

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
March 20, 2006**

**I. CALL TO ORDER**

Mayor Dennis Boback called a regular meeting of the Town Council to order on Monday, March 20, 2006 at 6:32 PM.

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

**Town Staff Present:** Town Manager Rachel Lambert, Town Attorney Ann Dalton, Director of Community Development Gerry Murphy

**II. PLEDGE OF ALLEGIANCE**

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

**III. INVOCATION**

Rev. Jeanne Davis of Beach United Methodist Church gave the invocation.

**IV. PUBLIC FORUM – HOMELESSNESS ON FT. MYERS BEACH**

Town Manager Rachel Lambert invited the President of the Beach Ministerial Association, Rev. Jeanne Davis, to speak first as a representative of group.

**A. BEACH MINISTERIAL PROGRAM**

**Rev. Jeanne Davis** came forward and gave a brief history of the God's Table program. She said the Ministerial Association had been helping needy people on the Beach for thirty years.

**Michael Cuti** came forward. Mr. Cuti said he had sought help at God's Table 6 months ago, and it had turned his life around. He said he was doing very well now, and that the program had given him a new chance at life.

**Robert Stryker** came forward. Mr. Stryker, the Coordinator for the Lee County Homeless Coalition, spoke in favor of the God's Table program, a member of that coalition. He noted service providers were being pushed further away from where the homeless population was located. He said the lack of affordable housing in the county was a critical problem, as there were only 72 shelter beds available for the 1400 homeless men in Lee County.

Rev. Davis noted that everyone who came for services at God's Table had to sign in and show some form of identification. She added that the Beach had supported the program through offerings taken at ecumenical services for twenty years, which was where most of the funds for the program came from.

**Sheila Morales** came forward. Ms. Morales said the program was not just for the homeless, but also the needy and disabled. She noted that 60% of the participants were not homeless.

#### **B. LEE COUNTY SHERIFF'S OFFICE**

**Sheriff Mike Scott**, accompanied by Captain Matt Powell, Chief Deputy Charles Ferranti and Lt. Matt LeClair, came forward. Sheriff Scott said he, Capt. Powell and Lt. LeClair had met with the people who ran God's Table in early 2005. He said the people had to sign in for services at the program every morning, and that there had always been cooperation with the Sheriff's office. He said his office saw three sides to the issue: feeding the hungry and helping the needy; quality of life issues regarding Beach residents; and the state law and what it dictates the Sheriff's office can do.

#### **C. PUBLIC COMMENT ON HOMELESS ISSUE**

**David Tezak** of 50 Chapel Street came forward. Mr. Tezak expressed concern for the safety of the children on the Beach with regard to the presence of vagrants and possible sex offenders participating in the God's Table program. He objected to participants coming to the program for years with no rehabilitation evident. He was not opposed to the charity work being done, but felt the program had created problems in the community.

**Gertraud Short** of 470 Madison Court came forward. Ms. Short recognized the problems that some of the participants had created with regard to trespassing and frightening residents, and opined that more deputies should be present on the Beach to handle those problems. Ms. Short stressed the kindness and humanity of the people she had met on the Beach, and hoped the God's Table program wouldn't be eliminated.

**Brinley Hall** of 205 Bay View Avenue came forward. Mr. Hall, a volunteer at the God's Table program for two years, said he did not want the community classified as "one of the meanest towns in America", in reference to a list produced by the National Coalition for the Homeless. He noted that, of the top ten towns on the list, three were in the state of Florida.

**Nancy Van Oyen** of 2522 Cottage Avenue came forward. Ms. Van Oyen said her neighborhood was dangerous and unsafe because of some of the God's Table participants. She recounted two incidents of trespassing and assault that occurred on her property. Ms. Van Oyen asked why the program couldn't be rotated amongst all the participating churches on the Beach, rather than be located at Chapel by the Sea all the time.

**Mary Porolercio** of 345 Mango Street came forward. Ms. Porolercio said she was like a prisoner in her own home because of the vagrants that came to God's Table for services who roamed her neighborhood. She asked that other churches on the Beach take turns hosting the program.

**Debra Wilensky** of 165 Mango Street came forward. Manager of the local Goodwill Store, Ms. Wilensky said her organization and God's Table had similar goals. She recounted the ways in which she had helped many participants in the program, but that some used her store to sleep and created a nuisance.

**Elizabeth Milton** of Lansing, Michigan came forward. Ms. Milton, a visitor to the Island, read a letter from a friend who had also visited the Island, in which the friend recounted an incident on the Beach in which a vagrant man had accosted her. Ms. Milton opined that unless something was done about the vagrants who bothered the people on the Beach, visitors would stop coming to the Island.

**Eddie Foster** of Ft. Myers Beach came forward. Ms. Foster said the issues of no job training and no sleeping arrangements had to be solved. She felt that those loitering, with open containers and trespassing must be arrested and not just "moved along". Ms. Foster wondered if Chapel by the Sea was in violation of any zoning ordinances. She felt the Town Council should require the God's Table program to be rotated among the churches that support it. She felt the God's Table enabled people to stay "off the track". She felt there should be a limit as to how long a person could receive services. She hoped the Town would develop and enforce vagrancy legislation.

**Joseph Boland** of 4745 Estero Boulevard came forward. President of the St. Vincent de Paul conference on Ft. Myers Beach, Mr. Boland displayed a poster that delineated the various organizations that contributed to the God's Table program as well as other programs that offer help to the needy. He gave examples of specific types of help given to residents on the Beach. He said some people were refused help. He said there would be an all-Island food drive taking place on April 1<sup>st</sup> and 2<sup>nd</sup>.

**Leroy Hommerding**, Director of the Ft. Myers Beach Library, came forward. Dr. Hommerding recounted many stories of vagrants using the library, inside and out, for shelter during the day. He said that he and his staff found human feces and other debris in the bushes and on the building's walls every morning. He felt that the God's Table program had to take more responsibility for the participants in the program after they had gotten their services each day.

**Chuck Golden**, a resident, came forward. Mr. Golden said incarceration was not the answer for the needy. He said “Don’t label them. Love them.”

**Rev. Tom Snapp** of St. Peters Lutheran Church came forward. Rev. Snapp he had been involved with God’s Table for four years, through which he had helped care for the disenfranchised of the Island. He said the Chapel by the Sea was the only church on the Island large enough with the needed facilities to house the God’s Table program. He said the people who were endangering the safety of residents, through trespassing and other offenses, should be arrested. He said the people on the Island who needed care should be helped.

**Pat Smith** of Fairview Boulevard came forward. Ms. Smith felt there was a public health issue, and thought public bathrooms of some sort should be provided by the Town if the program was to continue.

Town Manager Rachel Lambert closed the public forum at this time, and brought the issue to the Town Council.

#### **D. TOWN COUNCIL COMMENTS ON THE HOMELESS ISSUE**

Mayor Boback thanked everyone who had come to participate in the forum, and seeing that Sheriff Scott had nothing further to add, he turned the issue over to Council.

Councilman Reynolds said there had been excellent ideas put forth both pro and con regarding the homeless issue, but said there was no real answer to the problem. He opined that the homeless on the Beach were the cleanest and best dressed homeless because of the God’s Table program. He felt the County should build shelters and affordable housing.

Vice Mayor Massucco said it was a very delicate situation because the Town didn’t want the reputation of taking “these people by the collar and toss them off our Island into Never Never Land”. He said the Town had a responsibility to the tax payers, and if it came to a choice between protecting the residents and protecting the homeless, the choice was clear in favor of the residents. He said God’s Table didn’t go nearly far enough, and that Lee County needed to provide facilities for rehabilitation and housing for the homeless. He was concerned that, as Ms. Milton had said in her comments, the tourists would get disenchanted by the encounters with vagrants, and would stop choosing Ft. Myers Beach for vacations. He said the Town needed the tourists.

Councilman Shenko said the God’s Table program should invite the homeless to church on Sundays. He said people couldn’t go outside their homes; there were drunks under and in their houses, in the library, and behind their offices. He said the drunks were next to the Beach School, Bay Oaks, and the Town pool, which he said was unacceptable. He said he was not referring to needy people, but to drunks who had been brought to the Island for food and free

services, and who were not residents of the Island. Councilman Shenko said there were zoning regulations in place, and it should be determined if they were being violated currently, which he believed they were at Chapel by the Sea. He listed some other U.S. communities and some of the regulations they had enacted to handle the homeless/vagrancy issue. Councilman Shenko noted it was up to the Council, and not the Sheriff's Department, to fix the problem.

Councilman Meador said the Town needed the Sheriff's office and the cooperation of his deputies. He said the Town and Sheriff's Department had to be partners in zero tolerance. He said the people causing the problems for the residents were not on the Island thirty years ago. He said they came when the God's Table program opened at Chapel by the Sea, and kept the problem people on the Island. He said the neighborhoods were not safe because of them. He suggested the volunteers in the God's Table program should take the homeless people home with them so that they had a place to sleep at night. He wanted the problem "off my Island and off your Island".

Mayor Boback said he agreed with what the other Councilmen had said in that it was a problem that had to be resolved for the sake of the residents and their safety. He said it was nice to help the needy, but that God helped those who helped themselves. He said charitable work wouldn't help those that did not want to help themselves. He felt the existing laws needed to be looked into, and that more ordinances might be needed. He said he would not choose the needs of the needy over the needs of the residents.

#### **E. PUBLIC COMMENT ON OTHER AGENDA ITEMS**

**Jean Matthew** of 4451 Estero Boulevard came forward. Ms. Matthew, President of the Estero Island Historic Society, invited the Council and all in attendance to take a ride on the Historic Society's Historic Trolley Tours on Saturday, March 25<sup>th</sup>.

Jim Rodwell of 190 Tropical Shores Way came forward. Mr. Rodwell, a retired CPA and member of the Anchorage Advisory Committee, submitted a spreadsheet on the harbormaster's financials, and noted several line item amounts which he felt were unusual. He offered to help with the upcoming issue to be addressed by the Town Attorney during her items later in the meeting.

Attorney Jim Moran, representing the Wilker family, came forward. Attorney Moran gave background on a property against which the Town had placed a lien for code violations, the amount of which he felt was unfair to his client. He gave background information as to the events leading up to the lien, and distributed pictures showing the causes of the code violation citations had been remedied. He felt the lien placed undue hardship on his client.

Public Comment was closed at this time, and Mayor Boback called a brief recess.

**V. CONSENT AGENDA**

Mayor Boback pulled Item B, as he felt Special Events should not appear on the Consent Agenda.

**A. COUNCIL MINUTES**

**1. February 22, 2006**

**2. February 27, 2006**

**3. March 6, 2006**

Correction: Page 17, 3<sup>rd</sup> paragraph – “three year term limit” should be “two year term limit”

**4. March 7, 2006**

**MOTION:** Councilman Shenko made a motion to approve the minutes of 2/22/06, 2/27/06, 3/06/06, and 3/07/06 with the noted correction.

Councilman Meador seconded the motion.

**VOTE:** The motion passed unanimously.

**B. SPECIAL EVENTS**

**1. Historic Society Trolley Tour – 3/25/06**

**MOTION:** Councilman Reynolds made a motion to accept the request from the Historic Society for the Trolley Tour. Councilman Shenko seconded the motion.

**VOTE:** The motion carried unanimously.

**2. Art Association Art Bazaar and Clothesline Sale – 3/25/06**

**MOTION:** Councilman Reynolds made a motion to accept the request from the Art Association for the Art Bazaar and Clothesline Sale. Vice Mayor Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

**3. FMB Chamber Easter Egg Hunt – 4/15/06**

**MOTION:** Councilman Shenko made a motion to approve the request from the Chamber of Commerce for the Easter Egg Hunt based on last year’s application so that there were no exemptions from the Special Event ordinance. Councilman Meador seconded the motion.

**VOTE:** The motion carried unanimously.

**4. Surf Club 4<sup>th</sup> of July Fundraiser – 4/15/06**

**MOTION:** Councilman Shenko made a motion to approve based on last year's application. Councilman Meador seconded the motion.

Councilman Shenko asked how late the outdoor music would go, and it was determined that it would go from 1:00 PM to 6:00 PM.

Councilman Reynolds asked if the event would draw traffic. Mr. Murphy didn't know how much traffic would be created by the event. Councilman Reynolds asked about parking. Mr. Murphy said there was on-site parking as well as other parking nearby.

**VOTE:** The motion carried unanimously.

**5. Lee County Sports Authority: East End Volleyball Tournament – 4/22/06**

**MOTION:** Councilman Shenko made a motion to approve the Lee County Sports Authority request. Councilman Meador seconded the motion.

**VOTE:** The motion carried unanimously.

**VI. ADMINISTRATIVE AGENDA**

**A. CENTER STREET PRESENTATION – RON EDENFIELD**

Damon Grant came forward as Mr. Edenfield was not present. Mr. Grant said he had met with Mr. Edenfield and Councilman Meador to look at the location. The study done by Mr. Edenfield showed that private property and parking spaces would be taken to effect the opening of Center Street.

Councilman Meador said taking private property was not something he could support, nor could he support the cost of the project.

Councilman Shenko said it involved taking private property, and that the project would involve far more than the Council had envisioned.

Vice Mayor Massucco said the cost, and taking private property, made the project unsupportable.

Councilman Reynolds said he was not in support of taking parking spaces, nor was he in support of the cost of the project. He noted it would cause the traffic back up on the Bridge.

Mayor Boback said losing the 14 parking spaces would amount to about \$54,000 annual loss of parking revenue. He also did not support taking private property. He said the cost of the project wouldn't be justified by the

time it may save someone in traffic, if it did save anyone time. Mayor Boback said the opening of Center Street was a “dead issue”.

**B. SECOND PUBLIC HEARING FOR LPA MEMBERSHIP  
ORDINANCE 06-09**

Mayor Boback opened the public hearing on Ordinance 06-09. Attorney Dalton read the caption of the ordinance.

Bob Raymond of 393 Donora Road came forward. Mr. Raymond, currently a member of the LPA, objected to being referred to as “those people” by the Council during the first public hearing on the ordinance. He said the LPA members had taken a lot of time reviewing the ordinance and had recommended what they thought served the residents and the Council best. He said he trusted the Council’s decisions. He explained the LPA’s reasons for having recommended three-year terms, as they believed it would allow for a better flow of knowledge. As to why the LPA recommended there be nine members on the LPA, he said they had felt it would give a more diverse input, and would give residents a better chance of having a quorum when their cases were heard by the LPA. Mr. Raymond said in spite of that, he had no problem with the membership being pared down to seven members. He suggested having an additional two alternates, and listed several reasons for that. He said the LPA’s recommendations were not intended to be obstructionist.

Bob Simon of Sun View Boulevard came forward. Mr. Simon, currently a member of the LPA, spoke in favor of paring down the number of members on the agency to seven, as he felt it was much more efficient.

Jane Plummer of 340 Fairweather Lane came forward. Ms. Plummer, currently a member of the LPA, said she agreed with Mr. Raymond.

Seeing no one else wishing to speak on the issue, Mayor Boback closed the public hearing. The issue returned to the Council.

**MOTION:** Mayor Boback made a motion to pass Ordinance 06-09 as written. Councilman Meador seconded the motion.

Councilman Meador thought the shortened term of membership to two years was good. He spoke in support of the number of members being pared down to seven, as he felt it would be easier to get a quorum.

Councilman Shenko agreed with Councilman Meador. He thought there might be merit to the idea of appointing one or two people as alternates who would not vote unless they were filling in for a regular member’s absence. He said he was in support of the ordinance as it stood, but asked for input from other Council members about the idea of alternates.

Vice Mayor Massucco agreed with the basic format of the ordinance, and supported the idea of all the committees having alternates named in case of absence of any regular member. He supported the ordinance as it stood, but thought the idea of alternates should be looked into.

Councilman Reynolds recounted how the LPA had grown from seven to nine members. He was not in favor of naming alternates to the LPA. He was not in favor of keeping the language allowing owners of property to sit on the LPA if they were not full-time residents. He also wanted three unexcused absences to be reason for termination, not three *consecutive* unexcused absences.

Ms. Dalton recommended the Council consider some specific verbiage regarding a two-year required hiatus after a member had served two two-year terms in a row, before that member could be reappointed to the LPA again.

**AMENDED MOTION:** Mayor Boback made a motion to pass Ordinance 06-09, with the added verbiage that a member having served two consecutive two-year terms would be required to take a two-year hiatus before he or she could reapply for reappointment. Councilman Meador seconded the motion.

Mayor Boback said his intention had not been to clear the LPA of all of its current members, as he agreed experienced members were valuable. He felt the Council was just trying to get new ideas. He hoped anyone who applied to be on the LPA realized how much time and effort would be involved. He didn't support the alternate idea, but said it could be revisited at a later date if the situation warranted it.

Vice Mayor Massucco noted that any vacancies created on the LPA had to be filled within 30 days by Town Council appointment, and that the issue - as to what should happen if the vacancy could not be filled - was not addressed in the ordinance. He thought an amendment, which allowed the Council to appoint a former member who either was not a resident or was on another committee, would remedy that issue.

Mayor Boback said it was an issue that could be addressed should it arise.

Councilman Meador wanted the 30-day requirement to fill a vacancy changed to 60 days. Mayor Boback agreed to that and amended his motion as such.

**AMENDED MOTION:** Mayor Boback made a motion to pass Ordinance 06-09, with the added verbiage that a member having served two consecutive two-year terms would be required to take a two-year hiatus before he or she could reapply for reappointment, and with the 30-day requirement to fill a vacancy changed to a 60-day requirement. Councilman Meador seconded the motion.

Councilman Reynolds asked the motion maker to consider deleting the language in the ordinance that allowed property owners, whether they were full-time residents or not, to sit on the LPA.

Mayor Boback felt the Council could determine if a property owner were a seasonal or full-time resident, and didn't think part-time residents would apply for a position on the LPA because of its frequency of meetings.

Councilman Reynolds asked that the word "consecutive" be stricken from the language regarding unexcused absences. Ms. Dalton read the existing language of the ordinance. Mayor Boback had no problem with striking that word from the language of the ordinance.

**AMENDED MOTION:** Mayor Boback made a motion to pass Ordinance 06-09, with the added verbiage that a member having served two consecutive two-year terms would be required to take a two-year hiatus before he or she could reapply for reappointment, and with the 30-day requirement to fill a vacancy changed to a 60-day requirement; also, that a member would be terminated if they missed three cumulative regular LPA meetings per year. Councilman Meador seconded the motion.

Before seconding the amended motion, Councilman Meador asked if it was proper to amend a section of the ordinance not previously taken up by the LPA. Ms. Dalton said it was. It was determined that the Chair of the LPA would be the one to grant an excused absence to a member.

**VOTE:** The motion carried unanimously.

### **C. TIMES SQUARE MAINTENANCE MSBU MODIFICATION**

Damon Grant reviewed the history of the MSBU maintenance assessment plan, and its proposed revisions. He explained that the Times Square businesses were responsible for 40% of the maintenance costs, and the Town was responsible for 60% of those costs.

Councilman Reynolds asked if the businesses had paid their assessed costs on time, as last year only 17% of the 40% had been paid.

Mr. Grant said there had been problems in the past, and the Town had used liens in order to collect the money owed. Since then, the assessed costs had been paid on time for the most part, although he didn't have the exact data to say how many had paid.

Councilman Reynolds felt the businesses should plan for the assessed costs and pay them on time.

Vice Mayor Massucco asked if the Times Square Advisory Committee was in favor of the proposed revised plan. Mr. Grant said the committee had formulated and passed it. He said their recommendation was that the Council pass the revised plan.

Councilman Shenko explained to the audience what the assessed costs paid for with regard to maintenance in the Times Square MSBU. He felt the individually assessed costs to each of the businesses was very low, and felt the plan should list addresses rather than names of businesses.

Councilman Meador asked what the Council was being asked to vote on. Mr. Grant said a vote was not being asked for, but that he had brought the issue forward for the Council to discuss as there were still things being researched. Mr. Grant indicated that it may be brought forward to Council for a vote.

Councilman Meador noted that the Times Square MSBU businesses' taxes paid to the Town had been capped.

Mr. Grant explained that the Town decided not to allow private trash collection companies and utilities to drive through the Times Square area, and so took responsibility for it, which was where the 60% paid by the Town entered into the formula. He said the business owners in the area agreed to share the remaining 40% costs with the Town Council in office at the time.

Councilman Meador suggested that the revised plan list the businesses by strap numbers rather than addresses, as it would allow for proper indexing in the public records if liens needed to be filed by the Town for unpaid assessed costs. He said a lien was unenforceable unless it was against the owner of the property.

Mr. Grant said he had in his possession the owners' names and the property strap numbers, in addition to the business names and addresses.

Councilman Meador said he didn't care how the business owners split up their shares of the costs as long as they paid them. He said the Council may want to look at the 60%-40% split at a later date, based on what advantages are granted to the business owners in the Times Square MSBU. He said if there were to be a hearing on the revised plan, he wanted to be sure all the businesses involved had notice of the meeting.

Councilman Reynolds asked Mr. Grant what the daily labor maintenance costs were.

Mr. Grant said there were two MSBU's – maintenance and garbage. He said the garbage MSBU was paid monthly, and the maintenance MSBU paid for

the labor. Councilman Reynolds asked what the maintenance people actually did on a daily basis.

Mr. Grant noted that it was listed in the memo he had supplied to Council for this meeting.

Councilman Reynolds asked about the frequency of trash collection. Mr. Grant described the extent of the trash collection activity, which he said was generally once a day except during season.

Councilman Reynolds asked why the Town needed to pay extra money to take care of the businesses in the MSBU area, while several businesses outside of that area are not maintained by the Town.

Mr. Grant said there was no other area on the Island that had the same level of Town maintenance as was done in Times Square.

Mayor Boback said the main reason was because garbage trucks couldn't get into the Times Square area, and Mr. Grant said that was correct. He said the garbage collection MSBU was strictly within the bollarded section of Times Square, and everywhere else got regular curbside trash collection service.

Ms. Dalton said she and Mr. Grant intended to bring the ordinance back for a hearing before Council in the future.

#### **D. FEMA FLOODPLAIN RESTUDY FOLLOW-UP**

In reference to information given by FEMA representatives at a recent workshop, and suggestions made by Town consultant Bill Spikowski with regard to possible policy the Town could pursue, Gerry Murphy asked for the Council's direction in terms of moving the issue forward.

Councilman Meador understood from the workshop that the maps were going to be adopted as proposed by FEMA. He thought Mr. Tomasello said he could get the V-Zone moved a little bit, based on science. He felt that data should be sent up to FEMA as soon as possible, as it may change the V-Zone slightly in the Town's favor. It was determined at the workshop that the economic impact of the maps would have no bearing on whether or not they were adopted. He said FEMA's budget came from paid flood insurance premiums, so that they did have a vested interest in moving the V-Zone as they planned to do.

Councilman Shenko said the Town would have a hard time getting partners to fight the maps, as it had already been done in all but one other community in Florida. He said it would affect businesses the most. He related some of the information that had been imparted by the FEMA representatives at the workshop regarding how homes would be rated for insurance which he felt

was positive. He felt Mr. Tomasello's data needed to be gotten to FEMA immediately.

Vice Mayor Massucco said partnering with a lot of other communities was not going to happen. He said the maps were going to be adopted. "It looks like doomsday," he said.

Councilman Reynolds said that Mr. Loar, the FEMA representative, had told them at the workshop that adjustments would not be made for "one little locale" like the Beach.

The Council directed Mr. Murphy to forward Mr. Tomasello's data to FEMA as soon as possible, and tell Mr. Spikowski not to pursue his policy change recommendations.

**E. DOCKSIDE INN – REVIEW OF COMPLIANCE  
DETERMINATION/CDS**

Councilman Meador said he had brought the item forward for the Council to vote tonight as to whether they wanted to consider the project, but not actually to discuss it at this meeting.

**MOTION:** Councilman Meador made a motion that Council take the matter under review. Councilman Shenko seconded the motion.

In response to Councilman Shenko's question, Ms. Dalton recommended that the motion be more specific.

**AMENDED MOTION:** Councilman Meador made a motion that the matter of the Dockside Inn appeal be moved forward to an Administrative Appeal hearing to a date certain. Councilman Shenko seconded the motion.

Councilman Reynolds said a lot of discussion was needed on the matter, and discussed some of his concerns.

Ms. Dalton advised that the Commercial Design Standard process in the LDC was very specific as to external issues, rather than internal design of a commercial building.

Councilman Reynolds said he had no problem with the way the building looked. His objections were with additional information included in the submitted design plans. He asked what the motion was about, and didn't feel the issue should be deferred if they were only going to discuss the CDS.

Councilman Meador said the issues Councilman Reynolds had raised were not appropriate for discussion at this juncture, and that the motion was to move the item forward so that they could discuss those issues.

Ms. Dalton said if the Council had issues with internal design, as opposed to external design, it would fall outside the jurisdiction of the CDS.

Councilman Reynolds thought if the issue was taken forward in the appeal process, it would give the Council the opportunity to discuss other issues regarding the proposed design, but that Ms. Dalton had said that they would not have that opportunity. Ms. Dalton said that was correct.

Councilman Meador clarified that the motion would determine that the Council wanted to look at the proposed project.

Councilman Shenko pointed out that the CDS incorporated by reference the Comp Plan.

Mayor Boback asked if everything but the exterior look of the building had already been approved and permitted.

Mr. Murphy said the project had been rezoned with a CPD, and a DO had been submitted which Staff and County had reviewed and had determined to be in compliance with that zone. He said if the Council felt the external design didn't comply with the CDS, Council could appeal Staff's determination.

**VOTE:** The motion carried unanimously.

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

### **Councilman Reynolds:**

- 1) Missed the Hurricane Workshop on Saturday, as he had forgotten about it and had gone out of Town
- 2) Missed the St. Patrick's Day Parade for the same reason

### **Vice Mayor Massucco:**

- 1) Commended the organizers of both the Shrimp Festival Parade and the St. Patrick's Day Parade.

### **Councilman Shenko:**

- 1) RE: MPO – they asked for money to buy new trolleys; he voted no and when asked why, he had told them the trolleys were noisy and smelled bad. He said the MPO had then approved unanimously 'green' bus trolleys for the next two purchases for Ft. Myers Beach.
- 2) The Town would be asked to appoint a representative to the Lee County Transit Authority. He recommended the Transit Authority make a presentation to the Town Council. He called the Authority "taxation without representation". He felt the Town should consider opting out of it.

He said an appointed member had to be named before the next month's meeting.

- 3) Would be proposing a curfew for anyone under 21 years of age.
- 4) Was going to meet with the Fire Chief and Damon Grant with regard to more hurricane planning. He said the hurricane plan workshop on Saturday had been very good.

**Councilman Meador:**

- 1) Had attended the Chamber of Commerce Traffic Committee meeting. He said a LeeDOT representative had been in attendance, and when the subject of three full traffic lanes on the Bridge had come up, the LeeDOT representative had said it wouldn't happen because the bridge was not structurally safe to carry three full loads of traffic, as told to him by the state of Florida.
- 2) Agreed the hurricane plan workshop had been great. He apologized for having not given clear information to the Red Cross representative, which was why she had not been at the workshop. He said there would be trained Red Cross volunteers specifically and only for Ft. Myers Beach. He said the Red Cross worked concurrently with the CERT program.
- 3) Regarding the V.O.I.C.E volunteers, the Sheriff's Dept. had indicated that 10 parking spaces for one year would be a great way for the Town to show its appreciation; additionally, a dollar donation to the V.O.I.C.E. program would be appreciated.
- 4) Asked that Mr. Murphy and his crew investigate possible code violations with regard to Chapel by the Sea and the God's Table program. Mayor Boback and Councilman Shenko agreed, which was then Council consensus that Mr. Murphy pursue that. Mr. Murphy asked for two week's time to prepare the data. Mayor Boback said it needed to be moved up the priority list.

**Mayor Boback:**

- 1) Said the hurricane workshop had been very good. He said the finalized plan would be made public as soon as Staff had assembled the information.
- 2) Announced the Hurricane Preparedness Seminar at Santini Marina Plaza on March 26<sup>th</sup> at 2 PM. He noted there would be another seminar geared for full-time residents would be held on a future date.

**VIII. TOWN MANAGER'S ITEMS**

Ms. Lambert announced the VOICE volunteers were going to be given a special luncheon on April 7<sup>th</sup>, at which the Town would present the parking passes to the volunteers. Regarding a donation, \$100 per each of the twenty VOICE volunteers had been suggested as an appropriate to the program via the Sheriff's Department. From a conversation with someone from the County, Ms. Lambert believed they might also make a donation of some kind to the VOICE program.

Ms. Lambert said another Councilman Workshop was scheduled for Wednesday, March 22 from 6 to 9 PM, with regard to community development work that is taking place on the Island.

Ms. Lambert announced the next Town Council meeting, to be held on April 3, 2006 at 6:30 PM; additionally, the Town Manager interviews were to be held on April 4, 2006 at 6:30 PM.

**IX. TOWN ATTORNEY ITEMS**

Ms. Dalton said a date needed to be set for the Dockside hearing. It was determined it would be on the April 3<sup>rd</sup> agenda.

**A. UPDATE ON WILKER**

Ms. Dalton said the matter was in active litigation and should be the subject of an Executive Session, which was set for Wednesday, April 4<sup>th</sup> at 5:15 PM.

**B. UPDATE ON SALTY SAM'S**

Ms. Dalton cited letters between the Town Attorney and Salty Sam's attorney, included in the Council's packets. Ms. Dalton had advised Salty Sam's attorney of this meeting, but he was not present, nor was his client.

Mayor Boback said the Council could either accept or reject the proposal made by the Harbormaster's attorney, or the Council could make a counterproposal. He suggested, based on information from various sources, that the Town should consider paying the amount billed to the Town by the Harbormaster through March 31<sup>st</sup>. He further said Salty Sam's should provide a full accounting to justify the bill, and that possibly Charlie Green could go through the accounting data provided by the Harbormaster.

Councilman Meador said per the agreement that was signed, the Town should not have paid any money at all. He said if a side-deal had been made by the prior Town Manager outside of the contractual agreement, he would rather pay attorney's fees than pay the marina. He noted the spreadsheet provided by Jim Rodwell earlier in the meeting, and said there was no way Salty Sam's could justify the expenditures charged to the Town with regard to the anchorage.

Councilman Shenko said the spreadsheet provided by Jim Rodwell had described the situation best. He said the Town might be obligated to pay legitimate expenses based on prior conduct of Council, but he was not ready to concede that point, and stressed that he didn't think the expenses listed were legitimate. He felt the Town should actively pursue collection of the fees, as demanded in the letter sent by the Town Attorney.

Vice Mayor Massucco was very impressed by Jim Rodwell's spreadsheet, and thought Mr. Rodwell should be involved in any investigations that were done into the matter.

Councilman Reynolds thought Mr. Rodwell had said that it was not unusual to have repeated expenses, and had thought he had spoken in favor of Salty Sam's bill to the Town. Councilman Reynolds didn't think the Harbormaster should shoulder the blame for what the former Town Manager allowed for a year. He did not want the Town to try to collect the money from Salty Sam's. He felt the Town should pay the amount billed to the Town. He thought it would be a revenge lawsuit to pursue the demand payment.

Mayor Boback agreed with everything Councilman Meador had said, but had suggested the Town pay the bill as long as proof and documentation was provided by Salty Sam's to justify the amount, so as to avoid a lawsuit.

Councilman Meador said the overcharges were not defensible, and if Salty Sam's lost the suit, they would owe the Town the attorney fees along with the demanded amount plus interest. He said for the Town to pay the billed amount would be to pay blackmail money to avoid a lawsuit.

**MOTION:** Councilman Meador made a motion that Council request back-up records from Salty Sam's in support of the expenses billed the Town since December 2004. Councilman Shenko seconded the motion.

Councilman Shenko asked Councilman Meador to amend the motion to include minutes of the Council meeting at which the authorization was given to pay the previous payments made by the Town to Salty Sam's.

**AMENDED MOTION:** Councilman Meador made a motion that Council request back-up records from Salty Sam's in support of the expenses billed the Town since December 2004; also, Attorney Zsabo is to provide the minutes of the Council meeting(s), or any other written agreements, in which authorization was given to pay the previous payments made by the Town to Salty Sam's. Councilman Shenko seconded the motion.

Councilman Reynolds disagreed with the motion, as he felt the present Council had not created the situation.

**VOTE:** The motion passed 4 – 1, with Councilman Reynolds dissenting.

#### **X. PUBLIC COMMENT**

**Pat Smith** of Fairview Boulevard came forward. Ms. Smith commended the Council for their vote regarding Salty Sam's. She felt at the very least, Salty Sam's should furnish the financial records to back up the bill submitted to the Town. Ms. Smith, with regard to the Times Square MSBU, said she was

appalled to learn some of the merchants hadn't paid their assessed shares of the maintenance costs. She hoped Charlie Green would look into the matter.

**Pat Loffreno** came forward. Mr. Loffreno said that, fifteen years ago, he had obtained a copy of a letter Mr. John Davis had obtained from the state in which it said the Matanzas Bridge could hold three full lanes of traffic, contrary to earlier remarks made by Councilman Meador on the subject. Mr. Loffreno felt sorry for the homeless people, but wanted the services offered to them to include job skills.

**Gertraude Short** came forward. Regarding a mayors conference leading up to a conference with the governor regarding Lake Okeechobee releases, Ms. Short urged the Mayor to press for emergency measures as well as long-term plans.

**Doug Speirn-Smith** of 416 Crescent Street came forward. He urged the Council to learn how much in assessments had not been paid by the Times Square MSBU merchants before they took action. He felt the Town and the merchants had had a cooperative relationship over the years. He believed there were very few merchants who did not pay the assessed costs for maintenance of the area. He believed the merchants paid individually for garbage removal. Regarding the Dockside Inn application, Mr. Speirn-Smith said he was one of the applicants on the project, and felt there were a few misconceptions about the building, and explained the reason for various details of the project.

**XI. ADJOURNMENT**

**MOTION:** Councilman Shenko made a motion to adjourn the meeting. It was seconded.

**VOTE:** The motion carried unanimously.

Mayor Boback adjourned the meeting at 9:46 PM.

Respectfully submitted,

Jo List  
Transcribing Secretary