

**FORT MYERS BEACH
TOWN COUNCIL**

**Town Hall- Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Fl 33931
October 2, 2006**

AGENDA	Regular Town Council Meeting	6:30 PM
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I. CALL TO ORDER

Members Present: Mayor Dennis Boback, Councilman Garr Reynolds, Councilman Bill Shenko, Jr.

Absent: Vice Mayor Don Massucco, Councilman Charles Meador, Jr.

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:

III. INVOCATION:

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

V. CONSENT AGENDA-APPROVAL OF MINUTES

A. August 21, 2006

Councilman Reynolds pulled page 30 and 32: Corrections made.

MOTION: Councilman Shenko made a motion to approve the minutes for August 21, 2006 with the notations. Councilman Reynolds 2nd the motion.

AMENDED MOTION: Councilman Shenko amended his motion to reflect Mayor Boback's correction. Councilman Reynolds accepted.

VOTE: The motion carries 3-0.

B. September 5, 2006

MOTION: Councilman Shenko made a motion to approve the minutes of September 5, 2006 as noted. Councilman Reynolds 2nd the motion.

VOTE: The motion passes 3-0.

C. September 11, 2006

MOTION: Councilman Shenko made a motion to approve the minutes of September 11, 2006 with the changes indicated. Councilman Reynolds 2nd the motion.

VOTE: The motion passes 3-0.

VI. ADMINISTRATIVE AGENDA

A. Special Events Permit Applications

1. Surf Club 53rd Anniversary Party

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

VOTE: The motion passes 3-0.

2. Surf Club 4th Annual Turkey Testicle Festival

MOTION: Councilman Shenko made a motion to approve the application with the new change of name to the Turkey Festival. Councilman Reynolds 2nd the motion with the title as indicated.

Discussion ensued with regard to the word “Testicle” in the festival name, whether the event could continue with the name change, and whether the permit would be in compliance should the event operate under another name. It was noted that this is a fundraiser, it’s the 4th year for the event, with staff having approved the prior three years under the same name.

VOTE: The motion fails 2-1; with Mayor Boback dissenting.

The item was deferred to the next available agenda, when a full council would be present.

Mayor Boback opens public comment:

- Doris Kovach shared her concerns regarding connotations which she finds offensive, asking whether this is the image they want for their island.

Mayor Boback closes public comment:

B. Memorial to Rolfe Schell

Mayor Boback opens public comment:

- Pat DeVincent referred to a letter he wrote on August 31st. Mr. De Vincent read items they proposed for memorial plaques and street signs to honor Rolfe Shell.
- Jo Rothenberg and her husband would be very proud if Council were to decide to put a plaque on the wall, and she also stated that they do need to recognize, he was known as Bunny by a lot of people.

Mayor Boback closes public comment:

Councilman Reynolds stated his hope to have A.J. Bassett, a member of the Historic Committee, be present to offer comments on Mr. Schell.

Direction was given to Staff to look in to what requirements or regulations surround the placement of signage on the beach accesses or on the street.

Councilman Shenko suggested establishing a uniform policy by which Town Council could recognize members of the community that may deserve mention, by way of plaques on the beach accesses, for example.

Mayor Boback concurred with Councilman Shenko regarding establishing guidelines for this type of recognition.

Discussion ensued with staff being given direction with regard to having input from the Historical Society, the LPA/Historic Preservation Board, and cost and feasibility for signage. The item will be heard at an upcoming November town council meeting.

C. Authorizing Town Clerk to Amend Charter

1. Resolution 06-18-Passed Referendum on Tolls

Mayor Boback directed Ms. Dalton to proceed.

Ms. Dalton read the Resolution 06-18 Sec 11-03, Passed Referendum on Tolls.

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN CLERK TO AMEND THE TOWN CHARTER TO INCORPORATE THE RESULTS OF THE REFERENDUM OF NOVEMBER 8TH, 2005 REGARDING BRIDGE OR ROAD TOLLS.

Mayor Boback questioned Ms. Dalton if she was looking for direction to make a motion to put it in the Charter.

Ms. Dalton responded that this has already been approved, and has already been certified; Ms. Dalton notes that this would be the technical language

which will enable the Town Clerk to move forward.

MOTION: Councilman Shenko made a motion to approve the Resolution. Councilman Reynolds 2nd the motion.

Discussion:

Councilman Reynolds pointed out that on the cover page the language states it will authorize the Town Clerk to amend the Charter. Mr. Reynolds stated that the Town Clerk cannot make changes to the Charter, but she can update the Charter.

Ms. Dalton responded to Mr. Reynolds that she meant *amend* in the sense of the writing, but agrees with Mr. Reynolds in terms of the parliamentary procedures that it would be correct.

Councilman Reynolds commented that he would not want it to be misunderstood that a staff member is making changes to the Charter.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

VOTE: The motion passes 3-0.

2. Resolution 06-19-Passed Referendum on Run-Off Election.

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN CLERK TO AMEND THE TOWN CHARTER TO INCORPORATE THE RESULTS OF THE REFERENDUM OF NOVEMBER 8TH, 2005 REGARDING TOWN ELECTIONS

Ms. Dalton read Resolution 06-19, and made the same corrections to insert *update* in place of *amend*.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

MOTION: Councilman Reynolds made a motion to approve Resolution 06-19 as presented. Councilman Shenko 2nd the motion.

VOTE: The motion passes 3-0.

D. Setting 2007 Election Date-Introduction of Ordinance 06-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE CHARTER, PROVIDING AUTHORITY; AMENDMENT- ELECTIONS FOR MARCH, 2007 AND RUN-OFF ELECTION PROVISION; SEVERABILITY; REPEALING CLAUSE AND EFFECTIVE DATE.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

Discussion:

Councilman Shenko responded that he cannot support this Ordinance, stating this is exactly what was done by previous Council members. Mr. Shenko also pointed out that this would be setting the Election while other members of the Council are not present, and expresses no desire in doing so as he wants to have their input as well.

Councilman Reynolds read Ordinance 06-17. Mr. Reynolds stated based on what he has read, they are allowed to change a date for the convenience of the Town not extending it to 9 or 10 months. He noted that this is an adjustment in order to cooperate with the Board of Elections.

Ms. Dalton responded that is correct and that the Florida Statutes does allow this; Ms. Dalton reported that Ms. Harrington will not conduct the Elections in accordance with the Town's Charter, and differed to Ms. Lambert for further comments.

Ms. Lambert reported that when she was checking to having it on the 2nd Tuesday as it is part of the Charter, Ms. Harrington has coordinated this with Sanibel's Election which is on March 6th.

Ms. Dalton stated that this is not a hearing, and that it can be moved forward to the next agenda if that is the will of Council. She also noted that there will only be one hearing on the matter.

Ms. Dalton replied that they can defer the introduction to the next Town Council meeting.

Councilman Shenko agreed to have this moved forward, but would like to have input from Ms. Harrington and tell us exactly if she is able to run the Election on the date the Town's Charter calls for.

This item was moved forward to the next regular Town Council meeting, of October 16, 2006.

E. Water Utility Update

Mayor Boback directed Mr. Green to proceed.

Mr. Green reported that most of this is in regards to the financing and would prefer deferring it to Ms. Dalton.

Ms. Dalton reported she had provided a memo on September 28th to Council. She brought up the last time they had discussed this matter, Council had gave her direction on three tasks. Ms. Dalton reports that she has completed all three tasks one of which was to contact Dick Roosa who is the former Town Counsel regarding his analysis on the Town Charter. Ms. Dalton reports that Mr. Roosa did not analyze the Charter Provisions, with the sovereign immunity question, and he did not analyze the sovereign immunity itself. Ms. Dalton reports that Mr. Roosa analyzed the immunity protection by Florida not-for profit law. Ms. Dalton also pointed out that she was asked by Town Council to contact counsel for the SunTrust bank who had the revenue note, and she contacted Ackerman & Senterfitt who did the original financing, and also the attorney for Holland & Knight who handled the refinancing. Ms. Dalton reports both of them have indicated to her they will be responding by letter, which she has received any at this point. Ms. Dalton also obtained a fee proposal regarding an attorney specialist who will investigate the issue of revenue note financing, and Ms. Dalton was given an anticipated cost of \$19,800 for the service. Ms. Dalton added that at the time the note came due, there was a new note which was issued and there was no addendum to this note which was done. Ms. Dalton reports that she did not have any information regarding if there was any plan in place for the refinancing and did not have any documentation regarding that.

Mayor Boback opens public comment:

- Pat Loffreno stated that he was a little concerned of what has happened in their community. He suggested selling the water system as a private enterprise instead of spending money the Town doesn't have; Mr. Loffreno also stated this has been done before.
- Pat Smith commends Council for their efforts in trying to resolve this issue as she states that it is a huge liability hanging over their heads, as well as for the taxpayers of Ft. Myers Beach.

Mayor Boback closes public comment:

Ms. Evelyn Wicks reports from her research, the note comes due on April 7th of 2007; she notes that according to the records it appears that it was refinanced early due to favorable interest rates.

Councilman Shenko asked Ms. Wicks about the face amount of the note.

Ms. Wicks responded that it was \$3.2 million.

Councilman Shenko asked if there was any principle reduction from the last renewal.

Ms. Wicks reported that the original note was for \$3.6 million based on documentation she has found.

Mayor Boback questioned how it was reduced in the refinancing, if there was nothing paid back.

Ms. Wicks reported that there has been some principal interest paid throughout the years.

Ms. Dalton reports that there were more payments than was reflected in the refinancing process because the cost of the refinancing rolled into the refinancing therefore, more principal was paid down than it would appear.

Ms. Wicks agreed with Ms. Dalton that they have rolled some of the cost into the refinancing.

Councilman Shenko expresses his concerns regarding a \$3.2 million due and payable in seven months. Mr. Shenko reported that they have an opinion letter from their attorney stating that either the Town has violated the Charter, or they do not have sovereign immunity where they may be liable for actions or lack of actions that could be taken. Mr. Shenko suggested other options one of which Mr. Loffreno previously mentioned of selling the water system. Mr. Shenko asked Ms. Dalton for her recommendations.

Mayor Boback responded that he believed Ms. Dalton did state they do have sovereign immunity.

Councilman Shenko replied if they do, then they have violated the Charter.

Ms. Dalton reported that it is a municipal corporation and is an extension of the government therefore, they do have sovereign immunity. Ms. Dalton referred to the Charter Provision and stated that the Town shall not incur debt that extends beyond a 36-month period without referendum approval of the electors. Ms. Dalton pointed out when they addressed this at the last meeting; Ms. Dalton questioned at the time it was refinanced what was the intention, and asked if there was a pay-down during the 3-year period. Ms. Dalton also pointed out that in the original 36-months period it would have complied with the Charter only if there were documentation stating how it was intended to be paid down. Ms. Dalton reported that she was anticipating two letters at no cost to the Town from bond counsel to the bank. She noted that she had extensive discussions with both attorneys as to whether or not the Charter was violated, or if they relied on the opinion letter from the previous Town Council. Ms. Dalton reported that she has not received those letters as of yet.

Councilman Shenko assured Ms. Dalton that they were carefully drafting those letters stating that they will take no blame for violations of the Charter. Mr. Shenko points out that they both say the same thing; to be repaid in 3-years, and that they were 5-years owing more than they paid for it. Mr. Shenko states that they own more money on the water system 5-years after they had purchased it with a Charter Provision stating for it to be paid back in 3-years. Mr. Shenko stated that if they do have sovereign immunity, then they have violated the Charter and he does not want to violate the Charter again in April. Mr. Shenko suggested hiring someone who can direct them from another Charter violation, or looking at other alternatives; he feels that it would be better to get other proposals from other attorneys, as his concern is that April is coming and they need to face this head on.

Ms. Dalton reported that she had spoken to four firms, and only one was willing to proceed with a fee quote.

Mayor Boback suggested either refinancing, or putting it on a referendum to see whether the electorate can have them in some way finance it to pay it off, or they take the funds from the Town's Budget and pay it off which would leave them empty. Mayor Boback summarized those would be their three options. Mayor Boback suggested instead of going to a bond counsel that would be costly, they can consider a financial manager who can provide different options for them to pay it off. Mayor Boback directed Ms. Wicks to research who can provide that kind of information, and to present it at their next meeting.

Mayor Boback suggested putting it on the referendum in March to have the voters decide. Mayor Boback pointed out that the only way they will be able to pay this off or reduce it would be by taking it to the voters and

letting them know the options; refinance it, or pay interest on it again for three more years which would be throwing money away on interest. Mayor Boback stated that they can finance it and pay the loan down, stating that they need to legitimize it. Mayor Boback also suggested going through a private sector who may be interested in purchasing the water system. Mayor Boback states that they do have options, but have a limited amount of time to put it on a referendum to put before the voters.

Ms. Wicks replied that she will research, and could have a report back to them by the next Council meeting of options that might be available.

Ms. Wicks reported that there may be some options of financing and paying down the principal without stripping the entire fund stating that she will put some of these together.

Mayor Boback stated that they were open to any options, but does not believe a bond counsel would be the way to go suggesting that there are other options out there other than a 30-year bond.

Ms. Dalton reported the fee quote that was given to her by Edwards and Cohen was specifically to investigate the transaction in discussion.

F. Beach Renourishment

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

The Council agreed with the need to have a collective understanding as to where to have sand placement and present it to the Board of County Commissioners for their P&M meeting. Directed Public Works Director Jack Green to work with beach residents Merrill and Schilling with regard to placement. Attorney Dalton was directed to work with the County Attorney's Office with regard to the interlocal agreement and the sand placement and incorporate some consideration as to traffic mitigation.

VII. COUNCIL MEMBERS ITEMS AND REPORTS

Mayor Boback suggested having any referenda items for discussion at the upcoming October 16, 2006 Council meeting. He inquired as to the progress of considering three lanes on the Matanzas Pass Bridge. Staff will explore the possibility of piggy-backing on the County's engineering report regarding bridge structural feasibility.

VIII. TOWN MANAGER'S ITEMS

IX. TOWN ATTORNEY'S ITEMS

Attorney Dalton will be bringing forward a Resolution for a Charter Review Commission as requested by Councilman Meador.

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

Mayor Boback opens public comment:

- Dennis Kovach inquired as to the Town Council's request to have the Marine Resources Task Force weigh in on the beach renourishment project . Jack Green will coordinate with MRF.
- Phil Winter spoke of vegetation debris around the island and suggests signs such as the do's and don'ts regarding (i.e.) dogs on the beach, restricted hours, etc.
- Pat Lofferno spoke about the beach Renourishment and Traffic Mitigation and that he wants to correct the situation that they have had for many years regarding the bridge and the three lanes, and the need to have an emergency pull off lane. Mr. Lofferno stated on October 5, there will be a TMA meeting and believes it is time to do something.
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- Pat DeVincent noted a clarification for the plaques cost which would be \$300.00.
- Ken Siller resident of Ft. Myers Beach. He spoke about his hometown in Oregon where they had an ordinance from cruising stating this would be a good way to reduce the traffic. He also made some suggestions for beach Renourishment stating to set minimums of 50 feet from the property, that person deserves to have beach Renourishment to even it out.
- Theresa Schober referred to a memo she forwarded to Council regarding the grant review in Tallahassee where she had written a \$350,000 grant proposal to the State that would fund the completion for the underground pool exhibit area of the Mound House. Ms. Schober noted that the State received 129 grant proposals and they deemed 118 eligible for funding, and that the Mound House was ranked 1st for funding for next year. She noted that by next year they should be receiving from the State an additional \$350,000 which will put them on target to complete the project.

Mayor Boback closes public comment:

XI. ADJOURNMENT

MOTION: Councilman Shenko made motion to adjourn. Councilman Reynolds 2nd the motion.

VOTE: The motion passes 3-0.

Mayor Boback adjourned the meeting at 8:58 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