

**Town Hall- Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, Fl 33931  
July 11, 2006**

---

**Regular Town Council Meeting**

**3:07 PM**

---

**CALL TO ORDER:**

**Members Present:** Mayor Boback, Councilmember Shenko and Councilmember Meador

**Absent:** Vice Mayor Massucco, Councilmember Reynolds

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

**PLEDGE OF ALLEGIANCE AND INVOCATION:**

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

**INVOCATION:**

**PUBLIC COMMENT:**

Mayor Boback began by calling the Consent Agenda item, the Tomasello Report at which time Town Attorney Dalton suggested that the next agenda item would be public comment. Councilman Meador inquired on a Point of Order stating that his understanding is that this is a land use meeting, and that the only item on which we would have public comment is on land use, that there would be no general public comment. Attorney Dalton stated that is correct, but there is a consent agenda item that hypothetically there could be public comment on. Mayor opened public comment, inquired if anyone wanted to speak on the Tomasello report. Seeing none, the public comment was closed.

**CONSENT AGENDA:**

Mayor Boback called Mr. Tomasello to the podium. Bill Spikowski approached the podium and spoke that Mr. Tomasello was not present, however he had contracted with his engineering firm last year and could answer any questions regarding this report. Mr. Tomasello had originally worked on flood studies for Lee County 20-25 years ago, and was contracted by the Town to review the preliminary work that FEMA presented this past year including the Flood elevation maps. He found a number of discrepancies in his opinion on the inputs to the computer model used to create the proposed elevations. When they drew the maps they were using some combination of professional judgement to create very detailed maps without the kind of topographical information needed to do that accurately. In the two reports he prepared for the Town, he documented his findings and recommendations. When the Town met with FEMA back in March, Mr. Tomasello was present and announced his findings for the first time and Mr. Loar of FEMA asked that when they are complete, that he get to see a copy. At this point it's just a matter of

the Council formally agreeing to forward the work that was done for the Town, to share that with FEMA. If they agree with Mr. Tomasello's conclusions and recommendations, it could have very significant changes in the proposed maps. Mr. Spikowski recommends that the Council forward this information to FEMA.

Councilman Shenko has a point of order. He believes that this meeting is a public hearing on a zoning matter. He inquired as to how it was advertised; a regular, special, emergency meeting, or public hearing? If it was not advertised as a regular special emergency meeting, then the council cannot forward this report to FEMA, the council can only conduct the public hearing, and this is not a public hearing matter.

Attorney Dalton responded that she would need to inquire of the Town Clerk as to how this meeting was advertised, but normally these meetings are advertised as land use meetings, and since this report directly affects the V-zone which directly involves the land use matters on the island, it could be construed as being a land use matter.

Councilman Shenko has a problem w/ taking action with either no notice of meetings or improperly advertised notice of meetings and would like to have it checked as to whether the council is able to vote on this item at this time based on the notice and would like to defer this item and go ahead with the public hearing until the Town Attorney can provide an opinion to that fact, and in Councilman Shenko's opinion, this is a general meeting matter which should be discussed at the next general meeting.

Councilman Meador is in favor of sending the report to Tallahassee whether it's based on action today or at a future date and supports Councilman Shenko's suggestion to defer this item and move on to the land use matter.

Mayor Boback concurs and will move forward until which time the Town Attorney can opine. Public Hearing is opened. Attorney Dalton suggests asking as to any ex-parte communications, and mentioned that the applicant has requested a continuation at this time.

Councilman Shenko has had no ex-parte communication although he has been a patron of the establishment for 30 years and has talked with staff regarding the application.

Councilman Meador has had no ex-parte communication with the applicant and has spoken to two property owners in the immediate adjacent area and has also been a patron for close to 30 years.

Mayor Boback has had no ex-parte communication with the applicant or any staff; has some relationship with Bob Rockwell construction who is the contractor for this project. Rockwell is doing some work at the facility where the Mayor is employed, but nothing relative to the Plaka.

Attorney Dalton informed the council that the applicant has asked for a continuance and respectfully requests that this be turned over to Beverly Grady who is counsel for the applicant.

Beverly Grady for the applicant requests a continuance to the August 14, 2006 date.

Councilman Meador has no problem with a continuance however asks if any councilmembers will be absent on that date. Councilman Shenko will not be in attendance for the 14<sup>th</sup>, however has no problem with the hearing going forward in his absence. Mayor Boback has no problem with the 14<sup>th</sup>.

**MOTION** : Councilman Meador moves that the applicant's continuation request to August 14, 2006 be granted. Mayor Boback seconded.

**VOTE**: Vote Passes 3-0

Public Hearing is concluded.

Attorney Dalton had an opportunity to review the notice of public hearing and Councilman Shenko is correct; the only thing advertised was this particular hearing, the Plaka restaurant matter. It is not appropriate to review the Tomasello Report at this meeting. Attorney Dalton apologizes for that as she was not aware of the advertisement, and thanked Councilman Shenko for that correction.

Attorney Dalton has an Attorney's Item that she believes can be brought up at a special meeting, unless she is out of order at this time. Councilmembers have no items, so at this time, Attorney Dalton requests an executive session for this afternoon, with the belief that the statutes allow for a request of this nature at a special meeting. The purpose of this session is regarding the Consolidated Realty lawsuit. Councilman Shenko has a problem with calling for an executive session at a land use hearing; we have to call for it at a public meeting. He feels he's being asked to meet outside the Sunshine based on recommendations that are supposed to come forward at a regular meeting to go into executive session. This is not a regular meeting, it is a land use meeting and only advertised for land use. He is uncomfortable with going into executive session. He recommends that this be discussed at a regularly scheduled meeting. Attorney Dalton withdrew her request.

**ADJOURNMENT**: Mayor Boback called for a motion to adjourn. Councilman Meador so moved, and Councilman Shenko seconded. The vote was unanimous.

Respectfully submitted,

Michelle Mayher  
Town Clerk