

**FORT MYERS BEACH
TOWN COUNCIL**

**Town Hall- Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
August 7, 2006**

Regular Town Council Meeting

6:30 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 and Town Attorney Anne Dalton. Public Works Director Jack Green, Community Development Director Jerry Murphy,

II. PLEDGE OF ALLEGIANCE AND INVOCATION:

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

III. INVOCATION:

IV.

V. PUBLIC COMMENT: Please note that public comment will be heard at the time the agenda item is discussed.

VI. CONSENT AGENDA:

A. APPROVAL OF MINUTES- June 19, 2006; June 24, 2006; July 17, 2006

Councilman Shenko commented to corrections on the agenda. Mr. Shenko stated this began from prior Councils indicating Excused Absences. Mr. Shenko reported there is no such thing, as you are absent or you are here. Mr. Shenko referred to the Charter that it does not provide for excused absences, the correct term being "Absent."

Councilman Reynolds commented to corrections on page 5, as to Mr. Jerry Murphy making a motion. Mr. Reynolds replied to Councilman Shenko regarding the term Excused, and stated was used for the purpose of courtesy.

Vice Mayor Massucco had no comments.

Councilman Meador stated no changes.

Mayor Boback asked for a consensus whether they want to use the term Excused or just Absent on the minutes

Councilman Reynolds replied that he has no problem with either one of them as they were for the purpose of courtesy.

Vice Mayor Massucco referred to the Council if the word Absent is allowed.

Mayor Boback reiterated whether this is an excused absence or just absent.

Vice Mayor Massucco replied excused.

Councilman Meador stated for the purposes of this vote, he will follow Mr. Shenko's lead. Mr. Meador stated that there was an Ordinance or Resolution with the interpretation in the Charter, but has not been able to confirm with it.

Mayor Boback reported he has no problem with it as well, and for the purposes of these minutes change it to Absent.

Councilman Reynolds suggested it should be noted if the Councilman is not going to attend, he should let Council know.

Mayor Boback stated for the purposes of these minutes, we can let it go as is, and have this issue on the agenda so we can discuss it in more depth.

MOTION: Councilman Shenko made a motion to approve the minutes of June 19th with the exception that Excused is removed, and corrections on page five as indicated by Councilman Reynolds, "who actually made the motion other than Mr. Murphy." Councilman Reynolds 2nd the motion.

VOTE: The motion passes 5-0

Councilman Reynolds stated that was a Special Town Council impromptu meeting which Mr. Reynolds did not attend. Mr. Reynolds stated he can not vote on this meeting as he does not know what it was about.

Vice Mayor Massucco stated it was a legally called meeting and is in favor of approving those minutes.

Councilman Shenko stated he would like to have Excused removed and in its place Absent: Councilman Shenko and Councilman Reynolds. Mr. Shenko stated the liberty taken by someone putting these minutes together “decline to participate in this proceeding,” how would they know that if we weren’t here. If this language is included, then Mr. Shenko would like to include why.

Councilman Meador stated to further see *why* for Councilman Shenko, and stated to Mayor Boback previously bringing up the issue of Council civility in connection with a memo Mr. Meador sent to Town Hall regarding two memorandums. One was sent by Councilman Reynolds to Town Hall, and News paper article. Mr. Meador stated he was leaving this for Councilman items, but should talk about it now since they are talking about the meeting.

Mayor Boback suggested putting a motion before continuing discussion.

MOTION: Councilman Shenko began to make a motion, but stated he cannot move, as he was not there. Mr. Shenko would like to have Excused removed and just Councilman Shenko and Councilman Reynolds Absent. Mr. Shenko stated for purposes of discussion he will make the motion, but is not sure it is proper as he did not attend the meeting.

Attorney Dalton stated there are no grounds for abstention.

Councilman Shenko agreed with Ms. Dalton and stated he would have to vote on it.

MOTION: Councilman Shenko made a motion to approve the minutes for June 24th with the word Excused removed, and show Councilman Shenko and Councilman Reynolds were Absent. Councilman Reynolds stated he was not at the meeting but it is acceptable for him. Mayor Boback asked if he was 2nding the motion. Councilman Reynolds 2nd the motion.

Vice Mayor Massucco stated there would be a difference between being absent and being declining to attend. There is a difference and it should be noted.

Councilman Shenko reported that he was asked by Attorney Dalton to go into a back closet and discuss the meeting before the meeting started. Lets put that in the minutes, as well as put into the minutes that there was not a note on the door stating they were having a meeting. Mr. Shenko also stated putting in the minutes the fact that no one called the *News-Press*,

and have everything put into the minutes. Mr. Shenko reported they were asked to go into a back room to discuss the meeting prior to it occurring which was what sent Mr. Shenko through the ceiling. Mr. Shenko stated that need to be in the minutes as it did occurred.

Councilman Meador stated he doesn't know where Mr. Shenko was pulled, but Mr. Meador was told among the crowd during a break.

Councilman Shenko asked Ms. Dalton were they asked to go to a back room to discuss the meeting.

Ms. Dalton replied her recollection was that there was a request to all Council members to discuss whether or not they were available to attend a meeting at that time.

Councilman Shenko asked where were they going to discuss this.

Ms. Dalton replied the request was made to discuss it in the other room.

Councilman Meador stated why he objects, and reports having a great deal of respect for Councilman Reynolds but believes it is entirely out of order for memorandum like Mr. Reynolds dating June 26th and follow-up memorandum on July 31st. Mr. Meador stated if Mr. Reynolds wants to refer to meetings as illegal, it should be done here in Council. Mr. Meador stated if Mr. Reynolds really believes meetings have been illegally call, as Mr. Meador stated put you money where your mouth is and file charges or file a lawsuit. Mr. Meador also pointed out personal slurs at Mr. Massucco and at the Mayor which he was not in agreement with. Mr. Meador expressed he has a law degree which he worked hard on achieving, along with a certain ethic code and states the word illegal doesn't fit in there. Mr. Meador stated taking as much offence even though he was not mentioned personally. Mr. Meador politely stated the need to mention this in Council Chambers so as to decide should this be the way to run the Council, or as gentlemen follow the rules of protocol in the treatment of other Councilmen.

Mayor Boback stated that without question, the meeting was legally called. On the advice of Ms. Dalton there were no questions about it and it was stated in the record; Mayor Boback stated it was a legal meeting that needed to be called and it was. Mayor Boback stated not having any problems with changing excused to absent, and they can define that term later on.

Vice Mayor Massucco stated the nature of the meeting were extenuating circumstances which some people were being affected on this beach, and stated his responsibility in trying to help. Mr. Massucco contacted Town Manager to make arrangements for this meeting; not being intended to be a backroom meeting. Mr. Massucco stated Council people had to be pulled to see whether they can attend or not. This was in an effort to the Red Drift Algae. Mr. Massucco resented the way things got out of proportion and stated those items should have never been brought into the Council Chambers and is offended by doing so.

Councilman Reynolds spoke of the meeting regarding the workshop and agrees 100% with what Councilman Shenko said. Mr. Reynolds was pleased that Attorney Dalton had spoken out, as it was overheard by Mr. Reynolds. Mr. Reynolds responded to Council being angry with themselves for not following the rules. Mr. Reynolds expressed everyone should learn servility.

VOTE: Motion passes 5-0

Mayor Boback asked Councilman Meador if he had any comments for July 17, 2006.

Councilman Meador had no comments.

Councilman Shenko commented again on the word excused being removed. Mr. Shenko to page 7 of 21 where it talks of Mr. Shenko making a comparison to be the same to Cape Coral and Sanibel. Mr. Shenko stated they are certainly not the same as Cape Coral, but that the overall total tax rate is the same as Sanibel. Mr. Shenko requested the change be made that Ft. Myers is not the same as Cape Coral and Sanibel. Mr. Shenko also referred to page 9 of 21 where he made a motion and should have read Solomon like.

Vice Mayor Massucco had no comments.

Councilman Reynolds referred to page 7 of 21 at pubic comment, and asked who is Pat Mayher. On page 8 of 21 indicating an inconsistency with what Ms. Dalton replied. Mr. Reynolds stated on page 15 of 21 the word Alba, be corrected to Alva. Mr. Reynolds stated on page 16 of 21 taking out bunch of for sensible reading. Mr. Reynolds stated on page 17 of 21 Pat Mayher was noted again, and there is no Pat Mayher.

MOTION: Councilman Shenko made a motion to approve the minutes for July 17, 2006 with the changes and notations as discussed. Councilman Reynolds 2nd the motion.

VOTE: Motion passes 5-0

VII. ADMINISTRATIVE AGENDA

A. Update and Ranking of Architectural Firms for Newton Property

Theresa Schober presented to staff her request on July 17 to move forward on an architectural assessment on the Newton Cottage for a stand alone restroom facility. Ms. Schober stated the request for qualifications have been submitted with proposals due November 15, 2005. Ms. Schober stated Attorney Dalton reviewed the qualification proposals and was comfortable that Ms. Schober move forward with the same RQ. Ms. Schober stated the two firms who applied for that Renker Eich Parks Architects of St. Petersburg, Fl and Gary Parks Gurri Matute Architecture-Interiors of Coral Gables, Fl. Ms. Schober stated reviewing the qualifications of these two firms with Matt Finney. Ms. Schober stated that Renker Eich is currently under contract with the Town with the restoration plans for the Mound House, and are also working on the Shell Mound Exhibit Project. Ms. Schober stated that they have a tremendous amount of experience with Historic Preservation in Florida. The other company indicated they use a subcontractor out of West Virginia, and misread the scope of the project thinking the Town asking to construct a municipal facility building. Ms. Schober recommended to move forward with negotiations for Architectural services with Renker Eich Parks.

Councilman Meador asked Ms. Schober to refresh his recollection regarding the request for authorization for a certain amount of money for the architectural and what it was they have approved.

Ms. Schober stated when doing a RFQ, you cannot specify a budget in advance since a professional is being hired, and this would be determined by the negotiation phase. Ms. Schober stated she believed the cost for the Town's project would be approximately \$20,000 to \$25,000 with additional cost above that which would be reimburse by the Tourist Development Council.

Councilman Meador stated his question was that Council had approved a certain amount before and he could not recall how much the amount was.

Ms. Schober stated she had asked for a Town contribution in the amount of \$20,000, but stated that was only a estimate.

Councilman Meador thanked Ms. Schober for restating the information for him.

Councilman Shenko stated Ms. Schober had answered the question, as he had voted against that contribution at that time. Mr. Shenko stated he now realizes they have certain contractual obligations that they have to go forward with.

Vice Mayor Massucco asked if Renker Eich Parks is currently under contract with the Town.

Ms. Schober stated they are currently completing the Shell Mound project and they are the architect for the house restoration.

Vice Mayor Massucco asked Ms. Schober professional opinion if the company have done so far to her specification and approval.

Ms. Schober stated absolutely. She further stated the outcome of the garage which was fantastic, and the restoration plan for the house have been well complimented.

Councilman Reynolds stated that the firm has done a good job, but stated that they are taking the home off of the property and states they should not spend another penny on houses on that property. Ms. Reynolds stated getting into the Mound House, and that there is no end. Mr. Reynolds stated he has become disillusioned with this and is not so happy in moving forward. Mr. Reynolds stated he would not vote to approve either of these houses, and that both houses should be moved since they can't leave the Homestead there. Mr. Reynolds stated his tends to lean towards a passive park which he believes is what the people want from what he has heard, and is with the people all the way. Mr. Reynolds stated he would like it without a house or building except the restrooms.

Ms. Schober stated an architectural assessment of the property is a requirement of the Management Plan of Florida Communities Trust.

Councilman Reynolds stated he would still vote against it.

Councilman Meador stated the papers he has at hand talks about architect to consult and prepare restoration plan for the Newtown Cottage, and not for the other building.

Ms. Schober stated that is correct, and a minimal amount of assessment would have to be done at the other building which she presented to Council in July 17th. Ms. Schober stated the State requires any building over 50-years a minimal amount of assessment done. Ms. Schober stated writing a letter to the State asking the exact requirements needed and these should be in the contract for these services.

Councilman Meador stated that basically it will be following the plan that the Town agreed to when they acquired the property which is the Newton Cottage.

Ms. Schober stated that was her understanding from direction from Council.

MOTION: Councilman Meador made a motion to approve proceeding with the Renker Firm as suggested by Ms. Schober and staff. Councilman Shenko 2nd the motion.

Councilman Reynolds stated he had asked for the Communities Trust document last week and has not received it. Mr. Reynolds pointed out that he has not read the document but as mentioned by Mr. Meador, it reads for the Newton Cottage. Mr. Reynolds stated that one is not the Newton Cottage; the Newton Cottage is the one that you are heading to have removed from the property. Mr. Reynolds stated he would like to have the document in order to read it, and said that Florida Communities Trust should be notified if the Newton Cottage is being removed instead of the other Cottage which is pertinent of the Communities Trust loan.

Vice Mayor Massucco had no further comment.
Councilman Shenko had no further comment.

Councilman Meador referred to Ms. Schober regarding his understanding of what was approved by Florida Communities Trust what is referred to in the documentation is the Newton Cottage, which is the smaller of the two.

Ms. Schober stated the Northern Cottage the building at 486 Estero Blvd which is the one that was relocated from Alva, is referred to the Newton Cottage.

Mayor Boback opens for public comment:

- No public comment was given.

Mayor Boback closes for public comment:

VOTE: Motion passes 4-1 with Mayor Boback, Vice-Mayor Massucco, Councilman Meador and Councilman Shenko in favor with Councilman Reynolds dissenting.

B. First Public Hearing Ordinance 06-14 Changes to Special Magistrate Provision

Mayor Boback announced they are postponing this until the next meeting.

Attorney Dalton reported they may be done and suggested when they do open it; Ms. Dalton read a caption “and continue it if you chose to have it at the Land Use Meeting” that way you can continue it without re-noticing it from scratch. Ms. Dalton stated there was a portion that was not attached to the agenda.

Mayor Boback stated opening it.

Attorney Dalton announced Ordinance 06-14 and Ordinance amending regulations in Chapter one, two, ten, thirteen, and thirty-four of the Town of Ft. Myers Beach Land Development Code providing authority adopting amendments to The Land Development Code and their Titles:

- Chapter One, General Provisions.
- Chapter two, Administration.
- Chapter ten , Development Orders and Engineering Standards.
- Chapter **thirteen** , Zoning District Designs Standards of Non-conformities; providing severability and establishing the effective date.

Attorney Dalton asked if it is the will of Council, Ms. Lambert would indicate the continuation date for the hearing.

Councilman Meador stated this is not the first time this has happened on an Ordinance and asked if they are working on some procedure.

Attorney Dalton replied yes Sir.

Councilman Shenko indicated that he previously mentioned in a memo that he will not be here on the 14th, and stated excused or not he will not be here if it were continued to 14th, he will not be attending; Mr. Shenko did state he will be here on the 21st.

MS. Lambert announced it will be continued to Monday, August 14th, at 3:00 PM.

C. Best Western FEMA Hazard Mitigation Request

Attorney Dalton referred to a funded Grant Agreement between the State of Florida, and the Department of Community Affairs (DCA) and the Town of Ft. Myers Beach. Ms. Dalton reported the Town is required certain indemnifications, should Best Western fail to follow through with their commitments, the Town of Ft. Myers Beach would be financially responsible to the State of Florida under this agreement. The Sub-Recipient is in agreement with providing of letter of credit and stated discussing the terms. Ms. Dalton stated this would give the Town the ability in its discretion to tap into that letter of credit and would not have to engage into any litigation etc to do that. Ms. Dalton stated that it is her understanding the Sub-Recipient is not willing to provide financial security to the Town for the period of time following conclusion of the contract.

Mayor Boback opens for public comment:

- Bob Rockwell Project Manager for Best Western. Mr. Rockwell stated that FEMA is requesting a FEMA Litigation Program. Mr. Rockwell stated the owners do not want to provide a letter of credit because FEMA will allow the county to do inspections, and FEMA does a monthly inspection with them. They provide all of the documentation, FEMA approves it, the owner prepays for all the work. Mr. Rockwell stated there isn't a risk to the Town. Mr. Rockwell stated if they had to provide a letter of credit for the grant, they will do so.

Councilman Shenko had spoken to Ms. Dalton in regards to this item, and states they are the application, they receive the money, they reimburse the owner of the property. Mr. Shenko stated they have a continuing obligation with FEMA for five years after the construction is completed or of the original grant.

Attorney Dalton stated that technically, they are not the recipients of the money and believes the money goes directly to the Best Western.

Councilman Shenko stated he recalls through our prior accounting, the money came through the Town of Ft. Myers Beach and then was written back out in prior budgets, and states having done one of these in the past. Ms. Shenko discusses his concerns regarding obligations the Town of Ft. Myers Beach will have monetarily to FEMA for a certain period of time. Mr. Shenko want to make sure they are covered for that. Mr. Shenko asked Ms. Dalton if she was able to confirm if Lee county have a similar program.

Attorney Dalton stated she was unable to get any answers for that as of yet. Ms. Dalton also clarified that our contract with the State of Florida while there is a FEMA component, technically the State of Florida that the Town would be dealing with in terms of payback.

Councilman Shenko stated he does not feel comfortable with ongoing and continuing potential monetary obligations to the Town that extends beyond the date the construction is completed. Ms. Shenko also stated by having a letter of credit he feels it would not address all the issues. Mr. Shenko suggested direction to Attorney Dalton and Town Manager looking into how other communities handle this as he is in favor of the residents and business taking advantage of this, but is not in favor of the Town taking risk.

Vice Mayor Massucco concurs with Mr. Shenko of an ongoing liability for three, four or five years. Ms. Massucco would prefer to have Rockwell carry the expense rather than having the Town having this liability over their heads. Mr. Massucco asked Ms. Dalton her recommendations.

Ms. Dalton stated it is a risk analysis, and believes it is a policy call. Ms. Dalton made an example regarding the letter of credit stating if there were to be a bankruptcy, the Town would be classified as in contingent liability, and suspect who ever secured the letter of credit would go back into the bankruptcy court. Ms. Dalton stated again this is a risk analysis and does Council want to move forward with the grant project.

Vice Mayor Massucco suggested they need to find out the better way, as they are responsible to the Town and the Town's money. We need to avoid liability.

Ms. Dalton suggested absent of bankruptcy consideration the letter would provide protection to the Town. Ms. Dalton mentioned the recipient is in favor of providing a pass to the term of the contract.

Vice Mayor Massucco asked Ms. Dalton would this continue three, four or five years.

Ms. Dalton replied yes.

Councilman Reynolds stated the amount of \$630,000 for FEMA, and Best Western has already paid \$230,000, and further states they are assuming good amount of money if they don't get a back up.

Councilman Meador stated that we are not talking about Town liability, we are talking about putting other tax payers money at risk, to improve one tax payers property. Mr. Meador stated this has been done before with the Lighthouse property. Mr. Meador commented to Ms. Dalton that Mr. Shenko is right regarding the money coming to the Town and there might be some FEMA funds at hand in connection with the Lighthouse project. Mr. Meador stated those funds are disbursed through the Town as a recipient from DCA. Mr. Meador stated he is not willing to put other tax payers money at risk, to benefit one tax payer. Mr. Meador stated should there be risks, the property owner should bear the risk.

Vice Mayor Massucco referred to the Lighthouse project and stated that the money did come into the Town, then it was dealt out by the Town upon completion of the project. Mr. Massucco stated at the time of the occurring felt it was unfair for the Town to assume that responsibility of caring for the money, without having an administration fee attached to it.

Mayor Boback stated there are some administrative fees. Mayor Boback asked who is representing Best Western and to come forward. Mr. Boback asked why should the Town accept liability for your project.

- Paul Maldon part owner of the Best Western Beach Resort. Mr. Maldon stated he is confused as to why the Town become liable. His understanding is he would have to pay for all the bills out of pocket, and then go under inspection by the Town and by FEMA. If inspection is passes, then, FEMA would reimburse me. Mr. Maldon stated that would go through the Town and the Town would pass it to

Mayor Boback replied his understanding FEMA can still come back four to five years and do an audit and they were to find some of the things done not OK by them, not reimbursable. The Town would then be liable to pay back the cost to FEMA.

- Mr. Maldon asked if they come and inspect it and agree to give me the money what are they going to come back for.

Mayor Boback replied that is when they do their audit.

Attorney Dalton reported paragraph five of the agreement in subparagraph (I) talks about the audit that is required and if any portions of the funds or entire funds where not spent in according with the conditions of the agreement the recipient shall be held responsible for reimbursement all funds not spent in accordance with the requirements and this references the five year period.

- Mr. Maldon stated he doesn't see FEMA passing any money forward until they inspect things.

Mayor Boback stated if the Town is liable up to five years, it is the taxpayers money we are putting out there.

- Mr. Maldon stated this would help the tax rate for the Town.

Mayor Boback stated that does not have anything to do with the tax rate. It might have something to do with the flood. Mayor Boback stated they are putting \$630,000 dollars of taxpayers money out there for five years.

- Mr. Maldon stated he is at the mercy of FEMA, Lee county, the Town of Ft. Myers Beach. Mr. Maldon stated spending the money and paying the bills. Mr. Maldon suggested to come and look at it and if it doesn't meet their approval not to pay him any money.

Councilman Reynolds stated in response to Mr. Maldon removing what is underneath in the long run is a good direction, and that it took a lot of strong decision in taking that direction. Mr. Reynolds stated he doesn't recall Council ever being approach regarding this project. Mr. Reynolds stated the Lighthouse project was never approached and states he hopes the new Town Manager will consult with Council before making such decisions. However, Mr. Reynolds stated they should move forward in resolving this situation for them.

Ms. Lambert stated they did contact DCA regarding the language which is binding us and making us liable if there was any chance to change the wording to remove that liability. Ms. Lambert stated they were given a negative answer to that question. Mr. Lambert and indicated that she does not know how the other municipalities would handle it, and asked if this is the direction Council wants her to take.

MOTION: Councilman Meador made a motion to move this matter at this time and not make a final decision. Mr. Meador suggested getting more research through our Town Manager, and Town Attorney and with the owner of the property as well to satisfy the Council that we would not be putting other peoples money at risk. Councilman Reynolds 2nd the motion.

Ms. Lambert stated she was not familiar with the amount of work that goes into that, but knows a lot of staff time has gone into the Lighthouse project. Ms. Lambert suggested researching the time spent as well as what other municipalities are doing.

Mayor Boback asked Ms. Lambert how much time she requires to get this information.

Ms. Lambert stated she try to have it done before the next Council meeting which would be on the 21st.

Mayor Boback replied he would like to get some answers for these people.

- Mr. Maldon stated the FEMA grant will expire this month as it has been dragging for two years.

Ms. Dalton stated she knows this was extended once already.

Ms. Lambert stated the first deadline was on June 30th, then they were told on July 31st so it may be the second time it has been extended.

Ms. Dalton had spoken with the representatives of DCA and they indicated they were not willing to modify any provisions of the contract.

- Mr. Maqldon stated he was told that they do thousands of these grants a year, and never had a situation as his.

Councilman Reynolds asked Mr. Maldon if he has spoken directly to one the members of FEMA.

- Mr. Maldon replied he hasn't, but Mr. Rockwell has done so on his behalf.

Councilman Reynolds states perhaps he should be the one to ask the questions he had on his mind.

Vice Mayor Massucco referred to Mr. Maldon not leaving with the wrong impression that Council doesn't want him to proceed with this project, and states it is something they all agree in seeing it move on. Mr. Massucco stated they are sworn on behalf of the people, and they have to watch out for their money.

- Mr. Maldon asked how was this handled with the Lighthouse.

Vice Mayor Massucco stated he was not involved and does not know the details. Mr. Massucco stated he believes this could be cleared with the proper information, and further stated they are working on his behalf and would to see it getting done.

Councilman Reynolds asked if Mr. Maldon got the project done.

- Mr. Maldon stated no, that he has until next year.

Attorney Dalton referred to paragraph eight of the contract which stated the recipient which is the “Town” shall monitor its performance under this agreement as well as that of its sub-contractors, sub-recipients which is the “Best Western” and consultant who are paid from the funds provided under this agreement to ensure the time schedules are met, the budget in scope and work is accomplished within a specific time period and other performance goals stated in this agreement is achieved.

Mayor Boback stated there is a considerable amount of administrative work and they should investigate.

VOTE: The motion passes 5-0.

D. Special Event: Chamber of Commerce 1st Annual Pirate & Seafood Festival

Georgia Reinmuth stated the Ft. Myers Beach Chamber of Commerce and several of the Time Square Merchants are considering putting on an event for our Pirates Festival on October 7th and 8th. We are asking for the cooperation of Council in allowing us to use Old San Carlos Blvd between 1st and 3rd street for our event. This will be in benefit to the Boys and Girls Club, The Bay Recreation Center on Ft. Myers Beach.

Vice Mayor Massucco asked if the event will run like Taste of the Beach.

Ms. Reinmuth stated it would be pretty much the same with the exception, it would be a two day event.

Vice Mayor Massucco also asked it is also to benefit the kids which he is in favor of, and stated they never had a problem with Taste of the Beach. It would also benefit the business.

Ms. Reinmuth reported to Council some of the ideas they had for this event.

Councilman Reynolds asked Ms. Reinmuth how would they go about moving the people on and off the island by closing 3rd street.

Ms. Reinmuth stated closing Old San Carlos Blvd between 1st and 3rd.

Councilman Reynolds stated he has no problems with the event.

Councilman Meador stated the materials they have indicate staff is asking for direction. Mr. Meador asked what direction is needed by what staff member.

Mr. Murphy stated the direction was that the parking bag used on the meter and the fee be waived.

Councilman Meador reviewed some figures staff has prepared for this event of two days.

Mr. Murphy stated the event would be two full days with two full blocks, and suggested Mr. Green would better know how many meters are involved.

Mr. Green stated there are approximately 25 to 30 meters which makes about \$3200 a year, \$9.00 dollars a day.

Councilman Meador stated the highest would be \$18.00 dollars a day and if it were 20, we would be taking about \$1200 dollars in revenue. Sort of the Town contribution to the kids.

Councilman Shenko inquired about the beer station which will be provided by Budweiser that would at the event and if they were going to wave the open container law. Mr. Shenko asked if so where and how does it affect our merchants who are in that area and do comply. Mr. Shenko asked would the entire area be exempted from the open container law.

Ms. Reinmuth stated the Dockside has agreed to let them do this, and they would have their own permit as they did for the Taste of the Beach.

Councilman Shenko asked would this be limited to their property or would it be to the entire area.

Ms. Reinmuth stated that would be the area that they have which have not yet been written on paper as they are just starting new. Ms. Reinmuth mentioned it would be like the Taste of the Beach where the permit included the beer tap and the street along the area of the tent.

Councilman Shenko asked what time the band will stop.

Ms. Reinmuth stated on Saturday night we wanted to go on until 9:00 PM. Ms. Reinmuth also stated when they apply for their permit they will also include letters from the merchants in the area so that you will know they are in agreement with what is being done.

Councilman Shenko stated having no problem with the event or with the parking.

Mayor Boback stated he has no problem as well as it will be going to a good cause, Bay Oaks do a lot of good things as well as Boys and Girls Clubs.

Councilman Reynolds suggested to Georgia the requirements of the people who come for permits, Mr. Reynolds stated they like to see a list of the expenditures and where the money is going to and would like to know who else is contributing.

Councilman Meador announced that they have institutionalized NIMS and asked Ms. Lambert will be setting up incident command on this one.

Ms. Lambert asked if this was being addressed as an emergency.

Councilman Meador stated that the NIMS law require an incident command set up for every special event and emergencies.

Ms. Lambert stated she did not interpret it that way.

Councilman Meador as a part of the institutionalization, he was getting Ms. Lambert use to working with it, and Mr. Meador will let it go at that.

Mayor Boback opens for public comment:

- Brad Hill stated he has held a race boat last year and was a pretty good success. He asked if there was a way to figure out the cost of the parking a weekend in advance.
- Herb Aiken owner of Burrito Go-Go states he would like to see it approved stating any loss of revenue of parking would be more than made up for by the additional traffic in all the other parking areas.

Mayor Boback closes for public comment:

MOTION: Councilman Shenko made a motion to approve as presented waving the parking fee. Councilman Reynolds 2nd the motion.

Discussion:

Councilman Meador stated he was not too sure of what they were approving, as they cannot approve the event; pre-application, is the motion limited to not collection the parking meters. No application filed and we should ask for direction from staff on this.

Councilman Reynolds withdrew his 2nd.

AMENDED MOTION: Councilman Shenko amended his motion indicating to waive the parking fee.

Ms. Dalton stated it can be approve in principal and tell staff to carry it out, or you can require that it come back.

Councilman Shenko stated his concern is they need to start committing money. Mr. Shenko will not be here for the next meeting. Mr. Shenko approves the wavier of the parking fee and directs staff to work forward with this application to bring it back to Council for subsequent action. Mr. Shenko recommends approval. Vice Mayor Massucco 2nd for discussion.

Councilman Reynolds stated that they should have an application before they approve the details.

Vice Mayor Massucco asked Mr. Murphy if this will also include the waiver for the bags.

Mr. Murphy stated yes that that is what they are asking for.

Councilman Meador commented FEMA provides a course for NIMS and ICS special event planning. Mr. Meador stated that this is part of what they have adopted when they institutionalized the NIMS and ICS program. Mr. Meador suggested getting familiar with it and would provide Council and Town Manager with materials pertaining to the special events planning.

VOTE: The motion passes 5-0.

E. Update on Chapel by the Sea

Attorney Dalton stated she received a letter dated August 1st from the law firm who represent God's Table which contain five responses to the Town's solicitation for God's Table to move forward to help solve what was perceived as a problem. Ms. Dalton stated if the Town wishes to proceed with considering a Code Enforcement Action, Ms. Dalton recommended due to highly specialized area of law, an advisory opinion would be sought by an attorney who has had expertise in the Federal arena. Ms. Dalton also reported there would be an attorney fee provision should the Town proceed litigation and they were to lose.

Mayor Boback stated what they need to determine at this time is whether they want to obtain the services of another attorney, or move forward with the Code Enforcement Action.

Councilman Reynolds asked Ms. Dalton it was not clear that if they were to the God's Table to court, as they represent a program it would need to be the institution.

Ms Dalton replied the zoning issue would be Chapel by Sea. Ms. Dalton stated she was not sure if Quarles and Brady was representing the program or the church. Ms. Dalton stated the Code Enforcement Action would be the property owner which is Chapel by the Sea.

Councilman Reynolds thanked Ms. Dalton for clarifying this issue. Mr. Reynolds shared goals the Presbyterian church came forward with #1. They will have photo ID. #2. They will offer available jobs. #3. They report attendance to the Sheriff. #4. They will consider banding those who trespass the church property. #5. Use restrooms when convenient to the church staff.

Councilman Meador asked Ms. Dalton if she had a recommendation to the two attorney's she has spoken to.

Attorney Dalton recommended Fowler and White, who are representing this Town on matter regarding an ABA lawsuit. They have experience in religious discrimination cases

Councilman Meador asked Ms. Dalton of a budget obtaining an advisory

MOTION: Councilman Meador recommended to get an advisor opinion from Fowler and White to put a budget with a maximum \$ 2,000 dollars to get the opinion whether we are getting a prayer under God's Table getting a successful return if we proceed on this. Councilman Shenko 2nd the motion

Mr. Meador stated that he would like to get the opinion as to whether or not to proceed. Mr. Meador would like a follow-up with the Presbyterian Church who sent the August 1st letter regarding their banning an individual, specifying they will ban an individual from the program if they are arrested for trespassing or any other criminal offense in Lee County, Mr. Meador would be happy and doesn't believe it being unfair to the church..

Discussion:

Attorney Dalton asked a question regarding banning individuals who have been arrested for trespassing or other criminal offenses in Lee County. Ms. Dalton asked if Mr. Meador meant arrest or convicted.

Councilman Meador stated they use the word arrested which is fine.

Councilman Shenko asked for an amendment to Mr. Meador motion as there are two Fowlers White; it is the Fowler White Bob Banker out of Tampa.

AMENDED MOTION: Councilman Meador amended his motion. Councilman Shenko amended his 2nd.

Councilman Shenko stated for the purpose of discussion he has previously disclosed this when Denise was hired from Fowler White for the ADA litigation. Mr. Shenko agrees that they need to get professional advise someone that does this kind of litigation and comes forward to tell us exactly where we stand with this type statute. Mr. Shenko stated that Mr. Meador made a very good point where he referred to if they get arrested for trespassing they would consider banding. Mr. Shenko stated for the purposes of this meeting having this further investigated by an attorney who is familiar with Federal Court and Florida Law and come back with an opinion.

Vice Mayor Massucco stated no more \$250 attorneys fee. Mr. Massucco considers this movement by Chapel by the Sea which they have outlined five areas that they are willing to discuss. Mr. Massucco stated he would prefer to avoid any further litigation as the Town has enough of it now. Mr. Massucco doesn't feel this warrant a \$250 dollar attorney fee and suggested another workshop to see if we can improve on the five areas they have made here as it is a start.

Councilman Reynolds also agrees to no more attorneys for the increasing cost. Mr. Reynolds stated not going to court without trying to work with those folks and try to come up with solution. Mr. Reynolds stated this was not the Councils idea, it was the public. There were some people who became offended when the homeless people. Mr. Reynolds stated no court case at this time, but agrees with the idea that they need a person who is familiar with Federal with religious discrimination intervention.

Mayor Boback stated the letter had not impressed him, and they did not hear from them for a while after the workshop. Ms. Dalton sent them a letter asking whether or not they were going to send us some suggestions from our workshop. Mayor Boback stated that if it weren't for Ms. Dalton's letter sending the letter inquiring the information, we would not have a letter in front of us. Mayor Boback states in the last two or three days, he has received additional complaints about the area of Chapel by the Sea, cars being broken into on several occasions. Two people from Chapel by the Sea were arrested breaking into a local establishment here and were taken away. Mayor Boback stated all they came up with was

they will consider banning them, and strongly believes this was something just put together to try to put off any possible action by this Council. Mayor Boback also stated this is a zoning issue, and stated that by not enforcing this zoning issue what would be the next one that will not be enforced. Mayor Boback agrees with the motion on the table.

Councilman Meador stated just for clarification for Vice Mayor and Mr. Reynolds the motion was not to go to litigation. The motion was to get an opinion.

Mayor Boback opens for public comment:

- Doris Kovach of Ft. Myers Beach. Ms. Kovach agrees with Mr. Reynolds and stated her concerns.
- Herb Aiken speaking as a resident. Mr. Aiken stated the church is doing good work for the homeless people and they should be commended and not persecuted.
- Pat Smith stated one of the things the church has not indicated was getting along with their neighbors.
- Chris Loffreno of Estero Blvd believes the church might be doing some good things with the homeless, but there are also a lot of problems. Mr. Loffreno also indicated that his car was almost broken into at 10:30 in the morning in front of his business by an intoxicated homeless person. Mr. Loffreno stated that there are problems with this program.

Mayor Boback closes for public comment:

VOTE: The motion passes 3-2. Mayor Boback, Councilman Shenko and Councilman Meador in favor with Vice Mayor Massucco and Councilman Reynolds dissenting.

Attorney Dalton asked for direction in regards to the response letter from Quarles and Brady, and asked if the Council wishes Ms. Dalton to proceed with line of thought indicated by Councilman Meador.

Mayor Boback stated he has no problems continuing a dialogue with the church stated, as it is not a persecution issue it is a zoning issue. Mayor Boback believes they need to pursue in order to determine whether we can enforce our own zoning issue.

VIII. COUNCIL MEMBERS ITEMS AND REPORTS.

Councilman Meador stated his items were touched on earlier.

Councilman Shenko stated he has a memo from Town Council and Staff dated August 3rd relating to two items. The first one is Risk Management; Mr. Shenko stated it is way past time that we have someone assess the risks and how we are managing the risks for Ft. Myers Beach. Mr. Shenko asked that this be brought forward as an agenda item the next meeting that he will be attending where they talked about hiring a potential risk manager.

The 2nd item is a separate issue as it relates to the water utility. Mr. Shenko stated that is not for profit corporation under the Internal Revenue Code where we are retaining the earning of \$2 million dollars and have been doing it for years. Mr. Shenko stated the audit shows \$250,000 dollars of the income for sewer fees. Mr. Shenko stated he is not comfortable with the way it was set up.

Vice Mayor Massucco stated his 1st item regarding the water. Bob Burandt, a former attorney who worked with us; he complains of paying \$15.00 charge per month to read a meter as he feels it is in excessive. Vice Mayor asked Mr. Green if he could comment on this.

Mr. Green stated he was at a disadvantage as he did not have the documentation with him, but believes it is a fire suppression meter.

Councilman Meador asked if this was a water meeting stating this would be appropriate to discuss it in our Corporation.

Vice Mayor Massucco agreed that it could be discussed at another time.

Councilman Shenko disagreed.

Vice Mayor Massucco stated his 2nd item was from the *Sand-paper* where he was asking to put an issue on the agenda. Vice Mayor asked if this could be put on the agenda.

Mayor Boback stated this has already been addressed.

Councilman Meador stated there is no need for a Councilman consensus.

Ms. Lambert announced the date of Monday 21st at 6:30 PM for our next regular meeting.

Councilman Meador asked the item is doing our legal advertising in all local news medial in addition to the *New Press*.

Vice Mayor Massucco stated they have put it on the *Observer* but not in the *Sand Paper*.

Ms. Lambert stated they started to put it in the *Observer* when the website went down. Ms. Lambert stated that there is no need to go through the *Sand Paper* or the *Observer* now that it is being sent to the *News Press*. Ms. Lambert stated that when they send a legal notice through the *News Press*, they are also able to get an affidavit. The *Sand Paper* nor the *Observer* were able to provide this. Mr. Lambert also informed the Council of the cost.

Vice Mayor Massucco stated this should be further discussed. Vice Mayor referred to a memo from Jack Green regarding the Estero State Holders Meeting, and agrees with Mr. Green's recommendation to Marine Resources Task Force and suggested to go ahead and involved them.

Vice Mayor Massucco referred to a letter regarding Diamondhead and the failed attempts to meet with Mr. Murphy, and states that they should.

Ms. Lambert stated that they have a tentative date set for next Thursday.

Councilman Reynolds stated to Ms. Dalton his previous discussion having a Sunshine seminar as there are a lot a new people in Council and this would help.

Ms. Dalton replied at the time Mr. Reynolds had spoken to her he directed her to contact Sanibel. The Sanibel City Attorney indicated they were interested but not in the winter time.

Councilman Reynolds requested for this to be put on for discussion regarding a seminar.

Councilman Meador stated that 50% of that was Sunshine laws.

Councilman Shenko stated that Lee County is having an upcoming one and believes there was a memo to that notice.

Ms. Dalton stated Lee county sponsors a seminar similar to the one Ms. Dalton has put on their workshops. Ms. Dalton states they are doing the same and are inviting us as a courtesy.

Councilman Reynolds commented bringing up the water before Council.

Mayor Boback stated his 1st item Alexis Galarza who has applied to be appointed to the Marine Resources Task Force. Mayor Boback stated they

do have an opening and asked whether they wanted to put it on Council item agenda, or approve it.

Councilman Reynolds stated she is with the same company that the other gentlemen

Mayor Boback asked Ms. Lambert to put it on the agenda.

Mayor Boback spoke about the five items they had come up for the agenda. 1. Beach renourishment, 2.Lane Management, 3.Estero Blvd repairs and maintenance, 4. Bypass and Sidewalks 5. Lee Transit Authority. Mayor Boback stated these will be the items discussed at the meeting.

Mayor Boback requested Michelle Mayher to provide a copy of their inner local agreement.

Councilman Shenko stated there has been some material prepared by individuals in Ft. Myers Beach which they have asked to have those material available to County Commissions. Mr. Shenko named Mr. Shilling related to Beach Nourishment; Mr. Shenko asked whether Council wanted to have these available to the County Commissions or not.

Mayor Boback stated that they can have the information available for them, and if there any concerns they can address those issues.

Councilman Shenko asked if they would be able to present individuals who could speak.

Mayor Boback stated if they address their staff with certain things, and with have information contrary to what we feel we will be able to address those at that time.

Mayor Boback stated that it went very well, and they were very receptive to what we wanted to talk about, and to what they wanted to talk about. Mayor Boback stated Chairwoman Hall and Mr. Stillwell are more than willing to be open minded and willing to work with us.

Councilman Meador asked if Park & Ride is not on the agenda, and see this linked up with the county plan for us and Beach Nourishment.

Mayor Boback stated this can possibly be discussed under the guide of Beach Nourishment.

Councilman Shenko stated that the Lee Transit is also part of Park & Ride.

Mayor Boback stated there are options to bringing this up, but that is not the focus of it at this point.

Councilman Reynolds stated that is very much part of the plan and they are in the center of it.

Mayor Boback agreed.

Councilman Reynolds stated Ms. Lambert scheduled a budget meeting for the 9th, which he will be unable to attend.

Ms. Lambert stated she was going to confirm this. Staff will not be available would not be here until the 14th.

Council review the dates available. Ms. Lambert confirmed the date for August 18th at 3:00 PM.

IX. TOWN MANAGER'S ITEMS

Her items were already discussed.

X. TOWN ATTORNEY'S ITEMS

Attorney Dalton asked if Council wishes to schedule a Utility Corporation meeting to address the items under Council items, and stated Councilman Meador was correct.

Councilman Shenko stated the Town is the guarantor on a \$3. million dollar note. Mr. Shenko stated the Town Council can meet regarding the guarantee of a \$3 million dollar note and whether a Corporation was properly set. Mr. Shenko stated he would prefer they meet as Council and discuss issues regarding the water utility.

Ms. Dalton referred to Mr. Burandt letter, but does not know if it is specifically the Water Utility Corporation or not.

Councilman Meador stated he believes it might be, but is not sure.

Mayor Boback stated Mr. Green should look that up as it is an in-house topic.

Ms. Dalton confirmed no Corporate meeting.

Councilman Shenko stated they still have a Council meeting first.

Councilman Meador stated they still have a budget to look at.

Councilman Shenko stated he would like to know how does a non-profit Corporation set a budget for \$3 million dollars. Mr. Shenko states it is the Town who set the budget.

Mayor Boback stated he doesn't know how the Council can set a budget for the Corporation.

Ms. Dalton stated the Corporation would legally have to set their own budget.

Councilman Shenko stated he wanted an accountant or an attorney to tell me that they can retain earnings of \$2 million dollars in a Non-Profit Corporation and he would like to know what the money came from. Mr. Shenko is not satisfied with the response.

Councilman Meador stated to Mr. Shenko he will join with him in getting a 2nd opinion.

Mayor Boback stated to put this on the next Council meeting and we will then determine whether they will need a Corporate meeting from there.

XI. FINAL PUBLIC COMMENT: Public comment at this time is heard on any item and/or issued of concern.

Mayor Boback opens for public comment:

- Mr. John Gerola from Ft. Myers stated one of his businesses here is Seasonal Parking Lot Operation. Mr. Gerola stated he would like to request a meeting or a hearing before the commissioners resolve the issue for the operating dates.

Mayor Boback stated to speak with Ms. Lambert to schedule a date.

- Mr. Phil Winter stated his item is signs. Mr. Winter suggested giving out letter to the business and owners stating the do's and don'ts with penalties.
- Ms. Reggie Reynolds suggested the Council members working in being more civil to each other. Ms. Reynolds stated that they all have the same interests and they all support you. Ms. Reynolds suggested taking a group a picture of the Council and place it in the wall.

Mayor Boback closes for public comment:

XII. ADJOURNMENT

MOTION: Mayor Boback made a motion to adjourn. All Council members so moved.

VOTE: The motion passes 5-0 at 9:23 PM.

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

Respectfully submitted,

Debbie Cardoso
Transcribing Secretary