

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall- Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, Fl 33931**

Special Meeting

June 21, 2006

I. CALL TO ORDER

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

Absent: Councilman Bill Shenko, Jr. Councilman Charles Meador, Jr.

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

II. PLEDGE OF ALLEGIANCE AND INVOCATION:

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

III. INVOCATION: Town Manager Rachel Lambert gave the invocation.

IV. PUBLIC COMMENT:

Mayor Boback opened public comment

- Pat McKalan, 2532 Estero Blvd., right across the street. He asks Council to consider taking some remedial action to somehow reduce the effect of Red Algae that occurred after hurricane Alberto came through. From the area of Diamondhead to just south of Red Coconut, we are covered with a form of sludge. I call it that because it is a decomposition of the Red Algae that has built-up and is causing quite an odor for those of us that live close to the beach or walk on the beach, or have anything to do with the beach. Basically, we are at the point now where that area of the beach is unusable; you can't get through the sludge to the water and if you got into the water, you wouldn't want to be in it. Part of the problem that we are asking you to address is that hasn't gone away due to rain or tidal action, and it appears to be that this has occurred because #1, it came in at a high tide and was wind driven from the south as we caught the backside of Alberto passing by. So it drove it very high on the beach. Secondly, the rain that has come after the occurrence of the Algae, has tended not to dissolve it but as to pack it down and to cause a crust form on top of it; plus there are large lumps five to six inches in diameter that are just

sitting there and they are not going away. So we would ask that you address this issue, we are not asking that you violate your own Town ordinances by raking it or trying to actually remove, but if you could possibly come alone and break it up, crush it down so that this crust no longer keeps it from being removed by nature wave, tide and rain action. We hope that you will address this issue. Thank you for taking the time and for having a special meeting to come and hear our thoughts.

- Jane Ross represents the Ft. Myers Chamber of Commerce. Reports there was a Board of Directors meeting and read a letter that was addressed to Rachel Lambert. Dear Rachel, at our Board of Directors meeting the matter of the Red Algae was discussed, and the Directors voted unanimously that the town request the Tourist Development Council to remove the algae immediately. We know there would be no cost to the Town to have this removed. Many of our members have called the Town, and were informed the ordinance restricts the removal of any algae unless there is a health hazard. We have been informed that several visitor have become ill; breaking out with rashes as well as experiencing problem with breathing. Also several of our accommodation owners have reported that they have had some of their guest check-out early due to the horrible odor emanating from the algae. This is an economic loss to our businesses as well as to the Town. Please let of know if there is anything else that we can do to make our beach clean and safe for residents and visitors alike.
- Bill Van Duzer 5615 Lewis Street, Ft. Myers Beach. Reports he also went to the Chamber meeting this morning and following the Chamber meeting he was going into Town, and went to the Lee County Health Dept and had a discussion them just for the clerk because he was in the wrong place, and the clerk told me that they had numerous calls from Ft. Myers Beach, and she suggested that I go to the Environmental Engineering Dept which is just behind the Airport, and I did. I talked to Gary Mayor who is in the administration of that dept, and he was very helpful to me although, he stated after examining the sample I presented to him, that Red Drift Algae is not toxic. He further stated, we would advise people if they are going to go into the water it probably won't hurt them; they have done several test, but states certainly, that they should be careful not to get any of that water into their system because it could be harmful to their health. That was his statement, and I think that is enough to tell me there is a certain amount of health risk. The only other thing I would like to say is, we had this problem once before on Ft. Myers Beach it was even worse than it is today, and the beaches were raked. In fact we got into a little trouble and were stopped from doing, as we were told that we could not do; the information came from DEP, and within

a couple of days we had a letter from him stating under the certain circumstances they understood and gave us a Blanket Permit to rake the beach if type of situation persist or did persist at that time. So I think there is a little bit of history saying that when it does happen it could be dangerous to the health of our citizens if we couldn't take action on it.

- Sue Fenger - I represent Sun-Stream Hotels and Resorts. One of our properties Diamondhead Beach Resort is certainly seeing an affect on this odor. We have had so far since Sunday, 48 roomnites thoroughly check-out which has cost a significant amount of dollars as well as the two restaurants we have are seeing a decrease in business due to this. Not only is it affecting us now, I am afraid it is going to be very harmful in the future for guests who are leaving us now, or are staying with us now saying that Ft. Myers Beach is not a great place to come and stay. That is a concern of ours. So I do respectfully, request that you do something about that now.
- Fran Myers I live in the Widgeon Terrace, but mostly I am here today for the Red Coconut. This started about last Wednesday after Alberto went through and we noticed the smell starting to get after 12:00 o'clock it just kept getting worse and worse, and worse. I'm sure you know Mayor, you live right behind us, and Mayor Boback replies sure do. So I know we don't have to bring that container for you, but we had a grandmother that actually brought a child in on Friday morning, and she had to leave and go back to Miami because the child was covered with a rash and the child had been near the water and the grandmother said that is what caused the rash. I here what Diamondhead is saying and we had the same effect. I don't know how many we have lost; but Friday night we were supposed to have 28- check-ins; we called most of them and told them what they were coming to, and the ones that we couldn't get, when they arrived, they checked-out as soon as they came in; and of course being on the Tourist Development Council, all we have been listening to from our major people that do our strategy for us is that get braced for August and September because reservations are not looking so good in August and September because of the past two years of hurricanes and the Red Tide and the whole thing that we had so we all already worried about August and September, we didn't think we would have to worry about June. I really appreciate you calling this meeting today, and I hope that Summerlin Tourist Development Council I spoke to them downtown. They will pay for it; they will reimburse any cost that you have. So I don't think it's like we are asking for tax payer's money.
- Amy Malone works at Red Coconut. My family lives on Washington Av. I am here today to request that something be done

with the algae. Last Friday, after the storm came through, I've been experiencing throbbing headaches, dizziness and nausea and just basically getting sicker and sicker. On Friday I went to the doctor received a shot and medication because I had a serious sinus infection and I believe due to the algae because I didn't have a problem before that. Since then, the smell isn't bad in the morning, but in the afternoon it gets really bad, and it seeps into where I work. Unfortunately, I have gone through the embarrassment of wearing a mask in the afternoons because I can't stand to breathe in without getting sick. So it's difficult for me to work in a front office especially where you have people coming in and out; they don't understand exactly why you are wearing it and I just would like to feel kind of healthy again. So I'm just asking kind of pleading if you would do something with the algae.

- Gina Steinke I own the Beach Club at Junkanoos. We have seen a significant loss from the Red Drift Tide; muddy chairs, umbrellas leg runners. We are unable to put the leg runners in the water. My boyfriend was in the other day trying to get them into the water, and from it straight down on both legs he has a bad rash. It's like burning sensation and blisters. Also my son was dropped off on Saturday and was trying to get on shore, he literally was at the shores edge stuck. He is 115 lbs 9-year-old boy and he could not get out of the stuff. We had to have someone grab him out. So I just want you to know it seems that there are significant that go along with this, as well as the significant loss of business. It has been about 12 days now with the rain and the tide and everything Red drift algae is up and down.
- Bill Perry I grew on most of the beaches on the island in particular Diamondhead and everywhere south of where the really bad Red Drift Algae problem exists. In the past years Bill Van Duzer touch upon was the Red Drift Algae problem was far more significant for the first month, the Town hire me to clean it and it overwhelmed my capability. So the Town had to call in heavy equipment and these front-end loaders and dump trucks. The problem the state had with the heavy equipment was the front-end loader had a bucket instead of a rake and that's why the Town got into trouble for allowing the contractor to use that implement instead of a rake which DEP would have approved to pick up the Red Drift Algae. If you use a bucket you pick-up too much existing sand. If you use a rake to just get the algae. I would like to see at least permission from the Town, and I know it's in the Beach under Management Plan that the Town Manager can call an emergency reason and allow us to go below the tide line to rake up the Red Drift Algae. I also was a member of the Marine Resources Task Forces, I was a county member and I worked on that bit of regulation and I knew that we had put something in there that in the event of Red Tide,

because the fact in those days we had more problems with Red Tide; The Red Drift Tide wasn't as prevalent. So there is something in there and I just ask that you do allow us to go ahead and clean it. The property owners would be the responsible the ones that actually pay for us taking care of it.

- Beth Hyde, 3650 Estero Blvd, where my husband is a Resident Manager of a Resort there. We too have had people who have left and have canceled booking because of the situation here. So it has been an impact on us on a smaller scale. We also had people who have experienced problem with their eyes including my husband who went to the ophthalmologist today. So, something has to be done.
- Cherrie Uselton the guest Residence Manager at Diamondhead Beach Resort, as well as a resident of the beach there. I can smell the odor at my home at Shell Mound in Connecticut very sensitive off of the canal. I also am experiencing the eye allergies and went to the ophthalmologist last week, as well as the guest that have stuck it out with us the offensive odors are also experiencing the eye and throat irritation. We telling people it is not a health hazard yet, I am also having guest tell me that Beach Patrol was going up and down the beach advising guest not to get into the water. So it is kind of a contradictory thing that makes it look like we are trying to pull something on our guests and those that have never been here, don't anticipate on coming back. I just appreciate any that you can do for us.
- Mayor Boback closed the public comment.

Vice Mayor Don Massucco, started his remarks with a memo that he sent to Town Hall this morning. It is dated today 10:24 AM to the Mayor Council Town Manager, from Vice Mayor Massucco regarding Emergency Meeting Beach Problem. I am sure you are all aware of the deplorable condition now exist on our beach. I have received many calls from residents and business owners, the last being a phone call from a very angry beach front property owner who claims he is being physically affected by the condition. We also have a fax at from Chamber of Commerce in our boxes this morning stating that businesses are being affected by visitors leaving the island. I think is the problem is that for over a week now and continues today to be serious enough to call an emergency meeting today of Town Council for sometime Thursday June 22nd anytime after 3:00o'clock. Unfortunately, there was a glitch there on whether or not the meeting was today, so we went crazy trying to notify people of the change. Anyway, I am glad that you are all here. Like it or not this is a Council's responsibility and a decision that must come from us. I believe that when our residents and our businesses are being negatively affected by a condition that is within our power to correct, then we must act. As indicated in the Chamber of facts, it would be possible

that TDC funding could be used to affect a clean-up. We can no longer wait for a nation to correct this problem. I said that to Town Hall this morning, and that is the reason for this meeting today. I am even more determined to get something done after listening to the testimony today, and I believe every word I heard today. It's affecting people very, very seriously; children, we can't go into the water, our tourism industry. There are so many things that affect our decision and I am going to ask the Council to join with me to take the necessary steps to effect immediate action and get this cleaned up. Vice Mayor Don Massucco asked his fellow Councilman as to how they feel about this? We have samples over there is any doubt in any one's mind of what we are up against. Let's turn it over to Council to see whether they can come to some determination.

Town Manager Rachel Lambert stated: unfortunately, I really do sympathize with everything I've heard. I have been out on the beach, I smell the odor, I've walked the beach, I have seen the condition. Our LDC code does tell us that if there is a health hazard and also a fish kill, that I can grant that permit to rake the beach. Unfortunately, or maybe fortunately, I assess the situation, it is not a health or safety issue at this point in terms of the analysis that have been done and I will let my colleague Jack respond to that also because he has the research. There was no fish kill, it was the result of a natural occurrence and it was assumed that nature would handle it, and we are still of that opinion. This is the 1st occurrence of the season. It will not be the last. In fact, right now we know right at the mouth of the Caloosahatchee there is a whole amount of Red Algae that may be coming to our shores shortly. It's not something that I can prevent, or you can prevent. Unfortunately, nature is not being kind to us right now. So if we are to rake every time, this is going to have a profound environmental impact on our beaches. It is not for me, and I understand the economic, I know TDC is wonderful in coming and supplying us with the economic basis. However, it is not just a question of economics. So I recognize some of the difficulties that you are facing. It was an administrative decision, and if there is going to be a policy change of course, I will have to implement it. I am just trying to explain how we came about to make this decision.

Public Works Director Jack Green states that most of his information is mostly facts based on staff research. He reiterates the decision making that staff with the support of the Town Manager made which was as the code was written in such a way taking into account of the economic and environment health of the island, and that is what we believe we have been doing. We have been out there, I have been out there every morning; same spot near Junkanoo, just to assess what it would look like everyday, but last week when this really became a problem, and I agree with you it isn't the most pleasant smell in the world. Sometimes it smells like low tide twice a day in New England. I spoke with the folks out in Sanibel because

I have heard they had the same problem and at this point and time it's pretty much gone. They said they suffered from this for about three weeks, but nature took its course they didn't rake, and it's gone. I have pictures that they had on their website that shows it quite similar to what we have here on the beach. Following that, I spoke to Eric Windblad the Sanibel Captiva Conservation Foundation to get his assessment. Essentially, he reiterated the position that Sanibel had taken that raking isn't necessarily the proper action to take. He even indicated that this stuff in some cases would be very hard to rake, and would have to be loaded because it is very fine except, to where it has dried up toward the high tide line. Much of it is at the waters edge which would require some kind of screen or filter that would have to gather it up as well. So the most practical means of doing this would probably be with a piece of heavy equipment in which you would have to scrape the bottom a little bit, you would have to be careful not to disturb the invertebrate habitat that resides there. These are all environmental concerns which are just as important I think because the code speaks for that aspect, because nature can't speak for itself. I spoke with Eve Haverfield who indicated to me that it wasn't a problem for the turtles; it could be if it were hatching time in which they have to make a path. I talked to Gary Porter, who is the Lee County Parks Recreation Manager who would manage the raking if there is any to be done in Bonita and in Captiva. He indicated that he had been out on the beach here, and I he would have not raked either at this point and time. Staff also did some research. We spoke to Chris Koepfer, Biologist with the Lee County Marine Services and he indicated that in their opinion, most of the algae is gone off shore in most of the places they have checked; and they expect that any further algae from coming on shore would be gone before the weekend is out. Further discussion was had with Dr. Robert South an Epidemiologist for the Florida Health Department, who spent a considerable amount of time informing us of what was going on; but to distill it all down, he indicated that there is no scientific evidence that there is any toxic components in the seaweed. He further indicated that it does not constitute a health risk, despite I think allergic reactions that some of the folks may have had. But again, I think the code is written for the 95 percentile and that other 5 percentile is left to the Council's wise wisdom as to what to do. Whether it's a zoning act, or whether it's raking the beach. Essentially, I did speak with the former Public Works Director as to what would be the process, and besides the permits that would be required from DEP, we would require our own permits for that matter which I'm sure we can waive. He indicated that DEP would require that it be piled to dry. Then once dried, it would have to be sifted mechanically in some way to insure that most of the sand that was scraped-up would be left behind, and then it could be disposed of. So in all likelihood, we are not going to get rid of the smell. We are just going to pile it, if we in fact move it. So I just want to be clear on that, we are not going to get rid of that. So the issue comes down to the economic

versus the environmental, and I think unfortunately, that is your decision gentleman. Again, it will take different equipment. I don't believe just raking is going to get it; this was the opinion of experts as well.

Mayor Boback asked Jack Green, if we were to do anything and we had to pile it, where would it be piled?

Mr. Jack Green replied that he hadn't gotten that far, but stated that obviously, we would choose a location; unfortunately, there isn't a location on the beach that isn't going to offend somebody. If we were to do that, I guess we would try to pick the places that have the least amount of impact. Off the top of my head, I couldn't tell you.

Mayor Boback asked would it have to be piled on the beach.

Mr. Jack Green stated yes, it would have to be on the beach; obviously it would have to be above high tide line so we wouldn't interfere with the rack line, and that; but it would be a pile.

Mr. Green stated that we would obviously look for the best location that we could possible get, if you choose to remove it.

Mayor Boback asked what if you just were to take a rake out there, just to break it up as the one gentleman suggested and then let nature take its course. Is that something you think might be feasible?

Mr. Green again, I am going to rely on what the experts told me. This has to be corralled in a fashion because it is so fine. Now that which has dried we could probably get.

Mayor Boback stated that when he was out there today, there seemed big clumps of it. Its 10-15 feet into the water too, so even if you brought a bucket in and scraped the beach, you're not going to get the stuff that is in the water which could come the next day.

Mr. Green states quite possibly, and I don't know if DEP will allow us to go there under these circumstances because essentially, you would be authorizing a variance of the code. Its going to take a little I think investigation as how to best do this. We can try the standard rake such as what Bill Perry operates, just to see. We may be able to get that closer to the rack line; that which is closer to the waters edge, I think we are going to have great difficulty with.

Mayor Boback indicates of just breaking up some of the big clumps so that it would disperse more easily rather than trying to skim it all off.

Mr. Jack Green states he thinks you'll find that in many cases it has already been broken up into clumps by tidal action, and that's where some of the same sand is actually built up. I'll admit, in my estimation, I think its going to take a couple of weeks to go away by itself. But, it is in fact acting almost like glue in most cases sort of a natural beach nourishment. It just smells, and it does prevent people from going into the water in all honesty. Though, the northern end of the island and the southern end of the island are fairly clear.

Mayor Boback asked if this seems to be concentrated in the area that is raked everyday.

Mr. Jack Green replies that it is sort of in the bit of the island. Probably Lani Kai to Junkanoo is the worst maybe further south of Junkanoo, and it's where the island the beach is the flattest; the least amount of profile and so the tide was able to carry it further up the tide line and deposit it.

Councilman Reynolds reports that he is not knowledgeable of this situation. I did teach science a number of years way back, so I am somewhat familiar and probably more than some people are about nature affects not only this beach, but our river and other places in the country. We have already heard, it has already been checked out by the Health Department, and different people in the county and it seems like I feel a little bit of hysteria here. For the purpose of information, I too have allergies, and when Red Tide came here. By the way it isn't called Red Tide. It is Drift Algae. Quite different, this doesn't bloom or burst, and put toxins into the air. So there are no irritation factors out there this is why I stated, I have no problems at all, and I have as much allergy as most people do. According to the experts that we have, we have two to three people who have responded to our Town Manager, and there is no health hazard involved. If we did go through this, we just can't arbitrarily jump out and do this. I think one person indicated we have a Blanket Permit for the future. I don't think I would want to go jump out there without approval from DEP, and that would be a must. By the time that happens, it's going to be several days or weeks. Since there is no health problem involved, there is a certain discomfort with the odor but that is still going to last. If Sanibel can put up with it for a little bit, since there is no health problems involved; I don't know how we would be more tender footed than they are. I can appreciate the fact that some of your clients want to get from it, if they are that sensitive they have to. They don't understand that we have nature down here too, and it affects our beaches just like nature up north affects their situation. I would be concerned if there were a health problem, just like that I would have no problem with it. First of all, you can't rake it. Have any of you gone out there and taking a little sifter like this, and reached it up here and looked at it. You don't have a strand; it won't stretch out this way. Its not seaweed; Seaweed has sand

that will do that. Mr. Green gave a good description of how it needs to be handled if we have to do it. We would have to do it with a fine strain or something and you go through the water and lift. Councilman Reynolds asks if Bill has tried to rake it, and states if you try it you will not get anywhere, you can't rake it. So this is not an easy thing to deal with and isn't dangerous to your health that is the 1st concern. So you are asking us to do something that will cost a lot of money, but that's not the problem. The money is not the issue here; it is extremely nice that TDC has enough money that they are willing to cover this cost, which at this point isn't necessary. So I would have to go along with the situation as it exists. It would have to go to DEP, and that's the only way I could go along with approving such an action on this. I'm sure the odor is not any better for me, I live one step from the beach in mid-island; it's not any more comfort for me that it is for you. It is just as uncomfortable and unwanted, but that comes along with living on a beach. Councilman Reynolds reiterated what he said on Monday's meeting that this is a part of nature's way of re-nourishing the beach. If there is nothing that is going to decay and go back into the sand and feed the micro-organisms and even the little coquina shells that we used to see wheel barrels loads just a small area, you don't see that any more. So I am sorry, I don't see where we can do that at this point, and the fact that if you want to do it because you have the money to do it, we will still have to go through the DEP. So the money isn't the issue I just want you to understand that.

Mayor Boback stated that he too recalls the odor as well as anyone, as Fran Myers stated earlier, he too lives right behind there. He further stated he too walks the beach, his wife walks the beach. He has no health problems with it the Health Department states there is no health issues other than some people who have the tendency to be allergic would get some reaction from these algae that's out there. I guess my dilemma is if we can rake it and break it up, to let nature take its course without damaging the beach and sea life the invertebrates and everything that is right along the shoreline. I don't have a problem at all, but I don't really want to see a bucket out there digging up the sand and everything along with it. So that is my dilemma. I don't know can we send the rake out there and break it up or not to do any good. That's my question.

Mr. Jack Green stated if it is the Council's desire, we can check and see; what the least minimal impact effort we can have to facilitate nature's removal. I'm not too sure what that means today as I sit here, but maybe Mr. Perry might be of some assistance if we test one of the worst spots.

Mayor Boback agrees that before we go anywhere, we are going to need some approval.

Mr. Jack Green stated we can call Jennifer Cowart in the morning and see if we can facilitate that and expedite it so we can have it at least. Even if we leave it for now just for testing so we can expedite it, we will test that spot and see, if that is your desire.

Mayor Boback calls Mr. Perry again to ask his opinion as to raking the beach of this stuff?

Mr. Perry replies right now it is very small, but when it is a big matt like it is, you can't rake it; it just clumps up, and you can rake it to piles. I agree with raking it into piles and leaving the piles to degrade, and not actually removing it off the beach. I was also opposed to moving that stuff off the beach in the past. You can make it into piles and you can even cover it with some clean sand, so that it doesn't permeate the air with the smell. Let it decompose and then wait a few weeks, and then spread it back out the beach. That's what I normally do. As long as the tide is out, I can get a lot of it, and when the tide comes back in anything that's out in the near shore in the water would come back up in the beach and take the place of what I have removed; then when the tides out again, you gather up a lot of that as well then you make piles of it. Usually what I do is, I pile on debris in areas where least impact of the upland property owners. You never pile anything in front of a home, or in front of a Resort. You always do it at the property line, and in the past when I worked for the Town and I cleaned up dead fish, I would make piles where they would come later and pick-up. The crews from the county and the Town crews would pick-up the dead fish, but sometimes the fish would be so badly decomposed that you couldn't pile it up, it was like a soup. So I would then bury that then usually at beach accesses where it's Town property and cover it with enough sand that it was no hazard for anyone walking, in fact no one would know; and in a short period of time maybe a couple of weeks, it would decompose and the pile would go away. This is how I have done it in the past. So I do really think you can make an impact in some of the bad areas, after the tide goes out as far as possible and then rake that area, and I think it's like you said it will break it up.

Mayor Boback asked if anyone know what the tide is tomorrow. When is a low tide?

Mr. Perry replied in the afternoon, 2:00 o'clock.

Vice Mayor Don Massucco asked Mr. Perry if when you cover this up with sand, does this cover the smell.

Mr. Perry stated that you would not know that is there even if you place a towel over it and lay down in the sun. As far as the north shore environment, I must say I think Jack should check into this the Red Drift

Algae. My involvement in Environment Resources, we were told that Red Drift Algae and all algae when decomposed deplete the water of oxygen and actually cause the environment to degrade. It actually kills the things that we are trying to save by not raking. So I think that the Red Drift Algae is a hazard to the environment, it takes the oxygen away out of the water; it kills those invertebrates and the coquina shells and things of that nature.

Councilman Reynolds stated he is going in another direction on that because we had extensive discussions daily with DEP on this number one, you are not allowed to bury this, secondly, and if it comes out of the water and dies it doesn't do any damage in its decaying matter as it goes into the sand. In the water, yes it depletes the oxygen. Not only that, it put out a lot of toxicants and that's what kills the fish; and if it is really heavy it even steals the oxygen from the fish. But once it comes into land like it has here, you can't do some of the things that you have suggested. Councilman Reynolds indicated the clumps that he has seen are not big in size, and if they were raked would probably not make a difference. He indicated that he doesn't think it is the raking material is basically what I am saying. It cannot be buried unless you change the rules on it.

Mr. Perry suggested you don't have to bury it, you can pile it to let it decompose.

Councilman Reynolds replied he doesn't think it can be piled.

Mr. Perry suggests allowing him to do a sample area, and then I will call you Garr.

Councilman Reynolds replied that you are welcome to pile it right there as far as I am concerned as a trial the Dakota public access and that is equal distance on the island. If you can do that then call Jack to come down to look at it and I certainly want to see it. I'd like to see you try to rake it because I have gone out there a number of times to pick it up and all you get is what is between your fingers. He further states that this material cannot be raked.

Mr. Perry stated he believes the rake is better than the bucket the reason being the rake only gathers only the debris; the bucket does gather a lot of sand. Of course, you would have to make a few passes because you miss some through the rake, but eventually you get down to clean sand. Making a few passes, it is time consuming. Red Drift Algae is a pain in the neck and is the hardest to clean up in the beach. I think now we have waited a week, and maybe we need to clean it up now.

Councilman Reynolds stated to Mr. Perry that he continues to call it Red Algae.

Mr. Perry replied Red Drift Algae.

Councilman Reynolds stated its Drift Algae actually. You call it red because it is kind of red in color, but it's not the same what they call Red Algae. I don't know why they have the Red Algae and the Red Drift Algae, but there is a distinct difference between what you call Red Algae, and Drift Algae. Councilman Reynolds relates to the councilman mentioning some people have allergies, and he too has strong allergies and I have had zero affect on it except, the odor, I don't like the odor. By the time you get through the raking process. If we get a couple of winds it's going to create some waves and it's going to cover it off, and that will be the end of it. Like Sanibel has told us they had it, and it lasted for about three weeks. I don't think we can speed up the process.

Vice Mayor Don Massucco stated it was interesting to him with all due respect to Jack. I know you have put a lot of time and effort in this. But all of these people over the phone say don't worry about it. Vice Mayor Don Massucco indicated around the room that these are the people that have the problem not the guys on the phone. These are the kids that are getting... Applause is given by the people in the room. It's the kids that are getting this rash all over their bodies. These are the people that are being affected. You can talk to a million people on the phone and say oh it's not bad from where I'm sitting; but we have to respect these people, we have to respect the business community that are losing a lot of money here. We have to represent them also. I think if we have options, and Bill indicated that we do have options. Then get out there and get what we can of it, let's do something about it. To wait for nature to take it away it could be a month or more. We have July 4th weekend coming up. That's a big, big weekend for the businesses and for the residents. If we can do anything between now and then; let's do it. We have options. I'm sure DEP would give us an emergency clearance to do it. TDC is willing to pay for it. Why are we even talking about it? Let's get it done.

Mayor Boback thanks Vice Mayor Don Massucco, and thanks everyone in the business community what they are going through right now, and I am sympathetic to that. I would not in any shape or form vote to put a bucket out there on the beach to clean that mess up with a bucket. I would be willing to have Mr. Perry do a test with the rake to see if that would break it up enough, and make a determination from. I just can't put a bucket out there and dig up half the beach to get rid of the Red Drift Algae, and when it comes back the month after or after, the TDC has been gracious to pay for it now, are they going to pay for it every time it comes back. We got a bunch of it sitting out there in the Caloosahatchee. We can no sooner clean

this up, and that stuff is going to be right back on the beach and then we will be right back where we started. We just can't continually rake and shovel the beach or we won't have any beach, and it's just the fact that where the problem is concentrated is where the beach is being raked on a daily basis and it's not in any other areas of the beach. So that makes me wonder about raking the beach in general. If the other Council members would go with that, I would like if Mr. Perry would be capable of coming tomorrow around 3:30; we will meet over at Junkanoo, and we will do a little test and see what we can do from there. That is if Mr. Green can get permission from the DEP to do it, I am not going to go out there on the beach without permission from the DEP. At this point that is as far as I am willing to go personally.

Town Attorney Anne Dalton states under the Land Development Code, if you're contemplating on doing the raking even a limited raking of course, the DEP has issues to address. Also the Town Council would have to make a finding that there was a health or safety issue involved that will allow even under a limited raking that is under Section 14-6 of the Land Development Code, and there is no provision for waiver for that finding. So if there is going to be a motion, it should include there is a health or safety issue in question. I have a copy of that section if Councilmen would like to review it.

Vice Mayor Don Massucco stated that the actual testimony of the people that are being affected would be required.

Attorney Dalton replies she's not stating whether or not the proof exists, she is just stating legally, you would incorporate that finding into a motion. If that's what you want to find.

Councilman Reynolds thanks Ms. Dalton for bringing the legalities to their attention. This is not the first time I have heard that and I appreciate very much you bringing it forward. The key here is health hazard, and we have no health hazard. Does that mean I don't sympathize with you, I do; I empathize with you. So I have the same problem that you do. It smells down in my place to, so I am not over looking, I'm not trying to be difficult or nothing like that. We have rules to live by and you heard the one from our Town Attorney Ann Dalton, and you heard it from Mr. Green who spelled it out pretty clearly and so did the Town Manager. It's not that we haven't tried to prepared to do something, it just isn't there to do something. If you move it all tomorrow, you still are going to have this odor come in the water. If you haven't been out there go out there like some people have related to us. That stuff goes at least 20 feet into the water just floating very thickly there. More there than what is on the sand right. So if you take what's on the sand it not going to help a thing; there is going to be more tomorrow. Each day as the sun hits that it dries that out

and the odor is gone. As Mr. Perry pointed out, if it gets covered with sand there is no more odor at this point. It is not curable like that it just isn't, that not a part of nature you can cure that fast. The odor is going to be there for a while no matter what you do. If you do nothing, it going to be there at least two to three weeks according to Sanibel. My guess would be that until you look at the water and watch that stuff washed in; when that is washed in that is when the odor is going to stop and not until then. You clean up everyday; you are still going to have the odor so look at it for what it is.

Mayor Boback asked Town Attorney Ann Dalton based on the reports from Mr. Koepfer, Dr. South, and Vice Mayor all three of which state and Dr. South is from the Health Department, are stating that there is no health hazard. How does that affect us coming back and saying well it is a health hazard? Legally, where does that put us?

Ms. Dalton replied certainly, the opinion of three experts would be very significant in your factual determination as the Vice Mayor has indicated the comments by the public are something you can consider. It's actually a two part standard. Its health or safety and there is some information from Kathy Lewis on the second page that talks about sharp objects hidden in the residue that no one has commented on that from the public that is in the comments from Dr. South from the Health Department, and if Council believed that was a safety issue that was important for Council, that is something that you can consider. So there is something in the memo that does raise a second question. As you question certainly, the opinion of experts would carry a substantial rate in your factual decision.

Vice Mayor Don Massucco states that it would carry weight in our factual decision if they had come down here and tested and talked to some people, then it would have been some meaningful evidence; but they are talking over the phone telling us don't worry about it. That to me carries no weight whatsoever. I think these people carry much more weight.

Councilman Reynolds stated that his understanding is that they did test it.

Mayor Boback states as far as he is willing to go is to do a test at least to try to determine whether it can be cleaned up without damaging anything, and make it specific that it is to this particular incident and in no way try to set a precedent. So that every time we get a little algae we are going to clean it up. I don't want anyone to get that thought in their mind, but I am willing to work with everybody as best as we can because I do understand where you are coming from. I have to look at both sides of it as far as the environment is concerned as well. So it is up to the rest of the Council if they are in consensus. I will meet with Mr. Perry at 3:30 tomorrow afternoon. The other folks can come; Jack, Rachel, and we can do a short

test to see if there is a possibility that with the raking it will break it up enough to let nature take its course, and again, if the DEP will allow that to happen.

Ms. Rachel Lambert reminded Mayor Boback that they are working on a Hurricane Preparedness Plan, and that meeting already has been set.

Mr. Perry asked Mayor Boback if he wanted to do a test we could probably do it earlier and that he would contact our local DEP representative ensure that we can expedite this, and make sure there are no problems.

Mayor Boback agreed as long as he has the OK from DEP. We need to do it at a time where we can get a pretty accurate test. We are going to have to do it somewhere close to low tide or it's going to do us no good.

Mr. Perry agreed and insisted in order to meet all of our obligations we may have to push it up a little, if you want to. The Drift Algae that's left on the beach that is above the low tide line is still going to be wet. I think that Mr. Perry would agree that it still would be an adequate test to see what we can do. Let me check the state of the tide tomorrow and I will get back with you first thing in the morning, and what the best time that meets all of our obligations. But I would further ask if this works that we can do this with the least amount of impact to the natural environment. It is the Council's wish to extend it to beyond the test spot.

I think we need to make a determination after the test. I am not just going to give it a blanket until I see it.

Vice Mayor Don Massucco asked if we require DET to give us a temporary ruling if it is successful, we don't have to call them again we can just go in, in our determination and do the project. I would hate to have to go through the steps again and even delay it further.

Councilman Reynolds thanked Ms. Dalton as our Town Attorney; he was pleased that she had pointed out some of our legal directions. I was a little dismayed when you went though one little simple statement there which Dr. South states if someone is just stupid this little warning is not going to help them and here is what it says. He also reminded staff of beach goers of sharp objects getting in the residue. No one will be walking in the residue anyway, and if they walk everyday I'm sure they are aware of the little pieces of shell or something like that. So I don't think this is a loophole, and that you were graciously pointing that out. I know my colleagues want to appease you. I think we have enough information that we cannot give you appeasement in my opinion. We have to go by what the rules say. The rule are pretty clear and there is nothing dangerous to

your health or mind therefore, I cannot go along with what you are suggesting.

Vice Mayor Don Massucco stated to Councilman Reynolds that he cannot let him have the last word. You keep saying. You said I don't know how many times during this proceeding that is there is no health risk. There is a definitely health risk here. These people have testified. Everyone applauded.

Mayor Boback stated to Vice Mayor Massucco we still have to take the experts determination as well, and shouldn't have an Environmental sue us because we mess up the beach; you better believe that the experts are going to carry a whole lot more weight.

Councilman Reynolds states that we have to listen to the experts. Those folks have taken the time to come and inspect it.

Mayor Boback stated that he knows we have an ordinance and we should probably follow it, but I also know that we have a serious problem out here on the beach that hopefully we can come to some arrangement to try to rectify it. Again, I stand on my decision, and asked Vice Mayor if he had a motion?

Vice Mayor Don Massucco stated to make a motion that we exercise our options lets go forward with that one.

Attorney Dalton stated that section 14-6 of Land Development Code specifically states that raking of the wrack line is prohibited under normal circumstances. Town approval is necessary for determination of health and safety issues and once that had been confirmed would allow them into these scenarios. So it would be my recommendation if the Council wants to move forward with this that there be a specific finding by the Town Council, that there is a health or safety issue; and then what that health or safety issue is. That would be up to Council to determine whether factually something in the memo was sufficient or not sufficient, or the testimony was sufficient or not sufficient.

Vice Mayor Don Massucco reiterated again what he previously stated he cannot think of any more definite proof that there is a health hazard than these people have testified. The reports of the Chambers have been of people getting rashes. That to me is the definitive evidence. I don't know what else we can offer.

Attorney Dalton suggested if you want to make that part of your motion that there is a health issue in that just on testimonial; I'm not trying to tell you what to do. Vice Mayor Don Massucco agreed that this should be put in the motion. Attorney Dalton stated that the Council will determine that

there is a health issue included in that the testimony of the public at this meeting indicated that there one, and that is more compelling than the expert information contained in the memo from staff dated June 21st and therefore, there is a health or safety issue that will allow you to proceed with the exception, of 14-6 B; one, two or three.

Vice Mayor Don Massucco requested that the evidence be put on record as proof. Attorney Dalton stated she is not making the rules just suggesting what they contain if that's what you want to do. Vice Mayor Don Massucco further stated that he wants to make sure that what we heard today is the proof that I believe is sufficient.

Attorney Dalton continued with an example that there have been comments today regarding rash, respiratory problems, sinus infection; those types of questions and issues; if you wanted to make that as a basis as a finding of a health problem.

Mayor Boback reiterated in other words that there is enough evidence today to raise the possibility that there is a health and safety issue that would allow us at this point to rake the beach in a test to see if there is some way to rectify the situation.

Attorney Dalton replied she thinks that would be a motion that would comply with Section 14-6

MOTION: Mayor Boback asked if he would like to make that motion Sir. Vice Mayor Don Massucco replied you just made it Sir. Vice Mayor Don Massucco 2nd the motion.

DISCUSSION:

Councilman Reynolds reminded if some of you haven't read this we only got this as we were walking down to the meeting. He reiterates that in Dr. South's opinion that Drift Algae deposits along Ft. Myers Beach do not constitute a health risk. He stated that persons having a tendency to allergic reaction could experience some affect from the Algae. Obviously, if it is all along the shore 15 to 20 feet whether it's Algae or not; crude seaweed anything you can have a reaction to that. He suggested that those people stay away from the areas most affected. Then he went ahead to say and remind people while they are walking, not to stop on sharp objects. I'm sure you do that all the time.

Mayor Boback asked if Vice Mayor Don Massucco had and last words? Vice Mayor Don Massucco replied: Stay away from the beach folks. But one of my concerns is the health risk, but the other is the loss of revenue to the business community and they are here en mass. Vice Mayor Massucco

suggested that maybe we should change the ordinance as it is affecting a lot of the people that we represent.

Mayor Boback replied that is something you would have to bring up at another meeting.

Mayor Boback stated like he said from the beginning, I am really not against raking the beach. I think we should do like Sanibel and let nature take it's course but I also understand that dilemma the business folks in the business community faces, and we are here to represent them as well as the residents; I am willing to put aside that and go at least for the test to see what we can do and make sure that we are doing what we can do in the best interest of everybody.

MOTION: Mayor Boback made the motion all those in favor.

VOTE: Motion passes 2-1 with Mayor Boback and Vice Mayor voting in favor and Councilman Reynolds dissenting.

Councilman Reynolds asked what is the ruling.

Attorney Dalton asked if it is a question if it is a majority of the Council as a whole.

Councilman Reynolds stated yes that is the only way.

Attorney Dalton stated we had this question raised before, and what Council Reynolds is asking, is this a majority of the entire Council in other words would require three or are the majority of the Council members present in which case it would only require two. The Town Charter does have a specific provision regarding that. I unfortunately, because this was a special meeting don't have the charter in front of me and I would prefer to quote directly from the Charter if I may do so Mr. Mayor.

Mayor Boback stated a five minute recess until we get the Charter.

Attorney Dalton states she had an opportunity to review Section 4.13 of the Charter and Councilman Reynolds is correct, I like to read the specific language. Three members of Council shall constitute a quorum no action of Council shall be valid or binding unless adopted by the affirmative vote of a majority of the Council. What that means that the Council would be all five even though some may not be present. It would require unanimous vote by the members present to comply with the Charter Provision. So if it is a two one vote, then the vote fails.

Mayor Boback sighs OK. Well the only thing we can do is find another Councilman and have another meeting.

Attorney Dalton asks if there is another motion that the Council wants to entertain. It would be supported by all Councilmembers.

Councilman Reynolds states some of you wonder why I voted against it. I think appeasement is good in certain situations. In this situation appeasing you is not going to change the odor. There are small strands of Drift Algae approximately sometimes 10 or 15 feet on the sand. When the tide comes in and brings up some more there is 20 to 30 feet out in the water further. If we move this today, tomorrow morning it is going to be right back on the sand again. So moving it today, more tomorrow. Move it tomorrow, more the next day. I'm sorry I don't see the justification in this. In the process of doing that we would violate any ordinance in doing that pertaining to this. We would violate our DEP; we would violate the Health Department's ruling already. Everything that we have to go by, we would be violating. I don't know because there is no health issue. If there was health hazard involved, I would vote as an emergency situation, I would go along with it but there isn't. So what we are doing what the motion was said it would have not stopped the odor. It's going to be there until this stuff washes out of the water; its going to be there and I don't feel like breaking all the rules in an attempt to do something that I know is not going to work.

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

Attorney Dalton stated that it is up to the discretion of the Mayor; this is a special meeting you can allow public comment or not.

Mayor Boback opened to public comment.

Ollie Curran I am 30-years in Ft. Myers Beach. I sometimes feel that have been here this long that I have to make comments honestly. I was just talking to Mr. Reynolds and I told him I feel personally that he has come to my business and I have photos of him throughout this whole time. Being a business person in the Ft. Myers Beach, I feel that we come here as a whole body and we came here as an emergency meeting. You have told us that you are for the business; we are for the people we voted for you on that pretense. I have come her different times and Mr. Reynolds has voted against it. Sometimes we need to break some rules and if it is wrong or not wrong, I feel that these people today some were sick. My neighbor, her eye she can't even see. So those are the people you have to listen to Mr. Reynolds, it is us you have to listen to. Don't say no right away for the Manager, please don't come out saying no because this paper

says this and that paper says that. I am very offended with that. Just be open there are new Council members here and I voted actually for all three of you. I just ask you to please don't be so negative and don't be so no, no, no from the beginning. Open up and be with us sometimes Garr. You are always around saying we are going to do this and we are going to do that to the people. So be there for us. We need this. It's not going to hurt to rake it a little bit, it not going to hurt to walk on it. So why not do that today. I am very upset that you Mr. Reynolds voted no.

Mayor Boback asked if there is anybody else.

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

VOTE: The motion passed unanimously.

Mayor Boback adjourned the meeting at 6:04 PM.

Respectfully submitted,

Debbie Cardoso

VOTE:

V. PUBLIC HEARING LAND USE CASE:

MOTION:

VOTE:

VI.

MOTION:

VOTE:

VII.

VIII. ,

IX. ,

X. ,

MOTION:
VOTE: