

**FORT MYERS BEACH  
TOWN COUNCIL**

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

---

<b>AGENDA</b>	<b>Regular Town Council Meeting</b>	<b>3:00 PM</b>
---------------	-------------------------------------	----------------

---

**I. CALL TO ORDER**

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

**Absent:** Councilman Reynolds.

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

**II. PLEDGE OF ALLEGIANCE:**

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

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

**Public Comment:** Please note that public comment will be heard at the time the agenda item is discussed.

Mayor Boback announced he was going to move Administrative Agenda Update on Utelco in order to let Mr. George Knott begin his report before beginning with Consent Agenda.

**IV. CONSENT AGENDA:**

*A. Approval of Minutes- August 21, 2006; August 29, 2006; August 30, 2006.*

**MOTION:** Councilman Meador made a motion to approve the Agenda Minutes for August 21, 2006; August 29, 2006 and August 30, 2006. Councilman Shenko 2<sup>nd</sup> the motion.

Councilman Shenko asked the motion maker if they can make two changes on the Agenda regarding the August 29<sup>th</sup> and August 30<sup>th</sup> Special Town Council Meeting to indicate Mr. Shenko being present.

Mayor Boback acknowledges the changes made. Vice Mayor Massucco stated he had no problems with those changes. Councilman Shenko stated with the changes made, he will 2<sup>nd</sup> the motion.

Ms. Dalton addressed the Council regarding deleting the reference transcribing secretary from the minutes; she stated her concerns that by approving the minutes stating transcribing secretary, it may be construed as a transcript which it is not.

**AMENDED MOTION:** Councilman Meador amended his motion with the deletion of any reference as to who typed the minutes, and deletion of the reference transcribing secretary. Councilman Shenko amended his 2<sup>nd</sup>.

**VOTE:** The motion passes 4-0.

## V. ADMINISTRATIVE AGENDA:

### A. *Update on Utelco Litigation*

Mr. George Knott reported Utelco having executed a settlement agreement consistent with the terms previously discussed with Council. Mr. Knott stated the terms of this agreement and noted the Town will pay Utelco \$395,000 within 20-days from the date the agreement is signed. Mr. Knott stated both parties will exchange mutual general releases. Mr. Knott is requesting the Town to consider the offer.

Ms. Dalton reported she had the opportunity to draft a Resolution but is requesting Council to approve this which is time sensitive and she will prepare a Resolution based on what Council decides upon doing; Ms. Dalton requested Council to execute it.

**MOTION:** Councilman Shenko made a motion to approve the settlement agreement and payment as outlined by Mr. George Knott. Vice Mayor Massucco 2<sup>nd</sup> the motion.

#### *Discussion:*

Councilman Meador referred to concerns previously raised; raising the matter to both Council for confirmation that they make one payment and it should be one payment only; Mr. Meador referred to both parties there are no residual exposure anywhere else.

Mr. Knott stated that was correct pointing out the surety is consenting to this payment. He noted that he was not aware of any claim that can be asserted by a third party regarding any representations.

Ms. Dalton noted in the settlement agreement it does state any claims that might arise from this agreement with regards to anyone breaching the documentation, it would give right for further litigations.

Councilman Meador stated he wanted to clarify that there are no sub-traits where they have a clause to the money and they need to protect it.

Mr. Knott stated that he was unaware of any writ of garnishment filed by Rinker Materials stating that has been dismissed and states an order of dismissal has been entered by the Circuit Court, and that he has a copy of the order of dismissal. He further stated he is unaware of any claims that might be asserted by this payment.

Councilman Shenko stated his questions have been answered.

Vice Mayor Massucco stated he had no questions.

Mayor Boback stated he had no questions as well.

**VOTE:** The motion passes 4-0.

***B. Presentation – Lee County Transit Authority***

Mr. Joel Rey, Senior Project Manager with Tindale Oliver & Associates stating they are a consultant of Lee Tran. Mr. Rey stated this project was presented at a recent MPO meeting and they were asked to talk about the plans they developed to the Town of Ft. Myers Beach, and the process they used to develop it. He made his presentation. *See attached.*

Councilman Shenko stated he is not anti Transit, nor is he anti Transit Authority, but states his concerns are of special districts. Mr. Shenko pointed out that they already have an existing Transit Authority known as Board of County Commissioners stating that this Board of County Commissioners can tax them additional 6/10ths of 1 million and stated it is what they would take for funding for the Transit Authority. Mr. Shenko pointed out the Board of County Commissioners can put a referendum for sales tax. Mr. Shenko stated this would be creating another government and that there is more representation; he points out that they have no representation if they vote for all five County Commissioners.

Mr. Rey responded to Mr. Shenko regarding voting for all five County Commissioners but they have no say in Transit.

Councilman Shenko stated having it now, but they won't have it if they don't vote for the people; he states they can elect County Commissioners now.

Mr. Rey responded the Town of Ft. Myers Beach currently not having direct input into the planning process. He stated even though they have one member out of nine, the committee would decide what the actual Board representation would look like and how it would be determined.

Councilman Shenko stated they have five out of five as our County Commissioners and as a Town Council they can speak to County Commissioners to let them know. Mr. Shenko stated they have had issues which have come up, but stated he has little faith in independent special districts. Mr. Shenko states this is a method which is advocating responsibility and puts it into an appointed board which deals with millions of dollars with the same authority the Board currently has with the Board of County Commissioners.

Mr. Rey states he agrees with Mr. Shenko in the way he explains it. Stating that it is hard for him to speak on behalf of the Board of County Commissioners as to what their purpose for persuing that Authority, but states that was the guidance they were given from the MPO Board. Mr. Rey noted that there is a federal and state movement to push funding of Transit as Mr. Shenko stated is a loss later. He states there is no profit.

Councilman Shenko referred to a presentation back in October, stating it alluded to Jacksonville indicating all communities but one beach community opted in; he asked Mr. Rey if this was correct.

Mr. Rey stated he was not sure if Jacksonville was discussed at that meeting, but stated that Hillsborough had an issue regarding one of the municipalities which did not opt in.

Councilman Shenko brought up another concern of their road which is eight miles long and stated they will be spending 6/tenths of a million towards transit on a road eight miles long. He states whether this would be the County or Transit Authority, they would be a heavy donor community not a recipient community.

Mr. Rey stated the 6/tents being the worse case. He stated the figure is assuming they would be getting back .25¢ on the dollar from federal and state subsidy, also assuming they implement the entire long range Transit element over the next 25-years.

Councilman Shenko stated he believed the 6/tenths was an average, of 1.25.

Mr. Rey stated that it is an average of everything that is needed over the next 25-years. Mr. Rey stated that it is all of 9.million being implemented stating some years you are required more, and in other years required less.

Councilman Shenko referred to the presentation and stated that the slide showed it at mid-range, but that Mr. Rey had a higher Millage rate than 6/tenths. Mr. Shenko pointed out that they would be getting the Trolleys whether they opt in for the Transit Authority or not. Mr. Shenko stated that by participating in the Transit Authority process, they would lose their lever voting wise; he states they would have an appointed board, an independent district which operates away from the County Commission. Mr. Shenko pointed out it would be taking large amount of money from the County, and putting it with a group who will not be responsible to the voters.

Mr. Rey cautioned that at some point the Authority may determine if resources become tight again and they need to make decisions, he states of the areas that are not participating could always lose service without having the representation to combat that possibility.

Vice Mayor Massucco stated they are not opposed to a Transit System, but questions should they be a part of it. Vice Mayor Massucco questioned Mr. Rey for a reason why they should go along and do this, asking what is in it for them.

Mr. Rey stated regarding to what the economic impact could be versus the outgoing revenues is very hard to answer. Mr. Rey stated that it is the right thing to do for the County as Transit is going to be very important in the future. He states that they will not be able to build roads like they have been in the future and Transit of some sort would be a solution to the congestion. He notes it would be the right thing to do.

Vice Mayor Massucco responded that this may be the right thing to do for the County, but states his concerns are this project not being good for them. Vice Mayor Massucco points out they would be paying more towards the Authority, than the advantages they get. Vice Mayor Massucco asked whether this meant they would be adding big diesels running up and down the beach.

Mr. Rey pointed out Ft. Myers Beach having the smaller Trolleys, and that he is aware of the problem Ft. Myers Beach is currently having with congestion. Mr. Rey stated the benefits will not only apply to the island, but it will also apply to those who need to commute in and out of the island. He states they are also part of the County.

Mr. Massucco replied they are sometimes part of the County.

Mr. Rey suggested looking at what is best for the entire community as a whole. He also stated that perhaps the Authority is not the right solution as was suggested by Mr. Shenko, but suggests doing other things in the interim.

Councilman Meador stated he agrees with Mr. Shenko stating he doesn't see the advantage of taking the responsibility out of the five wise men presently as County Commission to let them take the pain with the pleasure for political decisions. Mr. Meador questioned Mr. Rey as to why this has not been looked at on a regional basis of Charlotte and Collier.

Mr. Rey responded that Lee County was considered first and it would be written in the legislation that those counties would be added thereafter.

Councilman Meador asked if any consultation of Charlotte or Collier have been made.

Mr. Rey reported no, he asked Council to keep in mind that the document has not been completely adopted. He stated the Transit Oversight Committee are deciding what to do next and how to go about doing it. Mr. Rey stated that by being a part of the group in order to participate with the committee that talk about the Authority and what to do next.

Mayor Boback questioned if they can opt out at any time.

Mr. Rey replied that is correct and that they are not required to sign any agreements in order to participate on the Committee.

Mayor Boback asked what the financial aspects of this Committee.

Mr. Rey stated there are no financial aspects, except the travel of the person going to the meetings. He also stated they will talk about the education plan this will include funding for the process to move forward with the creation of the Authority as to get the legislation written and begin campaigning.

Councilman Shenko pointed out in the first proposal, they had written a check to go in stating the funding mechanism was changed when Ft. Myers Beach opted out. Mr. Shenko considers that the Oversight Committee is not to determine whether or not the Transit Authority is a good idea, stating the Oversight Committee has remaining 12 tasks namely conduct Market Research, Outline Proposal for Special Legislation, Obtain Bill Sponsor, Draft Legislation, Bill Adoption, and a Log, Campaign, Education. Mr. Shenko pointed out the project has already begun and by being part of this Oversight Committee is to move

forward with the Transit Committee. Mr. Shenko expressed that he cannot support that.

Mayor Boback stated it has already been decided there will be a Transit Authority, and that they have already given up their right to hold the Commissioners to the fire.

*Mayor Boback opens public comment:*

- Pat Smith stated as a taxpayer she is unsettled with the tax bills Ad Valorem. She feels that most of the people do not know who is on any of these commissions, and feels they would know even less for the Transit Authority. Ms. Smith states they would have less control as voters and she is not in favor. She stated they should make the County Commissioners their elected officials to take the responsibility and live up to it.
- Tom Babcock regarded to the train had already left, but has not reached its destination stating they need a representative on the Oversight Committee, they would not get their input. Mr. Babcock suggested to participate in the Committee at least until cost is involved and then make a decision.

*Mayor Boback closes public comment:*

Mayor Boback pointed out it was up to them to decide whether or not they want to appoint a representative to the committee.

Mr. Rey clarified that nothing has been adopted from the study Mr. Shenko spoke about except two of them; convene a Committee and develop an Interlocal Agreement. He noted they will not move forward with any of the tasks or requesting any funding.

Mayor Boback agreed that they do need to have a representative on the Oversight Committee as long as they have the option to opt out whenever they need. Mayor Boback suggested putting this on referendum for the March election to get feed-back from the residents on the beach on how they feel about the Transit Authority.

Vice Mayor Massucco referred to the August 10<sup>th</sup> Commissioners meeting stating Commissioner Hall had the same argument of having a representative on the Oversight Committee in order to keep them informed. Vice Mayor Massucco stated he is not opposed in having a representative on the Oversight Committee at this point, until costs are involved.

Councilman Meador made a point regarding what Mr. Rey is presenting stating they had been presented with a final report dated January 2006 of an action plan which will be taking place, and they will present to the voters a referendum for this Transit Authority.

Mr. Rey responded to Mr. Meador stating that the action they took was not an action to adopt report as it was written.

Councilman Meador stated he's fine with having a representative on the Oversight Committee, but stated the reading material presented to them appears the decision has been made to go forward with the Transit Authority idea, and there is no other reason to prepare an Interlocal Agreement to formalize that. Mayor Boback agreed with Mr. Meador.

Councilman Shenko referred to calling it an Oversight Committee as a neat trick, and stated it is a cheering squad. He stated they would be writing a check now if they opted in based on how it was proposed. Mr. Shenko stated the Oversight Committee was formed to push the bill forward.

Mayor Boback agrees that they all are on the same page as to what the Oversight Committee really is and where it is going, but states he also agrees with Vice Mayor Massucco and Councilman Meador that appointing someone would not be a bad thing to do until the time comes whether they want to stay in or out. Mayor Boback suggested appointing Vice Mayor Massucco to that Oversight Committee.

Vice Mayor Massucco pointed out that the representative does not have to be an elective official.

Mr. Rey was not too sure of the requirements.

Councilman Shenko pointed out that most of them are MPO representatives or Mayors.

Mayor Boback stated it is obvious he cannot make the meetings, so it would be out of the question for him to be the representative.

Vice Mayor Massucco respectively declined, stating he could not take that on.

Mayor Boback suggested Councilman Reynolds if Councilman Meador is not interested.

Councilman Meador stated Councilman Reynolds is not here to decline.

Councilman Shenko recommended that they meet after the MPO meeting on Friday.

Mayor Boback pointed out that they consider who they wanted to recommend for the Committee, and they can look at reassigning the Committee in March.

Mayor Boback noted the fact that one of the Councilmen will have to take on the responsibility, and asked if they want to consider Councilman Reynolds in his absence. Mayor Boback stated if they cannot come to agreement today, they will bring it back up at their next meeting. He added he feels strongly at having someone there for their best interest until they decide whether or not to go. Mayor Boback stated they will leave it to the next meeting as to who to appoint.

### *C. Update on Town Manager Search*

Ms. Dalton reported that she has presented Mr. Baenziger with a Service Provider Agreement; she noted attached to this agreement is Mr. Baenziger's proposal and indicated a change in the possible Project Schedule Mr. Baenziger needed to modify to Council.

- Colin Baenziger of Colin Baenziger & Associates; principal owner. He states he would be the one working with the Town of Ft. Myers Beach on the recruiting assignment. Mr. Baenziger stated that Ms. Dalton suggested Council approving the advertisements before running them. Mr. Baenziger presented a revised schedule for Council stating if they can end on December 4<sup>th</sup> instead of November 20<sup>th</sup>. Mr. Baenziger stated he met with three elected officials and that he will meet with Mayor Boback to discuss what kind of candidate they are looking for, the issues they will be facing upon taking on the position, benefits and salary. Mr. Baenziger stated after he meets with the Mayor, he will then draft an advertisement which he will send to Council. They will begin contacting the people they know are interested in the position, and will search for people that are interested. Mr. Baenziger stated based on the resumes he reads, he will interview the candidate and will determine which candidate might fit for the community. Mr. Baenziger spoke to Council regarding the extensive background check with references, credit, current salary, etc. that they do with the candidates. He stated once they go over the details, they will present to Council eight finalists for Council to choose from. Mr. Baenziger adds that they should do this at an informal reception on a Friday night so they can meet with the candidates in a public and social setting, and then on Saturday they can meet with Council on a one to one basis. He then added they will do contract negotiations, the Town Attorney and one

Elected Official would take the lead; and finally, he will then do a six month follow-up with Council.

Vice Mayor Massucco asked how many resumes will they be looking at after their final analysis.

- Mr. Baenziger replied about eight.

Vice Mayor Massucco referred to the salary schedule and asked if it was based on salary population.

- Mr. Baenziger stated he sorted it based on population, but stated he can also sort based on salary or on Budget.

Councilman Shenko pointed out that he will not be here on November 20<sup>th</sup> and he will return on November 25<sup>th</sup>.

- Mr. Baenziger asked when he would be leaving and that maybe they can schedule it before he leaves.

Councilman Shenko stated on the 14 to the 25<sup>th</sup>. Mr. Shenko asked would it be his recommendation to discuss salary at this meeting.

- Mr. Baenziger stated he would speak to all the Council members first, and then he will produce the ad and put out a range.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

Ms. Dalton asked if they were going to vote on the contract today in order to approve it.

**MOTION:** Councilman Meador made a motion to approve the Service Provided Agreement for the Colin Baenziger Associates Firm for our Town Manager Search. Councilman Shenko 2<sup>nd</sup> the motion.

Ms. Dalton asked the motion maker to modify his motion to include the possible projects schedule amendment.

**AMENDED MOTION:** Councilman Meador amended his motion to include the revised schedule starting November 5<sup>th</sup> and ending December 4<sup>th</sup>. Councilman Shenko amended his 2<sup>nd</sup>.

**VOTE:** The motion passes 4-0.

***D. Parking Issues***

Mayor Boback announced to have this put on the agenda as he had several public comments and would like Mr. Green to address this issue for us.

Mr. Green stated he has heard about the Parking Enforcement or Parking Infraction going up in tempo. He noted they compared what happened last year from August 2004, to August 2005/2006 indicating there were more tickets issued last year during that time frame than there were this year; he reported by 700. Mr. Green stated for a community of this size these numbers were surprising stating last year 6,012 tickets were issued, and this year was 5,296; approximately 700 less. He notes in the last quarter has gone down substantially as to the previous year.

Mayor Boback stated what has been brought up to him were the tickets given out to, FedEx, UPS, the beer and soda vendors. Mayor Boback stated these were the complaints he has received mainly in the Times Square area, and he wanted to know if there was some stepped up Enforcement in that area.

Mr. Green was not too sure if there is a stepped up Enforcement in the Times Square area, but he states that the issues are the same issues in the Times Square area such as the loading area; he also mentioned the redevelopment and the loading indicating the Times Square and Old San Carlos has only three loading zones. Mr. Green states the problem they are having with FedEx or the UPS is that they have a time schedule and try to save time by facing the Gulf, and the way it is set up they would have to face the Bay which would affect them time wise. Mr. Green stated it has been proposed to use the Shipwreck Motel driveway allowing the FedEx and UPS to load there so they can face the Gulf and would save them time. He also stated they spoke with the owners of the Shipwreck Motel and they are in agreement with it, they spoke with Central Parking they don't see a problem with it. Mr. Green recommended leaving the one they already have and workout the one mentioned, and the drivers will have to adhere to where they are supposed to park.

Mayor Boback stated they need to look into this issue and as long as they communicate with the vendors supervisors regarding what they will be establishing for their use.

Councilman Meador stated it has been several months after he attended one of the Chamber of Commerce Traffic Committee meetings. He stated that one of the beer company representatives wanted to meet with one of

our Town members, and noted he spoke to Ms. Lambert about it and asked if there has been any progress in that regard.

Ms. Lambert replied that they did contact them.

Mr. Green stated this was an issue with the delivery truck and stated that they were taking short-cuts by going through Bonita, to get to Moss Marine. Mr. Green stated that they informed Moss Marine to contact their suppliers and to notify the drivers were not allowed to do that because there were speed bumps.

Councilman Meador asked if they had had contact with the local supervisor with the Budweiser Company.

Mr. Green replied they had not.

Councilman Meador stated this was beach wide where they had basically built their ticket cost into product cost. He stated they wanted to meet with a member of the Town and someone from Public Safety so they can go over their route. Mr. Meador stated having the name and number of the person they need to speak with and would provide them with it.

Mr. Green stated he will call the person Mr. Meador has as a contact. Mr. Green did mentioned that he does not really have the answer to give them as to where to park because they don't own Estero Blvd, and the Ordinance states there is no parking in the streets right-of way.

Councilman Meador stated he agrees with Mr. Green.

Mayor Boback suggested Mr. Green riding down with them so they can better identify what the problem is.

Vice Mayor Massucco referred to Lynn Hall Memorial Park facility, and asked if it could be extended.

Mr. Green stated it extends from the cross walk near the Square all the way to Lynn Hall Park. Mr. Green stated he would take the ride to see what the problem is.

Vice Mayor Massucco stated that the Central Parking would have to bend a little bit as these drivers are not going to spend a lot of time parked in one particular area.

Mr. Green stated that would probably work when there is no one around, but is virtually impossible to do when the season is in. He stated that by following rules it will provide a sense of order.

Vice Mayor Massucco stated that they are constrained here.

Mr. Green stated they are going to add a loading zone for the UPS, and stated if they followed the unwritten suggestion they probably would have not gotten ticketed stating there has to be some give and take.

Vice Mayor Massucco stated if this is a suggested procedure they need to follow it, or else they will get a ticket.

Mayor Boback brought up another issue with parking meters along the right-of-way of the Lighthouse, and stated that the Lighthouse is using that right-of-way for their patrons parking. Mayor Boback stated he has been working with Mr. Green to have the parking meters installed or to have Mr. Kholer to come with an alternate solution to compensate the Town for the use of that parking place. Mayor Boback referred to Mr. Green of any other for-profit business use and that they need to implement the same type of solution for that.

Mr. Green stated he has had the opportunity to look into that project stating there are seven phases of development. He noted that there was some discussion of rerouting of 5<sup>th</sup> street there was an easement given of 10ft given by Mr. Kholer to accommodate a side-walk adjacent where the parking spaces are. Mr. Green stated that ultimately if the direction that Council wants to put meters at that location it can be done.

Mayor Boback stated they need to see the documentation Mr. Green has showing what was agreed upon and where is the easement.

Mr. Green reported it may not be found in any documentations but they may want to take a look at the minutes of 2003 might show some discussion regarding that.

Vice Mayor Massucco asked if they are talking about head in parking or parallel parking.

Mr. Green replied it would be head in but in an angle and it accommodates 12 parking spots.

Vice Mayor Massucco questioned if they have to back out stating that is something that they have frowned upon in the past.

Mr. Green stated there have not been reports of accidents.

Councilman Meador questioned if they were talking about 5<sup>th</sup> street stating he has used the bypass and felt that it is a little tight, and very dangerous. Mr. Meador suggested looking at the deals they have signed with the

property towards the boulevard stating that a commitment has been made regarding 5<sup>th</sup> street.

Mayor Boback stated that is the information he will be requesting, and stated they would need to do so if the traffic mitigation plan comes through.

Mr. Green brought up another issued which is at Old San Carlos regarding the employees parking. Mr. Green stated there were suggesting for reduced parking or some sort of emblem for the employees.

Mayor Boback spoke about employees parking to Mr. Green stating that the Times Square Advisory Committee should come up with some kind of a plan to bring forward to Council for to review.

Mr. Green stated of a balance to be made on both parts.

Mayor Boback stated by doing so they can give them a starting point to then negotiate from there.

Mr. Green agreed that it would be in the best interest for everyone in working something out.

Vice Mayor Massucco suggested having the Times Square Advisory Committee come together with the parking program to see what they can come up with.

Mr. Green stated the whole downtown area should be addressed.

Mayor Boback stated the Times Square Advisory Committee is there for that purpose.

Councilman Shenko stated everything as the loading zone all of it as one package. He stated he appreciates an owner giving part of his property to use as a loading zone, but feels they should not be forced into doing so. Mr. Shenko asked if anyone has thought about having permits for delivery trucks where they can use the parking space not to exceed 15-minutes having a decal or something to that effect.

Mr. Green stated the issue is time  
Mayor Boback suggested Mr. Green when he takes that ride on the beer truck to take someone from Public Safety Task Force along and let them take a look at the problem suggesting tasking that Committee to come up with a solution.

Councilman Meador stated it is not only the Times Square area, but also the Lani-Kai. He also mentioned knowing one of the drivers from UPS who delivers to Mr. Shenko and himself has complained to him because he has to park half on the street and half off; stating that there will be places they will get tickets.

Mayor Boback stated getting everyone together, the merchants, the Advisory Committees; to get representatives to the companies all at once and look at the situation and come up with ideas.

*Mayor Boback opens public comment:*

- Evelyn May from the Times Square Advisory Committee stating they have been talking about parking and has brought up suggestions back three years.

Mayor Boback stated they were not here three years back and suggested bringing the minutes with the suggestions so they can take a look at them. Mayor Boback apologized to Ms. May for the previous Council not having made any changes or improvements on the matter.

*Mayor Boback closes public comment:*

#### ***E. WCIND Subgrant Funding for Marine Law Enforcement***

Mr. Green stated it has been four years they have been provided funding from the West Coast Navigation District through Lee County Natural Resources who manager it; stating they match it 50/50 for their Maritime Law Enforcement Program the Lee County Sherrif provides for them. Mr. Green stated they pay for their hourly wages and pay for the fuel for the boat.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Shenko made a motion to approve the WCIND funding as presented by Mr. Green. Vice Mayor Massucco 2<sup>nd</sup> the motion for discussion.

*Discussion:*

Vice Mayor Massucco questioned Mr. Green if they will have any problems with spending the \$32,000, or it would have to be sent back?

Mr. Green stated it is \$64,000 when it is matched, but insists they would have no trouble.

Councilman Meador had no questions. Councilman Shenko had no questions. Mayor Boback also had no comments.

**VOTE:** The motion passes 4-0.

***F. Update on Best Western Federally Funded Subgrant Agreement***

Ms. Dalton confirmed she was directed by Council to work with Ms. Beverly Grady regarding the two points she raised in her memo to Town Council. She stated having addressed those two points with Ms. Grady and has for Council an addendum which addresses those two points. See attached.

- Ms. Beverly Grady representing Best Western. She thanked Council for scheduling this meeting, and she also thanked Ms. Dalton who worked out the agreement they had. Ms. Grady is requesting that Council approve DCA agreement that is between the Town and DCA. She noted they had changed that agreement and inserted their name in place of the Town.

Ms. Dalton added to Ms. Grady comments stating that the letter of credit would aggregate which would ultimately be \$630,000 or whatever lesser amount DCA passes through.

Councilman Shenko asked Ms. Grady if it is the motel rooms that are being moved from the lowest floor to the upper floor.

Ms. Grady reported that Mr. Malbon is doing renovation and is fixing it up and adds it is an expenditure of several million dollars. Ms. Grady stated the grant is for the elevation of those lower rooms.

Councilman Shenko concurred with Ms. Grady that the grant is for the elevation. Mr. Shenko stated he is very pleased to see this come forward.

Councilman Meador had no questions.

*Mayor Boback opens public comment:*

- No public comment was given.

*Mayor Boback closes public comment:*

**MOTION:** Councilman Shenko made a motion to approve the Subgrant Funding as presented by Ms. Dalton, for the purposes of discussion. Vice Mayor Massucco 2<sup>nd</sup> the motion.

*Discussion:*

Councilman Shenko shared his concerns regarding having enough staff time stating even if they were reimbursed, they do not have a lot of people.

Mr. Jerry Murphy responded that John Gucciardo handled these duties in the past as Deputy Town Manager. Mr. Murphy stated they are getting more information regarding how much time staff is involved as he has asked the staff to track their time. Mr. Murphy stated he is no sure if \$15,000 is enough, but stated the only way to find out would be by doing a project.

Councilman Meador pointed out he was not 100% sure on what they were voting on, as the only information he has in his packet is an addendum to a Subgrant agreement.

Ms. Dalton responded to Mr. Meador regarding the main agreement stating it is an agreement which mimics the agreement between the state and the Town. She noted the Town Clerk Ms. Mayher was provided with a copy in review of the agreement.

Councilman Meador stated he has seen that agreement previously; he only wanted clarification to what they were talking about specifically since he did not have it in the packet.

Ms. Dalton asked Mr. Meador if he wanted this to always be included in the future she would inform Ms. Mayher.

**AMENDED MOTION:** Councilman Shenko stated he would be happy to amend his motion to indicate it is the agreement that was previously presented. Vice Mayor Massucco amended his 2<sup>nd</sup>.

Councilman Meador stated he had no further comments.

Ms. Dalton reported the \$15,000 administrative fee is a lump sum, and she clarified to Council that there is no provision to go back to Best Western for additional money. Ms. Dalton asked if Council wanted to take another tactic.

Mayor Boback stated he was fine with it.

**VOTE:** The motion passes 4-0.

***G. Appeal of Administrative Action-Case Number FMBADM2006-00002, Roger M. Schadt***

Mayor Boback declared this hearing opened and asked if any Council members had any ex-parte communications with the property owners or other person regarding this case.

Councilman Meador responded he had none whatsoever.

Councilman Shenko stated he has handled a real estate transaction for Mr. Schadt in 2001 which was unrelated to this project. He has had ex-parte communications with Mr. Schadt in his role as Councilman meeting with him in my office more than one occasion going over information that has been supplied. He stated he has no interest in the matter, other than he has had with Mr. Schadt. He also stated he is familiar with the property since it is adjacent to other property.

Councilman Meador restated that he doesn't consider it is an ex-parte communication as he represented the other party, but he represented the seller when Mr. Schadt purchased the same property stating it was a number of years ago.

Vice Mayor Massucco stated he had visited the property this afternoon and he met with Mr. Schadt who walked him through the project.

Mayor Boback stated he has spoken to Mr. Schadt and his contractor about this particular project on a couple of occasions and he also was at the property, nothing else. Mayor Boback asked Ms. Dalton if she would administer the oath if anyone is going to testify.

Those testifying were sworn in by Ms. Dalton.

- Dan Gravis reported he is working with Mr. Schadt. He presented Council with packets regarding the project. He gave his presentation; See Attached.

Councilman Meador responded to Mr. Gravis regarding the materials he has provided stating he noticed several of the properties have two addresses which are not withstanding the single family residential current zoning. Mr. Meador stated they appear like they were duplex slots. Mr. Meador asked Mr. Gravis if he had information regarding the additional structures which were added stating that from their stand point should be valuable information.

- Mr. Gravis stated he did not have that information at hand, but was willing to pull them out from County Records.

Councilman Meador stated that would not be of help at the present time.

- Mr. Gravis stated that there are a lot of them on Madison Court, which was just built in 92.

Councilman Meador asked Mr. Gravis if he has copies of approval material from the County which was not included in their packet.

- Mr. Gravis stated the County sends it out to the City, and that they don't have any control over what they have approved for the city; suggesting Mr. Murphy might have that information.

Councilman Shenko pointed out that he had the same questions as Mr. Meador did in regard to how many of these were after the new Land Development Code. Mr. Shenko also asked how many predate the Town's existence and what is the zoning on these parcels.

- Mr. Gravis stated it is single family zoning.

Councilman Shenko stated his zoning is also TFC-2 and thinks that is also a duplex use.

Vice Mayor Massucco referred to a conversation he had with Mr. Schadt regarding a previous Code Enforcement Officer who had instructed him to go for a business addition instead of a residential stating the information they have here is a new office with a deck.

- Mr. Gravis stated that Mr. Schadt would be using this for his personal use.

Vice Mayor Massucco asked Mr. Murphy if Mr. Schadt had applied for a residential unit would that have made a difference, instead of applying for an office/business.

Mr. Murphy stated it would be clear that it is a living area for density purposes and that there are two units already on the property. Mr. Murphy stated that Lee County never recommended approval for this project, stating they never approve it until the Town signs off on it.

Vice Mayor Massucco stated that based on Mr. Murphy's reports there was an alternative to this particular option building out, by just adding out.

- Mr. Gravis stated the pane is built out to the house, but it would take the steps out where the house is laid out.

Vice Mayor Massucco stated that there was another option available stated by the reports.

- Mr. Gravis reported they went through the other option by putting a roof across each one detached. Mr. Gravis stated that this was going to be used for an office and some things from his home, not really for use as a living area or a rental. He stated that was the concerns Mr. Murphy and Mr. Green had.

Vice Mayor Massucco had no other questions.

Mayor Boback questioned Mr. Gravis if this was for office use why would they need a deck, two sinks, a toilet a bathtub.

- Mr. Gravis responded that Mr. Schadt wanted a shower in his office.

Mayor Boback questioned why does he want to shower in the office if all he had to do would be go into his home and shower. He stated there is no reason a wood deck or a bathroom plumbing. Mayor Boback stated an office is an office.

- Mr. Gravis replied there is no reason for him not to have a deck in his office.

Mayor Boback responded there would be no reason for having a bathroom with a shower, a couple of sinks and a tub.

- Mr. Gravis stated this was more as a convenience for Mr. Schadt.

Councilman Meador had no further comments. Councilman Shenko had no further comments. Vice Mayor Massucco had no further questions. Mayor Boback stated he had no further questions.

Mr. Murphy stated Mr. Shockey would be making the presentation of the case for staff.

Mr. Frank Shockey spoke on behalf of Ft. Myers Beach stated the applicant had previously submitted an application for a building permit with Lee County, which acts on behalf of the Town for permit review. Mr. Shockey stated that if an addition was made to the existing single family home it could exceed the 50% substantial improvement limitations which would require that to be elevated for base flood elevation. Mr. Shockey stated the details are listed in the staff report and requested that they consider the staff report to be submitted as staff testimony.

Councilman Shenko stated they have an application which states this is an office. He stated that the Code provisions state that no offices are permitted in a restrictive category as principal uses. Mr. Shenko questions staff if they take into consideration that this is a principal use or if adding the bathroom takes out the office view. He states that the staff is calling it an office with a bathroom.

Mr. Shockey stated if they take it at face value it would be an office. He pointed out the office use permitted in the RS zoning District is accessory use as home occupation, where no employees are attracted, or traffic or customers.

Councilman Shenko questioned if they have a property with the potential to be turned into a different use, do they have any agreements that are recorded in the Land records indicating what the uses are and what its restrictions are.

Mr. Murphy responded that they never have done that. He stated that would be a Code Enforcement Issue that may become a nightmare. Mr. Murphy points out that the property is large enough to have an addition to the existing home. Mr. Murphy states the addition can be made where the office door is somewhere within the home and there is no way they can rent it out in the future.

Councilman Shenko stated he is familiar prior to incorporation with Lee County where they have properties that look as though they can be split and used separately.

Mr. Murphy stated that they have not done so, and that there is no index in Lee County for finding those public records.

Vice Mayor Massucco had no other questions.

Councilman Meador stated his concerns are like Mr. Shenko's, where they were told it was going to be an office, even though it has a bathroom in it. He stated there are some offices that have bathrooms few with showers, but this does not disqualify the property for office use. Mr. Meador asked if there is something in the Land Development Code that prohibits this.

Mr. Murphy stated that there is no specific prohibition. He stated there is language stating this habitable space with a bathroom being capable of being blocked off from the other structure is by definition a living unit for density purposes.

Councilman Meador questioned Mr. Murphy that would mean every office on Ft. Myers Beach would be a potential living space.

Mr. Murphy questioned if Mr. Meador was referring to a commercial office or a home office.

Councilman Meador asked if that would matter by definition.

Mr. Murphy stated that a commercial office would not be allowed in this zoning category.

Councilman Meador restated his point that every office in Ft. Myers Beach by definition could be a lock-off apartment.

Ms. Dalton stated that would depend on the configuration. Stating the definition of a lock-off is different than what Mr. Meador was explaining.

Councilman Meador referred to when they approve future development on offices, that they may not want to look at the definition based on the staff report that he has read, it states it doesn't even need a bathroom or kitchen to be a lock-off apartment.

Ms. Dalton stated that technically a lock-off definition does state a room and a bathroom.

Councilman Meador was concerned about having density problems. He asked a question regarding the analysis of the use of density.

Mr. Murphy stated the future land use map foresees what development is going to be permissible in the future. Mr. Murphy stated most of the categories of future land use map have been created to recognize the existing densities in place pointing out the fact they use a plate-overlay in certain areas that recognize up to 10-units per acre, standard being six; and stated the residential area standard is four-units.

Councilman Meador asked Mr. Murphy how the analysis would differ as far as density based on the current Land Use Map.

Mr. Murphy reported the Future Land Use Map is current - the current Land Use Map. He replied to Mr. Meador that it is called a Future Land Use Map as it has a horizon same to the Comprehensive Plan. Mr. Murphy stated when they do the EAR; they use both the Land Use Map and the Comprehensive Plan as part of that EAR.

Councilman Meador reiterates that the Future Land Use Map is today.

Mr. Murphy reported it is today, and it was when Mr. Schadt applied for the review.

Councilman Meador asked which of the two zoning categories would control, the adopted Future Land Use Map, or the adopted interim zoning map.

Mr. Murphy replied the Comprehensive Plan always control.

Councilman Meador rephrased his statement indicating if there were a property which is zoned residential in the zoning map, but is zoned commercial in the later adopted Future Land Use Map, the commercial would control.

Mr. Murphy replied that the owner would be able to reapply for a rezoning to up-zone property to a more intensive use, and that zoning would be consistent with the Comprehensive Plan.

Councilman Meador was satisfied with Mr. Murphy explanations.

*Mayor Boback opens public comment:*

Those testifying were sworn in by Ms. Dalton.

- Tom Babcock shared his concerns regarding living in a residential neighborhood. He stated he is representing the LPA as he feels it is in the best interest to represent all of the islanders on this issue. Mr. Babcock stated in order for this to approved they would have to change the Comp Plan and the Land Development Code to justify this matter. He stated they would have to deny the input provided by staff, stating they should ignore them as well as ignore the complaints given by the immediate neighbors regarding this property. He pointed out that the property has legal accessory apartment hitting all of the spreadsheets previously mentioned by Mr. Murphy; he stated that this legal accessory apartment has a short-term rental and is on the registry. Mr. Babcock suggested with all the information Council has obtained, he is asking them to deny this appeal.

*Mayor Boback closes public comment:*

Mayor Boback asked Council if they had any other questions for the applicant.

Vice Mayor Massucco replied he had none. Councilman Meador replied he had no questions for the applicant. Councilman Shenko replied he had

no questions for the applicant, and Mayor Boback also indicated he had no questions for the applicant.

Mayor Boback directed the applicant to come forward to make any final comments.

- Mr. Gravis referred to the SBF loan Mr. Babcock previously mentioned which has been settled. He mentioned the office with a bathroom in it, stating a person should be able to have a little space in his office as working habits. Mr. Gravis pointed out they did not encroach on anyone's rights, stating the apartment beneath the house has already been through the city; approved, and is legal.

Councilman Meador pointed out that staff has the feeling Mr. Schadt has other options which would be an addition to the home. Mr. Meador asked whether they would run into the same description of lock-off, by having an addition in a room with a bathroom, an independent door and separated from the home.

Mr. Murphy stated to the outside access.

Councilman Meador commented that it states, may have an outside entry it doesn't require.

Mr. Murphy reported the language stated can be physically locked-off from the main unit, and occupied as a separate unit. Mr. Murphy stated there are many ways it can be designed to provide an office that is inside the building he accesses from within the building.

Councilman Shenko stated those were his same concerns attaching the room to the house; he stated they have not accomplished anything if they attached the room to the house. Mr. Shenko pointed out by having a separate outside door it will be deemed a lock-off apartment.

Mr. Murphy replied to Mr. Shenko depending on the configurations it would be. He noted it could be a separate entrance to the house, which could be an additional bedroom within the house.

Councilman Shenko stated his concern would be if it were attached it would not comply under the reading of Mr. Murphy of the lock-off apartment, but points out under his reading of an office, he believes it would stating it is not a principal use.

Mr. Murphy stated they have examples of that on the island and they have separate numbers on their doors.

Ms. Dalton responded to Mr. Shenko stating part of the problem is the configuration of the bathroom as it is part of the definition of a lock-off.

Councilman Meador pointed that it would not be a lock-off if Mr. Schadt takes out the bathroom.

Mr. Murphy replied that it would be habitable space that would not fit criteria for a residential accessory structure. Mr. Murphy made reference by using the main entry of this structure they can have a door which opens from the main space going into the office, and indicated they could have an office with a bathroom with an option to convert it into a bedroom, but there would be no opportunity to rent that unit as an apartment as it would be within the main space.

Councilman Shenko stated the location of the door for the main house is not shown on the plan he has.

Mr. Murphy reported the main door is opposite to the existing unit.

Councilman Shenko pointed out it may be too far away from the exit door which would not comply with the fire codes.

Mr. Murphy stated they did not have the permit for the potential designs to be allowed to be constructed on the property. He noted this is an appeal of staff's determination of the configuration presented.

Councilman Shenko stated he had a problem assuming the worst and not have the application in front of them.

Mr. Murphy assured him they were not assuming the worst, stating he believes what Mr. Schadt is doing is exactly what he is stating.

Councilman Shenko replied he is not convinced.

Mayor Boback questioned if this is approved would they still need to get the permits and go before the LPA.

Mr. Murphy reported no as this came to staff as a building permit approval and staffs determination was that it could not be approved.

Mayor Boback commented that he has always worked in many offices throughout the years, which did not accommodate such luxuries.

Vice Mayor Massucco stated that he has options where he can build an attachment to the house, but states that they have lost him as to whether that is legal or not.

Ms. Dalton pointed out that Mr. Murphy stated there are some configurations in which it can be approved, but he has only brought out the configuration in which it will not be approved. She further noted, this being an appeal with that data that is up front.

Vice Mayor Massucco stated he did not have the depth of knowledge as his colleagues did with this regard, but states if this is going against the Land Development Code they are there to provide the Land Development Code, not to deviate from it. Vice Mayor Massucco strongly supports what is written in the Land Development Code as well as the Comprehensive Plan.

Councilman Meador appreciates the comments made by Ms. Dalton stating they do not have an appeal before them, from a permit which was presented with no bathroom and no walk-in closet; which might have been a different decision.

Mayor Boback asked if staff had any final comments. Mr. Murphy replied they have reviewed them.

Councilman Meador referred to Ms. Dalton for the appropriate language to state they will deny this appeal. Ms. Dalton replied Town Council to deny the appeal.

**MOTION:** Councilman Meador made a motion for Town Council to deny the appeal and that the staff's determination is upheld. Vice Mayor Massucco 2<sup>nd</sup> the motion.

Councilman Meador stated he also supports their Land Development Code as well as the Comprehensive Plan; he states the draftsmanship in both documentations should be reviewed as they do have potential conflicts that make it difficult to work with.

Councilman Shenko agreed with Mr. Meador stating that it is not a clear decision for him stating he also supports the Land Development Code as well as the Comprehensive Plan. He points out they should put language regarding it is presumed to be a lock-off dwelling unit if the following occurs. Mr. Shenko suggested the LPA taking a look at the provisions to see whether they can tighten it up some.

Mayor Boback also agreed to Mr. Shenko's comments.

**VOTE:** The motion passes 4-0.

## **VI. COUNCIL MEMBERS ITEMS AND REPORTS**

Councilman Meador referred to the upcoming Election of Town Council stating this may already be on the agenda on attorney items.

Ms. Dalton responded she has requested the Town Clerk, Ms. Mayher to put that item on the first meeting on October.

Councilman Meador verified that they only have two regular meeting dates in which they need to decide what to do with Ms. Harrington. Mr. Meador verified that they have the 2<sup>nd</sup> Tuesday in March for Election Day; five weeks prior to that, there will be a pre-election. He noted 50-days prior to that; the candidates need to qualify for an Election stating that within three weeks they need to have an agreement with Ms. Harrington. Mr. Meador suggested considering his proposal of going back to the system that was in the original Charter as drafted by Mr. Shenko. He stated having their March Election, having their runoff setout if necessary 60-days after that.

Ms. Dalton responded to Mr. Meador she would be addressing all of these issues at the meeting, but confirmed that Mr. Meador will not be available for that meeting on October 3<sup>rd</sup>.

Councilman Meador stated he will not be here on October 3<sup>rd</sup>, but that he is going to attempt to participate by long distance phone. Mr. Meador also brought up bringing the Charter review Committee stating they were shamefully treated by the last Council. Mr. Meador also pointed out having a Town Hall meeting which was brought up previously. Mr. Meador suggested if they want to have a referendum item to get feed-back regarding a Town Hall.

Councilman Shenko agreed with Mr. Meador regarding a Town Hall meeting. He referred to the referendum and if they were going to be paying the supervisor of Elections to run the Election, he suggested asking questions, get a straw ballot. Mr. Shenko referred to Ms. Harrington's agreement whether to take it or leave it, and asked Council if they would consider entering into the agreement with Ms. Harrington for the purposes of running the Elections.

Mayor Boback stated he had no objections.

Councilman Meador asked Ms. Dalton if there was a resolution for the agreement relative to the indemnification provisions.

Ms. Dalton replied to the resolution that she was aware of was of Mr. Tom Hart who is Ms. Harrington's attorney who had indicated to Ms. Dalton some of the municipalities had come up with the idea of buying an

insurance policy. Ms. Dalton noted that she tried to communicate this with the City of Ft. Myers as well as the Sanibel City Attorney, and stated she had not gotten information advancing that insurance policy.

Councilman Meador questioned Ms. Dalton if this would be covered at any general risk coverage they have currently with Florida League of Cities.

Ms. Dalton responded looking into that, but states she suspects they do not.

Councilman Shenko asked what the damages are if they are running Elections again. Mr. Shenko stated Ms. Harrington is the only show in town that runs the Electronic voting.

Ms. Dalton pointed out an example used by Mr. Hart who referred to the candidate's names which are put in alphabetical order, if one gets put out of order, they can sue. Ms. Dalton states that being a frivolous lawsuit and he replied to her that was not necessarily true.

Councilman Meador stated even if you are on the 2<sup>nd</sup> page of the ballot people believe you were not running.

Vice Mayor Massucco referred to comments made by Mr. Meador regarding the Charter Review Commission stating that there was a lot of work put into that Charter Review.

Councilman Shenko asked Ms. Dalton if it was within their pervue to change the primary in the runoff as Mr. Meador previously indicated. Ms. Dalton responded she will look into it and will provide a written response.

**MOTION:** Councilman Shenko made a motion for the agreement for services with the Supervisor of Elections of Lee County as presented to Council previously and reviewed by Ms. Dalton is accepted for purposes to move forward with future Elections. Councilman Meador 2<sup>nd</sup> the motion.

**VOTE:** The motion passes 4-0.

Councilman Shenko also pointed out a letter he received from Florida League of Cities regarding a legislative meeting which may affect all cities throughout the state of Florida. Mr. Shenko stated he will not be here during that meeting as he would be out of town, stating it was for informational purposes should anyone want to attend.

Mayor Boback asked Mr. Shenko for an update on the Sheriff's curfew. Councilman Shenko responded that the roof fell in on the substation on the morning he was supposed to meet with the sheriff stating they have rescheduled that meeting.

Mr. Green reported that he spoke to the engineer in the morning stating they should have a preliminary report sometime tomorrow.

Mayor Boback stated that he was trying to follow-up with the issues to make sure things are moving forward. Mayor Boback asked Ms. Lambert about the Bridge Traffic.

Ms. Lambert reported speaking with Sharon who is with FDOT and was told that the Bridge could sustain, but Ms. Lambert stated she did not have an official answer as Sharon needed to speak with the person who is working on the matter. Ms. Lambert stated she will follow-up tomorrow with Sharon.

Mayor Boback agrees with the follow-up and states there may be an opening.

Mayor Boback questioned Ms. Dalton regarding Town Accesses, if they own them or not.

Ms. Dalton responded not having a chance to research that information, but stated that she will have an answer by the next meeting.

Mayor Boback questioned Mr. Green about the signs on the South end if they had anything regarding that. Mr. Green stated they received two estimates and they are waiting for a 3<sup>rd</sup>.

Vice Mayor Massucco brought up an interoffice memorandum from the Marine Resources Task Force regarding work in progress. Vice Mayor Massucco commended the committee stating they are providing the information they needed, and are aware of what they are doing, they know what is on the plate, how soon they will get to these items. Vice Mayor Massucco stated that he would also like some of the other Committees to submit a report similar to the Marine Task Force, as this provide information. He suggested if the other Committees could provide a report to Council on a monthly basis, this would help Council in keeping them up to date with what the Committees are doing.

Councilman Meador stated two other items he did not mention; one of them is the Anchorage Advisory Committee. Mr. Meador suggested asking the Anchorage Advisory Committee to put out feeders for another operator as soon as they meet.

Mr. Green replied that he could put this on the agenda which would be an October meeting as they have a new member.

Councilman Meador brought up the other item regarding the situation with Chapel by the Sea. Mr. Meador reported they did receive a preliminary letter for the Council, by Chapel by the Sea regarding the issue of feeding the homeless. Mr. Meador suggested Council to give direction to Ms. Dalton to get back with Council for Chapel by the Sea to see how far they can push as far as an agreement with them.

Vice Mayor Massucco stated that would be fine, but he brought up the four or five issues they previously discussed with them stating they were going to build from those.

Mayor Boback stated it would be a start.

Councilman Shenko stated it was unfortunate it took so long to get to that point stating that point is not enough, but it is further than they have been. Mr. Shenko stated he is all for any ongoing negotiations.

Councilman Meador questioned if they needed a motion or if a consensus would be sufficient.

Ms. Dalton stated a consensus would be sufficient, but questioned if their attorney chooses to involve people from the program, and asked if she can involve the staff as well. Council agreed.

## **VII. TOWN MANAGER'S ITEMS**

Ms. Lambert had no items to report. Mr. Murphy reported he had spoken to Shawn Roche of FEMA stating the County is having a County-wide meeting involving the new firm maps for anyone who is interested; He stated it has been tentatively scheduled for October 26<sup>th</sup> in the afternoon.

Vice Mayor Massucco questioned Mr. Murphy if Mr. Spikowski or Mr. Tomasello will be invited to the meeting?

Mr. Murphy responded that Mr. Spikowski was aware of the meeting and will be available for that meeting. Mr. Murphy pointed out if Vice Mayor Massucco wanted Mr. Tomasello to attend the meeting, they would have to extend the contract with them. Mr. Murphy asked direction of Council if they wanted him to present it to Mr. Tomasello.

## **VIII. TOWN ATTORNEY'S ITEMS**

Ms. Dalton stated she was not clear whether Council wanted her to bring forward the Charter Review Commission as a Resolution in future meetings, or for purpose of discussion.

Mayor Boback suggested Ms. Dalton to put it on the meeting agenda to discuss it further.

Ms. Dalton requested an Executive Session in the matter of Straub versus Ft. Myers Beach the ADA litigation. Ms. Dalton stated the participants would be Denise Wheeler, Town Council, Town Manager, Ms. Dalton and a court reporter. Ms. Dalton requested this meeting to be on September 18, 2006 at 5:45 PM.

Mayor Boback responded he had no objection. Vice Mayor Massucco responded he had no objection.

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

*Mayor Boback opens public comment:*

- Annie Babcock resident shared her concerns regarding the Town Manger Search indicating in order to the Town Manager to be fit for the community; she/he should be a resident of Ft. Myers Beach.
- Tom Babcock suggested nominating Mr. Shenko for the Transit Authority Oversight Board. He also thanked Mr. Massucco for bringing up the Charter Review Committee for supporting your Land Development Code.

*Mayor Boback closes public comment:*

**X. ADJOURNMENT**

**MOTION:** Councilman Shenko made a motion to adjourn the meeting. Vice Mayor Massucco 2<sup>nd</sup> the motion.

**VOTE:** The meeting is adjourned at 7:03

*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](http://www.fmbeach.org).*

Respectfully submitted,

Debbie Cardoso