that the Town will receive 30%, and the marina will receive 70%.

Ms. Dalton responded yes of the gross amount.

Mayor Boback questioned Mr. Green if he had enough time with 90-days.

Mr. Green responded if it is the wish of Council to extend the time, that he had no argument with it.

Mayor Boback directed Mr. Green to advise them what he needs.

Mr. Green requested 180-days.

**AMENDED MOTION:** Councilman Shenko amended his motion. Vice Mayor Massucco amended his 2<sup>nd</sup>.

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

***F. Direction on Wilker foreclosure- Town Attorney***

Mayor Boback directed Ms. Dalton to proceed with the Wilker foreclosure. Ms. Dalton reports there was a stipulation which indicated they will pay \$20,000.00. Ms. Dalton questioned Council if they wanted her to move forward with the stipulation which would allow the Town to foreclose on the property.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

Councilman Meador referred to a report date October 23, 2006 and that he did not have that report, and is reluctant to make comments until all the information is available. Mr. Meador suggested deferring until they can get the information available.

Councilman Shenko agreed with Councilman Meador and suggested deferring this to another Council meeting.

Vice Mayor Massucco suggested verifying that Mr. Wilker's attorney did in fact explain to him the issue at hand, stating that he did make the settlement of the \$20,000.00, and finds it strange that he would not comply with the Code Enforcement. Vice Mayor Massucco expressed his concern regarding Mr. Wilker situation stating the he is an elderly person with health issues.

Ms. Dalton pointed out that she send a certified letter regarding the matter, and stated that she did receive the confirmation that Mr. Meran did receive the letter. Ms. Dalton suggested sending a follow-up letter.

Vice Mayor Massucco reiterated that he was concerned if Mr. Wilker understand what is at state, and would further verification that Mr. Wilker does comply with the Code Enforcement Officer.

Councilman Reynolds agreed with Vice Mayor Massucco. Mr. Reynolds believes that Mr. Wilker is unaware of what is going on.

Ms. Dalton responded that she can bring this to Mr. Meran, and will further inform Council of the results.

Councilman Shenko suggested having the original reports in order to know all the details.

Mayor Boback directed Ms. Dalton to provide both reports to Council at the next meeting.

### ***G. Establishing Policy for Citizen Recognition Awards***

Mr. Sallee reports in his research they have come up with information from Le Duc of Canada, which have an achievement award; Mr. Sallee questioned Council if they wanted staff to proceed, they can develop a policy based on this.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

Councilman Reynolds pointed out that this should have been recognized by a committee. Mr. Reynolds spoke of the Tree of Life stating that there is some history about that. Mr. Reynolds welcomes any suggestions.

Councilman Meador expressed that they should move forward to develop a program along the line of Le Duc, and points out that it would be nice to

have some form of recognition to outstanding individuals in the community.

Mayor Boback announced his reason for bringing up and moving this forward had much to do with the cost which including plaques etc. Mayor Boback pointed out that this should be a uniform recognition.

Mr. Sallee questioned Mayor Boback if he would like to have a Citizens Recognition Committee to review this, or did he prefer to have the staff handle it.

Mayor Boback responded it would be better for staff and Council to handle it.

Vice Mayor Massucco referred to item number four; the Youth Award of Merit stating that he had sponsored this a couple of years ago; Vice Mayor Massucco suggested recognizing the youth of their community.

#### ***H. Council meeting notice requirements- Town Attorney***

Ms. Dalton reports referred to noticing the meeting, and stated there are three components: The Sunshine law requirement, The Town Charter, and the Policy and Procedures. Ms. Dalton reports the Special meeting and the requirement by the Charter, stating if they have a Special meeting with regular items, they need to notice it that way.

Mayor Boback reported although they want Special meetings to be for that purpose only, it doesn't always turn out that way.

Councilman Shenko pointed out during the Special meeting attorney items come out, Councilmen items etc, which are not purposes for the Special meeting. Mr. Shenko suggested limiting the amount of Special meeting, to just that.

Councilman Meador suggested making them general meetings.

Ms. Dalton agreed with Councilman Shenko stating that from a legal point of view, she states it is a policy question with a legal component.

Councilman Meador pointed out that the Charter requires having three consecutive scheduled meeting. Mr. Meador suggested having a Special meetings just having one or two subject matter, do it and get out.

Councilman Reynolds expressed that he prefers Councilman Shenko's suggestion of a workshop having a topic.

Vice Mayor Massucco expressed a Special meeting for a special purpose.

Mayor Boback agrees with his fellow Councilmen.

Ms. Dalton reviewed in Special meeting she will eliminate Town Attorney items, Town Manager items, etc.

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

Councilman Shenko cost and association with enforcement of curfew Ordinance. Mr. Shenko also spoke about the traffic, suggesting having off duty deputy's sheriff to direct traffic. Mr. Shenko also spoke about Jaywalking Ordinance.

Vice Mayor Massucco referred to the Jay & Friends to any needy families. 463-2717, Mrs. Jamison can provide more information regarding this organization. Vice Mayor Massucco states it is a worthy cause.

Councilman Reynolds spoke about the MOP Oversight Committee, and how Council felt about independent taxing districts.

Councilman Meador referred to the FMB Elementary School stating they are in the process of replacing the playground. Mr. Meador reports they need a total of \$100,000 they need subscribe to replace the playground, and states that it is a worthy cause.

Mayor Boback referred to sheriff department regarding law enforcement for traffic. Mayor Boback spoke with Mr. Powell regarding the voice volunteers. Mayor Boback referred to a letter regarding a Mr. Misak who reported he has found appropriate sites for the New Town Hall, and now has become the procuring agent to represent the Town. Mayor Boback suggested having Ms. Dalton send Mr. Misak a letter stating that he has nothing to do with the Town, and that the Town did not solicit his proposal.

Councilmember Boback submitted Form 8B, Voting Conflict (attached)

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

Mr. Sallee spoke about setting up a workshop between staff and Council in order to set out goals, in order to get some direction as to where to go as a body. Mr. Sallee suggested December 16 at 9:00 AM. Mr. Sallee questioned Council about the meetings during the holiday and suggested the 8<sup>th</sup>, 16<sup>th</sup> and the 22<sup>nd</sup>. Mr. Sallee referred to a Fair Share Ordinance put on by the state, stating he will present the process by December.

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

Ms. Dalton responded she had no items to present.

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

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

Mr. Sallee questioned Mayor Boback if Council wanted to meet with the County in January as a follow-up or February.

**X. ADJOURNMENT**

**MOTION:** Councilman Reynolds made motion to adjourn. Vice Mayor Massucco 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 3-0.

Mayor Boback adjourned the meeting at 8:34 PM

Ms. Dalton referred to the Water Utility.

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Approval of minutes for September 11, 2006

**MOTION:** Councilman Shenko made a motion to approve the minutes for September 11, 2006. Vice Mayor Massucco 2<sup>nd</sup> the motion.

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

**ADJOURNMENT:** Councilman Shenko made a motion to adjourn. Vice Mayor Massucco 2<sup>nd</sup> the motion.

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

Mayor Boback adjourned the meeting at 8.37

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**BOARD OF DIRECTORS**

**ROLL CALL**

Don Massucco  
Councilman Reynolds  
Bill Shenko, Jr.  
Charles Meador  
Dennis Boback

**Old Business** - none.

**New Business- Election of Officers:**

**MOTION:** Mr. Shenko made a motion as to presently exist. Mr. Meador 2<sup>nd</sup> the motion.

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

Mr. Boback- President  
Mr. Meador- Secretary  
Mr. Reynolds - Treasurer  
Mr. Massucco- Vice President  
Mr. Shenko – Board Member

Mr. Sallee – General Manager

**Director Items**

No items were given.

**General Manger's Items**

Mr. Sallee referred to a payment on a note due on April the 8<sup>th</sup>, and how to proceed with a referendum item. Mr. Sallee suggested long-term financing for the utility.

Ms. Dalton pointed out if the referendum passes for the water utility, how it works towards the Town.

Mr. Sallee pointed out two options; How to proceed with the referendum, and how to proceed if it doesn't pass.

**Solvent**

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

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

Chair Boback adjourned the meeting at 9:02 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



**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, DENNIS C. BOBACK, hereby disclose that on NOVEMBER 13, 20 06 :

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of LEONARDO ARMS CONDOMINIUM, by whom I am retained; or
- inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

*My Employer HAS REQUESTED A SETBACK VARIANCE FOR RECONSTRUCTION OF CARPORTS DAMAGED DURING HURRICANE CHARLIE.*

NOVEMBER 3, 2006  
Date Filed

*Dennis C. Boback*  
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.