

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
January 23, 2006**

I. CALL TO ORDER

Mayor Garr Reynolds called a regular meeting of the Town Council to order on Monday, January 23, 2006 at 6:30 PM.

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

Excused Absence: None

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

II. PLEDGE OF ALLEGIANCE

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

III. INVOCATION

Rev. Thomas Snapp of St. Peter Lutheran Church gave the invocation.

IV. PUBLIC COMMENT

John Richard of 202 Crescent Street came forward. Mr. Richard spoke in favor of opening Center Street.

Mike Ratliff of 211 Ostego Drive came forward. Mr. Ratliff, an AAC member since its inception, spoke in favor of considering the qualifications of the current members of that committee, and thanked Matt Feeny for his professional guidance in all their work.

Frank Schilling of 6672 Estero Boulevard came forward. Mr. Schilling spoke in favor of the Library 50th Anniversary Proclamation, as he felt education was very important. He also praised the Head Librarian and suggested he be recognized in the proclamation as well.

Bill Whitaker, with business property at 1000 Estero Boulevard, came forward. Mr. Whitaker, a Gulf-front property owner on the Island for 26 years, said he had been a charter member of the Times Square Advisory Committee for six years, and wished to continue that service. He spoke against exclusion of non-residents from membership on the TSAC as

proposed in Ordinance 06-07. He said he and four other current members of the TSAC lived off Island.

Bill Freeman of 340 Old San Carlos Boulevard came forward. Mr. Freeman spoke in favor of the reopening of Center Street.

Warren Babcock of 474 Washington Court came forward. Mr. Babcock commented on a survey that had been conducted before the TMA had been in existence, and wanted to clarify to all that the TMA had had nothing to do with it. He said it had been a pleasure working with the other members on the TMA since he became a member in January 2005.

Barbara Johnson of 200 Old San Carlos came forward. Ms. Johnson spoke regarding the possible reopening of Center Street. She said a meeting with business owners, who might be impacted by it, which she had been promised would take place, had not happened. She asked that no action be taken until such a meeting took place between the appropriate officials and affected property owners.

Roberta Bright of 146 Del Mar came forward. Ms. Bright, a member of the Estero Island Garden Club, spoke in favor of the Landscape Architect project proposed for the Mound House. She explained why the Garden Club supported the plan, and why the proposed Landscape Plan at the Mound House was out of the Garden Club's scope, as the complexities of the grant requirements and the scale of the project necessitated the hiring of a professional. She hoped the Council would vote in favor of the project.

Eddie Foster of 2440 Cottage Avenue came forward. Ms. Foster said spoke against the God's Table program, as she felt it attracted homeless people to the Island without giving them shelter and job counseling. She said they slept under people's homes and the boardwalk, and that they scared people.

Herb Acken, a beach resident, came forward. Mr. Acken spoke in favor of the reopening of Center Street. He praised the current members of the various Town committees, and said many of them provided a bridge between the businesses and residents.

V. CONSENT AGENDA

A. Approval of Minutes: December 19, 2006

MOTION: Vice Mayor Massucco made a motion to approve the minutes. Councilman Shenko seconded the motion.

VOTE: The motion carried unanimously.

B. Proclamation for FMB Library 50th Anniversary – Request by Vice Mayor Massucco

Vice Mayor Massucco read the proclamation in its entirety, which included a brief history of the library and noted that the FMB Public Library had been the first public library in Lee County.

C. Abandoned Boat Bids

Matt Feeney explained which boats were targeted for removal – two mentioned in the original bids, and one that just came to light recently. He asked that, should the third vessel be determined to be abandoned, if the removal of it could be added to whichever bidder was chosen by Council, provided the total cost of removing all three boats did not exceed \$25,000.

After a brief discussion between Mr. Feeney and Councilman Shenko about the budget for such undertakings, including available grant money, Councilman Shenko commended Mr. Feeney because there were fewer derelict boats in the Bay since the inception of the anchorage.

MOTION: Councilman Shenko made a motion to accept the proposal, to expend not to exceed \$25,000 of the WCIND grant for purposes of removing derelict vessels from the Town boundaries, and that it be awarded to the low bidder – Kelly Brothers, Inc. Vice Mayor Massucco seconded the motion.

Councilman Meador asked why so much time had elapsed from the date of Mr. Feeney’s memo until it was brought before Council, and Mr. Feeney said he had held it up while waiting for final word from the deputy in charge of the Sheriff’s Marine Unit as to an official declaration that the third boat was derelict. Mr. Feeney felt confident that, due to the condition of the third boat, that the cost of removing it, along with the other two, would not bring the total above the \$25,000 cap.

VOTE: The motion carried unanimously.

VI. ADMINISTRATIVE AGENDA

A. Re-Opening of Center Street – Requested by Councilman Meador

Councilman Meador said the TMA had recommended to Council in 2004 that Center Street be reopened, and that the then-Town Manager had added it to her to-do list. He asked the Chairman of the TMA, Tom Myers, to give some contextual information regarding this issue.

Tom Myers, a resident and business owner on the Island, and Chairman of the TMA, came forward. He explained which part of Center Street was at issue, and said the TMA had determined that reopening it would help alleviate some of the traffic problems one experienced when one came onto the Island over the Matanzas Bridge. He did not believe reopening the street would do any particular harm to the parking lot located near it.

Mr. Gucciardo said his memo on the subject, which contained history and contextual data about the issue. His experiences with the TMA had been limited under the former Town Manager, but the reopening of the street had been mentioned mostly in connection with a dedicated trolley lane at that time.

Ron Eddenfield of Environmental Consulting and Technology came forward to give more background information about the Center Street reopening project, which he said was only part of a larger project in which his firm had been involved as consultants. He used a visual chart to illustrate various aspects of the overall project in the area, with particular attention to Center Street, which had originally been looked at as transportation hub for trolleys. Mr. Eddenfield spoke about the realignment of the Times Square area, for traffic mitigation purposes, which had been put forth by the TMA, and said various factors were favorable for accomplishing that. He said the biggest concern was the angle of the turn onto Center Street from the Bridge. He said whether Center Street was used for general vehicular traffic or strictly for trolleys, attention would be paid to the safety issues first and foremost.

Mayor Reynolds said the angle of the turn was a major issue and could create a slow-down in traffic itself.

Councilman Meador asked if Center Street had originally been looked at as a dedicated trolley lane, and Mr. Eddenfield confirmed that. Councilman Meador asked if trolleys would have a hard time making that turn, and Mr. Eddenfield thought they could do it. Councilman Meador asked how long it would take and how much it would cost to complete an engineering study of the Center Street opening. Mr. Eddenfield said part of their contract included design work on Center Street. He believed his firm could have the idea looked at from the perspective of cars using the street, not just trolleys, within 30 days and could make a report to Council at that time. Mr. Eddenfield said there was no doubt that opening Center Street would take traffic off of Estero Boulevard. Councilman Meador asked Mr. Eddenfield if he would meet with the owners of the adjacent parking lot as part of the study, which Mr. Eddenfield said he would do.

Vice Mayor Massucco asked if Center Street dead-ended on Old San Carlos, which Mr. Eddenfield said it did. Vice Mayor Massucco had doubts about the feasibility of trolleys making the left turn onto Old San Carlos so as to go to Bowditch, but Mr. Eddenfield explained that trams would be making that run from the area, whereas the trolleys would turn right, go under the Bridge, and the turn right onto the Bridge to go to Summerlin Square.

Councilman Shenko asked if Mr. Eddenfield was currently working under contract to the Town, which Mr. Eddenfield confirmed. Regarding the part of

the study dealing with dedicated trolley/tram lanes on Estero Boulevard, Councilman Shenko asked if part of the study could include the feasibility of dedicated traffic lanes as well as dedicated trolley/tram lanes. Mr. Eddenfield said the contract was for a set fee for a specific scope of study, and that he would furnish Councilman Shenko a copy of it, although Councilman Shenko said he would get a copy from Town Hall.

Mr. Gucciardo understood Council's direction to Mr. Eddenfield was to look at the reopening of Center Street not as a dedicated trolley lane but for regular vehicular traffic, and to report back to Council in 30 days with ideas and suggestions. Mr. Gucciardo said the study had taken a backseat while the potential for realignment of traffic through the Times Square area was being considered. He hoped Mr. Eddenfield would also bring back an idea of the cost of the Center Street project, so that it could be weighed against the potential for having to undo it in order to effect the changes that were being considered throughout the Times Square area.

MOTION: Councilman Meador made a motion that Council request of Mr. Eddenfield that he move ahead in terms of feasibility and cost proposals with regard to the opening of Center Street, and that he bring that information back to Council in thirty days. Councilman Boback seconded the motion.

Responding to Vice Mayor Massucco's concern that 30 days might not be enough time, Mr. Eddenfield felt a timeline estimate, as well as cost estimate, could be delivered to Council within that time.

Councilman Shenko thought the parking lot owner had a legitimate concern about making Center Street one-way. He requested that the motion be amended to address the entrance to the La Playa parking lot from Old San Carlos, which he said had been "landscaped out".

Councilman Meador said Mr. Eddenfield had already agreed to meet with the owner of the affected parking lot, and that Council had not approved any action to be taken yet with regard to Center Street, and did not wish to amend his motion. He did not want to shut the idea down until Mr. Eddenfield had studied the feasibility of it. He didn't believe Council would vote in favor of doing anything that would put an Island citizen out of business, and if the study showed such, then he would not approve it ultimately.

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

B. Public Hearing of the Town Committee Ordinances:

Mayor Reynolds stated this was the first of two hearings on the ordinances, and that no vote would be taken on them at this meeting.

Attorney Dalton pointed out that, per the Policy and Procedures Manual, and based on how ordinances had been dealt with by past Councils, a proposed ordinance would be introduced at one meeting, and then one public hearing would be held, with a vote. She said the only exception would be amendments to the Land Development Code. She said the ordinances on this agenda would not affect the Land Development Code, and required only an introduction and one hearing before a vote was taken.

Mayor Reynolds said the ordinances were not ready to be voted on, as he felt they needed a lot of improvements and corrections. Ms. Dalton said those changes could be made within the context of the hearing.

1. Ordinance 06-01 Anchorage Advisory Committee

Mayor Reynolds read the title of the ordinance into the record, and then opened the Public Hearing.

Jay Light of 151 Chapel Street, and vice-chair of the AAC, came forward. Mr. Light read a list of accomplishments achieved by the AAC, as well as the purpose of the committee – to advise the Town Council with regard to the management and operation of the Town’s anchorage. Mr. Light said the AAC strongly recommended against combining the AAC and the MRTF, as he said to do so would dilute the purposes of both entities. He said he and all the volunteers gave their time and worked on the committees because they cared about the Town.

Vice Mayor Massucco asked the Mayor to extend the allowed speaking time to 5 minutes, as he didn’t feel 3 minutes was long enough. Councilman Meador felt the committee chairmen/spokesmen, who had been asked to come and make their presentations to the Council, should be allowed to take whatever time they felt they needed; he added the rest of the public who came forward to comment on the various ordinances should be given the standard 3 minutes. Councilman Shenko and Councilman Boback agreed.

Councilman Shenko asked that Mr. Light be invited back to say anything else he wished to say, and Mayor Reynolds did that.

Mr. Light returned to the podium and continued listing the accomplishments of the AAC. He discussed the qualifications of some of the members on the AAC. Mr. Light discussed the insurance requirements in place in the Town’s mooring field.

Councilman Meador asked about the maritime lawyer who had been consulted about insurance requirements during a storm event when a boater might ask for safe harbor in the Town’s mooring field. Ms. Dalton believed the lawyer had worked pro bono for the Town.

Matt Feeney said the lawyer's name was Thomas Kiesel, of Kiesel, Hughes and Johnston – a firm retained to address legal issues for the mooring facilities. Mr. Feeney had contacted him as to the legality of the insurance requirement of a boater seeking safe harbor during a storm event. The maritime lawyer had advised the Town that it was illegal to deny a boater safe harbor during a storm event due to lack of insurance.

Jeff Warner of 7150 Estero Boulevard came forward. He spoke as a member of the AAC, and expressed the reasons why he believed the AAC and the MRTF should not be combined. He discussed the hundreds of hours of volunteer work he and his fellow committee members had done.

Mayor Reynolds closed the public hearing, and brought the issue back to Council.

Mayor Reynolds reopened the public hearing, as several people not on the AAC wished to make statements.

Dan Hughes of 270 Randy Lane came forward. He said he was concerned about the residency requirement included in each of the ordinances before Council at this meeting, and felt it was unnecessary. Mayor Reynolds wondered if it was proper for Mr. Hughes to speak in general terms and not specifically about the AAC ordinance. Councilman Meador believed Mr. Hughes was speaking about a provision of the ordinance under consideration. Councilman Shenko believed Mr. Hughes intended to save time by speaking about a provision which appeared in every ordinance, rather than come up to speak about the same thing separate times. Mayor Reynolds instructed that Mr. Hughes 3-minute timer be restarted.

Mr. Hughes explained why he was opposed to the residency requirement, and talked about the qualifications of some of the non-residents currently serving on Town committees. He felt the residency requirement would limit the Council's choices, and would increase the difficulty of finding qualified people to fill the volunteer positions.

Grace Workman of 194 Coconut Drive came forward. Ms. Workman spoke in favor of the residency requirement, and suggested non-residents who wished to contribute could be advisors to the respective committees.

Ann Alsop, who said she does not live on the Beach, came forward. Citing her 35 years of volunteerism on the Island, and the \$58 million dollars in income property she managed on the Island, Ms. Alsop spoke against the residency requirement.

Sharon Faircloth, who said she was not resident of the Beach, came forward. She said she had worked on the Island since 1991, and that she and her

husband were owners of water sports businesses on the Island. She spoke against the residency requirement.

Heather Stafford, a founding and continuous member of the MRTF, came forward. Ms. Stafford, who works for the State of Florida Department of Environmental Protection (DEP), said she had managed the Estero Bay Aquatic Preserve since 1989. Ms. Stafford spoke against the residency requirement for membership in any of the committees.

Dixie Curry, a property owner on the Island since the early 1970's, came forward. Ms. Curry thanked all the residents and non-residents for the work they had done on the Beach.

Mayor Reynolds closed the public hearing.

Vice Mayor Massucco asked the Town Attorney if it would be legal to have non-residents serve as advisors, alternates, etc. Ms. Dalton said having ex officio members was perfectly fine, but that an alternate would be a voting member. Vice Mayor Massucco suggested that Council should consider allowing for ex officio members so that some of the experts would be available to the committees.

MOTION: Councilman Boback made a motion to approve Ordinance 06-01, with a change in the residency clause to include real property owners in addition to residents. Councilman Shenko seconded the motion.

Vice Mayor Massucco asked about ex officio membership residency requirements. Neither Mayor Reynolds nor Councilman Boback believed an owner of real property on the Island would have to meet the residency requirement.

Ms. Dalton said the ordinance as written had no provision for ex officio members, but language could be added for that purpose which could include that residency was not required for such members.

Councilman Meador expressed he was not in support of the residency requirement in any of the ordinances. He said he preferred that committee members were Island residents, but felt the residency requirement limited the Council's discretion as to who would best serve the Town. He spoke against the concept of ex officio members, as he was concerned about different classes of committee memberships creating problems with regard to Sunshine laws.

Councilman Shenko said most jurisdictions would not open membership on such committees to non-residents. He felt non-residents who were interested in helping any one committee could be selected by the committee to act as an

advisor to it. Councilman Shenko spoke in favor of the residency requirement.

Regarding the AAC, Mr. Shenko wished to see the specific membership requirements currently on the books abolished completely.

Mayor Reynolds disagreed with Councilman Shenko. Mayor Reynolds felt strongly that Beach residents only should serve as voting members of the Town committees. Regarding the allowance for property owners, who are non-residents, to serve on the Town committees, Mayor Reynolds agreed to that, although he felt it might be controversial, as those people may also want to vote in Council elections and on Island referenda. He felt if the committees wanted to call in an advisor or consultant or ex officio member, it would be fine, but that they should have no voting privileges.

Mayor Reynolds asked that Mr. Light be allowed to respond to a question about the special qualifications called for in the current AAC ordinance. He said he was in favor of abolishing the requirements, as the definitions of the qualifications were vague.

Vice Mayor Massucco said many property owners on the Island did not live in Town year-round, and might miss a lot of meetings. Councilman Meador said anyone appointed would give a commitment to be at the meetings.

Councilman Meador asked if business owners would be eligible, and Councilman Shenko said his suggestion was that only real property owners would be eligible, in addition to residents.

Mayor Reynolds expressed dissatisfaction with the way the proposed ordinance was written.

Ms. Dalton read a note from Mr. Light which stated that the designations of environmentalists, property owners, boat owners, etc. had come from the DEP.

Mr. Hughes, who helped form the MRTF, said the definitions of membership qualifications as laid out in the current AAC ordinance, had been negotiated between the Town and the DEP as part of the Harbor Management Plan. He questioned whether the Council could abolish those requirements for AAC membership without a waiver from the State.

Mayor Reynolds asked that some of the sections of the new ordinances be combined so as to make them uniform with one another. He gave specific examples of things he wanted to see changed, including the ending date for members' terms, which he said should be March 31st.

AMENDED MOTION: Councilman Boback made a motion to approve Ordinance 06-01, with a change in the residency clause to include real property owners in addition to residents; and if allowed to do so, to abolish the designations of membership; if not, then to leave them as is in the ordinance. Councilman Shenko seconded the amended motion.

There was a discussion as to the ending date for the members of the committees. Mayor Reynolds was not concerned if a gap occurred between the end of one member's term and the start of the new member's term. Councilman Shenko disagreed, and used the LPA as an example. Councilman Shenko expressed his wish that the ordinance remained as written, and that the sections of the ordinance remained separate.

Mayor Reynolds said Ordinance 06-02 was written in the form he had suggested for Ordinance 06-01 for the AAC, and that he wanted all the ordinances to be uniform in structure.

Councilman Meador said the ordinances had been passed and amended at different times, and that uniformity could not be achieved without rewriting them all from scratch. Regarding the motion, Councilman Meador said the amendment regarding the abolition of the membership designations on the AAC was too vague.

Councilman Shenko said he would prefer that the designations be dropped if possible, and thought they may have to continue the hearing on this ordinance until it had been determined if they could abolish them or not.

Mayor Reynolds asked that all of the ordinances be continued until another draft of them had been written that appeared more uniform in structure.

Ms. Dalton said codification of all the Town's ordinances was an issue soon to come before Council, and at that time, the uniformity which the Mayor hoped to achieve in the ordinances could be addressed. Further, if Council wished her to go through all seven ordinances and make the sections in question consistent, she would do so.

Councilman Shenko explained why the ordinances were not written similarly, based on the history of their passage and amendments, and felt rewriting every ordinance to achieve uniformity would be too time-consuming. He asked the maker of the motion to withdraw his motion until Council could receive proper information from Ms. Dalton regarding the necessity of keeping the designated membership descriptions, and that Ordinance 06-01 be brought back as a Public Hearing at the next Council meeting.

Councilman Boback withdrew his motion, and the seconder, Mr. Shenko concurred.

MOTION: Councilman Shenko made a motion to continue the Public Hearing on Ordinance 06-01 until the next Town Council meeting and that it be duly advertised so that public could comment at that time, so that the Town Attorney could review the requirements of the Harbor Management Plan as they related to AAC membership. Councilman Meador seconded the motion.

VOTE: The motion carried unanimously.

Ordinance 06-01 was continued to February 6th at 6:30 PM.

2. Ordinance 06-02 Cultural & Environmental Learning Center Advisory Board

Mayor Reynolds read the title of the ordinance, and then declared the Public Hearing open.

Fran Myers of 21461 Widgeon Terrace, and Chair of CELCAB, came forward. Ms. Myers said CELCAB had started in 1998, and the Mound House had been through many directors. She expressed concern about the loss of Dr. Winsboro and Attorney Grace from CELCAB due to the proposed residency requirement for membership. Ms. Myers then listed several CELCAB accomplishments in the ongoing upgrades to the property, the development of programs at the Mound House, etc. She read the goals of CELCAB, and talked about Friends of the Mound House.

Lee Melsek of Ft. Myers Beach came forward. He said the changes being made to the ordinances were well supported by Beach residents. Mr. Melsek stressed that, even if no other committees were changed, CELCAB needed to be changed. He spoke very critically of the CELCAB members and activities and projects at the Mound House. He said all they had done was dig holes and throw private parties. He felt changing membership on the committees would act as an extension of the campaign promise to bring new faces with fresh ideas to the table.

Pat Smith of Fairview Boulevard came forward. Ms. Smith said the Mound House had been mismanaged from the beginning, and that the FMB citizens had been promised that the Friends of the Mound House would raise funds to support the property, which had not as yet happened. She said she loved the Mound House and enjoyed her tour of it, but wondered how the maintenance of the property was going to be paid for over the years.

Theresa Schober, co-director of the Mound House, came forward. Ms. Schober said CELCAB would be forwarding a recommendation to Town Council as to what they believed the best qualifications for membership on CELCAB would be. Ms. Schober spoke against the residency requirement for board members.

Grace Workman of Ft. Myers Beach came forward. She spoke against the hiring of landscape architects for the Mound House project.

Terry Cain, a member of CELCAB, came forward. She spoke in support of using tax dollars to support the Mound House because she felt it was an educational, archeological, environmental, cultural and historical resource for the community.

Mayor Reynolds closed the public hearing at this time.

Vice Mayor Massucco said both he and Mayor Reynolds had attended the private party to which Mr. Melsek had referred during his comments.

MOTION: Councilman Boback made a motion to pass the ordinance with the same residency requirement as Ordinance 06-01, to include the owners of real property. Councilman Shenko seconded the motion.

Councilman Meador expressed his opposition to the residency requirement, as he felt it limited Council discretion in making appointments to the committees.

Councilman Shenko said he was in favor of the residency requirement, but that it was not a reflection on the present members of CELCAB. He also commented that he hadn't attended the same party at the Mound House mentioned earlier because it had not been open to the public. Vice Mayor Massucco said the facility had been open to the public throughout the entire event.

Mayor Reynolds reiterated his support of the residency requirement for voting members on the Town committees.

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

Mayor Reynolds closed the hearing on the CELCAB ordinance.

3. Ordinance 06-03 Community Resources Advisory Board

Mayor Reynolds read the title of the ordinance, and opened the public hearing.

Betty Simpson, a resident of Ft. Myers Beach, came forward. Ms. Simpson said the Chair of CRAB, Karen Swanbeck, had been unable to attend but had prepared the report requested by Council. Ms. Simpson explained the purposes and activities of CRAB. Among the many projects and actions taken by this committee, Ms. Simpson mentioned the Beach Leadership program, as it had resulted in creating interest and involvement in Town affairs among

those Beach residents who had attended, and had prompted several to join some of the Town committees.

Mayor Reynolds closed the public hearing.

MOTION: Councilman Boback made a motion to approve Ordinance 06-03, with a change in the residency clause to include real property owners in addition to residents. Councilman Shenko seconded the motion.

Councilman Meador expressed his opposition to the residency requirement.

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

Mayor Reynolds closed the public hearing on Ordinance 06-03.

4. Ordinance 06-04 Marine Resources Task Force

Mayor Reynolds read the title of the ordinance, then opened the public hearing on Ordinance 06-04.

Terry Cain, chair of MRTF, came forward. She read the mission statement of the committee, and talked about the current members of the committee. She said all the work that MRTF had undertaken had been requested by residents. She estimated how much money the Town had saved by having expert and local advice from members on committees such as MRTF. She gave a history of the Harbor Plan, and said the AAC had been created to specifically address those issues. Ms. Cain listed out the many projects MRTF had researched, recommended or initiated for the community. Ms. Cain spoke against the residency requirement in the ordinance.

Mayor Reynolds pointed out there was no date on the MRTF mission statement distributed to Council, and Ms. Cain believed it had been written when MRTF had been formed eight years ago.

Vice Mayor Massucco asked Ms. Cain if she was in favor of combining AAC and MRTF. Ms. Cain said she was opposed to that, and wasn't sure that legally it could be done. She said they dealt with very separate issues.

Jeff Werner of 7150 Estero Boulevard came forward. He believed the changes desired in the membership of the committees did not require new ordinances, as the Council had the power to appoint and remove any member on a case-by-case basis that they so desired within the current ordinances. He spoke against the residency requirement, and felt it was exclusionary.

John Naylor, a member of MRTF, came forward. He said the non-resident, non-property owners acting as advisors or ex officio members would have no

time to speak during meetings accepted beyond what is aloud during public comment, if the meetings were to be run as they have been.

Mayor Reynolds closed the public hearing.

MOTION: Councilman Boback made a motion to approve Ordinance 06-04, with a change in the residency clause to include real property owners in addition to residents. Councilman Shenko seconded the motion.

Councilman Meador explained that the property owner addition to the membership requirements in the new ordinances was a relaxing of the requirement, rather than exclusionary, as Mr. Werner had thought.

Mayor Reynolds asked Councilman Meador not to respond to public comment directly, but that all response should be made through the Chair.

Councilman Meador also clarified that there had been no meetings out of the Sunshine that had occurred to formulate the ordinance changes, and that the idea had come from Councilman Boback. He also spoke against the residency requirement.

VOTE: The motion carried 3 – 1, with Councilman Meador dissenting. Vice Mayor Massucco was not present for the vote.

Mayor Reynolds closed the public hearing.

5. Ordinance 06-05 Public Safety Task Force

Mayor Reynolds read the title of the ordinance, then opened the public hearing on Ordinance 06-05.

Joellyn Reckwerdt, chair of the PSTF, came forward. Ms. Reckwerdt discussed the various projects the committee had undertaken at Council's direction. She mentioned that the committee also researched issues brought forward by residents, and sent their findings to Council. Ms. Reckwerdt addressed the vagrancy issue and said it was a serious problem on the Island. She advocated the CERT program. Ms. Reckwerdt spoke against the residency requirement. Ms. Reckwerdt noted that members of committees voted on recommendations sent to Council, and that the Council made the actual decisions.

Mayor Reynolds closed the public hearing.

MOTION: Councilman Boback made a motion to approve Ordinance 06-05, with a change in the residency clause to include real property owners in addition to residents. Councilman Shenko seconded the motion.

Councilman Meador referred to the homeless problem, and asked Ms. Reckwerdt if the PSTF had made recommendations to Council in the past regarding that problem.

Ms. Reckwerdt said they had, and were in the process of working with Chapel by the Sea to resolve some of the issues.

Councilman Meador asked how many members of the PSTF were Red Cross- or FEMA-certified. Ms. Reckwerdt did not have that information, but knew some were CPR-trained.

Vice Mayor Massucco said he had viewed the areas where the homeless lived on the Island, and said it was a problem the Council would have to address in the near future.

Ms. Reckwerdt commented that while she had been away, the homeless had camped out under her house. She said someone had tried to enter her house at night, and had recognized the man as being one being served in the God's Table program. She understood what the program was attempting to accomplish, but the vagrants were not allowed on the church property after 9:30 AM or at all on Sunday because they were considered a nuisance by the minister of that church.

Councilman Boback agreed it was a problem, and pointed out that it was a topic slated for discussion at the upcoming workshop.

Councilman Meador asked if there was vagrancy statute or ordinance on the books. Ms. Reckwerdt didn't know, but if a vagrant were caught on private property, they could be taken away.

Pasqual Loffreno, of 8002 Estero Boulevard, came forward. He spoke against the homeless program, as he felt it sent the wrong message to the children on the Island, and the vagrancy made a poor impression on the tourists.

Mayor Reynolds closed the public hearing.

MOTION: Councilman Boback made a motion to approve Ordinance 06-05, with a change in the residency clause to include real property owners in addition to residents. Councilman Shenko seconded the motion.

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

Mayor Reynolds closed the public hearing on Ordinance 06-05.

6. Ordinance 06-06 Traffic Mitigation Agency

Mayor Reynolds read the title of the ordinance and opened the public hearing.

Tom Myers, chairman of the TMA, came forward. Mr. Myers said all the current members of the TMA were residents, and felt the committee had accomplished a lot in its eighteen months of existence, which he had delineated in the report he had distributed to the Council members. He spoke at length about the crosswalk test area in front of Red Coconut RV Park. He said the TMA tried as many ideas as they could in their quest to mitigate traffic, and used the installation of the alternating light on San Carlos Boulevard as an illustration as to how long it sometimes took to implement ideas when working with government entities. He noted that there had always been experts available in advisory positions to the TMA.

Councilman Shenko said the Town Council had been proactive with regard to traffic mitigation, citing the 2 exit lanes Council asked for in a recent vote. He also questioned the statistic regarding the number of people who had used the Park & Ride last year, as he didn't believe the system for counting ridership was verifiable. He felt the Council was open and receptive to the TMA suggestions.

Mr. Myers acknowledged the Council's receptivity to the TMA's recommendations.

There ensued a discussion about dedicating two lanes on Estero Boulevard and on Matanzas Bridge for exiting traffic, and the various ramifications that could result from the implementation of that.

Pasqual Loffreno of Ft. Myers Beach came forward. He suggested going straight to the County Commissioners about the traffic situation so that results would be gotten. He felt there should be new blood on the TMA. He spoke against the garbage left on the sides of Estero Boulevard.

Mayor Reynolds closed the public hearing.

MOTION: Councilman Boback made a motion to approve Ordinance 06-06, with a change in the residency clause to include real property owners in addition to residents. Councilman Shenko seconded the motion.

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

Mayor Reynolds closed the public hearing on Ordinance 06-06.

7. Ordinance 06-07 Times Square Advisory Committee

Mayor Reynolds read the title of the ordinance. Mayor Reynolds asked that the Advisory "Council" verbiage be changed to "committee".

There was a question as to whether Mayor Reynolds had read the title of the ordinance, but he had. Mayor Reynolds then opened the public hearing.

Deborah Lallo, chairman of the TSAC, came forward. Ms. Lallo said the TSAC was required by the MSBU and that it was mandated that members be property owners in the MSBU district. She explained that the TSAC recommended to Council how the CRA money should be spent, and noted that it had to be spent in the overlay district. She said the current members were either property owners or resident property owners, and one was appointed by the property owner to represent him. She asked that the existing verbiage be left in the ordinance regarding the allowance for the designation of an agent for a property owner.

Mayor Reynolds closed the public hearing.

Mayor Reynolds re-read the title of the ordinance.

MOTION: Council Shenko made a motion to approve Ordinance 06-07 with the third line of Section 6 deleted, and with the addition that members must be residents of the district or real property owners of the district. Councilman Boback seconded the motion.

Councilman Meador asked for clarification of the motion, and Councilman Shenko said the Council would appoint the members. He didn't believe the Council should give designation power to the committee appointees.

There ensued a discussion as to how the ordinance should be worded, with regard to who would qualify for membership. Councilman Meador asked who would be appointed to represent corporate ownership, as he pointed out the motion on the floor did not allow for designees. He said a corporation had to have a designated agent.

AMENDED MOTION: Council Shenko made a motion to approve Ordinance 06-07 with the addition that members must be residents of the district or real property owners of the district, or persons designated by property owner as their agent, as approved by Council. Councilman Boback seconded the motion.

VOTE: The motion passed unanimously.

Mayor Reynolds closed the public hearing on Ordinance 06-07.

C. Mound House Shell Exhibit Bid (Item A-12/19/05)

This item was tabled until a future meeting. Councilman Meador asked for at least a month to review the budget data supplied to Council. Councilman Shenko agreed, and also asked for a budget summary on the Town before

making any more spending decisions. Councilman Boback agreed the item should be tabled.

Vice Mayor Massucco asked Ms. Schober if she understood what the Council required in terms of a format in which to present the Mound House budget data. Ms. Schober remarked that she had never been given instructions as to the format, and had been asked for a line itemization and had provided it.

After discussion, Ms. Schober was instructed to get together with the Town's Budget Director for assistance in putting together a format through the uniform numbering system of governmental accounting.

Councilman Shenko said he was on the verge of requesting a financial audit of the entire Town, including the Mound House.

Mr. Gucciardo remarked that the bid would expire soon. Councilman Shenko said it was a one-bid project and Councilman Meador said it was already over budget.

Mr. Gucciardo suggested that he could work with Ms. Schober and Ms. Paulauskas to put the Mound House budget numbers through the uniform accounting system.

MOTION: Councilman Shenko made a motion that Administrative Items C and D be tabled until further financial information was provided to Council. Councilman Meador seconded the motion.

VOTE: The motion carried 4 – 1, with Vice Mayor Massucco dissenting.

D. Landscape Architect Contract – Mound House

This item was tabled until a future meeting (see above motion).

E. Old Items – Selection of Format of Council Workshop on 1/28/06

Mayor Reynolds reviewed the information supplied by Mr. Gucciardo regarding the format options for, and topics for discussion to be brought up at, the workshop. He suggested limiting Town Staff presentations to five minutes.

Councilman Meador pointed out that the fewer rules in force at a workshop, the more free-flowing the dialogue would be. Mr. Gucciardo concurred.

Councilman Meador explained for the public's benefit that the workshop would be open to the public, but that no public comment would be heard nor would any decisions be made or voted on.

Mr. Gucciardo was asked which format had worked best in the past, and he said if Staff presentations were going to be limited, that a Q&A should be included, as in Format #1. He noted that written materials about the topics Staff would present at the workshop would be provided to Council by Wednesday, January 25th.

Vice Mayor Massucco felt limiting the time allowed for Staff presentations defeated the purpose of the workshop. Mayor Reynolds clarified that he didn't intend to limit Staff presentations, but rather did not want them to feel obligated to make lengthy presentations if they did not desire to do so.

Councilman Shenko asked that committee memberships be added to the list of topics to be discussed at the workshop. Mr. Gucciardo said it was already on the list.

Mayor Reynolds asked that public input be allowed during the workshop.

Councilman Shenko said that while the workshop was open to the public, the recommendation was that public comment not be allowed, and that additionally, an independent third-party facilitator could help keep things moving freely, although he noted that it was too late to arrange for that.

Mayor Reynolds said the Mayor had always been the facilitator in past workshops.

There was a discussion as to how lunch would be provided.

Mr. Gucciardo said the Town would provide lunch to Staff and Council, and had anticipated that it would be a working lunch.

Mayor Reynolds felt the workshop might need to go longer than the planned 3:00 PM adjournment.

F. New Items

No new items were brought forward.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Councilman Meador spoke favorably about Florida League of Cities conference which he, Councilman Boback and Councilman Shenko had recently attended. He recommended that all seated Council members attend these conferences, whether they were newly elected or not.

Councilman Shenko felt the conference should be required of Council members, and said it was better than 90% of the conferences he had ever attended.

Councilman Boback agreed with Councilmen Shenko and Meador, noting that he felt it definitely should be mandatory.

Mayor Reynolds said he planned to attend the conference that was to be held on the east coast of Florida in the near future.

Vice Mayor Massucco commented on the invoice from Attorney Ellen Gibbs, which he said was for \$9,662.50 and asked if it had been paid already. Mr. Gucciardo said it had been routed for payment. Councilman Shenko said the invoice had been faxed to him some time ago, and had brought a copy to the Town Hall when he had learned that Town Hall had not yet received a copy. Vice Mayor Massucco commented that, with Ms. Gibbs remuneration, and Ms. Segal-George's severance package, the total cost was \$126,662. Councilman Shenko said that was half of what had been demanded by Ms. Segal-George.

Vice Mayor Massucco announced the Southwest Florida Water Management District meeting that was to take place on January 25th. He encouraged Town residents to attend, as he said it was important the Island got its message across to the SFWMD.

Vice Mayor Massucco, in reference to a memo written by Mr. Gucciardo to the maintenance staff, said he was appalled that someone had been going around the Island taking pictures of the maintenance crews. He said the Town was a small community, but one would think it was Nazi Germany. He said the people doing this needed to get themselves under control and that this type of thing needed to stop.

Mayor Reynolds said he had been at a Horizon Council meeting that had been called by the Tammy Hall especially for the Mayors, Town Managers and Town Attorneys of all the municipalities in Lee County. He said the meeting had been with regard to the Lake Okechobee water releases.

Mr. Gucciardo had updated the Council in a memo about the meeting. He said the request from the other participants at the meeting was that FMB try to make an appearance at the SFWMD meeting to be held at FGCU on February 8th. He said common points of agreement had already been identified among the municipalities and County Commissioners, and the hope was that with everyone attending, they could speak in a common voice to the SFWMD. He said he had already reserved the allotted 5-minute speaking time allowed, and asked who would be speaking on the Town's behalf, as that information had been requested by SFWMD.

Ms. Dalton said it had been an excellent meeting. One of the County's lobbyist had stated that judicial remedies were not effective because they took

required much time and money, and were sometimes not effective, and spoke in favor of legislative remedies.

Mayor Reynolds said he would be the representative for the Town and would speak at that meeting. Mr. Gucciardo said Staff would provide him with the speaking points to be addressed.

Mayor Reynolds said he had been greeted with an ADA lawsuit against the Town. He said he was disappointed to get it. He said the Town had been notified about the complaint written by former Town employee Julia Campbell in July of 2003. He said it should have been dealt with long before now.

Attorney Dalton said it was a lawsuit and felt it needed to be reviewed before responding to it. She respectfully requested that the Council refrain from commenting on the merits of the lawsuit, or any attachments to the litigation because it could affect the Town's ability to defend the lawsuit.

Mayor Reynolds said the Town had been working on it, had been trying to comply with it, and that there had been doors that had been worked on.

Councilman Shenko concurred with the Town Attorney and recommended that Council refrain from making any comments about the lawsuit at this time.

Mayor Reynolds said he wouldn't make any more comments, but said he didn't see anything wrong in the public knowing about the lawsuit.

VIII. TOWN MANAGER'S ITEMS

Mr. Gucciardo said there had been a lot of discussion about the Town's advertising practices at the last Council meeting, and raised two items that needed to be advertised, and asked the Council for direction.

Councilman Meador asked if the items were what had been included in Mr. Murphy's memo to Council, and Mr. Murphy said they were. Councilman Meador felt the County's interpretation of the LDC was 100% correct, and felt it would take more than an ad to effect the change in interpretation of the code which Mr. Murphy had suggested.

Councilman Shenko suggested the issue be added to workshop items to be discussed.

Mr. Gucciardo asked for permission to run employment ads to fill vacant spots on Town Staff. He mentioned that John Scott and Jack Green had both given their notices to leave Town Staff. He said this would leave Mr. Murphy seriously understaffed. Mr. Murphy had indicated that he had already

interviewed and identified qualified applicants, and Mr. Gucciardo asked the Council for permission to fill both vacant positions.

Councilman Meador said he was opposed to anyone new being hired until a new Town Manager was hired.

Mr. Gucciardo said he had no intention of hiring anyone new, but felt obligated to fill vacated positions already in place.

Councilman Shenko said the Florida League of Cities could provide a range rider – an individual could come assist the Town. He agreed with Councilman Meador that no hiring should occur until a Town Manager was hired for the Town.

Councilman Meador said that, while the Council may not have the ability to hire or fire anyone, but might have the ability to freeze hiring and to suspend authority to spend money.

Councilman Boback asked how the loss of personnel would affect his department, and Mr. Murphy responded that it would bring it to a standstill and would greatly reduce the service the Townspeople had come to expect from his department. He said he had had an immediate need for additional personnel since October 2005.

Vice Mayor Massucco said it was possible Council would receive Mr. Murphy's resignation in next week's e-mail.

Mr. Gucciardo repeated that he had had no intention of hiring or firing anyone during his interim Town Management period. He stressed that they needed to fill at least one of the two open positions in Mr. Murphy's department, based on what he knew about the daily workload of that department. He pointed out that it may be sometime before a Town Manager were hired, and in that time, if those positions weren't filled, the service level the residents expected would dramatically drop. In the past, Mr. Gucciardo said Staff had based many actions on the budget, from which could be extrapolated the direction and policy of Council. He recognized that that was no longer the case, and planned to bring all spending decisions before Council for approval.

Councilman Boback felt the Council would be doing the residents a disservice if they didn't allow at least one of the vacancies to be filled. He felt it would be seriously unfair to Mr. Murphy and the residents not to allow him to fill Mr. Green's position.

Mayor Reynolds said the Council had not known there were two vacancies when the discussion started. He recommended allowing one vacancy to be filled.

Councilman Shenko asked if there were any candidates who could hit the ground running, and Mr. Murphy said the Town's LDC and Comp Plan were unique. He said it would take a great deal of his time to bring the new person up to speed on those, which was why he had requested that both positions be filled. He pointed out that both positions were in the budget, and one had been vacant since October 2005.

Attorney Dalton asked to address the Council, which was given. Ms. Dalton said a great deal of the work she did for the Town involved the Community Development Department, and believed the workload in the department was gigantic, and far exceeded any other department in terms of legal issues. She believed without proper staffing in the department, the Town would have serious problems with local attorneys and the residents.

Mayor Reynolds recommended that one person be hired.

Councilman Meador didn't believe Mr. Gucciardo needed a motion, but direction from Council, and believed he already had that direction.

Mr. Gucciardo said that a Volunteer Appreciation Dinner was held each year, and this year's had been tentatively scheduled for February 14th. He said it usually had 100 attendees and cost the Town about \$2500 - \$3000. He asked for permission from the Council to move forward with that.

All the Councilmen felt it should move forward.

Mr. Gucciardo tendered his resignation, and gave his 30 day notice. He pledged to do his utmost to help with the transition to new Town Management.

Vice Mayor Massucco said he was devastated about that announcement, and hated to see him leave. He said along with all the other key employees who were leaving, the Town was in trouble.

Mr. Gucciardo believed the Town would be fine. He said while change was painful, it was often a good thing.

Mayor Reynolds said nothing was more permanent than change, but said it was an inopportune time for the Town in terms of the timing of his resignation. He said Mr. Gucciardo knew more about the Town's operation than just about anyone else.

Councilman Shenko said he was sorry to hear about Mr. Gucciardo's resignation, and said Mr. Gucciardo had done an excellent job.

IX. TOWN ATTORNEY'S ITEMS

A. Length of Council Terms – Requested by Councilman Boback

Ms. Dalton understood that Councilman Boback had asked for legal advice with regard to length of terms. She reviewed what she had included in the Council's packets as to what she had researched, which included three scenarios.

Councilman Meador said the Town could move the election date from November to March, which would prevent having to go back to referendum, and would keep the Town out of court on the issue, which he felt would not resolve it anyway.

Ms. Dalton said that change would require that the Town run its own elections.

Councilman Meador said, based on the Supervisor of Elections' proposal which he felt was not acceptable, that the Town would probably running its own elections regardless of the date.

Mayor Reynolds preferred amendments be made by referendum. He added that they needed to decide on an election date.

Councilman Meador asked that the expiration date for Vice Mayor Massucco's and Mayor Reynolds' terms also be determined, as they believed they had been elected for four years, but the judge had said their terms had to be three years.

Ms. Dalton said she would bring the item back with Council's direction in mind.

B. Beach Renourishment Agreement – Requested by Councilman Meador

Ms. Dalton had looked into the Interlocal agreement between the County and Ft. Myers Beach, dated September 28, 1999, which had expired on September 27, 2004. After research, Ms. Dalton determined that no subsequent Interlocal agreement existed between the Town and the County. She said any obligations the Town had had under the expired agreement were no longer in force.

Councilman Meador understood that the Town therefore was under no obligation to Lee County with regard to how sand would be distributed in a renourishment project.

Ms. Dalton did not believe the Town had the authority to tell the County where the sand would be distributed.

Councilman Meador thought the Town had the authority to tell the County it would not spend \$900,000 unless the sand were distributed where the taxpayers wanted it to go.

Ms. Dalton said the Town had the ability not to commit any funds.

Councilman Boback changed the subject to the search for a new Town Manager, and suggested setting a date on February 1st or 2nd for a Special Meeting at 6:30 PM at which the Council would review the applications for the position. He described the process by which they could pare down the list of applicants.

Ms. Dalton said thus far she had received about 30 applications, some of which she had opened on this day. Once opened, Ms. Dalton gave them to Ms. Lambert to copy and distribute to the Council members.

Ms. Dalton said she had another item regarding the ADA complaint/lawsuit. She said it had been filed in the Middle District of Florida, the plaintiff being Scott Straub, and the Town had been served on this day. She said the Town had 20 days to answer the complaint, and asked for Council direction with regard to hiring an attorney who practices in the Federal courts. She said she could research the issue and bring it back to Council, but was concerned about the time factor.

It was decided that the item be placed on the agenda of the Special Meeting at which Town Manager applications would be reviewed.

The Special Meeting was set for 6:30 PM on Thursday, February 2nd.

X. PUBLIC COMMENT

Tom Babcock of Williams Drive came forward. He recognized Mr. Gucciardo's contributions to the Town, and said there were a lot of people who appreciated what he had given to the Town. He prompted a standing ovation for Mr. Gucciardo.

XI. ADJOURNMENT

MOTION: Councilman Shenko made a motion to adjourn. Councilman Boback seconded the motion.

VOTE: The motion carried unanimously.

Mayor Reynolds adjourned the meeting at 12:01 AM.

Respectfully submitted,

Jo List

Transcribing Secretary