

**FORT MYERS BEACH
TOWN COUNCIL**

**Town Hall- Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, Fl 33931
June 19, 2006**

Town Council Meeting- Set Executive Session (open to Public)	5:00 PM
Executive Session- Consolidated Realty Holding Litigation (Closed to Public)	5:05 PM
Executive Session- Utelco vs. Town of Fort Myers Beach (closed)	6:00PM
Regular Town Council Meeting	6:30 PM

Attorney Dalton is requesting that an Executive Session be held tonight with regard to the Litigation caption Consolidated Realty Holding vs. the Town of Fort Myers Beach.

I am requesting a 2nd Executive Session be held immediately thereafter and that regards the Litigation filed noted the Utelco vs. the Town of Fort Myers Beach. With regard to the 1st Executive Session, I believe that that session will last under 20 minutes or quite shorter than that. I will be requesting presumed to the statue the Town Manager, myself, the Council members and the court reporter be the only parties in the room to comply with the Sunshine Requirements.

With regard to the Utelco matter, I will be making a similar request that only Town Council, the court reporter, Town Manager and myself to be in the room to comply with the Sunshine Requirements, and I believe that particular meeting will last approximately five minutes or less. We will not have outside Council present at either one and requested a motion.

MOTION: Mayor Boback called for a motion in all who is in favor.

VOTE: Motion passes 5-0 with all in favor.
Mayor Boback closes the Council Session at 5:05 PM.

I. CALL TO ORDER

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

Absent: None

Town Staff Present: Town Manager Rachel Lambert, Town Attorney Anne Dalton Public Works Director Jack Green, Community Development Director Jerry Murphy, and court reporter.

II. PLEDGE OF ALLEGIANCE AND INVOCATION:

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

III. INVOCATION: Reverend Tom Snapp, St. Peter Lutheran Church gave the invocation.

IV. PUBLIC COMMENT: none given.

V. Consent Agenda:

A. Approval of Minutes- April 3, 2006, April 4, 2006, April 6, 2006

MOTION: Mayor Boback made a motion to approve the minutes of April 3, 2006

VOTE: The motion for the April 3rd minutes were approved 5-0.

MOTION: Mayor Boback made a motion to approve the minutes of April 4, 2006.

Vice Mayor Don Massucco made reference to the minutes being numbered, as well as adding to the name that is dissenting on the final vote.

VOTE: The motion carried unanimously.

MOTION: Mayor Boback made a motion to approve the minutes of April 6, 2006

VOTE: The motion for the April 6 minutes were approved 5-0.

Consent Agenda Number B.

B. Renewal of Interlocal for Animal Control Services.

Councilman Reynolds made a positive comment that county has been in their favor.

Vice Mayor Massucco requested Town Manager Rachel Lambert to provide him with a copy of these services made to the island.

Mayor Boback questioned how they determine the Town's population. Ms. Lambert replied a census, and further states she will inquire more information as how they do this.

Councilman Meador reported that they have gotten complaints of poor responses with the Animal Control. He spoke with John Gucciardo who told him that Beach Patrol has been given part of the duty?

Councilman Meador further indicated Beach Patrol does not have the protections under our ordinance, or under County or State law that Animal Control have. Councilman Meador's concerns when he spoke to Mr. Gucciardo were of Beach Patrol not having the same authorities as Animal Control does under the Ordinance.

Mayor Boback questions as to what can be done in order to have Beach Patrol respond more efficiently.

Attorney Dalton suggests reviewing the ordinance, and moving forward in making the necessary amendments.

Councilman Meador expressed that if Animal Control is being paid for the services, we should be able to receive prompt service.

Councilman Reynolds notes to page 25 the list of services they will try to provide. 80% of the calls will be responded to within two hours of the initial call. 100% of the calls will be responded to within three hours of the call. Councilman Reynolds states that they are doing a considerable attempt considering they are off the island.

Mayor Boback replies that two hours would be useless.

Councilman Reynolds states that there is nothing in here stating that we have to vote.

Motion: Councilman Shenko made the motion to approve the 3rd amendment to the Interlocal agreement between Lee County and the Town of Ft. Myers Beach regarding Animal Control Services.

VOTE: Councilman Meador 2nd the motion. The motion passes 5-0

VI. Administrative Agenda

A. First Public Hearing of:

1. Ordinance 06-14 Changes to Special Magistrate Provisions

Attorney Dalton asked if Council if we want to defer any subsisted discussion this and come back because we don't have the copies of the ordinance.

Attorney Dalton advised that the council could move to continue the hearing until we have the actual ordinance in front of us.

MOTION: Vice Mayor Massucco so moves, Mayor Boback seconds the motion.

VOTE: The motion passes 5-0.

Attorney Dalton requests to set the date for the next hearing.

Ms. Lambert states the next meeting being July 17th, which is a regular Town Council meeting. There is a Land Use meeting scheduled for the 10th, we can put it on the 10th if agreed. The meeting will be set July 17th.

B. Final Pubic Hearing of:

1. Lot Mowing and Nuisance Ordinance 06-13

Attorney Dalton states ordinance 06-13 and ordinance of Ft. Myers Beach repealing Town ordinance 96-13 regarding Lot Mowing. Repealing Town ordinance 97-11 regarding of removal of nuisance accumulation, amending regulation of the Town Land Development Code contained in chapter 6, article 1. Property maintenance codes to add provisions regarding lot mowing, nuisance accumulation and special assessment lien process and delete reference to ordinances 96-13 and 96-11 providing authority, providing severability, repealing clause and effective date.

Mayor Boback opens to public comment.

Mayor Boback closes to public comment.

MOTION: Vice Mayor Massucco made a motion for Council to adopt ordinance 06-13.

VOTE: Councilman Reynolds 2nd the motion. Motion passes 5-0

B. Final Public Hearing of:

2. Post-Disaster Recovery and Reconstruction Ordinance 06-12

Attorney Dalton states the Town of Ft. Myers Beach 06-12. An ordinance providing a procedure for declaring a state of emergency and related actions. Authority of Town Council, definitions of emergency, Providing for preparations of Emergency Disaster Plan, Providing for evacuation of Emergency Disaster Plan, providing for Emergency measures, providing for prohibitions during a state of an emergency, violations, and repealing ordinance 96-19, 99-06, 04-14, 05-16, and 05-17. Providing for conflicts, severability and an effective date.

Mayor Boback opens to public comment.

- Mr. Tom Badcock reports spending two days with the LPA discussing the ordinance. He states that the ordinance 06-12 should define who is in charge, how the Town works with other agencies and who will develop the disaster plan and presents questions to

the Council for the disaster ordinance. Mr. Badcock reiterates the importance of making sure of who has the authority in representing the interest of the Town and its' citizens. He also has provided his written questions to the Council.

- Phil a resident of Ft. Myers Beach indicates living here for two years. He also expresses his concerns on the island, and provides his detailed topics.

Mayor Boback asked Mr. Phil if this is in regards to the Disaster Recovery Ordinance, and advised Mr. Phil that he can address that issue at the back of the meeting.

Mayor Boback closes to public comment.

MOTION: Councilman Shenko stated that since he was the one that voted against the ordinance last time. For the purposes of discussion and vote, I would move approval of ordinance 06-12.

VOTE: For purposes of discussion Councilman Meador 2nd the motion.

Discussion:

Councilman Shenko reports he approves the ordinance, and states that the ordinance should be as simple as possible with a plan addressing the specifics which will give Council the ability to change the plan as circumstances may warrant. He mentioned a couple of things in the ordinance that need to be brought to everyone's attention. Reports that it is clear as to who the responsible official will be, which is the Town Manager subject to policies decisions being made by Council. A couple of things during a declaration of local emergency we will have an automatic dusk to dawn curfew that is mandatory along with the fact that a violation is punishable as a misdemeanor. This is something Council needs to be aware of. We would want to make sure the Declaration of local emergencies did not last very long. Curfew would permit people to be out during daylight hours, and would permit Law Enforcement members of the Fire Control District, Medical personal, Town Council members and regular employees of local businesses while traveling to and from their jobs for regular hours providing they have identification to be out during curfew time. It may very well affect business if they were trying to sell or provide services to people that were on the island.

Councilman Reynolds thanks Mr. Badcock and states we can deal with this in two phases. Mr. Reynolds indicates this points the direction of the Emergency Plan of operations with the directions or going into the action of other plans.

Vice Mayor Massucco refers to section one of Authorities of Town Council which states nothing in this ordinance should be construed to limit the authority of Town Council, to take any action authorize by Law when sitting in a regular or special session including but not limited to declaring, extending or terminating a state of local emergency. He reiterates from the beginning what the authority of the Town Council is. We have the authority. When discussing in the plan it does weigh heavily on the Town Manager, but ultimately, it's still the Town Council who makes the decision.

Mayor Boback addresses Mr. Badcock questions, and states that once the Disaster Plan is presented that plan will answer each and every one of your questions. The ordinance is just what it is an ordinance defining just who has the authority and the plan will detail who does, what, when, where, why and how. Mayor Boback stated to Mr. Badcock that all his questions will be answered when the plan is put out, and it will cover everything and then some of the questions Mr. Badcock had asked. Mayor Boback express his work with the Town Staff has got a very good beginning base plan together, and we are hopeful that by the 2nd week in July, when that Plan will be hopefully presented to Council for approval and to the public at that time, but everything will be addressed.

Councilman Meador states he too is concerned about the Plan, and Council and making sure the public knows about the plan. One thing I do not see in this ordinance which he may be missing. Mr. Mayor you are talking about the Plan being presented to us for approval, I don't see that requirement anywhere in that ordinance. This is one amendment I would like to see made to this ordinance. The other is as to Council's authority to vote in specific to the Council to order and terminate an order of mandatory evacuation. Finally, I would like to make it clear Mr. Shenko brought supervision as to dusk and dawn curfew, and I believe paragraph seven the introductory language used is as attempted to provide the Council can amend, those prohibitions in a declaration of state of local emergency. I would like to see this ordinance amended and be made more clear specifically, what I would propose.

In section one; Authority of Town Council that the following be added at the end of that paragraph and ordering and terminating an order of evacuation.

Secondly, in section three; Preparation of an Emergency Response Plan. The following sentence added to that sentence. The emergency Response Plan shall be subject to review and approval of the Council.

Finally, in section seven; Prohibition during a state of Emergency. I am only going to suggest that we insert three words. Currently it worded; When ever a state of Local Emergency has been declared, pursuing to this ordinance and until such state of local emergency has been terminated the following prohibition shall apply throughout the Town. Unless or until the

same shall be waived. I would like to see the two words or modified inserted there, by a quorum of the Town Council at a general I like to see, Special added there, or Emergency meeting. So basically, any type of meeting we can either waive or modify the specific Prohibitions that are set in paragraph A and B. Councilman Meador states he will be satisfied with these three amendments as a working base ordinance.

MOTION: Councilman Shenko also agrees for a motion to include those three amendments outlined by Councilman Meador.

VOTE: Councilman Meador amended his 2nd, Council Reynolds agrees, Vice Mayor Massucco is in favor as well, and commends Tom Badcock for his efforts with his presentation of his questions. The Motion passes 5-0.

C. Banner Request: Offshore Fishing Rodeo

Mr. Murphy reported it is a request for a memo for an event being held off island. The banner would be on island, and stated that generally the Land Development Code only allows banners in conjunction with special events that we would permit; we would not have any opportunity to permit this as well as they do not want to pay the fee.

Vice Mayor Massucco points out this was also done last year and confirmed with Mayor Boback.

MOTION: Vice Mayor Massucco made a motion for permission to approve the request.

VOTE: Councilman Meador 2nd the motion.

Discussion:

Councilman Reynolds reported that the money is used for the Lions Camp in Lake Well Fl, for handicap children and states this is a very good cause.

Councilman Shenko stated normally we have banners across the entrance of Ft. Myers Beach for matters which occur on Ft. Myers Beach and which are also subject to a Special Event Permit. This reason being so that they are able to review the applications for the Special Events Permit, who's sponsoring it, what they are doing, where the money is going and if it is something beneficial. He believes it is a dangerous precedence that they should have all events they don't really know a lot about other than the letter stating their proceeds go to a worthwhile organization.

Mr. Shenko also pointed out the Council discussing hanging an event for a downtown Ft. Myers Arts Festival, and decided against it because it was not a Ft. Myers Beach event, and agrees that we don't need to hang an event on Estero which is not taking place on Ft. Myers Beach.

Councilman Meador reports he is a member of the Ft. Myers Beach Lions Club, which is a separate organization than the Lions Camp but its dedication is towards the Lions Camp. They are heavily involved investment wise, time wise and attention wise to the Lions Camp, and feels the Club has enough nexus to Ft. Myers Beach via the Ft. Myers Beach Club and votes in favor of it.

Mayor Boback stated the Lions Club does a tremendous job her on the beach and for a lot of good causes.

Councilman Reynolds states that there is a reason why we have Special Permit events, and encourages for the future for persons wanting Special Permit events to advise us so we know what our are responsibilities are.

Mayor Boback replies an off island event does not need Special Permit.

Councilman Reynolds asks where is off island; Mr. Jerry Murphy replied it is outside the jurisdiction of the Town.

MOTION: Mayor Boback made a motion to approve the request.

VOTE: Motion passes 5-0.

VII. Council Members Items and Reports

Councilman Reynolds replies that Mother Nature is just two blows. First, is the rain, 2nd, is adverse to that; the smelling of the beach. He suggests for a little patience that it will be all clearing up.

Councilman Meador reports this Thursday on June 22nd at 6:00 PM here at Town Hall is going to be a 3-hour program. The Lee County Chapter of the American Red Cross is going to putting on two training. The 1st one will be the Damage Assessment Training; the 2nd training will be on the 29th, it is going to be the Community Service Training. We need people to come. Mr. Meador further commends the American Red Cross for their valuable service they provided after hurricane Charley; and after Wilma. Mr. Meador pointed out they are an excellent organization, and we need folks to help out and participate in their training who have the commitment to be with us after a storm to help their neighbors.

Councilman Meador reports other items that he has received today in the Town Council packet. One is Spekusky letter; secondly, is a letter addressed Sigel George relative to a grant of 350.000 on the William Case house project. Finally, is relative to a FEMA reimbursement for the Best Western Project.

Mayor Boback stated it is not on the agenda but he too has questions regarding that.

Attorney Dalton reports she and Ms. Lambert were the Town's representatives along with the Best Western representatives. She reported that FEMA is making certain kinds of monies available for private parties for repair related to the hurricane. FEMA cannot make the money available directly to the private parties based on their rules. FEMA gives the money to the State; The Department of Community Affairs is the entity charged with responsibility on behalf of the state. The state does the pass trough of those funds from FEMA, through DCA through the Town. Attorney expressed her concerns when this contract was given to her for review. The Town is put in a position as the guarantor of performance on the part of the private party. The word guarantor is not used, but states that by signing the contract should the private party not comply with everything they have stated, the Town is financially responsible back to the state of Florida. The responsibility would last for a period of five years following termination of all responsibility of the contact. She also notes that this risk in else property probably belongs as a matter of policy to the Town; we can certainly enter a third party contract with the private entity however, there is no absolute guarantee that we will not be financial in the event Best Western has a problem in the future. Attorney Dalton suggested a letter of credit that the Town unconditionally draws down upon. The problem Best Western's problem is having is that if the Town does not sign an agreement by the end of the month, they representative to us that the FEMA pass through money will no longer be available to them.

Ms. Lambert added one of the reasons for not wanting to enter into such an agreement is when you get Federal dollars, if you don't adhere to very strictly to Davis Baker Act for instance, all that money can be reclaimed. Ms. Lambert stated she had no way of ascertaining if all those guidelines have been followed. So by signing off, I would put the Town in a liable position, this project is over 600.000. That is why we were so cautious and Ms. Dalton and I spoke at great length.

Councilman Shenko asked Ms. Dalton or Ms. Lambert had any idea what was done in connections to the Lighthouse to protect the Town from the same exposure you were referring to.

Attorney Dalton replied that she was given copies of the contract and it appears that the Town representatives signed the contract as is, and did a third party contract where basically the Town's name was substituted by the state, and the private entity name was substituted by the Town, and states she did not see anything that protected the Town against liability.

Councilman Reynolds asked how that had come about without Council approval.

Attorney Dalton responded that she was not the Council's attorney at the time, and she has no information regarding that subject.

Councilman Reynolds replied he believes this never went through Council, and was probably done by the previous Town Manager. He further stated the importance of such a matter coming to Town Council before the fact.

Vice Mayor Massucco asked Ms. Dalton if she had mentioned a possibility of protecting the Town from liability.

Attorney Dalton stated, she and Ms. Lambert had presented two proposals to the Best Western folks as to how the Town can be protected. One would be through a performance bond; the second would be an unconditional letter of credit which would allow the Town to draw down money if we were in a position of controversy under this contract with the state. Neither the contractor nor Best Western representatives respond to those two thoughts.

Vice Mayor Massucco reflects back to the time dealing with the Lighthouse; the money comes to the Town, and then the Town pays out as the project goes along.

Attorney Dalton was not involved when the Lighthouse project went forward.

Attorney Dalton reports she was advised by the contractor that FEMA would come forward and examine the work, examine the project.

Councilman Reynolds clarifies what Vice Mayor Massucco previously stated was after the fact. This was not approved by Council. He reports having no knowledge about this until after the fact.

Attorney Dalton reported this being brought up during a workshop when Mr. Gucciardo was employed by the Town. Although Town Council was unable to vote at the workshop, but believes there was some consensus on these types of agreements would not proceed without Town Council

approval because it was a concern about the amount staff time involved as Vice Mayor Massucco indicated.

Councilman Shenko also agrees to having discussed this matter at one of our workshops in length. It takes a lot of staff time to administer this. In theory, he believes it would be good for our residences and businesses and like for it to proceed. In practice, it would be cost a lot of time, attorney time, manager time, and the county does to us at this time, when we contract for building services. We also pay a percentage each portion of the county's attorney's time. We pay for all county departments, even if we may be contracting with only one. We need to realize yes we are willing to go forward with this, but we are going to charge our administrative cost, an itemized amount and charge by the hour including legal costs and then the continuing obligation we have five years from the completion of the project which he states he was not aware of, and mentions that already occurred previously with no protection to the Town. Attorney Dalton is bringing forward to us the fact that we need to do something about it, or most certainly, be aware should we sign such projects.

Councilman Meador agrees with Mr. Shenko with one exception, he is not sure it is June 19, and the funding would be lost by June 30 and it is not on the Councils agenda. He states a letter of credit being an excellent idea which means that Best Western is going to have to put however money that is for five years, that is what the bank requires on a letter of credit.

Mayor Boback asks what need to be done in order to have this approved by June 30th.

Attorney Dalton replies looking for direction as far as how much risk Town Council is willing to take. Secondly, it is a financial analysis for administrative time, or potentially attorney's time and is the Town Council willing to absorb those costs.

Mayor Boback states that all agree to pay an administrative cost the Town encourages to move this forward, but what do we need to do to protect the Town and can it be done within the next week?

Attorney Dalton replies they are still waiting for some answers from the Best Western.

Mayor Boback agrees with Councilman Meador and Councilman Shenko not losing the opportunity of receiving the money, but the need to protect the Town is first responsibility. Therefore, we will await response from Best Western.

Attorney Dalton agrees as her recommendation to wait for their reply and is necessary call a meeting.

Vice Mayor Massucco asked if the Council is suggesting for Best Western to apply for an extension, due to the circumstances of the late arrival of this material.

Attorney Dalton stated Ms. Lambert had already sent out message.

Councilman Shenko inquires in the event they agree to pay our administrative time, and were willing to pay for everybody at Town Hall to drop everything and expedite and go forward with our plan. Mr. Shenko expresses they cannot afford to use Town's personnel to take that kind of time and suggests it might be beneficial to look at outside agencies that might be willing to contact with us and with landowners; to fill out the applications, go through the process, to be paid by the landowners and to own an obligation and a duty to the Town so that are staff members time is not taking up. There may be some outside advisors who may be able to give us some advice.

Mayor Boback announces the meeting for the Board of County Commissioners is scheduled for August 10th; they recently have received a letter on June 15th stating that they would like to meet at FGCU instead of Town Hall, they prefer a neutral site, and would like a consensus from the Council is the change is agreed. The Council agreed with exception of Councilman Reynolds.

Mayor Boback refers to a copy given by Mr. Reppeti about Island Ends Condominium Association. Has suggested the right of way just north of Big Carlos bridge on the east side of Estero Blvd in front of their property would be an appropriate location for a sign welcoming visitors to Ft. Myers Beach. Island End has volunteered to put a sign there. If we decide to do so Island End Condominium also will provide the plants and shrubs around the sign, provide water and nourish, and will have their landscaper maintain the area in which would make the Town proud. Mayor Boback asked if this was something Council wishes to pursue as far as putting a welcoming sign. The Council agreed not only it is a great idea, but also a generous one.

Mayor Boback announces on the Anchorage Advisory Committee they now have four members with the resignation of one of the members, and reports they need five members in order to hold a meeting. They are working with Salty Sam's in getting the audit done. Mayor Boback suggests appointing a 5th member to that committee and motion to appoint Mr. George Pacharis to the Anchorage Committee. Councilman Meador reports Mr. Pacharis already being on the Anchorage Committee.

Attorney Dalton reports that vacancies in the Anchorage Advisory Committee shall within 30 days be filled by the Council for the remainder of the term created by the vacancy. Ms. Dalton reports the Council has the latitude to follow any process that deems most appropriate.

VIII. Town Manager's Items

A. Appointment of Council Member to Florida League of Cities Conference.

Town Manager Rachel Lambert states she needs someone to be selected as the delegate the Florida League of Cities Conference in August 10-12th in Jacksonville, Fl.

Mayor Boback reports to Ms. Lambert the meeting with the County Commissioner is on August 10th.

Councilman Shenko previously reported not being able to attend the County Commissioner Meeting.

B. Mound House Director Renewal and Newton Beach Park Consultant

Ms. Lambert states she is aware of Town Council's concern with putting together additional staff. She states there seems to be assumption of when someone is hired is guaranteed a job for life, and this is not the case. The need for both properties is better development different than just maintaining it, so special skills brought by Ms. Schober to these projects is already home and operating. She also pointed out the grant previously mentioned by Councilman Meador was also the works from Theresa Schober and she needs to be commended for it. She further congratulates Ms. Schober for another 350,000 grant so they can bring the Archeological pool to completion. Ms. Lambert also reports that once these projects begin the level of skill needed to maintain it from a staffing point of view is much less, the skills are not going to be the same as what is needed right now to develop it. She also stresses the importance of renewing a contract or brining that person on staff. Should Council decides and approves Ms. Schober coming on staff the request would be a 52,000 salary and if it is full-time, it will give the same benefits as any other staff person working for the Town Hall at this time. She also reports how the Mound House got started which was mainly with FGCU at that time in 2002 as 35,000 just a blunt sum. This was renewed in 2003-2004 it was renewed at 45,000; presently, we are recommending Theresa Schober to come on board at 52,000.

Mayor Boback concurs that these projects had to be done by a governmental agency which came about with FGCU, in the years it got lost in the translation.

Attorney Dalton reports her understanding that Ms. Schober annual plan that provides in the state. On the first paragraph does state Ms. Schober is doing the managing plan and managing the property, that puts the state on notice regarding that language on the contract.

Mayor Boback asked Ms. Dalton if this meant she is an independent contractor or that she is managing it.

Attorney Dalton states she would need clarification on that one.

Theresa Schober reported that it does state she is an independent contractor, I also at the request of the Town Manager called Florida Communities Trust. We have a grant administrator Grant Gilhard who unfortunately was at a conference, but she spoke to one of individuals who work underneath him who sought FCT Council. They said that the operative language is that the property should be managed, rather than that it must be managed and they do have other communities Trust that are managed by outside agencies. Their concerns are about the revenue. She reports that there is revenue being generated and certain issues regarding how they get their funds and distribute it to the Town or as to whether or not the revenue stream goes immediately to the property. In this case all the revenue collected on the site comes directly to the town.

Councilman Meador states before Mr. Badcock reminds us of our Charter responsibilities, we cannot approve the hiring or firing of Town personnel that would be entirely to Town Manager. His personal point of view is that if they had a particular individual serving these two functions who as directly under our Town Manager, then our Town Manager can control hours, duties and be more on top of the job. Councilman Meador states they do not need a consultant to tell us what to do; those documents spell out in great detail what should be done, with a time line.

Councilman Shenko also agrees with Mr. Meador with moving forward with the property and feels Theresa is quite capable of doing so. Then Mr. Shenko discusses the salary of 52,000, presented by Ms. Lambert, and how difficult it would be to manage an independent contractor.

Ms. Lambert clarifies that is it her decision to hire and fire, but mentions if there are any changes in the organization plan she would tell them first.

Vice Mayor Massucco stated that Ms. Schober will be challenged with the Newton Property as well with the challenges she has faced with the Mound House.

Councilman Reynolds stated Ms. Schober is very qualified and had done a good job at the Mound House. However, he objects to brining another person on board as an employee and would prefer to keep Ms. Schober as an independent contractor.

Mayor Boback supported Ms. Lambert's decision.

C. Update on Town Hall Operations

Ms. Lambert also reports several positions being opened to their organizations. Ms. Lambert reviews some of the work being done for the Hurricane Preparedness; Mr. Rodney Melsek who is employed by FEMA, has been working on developing hurricane plans, and has identified four phases: Preparedness, Response, Recovery, and Litigation; their focus is preparedness and response. Ms. Lambert advises on June 24th they will be testing our "Red Alert."

Mayor Boback asked if this was Ft. Myers Beach only or will off island be a part of the 911.

Ms. Lambert stated this will be a joint effort between the Fire District and us, and will cover up to Summerlin Square.

Mayor Boback asked should the people call Town Hall. Ms. Lambert replied yes. Ms. Lambert also reports that they have put together all of the supplies they will need including a contract in place with the Masonic Lodge as a communication center in case of an emergency. They are holding their 1st level of State Holders on June 22nd which will include Fire Dist, Sheriff Office, FPL and other related services, and a State Holders on June 26th with the large employers who will provide supply. We have a plan with the Chamber who is working on the passes for these business owners, property owners and residents.

The Policy Group, the Coordination Group, the Responded Group, and the Communication Group, are categories our staff will be assuming and its purpose is to open the island as soon as possible in an event of a Mandatory Evacuation. July 31st will be our final hurricane seminar which will be held here and televised.

IX. Town Attorney's Items

A. Status of Implementation of Curfew Ordinance

Attorney Dalton adds that there would be a 10.00 charge for each citation for filing.

Councilman Shenko expressed his concern with the Sheriff having special details at certain times and hours. Mr. Shenko stated that random enforcement should take place with the Sheriff department should a Deputy feel it is necessary to send a juvenile home. Mr. Shenko suggest to enter into an agreement with the Sheriff as to random enforcement at a cost that is known to the Town, and report back to us how that is coming forward.

Councilman Meador agrees with Mr. Shenko with not having juvenile patrol, but disagrees with random enforcement.

Councilman Reynolds stated he would have preferred to have this information before taking a vote on the Curfew Ordinance.

Vice Mayor Massucco asked the procedures of picking up a chronic violator.

Attorney Dalton explains the procedure of giving a citation, following an appearance in court. If they do not appear in court then something will be sent to them indicating they have to appear in court.

Vice Mayor Massucco stated the Deputy who wrote the citation would have to appear in court as well. Ms. Dalton replied that is correct, not knowing when the hearing is going to be set.

Vice Mayor Massucco asked if the Deputy's time is something we would have to pay for. Ms. Dalton replied, yes we would.

Vice Mayor Massucco questioned the costs involved and also agreed to have had more information before passing this ordinance; he also mentioned the most critical times would be on Spring-Break or when there are events and suggested if they can concur with the Sheriff dept, to only cover only on those this will handle the cost and handle the problem.

Mayor Boback stated there is no doubt of a cost being assessed, and added he was not in favor of it from the beginning. He recommends maintaining it since it has already been passed. He agrees to random enforcement in order to maintain stability with these juveniles. This is an issue that should be in the Budget, or just curfew enforcement to help us understand how much is going to be spent.

Attorney Dalton stated that the sheriff has recommended the details as the most cost effective; she suggested getting a cafeteria plan of charges.

Mayor Boback stated there would be nothing wrong in having the detail charges, but for us to control when the detail goes out which can be done through the Town Manager.

Attorney Dalton stated if Council agrees with this scenario, they can move forward with what is in the memo, and then the Town Manager can implement it.

Councilman Meador stated it would make it simple; as far as the cost being done on a weekly bases; and would like to see even enforcement on a Random basis. Everyone concurred.

Councilman Reynolds stated the direction of this discussion is very constructive.

Ms. Lambert reported this will be Complaint driven, so we will handle the complaints and carry out the details. She asked how they would be processed once they are picked-up.

Attorney Dalton stated there are two members in each detail, one to stop the child and the other will take the child home. Mayor Boback asked if the parents can pickup the child. Ms. Dalton stated that is up to the Sheriff discretion.

Vice Mayor Massucco asked what if the Deputy doesn't show up to the hearing, is the hearing thrown out. Ms. Dalton replies it would be dismissed if there is no one to testify, unless the juvenile were to admit to the responsibility.

B. Writ of Garnishment/Rinker Materials/Utelco

This involves their attempt to garnish any amount of money we may ultimately be paying in the Utelco law suit. Ms. Dalton is requesting Council to authorize George to handle this matter on behalf of the Town.

MOTION: Mayor Boback made a motion to authorize the above mentioned.

VOTE: The motion passed unanimously.

Discussion:

Councilman Meador asks about the hourly rate. Ms. Dalton replied it would be the hourly rate of 250.00 an hour.

MOTION: The motion passes 5-0.

C. Update on Audit of Salty Sam's

Attorney Dalton referred to a proposal which Town Council received. Ms. Dalton request an approval of that engagement letter before Moving this forward. Ms. Dalton also provided a letter from Mr. Sals regarding a waiver of conflict of interest in the Town's interest and indicates that both parties are required to waive that conflict before the matter could move forward

MOTION: Mayor Boback made a motion to waive a potential conflict and to approve the engagement letter.

VOTE: Councilman Meador votes to accept the proposal and accept the Approval and waive the conflict

Discussion

Vice Mayor Massucco mentioned that it states we would not be conducting an audit or review.

Attorney Dalton states that it is not a full blown audit; it will be a review of various documents as outlined. She specifies that the DEP is looking to see whether or not we had made any money.

Councilman Shenko made no comment.

Councilman Meador asked Ms. Dalton if they are required as condition of the permit by the DEP to perform an audit.

VOTE: The motion passes 5-0.

D. C12005-0012- Big John's Rehearing Request/ Special Master

Attorney Dalton states Town Council was provided with coping of the re-hearing request. Under the Land Development Code, it is discretion of Town Council as to choose to re-hear it or choose not to re-hear it. A special master request from the same applicant and that is mandatory we do not have a choice whether or not to go forward with the Special Master proceedings under the statues. Ms. Dalton requested Council whether or not they want to proceed with the hearing.

MOTION: Vice Mayor Massucco votes to move forward on the hearing, Councilman Meador 2nd the motion.

Discussion:

Councilman Reynolds stated he would prefer to go to a Master Hearing without a pre-hearing.

Vice Mayor Massucco states to move forward with a pre-hearing as the applicant provided addition information which was impressive. There was a petition signed and he counted the signatures which were quite a few.

Both Councilman Shenko and Councilman Meador had no comment.

Mayor Boback stated he also read the petition and reports most of these people do not live on the on the island, or are from the south end of the island, and renters in the area; but were not the homeowners. Mayor Boback stated the petition should have been given to the homeowners that live directly behind and off the adjoining streets. Mayor Boback states the petition doesn't amount to anything and would stay the same as I felt before and not re-hear.

MOTION: Motions failed 3-2 with Mayor Boback, Councilman Shenko and Councilman Reynolds dissenting, and Vice Mayor Massucco and Councilman in favor.

Attorney Dalton requested to move forward with a Special Magistrate. Ms. Dalton states the statue requires for it to be a joint selection between the applicant and the Town.

Councilman Meador has no comment.

Vice Mayor Massucco voted to move forward. Mayor Boback granted Attorney Dalton to move forward with the Special Magistrate.

E. FMBDC12006-00001- Monkey Tree Rehearing Request

Attorney Dalton reports that they received a request from Henderson Franklin who is representing this applicant to defer this item. Ms. Dalton is requesting to defer this item.

Mayor Boback asked Ms. Dalton if this was the request of the applicant. Ms. Dalton stated the applicant is the Town, under the Land Development Code any aggrieved party may bring forward a rehearing request and they qualify as an aggrieved party. Mayor Boback stated that we do not need a motion for this just a consensus.

Vice Mayor Massucco, Councilman Reynolds and Councilman Meador are in favor.

Attorney Dalton stated she has another item which is not on the list. Ms. Dalton is requesting the appointment of outside Council in regard to the Law Suit Consolidate Reality Holdings vs. the Town of Ft. Myers Beach.

MOTION: Councilman Meador made a motion for the Town of Ft. Myers Beach retain Attorney Herald Estin in this matter at his fee of 200.00 an hour.

VOTE: Councilman Reynolds 2nd the motion. The motion passes 5-0.

Attorney Dalton states she and Mr. Green had the opportunity to meet with representative of Hydro Rock regarding some details of the contract where there is some confusion regarding some of the terms used in the contract.

Public Works Director Jack Green states his desire to reaffirm the mobilization aspect of their proposal as it is an important concern. It was reaffirmed that it would be 25, 000 per event or incident. Mr. Green posed the question this would be only payable if they were to get hit and they were here on the beach. The principal said no it would be per mobilization call, notification to proceed. They have a 24-hour response requirement. Mr. Green feels this is an important aspect of the selection process where the contractor is willing to negotiate how this would be applied if mobilized or if there would be some sliding scale should there be more than one event. However, Mr. Green prefers further guidance from Council as to how to proceed.

Mr. Green states that we reaffirm the selection, he considers that void-based that situation and reselect, or goes out with RFP which he believes is the best situation, even though this will go out for next year's call.

Mayor Boback stated that when Hydro Rock was selected, we had all questioned the 25,000; and we had said to see whether Mr. Green can negotiate on that mobilization fee at that time. Mayor Boback agrees to negotiate that 25, 000 in the best interest of the Town.

Councilman Meador states if Mr. Wade does not move on the 25, 000 the best thing to do would be to see how much we can get out of him, other than I'll be down there for the 25,000.

Mr. Green suggested to see whether we can apply half of that charge to the first hour of response.

Councilman Meador stated that would be our best case, but to be ready to write a check when we make the call and say to them to get ready.

Councilman Shenko fully understands there would be a check given to them when they make the call. Mr. Shenko stated if he would be willing to apply some of that to the first hours of operation, he states that we should go forward with him as our contractor.

Vice Mayor Massucco stated even if we don't get hit with 25,000.

Attorney Dalton stated that they have some negotiating room. Ms. Dalton states that she and Mr. Green had a lengthily discussion with Hydro Rock and at this point they are looking for authority to continue with those discussion without specific parameters.

Vice Mayor Massucco stated that the vote with Council was unanimous therefore, Council wants the "Rock," and suggests moving forward with negotiating.

Councilman Reynolds votes in favor of moving forward.

X. Final Public Comment: Public Comment at this time is heard on any item and/issue of concern.

Mayor Boback opens for public comment.

- Mr. Phil states he lives on the beach and presented Council with a list of suggestions which he voiced.
- Annie Badcock states she is a resident. She stated she attends these meeting and reads the minutes and so is aware of what goes on in Town. She refers to the new administration spending money or not spending money. She states that there should be attention for the safety of bike riders as well as the attention that was put in place for our curfew.

Mayor Boback closes public comment

XI. Adjournment

MOTION: Mayor made a motion to adjourn, Vice Mayor Massucco votes to move, Councilman Reynolds 2nd

VOTE: The motion to adjourn passed unanimously.

Mayor Boback adjourned the meeting at 9:02

Respectfully submitted,

Debbie Cardoso
Transcribing Secretary