

**FORT MYERS BEACH
TOWN COUNCIL**

**Town Hall- Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Fl 33931
October 9, 2006**

AGENDA	Regular Town Council Meeting	3:00 PM
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I. CALL TO ORDER

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

Absent: None

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

II. PLEDGE OF ALLEGIANCE:

All present stood for the recitation of the 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-

A. Approval of Minutes June 21, 2006

MOTION: Vice Mayor Massucco made a motion to approve the minutes for June 21, 2006. Mayor Boback 2nd the motion.

VOTE: The motion passes 5-0.

VI. ADMINISTRATIVE AGENDA

A. Public Hearing- VAR2006-00010: 61 Delmar Avenue: Dullard Setback Variance.

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

Councilman Reynolds responded he had none other than had visited the property.

Vice Mayor Massucco responded he had no communication, other than just visited the property.

Mayor Boback responded that he also visited the property, but had no communications.

Councilman Shenko responded that he had no communications, but that in the packet that the applicant has submitted a Land Survey of 10-pages, one of the persons it was certified to was Mr. Shenko. Mr. Shenko reported that he represented the seller of the property who sold the parcel to the purchaser. Mr. Shenko reports that he never met the purchaser, or has spoken to the purchaser about this application. Mr. Shenko also reports that he is very familiar with the property.

Councilman Meador reported he had no ex-parte communications whatsoever.

Mayor Boback directed those testifying to stand up to be sworn in by Ms. Dalton.

- Dan Gravis representing Steve Dullard. Mr. Gravis met with Shaun at Lee County and they have been able to work out agreeable terms. Mr. Gravis asked if anyone had any questions.

Vice Mayor Massucco questioned Mr. Gravis if he has agreed to the combinations which were made with the new numbers and the setbacks?

- Mr. Gravis responded yes with the 20 setback and the setback on the right side of the house. Mr. Gravis reported that they will be able to get the house in.

Councilman Reynolds questioned by being setback by 7 ½ feet will that bring him in line with the building before them.

- Mr. Gravis responded no, and that he was not sure what the building is on the left hand side.

Mayor Boback questioned about the steps going up into the building and if they were in the right-a-way.

- Mr. Gravis responded yes.

Mayor Boback questioned if the new structure is built will the steps still be in that 7 ½ foot of that right-a-way.

- Mr. Gravis responded no.

Ms. Dalton questioned Mr. Gravis if he agreed with the agreement with the Local Planning Agency that is in the packet.

- Mr. Gravis responded yes.

Shaun Lamey with Lee County Community Development, Division of Zoning representing the Town of Ft. Myers Beach. Mr. Lamey reports the case as VAR2006-00010, and is dated August 28, 2006. Mr. Lamey read the report to Council and reported that they have analyzed the requested variances and have come to the conclusion that the requested setbacks are not the minimum possible variances to make reasonable use of this property. Mr. Lamey suggested that the proposed structure can be relocated further from street setback, and staff is recommending lesser variances that move the proposed structure 20 feet from the alley way, and 7.5 feet from Delmar Avenue. Mr. Lamey reports that this recommendation is a more conforming alternative to accommodate more typical setbacks that are consistent with residential zoning found elsewhere within the Town. Mr. Lamey reports they have evaluated the recommended lesser variance and has been found to be consistent with the policies and objectives of the Town of Ft. Myers Beach Comprehensive Plan. Mr. Lamey further noted based on their findings and conclusions outlined by the staff report, staff is recommending approval of the requested variance as shown in Section 2-A, of the staff report.

Councilman Meador referred to the 7 ½ foot setback on the Delmar beach access side, and asked Mr. Lamey if it is correct that the stairs entry way will be 7 ½ feet from the property line.

Mr. Lamey responded that is correct.

Councilman Meador questioned if no part of the structure will be within the 7 ½ feet or access to the structure.

Mr. Lamey responded that is correct.

Councilman Meador pointed out that they have a proposed resolution which states the single family residences were built in 1952, which were within setbacks; Mr. Meador pointed out with the encroachment of the stairs to the property line, that it would be an incorrect statement.

Mr. Lamey responded that he believed so. Mr. Lamey pointed out that in 1952, there was no zoning at the time.

Councilman Meador stated that he understood, but pointed out if they were building over the property line that they would not be within setbacks.

Councilman Shenko replied that had no questions.

Vice Mayor Massucco responded he had no questions.

Councilman Reynolds pointed out that he read from the materials provided that there was some easement going back to keep the other property from being land locked. Mr. Reynolds questions a comment which is mentioned as a walk path rather that being used by automobiles. Mr. Reynolds expressed he did not believe that was correct.

Mr. Lamey responded that it is a public right-a-way.

Councilman Reynolds pointed that this will be used because the 2nd house would not be able to get in or out without that, stating that it has to be used by automobiles. Mr. Reynolds mentioned that was his only question as to clarify that issue.

Mr. Lamey responded yes it is.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment.

MOTION: Councilman Reynolds made a motion to accept the Resolution 06-22 as presented to them. Vice Mayor Massucco 2nd the motion.

Ms. Dalton pointed out to Council the way the Resolution is drafted stating it is an either or situation. Ms. Dalton requested that Council go through items one through five stating whether they are or are not extraordinary conditions.

AMENDED MOTION: Councilman Reynolds made a motion to accept the Resolution 06-22 as presented to them, and added with the notifications or notations of

- #one**, findings & conclusions that there are exceptional conditions or circumstances that are inherited to the property in question and the request is not for the minimums of a variance; stating that is the direction he will go with because a part is not considered a share.
- #two**, any exceptional ordinary conditions which would otherwise justify the variances or circumstances are not the result of action of the applicant etc.
- #three**, the variance recommended is the minimum variance that will relieve the applicant etc.
- #four**, the granting of a variance will not be injurious to the neighborhood etc.
- #five**, the conditions are circumstances on the situation of the specific piece of property or the intended use of the property for which a variance is sought are not so general and recurrent etc.

Vice Mayor Massucco amended his 2nd.

Mayor Boback asked if it would be needed to take out within setbacks under **# four; a single family residence was built in 1952 within setbacks.**

Ms. Dalton responded that they can take that out or amend it.

Councilman Reynolds agreed for that clause to be eliminated as previously suggested.

Councilman Shenko replied he had no further discussion.

Vice Mayor Massucco responded he had no further discussion.

Councilman Reynolds thanked the zoning Mr. Lamey and colleagues for doing such a good job, and also to the LPA stating that this was a tricky piece of work. Mr. Reynolds commends them for their efforts in their research and getting the job done.

Councilman Meador referred to the motion to # one, stating it would be more appropriate to state: the conditions or circumstances that are inherent to the property in question, the request is for the minimum variance under the circumstances. Mr. Meador reports that is one of the criteria for granting.

Ms. Dalton responded to Mr. Meador that was correct.

Councilman Reynolds responded he can accept that.

Councilman Meador noted the comment he would like to add would be in #one as to the potential amendment. Mr. Meador asked if it would be correct if a four sided figure that has paralleled lines, is a parallelogram.

Councilman Meador pointed out that a rectangle is also a parallelogram as a square. Mr. Meador questioned whether they should put that specifically as a criteria for the finding unless they were going to amend that to a narrowly drawn parallelogram or something just to take it out of the ordinary, stating that he didn't see that as a criteria per say.

Ms. Dalton asked Mr. Meador if he was suggesting that they delete the words as configured as a parallelogram.

Councilman Meador responded that it would be suitable to delete the words the lot is configured as a parallelogram as far as he is concerned.

Councilman Reynolds responded again that it is acceptable to him.

Vice Mayor Massucco amended his 2nd again.

Mayor Boback asked if there were any further discussion.

Councilman Shenko pointed out since they are changing paragraph one to indicate that it is a minimums variance, and asked if that meant the LPA's findings were incorrect, because they said it was not. Mr. Shenko suggested rechecking that to make sure if it is what they said, because he is in favor of the motion.

Ms. Dalton responded that they will check that, but reminded Mr. Shenko that Town Council has the ability to make its own findings and conclusions independently of whatever the recommendations of the LPA.

VOTE: The motion passes 5-0.

B. Introduction- Ordinance 06-18: Proposed Legislative Changes to the Land Development Code- Chapters 6 and 34

Mayor Boback directed Ms. Dalton to proceed with the introduction.

Councilman Meador asked before they begin if anyone knew what they were supposed to be introducing today; Mr. Meador pointed out that the document that was given to him was not proof read, stating that there were a lot of computer gibberish throughout the entire document which made it totally illegible. Mr. Meador suggested deferring this to the next agenda

when somebody has the opportunity to proof read what goes into our materials.

Mayor Boback asked the members if they had any other comments.

Councilman Reynolds responded that he has gotten used to reading around the errors that he has become immune to it.

Councilman Meador asked if anyone could read to him the bottom line on the 3rd page of the proposed amendment, he would be happy to go along with it.

Ms. Dalton pointed out that the consultant uses Word Perfect, and the Town uses Word. She noted at the time of the conversion whoever did the conversion did not follow through with the proof reading. Ms. Dalton suggested that they can re-notice it for introduction and have staff proof read before it comes forward.

Councilman Reynolds responded that he did not have any objections if the members wanted to move it forward to give them a chance to readdress some of the structure of the sentences.

Councilman Meador pointed out that he didn't see how they can possibly move this, stating that it would be an embarrassment to each and every one of them to move something forward that was not written in English.

Councilman Shenko also agree with Mr. Meador in not moving it forward, and he would prefer to have those two items be addressed; the 1978 Coastal Construction Control line and building that they have existing on this beach built prior to 1978, when the line was drawn that the seaward of that line they are going to prohibit them from rebuilding. Mr. Shenko pointed out he asked that this be addressed at the EAR and it is not here. Mr. Shenko asked for anyone to explain to him what the build backs provisions are at this time, stating it is not 50% loss; he would like to have that addressed as the items are important and should be discussed by Council.

Vice Mayor Massucco responded that he had no objection putting it off.

Councilman Reynolds pointed out there is no motion on this, but he had no objections moving it for reconsideration at a later date.

Mayor Boback reports that the consensus here is 4-1, that they will not move it forward and to address those issues Councilman Meador and Councilman Shenko had brought forward.

Mayor Boback questioned if they can bring this one back after the corrections are made, and work on the other ones to bring them forward.

Ms. Dalton questioned Mayor Boback if he was saying as an introduction.

Mayor Boback responded that is correct.

Vice Mayor Massucco reported that would be on the meeting on the 16th, and confirmed with Mr. Murphy.

C. Direction to the Local Planning Agency as to their role in initiating changes to the Land Development Code

Mayor Boback referred to Ms. Dalton as bringing this item forward, and directed for her to proceed.

Ms. Dalton reported at a previous LPA meeting the question arose whether the LPA had the authority under the Land Development Code to initiate legislative changes; Ms. Dalton went over the three scenarios they had come up with.

One: is yes it does i.e., have the ability to direct Mr. Spikowski as their Planning Consultant and Ms. Dalton as their attorney to move forward with changes.

Two: no they do not have the ability to do so, it would be Town Council who directs the LPA to address issues; they cannot address Land Development Code issue changes and such direct instruction.

Three: being a compromised position; where the LPA can send forward to the Town Council for consideration via Resolution, request to be allowed to review certain portions of the Land Development Code and Town Council would give direction based on that Resolution.

Ms. Dalton noted that there were several LPA members here today, and she did not know whether they wanted to address the Council, or if they are here to listen. Ms. Dalton pointed out two LPA members that have put items in the packet for consideration by the Council.

Mayor Boback opens public comment:

- Tom Babcock is requesting to address this issue on how Council wants to empower the LPA to initiate, or whether Council wants to empower the LPA to initiate changes or amendments to the Land Development Code. Mr. Babcock expressed to Council his primary concern he wanted them to consider would be how does Council want to efficiently use the staff, the support of the attorney, the planning consultant and volunteers on the LPA. Mr. Babcock reports that at the same time, they are trying to be as responsive as possible to the demands of the citizens of Ft. Myers Beach.

- Andrew De Salvo property owner of Ft. Myers Beach. He suggested for Council to allow the LPA the opportunity to initiate ideas the public brings before them; so they can initiate changes and receive final decision from Council.

Mayor Boback closes public comment:

Vice Mayor Massucco was under the impress that the LPA is a volunteer advisory agency. Vice Mayor Massucco expressed that he has always been reluctant to apply too much authority to each committee or agency, and does realize that they have the final decision as everything has to come back to Council. Vice Mayor Massucco pointed out which ever one they may select, have the same result stating that some will take longer in the process as Mr. De Salvo previously mentioned. Vice Mayor Massucco commented that he didn't see anything wrong with the way it is now, where the LPA can make all the suggestions and put them in a form of a Resolution to bring to Council; beyond that as an agency, to do the changes Vice Mayor Massucco cannot see giving that authority.

Councilman Reynolds expresses that it was not clear to him as to how items are brought before the LPA for consideration.

- Tom Babcock responded as part of their members discussion often times LPA members are approached by individuals from the Town with issues they would like to see addressed. Mr. Babcock noted that there are new LPA members that have fresh ideas in hopes to have the opportunity to address the impact of the Land Development Code. Mr. Babcock discussed having a workshop where they can have the people come in and provided input, and pointed out what Mr. De Salvo previously mentioned there has been more than one person who have come to them with suggestions of making changes to the Land Development Code.
- Mr. Babcock spoke to Council regarding Mr. De Salvo and his issues which may have been the reason this came forward. Mr. De Salvo came to the LPA and explained the issues he had. The LPA felt it was important enough to carry a Resolution to the Town Council. Mr. Babcock noted in order for the LPA to do so effectively, they required time by their planning consultant where Mr. Babcock explains Mr. Spikowski felt uncomfortable putting in time and charging the Town without knowing if it is authorized by Town Council. Mr. Babcock stated that he understand the reluctance by the staff, attorney or the planning consultant to go ahead of something which could end up being a waste of time, stating that this is a key issue of concern.

Councilman Reynolds pointed out with the three suggestions, he feels that the first one would be the best approach stating that it might be a little long, but in the long run it is the best approach.

Councilman Meador responded that he would like to see the LPA members have a role as far as making suggestions to Council. Mr. Meador feels that if the LPA sees a need to make changes in the Land Development no matter what the source, that the LPA can start the process by sending a Resolution to Council making their suggestions of what they think needs to be reviewed or revised and give the Council an idea of what they are looking at where Council can provide feed-back at a meeting, before involving considerable staff and consultant time and expenses. Mr. Meador expressed that he had a fear from a financial stand point of just telling the LPA to go and spend consultant dollars and tie up staff time for something Council may have no interest in pursuing. Mr. Meador is in favor of the #two scenarios, where the LPA has the authority to pass a Resolution in which they can present it to Council to review and would like to see the LPA proceed that way. Mr. Meador expressed his appreciation getting input from the LPA members on their studies, on readings and on proposed changes. Mr. Meador stated that he wasn't too sure that they need to make too many changes other than to tell the LPA to present a Resolution and it will be on the agenda.

Mayor Boback agrees that the LPA should continue what they are doing as far as taking input from the public or where ever they get it from, and then send a memo to Council about some issues that have been brought to them, to see whether Council would like the LPA to move forward with; Mayor Boback states that could be addressed at the next Council meeting. Mayor Boback noted that it doesn't have to be a formal process to bring it in as a Resolution, but perhaps only a consensus of the LPA to pass a memo to the Town Manager indicating there has been requests to look into these issues and if there is something Council wants the LPA to proceed with.

Ms. Dalton reports that this is a policy decision, and she agrees with Councilman Meador that there is no LDC change required. Ms. Dalton did however, requested that there be a vote on it to be clear on what the direction is to the LPA.

MOTION: Councilman Meador made a motion for the LPA to have the ability to bring forward to Council by LPA Resolution proposed changes to the Land Development Code for the direction by the Town Council, to the LPA. Councilman Shenko 2nd the motion.

Discussion:

Councilman Shenko responded that he had no other discussion.

Vice Mayor Massucco replied that he has no other discussion.

Mr. Reynolds stated that he had no problems, and believes it is a good move.

Councilman Meador pointed out that he understood Mayor Boback's suggestion of an informal memo and not a Resolution, but Mr. Meador believes if the LPA brings something to Council in a Resolution form it would be clear in both their minds as far as what they are looking for, and perhaps better understood by Council as it is Council will be one who will be considering it.

Mayor Boback responded that he had no problem with that, but was looking how to expedite the process as quickly as they could.

VOTE: The motion passes 5-0.

D. Mulholland Stewardship Award

Mayor Boback directed Mr. Charles Hester to proceed.

- Charles Hester of the Marine Resources Task Force referred to a memo that was dated September 8, 2006.

Mayor Boback responded that he had the memo for October 2, 2006.

- Mr. Hester reviewed what was written in the memo, stating that MRTF voted as they have done in the past to award a 4th annual John Mulholland Stewardship Award to some people and the memo explains why they have done so and the criteria. Mr. Hester is requesting Council to approve the award as this is the 4th year that they have given the John Mulholland Stewardship Award. Mr. Hester noted that this was created by MRTF as a community education based on the environmental values that the committee is tasked with, and includes inscribing the winners name on the bronze leaf on the tree.

Mayor Boback had no questions.

Councilman Reynolds asked Mr. Hester questions regarding the decision making process as to who was considered for the award.

Mr. Hester reported that they distribute this application which has a deadline and the criteria, for anyone who wishes to submit a name to MRTF.

Mr. Hester indicated that they have categories for individual businesses, and non-profit organizations.

Vice Mayor Massucco expressed that his concerns are the same concerns raised by Councilman Reynolds, how, when, where, and why. Vice Mayor Massucco noted that he never looked at it closely enough, and asked if it is written anywhere that this is reserved for the Marine Resources Task Force committee members.

- Mr. Hester responded that the John Mulholland Stewardship Award is a MRTF program, and that was the growth of it noting the tree, and the leaves. Mr. Hester pointed out what they would be doing is putting their name on the leaf and giving them a certificate, he noted that there is no money or any other recognition. Mr. Hess noted that they are trying to establish a history of the awards that they have given for conservation.

Vice Mayor Massucco noted that he was at the ceremony when the Williamsons appeared at the Matanzas Pass Preserve, and Vice Mayor Massucco agrees that they should have their names immortalized up there.

Councilman Shenko pointed out that for the purposes of the audience and the people at home, it may be beneficial to know who the recipients are and for what reason. Mr. Shenko noted that they have a memo, but is not sure anyone else knows, or the proposed recipients. Mr. Shenko had no other questions other than what he mentioned.

Mr. Hester noted that he did not read the entire list. He noted that they voted to award the fourth annual John Mulholland Stewardship Award to two couples: Katherine & Randolph Williamson, and Mary & Douglas Williamson in recognition of their unselfish dedication to conservation of land adjacent to the Matanzas preserve by virtue of her action to the Matanzas preserve to conservation 20/20 rather than to allow to be sold to development.

Mayor Boback thanked Mr. Hester.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

MOTION: Councilman Meador made a motion for Council to authorize expenditure of the \$9.00 per leaf, for the four leaves. Councilman Shenko 2nd the motion.

VOTE: The motion passes 5-0.

E. Introduction of Ordinance 06-17 Setting 2007 Elections

Ms. Dalton read the Ordinance 06-17 for the Town of Ft. Myers Beach. Ms. Dalton noted that this is an introduction of this Ordinance, and pointed out that there is some inaccuracy written in the body of the Ordinance which was rendered inaccurate by information received by the Town Manager from the Supervisor of Elections. Ms. Dalton noted the inaccurate portion is in Section two amendments, stating that she will correct this if it goes forward before the hearing.

Mayor Boback opens public comment:

- Tom Babcock noted that the changes modify what he was going to say. Mr. Babcock expresses his disappointment since they have known for a year and a half that there was going to be an Election in March in 2007, stating that since last November they would have a runoff in April 2007. Mr. Babcock pointed out that he is a little disappointed if they are being pulled several different ways by the Supervisor of Elections, because they have waited until now to request. Mr. Babcock's primary concern is the two month delay between when the Election would be, and when the runoff Election would be.

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Mayor Boback closes public comment:

Councilman Meador questioned Ms. Dalton of the status of the Ordinance.

Ms. Dalton responded that this was just an introduction.

Councilman Meador noted that there are more than the factual errors that are referred to in Section 5.01. Mr. Meador points out to the fourth whereas provision which states that the Supervisor cannot run their Election on the second Tuesday in March, questioning it would be incorrect. Mr. Meador pointed out to the fifth whereas would also be incorrect, and noted the need to made a change on the sixth whereas paragraph. Mr. Meador referred to the history they have had with the Supervisors of Election as to what they can and cannot do, stating that it is too late at this point to begin looking at running their own Elections. Mr. Meador commented that the last Town Council did not feel that they could not stand on their own in 2000.. Mr. Meador does not agree with the proposal that the Supervisor has made to them that we leave it up to the

Supervisor's office and the Town Clerk when the Elections will be, or when she can fit it into her schedule. Mr. Meador feels that does not serve the citizens at all, and would not like to proceed with that modification of the Charter, which is what the Supervisor is proposing to Council. Mr. Meador asked if it was correct that they can have an Election on the second Tuesday in March.

Ms. Dalton noted that the Supervisor corrected her prior advice. Ms. Dalton's understanding is that another suggestion on Ms. Harrington's part was to run in conjunction with an Election in Sanibel.

Ms. Lambert reported that they can have it on the second Tuesday. Ms. Lambert stressed to Ms. Harrington that this was part of their Charter, which would mean changing their Charter, and after further discussion Ms. Harrington consulted with her staff and found that it was possible to run it on the second Tuesday of March.

Councilman Meador understood, but pointed out that they still have a turn-a-round problem as far as the runoff, which he notes could be on the second Tuesday of May. Mr. Meador noted to the audience that there have been some statutory changes that according to the Supervisor, she is not able to turn-a-round and run a 30-day runoff as she was able to do before, because of certain time requirements in connection with certifying voters, which puts her two weeks back. Mr. Meador noted he would not like to do any damage to their Charter, but where they are at this point in time, they may have to go out 60-days for that runoff. Mr. Meador suggested after the Elections, that they should seriously start considering doing the Elections themselves.

Councilman Shenko pointed out that Mr. Meador was not present at the last meeting where Mr. Shenko expressed his frustrations when this was proposed that Ms. Harrington could not do the first Election. Mr. Shenko expresses that he is equally frustrated. Mr. Shenko points out that they have a Charter stating that they have to do certain things; the Charter was changed from November to March because the Supervisor told them to do so, because it was better for her office. Mr. Shenko proposes that they go along with the March Election, which Ms. Harrington can run. Mr. Shenko suggested looking at running the second Election with Ms. Harrington, but to consider a private enterprise doing the Election. Mr. Shenko pointed out that their Clerk needs to be trained to run municipal Elections. Mr. Shenko is in favor of going with the first date, which she states she can run, but also bidding to see if someone can run if there is a runoff; to see if it can be run by private enterprise, on the date required by the Charter.

Vice Mayor Massucco expressed that he was totally frustrated. Vice Mayor Massucco looks back to when he was elected to a 4-year term, and

then it was cut to a 3-year term, and points out that he wasn't seated until the following April after the March Election. Vice Mayor Massucco mentioned that the Charter review committee was probably on the right track in doing their study of the Charter, stating that they need to do some work on this as he is frustrated with the whole system, and hopes to be able to work things out.

Councilman Reynolds noted that Ms. Dalton had a pretty good system worked out and it should be able to work. Mr. Reynolds noted that they were given a lot of background to what is going on by staff and Ms. Lambert and Ms. Lambert faxed all the Council members an update given by Ms. Harrington. Mr. Reynolds stated given what he read, he believes the explanations are sound, and Mr. Reynolds noted that he understands the problem Ms. Harrington is facing. Mr. Reynolds suggested that they live by it this time, and noted one suggestion made by Ms. Harrington which was for them to change their Charter so it would not be so specific; Mr. Reynolds pointed out that he also suggested of making it like the first or second of March and go into April with the same account like that. Mr. Reynolds stated that he believes that would get them out of some of the specific things that they have to do, because they have to realize that other people have responsibilities as well, and may not always match the Council's as specifically as they would like for it to.

Mayor Boback stated that he finds it inconceivable that it would take Ms. Harrington 60-days to be able to count a half a dozen provisional ballots, stating that they only have about 4700 or 4900 registered voters in the Town. . Mayor Boback agrees with Councilmen Meador and Shenko in looking into finding someone who can hold their Elections other than the Supervisor of Elections, as Mayor Boback feels that there should be no need to change the Charter if Ms. Harrington cannot hold the Elections when they need them. Mayor Boback states that they have no choice this year as it is a little late in the year, and to look into the following year of running their own Elections. Mayor Boback asked to entertain a motion.

Ms. Dalton responded that they would only be moving it forward.

Mayor Boback asked if they don't need a motion to do so.

Ms. Dalton responded yes, and thanked Mr. Meador for the corrections to be made regarding the "whereas," which she had already done.

Mayor Boback noted that they do not need a motion, but need a consensus to move it forward.

Ms. Dalton responded yes, and a date and time for the hearing.

Ms. Lambert announced that the next Council meeting would be on the 16th, so will notice that tomorrow and they will have five days prior to seven days in between.

Ms. Dalton responded that her perception that Council would go forward with Ordinance 06-17, because of the change due to the runoff; she noted that there is also a Resolution which accompanies the Ordinance at the final hearing, and the Resolution would spell out the specific dates, and addresses Vice Mayor Massucco's concerns regarding the 50-days.

Mayor Boback asked the Council members for consensus to move this forward.

Councilman Meador responded to move it forward.
Councilman Shenko responded to move it forward.
Councilman Reynolds responded to move it forward.
Vice Mayor Massucco relied to move it forward.

Mayor Boback concluded that there were five who agree to move it forward.

Ms. Dalton suggested that the Town Clerk fax to Ms. Harrington the Resolution and the Ordinance just so there is no confusion and before it is presented to Council.

F. Letter Received from Dave Meyers

Ms. Dalton reports that she received a letter from Beverly Grady who is the representative for Mr. Meyers. Ms. Dalton reports that the Code Enforcement Action is scheduled for hearing this coming Thursday, and she is asking for the direction from Council whether they want staff to continue the Code Enforcement Action for a time certain, or an indefinite time, or does Council wish for staff to proceed with it.

- Beverly Grady with Roetzel & Andress pointed out that Dave Meyers is the representative for Times Square property, the Ramada, Howard Johnson, Day's Inn, Sandman Inn and also the Seafarer's across the street. Ms. Grady referred to the letter and thought it would be productive for the Town and the ownership of those properties to focus their energy on a redevelopment. Ms. Grady pointed out that it would be a positive step if they can put on hold the litigation and the Code Enforcement, and begin working on the redevelopment which she notes is the priority of the owners of these properties. Ms. Grady pointed out that they would be ready to meet and work with Council regarding the redevelopment; she suggested a workshop as an opportunity to commence that process if Council desires.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

Councilman Shenko mentioned that this is welcomed on his behalf, and appreciates them coming forward. Mr. Shenko pointed out his biggest concern which he previously had no longer exists, and brought up that he had made a motion regarding one of those places to continue operating under a Special Events Permit.

Vice Mayor Massucco responded that he sent a memo and read it to Council and for the audience. Vice Mayor Massucco pointed out that this is the most crucial time in their Town's development, and that the direction the Council takes now would shape the future of Ft. Myers Beach for the years to come. Vice Mayor Massucco stated that is the position he still holds today, and believes that they should set aside the Code Enforcement Action against the Times Square properties. Vice Mayor Massucco believes that would open up a new avenue for them to get into some meaningful discussion with Mr. Meyers, and to see if they can get something going. Vice Mayor Massucco pointed out that Times Square is going to get developed one way or the other, but he states he would rather be working with Mr. Dave Meyers than sitting on the sideline working against him.

Councilman Reynolds responded that Mr. Meyers has been taking it easy for two year, and he should have brought something before Council long before now. Mr. Reynolds referred to Vice Mayor Massucco's memo, stating that he did not believe it was proper for any Councilman to suggest before a Town Council meeting that Council "to set aside the Code Enforcement against Times Square property." Mr. Reynolds referred to a second comment "a positive response would be a giant step in opening a dialogue." Mr. Reynolds added that they never closed dialogue. Mr. Reynolds points out that Council's concern should be for the businesses and for the residents, not just for an investor or a developer. Mr. Reynolds noted that if Mr. Meyers wanted to talk to Council, they have always been there; and pointed out that it looks like it has come to the point where Mr. Meyers is ready to talk to us, and Mr. Reynolds is all for it whether it would be here today, or whether it will be through a workshop.

Councilman Meador responded that he would like to see discussions go forward with Mr. Meyers, stating that there were probably misunderstandings on both parts. Mr. Meador agrees with Mr. Reynolds regarding that nothing had been presented to them by Mr. Meyers. Mr.

Meador noted that he didn't have any problem with slowing the litigation, or have any problem with putting the Code Enforcement Actions on hold, and stated he would like to see them enter into productive discussions as far as the development of the area.

Mayor Boback agreed and stated that it is time that they sit down and try working something out for the benefit of the Town. Mayor Boback suggested a workshop would be best where they can sit down together across the table from each other, and discuss what they are looking at or what they might have. Mayor Boback asked Council members if it was agreeable with them, they can set a date and that they still need a motion for this.

Ms. Dalton asked if they can have Ms. Grady go on record indicating whether the litigation by consolidated realty would be put on hold, if the Code Enforcement were put on hold. Ms. Dalton pointed out that she does not have a firm commitment, and she believes that Ms. Grady has the ability to make that firm commitment.

- Ms. Grady replied yes as to whether the litigation would be put on hold and the circuit court litigation would be put on hold.

Ms. Dalton asked Council if they wanted to have the matter put on hold for a time certain or 90-day, or 120-days, or put on hold until further action of Council.

Mayor Boback responded he would say further action of Council indefinite period of time, as Mayor Boback didn't want to try to put a time constraint on them as it would not be productive. Mayor Boback noted that they need the time and the flexibility to really sit down and have some meaningful discussions and not with the gun of 60 or 90-day strain. Mayor Boback responded that hopefully it would be the end of those actions, and that they won't have to deal with them. Mayor Boback noted to have it indefinitely put aside until further Council action.

Ms. Dalton asked Ms. Grady if this was agreeable with her.

- Ms. Grady responded yes it would be agreeable.

Ms. Dalton pointed out that technically this is in front of the Magistrate; they would be requesting an indefinite continuance when the crafter of the motion crafts the motion, stating that technically the Magistrate has the final call on whether or not it would be continued; Ms. Dalton points out she assumes that he will go along with it, but points out that the ball is in his court.

.Ms. Dalton pointed out that Roetzel & Andress are the counsel on record.

MOTION: Vice Mayor Massucco made a motion to request for an indefinite continuance from the Special Magistrate. Councilman Shenko the motion.

Councilman Reynolds asked to repeat what the motion was.

Ms. Dalton responded that it is a request for an indefinite continuance from the Special Magistrate with regard to the Code Enforcement Action pending against the property located with the former Days Inn is.

Councilman Shenko added with the contingency upon that the Circuit Court Date needs to be continued in conjunction with that.

AMENDED MOTION: Vice Mayor Massucco amended his motion to include the contingency upon that the Circuit Court Date needs to be continued in conjunction with that. Councilman Shenko amended his 2nd.

Councilman Reynolds questioned if that meant that the whole area can go back to the way it was before the suit, and asked if Jimmy B's can go back to operation or did it ever stop operating.

Ms. Dalton responded that Jimmy B's is in operation and that she believes but confirmed with Mr. Murphy that the music is not in operation, but the bar itself is in operation. Ms. Dalton deferred to Mr. Murphy if that was correct.

Mr. Murphy responded that was his understanding.

Councilman Reynolds noted that he cannot go along with a motion to that effect because there would have been no suit had Mr. Meyers followed the Town's instructions and code enforcement.

VOTE: The motion passes 4-1; with Councilman Reynolds dissenting.

Mayor Boback asked if they wanted to set a time and date for the workshop.

Mr. Murphy suggested to Council that staff can coordinate the date and time.

Mayor Boback acknowledges Mr. Murphy to coordinate the date and time.

VII. COUNCIL MEMBERS ITEMS AND REPORTS

Vice Mayor Massucco mentioned the Pirate Festival and that it was a big success and a lot of fun. Vice Mayor Massucco suggested that everyone should try attending next time, as it is good for the businesses and good for the Town.

Councilman Reynolds noted that they have a memo from the County regarding Estero Blvd and the Town of Ft. Myers Beach by Scott Gilbertson, director of transportation sent to the Board of County Commissioners. Mr. Reynolds noted that he references the transit feasibility study that was presented to them by the Town. Mr. Reynolds pointed out that the memo also talks about the Estero Blvd drainage improvements, and it states the Estero Blvd has historically suffered from the lack of an adequate drainage system. Mr. Reynolds questions why if Estero's right-a-way belongs to the County and questions why are they not doing anything about it. Mr. Reynolds notes they question how much money the Town is willing to put into the improvements with the drainage system, and Mr. Reynolds asked if the County is going to help the Town to do the side streets because the side streets are part of that as well. Mr. Reynolds is suggesting that the Town should take the direction of telling them to do Estero Blvd along with all the drainage involved, and that the Town will be responsible for the connecting drainage at those intersections.

Mr. Reynolds referred to a memo he sent to Council regarding the advertisement for the new Town Manager, stating that the beginning salary is advertised at \$140,000. Mr. Reynolds reports that this was way out of line on that. Mr. Reynolds suggested \$90,000 to \$115,000 as a beginning salary.

Mr. Reynolds pointed out that Henry Gore resigned from the MRTF committee, and suggested for them to get the word out and get someone else in his place.

Councilman Meador commented on not being able to participate in Council meetings and stated that he did regret not being able to have input at the second Budget meeting, and had nothing new to comment on.

Councilman Shenko questioned Mr. Green regarding County people working on the sidewalks today.

Mr. Green responded yes that was correct.

Councilman Shenko responded that you learn in government things happen, stating that while you may want to take large strides to get things done quickly, you have to be grateful for the small things happening. Mr. Shenko pointed out that he did see County workers with edger's, brooms, with equipment cleaning out sidewalks today, stating that he hasn't seen

that in many years. Mr. Shenko stated other than that he has nothing to report.

Mayor Boback mentioned that the staff has initiated a sign-in sheet for those who come in and wish to speak on any issue, stating that it is available at the front desk. Mayor Boback stated as an example himself and Mr. Green went to meet with Mr. Boykin at the Pink Shell the other day relative to an issue down there, they would sign out on that sheet; anyone could come in to see who is meeting with who there will be a public record of that for the past two to three weeks. Mayor Boback referred to the memo Ms. Lambert sent regarding her last day in office, which will be on October 31st. Mayor Boback reports that their time line from Mr. Baezinger would not have them appointing a new Town Manager until December 4th. Mayor Boback reports that they will have a good four to five weeks depending maybe six to eight weeks depending on who is hired. Mayor Boback suggested that they consider planning another intern Town Manager, so that someone will be in charge while that gap is filled. Mayor Boback noted this would give everyone a chance to think about it until the next meeting on the 16th.

Councilman Meador suggested in the meantime they may consider Florida League of Cities to see who they have that might be able to assist them.

Mayor Boback pointed out again that was the reason for brining it up at this time.

Councilman Meador asked Mayor Boback if they can direct Ms. Dalton to do so as far as contacting the League.

Mayor Boback agreed and has no problem with it.

Ms. Dalton responded that she would be glad to contact them. She also noted that they have one regular meeting between now and the time that Ms. Lambert is leaving.

Mayor Boback responded that they should be able to handle that situation that day, next week or have a Special meeting.

Councilman Reynolds strongly encouraged going to the Range Rider, and Florida League of Cities.

Mayor Boback announced that Ms. Dalton will put it together for them, and they will speak about again on their next meeting on the 16th.

Ms. Dalton reported that she will provide a memo as soon as she gets any information prior to the 16th.

Councilman Shenko pointed out the term would be Manager in transition.

Ms. Dalton responded that there are two programs Manager in transition and also the Range Rider.

VIII. TOWN MANAGER'S ITEMS

None were given.

IX. TOWN ATTORNEY'S ITEMS

Ms. Dalton noted that she had two items. She had requested if possible all Council members get items for possible referenda to Ms. Dalton, previously said on October 23rd, which would require a Special meeting. Ms. Dalton noted if Council wanted to have it at a regular meeting, she would request for it to be on October 16th. Ms. Dalton noted the reason it is being requested was because the Supervisor of Elections has requested that Council provide her in final form on December 5th. Ms. Dalton notes that any referendum that they put on the ballot, they would need time to do the Ordinance introduction.

Mayor Boback was under the impression that they had set that for the 16th at their last meeting.

Ms. Dalton pointed out that Councilman Meador was not present, as she wanted to update him with that information. Ms. Dalton referred to her second item and that she sent a memo stating that they are being sued by Marylou Czulewicz stating it is the case regarding the Monkey Tree Restaurant which was the Town rezoning. Ms. Dalton requested an Executive session for the next Council meeting, which would be on October 16th at 5:30 PM to discuss litigations and strategies relating to this. Ms. Dalton is requesting the Council members, the Mayor, the Vice Mayor, the Town Manager and Ms. Dalton.

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

Mayor Boback opens public comment:

- Pat Smith Ft. Myers resident wanted to encourage and support what Council previously discussed regarding the Election. Ms. Smith reported that she and Vice Mayor Massucco attended a meeting with the Supervisor of Elections where they were trying to get an Election schedule and they were told by Ms. Harrington that they were moving their offices and therefore, could not provide an Election on April,

May, June, and July. Ms. Smith states that she believes that it is time, and is past time that they take the necessary steps to see whether they can conduct the Elections in accordance with the Town's Charter. Ms. Smith also pointed out that it was a thrill to have the sidewalk cleaning, but mentioned that the director of the library previously tried to clean-up that area even providing the supplies and help, and was told by the County to stop because there would be some kind of a hazard by having hedges.

- Eric Downing spoke on behalf of the Parcel Service. He came to protest the ticketing of the drivers, and to hopefully find an alternative to the ticketing the drivers. Mr. Downing noted that the problem they are having is that the drivers have no where to pull up on the side of road and deliver. Mr. Downing is asking to find some kind of alternative to at least ask for some leniency until they can find an alternative. Mr. Downing suggested that he will come back at Council's next meeting to bring some alternatives for this.
- Mayor Boback responded that they do not go back and forth during public comment, and suggested to Mr. Downing if there were any issues with the parking enforcement that he needed to speak to their Public Works Director Mr. Green and try and work it out with him.

Mayor Boback closes public comment:

XI. ADJOURNMENT

MOTION: Vice Mayor Massucco made motion to adjourn the meeting. Councilman Shenko 2nd the motion.

VOTE: The motion passes 5-0.

Mayor Boback adjourned the meeting at 5:03 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

Town Clerk

Date