

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
May 23, 2005**

**I. CALL TO ORDER**

A special workshop was convened on Monday, May 23, 2005 by Mayor Bill Van Duzer for the purpose of interviewing candidates for the Town Attorney position.

**II. PLEDGE OF ALLEGIANCE**

This was not done.

**III. INTERVIEWS OF TOWN ATTORNEY CANDIDATES  
(9:00 AM. TO 11:30 AM.)**

**Anne Dalton** came forward and introduced herself as being a licensed attorney since 1977. She said she first practiced in New York City, then moved to Pennsylvania, and ultimately to Florida, and had been practicing law in the state for about 14 or 15 years. She said her first job in Florida was with Lee County, employed by the Board of Commissioners as a government attorney in the General Services section. During the several years she worked there, she had concurrently worked at the airport, as well as with several committees and councils, with whom she believed the Beach Town Council interfaced regularly. She said because of that experience she had a great deal of familiarity with a great number of people in the County, including some of the advisory boards. Subsequent to her work with the County, she said she opened her own solo practice and which she continued to do to date. She said at this point she represented several government entities, and had checked with them as to whether they felt there would be a conflict of interest if she were to assume the Ft. Myers Beach Town Attorney position, and they found that it would not be in conflict.

Ms. Dalton went on to give a summary of her work prior to coming to Florida, which included representation of government entities in Pennsylvania such as small municipalities, counties and the state. She felt she had a fairly broad spectrum of experience, and had been very pleased in the position of serving as the interim attorney for the Beach Town Council. She had originally taken the interim position with the stated intention of not seeking the permanent position, but had changed her mind because she had had such a wonderful time representing the Beach Council, even in the short length of time she had served in that position.

Mayor Van Duzer had a concern about the conflict of interest with regards to Ms. Dalton's ongoing representation of several government entities. Most of what Mayor Van Duzer said was unintelligible on the tape, but it sounded as if he were asking her for assurance that there would be no problem with that. Ms. Dalton replied she would have no problems or conflicts with scheduling. She said that when she had first taken the interim position, she had had several commitments already scheduled that had been in conflict with some of the Town Council dates, and noted that most attorneys' schedules extended out for several months in advance. She said that what she had done, starting with the month of June, was she had completely cleared her calendar on the three meeting days Council had scheduled, and had selected those days out in the future so that if she were to be hired for the permanent Town Attorney position, she would have no scheduling conflicts whatsoever.

Mayor Van Duzer noted that in Ms. Dalton's resume, there had been no mention as to what her experience might have been in land use matters. He asked Ms. Dalton if she had looked at the Town's Comp Plan and Land Development Code so as to be able to advise the Council properly on those matters. Ms. Dalton said she had read most of the Land Development Code, on non-billable time to get herself up to speed, and said she actually knew much more about land use than she had thought, due to her time working with the County where she had done a lot of work with the land use people. She said it was her intention, if she were to be selected for the permanent Town Attorney position, was to read the back minutes of the LPA and the Council, also on non-billable time. She said her reason for doing so was that, when coming in after another attorney, any attorney would need to do that to get up to speed. She felt the Council had been gracious in allowing former Town Attorney Roosa to work with her in order for her to assume the interim position, but understood Council did not wish to continue that, and thought reading the back minutes, which she thought were well done, would get her up to speed on what had taken place thus far.

Vice Mayor Rynearson asked if her interim fee of \$150 per hour was what she had in mind for the permanent position. Ms. Dalton said she had done an analysis, in anticipation of that question, and said the fee would depend on what level of service the Council wanted. She said that she was not irrevocably wed to the \$150 per hour. She said she had looked at what Mr. Roosa had been paid, and he had said his pay had been \$4800 per month. She mentioned that her husband, who was a math teacher, had helped her calculate that Mr. Roosa had been paid \$1108 per week, and if that were based on \$150 per hour, that would total 7.38 hours per week of paid time. She said if it was based on \$125 per hour, and that would total 8.86 hours per week of paid time. She realized Mr. Roosa had been on retainer, which she knew created an inherent flaw in her calculations, but at \$125 per hour Mr. Roosa had given the Town under 9 hours a week in service. She said when she looked at her billing for her services in the interim position, she found she had billed the

Town 8.75 hours, 16.50 hours, 8.25 hours, 11.75 hours, and 13 hours each successive week. She then averaged the weekly billed hours, and found the average to be 11.65 hours per week, which when multiplied by the \$150 rate, came out to a number she did not think the Council would like. She then multiplied the 11.65 average of billed hours per week by the \$125 rate, and that brought the average total weekly billing to \$1456. She said she was not wedded to the \$6300 per month figure that she would be paid at the \$125 rate, but she said it would depend on the level of service the Council wanted for her to determine what rate she would agree to. She said she had some ideas as to how she could serve the Council, subject to her being hired and their subsequent approval of those ideas. She gave the example, based on her experience working with other government entities, that the Council may wish for a legal briefing before each meeting, so as to determine if something Council was considering bringing forward would create liability for the Town or not. She said that was just one reason to do briefings before meetings, and that this type of thing was an example of what she meant by "level of service" that was different from what Mr. Roosa had provided. She said she was open to negotiate the rate, but felt the amount Mr. Roosa had been compensated was not enough. She said that, as the Council was going to go on hiatus soon, they could just keep her at the hourly rate, and she would be okay with going to \$125 because the hours were far more in excess of what she had originally anticipated, which she also had no problem with. She thought she could work at that rate for a while to establish a track record in the position, and then, if she were hired, the Council could decide what level of service they would like her to render. She said that would determine what the Council decided to pay her.

Ms. Dalton expressed her opinion that the Town Ordinances desperately needed codification, which was what Bill Spikowski did with the Land Use Code. She said doing that alone would bring down the Council's attorney time because looking through them now without codification was a laborious process.

Councilman Katko asked Ms. Dalton what her duties had been while working under General Services for Lee County. Ms. Dalton said that when she was hired she was told she would be doing all the stuff that nobody else wanted to do. Some of those duties included: reviewing and creating contracts between the County and any entity such as an interlocal, a vendor, a lease contract, etc.; providing support to the land use area; assisting in rewriting the bidding code for the County; doing some litigation; providing general assistance and advice to all the County departments - representing the Tourist Development Council, the Economic Development Council, the IDA and various other advisory bodies. She said each attorney in General Services was assigned to an entire group of County departments or advisory bodies. She said she had done a lot of work with the DOT, and had done all of their contracts that had involved a very heavy land use component.

Councilman Katko asked why Ms. Dalton had originally not been interested in the permanent position other than the reason she had already stated in her initial presentation. Ms. Dalton said she was a solo practitioner, and tried to give a very high level of service to her clients. She said she had worked hard to get into the position where she could work for herself. She said she had thought it through, in terms of being hired for the permanent Town Attorney position, to determine what she would have to give up in her solo practice. She had originally thought she would just go to the Beach and help the Town through the difficult transition period and then go back to her solo practice. She said about 60% of her business was mediation, and thought it was good for an attorney to have a conciliatory attitude. She had found that she really enjoyed working as the Town Attorney, characterizing it as a really exciting job. She believed she would tone down or eliminate the mediation part of her practice, and that would free up a lot of her time.

Councilman Katko asked Ms. Dalton what her duties had been in her capacity as a Special Hearing Master for the Land Use board in the city of Cape Coral. Ms. Dalton explained that the City of Cape Coral had a special process where if people do not agree with how a Land Use matter is determined, they can go through an administrative procedure. She said that in the time that she had been at Cape Coral, she had heard only one case as Land Use Master.

Councilman Massucco said he had read Ms. Dalton's resume and felt she had had some experience that the Council could really utilize. Councilman Massucco asked Ms. Dalton if she anticipated having to put more hours into the Town Attorney position than Mr. Roosa had. Ms. Dalton said she had done a theoretical analysis based on how much he had been paid, but didn't know how many hours he had actually put in. She had asked Mr. Roosa how much time his job for the Town had taken, and he had told her between five and eight hours per week, and she said that had not been her experience in the interim position. Councilman Massucco said they would have to put some sort of cap on how much could be spent on attorney's fees, with which Ms. Dalton agreed. Councilman Massucco wondered if fee negotiations were to be done at this time. Mayor Van Duzer explained to Councilman Massucco that they would conduct the interviews, after which Council would make its decision, and then they would enter into fee negotiations with the person whom they've chosen. Ms. Dalton commented that she didn't know any attorneys who went into government law to get rich, and hoped her comment might help them with their concern about the fees. This comment drew chuckles from Council. She then said she was fairly flexible, but just did not want to "take a bath". Councilman Massucco reiterated his initial comment that her qualifications were more than sufficient, but for him it was just a question regarding salary.

Councilman Garr Reynolds asked Ms. Dalton, if there were some reason that she could not attend a special or emergency meeting of the Council, what arrangements she had made to provide legal advice to Council. Ms. Dalton said she considered her first obligation would be to Council, and would cancel other obligations if it were necessary to do so. She went on to say that if there were an emergency, she would have an attorney that she would bring to Council for prior approval to sit in as an alternate, much like what would occur if Council were to hire a firm rather than a solo attorney. Councilman Reynolds asked if Ms. Dalton would be available if there were another storm. Ms. Dalton said she had an elderly father living in Ft. Myers who had informed her that he would not leave if there were another hurricane. She said if he was not going, then she was not going. Councilman Reynolds asked if she would make herself available if legal questions came up during a hurricane emergency. Ms. Dalton said she absolutely would. She recounted that she had been without power at home and at her office for a ten-day period, but had still gone to work everyday because of a sense of obligation to her clients. Councilman Reynolds asked Ms. Dalton to whom she felt she was legally obligated to report to in the capacity of Town Attorney. Ms. Dalton said the Charter stated that the Town Attorney was to report to the Council, and thus each Council member. Councilman Reynolds asked Ms. Dalton if she felt that way or if she felt she needed to report to Staff. Ms. Dalton said she did not report to Staff currently in the interim position, and would not accept the position working for government where she would report to a staff member. She said that had been a running argument at the County level for a long time, and she didn't believe it would be fair to the Commission at county level, or the Council at town level. She also did not think it was legally appropriate, and absolutely would not report to a Staff member. Councilman Reynolds said he asked that question for obvious reasons that Ms. Dalton might not have been aware of. He said the community felt that Mr. Roosa had been reporting to Staff.

Councilman Reynolds remarked that Ms. Dalton had never been before the Beach Council with any business, but asked if she had ever done anything outside of the Town that related to Beach business. She thought when she had worked for the County there might have been something that had impacted the Beach, but she did not believe the Town had been incorporated during the time she had been employed by the County. She said she had been involved with an issue involving a boardwalk next to Jim Newton's property, but it was before the incorporation. She said she currently mostly represented non-profits, as well as the Ruth Cooper Center, and she felt those clients did not tend to have issues in front of the Beach Council.

Councilman Reynolds then asked Ms. Dalton which part of her working experience she considered to be a real strength. Ms. Dalton said she had a broad spectrum of knowledge, and a strong background in corporate law, and felt a lot of concepts in corporate law translated well to government law. She

thought her strength was in knowing the right questions to ask, because, as she had been taught in law school, if the right question was asked, then the right research could be done, and then the right answer would be found.

Councilman Reynolds asked Ms. Dalton if she had ever advised any government entity with regard to the Sunshine Law, and asked for some examples. Ms. Dalton told about one of her jobs at the Lee County Attorney's Office had been to provide legal assistance to advisory bodies, and once a year she would go to each advisory body and have an in-depth discussion about the Sunshine Law, because many of the people on those committees didn't really understand it. Councilman Reynolds said when the Council had first been formed, they had been informed over and over for several years on the Sunshine Law, which he had thought had been a great idea. He wondered if she would do something like that for Council as he felt the current Councilmen probably weren't well informed on the Sunshine Law.

Councilman Reynolds asked what legal advice Ms. Dalton would give a Councilman when speaking in public where other Council members were present. He asked if they could ask questions or make comments of a dissenting nature. Ms. Dalton asked in which type of speaking situation he was referring because it would make a difference as to whether it was a committee meeting, or a fundraiser. Councilman Reynolds gave the example of the Chamber of Commerce, where they have a guest speaker once a month. He wanted to know what her advice would be if a Councilman were the speaker, and there were several other Councilmen in the audience, and they did not agree with what the speaker was saying. Ms. Dalton said the Sunshine Law was very clear, in that there could be no interaction among the Council members with regard to any matter that might come in front of the Council for discussion or decision-making in the future. She said they could talk about the Red Sox and the Yankees, as an example of something they could discuss, whereas talking about the Segway issue that is before Council now would not be something they could discuss outside of the Council meeting. She said that a Councilman could speak on any issue, but there could be no interaction whatsoever among Councilmen regarding any issue that was currently or could be before the Council outside of the meeting. Councilman Reynolds then asked if a Councilman published something in the paper, and another Councilman did not like what had been written, he wanted to know if they could write a letter to counter the first-published article. Ms. Dalton said there was a specific body of law concerning newspapers, and letters to the editor and/or editorial opinions by Council members would be an issue balanced between the First Amendment to the U.S. Constitution and the Sunshine Laws, and she would want to study it before she gave an answer to that question. Councilman Reynolds asked Ms. Dalton if she perceived a difference between speaking in public and writing a letter, and she said there could be. He asked if television interviews would fall into the same category. Ms. Dalton said she would want to look at each specific case because the

Sunshine Law prohibition was so strong that she would not want to speak off the cuff on that.

Councilman Reynolds referred to the discussion earlier about fees, and thought \$125 per hour would be a reasonable rate. Councilman Reynolds could see that, unless a different agreement could be reached on who would cover for her if she could not be present, the Council could be left in a very difficult situation. He said that was why he was leaning toward hiring a firm, in that there were always colleagues who could back up the situation. Ms. Dalton responded to that comment by saying she had been a sole practitioner for about eight or nine years in Florida, and had never once at any time had a client say that she had failed them for not being there for them. She added that she had never had an ethics complaint and felt she was vehement about representing her clients.

Anne Dalton's interview was concluded at that time.

Vice Mayor Rynearson asked if Council could discuss directing Staff as to what the Council would like them to come up regarding a contract. He felt they needed some guidance regarding negotiating fees and other criteria. He suggested having a draft contract prepared and ready for when Council has made a decision as to whom they would like to hire.

Mayor Van Duzer thought they would get the interviews done and get a selection made during this meeting. Vice Mayor Rynearson suggested Mr. Cicerone be invited for his interview just before the next meeting, which would give Council an additional week to make a decision, and then the contract negotiation could be done. He felt this would settle the issue before they broke for summer. Mayor Van Duzer said he wanted to listen to all the candidates first, and then decide who they wanted, after which they could get the contract worked out. Mayor Van Duzer said Ms. Dalton had pointed some things out that he hadn't considered, and that even if they cut the fee to \$125 per hour, they might need to put more money into the budget for Town Attorney fees. He also liked Ms. Dalton's suggestion regarding codifying the Town's ordinances so as to greatly reduce Attorney time. Vice Mayor Rynearson said he did not disagree with the idea of listening to the candidates first. He clarified what he meant was that he wanted Staff to get started on the draft contract now so as to give them a few weeks to put it together. He also agreed that the ordinances should be codified and that all the Town committees should be given more understanding of the Sunshine Laws.

Councilman Massucco said that in retrospect, he wished that Council had been given a draft contract or form from Staff to use as a guideline when interviewing the candidates, especially with regards to salary and time needed for various legal services. Mayor Van Duzer thought that if they directed Staff to supply them with some type of form before they listened to

everybody, it would be premature in that they would probably learn a lot about what they need by listening to the candidates. He thought if Staff favored a particular candidate, that the form would be aimed more toward the selection of that candidate. He felt there were several things Ms. Dalton had said that should be worked into the agreement they enter into with the person they eventually select for the position. He did not believe that doing it his way would cause a hold up in the process. Vice Mayor Rynearson said that by noon that day they would have heard from every candidate except Cicerone. He agreed that Council would have their notes, which they could compare.

At this point, Councilman Reynolds remarked that he wanted the ongoing conversation to be dispersed amongst the five Councilmen, implying that it was not. He said he did not mean it to be an insult. Mayor Van Duzer said that it was an insult, and that he could jump into the conversation any time he wanted. He then told Councilman Reynolds he had the floor. Councilman Reynolds muttered a curse under his breath and deferred to Councilman Katko, who said he had no questions or comments.

Councilman Reynolds said that there already was a contract written out which was done with the cooperation and approval of Council. He thought they could use that and adjust it as needed. He commented that there was a lot of dialogue they could do without sometimes.

Mayor Van Duzer thought the existing contract would be the starting point, and Councilman Reynolds said he hoped so. Damon Grant commented that the normal steps taken in hiring would be that the candidates would all be interviewed and their qualifications looked at, and then the one most qualified would be selected for hire. He said that after that selection was made, negotiations would be undertaken. He said he could get some guidelines from Mr. Roosa regarding how many hours could be expected to be needed in legal services, given the growth of the Town and what the Town is faced with, from an attorney's perspective. Mr. Grant thought that the fee any attorney would ask for would be dependent on how many hours a week in services the Town would require. Vice Mayor Rynearson said that was exactly what he had been suggesting. He said this would give Council control over the negotiations, in that they could know beforehand how much they would be willing to pay based on the number of hours needed in legal services.

Councilman Reynolds felt that the Town Attorney position was a part-time job, and that a floating rate was not necessary in that the hours would vary from week to week and the amount of money the attorney would be paid would average out. He recommended that they look at the contract that the Town had with Mr. Roosa and go from there. Councilman Massucco thought they should have the contract and the guidelines as described by Mr. Grant as suggested by Vice Mayor Rynearson. Mr. Grant said he would go back to

Staff and Mr. Roosa and get their input. Mayor Van Duzer said he took exception to the idea of asking Mr. Roosa what he thought the hours would be, and Councilman Reynolds concurred with him. Mayor Van Duzer reminded Council that they had had a unified position that they had not been happy with the services that they had been getting from Mr. Roosa. He felt the Council should make the determination as to the level of service they would require of the new Town Attorney, as Ms. Dalton had suggested in her remarks. He said he had been concerned when the subject of money had come up during Ms. Dalton's interview because it seemed they were planning to hire someone without knowing how much it would cost. Vice Mayor Rynearson suggested that Staff could call around to different attorneys and ask them what they would suggest or expect in that position, as opposed to asking Mr. Roosa. Mr. Grant said he didn't have to ask Mr. Roosa anything if that was the will of Council. The entire Council agreed with that. Councilman Reynolds did not agree that Staff should call around to different attorneys for their opinions on it either.

Vice Mayor Rynearson noted the figure that had been budgeted for Attorney's fees in the past, saying it was a starting point, and that it had not been negotiated in ten years. Councilman Katko commented that it had been nice that Ms. Dalton had furnished them with that information, but he felt that the Council should have been supplied that information from Staff. Mr. Grant called up to the administrative offices and asked for copies of Mr. Roosa's contract for the Councilmen to be brought to them right away.

There were several comments made from Council as the next candidate came forward, but the microphones were not picking up what they said. Mayor Van Duzer became audible when he asked the candidate if he could call him Jack, which the candidate said was all right. Mayor Van Duzer told him he was there to interview for the position of Town Attorney, and that he would like him to make a presentation and then answer questions from Council.

**Jack P. Pankow** introduced himself as having grown up in Lee County. He said he went to the University of Florida for undergraduate and graduate degrees. He said his parents had moved to Cape Coral in 1961, making his family one of the first 200 residents to settle there. He said he had practiced law in Lee County since 1973 in all areas of practice, and that currently he specialized in corporate and business law and real estate. He said he had also been involved in a company that put together an insurance program for mosquito control districts throughout the U.S., in which he had developed the insurance policies. Subsequent to that, he had been involved in the medical industry, in that he had owned physical therapy clinics in Lee and Collier Counties, as well as in Georgia. He said he had never represented a governmental entity, except indirectly when he worked with the mosquito control districts, which he characterized as being quasi-governmental. Mr. Pankow said that his first attorney job was for attorneys who represented the

Lee Memorial Hospital board, which he said had also been quasi-governmental work. He said he had practiced in just about every area except criminal law. He said he had done a number of things in front of boards – administrative, code enforcement, zoning – but did not profess to be a zoning expert. He said he was married and lived in N. Ft. Myers, and his law office was located in downtown Ft. Myers. He noted his personal interests as they appeared on his resume. He said he lived on the Beach for two years after finishing law school, and that he loves the area.

Councilman Massucco asked Mr. Pankow how he got involved with physical therapy, noting his strong involvement in that area. Mr. Pankow said his brother-in-law, who was a physical therapist, had wanted to move to the area and needed help opening a business, and that it became successful beyond what they had expected. He said his brother-in-law had since bought him out, but that he had just been involved initially to handle the business and legal end of the endeavor.

Councilman Massucco asked Mr. Pankow if he were familiar with the Council schedule and asked if he foresaw any conflict with it. Mr. Pankow said he was familiar with the schedule and didn't see any conflict. He went on to say he didn't know how much work was involved other than attending meetings, but Monday nights were not a problem.

Vice Mayor Rynearson said he would be hired on a retainer and also an hourly rate, and asked Mr. Pankow if he had any idea how much he would charge. Mr. Pankow said he had charged \$175 per hour for twenty years. He said he had no intention of raising it even though other attorneys with experience equal to his were charging \$225 per hour. Vice Mayor Rynearson asked if his fee were negotiable. Mr. Pankow said he would have to see what was involved, but the retainer might have an effect on his hourly fee. Vice Mayor Rynearson asked how he would interact with Council, and if he would be there to give input into the meetings if he felt the Councilmen were going in the wrong direction, and how he would go about it. Mr. Pankow thought that was what he would be hired to do, and to make sure the decisions being made by Council were not putting the Town in a position of liability. He felt, because it was a public forum, that a legal counsel he would need to be a little cautious about what he said.

Councilman Reynolds asked Mr. Pankow if the traffic had been bad when he had lived on the Island. Mr. Pankow said it was, and was one of the reasons he had moved off the Island. Councilman Reynolds asked Mr. Pankow if he had a solo practice, and Mr. Pankow said he did. Councilman Reynolds asked if he had any plans for having another attorney sit in his stead if he couldn't attend a regularly scheduled meeting or an emergency meeting. Mr. Pankow said he had another attorney that served as a backup to him. Councilman Reynolds asked if Mr. Pankow would be available to the Council if a storm

came. Mr. Pankow said he absolutely would be, after he made sure his roof was on his house and his family was safe. Councilman Reynolds asked if Mr. Pankow had done any work for the Town, and he said he hadn't, nor had he ever been before the Beach Town Council. Councilman Reynolds asked the candidate what he considered his most valuable experience with regards to representing Town Council. Mr. Pankow felt his 31 years of practicing law in a great variety of areas, and dealing with all kinds of people. He thought the Town's problems were probably not unique to the Island, and that he had found he was a good problem solver. Councilman Reynolds asked, if he were hired as Town Attorney, where he felt his responsibilities and loyalties would lie. Mr. Pankow said he had been thinking about that and figured he would be representing the Town of Ft. Myers Beach, meaning the people as opposed to any particular individual, and to make sure the laws were being interpreted the way they were supposed to be, and in the best interests of the Town. Councilman Reynolds asked Mr. Pankow to define what "the Town of Ft. Myers Beach" meant. Mr. Pankow said it meant the government as a whole, as opposed to the five Councilmen. He said the Council members might have differing opinions on things, and didn't think it would be his job to side with one or the other Council member. Councilman Reynolds made a response that was not picked up by his microphone, but Mr. Pankow responded by saying one of his questions was that he didn't know who he was supposed to be representing. He didn't think he could keep five people happy if he were representing each of them individually. He said as a Town Attorney, he would want to maintain the legal position that represented the best interests of the Town, and then it would be up to the Council members to change laws if they didn't like them. Councilman Reynolds asked him if he had a direction in which he wanted to go, with whom would he clear it with. Mr. Pankow said as an attorney he would not have direction to go, because he would not be making independent decisions as to where anything was heading. He went on to explain that if a question arose with regards to a legal question that would affect the Town, he would render his legal opinion. He said it would not be up to him to decide to do anything unless it was a legal decision. He said he would not select options, but rather give them. Councilman Reynolds asked whom Mr. Pankow would go to for direction if he felt he needed a question answered. Mr. Pankow felt overall his direction would come from Council. Councilman Reynolds asked Mr. Pankow if he was familiar with the Sunshine Law. Mr. Pankow said he knew what it was but was not an expert. Mr. Pankow said he had purposefully not looked into the goings-on on Ft. Myers Beach because if he were to be hired, he didn't want to have any preconceived notions or opinions, and would have a fresh approach to everything. Councilman Reynolds asked if he had ever worked directly with the government and Mr. Pankow said he had not. He said he would make it a priority, if he were hired, to fully understand the Sunshine Law. Councilman Reynolds remarked about Mr. Pankow's \$175 per hour fee, and asked if the retainer might bring that figure down. Mr. Pankow said it could possibly. Councilman Reynolds asked Mr. Pankow if he would have any problem with

the meetings schedule, and Mr. Pankow said he didn't see any problem with it. He went on to say that the good thing with him was that his schedule was flexible, as he did very little trial work.

Councilman Katko asked Mr. Pankow why he had applied for the position. Mr. Pankow said he liked challenges and opportunities, and liked the idea of bringing his years of experience, knowledge and expertise to a new, and more public, forum. He had thought there might probably be a lot more attorneys with experience working with local government entities that would apply for the position, but he liked the challenge. Councilman Katko thought, if Mr. Pankow were hired, the first meeting would throw him into the Land Development Code and Comprehensive Plan, and wondered how he would prepare himself for that, and if he would expect to bill the Town for the time he took familiarizing himself with those documents. Mr. Pankow didn't think he would bill the Town for his studying time of those documents, were he to be hired. He went on to explain that most lawyers cannot quote chapter and verse many of the laws, but he said he knew how to find everything and could read it when he found it. He said he would not memorize the codes, but he would become familiar with it so that he could find what he needed.

Mayor Van Duzer explained to Mr. Pankow that the Council establishes the ordinances and policies under which the Town operates. He said there had been problems recently with the wording of the ordinances, and was one of the reasons a new attorney was being hired. He asked, if they entered into a contract with Mr. Pankow, and he looked at the present ordinances, if he would be willing to meet with Council prior to any official Council meeting to discuss it with them. Mr. Pankow said if he were hired, it would be his job to do what the Council asked him to do. He said if there were specific things that Council wanted him to look at and discuss with them with regard to wording, he did not think that would be a problem. Mayor Van Duzer said he had originally wanted someone well versed in the laws, but after listening to Mr. Pankow, the Mayor thought it might be good to have someone with a fresh mind about it. Mr. Pankow said he could not present what he is not, and he was not and never was a government attorney. But he felt he had a world of knowledge and experience to offer and which he thought would be a help to the Town. Mayor Van Duzer thought zoning and Comp Plan issues were the biggest jobs the Council faced. Mr. Pankow said he had had some experience with that as a developer and as an attorney representing clients in real estate. Mayor Van Duzer and Mr. Pankow engaged in a short discussion about development as opposed to redevelopment on the Beach and the attendant problems.

Councilman Massucco cited one part of Mr. Pankow's resume that talked about the management of a general agent for Homestead Insurance, and asked if that been in relation to Hurricane Andrew. Mr. Pankow said it had not, and

that it was the company, in Hoboken, New Jersey, that insured the mosquito control districts throughout the U.S.

Mr. Pankow's interview was concluded at that time.

**Mr. Chris Lombardo** came forward and introduced himself as being from **Woodward, Pires and Lombardo, P.A.** He introduced his partner **Tony Pires** and an associate **Carlo Zampogna**. Mr. Lombardo said they were attorneys with offices in Naples and Marco Island. He said the firm was 35 to 40 years old, one of the older firms in Southwest Florida, and was the first on Marco Island. He said they had represented a significant number of developers, and their clients were from Marco Island to the Florida Panhandle. He said his firm also handled a lot of litigation – commercial and government, as well as family law - and that he handled most of the litigation himself because of his personality. He said they had represented a significant number of government entities over the years, including planning boards, independent districts, Collier County Clerk of Courts, Everglades City, and development districts. Mr. Lombardo said he had been practicing law since 1983, and Mr. Pires since 1975, both having graduated from Florida State College of Law. He said that Mr. Pires had been the County Attorney for Collier County for many years, and then was in-house counsel for Westinghouse, before coming to work with him. Mr. Lombardo said Mr. Zampogna had been with the firm for about two years.

Mr. Lombardo said they worked as a team. He said that Mr. Pires was a board-certified Land Use lawyer, and said he was an incredible person who could burrow his way through mountains of paper to find answers to questions. Mr. Lombardo said one of the reasons he had been so successful as a litigation attorney with Mr. Pires at his side was because they had been able to completely overwhelm the other side with little known or unknown facts that had been gleaned by Mr. Pires. Mr. Lombardo said the State of Florida, as well as Collier County, had been less than thrilled with his firm over the years because of their ability to find things that, they would like to think, don't exist. Mr. Lombardo then told a story about a case that he and Mr. Pires had had with Everglades City, Florida, wherein Mr. Pires had discovered that notary stamps on some easements had been forged.

Mr. Lombardo said that his firm had an interesting blend of personalities, and that they enjoyed representing different types of communities, especially those in transition. He felt they were proactive rather than merely responsive to needs. He said they had had good luck dealing with large state and federal agencies, and they had noticed that small communities had tended to be targeted and the larger agencies were rarely ready for a smaller community that was ready for them. He recounted the unique difficulties of Everglades City, and how shocked the town had been at his firm's preparedness and

effectiveness in their fight with federal and county agencies with regards to the water treatment plant.

Mr. Pires came forward and stated that he was certified in City/County Local Government Law, certified in Local Government Land Use Owning/Permitting Law – primarily in Lee and Collier Counties, and represented five community development districts – River Ridge, Gateway, Fiddlers Creek I and II, Pelican Marsh. He went on to say he also represented the Clerk of Courts for twelve years, who was an attorney himself, and had learned a lot about the courts system working with him. He referred to Carlo Zamponia, who works in their firm, stating he worked on a number of the projects mentioned above, particularly the community development districts and the cities. He said he did a lot of the detail and information-gathering work for those clients.

Mr. Pires said the firm was involved in community activities. He related that Mr. Lombardo was Chairman of the North Naples Fire Control District, which has had a rebirth in the last few years financially and in providing fire service to their area; he said Mr. Lombardo was also active in the Boy Scouts and a number of other community organizations. Mr. Pires said he was on two Collier County advisory boards – Coastal Advisory Committee and County Land Acquisition Advisory Committee. Mr. Lombardo interjected that he was also one of two representatives for the Florida Bar Board of Governors for this circuit. He added that they had made it a practice in their firm of being very involved in their community, not just in Naples, but in Everglades City as well.

Councilman Reynolds asked which of the lawyers present from their firm would be the primary representative for Council. Mr. Lombardo said they typically work as a team, and that they keep each other well informed. Councilman Reynolds thought the Council, as a group, would prefer having one specific representative as much as possible, with others filling in if that person could not be present. Councilman Reynolds asked if they would make themselves available in the event of a storm emergency. Mr. Lombardo said that due to his involvement with the North Naples Fire Control District, depending on the severity of a storm, he would typically stay in Naples. He said the firm has a satellite phone through which they can be reached. Councilman Reynolds asked if any of them had ever been before the Beach Town Council or worked on a case before it. They answered they had not. Mr. Lombardo thought none of them had any investments in Ft. Myers Beach. Councilman Reynolds asked if they were familiar with the Sunshine Law. Mr. Pires said they were very familiar, and that he himself took a very strong conservative approach rather than walking a fine line with it, based on the Attorney General's opinions and existing case law. Councilman Reynolds asked if two Councilmen were being interviewed on television if they were at liberty to express opposing views. Mr. Pires said if they were not in the same

room together, and that they were not on the same show together, he felt it would not be a violation, but if they were both present, Mr. Pires said he would have a very big concern with that. Councilman Reynolds asked if a Councilman wrote an article in the paper, and another Councilman wrote an opposing view in another edition, if it would violate the Sunshine Law. Mr. Pires said that he would encourage them not to do that because, although it was in a public form, it would be the start of a kind of dialogue in which the public would not have the opportunity to participate. He said it might not be a Sunshine Law violation per se, but that it could become a debate in a forum other than an advertised Council meeting. Councilman Reynolds asked if there were a better way to handle that sort of situation. Mr. Pires said his guidance to the Council would be that if a Councilman had a desire to rebut or retort what was said in the first article, he should have it placed on the next meeting agenda to bring it up for discussion.

Councilman Reynolds asked if they had considered the Town Attorney position as an hourly rate position, whereas before the Town Attorney had been on retainer. Mr. Pires said they had typically charged on an hourly basis with their government clients, with a very detailed billing. He gave as an example that if, in one hour, he had three telephone conversations with three different people, and two different e-mails to two different people, each one of them would be a separate line item entry. In response to Councilman Reynolds question as to whether he would have availability for Monday meetings, Mr. Pires stated that he has standing obligations on Mondays. Mr. Lombardo said he had standing meetings on Thursdays. He said that they have typically developed a flat fee for the regular Council meetings each month – with clients in the past – and then everything else was billed hourly. He said that Mr. Zampogna was the most reasonably-priced, of the three of them, and would be involved as much as possible because he would be the most accessible. He said there would be different rates for the three of them, and that was something that would have to be figured out as to what would make sense for the Town.

Councilman Reynolds thought there was a benefit to having a firm representing the Council, because there would always be someone who could cover the meetings. Mr. Lombardo said that within their firm they also had real estate attorneys and other litigators.

Ken Katcko referred to the situation Councilman Reynolds had asked about regarding the Sunshine Law. He asked why the first Councilman would be able to have free speech and express his opinion in the newspaper, where the second Councilman would not have that right. He said he understood that for decorum, one would not want them fighting in the newspapers, but to not allow the second Councilman to counter with his opinion in the same forum didn't seem right to him. Mr. Pires said it may not be a Sunshine Law violation, but it would become troublesome because the idea of the Sunshine

Law was to ensure the decision-making process occurred in an advertised public meeting where the public would have the opportunity to become part of the debate. Mr. Lombardo opined that it was a delicate balance between the Councilmen's Constitutional rights with the Sunshine Law. He said the scenario of one Councilman writing an article, with another rebutting in another article, and then another Councilman doing the same, soon the potential for a third party, saying they had been prejudiced by the articles, arises. He said either of the Councilmen might be well within their rights to write and publish their opposing views, but his firm would advise against it. Mr. Pires said he always recommended that his government clients be very circumspect with regards to how and under what circumstances they communicate. Councilman Katcko asked if what they were saying was that, instead of creating a situation where one Councilman gloats about getting an article published to which no one can respond in the same forum, it would be a better policy that no Council person could write letters to the editor expressing their opinions. Mr. Pires said it was outside the Sunshine Law issue, and more a matter of policy and decorum. He said that they would recommend that Council members not write their opinions on Town issues in Letters to the Editor or such.

Councilman Katcko asked for clarification as to whether all three of the men interviewed from the firm were going to be present at all the Council meetings if their firm were to be hired. Mr. Pires said it would be one person, possibly two. Mr. Lombardo said they share the load, and they would probably alternate depending on the issues on the agenda at any given meeting, so that the one who had the most expertise relating to that issue could be present if possible. He said when they've worked with other cities, they've worked out with the Mayors which of the attorneys from their firm would be present at any given meeting. Mr. Pires said that, from the cost perspective, they usually charge a flat rate for attendance at meetings, regardless of how long they last, and regardless of how many of their firm actually are present at the meetings. Both Mr. Lombardo and Mr. Pires said they like to be well prepared for the meetings, and will try to have answers to questions before they are taken up at the Council meetings. Mr. Lombardo gave the example of airboats being a hot issue in Everglades City, and Councilman Katcko joked that he had been sidetracked by the airboat story because he had a wholesale business that sells to a lot of airboat businesses. This drew hearty laughter from the lawyers.

Councilman Katcko asked if they could give the Council some idea about their salary or compensation. Mr. Pires said representation of the community development districts range from \$150 to \$200 per hour. He said they typically gave a discounted rate to government bodies. Mr. Lombardo said his normal rate was \$400 per hour, where Mr. Pires' rate was \$350 per hour, and Mr. Zampogna's was \$175 per hour. Mr. Lombardo his rate was high because he does a significant amount of litigation. He said they would have to do a sit-down with Council to work through what they thought was reasonable, but

they would not charge the Town \$400 per hour. Mayor Van Duzer quipped that he knew they wouldn't. This caused lots of laughter in the room. Mr. Lombardo said he understood that, but that they would ask to develop a schedule that had different rates for different attorneys, a Council meeting rate, and a litigation rate, litigation requiring much more staff and hours. He said they were very conscious of charging a fair rate, and they look at the overall picture when billing.

Councilman Massucco asked how to spell Mr. Zampogna's name, which he did. Mr. Lombardo said they hadn't purposefully set out to hire all Italian attorneys, but it had worked out that way. This drew chuckles. Councilman Massucco asked if they were familiar at all with the Town's Comp Plan or Land Use code. Mr. Pires said he had not reviewed it, but he understood that Bill Spikowski did a lot of the Town's planning, and Mr. Pires had worked with him and thought he was very good. Councilman Massucco said the Comp Plan and the Land Use codebooks were both about 1¼ inches thick, and while the Council wouldn't expect them to know it all, he asked how they would handle them, explaining that the agenda had a lot of Land Use issues. Mr. Pires said he and Mr. Zampogna both loved Land Use issues, and assumed they would both become familiar with those codes. He added that they would not charge the Town for every little bit of their learning curve. Councilman Massucco said the Council agendas were varied and one never knew what issues they would be facing from week to week. He remarked that Mr. Pires has already said he would have a conflict with the Monday meetings. Mr. Pires said he did have one Monday a month in conflict, and that Mr. Lombardo did not have any conflict. Councilman Massucco pointed out that if the Council needed Mr. Lombardo, and he wasn't available, Council would then need either Mr. Pires or Mr. Zampogna, and he wondered if that would be to Council's advantage or disadvantage. Mr. Lombardo said that when they first began working with Everglades City it did not have a Land Development Code, and his firm had helped create one. He said they were all familiar with Land Use issues, but when it came to really unusual questions, they would not make off-the-cuff opinions, but rather would research it first before they would give advice. He said there would be a window when none of them were extremely conversant on the Town's codes, but they would make that transition as fast as possible.

Councilman Massucco asked if he understood correctly that if two of their attorneys attended a Council meeting that the Town would still be charged the flat rate. Mr. Pires said that was their practice to do it that way. He said that having at least two people from the firm at every meeting insured that they would have a good sense of how the Council, Town Staff and citizens interact. Mr. Lombardo said it helped because they all had different perspectives on how to look at problems, as he always looked at issues from a litigation standpoint, and looked at worst-case scenarios, whereas Mr. Pires was more inclined to figure out how to make things work. He thought their sharing of

the client allowed for the formulation of a more informed opinion given to their clients.

Vice Mayor Rynearson said he had gotten most of his questions answered. He commented that Mr. Lombardo and Mr. Pires were certainly enthusiastic. Mr. Lombardo said they really enjoy what they do. He said that although the issues might be serious, he was not averse to firing off a joke or two to keep the meetings enjoyable, and thought it would be something about him the Council would either really like or really hate about him.

Mayor Van Duzer said he had heard just about everything he had wanted to know, and had found a couple of things quite interesting. He said that he had gotten all the information he needed, and unless anyone on Council had any further questions, he felt that was all they needed from them for the time being. He mentioned that it would take a few weeks for Council to reach a final decision, and they still had another firm to interview. Mayor Van Duzer said the Town had a town manager system, with a Town Council that sets policies and drafts and adopts the ordinances, and wanted to know who they would answer to if they were in the Town Attorney position. Mr. Pires said they would answer to Council, and then gave examples of other governmental bodies that were clients and how he handled that with them. Mr. Lombardo added that he sits on the Fire Commission and was very sensitive to the fact that the attorney is there to represent the Council. Mr. Pires said the Council directs the Town Manager, and she carries out those directions, so the Town Attorney may advise the Town Manager in carrying out those directions, but answers to the Council, and is the Town Attorney. Mr. Lombardo said that they would strive to develop a good relationship with the Town Manager, but they would make it very clear that they were counsel to the Town Council. Mayor Van Duzer said that there was a packet put together for each Council member, as well as the Town Attorney, before each meeting. He remembered that Mr. Lombardo and Mr. Pires had said they would review those packets before the meetings. Mr. Pires said that was correct. He asked if the packets would have the minutes of the prior meeting, and Mayor Van Duzer said they did have them, as well as minutes from the LPA and any other organization that might be included in any particular case. Mr. Lombardo said that once they had reviewed the packet, they might call the Town Manager and ask if any of the agenda items were controversial. He said that in the past, with Everglades City, council members have called them when they knew a particular item on an upcoming agenda was going to be controversial. He said it was important for the Council members to tell them in advance if they had any particular concerns or worries regarding agenda items. Vice Mayor Rynearson told Mr. Lombardo that the packets did not come out until the Thursday before the Monday meetings. Mr. Pires asked if they were e-mailed. Vice Mayor Rynearson said they were put in a box in the Town offices and someone would come and pick them up. Mayor Van Duzer and Vice Mayor Rynearson both remarked that that could be worked out. Mr.

Pires said the time window was workable. Mr. Lombardo said the documents could be scanned and e-mailed. He felt that, initially, there would be a few months of ironing out the details, but over time, there would be familiarity with issues of the Town and needed prep time would be shorter. Councilman Massucco asked if prepping for a meeting, reviewing the packets, would be an additional billed item or if it would be included in the cost of the meeting. Mr. Pires said that would typically be a separate cost billed at the hourly rate.

Councilman Reynolds said he liked the way the group worked together, but he was concerned about costs, and he felt that was something Council needed to know. Mr. Lombardo said it was something they needed to sit down and work out and understood it would have to be figured out before any final decision could be made.

Mayor Van Duzer said it was his understanding that the Council was going to interview the candidates and then decide on one candidate and then enter into a negotiation regarding money. He thought what Councilman Reynolds was saying was that Council wanted to have some idea as to what the hourly rate, or a retainer fee with an hourly rate. Mr. Lombardo asked the Council to give them a moment to discuss it, which was allowed by the Mayor. Mr. Lombardo then said that before the end of the week they would have a prepared letter with that information. Mayor Van Duzer thought that would be fine.

The interview with the attorneys from the Woodward, Pires and Lombardo law firm concluded at this time.

Vice Mayor Rynearson asked if they were going to interview the last candidate on the following Monday at 2:00 P.M. Mayor Van Duzer said they needed to check with the candidate, but that he himself would rather do it at two o'clock to give the Council time to have a discussion afterwards if they wanted. After a brief discussion, the time for the interview with the last candidate for the Town Attorney position was set for 2:00 PM. on Monday, June 6, 2005. Mayor Van Duzer asked if there was anything else that any of them felt they needed to discuss regarding the interviews at this meeting. When no one raised any questions or issues, Mayor Van Duzer adjourned the meeting.

Respectfully submitted,

Jo List  
Transcribing Secretary