

**FORT MYERS BEACH
TOWN COUNCIL**

**Town Hall- Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Fl 33931
November 6, 2006**

AGENDA	Special Town Council Meeting	5:30 PM
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CALL TO ORDER

Mayor Boback called a Special meeting of Town Council to order on Monday November 6, 2006 at 6:30 PM.

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

Absent: Councilman Bill Shenko, Jr.

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

Mayor Boback announced an Executive session has been requested by Ms. Dalton to discuss strategies regarding the litigation Shenko vs. Warner.

Ms. Dalton read into the record requested by Councilman Shenko; Form 8-B memorandum of voting conflict for municipal and other local public officers. Councilman Shenko has indicated that he is not participating in the Special meeting tonight as to Mr. Shenko is the plaintiff in the litigation which is the subject matter in the litigation. Dated and signed November 6, 2006 and filed with the Town Clerk.

Ms. Dalton announced the reason for the Special meeting is to comply with the requirements of the Sunshine law. Ms. Dalton requested an Executive Session for the purpose of discussing the litigation regarding the litigation involved with William Shenko versus Jeff Werner, Sharon Harrington, the Town Clerk Michelle Mayher and the Town Council of Ft. Myers Beach.

MOTION: Vice Mayor Massucco made a motion to commence with the Executive Session as scheduled. Mayor Boback 2nd the motion.

Discussion:

Councilman Meador announced that at their previous meeting he had objected to having these Executive sessions, and restated his objection.

Mr. Reynolds expressed he does not consider this to be a secret session, and believes that it is the best way to go.

Mayor Boback expressed that any litigation should be handled within an Executive session as long as it complies with the Sunshine.

VOTE: The motion passes 3-1; with Councilman Meador dissenting.

MOTION: Vice Mayor Massucco made a motion to adjourn the Special meeting. Mayor Boback 2nd the motion.

VOTE: The Special meeting is adjourned.

AGENDA	Regular Town Council Meeting	6:30 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 David Sallee, 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: Reverend Tom Snapp, St. Peter Lutheran Church

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 October 2, 2006.*

MOTION: Councilman Shenko made a motion to approve the minutes of October 2, 2006. Councilman Reynolds 2nd the motion.

Discussion: No discussion was given.

VOTE: The motion passes 5-0.

B. *Approval of Minutes October 9, 2006.*

MOTION: Vice Mayor Massucco made a motion to approve the minutes of October 9, 2006. Councilman Reynolds 2nd the motion.

Discussion: No discussion was given.

VOTE: The motion passes 5-0.

C. *SFWMD Funding Agreement and Resolution 06-23*

MOTION: Councilman Shenko made a motion to approve the Resolution 06-23. Councilman Reynolds 2nd the motion.

Discussion: No discussion was given.

VOTE: The motion passes 5-0.

D. *Utility Work Vehicle Bid Award*

MOTION: Vice Mayor made a motion to accept the proposal for the purchase of a utility work vehicle by the maintenance department with attachments. Councilman Shenko 2nd the motion.

Discussion:

Councilman Reynolds objected to the purchase with concerns as to the operation of the equipment and the liability, and suggested staff explore other options.

Councilman Meador pointed out that this matter had been discussed extensively by Public Works during the Budget workshop and suggested reviewing the Town's equipment inventory.

Councilman Shenko responded that he recalls this being discussed in length during the Budget process and that this was a budgeted item. Mr. Shenko did mention that this was not available under a state contract, and that they had to bid this separately.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

VOTE: The motion passes 5-0.

VI. ADMINISTRATIVE AGENDA

A. Friends of the Mound House Citizen Support Organization Request

Mr. David Sallee pointed out that they are dealing with the policies and procedures for the general operation of the Mound House, and the policy agreement with the Citizen Support Organization.

Councilman Meador questioned if the Mound House Operations policy was submitted to the state for review.

Ms. Schober reported that she did not submit it and was hoping to have Council's input on it.

Councilman Meador pointed out that they would be spinning their wheels, until the state reviewed it including the Mound House Operation Policy. Councilman Meador added that the deed restrictions prohibits profit taking opportunity for weddings.

Mayor Boback did not disagree with Mr. Meador but pointed out in the Operations Policy they may want to input some of their own comments before submitting it to the state for review.

Ms. Dalton suggested reviewing it, and approving it in concept with the understanding it would come back if the state had any changes.

Councilman Shenko questioned if the present CELCAB committee reviewed the Operations Policy or the Citizens Support Agreement.

Ms. Schober responded that CELCAB had not had it as an agenda item. Ms. Schober pointed out that six of seven CELCAB members are friend of Mound House, and was not sure if they were the correct body to review the Citizens Support Organization Agreement of that agency.

Ms. Schober reviewed the hours of the Mound House with Mayor Boback along with the activities.

Mayor Boback suggested the daily operations of the Mound House to have final approval by the Town Manager.

Councilman Reynolds questioned if this had to do with the expenditures.

Mayor Boback pointed out the ground use of the facility is authorized by the Mound House Director in coordination with the Town Manager. Mayor Boback pointed out that the Mound House Director can coordinate with the Town Manager, but the Town Manager will make the final decision.

Councilman Reynolds pointed out to Ms. Schober that the Mound House should be open to the public even if it is an event such as a wedding, stating the public should be able to observe the event.

Vice Mayor Massucco questioned Ms. Schober about the consumption of alcoholic beverages, stating that Council agreed to have this omitted.

. Ms. Schober indicated the consumption of alcohol was limited to events such as an opening to an exhibit, and a wine and cheese reception. Mayor Boback suggested the change to be made where the Town Manager has the final authority regarding who is allowed to use it or not.

Mayor Boback opens public comment:

- Dan Hughes referred to a fee of two hundred dollars. Mr. Hughes pointed out that if the Friends of the Mound House are holding a sponsored event, the two hundred fees should not apply to them.

Ms. Sallee added that would be considered as a security deposit.

- Ceel Spuhler pointed out that the Mound House is not open daily due to the construction that is currently going on. She added that there are a lot of people who do come around to watch the digging activity.

Mayor Boback closes public comment:

Councilman Meador suggested going over these policies in detail. Mr. Meador also added putting this out for state review.

Councilman Shenko also agreed with Councilman Meador.

Mr. Sallee questioned Council if they had any major issues to address before sending out to the state.

Councilman Meador expressed his major concerns regarding any provision for private use of the facility, which could exclude the public.

Mr. Sallee reiterated Mr. Meador's concerns regarding private use on the property.

- Dan Hughes commented that this was presented back in March of last year where Council expressed concerns regarding the language in the CSO.
- Ms. Dalton responded to former Mayor Hughes regarding paragraph 1-C, on the agreement. Ms. Dalton does agree the language was added as approved by the Town Manager. Ms. Dalton referred to paragraph four re” a bank within the territorial limits in the Town, stating that would be a policy issue for Town Council. Ms. Dalton referred to the entity entering into the agreement, she pointed out that it would be the Town of Ft. Myers Beach by, and through its Town Council stating they can make the necessary changes.

Councilman Meador responded that he preferred the Town of Ft. Myers Beach. Mr. Meador suggested adding to the agreement a bank with offices located within the territorial limits within the Town.

Councilman Shenko agreed with Councilman Meador stating he would leave as approved by Town Manager, and indicate bank with offices within the territorial limits.

Vice Mayor Massucco suggested looking at the other side of the coin.

Councilman Reynolds suggested that all three items were changed or improved. Mr. Reynolds suggested the Mound House as approved by the Director and the Town Manager. Mr. Reynolds suggested adding the CSO will recommend to the Director as to how the funds will be spent, adding the manager will review and approve in advance.

B. Citizen Proposal for Traffic Control Program

Dan Parker read his proposal to the Council.

Mayor Boback opens public comment:

- Chris Loffreno resident questioned why this is being presented to Council instead of the TMA.
- Pat Smith resident suggested using the VOICE to Crescent Street in helping the people getting across.

Mayor Boback closes public comment:

Mayor Boback announced the VOICE volunteers only work from Monday thru Friday 10:00-4:00. Mayor Boback pointed out they had a

contract with the Sheriff's department to contract off duty officers for \$30.00 an hour for the hours Mr. Parker is presenting to fill in. Mayor Boback added that this was in no way to displace the VOICE volunteers.

Councilman Shenko suggested that this should go to the TMA first and come back with a proposal from there.

Vice Mayor Massucco responded that he would like have other input and that he did not want to rush into this, and recalled the Town's concern regarding liability.

Council directed the Town Attorney in conjunction with the Finance Director, to look at the liability issues and then bring this item back.

C. First Public Hearing – Ordinance 06-18 Proposed Legislative changes to Land Development Code.

Mayor Boback announced moving C up first in Administrative agenda First Public Hearing as Mr. Spikowski is present.

Ms. Dalton read Ordinance 06-18 Proposed legislative changes to Land Development Code.

Mr. Spikowski planning consultant for Ft. Myers Beach announced there are several amendments to the Land Development Code regarding flood zones. Mr. Spikowski reminded Council the Ordinance was previously discussed in a workshop they held where they had discussed the problems with the existing flood plan regulations. Mr. Spikowski noted that there are six changes that are policy oriented, and suggested if Council chooses to adopt the Ordinance at the second public hearing of having the language correct. Mr. Spikowski reviewed with Council the six changes noted on his memo. The first change deals with the dry flood proofing for commercial buildings; Mr. Spikowski noted that they have added language requiring the specific date of testing for the written report and documentations. The second change deals with the subsection five; stating there are two set of regulations which are clearly ambiguous. He noted subsection 5-A is at Council's discretion. Subsection 5-B are mandated by FEMA. The third item deals with electrical and plumbing equipment below base flood elevation; stating there are two alternatives. The fourth change deals with partitions and the space below elevation where air-condition is not permitted. Mr. Spikowski noted there are two alternatives which will be more lenient. The fifth change deals with the accessory structure how big it can be without meeting flood line regulation. The sixth change deals with height of the buildings.

Councilman Meador responded that he had several questions for Mr. Spikowski and would prefer to ask those questions after public comment. Councilman Shenko agreed with Councilman Meador.

Vice Mayor Massucco asked if they can allow a building to exceed the height limit.

Mr. Spikowski responded that by adopting the language this would allow the roof to be built two feet higher.

Mayor Boback opens public comment:

- Stan Stouder resident reports that he had spoken to Community Development regarding Chapter 34-631-2D, and presented some proposed language to address the scrunching of the house. Mr. Stouder pointed out that he has read Mr. Spikowski's language and is here to support his changes, but suggested an additional measure of adding 25-feet.

Mayor Boback closes public comment:

Councilman Meador questioned Mr. Spikowski about the base flood and if there were any doubt to which maps they were talking about.

Mr. Spikowski responded that in the new base flood regulation they will be used in two different ways. One is referred to the maps adopted by FEMA and two would be the additional height that they are allowing. Mr. Spikowski pointed out it is suggesting some ambiguity if it is not defined.

Councilman Meador questioned Mr. Spikowski about the change regarding his definition of highest adjacent grade and what will it affect.

Mr. Spikowski responded he was hoping none, but stated the term grade and highest adjacent grade were used interchangeably in the code and may appear they are intended to be two different things. Mr. Spikowski pointed out that anywhere the word grade was written, it will be changed to highest adjacent grade.

Councilman Meador expressed his concern in reading these documents, pointing out that the homeowner or homebuilder may be caught in a snafu. Mr. Meador added the highest adjacent grade measured one way at the start of the construction, but becomes noncompliant at the end of construction.

Mr. Spikowski responded that with the proposed changes if the homeowner is proposing to add filler around the property, this would

clarify that the highest adjacent grade will be the after condition, after he has the fill. Mr. Spikowski pointed out if the builder is not adding the fill then it was never ambiguous.

Councilman Meador questioned Mr. Spikowski how would this relate to the V-zone regulations which do not allow fill.

Mr. Spikowski responded that he did not know if this affected V-zone, but did state that mobile homes do have to be 3-feet to the highest adjacent grade. Mr. Spikowski pointed the back holes that go into the walls in the A-zone to allow the flood water to go in and out.

Councilman Meador questioned Mr. Spikowski if it is measured for fill for one purposed, will this put the people out of compliance in V-zone where they cannot use fill.

Mr. Spikowski responded that he didn't know of any, but will further investigate with concrete answers for the next hearing.

Councilman Meador questioned Mr. Spikowski regarding the word "space" used as apposed to "area."

Mr. Spikowski responded that these two were used interchangeably, and pointed out that they were deferring it to the word "space," which is the term used by FEMA.

Councilman Meador had no further questions regarding 6-405.

Vice Mayor Massucco, Councilman Shenko and Councilman Reynolds had no questions regarding 6-405.

Mayor Boback asked the members if there were any questions regarding 6-441.

Councilman Meador had none, Vice Mayor Massucco had no comments; Councilman Reynolds had no comments.

Councilman Shenko referred to paragraph D; for the flood proofing to be certified including a binding commitment upon completion of a test, and asked to tighten it up a little, as he has brought up this item previously; suggesting that the language should read should include a binding requirement upon completion of a test and a report would be submitted by the owner within 30-days.

Mr. Spikowski responded that it would help clarify the language.

Councilman Meador referred to the duplicate of sending the notice to the coordinator and the Town Manager. Councilman Meador questioned what would happen if the coordinator or the Town Manager does not attend the test.

Ms. Dalton reported that it was requested by her, to give both the coordinator and the Town Manager the opportunity, adding the language that is incorporated puts it if they didn't attend, there is no requirement to have it redone or rescheduled.

Councilman Meador referred to the report and that the language appears mandatory that the report include proposed revisions to the operation maintenance plan; Mr. Meador questioned should this be conditioned on "if any of such are found needed."

Mr. Spikowski responded that it would make it clearer.

Ms. Dalton added "corrective measures if any" instead of "any corrective measures."

Mayor Boback asked for concerns regarding 6-444.

Councilman Reynolds had no comments regarding 6-444.

Vice Mayor Massucco made a comment regarding 6-441 regarding the "Town Manger shall designate a flood insurance coordinator" asking if the coordinator needed specific credentials.

Mr. Spikowski responded that FEMA provides a training program, which encourages the people to become certified flood plain managers, but states that it is not a requirement.

Mayor Boback asked the members if they had questions regarding 6-472.

Councilman Meador added that subsection-B1, applies to additions, even if it is not at a 50%. Mr. Meador pointed out to subsection B2, if the structure was built before 1984, any addition enclosed space must be elevated two or above the elevation of the structure existing lowest floor.

Mr. Spikowski responded that without this section it does not clearly state that you can do that.

Councilman Meador replied that they should keep it as simple for the homeowners as possible, and didn't see the need to have this in their code.

Councilman Shenko responded that he agrees with Mr. Meador when it relates to the new maps.

Vice Mayor Massucco also agreed with Mr. Meador as long as it does not affect the insurance that FEMA provides for homeowners.

Mr. Spikowski responded that he didn't believe so, but would change it when they do their audit and tell us it did.

Mr. Murphy reported that they are required to provide the National Flood Insurance Program of FEMA copies of any changes made to the flood plan; FEMA will notify if this will affect the discounts rate.

Mr. Spikowski reported subsection B-1 is the general rule; subsection B-2 is the substantiate requirement, where it talks about structures before 1984.

Mayor Boback asked if there was anything else in 6-472.

Councilman Meador responded in subsection 4-for nonresidential construction. Mr. Meador questioned about the dry flood proofing up to the base line elevation as the preferred alternative in the Town's future Land Use map, and asked Mr. Spikowski how this would apply to the incoming v-zones maps.

Mr. Spikowski pointed out if these maps are adopted as proposed, the majority of the pedestrian commercial would no longer require dry flood proofing. Mr. Spikowski added if this is passed, they would have to make an amendment to the ordinance to refer to the maps.

Mayor Boback referred to subsection five.

Councilman Meador referred to subsection five regarding a new construction which has been enclosed to below flood elevation, is there a variance needed to have anything else other than for parking, building access or storage.

Mr. Spikowski reported that parking, building access, and storage is on the federal law, stating that they have to be there.

Councilman Meador pointed out that they have three alternatives to choose from, and stated that he was inclined to alternative three, which is LPA recommendation.

Councilman Meador referred to C, pointed out that there is an alternative for the LPA recommendation a third of the three; Mr. Meador recommends that they go with that alternative.

Councilman Shenko also agreed with Councilman Meador.

Mayor Boback questioned Mr. Spikowski if they go with alternative three, if it meant they can put electrical panel or sub-panels below flood elevation.

Mr. Spikowski responded that was correct.

Mayor Boback responded that he was against that, as he felt it was unnecessary to have electrical panels or house panels below base flood elevation.

Vice Mayor Massucco responded that he would want them above base flood elevation.

Councilman Reynolds questioned if there was a statute where FPL did not require building the boxes above flood level.

Mr. Spikowski responded that the electrical code has a requirement where the meter reader can read the meter without a ladder.

Mayor Boback recommended going to alternative two.

Councilman Reynolds responded that he agrees with alternative three.

Mayor Boback announced for the next meeting, it would be alternative three.

Councilman Meador pointed out that he did not like alternative one, two or three. Mr. Meador pointed out that he like the idea suggested by the LPA in alternative three, but does not agree on how it is worded. Mr. Meador suggested changing the wording to the interior portion of such enclosed space may be partitioned.

Councilman Shenko responded that he agreed with Councilman Meador.

Mayor Boback responded that he disagreed with both Councilman Meador and Councilman Shenko, stating that it should stay the way it currently is with no partitions and temperature control.

Councilman Reynolds agreed with Mayor Boback.

Councilman Meador referred to subsection 7, and asked Mr. Spikowski if there is an existing form.

Mr. Spikowski responded yes, stating that they have created a form which is signed by the people and are kept in County records. Mr. Spikowski suggested that it would be better if they were recorded to provide notice to subsequent purchases.

Councilman Meador pointed out that it is currently provided in the code, and questioned if it is not being done.

Mr. Spikowski responded that he suspects that it is not being done and is in County records.

Councilman Meador questioned what would happen if the document is recorded, and the restrictions become more restrictive.

Mr. Spikowski responded that it would be an acknowledgement of the regulation.

Councilman Reynolds had no questions regarding subsection 7.

Councilman Meador referred to accessory structure amendment, stating that they should leave that as it is. Mr. Meador did comment on the market value of principal building established; pointing out the unnecessary need of having two appraisals. Mr. Meador suggested maintaining it as it was without further complicating it.

Councilman Shenko also agreed with Councilman Meador stating that this is should be kept as simple as possible.

Vice Mayor Massucco also agreed with both Councilman Meador and Councilman Shenko stating that it can become complicated. Vice Mayor Massucco is in agreement with comments made by Councilman Meador and Councilman Shenko stating as they believe it is in the residents favor.

Councilman Meador referred to subsection 7 and the costal high hazard area requirements and questioned if they pertain to both residential as well as commercial construction.

Mr. Spikowski responded that this was correct.

Councilman Meador suggested that it may be better to have that referenced for commercial.

Councilman Shenko responded that he would liked to have addressed in the Land Development Code structures built seaward of the line prior to 1978. Mr. Shenko agrees with Councilman Meador in changing subparagraphs C-1 and C-2.

Mayor Boback referred to exhibit B, and the building heights.

Councilman Meador pointed out the problem they would encounter by approving these changes would be how many stories they will allow to build above base elevation. Mr. Meador pointed out that the language is confusing and needed to be cleaned up for better clarification.

Mr. Spikowski responded regarding table 34-3, stating that it the table which has all the dimensional regulations for the zoning districts.

Councilman Shenko responded that he would like it to go to three-feet, as the maximum benefit on the flood insurance is three-feet not two-feet.

Vice Mayor Massucco pointed out that by opting to go the additional two-feet, it is not going to assure the residents that the insurance is going to be lower.

Councilman Meador added that he would like to propose an additional amendment to the Land Development Code regarding Section 34-702-D3. Add a subsection E, which will read: “any other existing commercial use, to the same commercial use, or to office use.”

Ms. Dalton suggested taking this through the LPA, as it is different than what is being discussed tonight.

Mr. Spikowski added that they did not advertise any changes to that part of the code. Mr. Spikowski pointed out that they have other clarification on chapter 34, and suggested adding this along with others to make one big list.

Ms. Dalton suggested that she would feel more comfortable having it go through the LPA first.

Councilman Meador suggested that they allow two stories on top of ground, and by allowing 16-feet per story that would be 32-feet.

Mr. Spikowski pointed out in 34-631 reads for the purpose of this height regulation, base flood means something different and suggested adding the language Mr. Meador spoke about.

Mr. Murphy added that Mr. Spikowski is aware that they make their measurements from the top of the wall supporting the roof.

MOTION: Councilman Meador made a motion to move this matter forward. Councilman Shenko 2nd the motion.

VOTE: The motion passes 5-0.

Ms. Dalton pointed out they needed to set a date certain in December 4, at 6:30.

D. 2007 Referenda

MOTION: Councilman Meador move all proposed amendments to November 13, 2006. Councilman Shenko 2nd the motion for purposes of discussion.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

VOTE: The motion passes 5-0.

E. Direction as to changes to LCD personal watercraft and parasail regulation

Mr. Murphy announced that the time has come to renew personal watercraft licenses and the vehicle licenses. Mr. Murphy reported that they met with some of the vendors and reviewed the Land Development Code and use of them on the beach. Mr. Murphy noted they were looking at the size of the kiosks which are utilized by the vendors for their transactions sales. Mr. Murphy reported the current regulation limits them 4x6, stating that the size is extremely small and expressed they had some concerns regarding keeping the people out of the sun. Mr. Murphy suggested that they can come up with a standardized design so all of the kiosks will look the same. Mr. Murphy asked Council for direction regarding this matter.

Mayor Boback opens public comment:

- Sharon Faircloth read her presentation regarding the upgrade of the kiosk
- Chris Webber referred to Mr. Murphy regarding the nonrenewable licenses. Mr. Webber referred to an email and provided Council with a

copy to review. Mr. Webber suggested a policy to be implemented regarding the renewal of their licenses.

Mayor Boback closes public comment:

Councilman Shenko reports that he had spoken to Ms. Faircloth regarding Renewal of a license, as they were having some issues. Mr. Shenko agrees that they could be a little more accommodating in the future with the vendors.

Vice Mayor Massucco questioned if there was anything that they can do to avoid running into this again. Mr. Murphy responded that they were hoping to do so by reviewing chapter 27.

Councilman Meador expressed his disappointment regarding an issued being addressed on the agenda, and states that it has not appeared on the agenda. Councilman Meador spoke on behalf of Mr. Webber stating that the situation was misrepresented to this Council. Mr. Meador expressed that he was not very happy in who had made the decision in not putting his item on the agenda, and states that it is highly irresponsible of their Town government to put people out of business.

F. Special Events Permit and Funding Request- Times Square and Old Sand Carlos Improvement Alliance New Year's Eve Party

- Carolyn Epperson with Times Square Alliance. Ms. Epperson proposed having New Year's Eve, and Fireworks. Ms. Epperson reported that they were going by last year's figures at \$3,500.00 and Captain Powell's figure is at \$4,600.00.

Councilman Reynolds had no problems regarding that.

Councilman Shenko pointed out that the request was that they pay half the cost.

- Ms. Epperson responded that they have to pay all cost up front first, and then be reimbursed by the Town.

Councilman Shenko questioned if the set-up in Times Square would be the same as it was last year.

- Ms. Epperson responded yes.

Councilman Shenko expressed that he favors the proposal but he would like to know how much they paid last year.

Nicole Olsen responded last year's estimate was \$21,370.00, and states if the Council agrees to pay half it would be approximately \$11,000.00. Ms. Olsen reported that the band was \$1,500.00 total and \$750.00 is what Council did not approve.

Vice Mayor Massucco pointed out that they have a bottom line of \$25,000.00, and questioned if they had a donation by Budweiser \$5,000.00 will it reduce the amount from the \$25,000.00

- Ms. Epperson responded no, stating that she has to go out and raise the rest of the money.

Vice Mayor Massucco expressed that he was 100% behind this event.

MOTION: Councilman Meador made a motion that they approve payment of half of the expenses up to a maximum of \$12,500.00. Councilman Shenko 2nd the motion.

Mr. Murphy asked Mayor Boback for the motion to include the approval of the waiver of the open container prohibition in Times Square as part of the request.

AMENDED MOTION: Councilman Meador amended his motion as it was presented to them with the waiver of the open container prohibition in Times Square. Councilman Shenko amended his 2nd.

VOTE: The motion passes 5-0.

G. Establishing Policy for Citizen Recognition Awards

No discussion was given.

H. Request for waiver of noise ordinance

- Davie Lawless project manager of Sun Stream Realty 6231 Estero Blvd. Mr. Lawless is requesting a waiver of noise ordinance.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

MOTION: Councilman Meador made a motion to deny the request for a waiver. Councilman Shenko 2nd the motion.

Discussion:

Vice Mayor Massucco pointed out that by approving this waiver they would be setting precedence to other contractors by allowing the early start.

Councilman Reynolds complimented Davie Lawless for his presentation. Mr. Reynolds expressed that he had no problem in allowing an hour earlier in order to keep the integrity of their construction project. Mr. Reynolds asked Council to consider this waiver. Mr. Reynolds questioned Mr. Lawless how many floors they needed to complete and how many days they needed.

- Mr. Lawless responded that they had one floor to complete and one day left in the week of November 16th.

Councilman Meador expressed that he is sensitive to neighborhood noise and pointed out that they are working across from residential condominium. Mr. Meador pointed out that they have violated the Town's requirements once unknowingly, and a second time knowingly.

Councilman Shenko reported that they have been pouring concrete for years after 7:00, and they need to pour this one after 7:00 AM as well.

Mayor Boback questioned Mr. Murphy if they have to notify the contractors when they get their building permits regarding the noise ordinance.

Mr. Murphy responded no, but that they expect for the licensed contractors to be fully aware of the all the regulation and jurisdiction they are working for.

Mayor Boback suggested that once the contractors receive their permits, the Town should provide them with a notice.

Mr. Murphy reported that Code Enforcement did receive six complaints regarding the October 25th pour.

Councilman Reynolds pointed out that ordinance 96-24 did provide a process for a waiver.

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

I. TMA request for council approval of Pedestrian Byway & Underpass Proposal

Mayor Boback asked the members of Council if they had any problems with moving up the TMA.

Pat Smith, member of the TMA. Ms. Smith referred to her power point presentation she previously presented and is requesting Council to allow the TMA to pursue inter local agreements, to pursue their project; to pursue bids, and to approve a Budget not to exceed \$150,000.00.

Mayor Boback opens public comment:

- Dan Hughes resident. Mr. Hughes commends the TMA for the efforts in preparing their presentation. Mr. Hughes added the need to have handicap provisions addressed to the plan.
- Pat Loffreno local resident. He adds that Ms. Smith has done a great job. Mr. Loffreno adds that decisions have to be made and states that the expenditure will be inexpensive.
- Maggie Ramos resident. Ms. Ramos is in favor of having change done to improve the traffic from the south end. Mr. Ramos asked Council to take into consideration the TMA has presented.
- Frank Juliano resident. Mr. Juliano also agrees that the time has come to make some change. He agrees that the committed has come up with a wonderful plan and hopes that the Council will take it into consideration.
- George Repetti resident. Mr. Repetti also points out that the traffic has gotten out of control. He pointed out that there has not been any Council that has made efforts to alleviate the mitigation here in Ft. Myers Beach. Mr. Repetti added that this is the opportunity for this Council to make some definite change on Ft. Myers Beach and be acknowledged for doing so.

Mayor Boback closes public comment:

MOTION: Councilman Reynolds made a motion to move this issue forward as presented by the TMA. Councilman Shenko 2nd the motion for purposes of discussion.

Discussion:

Councilman Reynolds referred to Ms. Smith's regarding the crosswalks signal light, and the present pedestrian light. Mr. Reynolds pointed out that they should not touch that at this time, and suggested seeing how close

they can do this to the \$150,000.00. Mr. Reynolds stated that this is a first step.

Vice Mayor Massucco commended the TMA for the efforts they have put into this. Vice Mayor Massucco pointed out that he didn't believe this could be done with a Budget of \$150,000.00. Vice Mayor Massucco expressed that he had some reservations regarding the project and did not believe it was ready to move it forward.

Councilman Shenko responded that he was not 100% sold, and suggested taking a look at the bids to see if in fact it is going to cost \$150,000.00. Mr. Shenko added not seeing any harm in going forward and drawing some initial plans, and the bids. Mr. Shenko is in favor in moving forward and taking some bids to see the dollars they will be looking at.

Councilman Meador questioned Ms. Smith about the \$150,000.00 and if it was just to get the engineering, or if that amount included all that would be involved.

Ms. Smith responded that the actual proposed amount did not include an engineering study.

Mayor Boback also added his concern regarding the amount of \$150,000.000 pointing out that the amount would probably not be enough to cover the entire project. Mayor Boback is in favor of moving this forward in order to get some actual cost.

Mr. David Sallee pointed out that the city is going to bring about in 60-days the CCNA contract, which allows for them to contract out and they will be able to get actual numbers. Mr. Sallee suggested putting up some barriers to see how the traffic flows.

Mayor Boback responded that it is going to be hard for them to get any kind of numbers without the expert assistance of an engineer. Mayor Boback suggested pursuing some of the issues in order to get some of the cost.

Mr. Jack Green concurred with Mr. David Sallee where he indicated they are looking to get out the CCNA engineering services contract. Mr. Green added once this is in place, they can have an engineering firm produce the specifications and the cost. Mr. Green suggested doing a trial period and having some barriers put in place to prevent the people from crossing; this would give them an idea of how the traffic will flow etc.

Mayor Boback pointed out that those are the questions that they need to have answers.

Vice Mayor Massucco related to former mayor's suggestions regarding the handicap, and stated that this would be making it harder for them to get to the beach. Vice Mayor Massucco pointed out that he has a lot of concerns and does not support this because there are a lot of issues that need to be further looked at before moving forward with it.

AMENDED MOTION: Councilman Shenko amended his motion to state they look first at the cost of engineering, and then construction cost of the project, and the light and bollards.

Mayor Boback suggested to Councilman Shenko withdrawing his amended motion, and Councilman Reynolds his 2nd. There was a consensus to have Mr. Green pursue with Lee County or the state to check on the light and the right a way.

VOTE: The motion fails 4-1. Councilman Reynolds in favor;

Mayor Boback questioned Mr. Green if he knew his direction regarding the matter.

Mr. Green responded that he will check with the state to see whether there are any contracts they can piggyback on that would allow accelerating the engineering part of this. Mr. Green reported putting together a specific CCNA proposal for a letter of qualification to get someone on board.

J. Mooring Field Agreement Discussion

MOTION: Councilman Meador made a motion to fire- to discontinue contractual relationship with Salty Sam's. Councilman Shenko 2nd the motion for purposes of discussion.

Discussion:

Councilman Reynolds questioned if Mr. Green has checked the amount, and is it consistent with the amount they want at \$92,741.57.

Mr. Green responded no that it would not be in line with the present agreement where they retain 95% of the revenue that comes from the Mooring Fields.

Councilman Reynolds suggested for the operation to be turned over to the state and to Lee County, as they are a little Town.

Councilman Meador pointed out that this was presented to them last December; over 11-months and they still have not done anything. Mr. Meador suggested doing a little reviewing and making a decision regarding this matter.

Councilman Shenko agreed with Mr. Meador stating that it is time to do something about, and is in favor of moving forward.

Vice Mayor Massucco referred to litigation by firing the individual which could be substantial with cost. Vice Mayor Massucco added by firing the individual they would need to get another Harbormaster. Vice Mayor Massucco suggested paying the debt and then sitting with Mr. Hansen with a new contract.

Mayor Boback pointed out that they had this same discussion regarding the \$92,741.57 at a previous meeting where they agreed to pay the amount. Mayor Boback expressed that he is offended that Mr. Hansen is demanding another \$90,000.00. Mayor Boback suggested to fire him and to do it fast.

VOTE: The motion passes 3-2; with Vice Mayor Massucco and Councilman Reynolds dissenting.

MOTION: Mayor Boback made a motion not to pay Mr. Hansen a single cent. Councilman Meador 2nd the motion.

VOTE: The motion passes 3-2; with Vice Mayor Massucco and Councilman Reynolds dissenting.

K. Update on Town Manager Search–Town Attorney

No comments were given.

L. Direction on Wilker foreclosure

No comments were given.

M. Contract with Town Manager David Sallee

Ms. Dalton reported that this contract was previously entered by Ms. Lambert and has been modified. Ms. Dalton reports that she has discussed this contract with Mr. Sallee, and he is in agreement with its terms and conditions.

Mayor Boback opens public comment:

- No public comment was given.

Mayor Boback closes public comment:

MOTION: Councilman Shenko made a motion to approve the contract with David Sallee. Vice Mayor Massucco 2nd the motion.

Mayor Boback referred to E section 3 regarding leave, sick and vacation.

Evelyn Wicks, Finance Director reported leave, sick and vacation accumulate by the month. She pointed out that the health insurance requires a 90-day wait period.

Discussion:

Councilman Reynolds pointed out that he had some concerns regarding the benefits for Mr. Sallee.

Councilman Meador agreed with Councilman Reynolds suggesting having the words “and other benefits deleted.”

Ms. Dalton suggested leaving in Workers Comp and FICA which is a requirement.

AMENDED MOTION: Councilman Shenko amended the motion to make that change if it is acceptable with their manager.

Mr. Sallee asked to clarify the terms.

Councilman Meador responded health, life, STD, LTD.

Councilman Meador questioned if they can terminate this earlier if they found a permanent Town Manager.

Ms. Dalton responded that if it is agreed with Mr. Sallee. Councilman Meador reported that he is satisfied if Mr. Sallee is satisfied.

AMENDED MOTION: Councilman Meador amended his motion.

VOTE: The motion passes 5-0.

N. Council meeting notices requirements- Town Attorney

No comments were given.

O. Proportionate Fair Share LDC Amendment- Introduction

No comments were given.

VII. COUNCIL MEMBERS ITEMS AND REPORTS

Councilman Meador suggested that they amend their Council policies and procedures to end meetings at 10:00 PM and carry items that are not heard to the next regular scheduled meeting.

VIII. TOWN MANAGER'S ITEMS

Mr. Sallee responded that he had some things but would do them at another time.

IX. TOWN ATTORNEY'S ITEMS

Ms. Dalton reported that Colin Baenziger will be doing a presentation next week. Ms. Dalton questioned if it is the will of Council to have it shifted to the following week, and will follow up scheduling with Colin Baenziger.

Councilman Shenko pointed out that he did not attend the Executive Session as they related to the litigation that was filed by Mr. Shenko and filed a conflict of interest and did not attend.

Ms. Dalton reports there were two Special meetings, and two Executive Sessions, following Special meetings and Councilman Shenko has filed the appropriate paper; Ms. Dalton read into the record on each of the four sessions.

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 DeVincent commended the entire Council for their efforts.

Mayor Boback closes public comment:

XI. ADJOURNMENT

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

VOTE: The motion passes 5-0.

Mayor Boback adjourned the meeting at 12:04 AM

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