

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
April 3, 2006**

I. CALL TO ORDER

Mayor Dennis Boback called a regular meeting of the FMB Town Council to order on Monday, April 3, 2006 at 6:30 PM.

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

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

II. PLEDGE OF ALLEGIANCE

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

III. INVOCATION

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

IV. PUBLIC COMMENT

Mayor Boback asked Council for agreement to accept public comments on agenda items when those items were taken up during the meeting, rather than all at once at the beginning of the meeting. The Council agreed.

V. CONSENT AGENDA – Council Minutes March 20, 2006

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

Correction: Page 4, 6th paragraph – change the word “vagrants” to “homeless”. Page 10, 3rd paragraph – delete “none of the councilmen agreed with...”

VOTE: The motion passed unanimously.

VI. ADMINISTRATIVE AGENDA

A. SPECIAL EVENTS

1. KAIO STUDENT MINISTRIES CONCERT SERIES

Will Hutcherson of 1108 Navaho Avenue, LeHigh Acres, came forward and explained what his organization wished to accomplish during the high school

spring break on the Island. He said they wished to stage a concert series at which soft drinks would be given away as an alternative to drugs and alcohol.

Councilman Shenko asked where the concert would take place. Mr. Hutcherson said someone on Avenue C had donated the use of their property. He said there would be two 30-minute concerts; one would be at 12:30 PM and one would be at 3:00 PM. Councilman Shenko asked if it was a non-profit organization, which Mr. Hutcherson affirmed.

Councilman Reynolds asked what type of concerts there would be. Mr. Hutcherson said the bands were all Christian-based, and that they would be amplified. He said the neighbors where the concerts would take place had been spoken with and a plan had been devised to satisfy all. Councilman Reynolds asked if there would be a big crowd that necessitated the use of amplifiers. Mr. Hutcherson said the sound system would be small. Councilman Reynolds asked that the volume be kept low.

Vice Mayor Massucco asked if Mr. Hutcherson's group had come before Council last year for the event held then. Mr. Hutcherson said they had. Vice Mayor Massucco asked about the schedule. Mr. Hutcherson said it would be set up by noon and would go on until 3:30 PM. He said their goal was to offer teenagers an alternative to drinking and drugs, and that nothing would be sold. Vice Mayor Massucco asked how big the crowd had been last year. Mr. Hutcherson said the most at any one time had been 40 people.

MOTION: Councilman Shenko made a motion to approve the request for a permit by the Kaio Student Ministries Concert Series provided it was limited to the two half-hour sessions as stated, and that they comply with the noise ordinance; if any complaints are received, the code enforcement would have the ability to immediately stop the music. Vice Mayor Massucco seconded the motion.

VOTE: The motion carried unanimously.

2. FMB AIR SHOW – REQUEST FOR FUNDING – CHRIS MOSKAL

Jim Nygard, President of the FMB Air Show came forward and briefed the Council on the plans for and parameters of the air show. He also covered the financial benefits and costs. The request was for \$10,000 from the Town, as well as the granting of a permit.

Councilman Shenko asked where the proceeds from the sale of T-shirts and sponsorship money went and who managed the money. He also asked if the organization was non-profit. Mr. Nygard said it was a non-profit organization, but was not a charitable one because the Dept. of Defense did not sponsor charities. He said all money made would go back into the show.

Councilman Shenko asked if the TDC, the Chamber of Commerce, or the County had contributed any funds, and Mr. Nygard said neither had.

Vice Mayor Massucco asked if there was the intention to solicit funds from the Chamber of Commerce or the TDC for the event. Mr. Nygard said it sounded like a wonderful idea.

Councilman Reynolds said he had concerns about the sales of items during the event, as well as the fact that no other entity had been approached for help with funding. He had concern about the traffic generated by such an event. He said he would approve the permit, but was not in favor of a monetary contribution from the Town until he knew how much support other entities would give. Mr. Nygard said there was over \$34,000 already contributed, mostly from businesses on FMB, and that last year's event was funded completely by non-Beach entities. Councilman Reynolds asked how many extra deputies would be hired to handle the crowd. Mr. Nygard said the West District Commander required 6 additional deputies, from 9 AM to 7 PM.

Mayor Boback asked if there was no money committed by Beach businesses, and Mr. Nygard said there was not. Mayor Boback asked if any had been approached. Mr. Nygard said some had been approached, but it was sometimes a challenge "getting them to open their wallets". Mayor Boback asked if the Chamber and the TDC would be approached for funds.

Stan Nelson from Bokeelia came forward and said he had spoken with the TDC, and the money available could only be used for marketing outside the local market area. He didn't think it was a good idea. He said he had contacted the Chamber which had offered to put out brochures, but would not provide financial assistance.

Mayor Boback said he was disappointed that the local businesses that would benefit from the air show had not contributed any funding. He thought the air show was great.

Gerry Murphy said the boat race mentioned in Mr. Nygard's opening remarks had not yet been approved.

Councilman Meador asked if the air show had lost \$12,000 last year. Mr. Nygard said that was correct, and that one of the air show board members had paid for that. Councilman Meador asked what the Town had contributed to last year's air show, and Mr. Nygard said "nothing". Councilman Meador asked if the Sheriff's Department had agreed to only six additional deputies to handle the estimated crowd of 150,000 people. Mr. Nygard said the estimate was a combined figure for three days: Friday show – 3,000 people; Saturday show – 50,000 people; Sunday show – 100,000 people. Councilman Meador asked how the estimated 120 room nights at \$99 each had been figured. Stan

Nelson explained it was based on the number of support crew that would stay over a three day period. Councilman Meador wanted to know if they would stay in hotels on the Beach, and Mr. Nygard said they would not be.

MOTION: Councilman Meador made a motion to approve the permit but none of the funding. Councilman Shenko seconded the motion.

VOTE: The motion carried unanimously.

B. ADMINISTRATIVE APPEAL/CDS/DOCKSIDE INN

Town Attorney Dalton administered oaths to those wishing to testify at the public hearing.

Atty. Beverly Grady came forward in representation of the Dockside Inn. She said their request was for Council's approval of the Staff Report in which it was found the Dockside elevations are in compliance with FMB's CDS, and reviewed the Staff Report. She also reviewed the steps that the applicant had taken up to this hearing.

Councilman Reynolds asked why Ms. Grady referred to elevations several times in her presentation, as he saw no reference to elevations in the materials he had been given. Ms. Grady said it was in reference to the elevations indicated in the drawings of the building, copies of which were in the Council packets, and which were included in the DO. Councilman Reynolds said there were no figures on the drawings. Ms. Grady said the purpose of the hearing was to look at the elevations in terms of architectural design and appearance.

Councilman Reynolds questioned the floor plan schematic included in the packet, as there were no numerical measurements included on them. He asked several questions about other aspects of the floor plan, which Ms. Grady answered. Councilman Reynolds wanted to know what each space in the building actually was before approving the plan, and felt all the dimensions should have been numerically indicated as well. He asked why the Council had been given anything else except renderings of the exterior design of the building if the exterior was all the Council was being asked to consider. Ms. Grady said the owner had submitted the full package, but what was required for review by the Town Council was compliance with the CDS. She said the exact dimensions would be known and included with the application for the building permit, but were not known or required for this hearing.

Councilman Meador asked Ms. Grady for her qualifications with regard to administrative law, which Ms. Grady gave in detail. Councilman Meador asked Ms. Grady if she considered herself an expert, and believed the project being appealed had been predicated on a Council resolution that permitted 34 units. Ms. Grady said that was correct, but that the number of units was not under consideration at this hearing. Councilman Meador asked, if the Council

didn't have jurisdiction to stop the project at this hearing, at what point the Council would have the ability to stop it. Ms. Grady said the plan to be submitted for approval was for 34 guest units, and only 34 guest units. She said if in the future someone did something different than approved plan with 34 units, the approval would be obtained through a different mechanism other than this hearing. Councilman Meador asked what the earliest point in the process the Council could stop the project. Ms. Grady asked what the violation was. Councilman Meador gave the example that the project had been approved for 34 units, but the drawings before him appeared to show 43 units were planned. He asked again, if the Council couldn't stop the project at this hearing, what the earliest point would be at which the Council could stop the project, based on her expertise.

Ms. Grady said 43 units had not been approved, and the DO and building permit could only be issued for 34 units. Councilman Meador said Ms. Grady was testifying under oath, and asked her, in her expert opinion, what the earliest point would be at which the Council could stop the project. Ms. Grady said he was asking her to assume something that was not happening.

Councilman Meador said the zoning resolution required 38 parking spaces, and there were only 34 depicted in the drawings. He asked if, under development review the Council could not stop the project at this point due to insufficient parking, at what point they could stop it. Ms. Grady said that there had been an administrative amendment wherein a reduction in square footage lowered the required parking spaces to 34. Councilman Meador believed no members of the Council had been provided with an administrative override of a Council resolution.

Councilman Meador said the zoning resolution provided for retail space of 2,660 square feet, and the plans depicted retail space of 6,220 square feet, and again asked at what point in time the Council would have jurisdiction to stop the project. Ms. Grady believed that the total number of square footage was in compliance with the number approved in the resolution, but hadn't added the numbers herself and was unable to speak to his specific question. Councilman Meador also believed the Council resolution called for two entrances/exits, but that the current plan had only one. He asked Ms. Grady if she could concur that the number of entrances and exits fell under the CDS. She concurred that it would be reviewed for a development order.

Councilman Shenko asked if Ms. Grady was familiar with the project as it was originally submitted, before it had been redrawn. He felt several details on the plans submitted for this hearing had been intentionally left out. He felt the "meeting room" would become a second floor barroom. Ms. Grady said the approved plan included a restaurant, bar and lounge, indoor only. Councilman Shenko raised the question as to what "design concepts", mentioned in the

CDS, actually referred to, and felt one applicable concept was that the Town had to protect residential neighborhoods from intrusive commercial activities.

Ms. Grady said the plan had an approved CPD, and what had been defined as allowable were: a 34-unit hotel, a restaurant (Type 1, 2 or 3), retail, bar, cocktail consumption limited to indoor, and a caretaker's residence. She said the "amenity" or meeting room was 320 square foot space, and had been found by Staff to be consistent with hotel use. Councilman Shenko said it was a second-floor bar, and "its multi-purpose is gin, rum, whiskey, beer and vodka". He said that in looking at the outside of the building, with regard to CDS, he could see a second-floor bar. He said that, for purposes of the application, the drawings submitted were insufficient. Ms. Grady began to verbally supply some of the missing information, but Councilman Shenko wanted the information drawn in and approved.

Vice Mayor Massucco said he was in concurrence with the opinions expressed by Councilmen Meador and Shenko.

Councilman Reynolds said he didn't like being asked to approve something for which all the information had not been supplied. He gave examples of details that were incomplete in the materials supplied to Council. He expressed concern about the reduction in parking spaces. He felt the Council needed to keep the density of that area of the Island in mind when considering the project for approval, as there were several other projects planned in that same area.

Jack Green came forward on behalf of Staff, but said he had nothing further to add to what had already been said, beyond what was in the memo he had included in the Council members' packets.

Councilman Meador asked if there had been an administrative approval given on a deviation from the Council's original resolution. Mr. Green said there had been an administration amendment granted which reduced the total square footage of the previously approved building and a commensurate reduction in parking. Councilman Meador asked if there had been an administrative amendment granted with regard to the increase in retail space, and Mr. Green said one was pending before the County requesting flexibility with regard to retail and restaurant space so as to allow the owner to maximize whatever the real estate market would provide. Councilman Meador asked if that would affect the number of required parking spaces. Mr. Green apologized for not having specific information about the parking ratios, but had thought the hearing would be focused on the CDS as opposed to the actual evaluation of the plan which he was not fully prepared for. He noted that in the downtown district, per the code, parking ratio requirements are reduced by 50%, and felt the 34 parking spaces in the current plan were adequate and in accordance

with the resolution and the current code. Regarding the reduction of entrance/exits, Mr. Green felt it was safer.

Councilman Meador said he was not opposed to the project, but thought there was missing information needed for consideration by Council. He felt what was presented at this hearing had too many deviations from the original Council resolution approving the project.

Councilman Shenko asked Mr. Green if it was usual to leave the commercial space blank in drawings as was done in the drawings presented at this hearing. Mr. Green said his first review of the project was to total up the various spaces depicted on the plan, and he had accepted it. Councilman Shenko asked Mr. Green about the multi-purpose/meeting room space. Mr. Green didn't think it was an extraordinary issue because it was a typical use of a space that size in a motel. Councilman Shenko asked if interior spaces that could be viewed through windows would fall under the purview of CDS. Mr. Green said the code regarding CDS dealt with "principle facades". In his opinion, the surfaces to which Councilman Shenko referred were not principle facades.

Councilman Shenko said too much information had been left out of the plans submitted for the hearing, and felt it had been done intentionally. He felt the design did not meet the criteria of the CDS, and in reference to the Comp Plan, he felt the intent was to implement the design concepts in the Comp Plan, one of which was to avoid commercial intrusion into a residential area.

Councilman Reynolds didn't believe any of the Council members were against the project, but rather they were not pleased with the information provided. Vice Mayor Massucco concurred.

Mayor Boback asked if the original plan submitted to the County showed where the restaurant would be located in the project. Mr. Green said there had been no definite indication about it. Mayor Boback asked if the DO had been issued as yet. Attorney Dalton had that understanding. Mayor Boback asked if the issues that had been raised at this hearing would be addressed when the DO was up for approval.

Attorney Dalton said that was so, and that when the building permit was issued, there would be much more detailed plans provided to the Town. She said some of the issues that had arisen at this hearing could be addressed at that time.

Mayor Boback opened Public Comment at this time. No one wished to come forward, so Mayor Boback closed Public Comment.

Doug Speirn-Smith, one of the Dockside owners, came forward. He wanted Council to know they wanted nothing other than what had been approved. He

said the plans that were submitted to Staff for the DO last September have all the detailed engineering, all the space planning on the ground floor, all the retail uses specifically. He said it had not been included in this hearing's packet, but the details were in the Staff's files. He explained why the approved master concept plan and the lay-out of the parking had been changed, and felt it had been approved by Staff because it had a better lay-out of the ground floor and better parking allocation.

Regarding density issues, Mr. Speirn-Smith believed there were no density limitations on the second and third floor of buildings on Old San Carlos as long as parking requirements were met, which he said the plan did meet.

Regarding Councilman Shenko's concern about sliding glass doors, Mr. Speirn-Smith said they were windows, not sliders, per code. He said if the common room/meeting room/multi-purpose room was a problem, he and the other owners would be happy to take it out of the plan. He said they agreed with all the comments and intent expressed by Council at this hearing, but assured them the plan didn't create problems. He entered into the record an alternate floor plan to address the extra nine units the Council had felt were in the plan, as well as a rendering of the type of egress window to be used, which he said was clearly not a sliding glass door. He said their intention was to continue to work with the Town Council and Town Staff to ensure the project would be a benefit to the community.

Mr. Speirn-Smith said they had been in business on the Beach since 1984 and said there would be no surprises with the building, and mentioned that a bar on the second floor was illegal and they had no intention of having one there.

Ms. Grady understood that revised plans had to be furnished to Council that would show the elimination of the gathering room on the second floor, to show the windows to be used, and that the floor plans needed to be included in detail to eliminate the additional lock-off issue, and asked if the applicant had answered those questions.

Councilman Shenko said the representations as described by the applicant would "allay his fears" but wanted them resubmitted in a new set of plans for a new Staff recommendation to be made to Council based on those plans.

Councilman Meador said that, in addition to the three issues raised by Councilman Shenko, he was concerned about the increase in the total square feet of retail and office use depicted on the plan submitted for this hearing, and wanted Staff assurance that there was adequate parking.

Ms. Grady said that although what they were concerned about was not part of the appeal before them, it was a clear direction to the Town Staff.

Councilman Meador reiterated that he didn't think anyone on Council was

opposed to the project, noting that it had been approved, but that they just wanted more information.

Vice Mayor Massucco asked if the owner were amenable to the requests made by Council to go through the process again with the additional information. Mr. Speirn-Smith had hoped Council would authorize Town Staff to ensure the applicant complied with their requests. He had hoped they would not have to start the 90-day appeal process again. Vice Mayor Massucco said he was asking for the Council's blessings without any substantiation for the promises the applicant was making with regard to the Council's request. He said it would be on his word, which he felt was not enough for Council to take action. Mr. Speirn-Smith said Council had given clear direction as to what they wanted changed or added to the plans, and felt that should be enough. He hoped the Council would sign off on the design standards at this hearing, because at the building permit and DO stages, Staff had the opportunity to ensure the project was done according to the Council's requests and directions.

Attorney Dalton suggested continuance of this hearing to allow for further documentation to be submitted by the applicant, as opposed to starting the process from scratch, and to bring it back to a date certain.

Councilman Reynolds asked Mr. Speirn-Smith how many total square feet would be in the enclosed structure. Mr. Speirn-Smith said there were 23,000 feet of residential and 5,344 commercial, plus common area, and that 42,700 or so square feet total had been approved. Councilman Reynolds hoped those figures would be included in the additional materials to be submitted by the applicant.

Mr. Speirn-Smith said the building was consistent with the downtown area, although smaller than some other projects coming up in the area, or that had already been approved.

Vice Mayor Massucco said he was convinced that the applicant was not trying to get more than what was approved, but to allay the concerns of Council, the applicant needed to submit the information requested.

Ms. Grady said the applicant wanted to work with the Town and only build what had been approved, and that they were willing to revise the plans to show the information requested by Council.

Jack Green said the Dockside produced very good food and felt one of the criteria that should be stipulated in the DO was that they had to replace that restaurant in some satisfactory fashion.

Councilman Meador asked Attorney Dalton if the Council would have the opportunity to review the application again, and Ms. Dalton said that during the DO process and the Building Permit process the Council would have that opportunity. Councilman Meador asked how the Council would know when those processes were taking place. Ms. Dalton suggested that Council direct Staff to provide Council with that information, and was sure Staff would do so.

MOTION: Councilman Meador made a motion to approve the submission. Vice Mayor Massucco seconded the motion.

Councilman Reynolds said he couldn't support the motion because there were too many unanswered questions.

Councilman Shenko said the developer agreed to make changes requested by Council, and that Ms. Dalton's suggestion to continue the hearing was what he supported.

VOTE: The motion failed 3-2, with Mayor Boback, Councilman Shenko and Councilman Reynolds dissenting.

MOTION: Councilman Shenko made a motion that if it was acceptable to the developer, that he be given as short a time frame as possible to redraw and resubmit to Staff the plans per the requests made by Council – the windows, the extra room, the bathrooms and the designation of commercial space, to be brought back before Council for a continuation of this hearing; the CDS could be administratively approved at the time of submission if the redrawn plans accurately reflected the specific changes discussed at this hearing; Council reserved the ability to review the DO and the Building Permit. Councilman Reynolds seconded the motion.

Ms. Grady said the applicant was willing to accept the continuance, and will come back as quickly as possible. She asked for an extension of the Master Concept Plan.

Gerry Murphy said the regulations in place when the Master Concept Plan had been approved required the applicant to apply for a DO, and the current regulations required a DO to be in hand. Ms. Dalton said basically Ms. Grady's client was "grandfathered" in and didn't need an extension. Ms. Dalton asked how much time the applicant needed. Ms. Grady asked that the hearing be continued to the first week in May.

AMENDED MOTION: Councilman Shenko made a motion that if it was acceptable to the developer, that he be given as short a time frame as possible to redraw and resubmit to Staff the plans per the requests made by Council – the windows, the extra room, the bathrooms and the designation of

commercial space, to be brought back before Council for a continuation of this hearing at the first Council meeting in May; the CDS could be administratively approved at the time of submission if the redrawn plans accurately reflected the specific changes discussed at this hearing; Council reserved the ability to review the DO and the Building Permit. Councilman Reynolds seconded the motion.

VOTE: The motion carried unanimously.

C. INTRODUCTION OF ORDINANCE 06-11 EXTENDING COMMITTEE APPLICATIONS

Councilman Shenko asked that the committee applications be extended for another two weeks and advertised in the local newspapers.

D. INTRODUCTION OF ORDINANCE 06-10 CURFEW ON FMB (see attached)

Sandi Suter spoke in favor of the curfew ordinance.
Close Public Comment.

Councilman Shenko proposed to amend the ordinance to indicate it to be 17 and it's under the age of 17. We're talking about 16 year olds, and let it be 11:00 p.m. to 5:00 a.m. Saturday through Thursday, and let it be 12:01 a.m. to 6:00 a.m. Saturday, Sundays, and legal holidays. And the ordinance describes what occurs. Violators are not immediately hauled off to jail, they are taken back to their parents. He moved to go forward with the state ordinance as amended. Councilman Reynolds seconded the motion. Council decided to have another hearing on April 18. The motion was not voted on.

E. UPDATE ON HOMELESS ON FMB – VERBAL

Jerry Murphy reported that the homeless are still here. He referred to a memo he sent to the Council regardless permitting. (see attached)

Public comment opened and closed with no comment.

Councilman Shenko moved that they actively enforce the code violations as outlined by our Community Development Director. Councilman Meador seconded. Motion passed 4-1.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Massucco discussed letter from concerned residents on Beach Beautification. He also referred to a petition from South end residents for a crosswalk.

Councilman Shenko indicated he would be meeting with the Fire Department people in regards to hurricane plans.

Councilman Meador discussed getting Red Cross out to the beach to do some training.

Councilman Reynolds discussed the crosswalk issue.

Mayor Boback met with several of the area mayors to discuss the Lake Okeechobee problem with the governor. Wants to do workshop on the EAR that Bill Spikowski brought to them.

VIII. TOWN MANAGER ITEMS

A. LEAGUE OF CITIES CERTIFICATE PRESENTATION

Handed Certificates to Councilman Shenko, Boback and Meador for Completing League of Cities program.

B. SPECIAL THANKS

Judy and Joe (code enforcement) located a lost child and returned her to her group. Thanks to the co-ordinator of the Seniors program, Laurie, who does a very good job. Thanks to the staff for all their work. (voice breaking)

C. BEACH RENOURISHMENT REQUEST

Request from County to open up this discussion again.

Public Comment. Carlton Riffle requests that the Council sign the Interlocal agreement.

Fran Myers spoke for Chamber of Commerce. They took a vote and decided to support Beach Renourishment.

Pat Smith reiterated opposing arguments against the renourishment.

End Public Comment

Councilman Meador and Councilman Shenko both spoke against the Interlocal agreement to do renourishment.

Councilman Reynolds said he is against unfair distribution of sand.

Vice Mayor Massucco said we want renourishment but we want to do it our way.

He moved that we have another workshop and have Steve Boutelle and others to come down again and retalk about renourishment.

There was no second to the MOTION.

Mayor Boback said that this group had “flat out lied” about what the sand would do in a hurricane. Renourishment has to be done in a proper manner.

D. STATE OF THE TOWN HALL

1. Changes for new manager. Organizational chart is now in place.
2. Has flow chart for all activities currently under way.
3. Finance Director and Public Service Supervisor have applications.
4. Internal Audit is being done.
5. Organizing ten years of documents.
6. Jerry Murphy brought up the Easter Egg funds and the Council waved the fees.

I. TOWN ATTORNEY’S ITEMS

Rachel has done an extraordinary job.

Wilkers case is still in litigation.

Salty Sam’s agreement – they have requested certain types of information and have made an offer to meet, so Anne recommends that the Council meet with them. The Council agreed, as long as Sam’s gives the proper information.

Update on UTELCO. Trial starts Wednesday.

IX. PUBLIC COMMENT

Tom Babcock talked about ordinance 06-11. Asked if Council intends to advertise positions before closing the application period.

Public Comment closed.

X. Moved and seconded to adjourn at 10:38 p.m. (4 hours, 38 minutes)

Transcribed by Jean Matthew