

**FORT MYERS BEACH
TOWN COUNCIL**

Town Hall- Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, Fl 33931
April 10, 2006

Town Council Land Use Meeting

9:32 AM

I. CALL TO ORDER

Members Present: Vice Mayor Don Massucco, Councilman Garr Reynolds and Councilman Shenko

Absent: Mayor Dennis Boback and Councilman Meador

Town Staff Present: Community Development Director Jerry Murphy and Town Attorney Anne Dalton.

II. PLEDGE OF ALLEGIANCE

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

III. INVOCATION:

Vice Mayor Massucco stated Mayor Boback wishes this hearing to continue without a full Council.

MOTION: Vice Mayor Massucco made a motion to continue this hearing without Mayor Boback and Councilman Meador present.

Councilman Shenko stated before the motion, he would like to hear from the public comment on whether they would like to proceed with this hearing.

Councilman Reynolds stated that he doesn't like the idea of having public input to then have a continuance. He would prefer to continue with the project at this time.

Vice Mayor asked whether Councilman Reynolds or Councilman Shenko would reconsider their reply.

Councilman Shenko stated that his reason for public input was not for the purpose of the issue in itself, but to have the public respond towards having a continuance.

Vice Mayor Massucco referred this to Attorney Dalton.

Ms. Dalton responded technically the hearing is opened. Ms. Dalton suggested taking public comment as listed on item four on the agenda strictly for public comment, and it would not be used as testimony from the public in the context of the hearing and it would not be sworn testimony.

MOTION: Councilman Shenko made a motion to continue the public hearing only to permit public comment and its conclusion of public comment, the hearing be reopened for further action. Councilman Reynolds 2nd the motion.

VOTE: The motion carried 3-0

IV. PUBLIC COMMENT

- Mr. Joe Grant; 320 Crescent Street, Ft. Myers Beach. Mr. Grant stated with the most important decision to make since taking office, and there is not a complete Council. Mr. Grant asked if this public comment was to see if we want to have a continuance. Mr. Grant stated he wants it to continue today.
- Jeanette Swenson 207 Primo Drive. Ms. Swenson stated she does not want a continuance.
- Richard Swenson 207 Primo Drive. He asked would there be a majority with three Councilmen to make the decision.

Vice Mayor Massucco stated they have a quorum . *(at the August 21, 2006 Council meeting, when these minutes came for approval, the following ensued: “ Councilman Reynolds made corrections for April 10th minutes on page two, where Vice Mayor stated they had a quorum. Mr. Reynolds stated they had tree as a quorum, but they didn’t have a three for voting purposed unless the count was 3-0.”)*

- Mr. Swenson stated might as well go ahead.
- Doris Grant stated she is in favor of continuing the hearing today as everyone had made prior arrangements to attend this hearing.

Councilman Reynolds rectified Attorney Dalton that the quorum does not change because two members are not present; there is still a need to have three out of five. Three is a quorum, but you need three to make the vote.

Attorney Dalton replied at quorum of three is correct. However, it is a majority of those present who would be able to make the decision. Therefore, two can make the decision.

Councilman Reynolds stated this must be a new ruling, as it was never done before in the seven years he has served in the Council. Whether there are three or five members, three votes pass an issue.

Both Vice Mayor Massucco and Councilman Reynolds stated the need to settle this matter before continuing.

Councilman Shenko stated in the Charter it states that what required a majority of the Council would be terminating the manager and the attorney. Ms. Dalton agreed. Councilman Shenko was not sure if Land Use could fall in this category, but believes it could be a two to one vote to decide the matter. Ms. Dalton agreed.

Vice Mayor Massucco replied the legal interpretation is if there are only three then a majority of two would suffice.

Councilman Shenko withdrew his motion on continuing a hearing and asked if Attorney Dalton can reconfirm the Charter Provision, and then we can go forward with the hearing.

Vice Mayor Massucco and Councilman Reynolds both agreed to recess.

Vice Mayor Massucco asked Attorney Dalton to explain the results.

Attorney Dalton reported in Section 4.13 of the Charter, three members shall constitute a quorum; no action of the Council shall be valid or binding unless adopted by the affirmative vote of a majority of the Council. Under the interpretation it would take the three members of Council to take affirmative action today on any subject.

Vice Mayor Massucco asked what if only two took affirmative action. Ms. Dalton replied it would not constitute a valid action of Council.

Councilman Shenko thanked Councilman Reynolds for making the notation.

V. STATUS OF TOWN MANAGER NEGOTIATIONS

Attorney Dalton reported to postpone Item Five until 12:00 PM.

VI. PUBLIC HEARING

Jay Urseleo in reference to 150 Crescent Street CPD, DC12005-00084

Vice Mayor Massucco asked if any of the Council members had any ex-parte communications.

Councilman Shenko stated for the record he did a closing on the real property immediately adjacent to this which was also purchased by Mr. Urseleo, and had a brief conversation with Mr. Urseleo at that time regarding the fact that he would have a zoning matter coming up, but we did not discuss the particulars. Mr. Shenko also stated his family has a own a house on Primo Drive for over 30-years. He received a telephone call from Ms. Bean, but did not return the call.

Councilman Reynolds reported he has not. However, stated he visited the property.

Vice Mayor Massucco also observed the property but did not speak to anyone.

Attorney Dalton swore in the witnesses.

- Tracy Bean certified planner. Ms. Bean made the clarification that she did not call Mr. Shenko, as there is another person with the last name of Bean that may have called regarding survey. Ms. Bean asked if they go forward with this hearing today with only three Councilmen members with a chance one voting no, then would they have a denial.

Attorney Dalton replied yes to Ms. Bean.

- Ms. Bean asked for five minutes to consult with her client regarding the matter.

Vice Mayor Massucco granted a five minute break for Ms. Bean.

- Ms. Bean reported after consulting with her client, she is requesting a continuance with a full Council.

Vice Mayor Massucco stated Council would like to present Ms. Bean's case in a fair manner, and asked Council we they can take another vote on proceeding, or are they committed to proceeding.

Attorney Dalton reported the applicant has one continued right and stated Mr. Murphy is looking this up in the Land Development Code. Ms. Dalton stated it is not in the Land Development Code, but is a common practice that the applicant has the ability to request for a continuance.

Vice Mayor Massucco asked Councilman Shenko if he would agree to a continuance.

Councilman Shenko stated he is not in favor of a continuance as the people present made every effort in to attend this hearing.

Attorney Dalton suggested the Council to proceed with the public comment portion of this hearing.

Councilman Reynolds stated that they have not voted whether the public want a continuance or not.

Vice Mayor Massucco stated that the applicant has as much right to ask for a continuance.

Attorney Dalton stated under Section 34-235 of the Land Development Code; the applicant shall be entitled to one continuance before the Town Council as a matter of right.

Vice Mayor Massucco apologized to the public stating we have our Land Development Code that states the procedures which have to be followed.

Vice Mayor Massucco confirmed with Ms. Dalton in granting a continuance to the applicant.

MOTION: Councilman Shenko made a motion for the hearing on this matter to be conducted in the evening and no testimony be taken today. Councilman Reynolds 2nd the motion.

Discussion:

Attorney Dalton asked Council for a five minute recess in order to confirm a date for continuance.

Councilman Shenko asked Ms. Dalton if Council can accept an affidavit under oath prepared in testimony for the people who cannot attend the next hearing.

Attorney Dalton stated that is correct, and stated the date and time for the next hearing would be next Tuesday April 18th at 6:30 at our next meeting following the Pledge of Allegiance and Invocation.

Vice Mayor Massucco stated affidavits will be accepted. Granting a continuance will preclude further testimony.

VOTE: Motion carries unanimously.

Vice Mayor Massucco closed the hearing at 10:18.

Councilman Reynolds suggested public comment before closing the hearing.

Attorney Dalton responded Council may open for public comment or proceed to another item on the agenda.

Vice Mayor Massucco opens for public comment:

- Richard Swenson spoke about rezoning and the comprehensive plan it puts in the position where we are relying on the Town Council and their interpretation of the comprehensive plan.
- David Uhlo commented to item 10.
- Doris Grant property owner at Crescent Street asked for a five minute recess for the participants.

Vice Mayor Massucco granted a five minute recess.

Vice Mayor Massucco closes for public comment:

VII. ADMINISTRATIVE AGENDA

Attorney Dalton reported to Council the right to defer item seven A and B for a full Council or to proceed at this time.

Vice Mayor Massucco stated proceeding to item eight.

- A. Discussion of Public Informational Sessions for rezoning and development review applications (see Lee County LDC Sec. 34-1042)
- B. Preliminary meetings of Town Attorney/Town staff with property owners and interested parties- direction from Town Council (aural)

VIII. COUNCIL MEMBERS ITEMS AND REPORTS

Councilman Shenko asked that any Council member that would like further information regarding Lee County Transit Authority just to let the Town Manager know in order to make the presentations. Mr. Shenko would make it a matter to consider at the next Council meeting as to appointing a member to the over-site Committee. Mr. Shenko expresses that he feels they should not appoint a member to the over-site Committee and would like to have this brought up before the full Council at our next meeting.

Councilman Reynolds made reference to Mr. Shenko of his involvement with the Over-site Committee and expressed his concerns of getting into something like this might bring a tax increase in the future.

Vice Mayor Massucco asked whether Council wants to participate in this and to what extent.

IX. TOWN MANAGER'S ITEMS

Jerry Murphy stated no Town Manager Items.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Update on "God's Table" zoning compliance

Jerry Murphy reported the memorandum reference to God's Table; it was a request for 30-days to abate the violation. Mr. Murphy was asking for direction in that regard.

Vice Mayor Massucco stated he is not against a 30-day request.

Councilman Shenko stated Reverend Uhol is present and may want to present input before Council taking action.

- David Uhl pastor of the Chapel by the Sea stated they met with Julie Brown. Mr. Uhol spoke about the session he had with Julie Brown and the discussion of relocating and the things that need to be done. Reverend Uhol asked Council to grant them the time as they try to comply with what is going on.
- Jeffery Hammerly made comments the benefits he has gotten from the Churches.
- Shelia Morales parish nurse at Chapel by the Sea asked Council to consider the time the Chapel has requested so their programs and agencies don't get dropped, and they can make the necessary arrangements with them in relocating.
- Barbara Stepi states the main problem she foresees is the location.
- Jack Bright a resident of the beach stated that the program is not only for the homeless.

Attorney Dalton asked for direction from Council if they want us to proceed with this.

Councilman Reynolds stated he would like to extend that time until the end of June.

Vice Mayor Massucco stated he agrees with the 30-days.

Councilman Shenko stated that the 30-days is reasonable.

Attorney Dalton reported this item was initiated by Mayor Boback, and he directed Ms. Dalton to advise Council to adjourn the discussion on the God's table at 12:00 PM.

Councilman Shenko stated that the people are here and they want a decision. Mr. Shenko suggested favoring the 30-days.

Councilman Reynolds suggested that they can accommodate them 60-days; there is no need to rush them.

Councilman Shenko suggested a 30-day interim report to show that good fait has been shown towards compliance, and giving the 60-days as a final.

XI. TOWN ATTORNEY'S ITEMS

Attorney Dalton stated the only item she had mentioned previously was to postpone item five until 12:00.

Attorney Dalton reported a status of the Town Managers negotiation. Ms. Dalton read an email sent by Ms. Susan Boyer in regards to her withdrawing her candidacy as Town Manager.

Vice Mayor Massucco stated the importance of having a Town Manager and the need to act quickly.

Councilman Shenko asked Council to consider the exemplary job the staff has done so far. Mr. Shenko asked that they give the acting Town Manager the ability to staff up.

Councilman Reynolds noted that she is an interim.

Attorney Dalton noted a final item Administrative Agenda items A, B, if it can be put on the next agenda.

Vice Mayor Massucco stated August 18th.

XII. PUBLIC COMMENT: Public comment at this time is heard on any item and/or issue of concern.

Vice Mayor Massucco opens for public comment:

- Joe Grant Crescent Street stated this should not be labeled as only homeless.

- Ms. Grant resident at Crescent Street. She stated yes there are homeless, as well as the needy or Vagrant

Vice Mayor Massucco closes for public comment:

Attorney Dalton suggested to recess until 12:00 noon to review Item Five.

V. STATUS OF TOWN MANAGER NEGOTIATIONS

Attorney Dalton reported to Mayor Boback the acknowledgement of Susan Boyer of withdrawing her candidacy.

CALL TO ORDER

Mayor Boback called to reconvene the Council meeting at 12:02.

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

Absent: Councilman Meador

Town Staff Present: Town Manager Rachel Lambert, Community Development Director Jerry Murphy, Town Attorney Anne Dalton.

Attorney Dalton reports the agenda item is to discuss the Town Managers selection process, and asked how the Council would like to proceed with this mater.

Mayor Boback suggested that Council can start at the top ten. Mayor Boback recommended to Council Ms. Lambert and stated she is more than willing to fill that position if it is the will of Council.

Vice Mayor Massucco read a letter to Council regarding recommendation in appointing Ms. Lambert as Town Manager.

MOTION: Vice Mayor Massucco made a motion that Council appoint as Town's permanent Town Manager, Ms. Rachel Lambert with the salary and benefits commensurate with that position and normally be offered to any appointee. Mayor Boback 2nd the motion.

Discussion:

Councilman Shenko announced since his candidacy he has had the pleasure of working with Ms. Lambert. Mr. Shenko expressed with all the

applicants that applied for the position, he couldn't find anyone that he would rather have than Ms. Lambert.

Councilman Reynolds announced if anyone knows the process of Town Hall, it would be Ms. Lambert. Mr. Reynolds suggested an interview process.

Vice Mayor Massucco stated time is of the essence and we need to get this done, based on Ms. Lambert's qualifications and we all agree of Ms. Lambert filling that position. We do it now.

Councilman Shenko stated the interview process is certainly the method for us to get to know the potential candidates. Mr. Shenko suggested for public purposes this may not be a bad idea. However, he is convinced that Ms. Lambert can take on the job. Mr. Shenko further states, we need to move forward on this issue.

Mayor Boback stated he also agrees in moving forward on this issue today. Mayor Boback stated that everyone knows Ms. Lambert's qualifications, if we want to make her resume public that he did not have a problem with do so. Mayor Boback regarded to the interview process that they already know the answers to the questions.

Councilman Reynolds stated there is no urgency as Ms. Lambert is in control. He would not vote against her, but would like to see an interview process for respect for the public that should be carried out.

Vice Mayor Massucco stated that the interview process should be for the individual who is not know, and he feels strongly that he knows Ms. Lamberts.

AMENDED MOTION: Vice Mayor Massucco amended his motion. Mayor Boback amended his 2nd.

Mayor Boback opens for public comment:

- Mr. Jack Bright made a comment that God has guided them to Ms. Lambert.
- Ms. Lambert stated that she is honored and is privileged to serve Council, and looks forward in working together with Council.

Mayor Boback closes for public comment:

VOTE: Motion passes 4-0.

XIII. ADJOURNMENT:

MOTION: Mayor Boback made a motion to adjourn. Vice Mayor Massucco 2nd the motion.

VOTE: The motion passed unanimously.

Mayor Boback adjourned the meeting at 12:22 PM.

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that a verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based. Please note: Agendas will be available on the Friday prior to this meeting at www.fmbeach.org.

Respectfully submitted,

Debbie Cardoso
Transcribing Secretary