

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
February 13, 2006**

**I. CALL TO ORDER**

Mayor Garr Reynolds called a special meeting of the Town Council to order on Monday, February 13, 2006 at 4:45 PM.

**Members Present:** Mayor Garr Reynolds, Vice Mayor Don Massucco, Councilman Dennis Boback, Councilman Bill Shenko

**Excused Absence:** Councilman Charles Meador

**Town Staff Present:** John Gucciardo, Anne Dalton

At this time, Town Attorney Anne Dalton requested an Executive Session be convened, to be attended by the Council members present, the interim Town Manager John Gucciardo, Town Attorney Dalton and a court reporter. The purpose of the Executive Session was to discuss litigation filed against the Town with regard to an ADA facilities complaint – Straub vs. the Town of Ft. Myers Beach.

**MOTION:** Mayor Reynolds made a motion to accept the request for an Executive Session as it related to the ADA claim, and that the Special Town Council Meeting be closed, and to be prepared to open the Executive Session once the court reporter arrived. Vice Mayor Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

Mayor Reynolds closed the Special Meeting.

Mayor Reynolds convened the Executive Session when the court reporter arrived.

Mayor Reynolds closed the Executive Session, and reopened the Special Meeting of the Town Council at 6:01 PM.

**II. PLEDGE OF ALLEGIANCE**

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

**III. INVOCATION**

Mayor Reynolds gave the invocation.

Mayor Reynolds, citing the Town Council manual, said that Roberts Rules of Order were generally followed but that the Council's meetings were not "that formalistic". He asked both the Council and the audience members not to make any personal attacks. He asked audience members to request to speak on agenda items during Public Comment by filling out the furnished request cards before the commencement of the meeting. Mayor Reynolds told the audience that they could not make negative comments, or ask questions to be answered during that time.

Mayor Reynolds read from the Council's manual to his fellow Councilmen with regard to their proper conduct during the meetings.

**IV. PUBLIC COMMENT**

No one came forward.

**V. ADMINISTRATIVE AGENDA**

**A. NEPTUNE INN ADMINISTRATIVE APPEAL**

Attorney Dalton said the applicant, Town Staff and the Town Attorney respectfully requested a continuance of the appeal to February 22, 2006 at 6:30 PM so that they could jointly craft a resolution to bring before Council at that time.

**MOTION:** Mayor Reynolds made a motion to continue the Neptune Inn Administrative Appeal to February 22, 2006 at 6:30 PM. Vice Mayor Massucco seconded the motion.

Council Shenko asked that it be continued to the next scheduled Council meeting after February 22<sup>nd</sup> as the agenda for that meeting was full.

Mayor Reynolds said the applicant wished to get it done before that. Councilman Shenko believed it should be taken up at this meeting.

Councilman Boback agreed with Councilman Shenko.

**AMENDED MOTION:** Mayor Reynolds made a motion to continue the Neptune Inn Administrative Appeal to March 6, 2006 at 6:30 PM which was found to be an acceptable date for the applicant, the Town Staff, and the Town Attorney.

Vice Mayor Massucco seconded the amended motion.

**VOTE:** The motion carried unanimously.

**B. APPOINTMENT OF INTERIM TOWN MANAGER**

Mayor Reynolds recommended accepting the application of Rachel Lambert for the position.

**MOTION:** Councilman Boback made a motion to name Rachel Lambert as the Interim Town Manager. Mayor Reynolds seconded the motion.

Councilman Boback said he had spoken with various administrators in local government entities, and said Lee County was willing to lend the Town someone to fill the position if needed. These administrators had recommended not using someone who had applied for the permanent position to hold the interim position, and had agreed that someone from FMB Town Staff, willing and able to hold the position on an interim basis, would best be tapped for the role.

Councilman Shenko gave a brief background, for the benefit of the public in attendance, as to what this discussion was about. His only expressed concern with naming Ms. Lambert was that one of the Council members was absent, and she had stipulated that she would not take the interim position without unanimous approval from the Council.

Attorney Dalton said Ms. Lambert would be okay with one Council member missing, if all present voted in favor of the appointment.

Mayor Reynolds liked that someone from Town Staff would be appointed to the position, so as to provide continuity.

**AMENDED MOTION:** Councilman Boback made a motion to name Rachel Lambert as the Interim Town Manager, effective February 22, 2006. Mayor Reynolds seconded the amended motion.

**VOTE:** The motion carried unanimously.

### **C. REVIEW OF CANDIDATE APPLICATIONS FOR TOWN MANAGER**

Mayor Reynolds felt they could move forward with this item, even though some of the applications had been received that day.

Vice Mayor Massucco disagreed.

**MOTION:** Mayor Reynolds made a motion to proceed with this item.

Motion failed for lack of a second.

**MOTION:** Vice Mayor Massucco made a motion that Council follow the previously agreed-on procedure of reviewing the applications after all had been received and compared with the resumes already in hand; continued to the next Council meeting on February 22nd. Councilman Boback seconded the motion.

Councilman Boback noted that all five Council members would be present at that meeting.

**VOTE:** The motion carried unanimously.

**D. SELECTION OF AGENCY FOR BACKGROUND CHECKS**

The Councilmen discussed their personal choices, having already reviewed information on the firms from which they would select.

**MOTION:** Mayor Reynolds made a motion that Advanced Screening Solutions be chosen as the background check agency with regard to screening the Town Manager applicants. Councilman Shenko seconded the motion.

No vote was taken.

**MOTION:** Councilman Shenko made a motion to accept Package #1 offered by Advanced Screening Solutions. Councilman Boback seconded the motion.

**AMENDED MOTION:** Councilman Shenko made a motion to accept Package #1 and the 5-Panel Drug Screen offered by Advanced Screening Solutions. Councilman Boback seconded the motion.

**VOTE:** The motion carried unanimously.

**E. PROPOSAL TO ASSESS MOUND HOUSE/ADA ISSUES**

**MOTION:** Councilman Shenko made a motion for the Town to employ the services of Mr. Norokanis as shown in the memorandum of the Town Attorney dated February 8, 2006 for the sum of \$2,500 to inspect the Mound House property and to complete a report, to include recommendations as to necessary improvements if any, to be presented to Council regarding ADA compliance on the Mound House property. Councilman Boback seconded the motion.

Vice Mayor Massucco believed there was documentation available stating that the Mound House was already ADA compliant, based on two phone calls he had received.

Mayor Reynolds didn't believe anyone needed to tell the Council whether the Mound House was ADA compliant or not, because they had seen the property while attending the Staff/Council workshop that had taken place there a few weeks ago. He felt strongly that certification was needed.

Mr. Gucciardo felt it was appropriate for Council to hire the consultant to look at the property. He said Staff had included some information from Ms. Schober in the Council's packets regarding her viewpoints on the subject, and

assumed the consultant would be put in contact with Ms. Schober, who could connect the consultant with the people who had done work at the property, or were planning to do work as part of the grant application. He noted that the house, the garage and the grounds were all different in terms of ADA compliance, and saw no conflict in putting the consultant in touch with Ms. Schober, the contractors and potential contractors, so that he could come up with a recommendation.

Mayor Reynolds announced to the public that while the house itself was closed, the grounds and new restroom facilities in the “garage” were open to the public. Mr. Gucciardo asked for a consensus regarding Mayor Reynolds remarks.

Councilman Shenko felt it was necessary that the entire property be closed pending ADA compliance. He understood the consultant might be able to make a recommendation as to the grounds and the restroom facilities in a short period of time. Mayor Reynolds agreed.

Vice Mayor Massucco was concerned about the property being unattended while closed. Councilman Shenko clarified that it would not be closed to Staff.

**VOTE:** The motion carried unanimously.

**MOTION:** Councilman Shenko made a motion that the entire Mound House property be closed to public access until such time as the consultant delivers his report to, and additional action is taken by, this Council. Councilman Boback seconded the motion.

Mayor Reynolds noted that Ms. Schober was a conscientious person, and wanted her to know that this action was no reflection of her excellent work at the Mound House.

**VOTE:** The motion carried unanimously.

#### **F. FIDELITY BONDS**

Vice Mayor Massucco said a memo from Ms. Lambert indicated that the materials for their consideration had not yet arrived.

Ms. Dalton indicated she had provided a memo dated February 9<sup>th</sup>, but Vice Mayor Massucco said he hadn't received that as yet, but the rest of the Council did have a copy of it.

Referring to the 2-09-06 memo from Ms. Dalton, Mayor Reynolds called the Council's attention to a passage in which she referenced Section 45 of the Bonita Springs City Charter regarding their employees' bonding requirements.

However, Ms. Dalton also noted that Bonita's City Attorney had elected not to utilize this provision of their charter.

**MOTION:** Councilman Shenko made a motion that any FMB Town employees authorized to sign checks are to be insured by a surety bond, not to be less than \$1 million dollars, with a \$1000 deductible, with the cost of the bonds being paid by the Town of FMB. Councilman Boback seconded the motion.

Vice Mayor Massucco asked if it was essentially the same method used by the County, and Councilman Shenko said it was.

Councilman Shenko said he had not received financials yet, although he had been in office for almost 100 days. He said there were people writing checks whom he didn't know, and found it incomprehensible that they were not bonded. He felt it should be done immediately.

Councilman Boback agreed.

Vice Mayor Massucco agreed.

Mayor Reynolds agreed.

**VOTE:** The motion carried unanimously.

**G. ADMINISTRATIVE APPROVALS FOR ALL PROJECTS ON FT. MYERS BEACH**

Mayor Reynolds said the heading of this item should have read: "Administrative Approvals for All Projects on Ft. Myers Beach Should Stop".

Mayor Reynolds objected to projects being approved by the County without either the LPA or the Town Council having reviewed them first. He knew of three projects that had been approved, and were ultimately found to be non-compliant with the Town's LDC and/or FEMA's guidelines. He said it was unfair to those who had made investments in those projects, and that it was unfair to the Council.

Mayor Reynolds recommended that the issue be forwarded to Bill Spikowski to review and to make his recommendations as to whether the process for approval should or could be changed to include the LPA and Town Council, and then to bring his findings back to Council.

Vice Mayor Massucco agreed with Mayor Reynolds' assessment of the approval process, and agreed that nothing should be built on the Island without having been reviewed and approved by both the LPA and the Council.

Councilman Shenko said there were four issues:

- 1) Compliant buildings
- 2) Administrative Approvals – small projects
- 3) Request to change planned development
- 4) Builders who ignore building plans

Councilman Shenko suggested a workshop with Mr. Murphy so that Council could learn how the policies and procedures, already in place, worked. He disagreed that the Council should be involved in the approval process for every permit issued on the Beach, as he felt it would consume too much of the Council's time.

Councilman Boback pointed out that everything could come before Council for approval, but that it wouldn't guarantee that contractors would build structures per approved plans. He said two of the three examples given in Mayor Reynolds' memo on the subject had been the result of contractor mistakes. He said the third example had been a project approved by the then-seated Town Council.

Vice Mayor Massucco acknowledged the veracity of Councilman Boback's assessment of the specific examples that had been given by Mayor Reynolds. Vice Mayor Massucco said the Council could not get into the minutiae of every project, but if a project was in blatant violation of the LDC and/or the Comp Plan, the Council should be able to do something about it. He felt the County should not be able to approve everything that got built on the Island without the Town's say-so.

Mayor Reynolds cited a memo from Jerry Murphy dated 1-06-06, in which Mr. Murphy had discussed new residential construction below base flood elevation issues, and in which he had also discussed the evidence of some confusion created by these issues, and listed three separate regulatory areas affected:

- 1) Excessive enclosure of space below base flood elevation
- 2) The failure to elevate electrical equipment above the base flood elevation
- 3) The improper adjustment of height limitations for buildings constructed above the base flood elevation

Mayor Reynolds said he had brought this issue before Council for consideration, and believed the Council should be obligated, and be given the opportunity, to see every plan before they were implemented.

Councilman Shenko said this issue had been discussed at length at the Staff/Council workshop. He said one problem evident was an inconsistency between County review and Town Staff review. Of the list of various types of projects he had listed (above), Councilman Shenko wondered which of those Mayor Reynolds wished to have brought before Council for review. He felt

that needed to be determined before anything was forwarded to Mr. Spikowski for his assessment.

Councilman Shenko said the Council needed Staff direction with regard to bringing all the various interpretations of the codes into alignment. He felt bringing all plans before Council for approval was unworkable.

When residents asked about various projects on the Island under construction, Vice Mayor Massucco found it embarrassing not to know anything about them because they had never come before Council. He felt each project, if it went before the LPA first, would have been well sorted out by both the LPA and the Town Staff before it ever came before Council. With that process in place, the Council would be apprised of every construction project on the Island.

**MOTION:** Mayor Reynolds made a motion that the issue be referred to Bill Spikowski for his review and a report to Council about it. Vice Mayor Massucco seconded the motion.

Jerry Murphy said he had believed his direction from discussions at the Staff/Council workshop had been: to create options that embodied the choices under the three scenarios listed in his memo and cited by Mayor Reynolds in this discussion; then, to bring that language forward to the LPA for recommendation to Council for ultimate action on that policy. He indicated his intention to bring it to the LPA in March, so that it should be back to Town Council by the end of March or early April.

Mr. Murphy said if the Council was considering changes in the administrative review process, it should definitely be forwarded to Bill Spikowski for his review, as it would entail a number of changes to the LDC so as to provide that process. He cautioned that there might be some liability with Council having ultimate approval power in the event a project was subsequently found to be non-compliant because of errors made in the process prior to the Council's approval of a plan. He said he would be happy to follow whatever direction the Council gave him.

Councilman Shenko asked for clarification regarding the motion.

Mayor Reynolds explained that he wanted this issue, as had been discussed here, to be referred to Mr. Spikowski for further study, and so that the Council could hear his assessment and opinion about the issues raised by the Mayor with regard to the project approval process.

Councilman Boback reiterated that there was no way the Council could correct a builder's error.

Councilman Shenko repeated that the motion was unclear, and that he could not support the motion.

Mayor Reynolds said the Inter-local agreement did not preclude approval for projects from the LPA and the Council, but that currently, projects were being approved without coming before the LPA and Council. As a result of some differences of interpretation of the Town's code that existed between the County and the Town, the Mayor said several ongoing projects on the Beach had been found to be non-compliant subsequent to the commencement of construction. Mayor Reynolds wanted to forward this issue to Bill Spikowski so that he could study the issues raised in Mr. Murphy's memo, and could then bring his findings back to the Council for consideration.

Councilman Shenko felt pursuit of the procedural changes, as discussed by Mayor Reynolds, would create a "serious problem" rather than solve what Mayor Reynolds believed was a serious problem. Councilman Shenko said he was not certified to read construction plans, and felt it would create personal liability for the Council members. He said he was in favor of Mr. Murphy's direction – "...to create options that embodied the choices under the three scenarios listed in his memo and cited by Mayor Reynolds in this discussion; then, to bring that language forward to the LPA for recommendation to Council for ultimate action on that policy. He indicated his intention to bring it to the LPA in March, so that it should be back to Town Council by the end of March or early April." He hoped the Council could have a workshop with Mr. Murphy after the LPA's recommendations had been forwarded.

**VOTE:** The motion failed 2 – 2, with Councilman Boback and Councilman Shenko dissenting.

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

Councilman Boback thought a date should be set for another workshop. Ms. Dalton said it was outside the scope of this meeting, as it was a Special Town Council Meeting.

Vice Mayor Massucco announced he had attended the Chamber of Commerce Traffic Committee meeting on February 10<sup>th</sup>. He said there were a lot of events coming up soon, such as the St. Patrick's Day Parade and the Shrimp Festival, and he thought the Council would have to discuss them soon.

Vice Mayor Massucco announced that an Olympian, Al Oerter, planned to have 14 Olympians as guests on the Island March 5<sup>th</sup> – 8<sup>th</sup>. Mr. Oerter had asked Vice Mayor Massucco if the Town could put up a banner or something in their honor.

John Gucciardo said banners were typically part of an event application. He said if a group had been approved for a banner, the group would supply the

banner themselves, and a crew from Town would put it up over the road in front of Seafarers Mall. He explained details about what the Olympians were planning while in the area. He didn't know if the Council was interested in issuing a proclamation of some type, or acknowledging the Olympians' presence in some way. He asked if this issue should be an agenda item for the Council's February 22<sup>nd</sup> meeting, and Vice Mayor Massucco said "sure".

Mayor Reynolds, citing a memo from Councilman Shenko, said the issue as to the Mayor and Vice Mayor terms of office needed to be addressed. He said the ordinances, to which Ms. Dalton referred in her memo about this issue, were ones with which he disagreed, as he felt they were "ghost" or "rogue" ordinances he said were created by the former Town Manager and Town Attorney for the "sole purpose of evading the regular scheduled election for March 6, 2004."

Mayor Reynolds said he agreed with a memo sent to all Council members regarding "communications of Council with the general public and other governmental bodies". Mayor Reynolds explained his understanding of what was acceptable or not acceptable with regard to Council communications.

Mayor Reynolds said he had gone to a Water Resources Development Act (WRDA) meeting at FGCU on February 9<sup>th</sup>. He said he had spoken on behalf of the Town as its Mayor with regard to the Lake Okeechobee water release issue. He then said he had spoken solely for himself in support of the effort to solve the water releases that were harmfully impacting the Back Bay. He said the Mayor of Sanibel had given an excellent speech at the meeting.

Mayor Reynolds said he had attended the MPO meeting on December 6<sup>th</sup>, and he said Bonita had fought very hard to have an interchange constructed at Coconut Road and I-75, but it had been disapproved. He went on to give many details about this issue.

Mayor Reynolds mentioned the "Do the Right Thing" program sponsored by the Lee County Sheriff's Department, and asked if anyone could attend that event on Thursday, February 16<sup>th</sup> at 2 PM. He said he could not.

Mayor Reynolds cited a communication from the Lee County Board of County Commissioners regarding an approved Community Block Grant, and checked with Mr. Gucciardo to assure he had received a copy of it, which he had.

Mayor Reynolds said he had received a letter from a resident asking that a moratorium be called on all development on the Island.

Councilman Shenko said he had spoken several times with regard to his concern about the Town's budget and financials. He asked that the Budget

Director, the Technical Advisor, and the Town's auditor be in attendance at the next Council meeting and that the issue be placed on the agenda. He wanted them to explain why he had not as yet received any budget figures.

Councilman Shenko said the vagrant situation on the Beach, caused by the Chapel by the Sea "God's Table" program, had been discussed at length at the Staff/Council workshop. He asked if the Sheriff's attendance at a Council meeting to discuss the issue had been scheduled as yet. In the interim, he had discovered that the Cities of Sarasota and Bonita Springs were both in the process of addressing this issue, and requested that the Town Attorney look into the Sarasota Homeless Ordinance, and how it might dovetail in with enforcement by the Sheriff's department.

John Gucciardo said the Town had made contact with the Sheriff, and a date was being sought for his appearance at Council, which could be at either the first or second March Council meeting.

Councilman Shenko said that several people had brought to his attention that when one parked in a Beach Access "the wrong way", a \$75 fine was levied. He said the signs indicating this were difficult to read. He said he would be asking at the next Council meeting that, until the signs were more visible, the fine be abated. He felt the situation sent the wrong message to the tourists.

Councilman Shenko asked that someone look into the situation of several trolleys sitting empty and running on the north end of the Island on a regular basis.

Regarding the MPO – the Metropolitan Planning Organization, Councilman Shenko said the Town had one voting member of it, and he was now that member. With regard to the Coconut Road interchange proposal, to which Mayor Reynolds had referred in his items and reports, Councilman Shenko said he would not readdress that issue without direction from Council.

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

John Gucciardo said the Town Attorney, Anne Dalton, had been nominated for the Paulette Burton Citizen of the Year Award.

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

Ms. Dalton had no items.

#### **IX. PUBLIC COMMENT**

Edwina Foster, a Ft. Myers Beach resident, came forward. Ms. Foster publicly thanked the two Councilmen who had contacted her and discussed the vagrancy issue with her, although she did specifically name those Councilmen. Ms. Foster expressed her strong disagreement with the Council's decision to close the Mound House at the height of tourist season.

She was concerned that the grant secured by Ms. Schober would be jeopardized. Ms. Foster said there was a Florida statute that required all cars to be parked with the flow of traffic, and that the signs on the meters in the Beach Accesses were clear about that.

Maryann Scott, a Mound House volunteer, came forward. Ms. Scott didn't feel the Council members understood the amount of time and effort Ms. Schober had put into obtaining the grants for the Mound House, and if it wasn't used, the grant money would be forfeited. She said the Mound House had a cultural heritage, even if the Council members didn't like it. She said everyone would win if the Mound House projects were allowed to be completed.

Lee Melsek of Ft. Myers Beach came forward. Mr. Melsek felt it was the responsibility of former Town administrators, former Council members, and CELCAB, for allowing the Mound House to be in violation of federal ADA statutes. He said the property was a "mess".

Arthur Monahan, a resident of Ft. Myers Beach, came forward. Mr. Monahan said he lived near the Mound House, and was also a general contractor who worked with ADA issues a lot. He disagreed with Mr. Melsek's comments, and said the Mound House was a beautiful piece of property. He felt the Council should ask that the ADA inspection report be delivered within 30 to 45 days, and that Council should request specifics in that report. He hoped the grounds could be reopened as soon as possible.

**X. ADJOURNMENT**

**MOTION:** Mayor Reynolds moved to adjourn the meeting. Vice Mayor Massucco seconded the motion.

**VOTE:** The motion was passed unanimously.

Mayor Reynolds adjourned the meeting. No time was given.

Respectfully submitted,

Jo List  
Transcribing Secretary