

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
January 9, 2006**

**I. CALL TO ORDER**

Mayor Garr Reynolds called a regular meeting of the Ft. Myers Beach Town Council to order on Monday, January 9, 2006 at 6:34 PM.

**Members Present:** Mayor Garr Reynolds, Vice Mayor Don Massucco, Councilman Dennis Boback, Councilman Charles Meador, Councilman William Shenko

**Excused Absence:** None

**Town Staff Present:** Acting Town Manager John Gucciardo

**II. PLEDGE OF ALLEGIANCE**

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

**III. INVOCATION**

Mayor Garr Reynolds gave the invocation.

**IV. PUBLIC COMMENT**

Mayor Reynolds told the audience that four of the five Council members wished to eliminate Public Comment from its first slot on the agenda, as had been the tradition. He then asked all those in favor of eliminating this public input slot to “say aye”.

Vice Mayor Massucco thought, before a vote was taken, that public input should be allowed at the beginning of the meeting with regard to agenda items only, with general public input slotted at the end of the meeting. Councilman Shenko agreed with Vice Mayor Massucco. Councilman Meador agreed also, and believed that that arrangement was what was called for in the Council’s Policies and Procedures Manual.

Mayor Reynolds then announced to the audience that only agenda items were to be addressed during the early Public Comment slot, with general comments allowed during the second and final Public Comment slot near the end of the agenda.

Mayor Reynolds said if a person addressed an agenda item during the early Public Comment slot, he or she would not be welcome to address the Council again when the actual item came up on the agenda during the course of the meeting. He asked for his fellow Council members’ opinion of that statement.

Vice Mayor Massucco felt if a person opted to hold his or her comments about a particular agenda item until it was taken up in the course of a meeting, they should be able to speak at that time.

John Gucciardo said the Council could conduct the meeting however they chose, but typically public input was not invited at the time specific agenda items were taken up, unless the items were public hearings. He said the usual method had always been, when no public hearings were on the agenda, to hear public input on agenda items only during the first Public Comment slot.

Mayor Reynolds asked if Mr. Gucciardo meant that, as an example, the TMA members would not be invited to give their input at the time their recommendation was discussed by Council. Mr. Gucciardo stressed it was at the will of Council, but usually, unless there was a public hearing on an agenda item, public input would be accepted on agenda items only during the first Public Comment slot on the agenda. Mayor Reynolds asked Council if that was the consensus.

Councilman Shenko thought the distinction needed to be made between Public Comment and a person presenting an agenda item. He felt public input on any agenda items at the beginning of the meeting, and public input on any matter whatsoever at the end of the meeting, was the proper protocol. Councilman Shenko said that arrangement did not, however, prevent the person or persons who were presenting agenda items to do so at the time the item came up for discussion or consideration.

Mayor Reynolds did not think anyone was there to present any agenda items at this meeting, but Councilman Shenko believed there was.

Mayor Reynolds announced three items that had been pulled from the agenda since its distribution:

V – B: Proclamation for the FMB Little League

VI – G; 1 & 2: Founder of Town of FMB and Recognition of Rolfe Schell

Councilman Shenko wanted assurance that the person who had asked for the Little League Proclamation to be on the agenda was the same person who had pulled it. Mayor Reynolds said Jean Matthew had put it on. Councilman Shenko said a Council member had to have put it on the agenda. Mayor Reynolds said he did not know how it had gotten onto the agenda in that case. He added that Mr. Gucciardo had been the one to have heard about it originally, and that Rachel Lambert had followed up on it.

Councilman Boback said he had spoken with Mr. Gucciardo about adding the Little League Proclamation. Councilman Boback asked why the item was being pulled. Mayor Reynolds explained that there was not enough information on it. Councilman Boback asked what information was needed.

Mayor Reynolds said that Jean Matthew didn't know the extent of the history behind it, or if the people named in the proclamation were the only ones involved in it. He said he didn't want Council to put it forward without assurances that the information was accurate. Mayor Reynolds had requested more documentation from Dr. Matthew, as he personally knew two people who had been working 25 years or more with the Little League, whose names had not been included.

Councilman Boback said he had thought the proclamation was in recognition of the founders of the original Little League fifty years ago.

Mayor Reynolds said that may be, but it was possible other unnamed people had been involved. He said it wasn't known who had compiled or approved the list for the proclamation, and that no other name had been attached to the proclamation aside from Dr. Matthew. He stressed that he didn't believe anyone was against the proclamation; he just wanted to be sure it was accurate and thorough.

Councilman Boback asked if Dr. Matthew had been the one who had asked that the item be pulled from the agenda. Mayor Reynolds deferred to Mr. Gucciardo for the answer, as the Mayor had only spoken once about the item with Dr. Matthew that day.

Mr. Gucciardo said he had not spoken with Dr. Matthew about it. He explained the information to hand about the proclamation had come from Lee Melsek, and Mr. Melsek had drafted the proclamation and had given the Town Staff the information about its contents. Mr. Gucciardo assumed that Mr. Melsek was aware of the facts and he had had no reason to question the accuracy of that information. Councilman Boback said he had assumed the same thing.

Councilman Meador said he wanted to hear Mr. Melsek's presentation regarding the Little League Proclamation.

Mayor Reynolds said it would be out of order, per the agenda, to call Mr. Melsek up to give a presentation on the proclamation.

Councilman Boback said Mr. Melsek could make his presentation when the item appeared on the agenda.

Mayor Reynolds said he had been able to pull the other two items from the agenda for the same reason he had pulled the Little League Proclamation. He didn't believe anyone would be hurt or injured "in any fashion" if the items were postponed or delayed until the January 23<sup>rd</sup> Council meeting.

Councilman Shenko believed the only person who could pull an agenda item was the person who had put it on the agenda. He suggested that the Council should proceed through the agenda in order, and when the item came up, that the presentation should be made so that Council could vote on it.

Mayor Reynolds asked who had put the item on the agenda.

Councilman Boback said he had asked Mr. Gucciardo to put it on the agenda, and that he, too, wanted to hear the presentation, in concurrence with Councilman Meador.

Mayor Reynolds did not agree that the item should be left on the agenda, as there would only be one person to confirm the information on the proclamation. He said it was the same situation with the other two items he had pulled, and was uncomfortable letting the item through and not the other two.

Mayor Reynolds opened Public Comment, and reminded the public that their comments were to be with regard to agenda items only.

**Steve DuBois** from the Beach Observer came forward. Mr. DuBois brought information to the Council members' attention with regard to past advertising practices the Town has conducted with his newspaper, and options still available.

**Jack Boykin** of the Pink Shell Beach Resort came forward to speak in favor of the FEMA Flood Insurance Re-Study.

**John Naylor** of the Pink Shell Beach Resort came forward to speak in favor of the FEMA Flood Insurance Re-Study. Additionally, he hoped Dr. Clages would be engaged by the Town to do an economic research study on it. Regarding the ordinances to be introduced later on the agenda, Mr. Naylor, who currently serves on the MRTF, said his committee had gotten a lot of valuable input from many non-residents such as Eve Haverfield, Dr. Win Everham, and several business owners and managers who work and operated businesses on the Island. He felt that to disenfranchise business owners, managers and people with valuable expertise and insight seemed short-sighted. He asked the Council to reconsider the proposed exclusion of non-residents from the committees. He noted that former Mayor John Mulholland had been a key figure in the formation of the MRTF.

**Carl Conley** of 2801 Estero Boulevard came forward. Mr. Conley expressed his support for any efforts the Town could make with regard to the FEMA maps and any other issues that could affect the Town's flood plan. Mr. Conley agreed with Mr. Naylor's remarks regarding the proposed exclusion of non-residents from the Town's volunteer committees. Regarding the Town's

proposed policy changes in advertising, Mr. Conley entered into the record copies of two signed letters from the Publisher of the Beach Observer, Steve DuBois.

**Tom Babcock** of Williams Drive came forward. Mr. Babcock made two suggestions with regard to the proposed committee ordinances: first, he did not agree that membership should be restricted for an individual to one committee; second, Mr. Babcock noted that the wording of the ordinance seemed to propose limiting membership on a committee to residents only, with which he disagreed, with the exception of the LPA.

**Tom Myers**, owner of the Red Coconut RV Resort, came forward. Mr. Myers read aloud the specific recommendations that the Traffic Mitigation Agency, on which he serves, had forwarded to Council for consideration at this meeting. He noted that the TMA had voted unanimously to add Crescent Street, in a short-term test, as a formal routing off the Island in order to bypass the pedestrian light in front of Seafarers Mall. If successful, Mr. Myers said the route had the potential to become a long-term solution if it proved successful

**Anita Cereceda** of Ft. Myers Beach came forward. She believed everyone would agree that the Comp Plan was an “awesome plan” and should be adhered to strictly. She said the Comp Plan would suggest that the Council should fight the proposed FEMA maps, because the plan defined FMB as a small town community with walkability. She said the vision created in the plan would be annihilated if the new maps were implemented. She thought it was a disservice that there was “so much scuttle” on the Island that the only people who would be affected by the new maps would be the business owners. She said that was an “absolute mistruth”, and encouraged anyone observing the Council meeting to contact their Councilmen as well as the County Commissioners, State Representatives, the Governor, the federal representatives and anyone who might have a say in the final outcome of the issue, because it would change every element of the community. She hoped the Council members would make every effort to maintain and hold strong the vision that everyone had worked for. Ms. Cereceda also thanked Tom Babcock for his comments about the committees, and said volunteerism was at the heart of the Town’s incorporation. She noted that Councilman Shenko had been in charge of the first volunteer group. She thought many people were wondering if their time was appreciated, and if they were being judged by any particular criteria to determine if their time was valuable to the Council or not, which she said was a great disservice. She was sure the Council’s intentions were good, but asked the Council to be careful how they went about reorganizing the volunteer groups, as she felt it was a very delicate issue.

Rachel Lambert apologized for the hissing noise in the sound system, and said there was no way to correct it. She said it would be corrected, but could not be corrected during this meeting. She thanked everyone for their patience.

**Jane Plummer** of 340 Fairweather Lane came forward. Ms. Plummer agreed with Tom Babcock's remarks about the proposed ordinances regarding the volunteer groups. She felt when a member's term ended, that would be the time to address any conflicts of interest or any other questions about that member. She could not recall long lines of people wanting to get onto the various committees when seats on any of them opened up. She hoped there were 150 people, familiar with the Comp Plan, waiting to get onto the committees if the current members were removed. She hoped the Council would reconsider changing everything so that everyone had to learn all over from the start.

**Pat Loffreno** of 8002 Estero Boulevard came forward. Mr. Loffreno expressed his support for the TMA's recommendation and his agreement with everything Tom Myers had said in his remarks. He hoped the Council would move forward with the TMA's recommendations as quickly as possible.

Mayor Reynolds asked that everyone turn off their cell phones, as it was disruptive. He then closed Public Comments.

**V. CONSENT AGENDA**

**A. Approval of Minutes**

**1. November 30, 2005**

**MOTION:** Mayor Reynolds made a motion to approve the November 30, 2005 minutes. Councilman Shenko seconded the motion.

**VOTE:** The motion carried unanimously.

**2. December 5, 2005**

Corrections:

Page 2, 1<sup>st</sup> Para. – Councilman Massucco should be Councilman Shenko.  
Page 37, under “Item 5” – Add clarification regarding Vice Mayor Massucco's remark, as it referred to sweeping of the sidewalks.

**MOTION:** Councilman Shenko made a motion to approve the December 5, 2005 minutes, with corrections. Mayor Reynolds seconded the motion.

**VOTE:** The motion carried unanimously.

**3. December 12, 2005**

**MOTION:** Councilman Shenko made a motion to approve the December 12, 2005 minutes. Vice Mayor Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

**B. Proclamation for FMB Little League**

Mayor Reynolds reiterated that the facts related to this item, along with two other items, had not been vetted, which was why he had asked to have the items continued until the January 23, 2006 Council meeting. He did not see any urgency for approval of any of the items. He asked Ms. Dalton if the Chair could make the adjudication as to whether the items remained on the agenda or were pushed to another agenda.

Ms. Dalton believed Councilman Shenko had been correct that only the Council member who had put an item on the agenda could pull or postpone that item. She noted that Councilman Meador had requested that Lee Melsek speak regarding the item, and that Councilman Shenko had wanted a discussion regarding the item. Ms. Dalton said that, within the context of the discussion, Mayor Reynolds could bring forward his comments on the item.

Mayor Reynolds stated he had preempted his authority when he had called “these individuals”, although he did not name them at this juncture. He then turned the floor over to Councilman Boback, who had asked that the item be placed on the agenda.

Councilman Boback asked Lee Melsik to come forward so as to present the proposed proclamation.

Lee Melsek of Ft. Myers Beach came forward and gave a brief history of Little League and Babe Ruth baseball on Ft. Myers Beach. Mr. Melsek said his intention was to go to the County Commission – owner of the baseball park at Bay Oaks – and ask that commemorative plaques be placed at the park that gave the names of the people and the organizations that created the Little League and the FMB Travelers Babe Ruth team. He acknowledged the presence at the meeting of Susan Tyson, whose father – Jake Tyson - had been the first coach of the first Babe Ruth team, the Travelers. He said his purpose in bringing the proposal for the plaque forward to Town Council was to ask for the Council’s support in his endeavor to get the County to create and post the commemorative plaque. He said he had also asked the FMB Historic Society for their support as well, which they had given. Mr. Melsek then read his proposed proclamation into the record, although a written copy of the proposed proclamation had also been distributed and thus entered into the record. When reading the list of individuals named as founding and original coaches, sponsors, etc. Mr. Melsek said he had spoken with those of that list who still survived, as well as individuals with whom he had played on a Little League team, and they had all agreed on which names should appear on the plaque.

Mr. Melseik reiterated his request of Town Council, which was to gain their support in his effort to persuade the County to create the proposed commemorative plaque(s). Mr. Melseik related his conversation with Parks and Recreation Director John Yarborough, in which Mr. Yarborough had assured Mr. Melseik that he saw no problem with the proposed plaque. Mr. Melseik said he had spoken that day with the first manager of the Lions Club Little League team, Pete McKagg, with Joe Mazzolla, the first manager of the Rotary Club's Little League team, and with Dick Hoag, and they all remembered the details and people involved exactly as Mr. Melseik did.

Mayor Reynolds thanked Mr. Melseik for coming forward and explaining the proclamation. He remarked that he had been the only Council member to have raised an objection to the item earlier, but now felt very comfortable with Mr. Melseik's proposal, as it was clear Mr. Melseik had vetted his information as to who should be included on the plaque.

Mr. Melseik thanked the Mayor, and pointed out yet another source of confirmation for his information, that being the August 26, 1956 Sports Section of the Ft. Myers News-Press, in which photographs of the first three Little League teams appeared, complete with the names of each player and the coaches. Mr. Melseik made reference to the fact that his team, sponsored by the Rotary Club, had won the Championship during that first year.

**MOTION:** Councilman Boback made a motion to support the proclamation regarding the founding of Little League on Ft. Myers Beach proposed by Lee Melseik. Mayor Reynolds seconded the motion.

Councilman Shenko noted that the date in the proclamation before them should be changed from 1957 to 1956.

Mr. Gucciardo said Staff would redo the resolution to be signed by Council, with the proper date, turned over to Mayor Reynolds for signing, and then given to Mr. Melseik.

**VOTE:** The motion carried unanimously.

## **VI. RESULTS OF EXECUTIVE SESSION**

**MOTION:** Councilman Shenko made a motion, regarding the Utelco vs. the Town of Ft. Myers Beach lawsuit, to terminate the services of Mr. Kennedy as counsel representing the Town, and retain the services of Attorney George Knott, who had been contacted and had agreed to take the place of Mr. Kennedy at a rate of \$250 per hour; that Mr. Knott be instructed to review the file as soon as possible, and that he report independently to Council as to the Town's position and alternatives as they relate to the lawsuit. Councilman Boback seconded the motion.

Vice Mayor Massucco clarified for the public that Council had had an Executive Session prior to the regular Council meeting, in which they had discussed the lawsuit, and while he could not divulge details of the session, he assured the public that Council had good reasons for taking the proposed action as delineated in Councilman Shenko's motion.

Mayor Reynolds said the attorney the Council wished to hire had the expertise and experience the Town needed with regard to the pending lawsuit.

**VOTE:** The motion carried unanimously.

## **VII. ADMINISTRATIVE AGENDA**

### **A. Discussion of Advertising Policy of the Town**

Councilman Shenko said he had brought this and Item B forward, not because he was fiscally conservative, but because he was "cheap".

**MOTION:** Councilman Shenko made a motion that any committee or agency meetings which require public notice be advertised only as required by law, and only in one publication of general circulation as a legal advertisement; and, that multiple meetings be advertised together if possible. Councilman Meador seconded the motion.

Councilman Shenko said he was aware that legal advertising was expensive, and after the election had asked Ms. Lambert to compile advertising costs for the past three months, which she put in a memo, dated December 29, 2005, to the Council members. In the memo, Ms. Lambert also indicated that she would welcome a written policy regarding the placement of the legal ads, as none existed to her knowledge.

Councilman Shenko said that, over the past three months, the required advertising for Council meetings would have cost the Town \$491, but had actually cost \$3,900; required election notices would have cost the Town \$1,413 but had actually cost \$20,237. He continued to list out other advertising costs, including those for the Mound House, employment notices, the FMB Film Festival, the Farmers Market, public hearing notices, Newton property notice.

Councilman Shenko said at that rate, the Town could spend as much as \$133,500 for legal advertising, even if they took out the campaign advertising. He said this was way out of line, and recommended that advertising be cut down to what was legally required in a paper that qualified. Regarding that qualification for legal advertising, he cited a memorandum from Attorney Dalton which contained her findings as to research of Florida statute for legal ads; he noted that the contents of the memo had been unknown to him at the time he had put forward his concerns in a memo to Council. Ms. Dalton's

memo included the information that the only paper that qualified for legal advertising was the News-Press because it was a paid circulation.

Vice Mayor Massucco believed the interest in the advertising costs was two-fold: the legal issue and the expenditure to advertise in the local newspapers. He said they certainly had to conform to legal aspect of advertising, but in doing so, they should not diminish the importance of keeping the residents informed by placing ads for Town Council meetings in the papers in which they have been accustomed to finding that information for so many years. He pointed out that not all Beach residents subscribed to the News-Press, and Vice Mayor Massucco commented that he had “no desire to increase the circulation of that paper.” Vice Mayor Massucco concurred that there was room to cut down the sizes of the ads and the costs for placing them, and felt Council should explore those things before deciding to end the placement of ads in local papers. He reiterated that many Beach residents depended on the Beach Observer and the Island Sand Paper for their news about the Town.

Mayor Reynolds acknowledged that the Town could still place advertisements in the local Beach papers, but that the Council needed to know what the legal requirements were and needed to abide by them. He said the News-Press was the only newspaper that qualified in that regard.

Councilman Boback asked if the minimum legally required advertising could be done with the News-Press, with ads placed in one of the two local Beach papers.

Mayor Reynolds said there was nothing “in this” that tied the Town to one or the other newspaper. To meet the legal requirements, Mayor Reynolds said the Town had to advertise in the News-Press, and that it prohibited doing otherwise. Councilman Boback said he understood that.

Councilman Shenko said the Town was not legally prohibited from advertising in other newspapers. He said one of the problems had been that quarter, half and full page ads had been placed, and no one had been in charge of how the ads were placed, how large they were, or where they were placed. He felt it needed to be “reigned in”. He felt placing ads in more than one paper increased the possibility for conflicting information about meetings, should one or the other of those publications print the wrong information mistakenly.

Vice Mayor Massucco agreed 100% with Councilman Shenko’s opinion that the size of the ads needed to be reduced. He felt, rather than taking the ads out of the local Beach papers, the Town would save a lot of money by doing that, and the people in Town would still get the information they need where they had become accustomed to getting it.

Councilman Shenko objected to advertising in the Naples Daily News, and the large amount of money spent to advertise in it, especially with regards to ads related to the Mound House or the Newton House.

Mayor Reynolds said he had often wondered where the ads came from, and remarked that they still didn't know who actually placed the ads.

Councilman Shenko said part of the Mound House budget, as well as the CRA budget, was earmarked for advertising. He had requested both of those budgets, neither of which he had been given the opportunity to review.

Councilman Meador said reining in Town spending had been a key issue in his campaign, and added "no time like the present to start". He said this issue was a perfect example of money being thrown away on a daily, weekly and monthly basis. He said if the local papers didn't want to tell the public when the Town meetings were going to take place, free of charge, then they would not be doing a public service. He expressed his support for Councilman Shenko's motion as it stood.

**VOTE:** The motion carried 3 – 2, with Vice Mayor Massucco and Councilman Boback dissenting.

**B. Discussion of Publications and Mail Out Policy of the Town**

Councilman Shenko said he had received three calendars in the mail. When he asked Town Staff about the calendars, Councilman Shenko had learned that the calendars had been produced and mailed out to the Town residents at a cost of \$21,367. He said the cost of the last Town newsletter had been \$8,487 and, "just outside this budget time", the Mound House "Happenings" had been mailed to the residents at a cost of about \$8,000. He said the total cost, minus the Town newsletter, added up to more money than C-CALB (sic) had asked for at the last Council meeting.

**MOTION:** Councilman Shenko made a motion, as to the editing and distribution of written material, that no further material be edited, printed or distributed by Town Staff without specific consent of Council; and, that the total advertising and distribution cost of any publication be printed on the bottom of each publication. Mayor Reynolds seconded the motion.

Councilman Meador asked Councilman Shenko if he would amend his motion to include "for distribution to the public" so that Staff would not have to get permission from Council for every photocopy, etc.

**AMENDED MOTION:** Councilman Shenko made a motion, as to the editing and distribution of written material to the public in general, that no further material be edited, printed or distributed by Town Staff without specific consent of Council; and, that the total advertising and distribution cost

of any publication for the public in general be printed on the bottom of each publication. Mayor Reynolds seconded the amended motion.

**VOTE:** The motion carried unanimously.

**C. Schedule of Town Meetings**

Councilman Shenko said he was prepared to make a motion that Land Use meetings be conducted in the evenings, not during the day, so that the public had a chance to either attend or watch the meeting on television. He stated his preference that they be scheduled to immediately precede the second Council meeting each month, with the Land Use portion commencing at 4:00 PM. Councilman Shenko added that he would like to see Council meetings begin earlier than 6:30 PM. He wished to set a schedule for meetings as soon as possible because when trying to determine meeting dates prior to his election, it was virtually impossible, because the Town website was not up for more than a month in advance. He said the issue might be a workshop item.

Mayor Reynolds said a motion and a second was needed.

**MOTION:** Councilman Shenko made a motion that the meeting schedule be adopted with the exception of July 3, 2006 deleting all Land Use meetings scheduled for 10 AM, and moving them to 5 PM immediately preceding the second regularly scheduled Council meetings each month. Councilman Boback seconded the motion.

Vice Mayor Massucco remarked that Councilman Shenko had expressed concern that some Council meetings fell on holidays.

Councilman Shenko said the calendar, prepared by Town Staff and to which he had referred in his motion, showed Council meetings which would have fallen on holidays had been rescheduled to the following day - Tuesdays, which reflected Council consensus in a previous discussion.

Councilman Meador said he understood what Councilman Shenko was trying to accomplish with his motion, but recalled the one Land Use meeting he had ever attended as having lasted much longer than the suggested allotted time in Councilman Shenko's motion. In conversations with Town Attorney Dalton, Councilman Meador had learned that the Land Use cases had the potential to become complicated and to require more time than the schedule suggested in Councilman Shenko's motion.

Councilman Shenko said his motion would not preclude the Council from having special meetings if needed for protracted cases, and felt the time constraint might "put a fire under" the Council to get the cases done. He said hearings could be continued to the next hearing date, or to the next week, with an advertisement placed announcing such.

Councilman Shenko stressed that he wanted the Land Use meetings to be scheduled in the evenings so that the public could see them, either in Council chambers or on television.

Mayor Reynolds recalled that, in the past, Council had been told they were required to have at least one Council meeting during the day. He asked Ms. Dalton for her opinion about that.

Ms. Dalton had no knowledge of a requirement that Land Use meetings were to be held during the day. Ms. Dalton asked if the time of 5:00, as Councilman Shenko had indicated in his motion, was the time he had intended to state in his motion. Ms. Dalton further thought there may be an issue regarding County Staff and, believed Town Staff could address it and that it was not a legal issue.

Mr. Gucciardo said one thing previous Council's had taken into account when scheduling Land Use meetings had been the availability of County Staff, as typically someone from County would attend Land Use meetings and make recommendations on the cases before Council. Mr. Gucciardo also concurred with Councilman Meador's remarks about the potential lengthiness of Land Use cases, due to the usual complexities inherent in most such cases; he expressed concern that, while Council was capable of working within time constraints, they might find themselves getting behind on the regular meeting schedule because of it.

Mayor Reynolds said he could understand why the three new Council members might have a concern about meetings scheduled during the day, because they all three still worked full-time. Mayor Reynolds did not want to change the Land Use meeting time, but was amenable to the desire of the Council.

Councilman Boback asked if Councilman Shenko would consider amending his motion to state that the Land Use meetings would be held at 4:00 PM on the dates that had already been scheduled, rather than before a regular Council meeting, so as to avoid any conflict or time constraints. Councilman Shenko thought if the dates were not going to change, that he could amend his motion to say the Land Use meetings would commence at 6:30 PM, as regular meetings did. Councilman Boback thought the 4:00 PM start time would be more convenient to County staff. Councilman Shenko thought the local Town Staff knowing what was being done in Land Use meetings was more important than County staff being present during normal business hours.

**AMENDED MOTION:** Councilman Shenko made a motion that the meeting schedule be adopted with the exception of July 3, 2006 and with all

Land Use meetings rescheduled for 6:30 PM rather than 10 AM.. Councilman Boback seconded the motion.

Vice Mayor Massucco, referring to Mayor Reynolds' statement that three of the Councilmen had daytime commitments, remarked "I, too, have a life" and wanted to be included in the discussion. After a good natured exchange between the Mayor and him, Vice Mayor Massucco said 6:30 PM was fine with him.

Councilman Meador asked if they knew for sure that County staff would be available for evening meetings.

Mr. Gucciardo said he didn't have certain data about that, but felt there was probably a way to work that out.

Jerry Murphy, the FMB Community Development Director, said the Interlocal agreement the Town currently had with the County clearly assumed that Land Use hearings would be held during County Staff's working hours. At Council's direction, Mr. Murphy said he would have a conversation with County Staff to determine their viewpoint on evening Land Use meetings. He said it may require an amendment to the Interlocal agreement, or they may not agree with the change in schedule.

Mayor Reynolds pointed out that County had attended evening Council meetings. Mr. Murphy concurred that County Staff had cooperated with the Town when various circumstances had dictated the rescheduling of meetings, but had not been contemplated as happening on a regular basis. Mr. Murphy added that County held Land Use hearings that involved their Staff during the day.

Mayor Reynolds believed most, or all, municipalities in Lee County held Land Use meetings during the day.

**AMENDED MOTION:** Councilman Shenko made a motion that the meeting schedule be adopted as presented to Council by Staff, with the exception of July 3, 2006 and that Land Use meeting time be discussed at a later Council meeting after Town Staff had discussed the suggested evening schedule for Land Use meetings with County Staff. Councilman Boback seconded the amended motion.

Councilman Shenko reiterated his preference that Land Use meetings be scheduled at 6:30 PM.

Councilman Boback asked Mr. Murphy if he could have the information from County in time for the January 23<sup>rd</sup> Council meeting, and Mr. Murphy

indicated that he could. Councilman Shenko pointed out that there were no Land Use meetings scheduled before then.

Councilman Meador said if the Interlocal agreement was going to be amended, and County Staff were going to be asked to attend meetings outside their working hours, he assumed there would be a cost involved which would need to be considered. Mr. Murphy said that was one of his concerns.

Regarding the July 3<sup>rd</sup> meeting, Vice Mayor Massucco thought that should be changed, as no one would attend the meeting the night before the 4<sup>th</sup> of July. Councilman Shenko said he had indicated as such in his motion. Vice Mayor Massucco said an alternate date would have to be determined in lieu of the July 3<sup>rd</sup> meeting, as the following Tuesday was the 4<sup>th</sup> of July. Councilman Shenko remarked that prior Councils had not held any meetings during the summer.

It was determined that no alternate date needed to be determined, and the July 3<sup>rd</sup> meeting should be deleted from the calendar.

**VOTE:** The motion carried unanimously.

**D. FEMA Flood Insurance Restudy**

Mr. Gucciardo indicated that Matt Feeney was present if Council wished him to give a presentation or so as to answer any questions Council might have. Mr. Gucciardo thought the memo in Council's packet from Mr. Feeney was self-explanatory in terms of where things stood and in regard to a recommended course of action.

Matt Feeney, of Town Staff, briefly summarized the contents of his memo to Council regarding the FEMA Flood Insurance Restudy. Mr. Feeney, upon conclusion of his summary, recommended that Council continue the retention of the coastal engineering consultant – Tomasello – if Council wished to file a formal appeal during the first three months of the formal 10-month adoption process, slated to begin in spring of 2007. Additionally, Mr. Feeney said Staff recommended that Council agree to FEMA's offer to meet with them in Atlanta to discuss the issue, but prior to making that trip, Staff also recommended that an economist be retained for the purpose of presenting to FEMA the potential economic impacts FEMA's proposed changes would have on the Town's economy. Mr. Feeney indicated that Dr. Clages, a local economist, had quoted a fee of around \$25,000 to \$30,000 for an economic study. Mr. Feeney indicated that he needed direction from Council as to whether they wished to pursue the meeting in Atlanta, and if so, if they wished to retain an economist to prepare a study on the potential economic impacts.

Mayor Reynolds opined that Council should direct Mr. Feeney to attend the meeting in Atlanta.

Vice Mayor Massucco agreed that at least Mr. Feeney should attend the meeting in Atlanta. Vice Mayor Massucco, citing Page 2 of Mr. Feeney's memo, read: "Their initial review indicates that there may be some deficiencies...". He asked how positive that was.

Mr. Feeney said it was as positive as it could be. He said FEMA was the mapping agency, and the appeal is made to FEMA directly. He had used the word "may" because while the Town may view things one way, FEMA may see it another way. Mayor Reynolds remarked that FEMA was "hard to fight".

Councilman Boback asked if FMB had partnered with any other coastal municipalities so as to fight FEMA together.

Mr. Feeney said Town Staff had had brief discussions with Sanibel officials, but he didn't know if they had retained a coastal engineer or not, but he knew they had concerns. He said he had also made a presentation to the TDC about the issue, and there seemed to be some interest there, which he said was at the County level. He said there had been no coordinated effort or formal commitment made with any other community or level of government. Councilman Boback remarked "we're hanging out there by ourselves". Mr. Feeney felt the Town was on the leading edge of the issue, because FMB had thus far been the only entity to have gone to the federal level – the trip to Washington D.C. to meet with Senator Nelson.

Mr. Gucciardo added that some indication from previous Council had been for Town Staff to try to develop partnerships with other municipalities, and had tried to maintain their communications with them and the County regarding the issue. He agreed that FMB was probably the leader in the endeavor, but felt other areas were becoming aware of the potential impacts. He said there had been a meeting recently on Sanibel of the Coastal High Hazard Study Committee – an organization he said had been traveling throughout the state so as to get input on issues and impacts similar to those FEMA mapping change. At those meetings, he said Town Staff attendees could gauge that the City of Ft. Myers was now much more aware of the potential impacts on their development of this type of change. Mr. Gucciardo suggested that Town Staff continue to reach out to other entities, and that no expense would be incurred in doing so.

Councilman Meador asked Mr. Feeney asked how much had been paid to the coastal engineer thus far. Mr. Feeney said the Town had not been invoiced as yet. He further explained that there was a contract with him for \$28,000 to bring the Town to an appeal point. He expected a partial invoice shortly, as the first report was about to be completed. Councilman Meador asked what was meant by "to an appeal point". Mr. Feeney said it would give the Town

the reports and findings it would need to submit for an appeal. Councilman Meador asked if he would, at that point, be further along than “maybe having found some problems” or to definitively say there were no problems. Mr. Feeney assumed so.

To allay any fears, Councilman Meador asked Mr. Feeney how many people would have to tear their houses down if FEMA did implement the new maps. Mr. Feeney said that would not be the case, but that the 50% rule would be invoked for those houses that no longer conformed to the new height restrictions. Councilman Meador said that basically the same rules the Town had had to live by for a number of years would apply, but just would change the guidelines with regard to ground floors on commercial buildings. Mr. Feeney said it would give some of the commercial areas no choice but to elevate if they wished to redevelop; additionally, he said it would make homes that were built to the current codes non-conforming.

Mayor Reynolds said the FEMA map changes would affect everyone on the Island, and not just businesses.

Councilman Meador said that when Ms. Cereceda had made her statement during Public Comment at the beginning of the meeting, she had made it sound as if people would have to tear their homes or businesses down, which Councilman Meador emphasized would not be the case. He felt the circumstances would be exactly the same, only with different specifications, should a structure suffer damage beyond 50% of its value or if remodeling or redevelopment over 50% of a structure’s value was desired.

Mr. Feeney said it was correct that the 50% rule would not change. But, he said it would change who would be affected, and in what way. He said it would render most currently conforming residences non-conforming. He said some of the current businesses located in the A Zone would, with the new maps, be located in a V Zone, so that if they were to redevelop, they would have to go up, with no commerce allowed on the first floor.

Councilman Shenko asked if the 50% rebuild was every five years. Mr. Murphy said it was a five-year cumulative total. Councilman Shenko said if one remodeled up to 49% of the value of a structure, after five years, one could do that again. He said that was in place now, and the FEMA remapping would simply change how high one had to go up.

Regarding Tomasello Consultants, Councilman Shenko asked if he was the same engineer who had worked on the Naples remapping issue, and pointed out that Naples had lost its appeal to FEMA. Mr. Feeney said he was, but said the issue hadn’t been completely decided as yet in Naples. He explained that they had not successfully won an appeal, although they had entered into a negotiation with FEMA in which the contested maps were adopted, but a

memorandum of agreement between FEMA, the Water Management District, and Naples had been signed indicating they should continue the evaluations for a year to see if there was anything more that should be modified on the map.

Councilman Shenko said he wanted to see the entire Council attend the meeting in Atlanta. He asked if they would be meeting with engineers or economists at that meeting.

Mr. Feeney said they would be talking with engineers. He said the FEMA representative in Atlanta had indicated that there would be potential for discussion of legislative issues, which was where the economist would more so weigh in, as well as regulatory solutions.

Councilman Shenko wanted the engineer to come to a Council meeting, before the Atlanta meeting, to report what he had been doing thus far, and so that he could explain what he had done in Naples and why Naples had lost the appeal. He wondered if an economic study had been done in Naples, and if so, if it had helped their case. He also wanted the engineer to go to Atlanta with the Town if the data he produced came back in the manner in which the Town hoped. He was not in agreement with retaining an economist – yet another consultant – to take an economic report to a meeting to be held with engineers.

Mayor Reynolds asked Mr. Feeney if Mr. Tomasello could attend both the upcoming workshop as well as the January 23<sup>rd</sup> Council meeting. Mr. Feeney said he would find out if he was available.

**MOTION:** Vice Mayor Massucco made a motion for Mr. Feeney, along with one as yet unnamed Council member, to attend the meeting in Atlanta with FEMA. Councilman Shenko seconded the motion.

Mr. Gucciardo assumed that the trip to Atlanta would be contingent upon getting feedback from the engineering consultant to the effect that there was some science that would back up the need for more discussion with FEMA's engineers

**AMENDED MOTION:** Vice Mayor Massucco made a motion for Mr. Feeney, along with one as yet unnamed Council member, to attend the meeting in Atlanta with FEMA, contingent upon getting feedback from the engineering consultant to the effect that there was some science that would back up the need for more discussion with FEMA's engineers. Councilman Shenko seconded the motion.

Mayor Reynolds didn't think an elected official should be tied with the motion, because the person who would be in charge would be a Town Staff member.

Ms. Dalton said there was a motion and a second on the floor, and it would be determined by the vote.

Councilman Meador asked if anyone knew when the meeting was to occur, and if it was part of the appeal process or preliminary to it. Mr. Feeney was told by the FEMA representative in Atlanta that the earliest time at which the meeting could occur would be the week of March 17<sup>th</sup>, or St. Patrick's Day weekend. Mr. Feeney thought the intention was for the Town to meet with FEMA prior to the formal process.

Vice Mayor Massucco asked what Times Square would look like, should the maps be implemented, if they suffered over 50% damages from a storm.

Mr. Feeney said up to Third Street on Old San Carlos Boulevard, all structures would be raised a minimum of 16 to 17 feet off the ground. Vice Mayor Massucco remarked that there would be no businesses on the ground level, which he said was "a dreadful thought".

**VOTE:** The motion carried unanimously.

Mr. Gucciardo asked if no action was to be taken with regard to retaining an economist. Mayor Reynolds said that was correct.

#### **E. Traffic Mitigation Agency Recommendations**

Mr. Gucciardo said the TMA had recently reviewed and evaluated a series of traffic mitigation initiatives that had been suggested to Council, and one of them had been a rerouting of northbound traffic onto Crescent Street. He said the TMA had determined that it would be relatively easy and inexpensive to implement. The TMA had recommended to Council that they authorize this initiative for this season, contingent upon the approval of FDOT and Lee DOT. Mr. Gucciardo had met with representatives with both of those entities for a completely different reason, but they had been aware of the TMA's recommendation, and had indicated that, in their estimation, the plan would be something that they could implement relatively quickly and that they would be willing to work with the Town to try to get it in place for this season if Town Council wished. Additionally, they had indicated that the TMA's request, that a portion of Crescent be made one way for the testing of this initiative, would be doable, but that it could be done with or without the one-way designation.

Mayor Reynolds said that while he had allowed Mr. Gucciardo to give the contextual information, he preferred that Council gave their input before

getting extra information. He indicated that Vice Mayor Massucco had been the one to place the item on the agenda, and had wanted him to make his presentation first.

Vice Mayor Massucco expressed his appreciation for Town Manager John Gucciardo's remarks, as they gave Council insight they might not have had otherwise. Vice Mayor Massucco said he had always had an "abundance of faith" in the TMA, and that they had done tremendous work since the agency's conception. He said if the TMA thought this test would help mitigate traffic congestion, then he was for it, and that the Council should do whatever it could within their power to assist the TMA in getting it done.

Mayor Reynolds said he was probably more familiar with the TMA than just about anyone because he had been involved in it, and had been instrumental in its formation. Mayor Reynolds said he had been present at the meeting when the discussion about this recommendation had taken place. He said three of the members – Charles Diemer, Ken Katcko and Frank (no last name given) – had been absent. He said there had already been two test trials done on this particular rerouting scenario, and that he had gotten a lot of feedback from the residents who had not been happy with it, as it had caused a traffic back-up. He said each time it had been tested before, he had received very strong complaints from residents. He read the following statement: "It seems clear that any time you move traffic from a straight line of traffic, of travel, and follow a bypass with three or four turns, more distance and come back to the same straight line heading in the same direction, several problems will occur." Mayor Reynolds said this was the same line of reasoning he had received from residents, and he agreed with them, because it hadn't worked either time it had been tried.

Councilman Shenko recalled that all traffic had been routed that way in other trials, whereas the newly proposed trial offered an alternative to those who wished to take it so as to avoid the pedestrian crossing light on Estero Boulevard. He thought it should be tried. He said the only real concern he had was with regard to the affected businesses and residences on Crescent.

Mr. Gucciardo indicated that FDOT and LeeDOT had anticipated that that might be a concern, and so had indicated to Mr. Gucciardo that they believed it could work with or without the one way scenario on Crescent Street. He thought it could be done in which ever manner the Council wished.

Councilman Shenko pointed out that if it were not made one-way, then the only change would be signage. Mr. Gucciardo added that some pavement marking would be needed as well, which Councilman Shenko acknowledged. Councilman Shenko said it wouldn't cure the problem, but couldn't see how it would hurt to try it, either. He said he would love to see the trolley lane done

away with, and made into another exit lane on the Bridge and said “let’s work on that one, too.”

Mayor Reynolds asked Mr. Gucciardo to furnish Council with the costs associated with the past two tests of this exit scenario.

Councilman Meador pointed out that if Crescent Street were not changed to one-way from Estero to Fifth Street, then nothing would be changed because one could already turn down Crescent Street to exit the Island. He said in that case, a sign indicating the optional exit route would be all that was needed.

Mr. Gucciardo agreed that it would be a minimal change, and said it was why FDOT and LeeDOT had thought it would be fairly easy to implement – some signage, some pavement markings, and possibly some educational outreach. He added that if the road were made one-way to Fifth Street, it would still be a fairly easy and inexpensive endeavor.

Vice Mayor Massucco asked if either of the TMA members present could come forward to give speak to the Council about the issue. Tom Myers came forward and introduced himself, but Mayor Reynolds stopped him, and asked Vice Mayor Massucco to give him a moment to respond to his request when calling someone forward to speak to Council. Vice Mayor Massucco responded in the positive, and then Mayor Reynolds invited Mr. Myers to resume making his comments.

Tom Myers, the Chairman of the TMA, said his agency believed the recommended traffic scenario was worth a try. He said it was true that the last time the exit option had been tested, people traveling north on Estero had not been given the option of using either the new route or the usual Estero Boulevard exit route through the pedestrian light in front of Seafarers Mall. Additionally, Mr. Myers said when the Bridge had first been built, several citizens had proposed moving Estero Boulevard to a position similar to the route the TMA wished to test now. He didn’t know why that proposal had been rejected at that time. He pointed out that there may be an opportunity in the near future to reconfigure the road over the back of the Seafarers property to create a direct route onto the Bridge.

Mayor Reynolds asked Mr. Myers if he meant that the Seafarers building could be torn down for use of the right of way for the exit road as Mr. Myers had just described. Mr. Myers responded in the affirmative, and added that the developer of the property had plans to tear down the structure anyway. Mayor Reynolds said that information had not come to the Council as yet. Mr. Myers said that was information that had come back to him. Mayor Reynolds said the idea made sense.

Councilman Boback asked if the TMA thought that Crescent should be a one-way or a two-way street in their recommended exit scenario.

Mr. Myers said there had been mixed opinions on that, but he agreed that with the businesses on Crescent Street, making it one-way to Fifth may impact them negatively. He commented that small business owners often didn't get the same consideration as the larger businesses like McDonald's.

Councilman Meador said he appreciated the suggestions that came from the TMA, but had been surprised at how late this one had come before Council. He understood that the trolleys had been under consideration by the prior Council, but in the past, other suggestions that had been made by the TMA. As an example, he asked what had been done with the TMA's proposal a few years ago to reopen Center Street.

Tom Myers said the reopening of Center Street was still on hold, as far as he knew. He didn't think it would help much with the exit scenario under consideration at this meeting.

Councilman Meador said his question was why not more than one TMA recommendation at a time had been implemented.

Mr. Gucciardo thought the TMA had created a list of options the Council might want to consider moving forward on. He said the reason only one of those suggestions had come forward to this Council was that the TMA wanted to see what could be implemented on a short time frame, and the recommendation before Council at this meeting was the most simple and cost-effective suggestion on that list. He added that the TMA had been waiting for feedback from the Council about other items on the list of options they had created to see which ones Council was most interested in. At that point, they will begin to devote some time and resources to working out the details of those suggestions preferred by Council.

Mayor Reynolds told Councilman Meador that the discussion at this meeting should be limited to only the recommendation before Council, and should not deviate onto other items on the list of ideas created by the TMA. He said those other suggestions had been discussed at length on two prior occasions, and that was not what they were discussing at this meeting.

**MOTION:** Councilman Shenko made a motion that Council follow the recommendation of the TMA to indicate an alternate route down Crescent Street to Fifth Street and onto the Bridge, and that Crescent Street remain two-way, and that Staff inquire as to the possibility of having two lanes exiting the Island and one lane coming onto the Island, eliminating the trolley lane. Councilman Boback seconded the motion.

Mayor Reynolds said he could not support the motion because he could see no reason to deviate off a straight line in order to get onto the Bridge.

Councilman Shenko said he would use that lane.

Mayor Reynolds said he didn't understand how the alternate route could help anyone. Councilman Shenko explained that there was no traffic light on Crescent Street, and if there were a dedicated exit lane from Fifth Street onto the Bridge, it would be icing on the cake.

Mayor Reynolds felt the route had been tested a lot, and that this would just be a repeat of those.

**VOTE:** The motion carried 4 – 1, with Mayor Reynolds dissenting.

Mr. Gucciardo asked if the motion included the option of one-way or two-way, and Mr. Shenko said it had included leaving Crescent two-way.

Regarding the additional request by Mr. Shenko for Staff to inquire as to the possibility of making two exit lanes on the Bridge by eliminating the dedicated trolley lane, Mr. Gucciardo said that had been one of the options he had already discussed with FDOT and LeeDOT, and he was awaiting for their analysis as to whether that was a possibility.

Vice Mayor Massucco didn't believe it was within the realm of the Town's responsibility to discontinue the trolley lane, and if the County wanted to, it could maintain the dedicated lane for the Park & Ride trolleys.

Mr. Gucciardo said in terms of legality and ownership of the roadway, Vice Mayor Massucco was absolutely right. However, he had gotten the impression that they were willing to work with the Town whenever possible, and that they wanted Council's input on this type of issue.

Mayor Reynolds said the discussion had gotten way off target and that the meeting was running late. Mr. Gucciardo said he had just been responding to the Vice Mayor's remark. Mayor Reynolds said that had been off the subject.

**F. Notice of Funding Availability – “Emergency Preparedness and Assistance Trust Fund”**

Mayor Reynolds said this item was for the purpose of getting direction from Council, and that there was a February deadline on the fund.

Mr. Gucciardo said the PSTF had indicated in the past that one of the initiatives they wanted to pursue was the establishment of a CERT program in Town. He said when Council had discussed it, there had been some consensus that the program might be worth pursuing. He said they were still

gathering information as to the viability of having the program on the Island, and said it would be in partnership with the Fire District. Before the PSTF had completed its fact-gathering and had been able to forward a formal recommendation to Council, Mr. Gucciardo had become aware of the grant which had as one of its priorities the formation of CERT programs. He said there was usually a buy-in from the community of 10 – 25% required as part of the grant agreement, although Staff time may qualify for part of that amount. He said there was a February 2 deadline, but before the grant were earnestly pursued, he wanted to ensure that it was something Council wanted to pursue.

Mayor Reynolds had thought the Fire Chief was to create the CERT program, in conjunction with the PSTF and its members.

Mr. Gucciardo said Mike Becker was a big proponent of the program, and Mr. Gucciardo believed he had gotten direction from his commissioners to take the preliminary steps toward establishment of the program. He said he and Mr. Becker had worked very closely together, and had done other joint grant ventures in the past, and had done various other programs with the Fire District. Mr. Gucciardo thought Mr. Becker felt if the program could be done as a partnership with the Town it would be wonderful, but if the Town opted not to participate, Mr. Gucciardo felt the Fire District would pursue it anyway.

Mayor Reynolds asked if what Mr. Gucciardo wanted was some direction as to whether he should apply for the grant or not. He added that Mr. Becker could apply for the grant himself.

Mr. Gucciardo said it may be determined that the program is not far enough along to qualify for the grant within this application cycle, and even if the grant were awarded, he was not sure what expenses it would cover. He asked for Council's direction as to whether or not it should be looked into.

Mayor Reynolds said he would encourage the Council to give Mr. Gucciardo the leeway to look further into the grant and the CERT program. He asked that Mr. Gucciardo keep Council informed as to any information learned.

Mr. Gucciardo also assured the Mayor that any actual commitment would be brought before Council beforehand for their approval.

Councilman Meador thought there was a January 6<sup>th</sup> deadline for providing a project description to County Emergency Management Agency. Mr. Gucciardo said he had contacted John Wilson there, and that Mr. Wilson would give a concurrency on the application if the Town limited itself to establishment or development of a CERT program.

Councilman Meador asked if there were a similar program in existence in Town already, and Mr. Gucciardo said the closest to a CERT program had been the initiative the PSTF had started, with Council's approval, in which they had developed a cadre of volunteers who could be called on to assist in emergency situations. He said it was a basic and unsophisticated program compared to CERT, which required real training and expertise.

Councilman Meador asked if CERT was FEMA or Red Cross sponsored, and Mr. Gucciardo indicated FEMA was the sponsor of it. Councilman Meador asked if any of the PSTF members were already certified in the CERT program. Mr. Gucciardo said none were.

Mayor Reynolds didn't think it was a FEMA program, and Councilman Shenko said it was a FEMA-endorsed program. Councilman Meador also said it was a FEMA sponsored program.

Mayor Reynolds said the application deadline was February 7<sup>th</sup>.

Councilman Shenko was concerned about accountability. He said in the CERT program, the volunteers were given quasi-fire/police power, and he wondered to whom they answered – the Town or the Fire District. He said if the Town helped pay for the establishment on the Beach, and also assisted in getting the grant, he felt the Town would be paying them. He asked who insured the volunteers – liability, workman's comp; he asked who would do background checks and drug testing. He asked if there were a health and fitness program for the volunteers. He asked what would happen if a volunteer directed someone into a power line. He said the CERT program normally presupposed there would be a city that operated a fire department, whereas the Town does not operate the Fire District. He said the Town's budget was 25% of the Fire District's budget, and felt the Town needed to have a very set accountability program between the Town and the Fire District, and needed to know who would be in charge and commented: "Who comes over the Bridge? Who gets the cans of red spray paint?". He said that without more information, he did not believe the Town should go forward with the grant.

**MOTION:** Councilman Shenko made a motion that more information about the CERT program be presented to Council at the workshop, with the Fire Chief there if possible to explain the command structure and the Town's liabilities if a partner in the CERT program. Mayor Reynolds seconded the motion.

Mayor Reynolds said he had spoken with Asst. Chief Becker about CERT, and that he had been very cooperative. Mayor Reynolds felt Councilman Shenko had raised very good points, and thought they should continue to learn more about the program.

Mr. Gucciardo said he had no problem with Council's direction.

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

**G. Letter from Lee County re: Park & Ride**

Mayor Reynolds indicated a letter from Commissioner Albion written to Mr. Gucciardo that had been delivered to the Council just before the meeting. He read: "Unfortunately, my schedule will not allow me to attend this meeting tonight regarding the Park & Ride program. However I do wish to bring this issue to the Board for discussion. I appreciate knowing the outcome of the Council's decision and the position they plan to take on the Park & Ride program prior to tomorrow morning's 9:30 AM board meeting. You may respond....".

Mayor Reynolds said he had told the board members of the traffic committee that the old, outgoing Council had voted 5 – 0 to discontinue financing for the Park & Ride; he also had indicated at that meeting that the newly elected Council had voted 5 – 0 to discontinue the Park & Ride program. He said Mr. Albion already knew the Town would not pay for the program, and believed what Mr. Albion wanted to know was if the Council would give the County "their blessings" should the County continue the program themselves, with a fifty-cent fare charged.

Mayor Reynolds said what the Commissioners were asking for was Council's approval of the program, which would bring more pedestrians into the Times Square area. Mayor Reynolds said when the Council had voted against funding the program, there had been more than money involved in the decision. He said every time a person crossed the street in Times Square it stopped traffic for three or four miles.

Mayor Reynolds said there were two points that needed to be made clear to the Commissioners, even if the federal government gave the Town a big grant to continue the program, bringing more pedestrians onto the Island created problems all the way down the Island. He said the majority of the south end residents, whom he said comprised most of the audience at this meeting, paid about 80% of the taxes on the Island, and did not want all those additional people coming to the Island, whether those people paid or were given a free ride. He said: "If people really want to come to the Island, we have no problem with that, but let them sit in the same line that we sit in."

Mayor Reynolds said the counter-argument to his views, was that for every trolley that came to the Beach, so many cars would be taken off the road. He said that was true to an extent, but many of "these people" would not have come to the Beach at all if the Town had not "shelled out \$50,000 of the taxpayers' money to hire a public relations firm to promote" it. He said that

someone had said that the businesses needed the extra help, and he asked “what businesses?”. He did not believe Sea Grape Plaza or Santini Marina Plaza got any benefit from the program.

Mayor Reynolds encouraged Council to stick with their decision not to fund the program, and further, felt if the program continued at the level it had been, it would continue to create problems for the Island’s residents. He said anyone who doubted that should go to the south end of the Island and drive back to Times Square during season.

Councilman Boback didn’t think the Town could stop the County from bringing the Park & Ride trolleys to the Beach. He said the County wanted the Council’s blessings for them to continue the program with their own funds.

Mayor Reynolds said they wanted to know how Council felt about it, and hadn’t necessarily asked for the Council’s blessings.

Councilman Boback said that was basically what Mr. Albion was doing. He didn’t believe the Town could stop the County from bringing the trolleys onto the Beach, no matter how they felt about it. With or without the Council’s blessings, Councilman Boback said it was going to happen anyway.

Councilman Boback pointed out that if the Town planned to work with the County on various issues such as turning the trolley lane into an additional exit lane, the Council should try to be cooperative and show a measure of support for what they were trying to do for something that the Council can’t stop anyway.

Mayor Reynolds said stopping the Park & Ride was not Council’s call, but that Mr. Albion wanted to know what Council’s position was on the Park & Ride program. He wasn’t sure they even wanted the Council’s blessing. He believed that if the County perceived that the program would continue to be a problem for the Town, that they may not continue it at all.

Vice Mayor Massucco personally had accomplished his own mission by contributing to the vote which suspended all Town funding of the program. He believed the County Commissioners felt obligated and committed to carrying on with the Park & Ride program, with or without the Town Council’s blessings. Vice Mayor Massucco said he had heard two or three accounts of what could happen without the Park & Ride program, and it really didn’t matter what the Council said about it.

Mayor Reynolds said he didn’t believe the County would run the Park & Ride trolleys without the Town’s blessings, because the letter had asked for their opinions and he believed the Commissioners would take the Council’s

suggestions. He didn't believe the County would "cram it down our throats". He really believed the Commissioners were looking for some direction from Town Council.

Mayor Reynolds said they should indicate to the commissioners whether they wanted the Park & Ride, at County's expense, or not. He said if the Councilmen thought the Park & Ride would help the Town's residents, they should communicate that to the County. He said they should not consider what the County wanted, but what they, as individual Councilmen, wanted for their Town.

Councilman Meador appreciated the County's decision to support the project, but as long as it included a dedicated lane for the trolleys from Summerlin Square to Ft. Myers Beach, while the Beach residents had to sit in miles of traffic, he could not support it.

Councilman Shenko agreed with Councilman Meador, and said it may mean that there would only be one lane open for traffic from Summerlin Square to Ft. Myers Beach. He said the only way he would support the program was if Council expressed its strong opposition to a dedicated lane from Summerlin Square to the Bridge, as well as on the Bridge itself. He said the only difference between the program as proposed by County, and a County Transit Authority, was that a Transit Authority could levy a tax without asking. Councilman Shenko noted that County was not "forcing a Park & Ride down Sanibel's throat".

**MOTION:** Councilman Shenko made a motion that the Council send an indication to the County that the Town was not in agreement with the Park & Ride program, especially as it related to the dedicated lane and the lane over the Bridge. Vice Mayor Massucco seconded the motion for discussion.

Vice Mayor Massucco said he had received negative comments from residents on the Beach, and added "they hate" the dedicated lane, and "hate" to see the buses passing them while they sat in traffic. He said he agreed with them 100%, but he said the County was going to run the program because they had a responsibility to run it. Vice Mayor Massucco recalled Mr. Meyers of LeeTran telling Council, at a prior meeting, if Park & Ride remained at core level of service during season, that there would have to be armed guards at Summerlin Square to protect the drivers from angry patrons expecting the same level of service as was provided last year. For these reasons, Vice Mayor Massucco believed the County would go through with the program, with or without the Town's blessings. He reiterated he knew that the Beach residents were opposed to the program.

**VOTE:** The motion carried unanimously.

Mayor Reynolds said that essentially Council was communicating “get in line with the rest of us”.

Mr. Gucciardo said he would communicate to Commissioner Albion that the Council was not in agreement with the Park & Ride program, especially as it related to a dedicated lane to the Island and over the Bridge.

#### **H. New Items**

Mayor Reynolds thought this item might not be needed, as issues could be raised during Members’ Items and Reports.

#### **I. Old Items**

Councilman Boback said the advertisement for a new Town Manager had been placed in the League of Cities Florida and National, as well as the Professional Managers Association publications. He said Council had also approved its placement in the Wall Street Journal, which was priced at almost \$3,000 for one day, so the ad had not been placed in the WSJ. He said he had looked into placing the ad in the FM News-Press and the Naples Daily News; the News-Press had quoted close to \$1150 for one day, and Naples had quoted over \$500 for one day. As a result, the ad was not placed in either of those newspapers. After speaking with Ms. Lambert, Councilman Boback had cut the ad down to a three-line ad which directed interested parties to the Town’s website, and then had had Ms. Paulauskas put the details of the original ad on the website. The shorter ad would cost \$640.65 to run three days in the FM News-Press, whereas one day would cost \$420.30 – Sunday only. The shorter ad would cost \$153.60 to run three days in the Naples Daily News. He asked for direction from Council as to whether he should place the shorter ads in the local papers. He noted that the deadline for submission of resumes to the Town was January 31<sup>st</sup>.

Vice Mayor Massucco had hoped for wider exposure than just Ft. Myers, Naples and Ft. Myers Beach. He thought they should go outside of the area, as he really wanted someone “fresh” who had new ideas and new energy. He thought local people would come in with their minds already made up, and opined that the Town might end up taking a giant step backward in that case. He thought \$3000 was not a lot of money in relation to the salaries of the type of person the Town wanted to enlist.

Mayor Reynolds agreed.

Councilman Boback assured the Vice Mayor that the ad had gone beyond the local area with its placement in the Florida and National League of Cities publications, as well as the Florida and National Professional Managers Association publications; thus, the ad was appearing all over the U.S. When he asked Ms. Dalton how many responses to the ad had come in so far, Ms. Dalton indicated there were probably a dozen.

Vice Mayor Massucco asked if a salary amount had been included in the ads.

Councilman Boback said there had not been, and that he was still in the process of conducting a salary survey through the League of Cities, to determine the salary ranges for Town Managers of communities roughly the same size as FMB – he added that the survey included a salary survey of all Town Staff positions as well.

Councilman Shenko thought they should probably run the ad in the News-Press, and possibly Miami or St. Pete. Councilman Boback commented that those areas were covered by the League of Cities publications.

**MOTION:** Councilman Shenko made a motion to run the ad in the News-Press for one three-day period of a Friday, Saturday and Sunday: no ad to be placed in the Naples Daily News. Mayor Reynolds seconded the motion.

Councilman Meador felt anyone in the Ft. Myers area who didn't know the Beach was looking for a new Town Manager would have to have been "hiding under a rock too long", and would be someone the Council didn't want.

Mayor Reynolds felt that, for legal reasons, Councilman Shenko's motion was a good one.

Ms. Dalton said there was no legal requirement that an employment ad for the Town Manager had to be run in a local paper.

Councilman Shenko withdrew his motion. The seconder, Mayor Reynolds, withdrew his second to the withdrawn motion.

**MOTION:** Councilman Shenko made a motion that no further ads be run. Mayor Reynolds seconded the motion.

**VOTE:** The motion carried unanimously.

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

Mayor Reynolds said "the three of us" (no names given) had attended a ceremony at the Coast Guard station in honor of the women's auxiliary. He said the commander of the station had expressed his interest in coming to address the Council as to the station's activities, especially with regard to hurricanes. Mayor Reynolds had asked if Council could take a ride on the boat, and the commander had indicated that sometime in March or April would be a good time for that.

Mayor Reynolds said there had been some people disappointed with the New Years Eve fireworks this year because they had not gone off until midnight.

Mayor Reynolds said the festivities in Times Square were promoted as family-oriented in nature, and the fireworks had gone off too late for families with small children. He noted that he had received a letter from a woman who had been very pleased that the Sheriff had been able to route the traffic off the Island so rapidly after the New Years Eve event.

Mayor Reynolds mentioned Ben Aylord at the MPO was going to be retiring at the end of the month, and that more information about that was forthcoming. He said he was temporarily holding the Town's seat on the MPO, and that they would be discussing permanent appointments during the upcoming workshops. He said he had a lot of things he planned to bring up at the workshop, and hoped the other Councilmen were planning to do the same.

Mr. Gucciardo said, based on previous discussions, one of the items the Mayor had planned to bring forward was the potential need for a meeting next week, at the time when a Land Use meeting would have been held, to discuss Commercial Development standards.

Mayor Reynolds said he had called for that meeting because it had come to his attention, more than once, that administrative approvals were given on whole building projects, which he said might cost a few million dollars, and which did not come before the LPA or the Council. He said that was "frightening" because it was Council's responsibility to ensure development didn't go beyond the recommended amount. He wanted both the LPA and Council to have the opportunity to review the projects to ensure they met code. He said had scheduled the meeting for January 17<sup>th</sup> but if any of the other Councilmen objected, he invited them to speak if they wished.

Mr. Gucciardo said he had not understood that the meeting had already been scheduled, as he thought that was going to be determined at this meeting. Mayor Reynolds said he had sent Mr. Gucciardo, Ms. Lambert, Ms. Dalton and every Councilman a message stating his wish to schedule that meeting. Mr. Gucciardo apologized, and acknowledged that he could have misunderstood, but had thought the Mayor had intended to bring up the subject at this meeting so as to determine if the meeting would be called. He corrected himself to say it was about commercial design standards, not commercial development standards; he noted that two projects had been routed to Council for input – the Buccaneer and the Colonial Bank.

The Mayor said both Mr. Murphy and Mr. Green had spent over an hour with him the previous week going over the design for the Buccaneer and another project. He said it had been very beneficial, and felt every Council member should have that information. He repeated that he wanted the meeting scheduled for January 17<sup>th</sup> at 10 AM.

Vice Mayor Massucco said he had gotten two letters and two phone calls in the last week regarding the opinion that there were too many dogs on the beach. He expressed concern about the dogs urinating in the sand, which could not be cleaned up by the owners, while children played in the same sand. He felt the problem was growing worse, and believed it was something the Council would have to address soon.

Attorney Dalton, in reference to Mayor Reynolds' item about commercial design and his wish to schedule a meeting to discuss it, mentioned something Councilman Shenko had brought up earlier in this meeting. She said, if it was the will of the Council to have the meeting on January 17<sup>th</sup>, there would be no County staff required to attend; therefore, the Council had the option of scheduling the meeting in the evening if it so chose.

Mayor Reynolds said he had planned the meeting with Mr. Murphy and Mr. Green because the Council was being asked to stamp something about which they knew nothing. He said because there was no Land Use case before Council on the regularly scheduled Land Use meeting date, January 17<sup>th</sup>, he believed it would be a good time to have that special meeting.

There was some discussion as to what time of the day the meeting could be scheduled. Councilman Meador pointed out that because it was not a Land Use case, and was a special meeting, it didn't matter at what time they met. Mayor Reynolds said he had scheduled it as a Land Use case, but Councilman Meador said he couldn't do that because it was not a Land Use case. Mayor Reynolds said it was a Land Use-knowledgeable situation, and was a case, because the projects wanted a CDS approval. Councilman Meador asked if someone had filed an appeal on an adverse ruling. Ms. Dalton said that, to her knowledge, no one had.

Jerry Murphy said the way the process was laid out in the LDC was that when a CDC came in, Staff reviewed it for compliance with the commercial design standards laid out in the LDC. He said it generally took several rounds of discussion with the developer, and ultimately they would submit something that Staff felt complied with the requirements. At that point, Staff had a certain amount of time to provide that to Council, and if a majority of the Council felt Staff's approval of the designs was incorrect, then Town Council would enter into an appellate process, where Council would appeal Staff's determination, and would make some other determination of their own.

Ms. Dalton said there was no specific issue before Council, but that the meeting would be called to discuss a matter that happened to be a Land Use issue.

Councilman Meador asked if he was correct that Staff determinations regarding either of the projects mentioned by Mayor Reynolds had been

appealed by Council majority. Mr. Murphy said they hadn't, but the thirty day window for doing so was near. Mayor Reynolds said that was why he felt it was urgent to have the meeting on January 17<sup>th</sup>. He felt the meeting would last for at least an hour or more for the explanation to be given to Council.

Councilman Meador asked if the Mayor were presenting the item to be appealed.

Mayor Reynolds said he wanted the time taken by Council to either approve or reject it. He said he hadn't wanted to take that much time at a regular Council meeting to deal with it.

Councilman Meador asked Mr. Murphy if he understood the procedure correctly and began to list the steps of the procedure. Mr. Murphy explained the steps about which Councilman Meador was unclear.

Councilman Meador asked how and when would a majority make the determination that it going to go to appeal or not.

Mr. Murphy said it was not specifically laid out, and which was why he felt Mr. Gucciardo had raised the issue, so that the 30 day window wouldn't be missed. He said the proposed meeting would be an appropriate forum. Mr. Murphy had that one had never been done.

Councilman Meador said the procedure of the majority of Council making the decision to appeal something, and then the majority of Council making the decision on the appeal, sounded somewhat redundant.

Mr. Murphy said that procedurally, a majority of the Council would be saying that Council was going to take an appeal on something; then, the applicant or proponent of the project would have the opportunity to be in front of Council to hear Council's concerns and agree to make any changes suggested, or not; then if the determination of compliance could not be addressed in that appellate forum would be denied or approved.

Attorney Dalton agreed that at "first blush" it appeared redundant, but thought the purpose of it was to set a hearing date because the Council could take no action on it unless it was during a noticed meeting. Thus, she said the first step of the appeal process was to give the applicant notice that there was going to be an appeal, and then due process would move forward at a noticed hearing.

Councilman Meador supposed that if a particular Council member had a concern with a particular administrative determination, it would be put on the agenda for the next Council meeting, so that it could be considered as to whether it should be pursued or not.

Ms. Dalton said that was correct. She remarked that she was not sure what the function of the meeting was which Mayor Reynolds had suggested for January 17<sup>th</sup> in terms of whether it would be the first step of that process, or if the Mayor had envisioned a theoretical discussion of the LDC language.

Mayor Reynolds thought Councilman Meador and Attorney Dalton had made an assumption that there would be an appeal, which he had not assumed. He said he wanted the Council to learn about the process, and in doing the process, he believed the Council would approve the CDS that Mr. Murphy and Mr. Green had been working on. He felt, because the process would take about an hour, and because there were no Land Use cases scheduled on their regular Land Use case meeting date in January, he felt it would be an appropriate time to introduce Council to the process. He said he had gone through the CDS, and did not anticipate the Council finding anything particularly wrong with it, although they might find it “a little stark”. He said the topic would not be appropriate for the workshop, and that it was definitely a Land Use item. He said if Council wanted to delay it, then it would be, but felt it was urgent enough that it needed to be dealt with.

Mr. Murphy said he could read the provision from the code to Councilman Meador if he wished, so as to help clarify their discussion. Councilman Meador said “fax it tomorrow would be even better”.

Mayor Reynolds said that, unless Council made a motion otherwise, he still wanted the meeting to be scheduled on January 17<sup>th</sup> at 10 AM.

Councilman Shenko proposed that the meeting be held at 6:30 PM. Mayor Reynolds said that would be fine.

Councilman Meador asked if it was going to be a mini-workshop.

Mayor Reynolds said that wasn't the case, and that Council would be voting on it.

Attorney Dalton said they couldn't unless a specific item was noticed first.

Mayor Reynolds said that had been why he had asked Mr. Gucciardo if he had sufficient time to place the notice in the paper.

Councilman Meador said to get either of the items on the agenda, there had to be a majority vote to appeal on an item that wasn't even on this meeting's agenda.

Mayor Reynolds said that Councilman Meador still didn't understand, because the meeting was not for an appeal, but that could be an option if Council rejected what it saw at that meeting.

Councilman Meador thought, per his understanding of the code, that Council did not have to approve a CDS, and that they were automatic if the Council did nothing. Ms. Dalton said that was correct. Councilman Meador said, therefore, Council did not have to have a meeting to approve it; but had to have a meeting to start a potential disapproval process. Ms. Dalton said that was correct. Councilman Meador said Mayor Reynolds didn't want to do that.

Ms. Dalton said if, at the special meeting, either the Buccaneer or the Colonial Bank project were discussed, they would have to be specifically noticed.

Councilman Meador asked if it would then be a Land Use case and quasi-judicial. Ms. Dalton said that was correct, as opposed to legislative.

Mr. Gucciardo suggested, if the majority of Council did not want to appeal it and that was specifically indicated, the meeting could be set as a special meeting to discuss the process of the CDS, using the Buccaneer and Colonial Bank projects as examples. He asked if that would be appropriate.

Ms. Dalton said if there was no appeal, any project could be used illustratively. However, she pointed out that it had not been on this meeting's agenda for any purpose whatsoever, in terms of the Buccaneer and the Colonial Bank CDS.

Mayor Reynolds told Ms. Dalton that all Council members had received communication about it, however.

Ms. Dalton said she understood that, and while it was not required for Sunshine purposes to have an item noticed specifically for discussion, as a matter of policy, the Council may or may not want, in Land Use cases specifically, to have them specifically noticed.

Councilman Shenko said he would not mind having a meeting for informational purposes so as to see how the process worked, but he didn't want to use pending matters as examples in that meeting, especially as they would be automatically approved if Council took no action. He said using an old case for an example would be acceptable to him.

Mayor Reynolds thought the Council should see things before they were automatically approved. Councilmen Shenko and Boback said they had all seen it. Mayor Reynolds said perhaps they had understood it really well, and Councilman Shenko said he had had some questions, but that he was satisfied with it.

Vice Mayor Massucco said he would be in favor of the meeting if it were for informational purposes only, and if no pending cases were used as an example.

Councilman Boback said the special meeting could only be for informational purposes, as there was no case before them. Councilman Shenko felt they could do that at the workshop.

Mayor Reynolds said he hadn't looked at it that way, but told Mr. Gucciardo not to set the meeting.

Councilman Shenko commended the Sheriff's Department and the Times Square merchants with regard to the New Years Eve event. He said he had been there in the afternoon and at night, and thought they had done an excellent job. He said he had been incorrect in his assumption that there would be problems with Times Square being opened up for consumption of alcohol.

Councilman Shenko said he and a few other Council members were planning to attend the Institute for Elected Public Officials beginning on January 20th, which he said was a three day class held in Gainesville, the purpose of which was to teach them how to be Council members.

Councilman Meador said he would like the reopening of Center Street placed on the agenda for the next Council meeting.

Councilman Meador asked if a date for the workshop had been determined.

The following was data was given in response -

DATE: Saturday, January 28<sup>th</sup>.  
TIME: 9 AM – 3 PM  
LOCATION: Mound House

**IX. TOWN MANAGER'S ITEMS**

Mr. Gucciardo had no items.

**IX. TOWN ATTORNEY'S ITEMS**

**A. Wilker Item – Stipulation and Proposed Order**

Attorney Dalton presented a matter involving the Town of Ft. Myers Beach vs. Herbert and Nancy Wilker, which she said was a code enforcement foreclosure, authorized by the Hearing Examiner Special Magistrate, and was also moved forward by a prior Town Council. She said it was before this Council now because there had been a stipulation that had been proposed by the bank, pursuant to which the bank was agreeable to taking no action whatsoever in this litigation, in exchange for this body recognizing that its

mortgage interest is superior to that of the Town. Ms. Dalton said that was, in fact, the case. She said the mortgage interest of \$140,000 was a lien superior to the Town lien. She said there were no negative ramifications for the Town to enter into it. She said Councilman Meador had pointed out that in Paragraph 4, the plat book and page reference should probably be double-checked. She said she had prepared the stipulation, and the fill-in-the-blank part had been filled in by the bank, so that the plat book and page reference had not been done by her. She said it was being requested of the Council to approve the document, and therefore she would double-check those things. She said the stipulation had been made available to Ms. Dalton late that afternoon by counsel for the bank, and she apologized for bringing late before Council. She requested, if the Council chose to move forward on the stipulation, that there be a motion, a second and a vote to that effect.

**MOTION:** Mayor Reynolds made a motion to have Attorney Dalton move forward on the item. Councilman Boback seconded the motion.

Ms. Dalton asked that there be no discussion of the substantive issues regarding this matter, as it was pending litigation.

Mayor Reynolds said Ms. Dalton had provided enough information to Council, and there was no need for discussion.

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

#### **B. Code Lien Enforcement**

Ms. Dalton said this was a list compiled by Lee County. She said the County had a component in the Town's code enforcement process. She said when she had become the Town Attorney, she had become aware of a number of pending code lien issues. She briefly explained the process, wherein the Town Council was technically not in the chain of approval in terms of foreclosure. She said the way the LDC was phrased, permission or denial was actually given by the Hearing Examiner Special Magistrate. Although it was technically required for her to do so, she was bringing this forward to Council for two reasons: 1) In the Wilker litigation, the filing fee was \$260, and the service costs were over \$500, for a total of \$825. She said she would not spend Town money, let alone attorney fees, in pursuit of foreclosure without having some direction from Council; 2) She requested that Item #2 – the Kudzik matter - be pulled from consideration by the Council. She said if the Council wanted to consider moving forward on the remainder of the list at this meeting, it would be a policy question. She asked that the Kudzik matter be pulled or deferred because a lien had not been recorded and there were factual issues she wanted to further explore.

**MOTION:** Councilman Shenko made a motion that they proceed as outlined by the Town Attorney. Vice Mayor Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

**C. Code Changes – Memo**

Ms. Dalton said this was an FYI item.

Ms. Dalton said changes to the LDC would go to the Local Planning Agency for hearing, and then would come back before Council. She said when she first became FMB Town Attorney, one of the projects she had been tasked, in conjunction with the Department of Community Development, with doing an update to the Code Enforcement provisions of the LDC. She said some of the provisions were outdated and did not comply with statutory requirements and did not provide protections for the Town that were afforded by the statute. She said it was an attempt to update the LDC, and to further protect and augment the Town's code enforcement procedures; it was also so as to clear up what Ms. Dalton characterized as "muddy language" in the LDC. She said she had not brought it forward for a determination at this meeting, but did not want it to "come out of the blue" to Council and cause confusion.

**D. Introduction of Committee and LPA Ordinances**

Ms. Dalton said Councilman Boback had asked that these proposed ordinances be brought forward.

Councilman Boback said he sincerely appreciated every person who had ever volunteered on any of the Town's committees. He said he was not trying to run anyone off the committees. He requested that every committee member newly submit an application for a seat on a committee. He said that, during his campaign, many residents had said they would have liked to be on a committee, but hadn't believed they could "get through the door" unless approved by the previous Town Manager. He said it was immaterial whether it was true or not, but it was a perception "out there". He said there were so many intelligent, willing people on the Island, that by limiting the number of committees on which a person could serve simultaneously, that a whole new avenue would be opened up for the committees to bring in "fresh blood" and new ideas. He reiterated that he had nothing against those who were currently serving on committees. He thought it was more than likely that most who re-applied would be reappointed.

Councilman Boback said he believed in the KISS principle – Keep It Simple Stupid. He said there were eight committees, and there were roughly 28 ordinances which regulated those committees, and that 28 ordinances were not needed for 8 committees. He said he wanted to simplify the entire matter, with one ordinance for one committee, which he felt would result in no confusion.

He said his personal recommendations, which he had brought forward to Council at this meeting, were based on conversations he had had with different residents coupled with his own personal considerations, and were always open to adjustment and change by Council.

He had asked the Town Attorney to prepare the following ordinances, and noted that there were other subcommittees that had not addressed as yet, but that he would be meeting with Ms. Dalton at a later date to do that.

Ms. Dalton said she had an umbrella comment about the ordinances, and that it had to do with a drafting issue. She said Item B in Councilman Boback's memo to her indicated that terms were to expire on March 31<sup>st</sup> of every year. She said the way the ordinances were drafted, the appointments would be made at the first available meeting in April, which she said could be a problem in that there could be a significant gap between the time a term ended and the member was either reappointed or replaced. She respectfully requested that the Council address that issue as they considered each ordinance. Ms. Dalton said the Town Charter stated that a proposed ordinance may be read by title or in full on at least two separate Council meeting days. In past Councils, when an ordinance of this type was introduced – except for the LPA ordinance – there had been only a general discussion and a date would be set if it was the will of Council to move it forward to a hearing. She suggested that each ordinance be read by title, due to the late hour. She said it was not mandatory.

Mayor Reynolds said all the Council members had read the proposed ordinances, and that this was an introduction of them – an extra step this Council had decided to use, which he said was different from past years. He said he had no objections to not reading the ordinance titles, as it was not required, and they had all read them. He said the public would hear all of the ordinances as they went before the LPA and the Council for public hearing.

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|-----------|------------------------|--|
| <b>1.</b> | <b>Ordinance 06-01</b> | <b>Anchorage Advisory Committee</b>                              |
| <b>2.</b> | <b>Ordinance 06-02</b> | <b>Cultural and Environmental Learning Center Advisory Board</b> |
| <b>3.</b> | <b>Ordinance 06-03</b> | <b>Community Resources Advisory Board</b>                        |
| <b>4.</b> | <b>Ordinance 06-04</b> | <b>Marine Resources Task Force</b>                               |
| <b>5.</b> | <b>Ordinance 06-05</b> | <b>Public Safety Task Force</b>                                  |
| <b>6.</b> | <b>Ordinance 06-06</b> | <b>Traffic Mitigation Agency</b>                                 |
| <b>7.</b> | <b>Ordinance 06-07</b> | <b>Times Square Advisory Board</b>                               |
| <b>8.</b> | <b>Ordinance 06-08</b> | <b>Local Planning Agency</b>                                     |

Ms. Dalton said the LPA ordinance would go before the LPA as its next step. She mentioned that Councilman Boback had indicated that terms would expire on March 31<sup>st</sup> of each year. She said the way the LPA ordinance had been

written, the terms were staggered so that there would be an equal mix of experienced, intermediate and new members. She asked Council for direction as to whether the staggered component would expire on March 31<sup>st</sup> of each year, or if the entire membership would expire on an annual basis. She had consulted with Mr. Spikowski to determine if there were a norm to guide this component, and he had told her staggered terms were the norm, and had personally never heard of an LPA that did not have staggered terms. She added that it was a policy issue.

Mayor Reynolds did not think the annual expiration of membership would apply to the LPA.

Ms. Dalton asked if the LPA ordinance would then not be amended.

Mayor Reynolds said he did not mean that, but only that their terms would not expire annually on March 31<sup>st</sup>.

Ms. Dalton understood the Mayor to mean the staggered format would be retained in the LPA ordinance, but the March 31<sup>st</sup> expiration would be “folded in”.

Mayor Reynolds felt that was imperative for the LPA. In reference to remarks made during public input earlier, Mayor Reynolds said the LPA members worked very hard and were familiar with the Comp Plan, and felt it would be a catastrophe to replace too many of those members at a time. He said continuity was needed on that committee.

Ms. Dalton asked when the appointment date would be set for replacement of an expired membership. She opined that the appointment date should be set prior to the expiration so that lapse in service would not occur.

Mayor Reynolds said it really didn't matter.

Councilman Boback said he had no problem moving the expiration date back or forward by a week or so, but he understood Ms. Dalton's point.

Ms. Dalton asked Councilman Boback if his preference would be that the new appointments were made at the first meeting of April, with terms expiring on April 15<sup>th</sup>.

Councilman Boback asked why the appointment and expiration couldn't be on the same day.

Ms. Dalton said that was fine.

Mayor Reynolds thought that made sense, so that the exiting members would be replaced that same day by the new members on the committees.

Ms. Dalton said this would cause there to be no date certain, because there would not necessarily be a Council meeting on March 31<sup>st</sup> at which the appointments would be made.

Councilman Boback said the appointments could expire on the date of the first meeting in April, and the new appointments could be made at the first meeting in April.

Ms. Dalton said she understood and appreciated the direction from Council.

Councilman Shenko said language could be used to the effect that a member held their seat on a committee until a replacement was appointed. Ms. Dalton said she had had that language, but had deleted because of the request for a specific date. She said that would be fine.

Councilman Boback said he was just trying to streamline the ordinances, and was not “stuck on any particular date”. Regarding the LPA, he said he was fine with the staggered terms, but was not sure he was comfortable with the three-year terms; he believed a two-year term would be better.

Vice Mayor Massucco said that, because of the intricacies of the Comp Plan and the LDC, he did not want to see the terms on the LPA end all at the same time. Further, he said it took a long time for a person to become familiar with the Comp Plan and LDC, and felt the LPA needed special consideration. Councilman Boback agreed with that.

Councilman Shenko said he had some difficulty with LPA members being appointed for three-year terms when his own term of office was not that long. He didn't think governing bodies appointed people beyond the term of their own office.

Councilman Boback, Mayor Reynolds and Councilman Shenko all expressed their preference that LPA terms be limited to two years.

Mayor Reynolds said if enough people applied for a position on the LPA, Council could ask the sitting members to serve another term.

Councilman Boback said anyone on a committee could re-apply for the position if they chose.

Vice Mayor Massucco asked, if one committee member came due for expiration and reapplied for the position, and someone had applied to fill that

upcoming position, if the new person would get preference over the person who had served. Several Council members responded in the negative, and

Councilman Boback said it would be strictly up to the will of the Council. He said he didn't want to give anyone preference, but wanted to open up the opportunity for more residents to serve.

Vice Mayor Massucco hoped the current members of the committees would come to the hearing on the ordinances to give their views to Council, which he felt would help the Council in their decision-making process. He opined that many of the members will be replaced with the implementation the new ordinances.

Councilman Boback said not all the members would be replaced. He said thirty or forty slots would open when it multiple committee membership was no longer allowed. He said he applauded all who sat on the committees, but felt there were too few people making the decisions for the Beach, and didn't think the Town was utilizing all the people and the intelligence on the Island with the current multiple membership situation.

Vice Mayor Massucco said the members of the Anchorage Advisory Committee were experts in that field. He didn't want to see someone less qualified given an appointment to that committee, as an example.

Councilman Boback said it would be up to the Council as to who would be appointed based on their qualifications.

Vice Mayor Massucco said the thinking seemed to be that there needed to be new thinking and new blood on the committees, and that the feeling "out there" was that the current members on the committees were going to be replaced.

Councilman Boback said that was not his intention.

Vice Mayor Massucco said he hoped not, but the thought was "out there", and rightfully so, because they had been dedicated over the years and had the expertise where it was needed; he felt the current committee members were right to be concerned. He did not want them to feel that they shouldn't reapply for their committee seats because they felt unwelcome. For these reasons, Vice Mayor Massucco wanted to hear from as many committee members as possible during the hearing process on the ordinances.

Mayor Reynolds told Councilman Boback that he sounded almost as if he was apologizing, and didn't feel he need to.

Councilman Boback said he was not apologetic, and had no intention to be – “none whatsoever”. He said he just didn’t want people to think he was going after the committees’ volunteers because he was not, but he still thought a change needed to be made.

Mayor Reynolds agreed and believed that most people would go along with Councilman Boback’s opinion. He said the intention was not to “look down” or degrade anyone or the value of the committees.

Mayor Reynolds read the requirements for membership on the Anchorage Advisory Committee to demonstrate that unqualified people would not be appointed “off the street” to any of the committees. He asked Ms. Dalton if she could read the membership requirements for each of the proposed ordinances.

Ms. Dalton said the language he had just quoted was in the existing ordinance, and was not a modification of the ordinance. She said reading the changes proposed by Councilman Boback in each of the ordinances would probably be more effective, if he wanted her to read them at this time.

Mayor Reynolds said it was just an introduction, and asked her to read the proposed changes in each ordinance.

Councilman Meador asked Ms. Dalton at what point in the procedure it would be appropriate to make suggestions to Councilman Boback regarding things that might be reconsidered.

Ms. Dalton said the present would be appropriate so that she could incorporate any agreed-upon changes into the ordinance for the hearing, or it could be done at the hearing itself.

Councilman Meador said he really wanted Councilman Boback to reconsider the stipulation that non-residents of FMB would be disallowed from the committees, as he didn’t want Council to turn very qualified people away because they didn’t live on the Island.

Mayor Reynolds said he had a very good friend who lived in North Naples who wished to serve on one of the committees, and was glad Councilman Meador had brought that up.

Councilman Meador said they would certainly give FMB residents with equal qualifications preference.

Councilman Boback said he would consider allowing non-residents on any of the committees as long as it was stated in the ordinances that residents would get priority.

Mayor Reynolds said he definitely didn't want all the committees opened to non-residents. He said he had been facetious when he had mentioned his Bonita friend, and didn't know why they would want someone from another community telling Council how to run the Town. He didn't believe the Town was lacking in people with the expertise to serve on the committees. He said he would in no way support that. He said the only committee on which he might consider non-residents for would be the Times Square Advisory Council.

Councilman Shenko wondered if so many committees were needed, and wondered if it were possible to combine some of them. He said the MRTF and the AAC both dealt with marine issues. He thought Council should ask for a report from each committee as to what they had accomplished over the past year, so that Council could make a decision as to the qualifications necessary to serve on the various committees.

There was some discussion regarding the AAC requirement that two of the committee members were to be boat owners. Councilman Shenko said live-aboards weren't residents. Vice Mayor Massucco said boat owners were not necessarily live-aboards. Councilman Shenko said the requirement that two members be environmentalists sounded "nice", but felt it was an undefined term. Regarding the requirement that two members be bay front property owners would exclude anyone who lived on a canal. Councilman Shenko said he felt strongly that all committee members should be residents.

Vice Mayor Massucco felt Town committees should be made up of Town residents.

Mayor Reynolds remarked that he liked the statements just made by Councilman Shenko and Vice Mayor Massucco.

Mr. Gucciardo stated the item would be brought back before Council on January 23<sup>rd</sup> at 6:30 PM.

Ms. Dalton said Item 8 – the LPA ordinance – would not be brought back to Council at that time, but would go to the LPA first.

Councilman Meador, in reference to Ms. Dalton's memo of December 28, 2005, said that she had indicated that the LPA ordinance did not have to go to the LPA unless Council first decided that it should.

Ms. Dalton said that was not accurate, and said her point had been that part of the reason for an introduction of ordinances was to see if the full Council wanted to move them forward.

Councilman Meador asked if there were any time requirement in terms of when the ordinance had to be sent back from LPA to Council.

Ms. Dalton said it would come back at the next available Council meeting, once it had been through the LPA process. She said Staff scheduled it to go before the LPA, and then forwarded back to Council.

Councilman Boback asked if the LPA ordinance would be back from the LPA in time for the January 23<sup>rd</sup> Council meeting, and Mr. Gucciardo said most likely it would not. Ms. Dalton definitively stated it would not.

Vice Mayor Massucco asked if he could get a consensus that all committee members were to be noticed about the ordinance hearings. With the exception of Mayor Reynolds, everyone else on Council indicated that they agreed with that suggestion.

Mayor Reynolds said if they did that, there would be no time for anything else to be on the agenda. He thought it was a good idea, but thought a special meeting would have to be called to hear from all the committee members.

Vice Mayor Massucco pointed out that they would be limited to three minutes of testimony time.

Mr. Gucciardo said if there were items that were not time-critical, they would be moved to a later agenda so as to allow time for the ordinance hearings.

Mayor Reynolds asked Ms. Dalton to read the titles of the proposed ordinances, with which she complied. She said the memo of December 12<sup>th</sup> that she had received from Councilman Boback had been a request that she prepare ordinances regarding all the committees that would reflect the following: number of committee members would be set at seven; the terms would expire March 31<sup>st</sup> of each year, which she understood would be modified so that there was no gap in service; no individual would serve on more than one committee; no husband and wife may serve on the same committee; no Town Council member may serve on any committee; a committee member must be a Ft. Myers Beach resident to serve; all applications for consideration for appointment to a committee must be received by March 1<sup>st</sup> of the appointment year; applications must be on one 8 ½ x 11 sheet of paper, including a short biography and a short explanation as to why the applicant wished to serve on the committee; all appointments would be made by a majority vote of Council at a scheduled properly noticed Council meeting. She believed all the ordinance drafts reflected Councilman Boback's request, except for the LPA staggered terms which had already been addressed at this meeting.

Vice Mayor Massucco wondered if the requirement to furnish a short biography and explanation for wanting to serve could be waived for existing members.

Councilman Boback guessed so. Mayor Reynolds asked why. He said if they were reapplying it would be nice to have that information before Council. Vice Mayor Massucco said their service already proved their dedication and expertise.

Councilman Meador pointed out that there could be committee members whom he knew, but whom Councilmen Boback, Shenko and he did not know; for that reason, he did not wish to see that requirement waived. He said if Council didn't get anything from sitting committee members, it would indicate they had no desire to serve. Vice Mayor Massucco felt their service proved their desire to serve. He said he would not belabor the point, and that it had just been a suggestion.

Mayor Reynolds said leaving the requirement in for all applicants would make it uniform and would give the Council up-to-date information about all being considered for positions on committees.

Ms. Dalton indicated the only change she had been directed to make in the proposed ordinances was with regard to the elimination of the gap in service.

Mayor Reynolds thanked Ms. Dalton.

## **XI. PUBLIC COMMENT**

**Frank Schilling** of 6672 Estero Boulevard came forward to discuss Beach Renourishment. He said it was going up in cost and scope and was being pushed through the halls of higher government. He said it would have a huge impact on the Island. He said the Council could make changes to the existing plan, which he said would simply put more sand in areas on the beach that would attract more tourists, to a plan that added sand only to the areas of erosion. He said the Town was formed (incorporated) so that the citizens could control its destiny. He said time was running out for Council to act in the best interest of the community. He asked if the Council was going to allow the current renourishment plan to proceed and attract more tourists, as it was designed to do; or, would the Council move to place renourishment on an official hold and work out a plan that met the best interests of the Town. He said two of the current Council had seen the plan and the maps in 2005, where it was clearly shown that sand would be added to areas certified by the County's independent engineering firm as having no erosion. He said that in that plan, the areas of the beach with the most severe erosion were to get the least amount of sand, while the area of the beach growing the most would get the most amount of sand. He asked Council to ask the Town Attorney to review the legal contractual status to determine the time that Council had left

to act to place Lee County's renourishment plan on hold; and to determine what their options were so that Council could decide what they wanted to do.

Tom Merrill of 21581 Indian Bayou came forward to talk about Beach Renourishment, as he said there were indications that the County was still very interested in making it happen. He said that with the TDC's 2% increase in the bed tax, there would be more money available, and there were indications that it would be used for renourishment. He said it was important to know that the County was ready to move forward with their Renourishment plan. He said the Town had never really examined the plan in terms of whether it was worth doing for the Town. He said that currently there was a million dollars allocated in the Town budget for the project, and that there was some sort of agreement with the County to participate in beach renourishment. He said the Council should take a good look at the plan. He said he and Mr. Schilling called it an upside down project, because it would give sand to the areas of the beach that didn't need sand, and would give little or none to the areas that needed it. He said if Council had any concern about the million dollars on the table in an agreement that may force them to go ahead with a plan they had not even had the chance to review it, that it might be worthwhile for Council to take a look at it and put it on hold if possible. He thought minimally Council should take the money off the table to give themselves "breathing room" to figure out what they wanted to do.

**XII. ADJOURNMENT**

Mayor Reynolds adjourned the meeting at 10:55 PM.

Respectfully submitted,

Jo List  
Transcribing Secretary