

**FORT MYERS BEACH
TOWN COUNCIL**

**Town Hall- Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, Fl 33931
June 24, 2006**

Special Town Council Meeting

4:30 PM

I. CALL TO ORDER

Members Present: Mayor Dennis Boback, Vice Mayor Don Massucco, and Councilman Charles Meador, Jr.

Absent: Councilman Shenko and Councilman Reynolds

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

II. PLEDGE OF ALLEGIANCE

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

III. INVOCATION: The invocation was given by Town Manager Rachel Lambert.

IV. Discussion of possible action relative to emergency raking the beaches, and especially seaward of the wrack line.

Mayor Boback states the reason for this meeting and requested for Attorney Dalton to explain in detail as to the foundation of this meeting.

Attorney Dalton reads from the Charter Section 4.11: Special meeting may be held on the call of the Mayor or Town Manager whenever practical upon no less than a 24- hour notice to the Council and to the public. Action taken to a Special Meeting shall be limited for the purpose to which that Special Meeting is called. Ms. Dalton states the Charter does permit that whenever practical. She gave her legal opinion that it is not a Sunshine violation.

Mayor Boback stated that based on the testimony at the last meeting from the people who were being affected by the Red Algae; he feels this

constitutes an emergency of public Health Hazard, and to expedite the clean-up as soon as possible.

Councilman Meador asked Ms. Dalton if this is being called a Special Meeting. Ms. Dalton replies that the Charter provides for Special Meetings. Mr. Meador states that we don't have to specify in detail emergency findings for calling this an emergency meeting than for a special meeting. Ms. Dalton replies the purpose for calling this meeting the Charter does not require to be given a reason. Mr. Meador further asked since we are limited to the subject for which the special meeting is called, should that not be specifically stated for the record. Ms. Dalton states the subject is that we are here to discuss the clean-up of the beach through possible beach raking or other mechanism. Mr. Meador stated that was fine with him.

Mayor Boback opens for public comment.

- Ms. Lambert states that she and Mr. Green have been working to see how we can change the situation. Ms. Lambert states they are bound by their LDC Code, and states Mr. Green has some new information which might be helpful.
- Mr. Green states to Mayor Boback the testimonies of the people at the last meeting regarding this issue. He reports the north and south end of the island are fairly clear. Mr. Green stated that the area from the Neptune to Junkanoo the accumulation persist to stay there. Mr. Green stated he spoke to Jennifer Cowart who is the DEP representative in our area and discussed the issue of raking. Ms. Cowart indicated because we were raking below the high tide line or the wrack line, she did not have the authority to grant us a permit. This would have to go to Tallahassee and be reviewed by FWC, and then it would come back. Mr. Green reports that what he is presenting is a general discussion of what are circumstances are, and the parameters of what we proposed to rake the beach below the high tide line. Mr. Green directed the Council to the last parameters which is what Mr. Green offers as a possible future solution. Mr. Green stated that if we were to go along with the clean-up and if it happens again we would set a precedence and be looking at doing this again in the future. Mr. Green suggested taking the negative impact and making it into a positive impact by taking this material and consider creating some dunes with this. This would require a different permit and a different term process.

MOTION: Vice Mayor Massucco made a motion to rake the unsightly, unsafe mess from our beach ASAP.

VOTE: Councilman Meador 2nd the motion for discussion.

Vice Mayor Massucco reminded the problems they had with dunes planting which was one of the things that caused turmoil. Vice Mayor further states that this might be creating future problems.

Mr. Green stated he is aware this has created some strain with the upland property owners. Mr. Green states that we need to balance things with a positive, as the dunes will dissipate wave energy and will protect the upland property owners in the long run.

Vice Mayor Massucco reiterates the need to move forward and have Mr. Green take the necessary steps to attain a permit from Tallahassee to begin the raking as quickly as possible.

Councilman Meador asks for Ms. Dalton to clarify the requirements of the Land Development Code.

Attorney Dalton quoted from Section 14-6 of the Land Development Code that under normal circumstances raking of the wrack line is prohibited, and what is required for Town approval which would be a determination of a health or safety issue. Ms. Dalton recommended to Council, if they should decide to move forward with this motion, they first need to make a specific finding as to the health or safety issue is if the DEP is attained.

Councilman Meador asked Ms. Dalton as the Land Development Code refers to Health and safety, does it specify human health. Ms. Dalton replied it does not. Mr. Meador also questioned if it is necessary to be specific to the issues of health and safety. Ms. Dalton replied it would be a continuum of risk, and would be wiser to make a finding affect.

Councilman Meador apologizes to Council for not being present at the last meeting, but further stated this gave him an opportunity to study the present situation. He concurs with Mr. Green between Diamondhead and Junkanoo are the most affect areas. Mr. Meador stated the Newton Beach park is required to establish dunes which has a beach access to that which may be the starting point if move forward. Mr. Meador also had the opportunity to speak to Tom Myers over at the Red Coconut regarding the people who have had immediate health problems, and also mentioned one person who jumped into the water getting stuck and almost drowning because it was so thick with the Red Algae.

Councilman Meador stated he would like to see this motion amended; Town Council finds that there are adverse health impacts on individuals, such as breathing problems and rashes, as well as a danger to an individual stepping on a foreign object, and possible risk of drowning by way of sinking into the material.

Vice Mayor Massucco he would agree to amend the motion. Councilman Meador 2nd.

Mayor Boback also made another amendment to Vice Mayor Massucco's motion to state before continuing raking the entire beach, to do a test area to make sure we can rake it without making a lot of environmental damage, and the area proves workable to continue forward.

Vice Mayor Massucco was reluctant to this amendment as he insists on getting this started; Mayor Boback reiterates he too want to have this done but would prefer to do a little test area as we mentioned previously then they can make that determination and they can continue on.

Councilman Meador stated there was testimony at the prior meeting from a gentleman who had already done this before and was successful.

Mayor Boback agrees that is good, but insist there should be a test done, and then continue on.

Vice Mayor Massucco stated he spoke to Mr. Perry and he assured that this could be done.

Mr. Green stated he too had spent some time speaking with Mr. Perry as well as with Jennifer Cowart from DEP. Mr. Green states Mr. Perry does have a lot of experience in this matter however, he is not an expert. Mr. Green confirmed with Ms. Cowart if the rake can be adjusted to have no more than a 2" penetration, there would be minimal impact on the invertebrate population and that would be OK with DEP.

Mayor Boback states a test can be done and if it proves no harm to the environment then to go right on through.

AMENDED MOTION: Councilman Meador indicated to Vice Mayor Massucco in order to avoid coming to the same impasse Council came up against last meeting, would you be willing to amend your motion to include the test Mayor Boback indicated to have done as I will 2nd this motion. Vice Mayor Massucco stated he would amend his motion.

Mayor Boback opens for public comment.

- Ms. Fran Myers thanked the staff and the Council members for their conclusion tonight.

Mayor Boback closes for public comment.

MOTION: Mayor Boback made the motion to the amended motion.

VOTE: The motion passes 3-0

Attorney Dalton stated that Mr. Green asked for direction regarding making this into a dune tonight, and asked if the direction was given or not.

Mayor Boback states as Councilman Meador previously mentioned there is a place to start even as a test area, and from that point based that it worked; Mr. Green can speak to the other owners there to see if they are interested.

V. Council Member Items and Reports

None were given.

VI. Town Manager's Items:

None were given.

VII. Town Attorney's Items:

None were given.

VIII. Adjournment:

MOTION: Mayor Boback made a motion to adjourn. Councilman Meador 2nd the motion.

VOTE: The motion passed unanimously.

Mayor Boback adjourned the meeting at 5:35 PM.

Respectfully submitted,

Debbie Cardoso
Transcribing Secretary