

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
September 19, 2005**

I. CALL TO ORDER

Mayor Bill Van Duzer called a special meeting of the Town Council to order on Monday, September 19, 2005 at 10:00 AM.

Members Present: Mayor Bill Van Duzer, Councilman Don Massucco, Councilman Garr Reynolds, Councilman Ken Katcko.

Excused Absence: Vice Mayor Howard Rynearson

Town Staff Present: Town Manager Marsha Segal-George, Town Attorney Ann Dalton

II. PLEDGE OF ALLEGIANCE

All present stood to recite the Pledge of Allegiance.

III. INVOCATION

Mayor Van Duzer gave the invocation.

IV. PUBLIC COMMENT

Town Attorney Dalton told the Council that because the public hearing on the signs was the only item of business on the agenda, she suggested that the hearing could be opened at this point, and those who wanted to testify at the hearing could be sworn in, effectively skipping this public comment agenda item and taking public comment at the end of the meeting. She did suggest asking if anyone wanted to make a public comment before the hearing, but Mayor Van Duzer opted to open the public hearing on the sandwich signs at this juncture.

**V. AGENDA – EMERGENCY ORDINANCE AS TO RELATES TO
“SANDWICH SIGNS” – PUBLIC HEARING**

Mayor Van Duzer asked Town Attorney Dalton to read Ordinance 05-25, which she did. Mayor Van Duzer then asked if those who wanted to make public comment at this time had to be sworn in. Attorney Dalton felt that, in the interest of prudence, that everyone who spoke about the signs at this point should be sworn in. All who wished to speak stood and were sworn in by Town Attorney Dalton.

Mayor Van Duzer announced that Councilman Katcko would not be voting on the issue, because it had been determined that he had a conflict of interest in this matter

for which he had filed the necessary paperwork, although he could participate in the discussion if he chose to do so.

Mayor Van Duzer reminded the people in attendance that it was an emergency ordinance that was being considered at this meeting, and therefore it had to receive a 2/3 affirmative vote in favor of it, in order for it to pass.

Mayor Van Duzer then announced that, if the ordinance were passed, only those merchants who had sandwich signs, before the ordinance banning them went into effect, would be eligible to have a sandwich sign during the time allotted by the emergency ordinance.

Kim Bridge, co-owner of the Silver Witch on Crescent Street, came forward. She said that she and her husband were in favor of getting the sandwich signs back. She said the biggest reason was because it affected everyone's pocket. She said the adverse effects on her business affected her ability to spend money in the community and vice versa. She asked to have the signs back.

Councilman Massucco asked if he could interrupt the proceedings, which Mayor Van Duzer allowed. Councilman Massucco then expressed his concern about proceeding with the hearing. He pointed out that Councilman Katcko could not vote, and Vice Mayor Rynearson was unable to attend so that he could be with his mother at Hope Hospice. He thought they should postpone the hearing until Vice Mayor Rynearson was able to take part, as it was an important issue, and felt there should be a better representation on Council before voting on it. Mayor Van Duzer said there was a majority of the Council present. Councilman Massucco realized there was a quorum, but he felt that, in fairness to Councilman Rynearson, the hearing should be postponed until Vice Mayor Rynearson could take part.

MOTION: Councilman Massucco made a motion to continue the hearing on Emergency Ordinance 05-25 to the following week, with the hope that Vice Mayor Rynearson would be able to take part in it. Councilman Reynolds seconded the motion.

Councilman Massucco explained that he would like it if the hearing could be rescheduled within a week's time, but only if Vice Mayor Rynearson could be there.

Mayor Van Duzer said they had taken the time to set up the emergency meeting, and felt the Council would be shirking its duties if they didn't listen to the testimony and take action at this point. He said there had been several times in the past when a Council member could not take part in a vote for some reason or another, but the Council went ahead and considered the items. He said if there was a quorum present any time a Council member couldn't attend, the Council had always proceeded with the agenda. He did not think the Council should put off this item, as he felt it was too important, as he had received many calls and letters about it from people in Town from both sides of the issue.

Town Attorney Dalton said that, as a courtesy to the people who came to speak at the hearing, Mayor Van Duzer could, if the maker of the motion so wished, have the public comment section and then resume discussion in Council at the next hearing of the issue.

Councilman Reynolds said he had planned to suggest what Attorney Dalton had just suggested. He thought if people who had come to speak on the issue wanted to speak at this time, they should be allowed to do so, as he knew how much of an imposition it had been on them to make arrangements to be at the hearing. He said the ordinance was classified as an emergency, but he said he had a problem with that. He said nobody was being hurt here. He said maybe they were being hurt to a small degree, but one week was not going to kill anybody. He said the issue had dragged on for four years, and said again that he didn't think one week was going to kill anybody. He said his biggest problem with it was that there were five people representing the community, and if it went the wrong way, he didn't believe anyone would be happy. He asked the public in the audience to be patient with the Council. He didn't believe it would change the will of the Council to delay it one week.

Councilman Massucco said he was willing to amend his motion to allow people to speak if they wanted to, but thought they should wait until there was more representation of Council present.

MOTION AMENDMENT: Councilman Massucco added that the public wishing to give testimony could do so. Councilman Reynolds accepted the motion.

VOTE (for amendment): The amendment to the motion passed 2-1.

VOTE: The motion passed 2-1.

Mayor Van Duzer asked Ms. Bridge if she wanted to add anything to her testimony in light of the motion that was just passed. Ms. Bridge added "Pretty please, sir, with sugar on top."

Councilman Reynolds said he was glad the hearing was being postponed, but that he was unhappy with the vote because it was 2-1, and felt it put the Council in an embarrassing position. He said he had asked Town Attorney Dalton about the emergency ordinance, and she had told him that there had been a ruling from the Attorney General that Council could go in this direction. He said while it wasn't illegal, he thought it was questionable because all of the people were not being represented on Council. He said he didn't know any other way to get it deferred to the next week except by what they had done. He wished they had had a 3-0 vote on the motion because that was what they would normally have. He felt all the Council members' hearts were in the direction of wanting to do what is best and fair for all the small businesses on the Island, and all of them should be able to have a say in it.

Mayor Van Duzer said he was sorry he disappointed Councilman Reynolds with his vote, but he had voted the way in which he thought was correct. He said the Council very seldom had a unanimous vote, contrary to what Councilman Reynolds had stated in his remarks.

Cherie Smith, of 180 Egret St., was called to testify, but asked to defer her comments until the deferred hearing of the issue.

J.T. Webb, owner of the Print Shop, Inc., came forward. He felt a decision had to be made as soon as possible. He said it had been a particularly tough year, and a tough time of year, and something really needed to be done. He pointed out the process for getting a new design agreed upon and through the LPA and Council would be a long process and would take a lot of discussion to it right. In the interim, he said they really needed some help.

Jane Plummer, owner of Curves in Key Estero Shops, came forward. She had a copy of a design for a possible replacement for sandwich signs, which she said had been drawn up by Connor Signs, and offered a copy of it to Council to look at. She said she would bring one to the next meeting. She asked what would happen if Vice Mayor Rynearson was unable to attend the meeting on the following week. She wondered how long the hearing for the emergency ordinance would be continued. She felt the Vice Mayor was where he should be, with his ailing mother, but “life goes on”. She felt the Town needed to do business accordingly. She said the issue had been going on for four years, and that the business owners had been closing their businesses in order to attend the meetings. She said a lot of people could not attend, even though they wanted to, because they couldn’t close their businesses and had no one working for them – she called them “one-man bands”. She said some would be back for the next hearing, but that they needed some commitment from the Council members. She said people talked a lot about traffic on the Island, but asked the Council to think about all that traffic with no businesses on the Island for people to patronize because they had gone out of business. She acknowledged that it was not the Council’s job to keep them in business, but the sign ordinance as it stood had hurt their businesses. She said they needed help and were hurting. She reiterated that they needed someone on Council to step up and say that they acknowledged their issues and that the sign ordinances would be revisited. She said the businesses would not survive as things were. She hoped the Council could hear the business owners’ cry for help.

Sandi Suter came forward. She said she was against the sandwich signs. She said she had been in business on Sanibel/Captiva and Ft. Myers Beach for 26 years. She agreed that some of the plazas needed signage, probably one huge marquee or whatever could be worked out. She said “we don’t need sandwich signs.” She said there were businesses on Sanibel and Captiva that had no signage whatsoever that were set far back, had no neon lights or anything like that, and had been successful. She said FMB was the only community in Lee County that had allowed sandwich

signs. She said the Town had allowed “this clutter” to exist. She asked that the Council please not bring them back.

Carolyn Eppersom, owner of Wahoo Willies, came forward. She said respected Ms. Suter’s opinions, but agreed with others present, in that her business had been severely hurt since the sandwich signs were removed. She said people couldn’t find her business in Times Square. She said she wasn’t asking to go back to handmade, rickety-rack signs, but signs made professionally. She said there should just be a regulation governing the look and size of the signs. She pointed out that realtors, and politicians running in the election, were allowed to put up signs to represent themselves. She said she wanted a sign to represent what she was selling.

Ollie Curran, owner of Hair, Etc., came forward. She said she agreed with everything Jane Plummer had said, as well as what other business people had said. She said she had definitely lost business. She felt the ideas she and others had proposed were great, and that she had been thinking about her idea for four years. She had brought her idea forward for four years, and felt that no one in Town had listened to her. She thought a positive that had come about as a result of the sandwich sign ban was that the businesses were better represented Island-wide in the recent hearings, whereas in the past only Seagrape Plaza merchants had attended the meetings about the signs. She asked anyone opposed to the sandwich signs should bring their ideas for alternative signage forward and help come up with a new sign design for the Island. She also asked that the businesses be allowed to have the sandwich signs temporarily until an alternative could be found. She hoped those for and against the sandwich signs would work together as quickly as possible to solve the problem by working together. She suggested a sign design workshop be organized. She said she had not been in Town when the sign ordinance was passed, and said she hadn’t found anyone else who had known about it when it took place. She asked the Council to help the business owners, and asked anyone in the community who opposed the sandwich signs to get together with those who wanted them, and try to help each other.

Herb Acken, owner of E.B. Café, came forward. He said he didn’t have to explain his feelings about the outdoor sign issue, and thanked the Council for taking the time to readdress it. He said that, in addition to the A-frame sign issue, there was a problem with the outdoor display statutes and with what can or cannot be attached to the trees in Times Square. He said he had been late for this meeting because he had had a visit from Code Enforcement, during which he was told his table umbrellas could no longer be tied down to the trees. He said it was a huge safety issue. He said he would be willing to take the ropes off the umbrellas if he had to, but then he would need the Council or the Town to assume liability for injury. He said he had spoken with Deputy Town Manager John Gucciardo about it last week, and had e-mailed him a picture of some other businesses’ umbrellas that had been tossed about by the wind in Times Square. He said he had seen them shoot 40 or 50 feet in the air and watched them crash down, narrowly missing people. He said he had tried to address this safety issue on his own by tying his umbrellas to the trees. He said he would like the Council to the matter, and reiterated that he would be happy to untie the ropes, but not

until someone signed a waiver or until someone was willing to take responsibility for the liability if one of his umbrellas flew out and hurt somebody.

Seeing no one else who wished to offer testimony, Mayor Van Duzer asked Town Attorney Dalton how he should proceed. She explained that he should continue the hearing. Ms. Segal-George said the agenda for the next Council meeting was already done, and it had already been advertised. Ms. Dalton pointed out that it was a continuation, which seemed to imply that it didn't matter that the agenda advertised didn't include the hearing on the emergency ordinance. She said at this point, Mayor Van Duzer should continue the public hearing in accordance with the motion and the second and the vote.

Mayor Van Duzer said the public hearing was continued until September 26, 2005 at 6:30 PM. He asked Ms. Segal-George if it could be put on the agenda for that meeting, and she said it could if that was the will of the Council. Ms. Segal-George said that was also the Council's last budget hearing, and asked if he wanted certain placement on the agenda of the continuance of the emergency sign ordinance hearing, and said a land use case and the budget were the items on the agenda thus far. Mayor Van Duzer thought it should be with the land use case, after the budget.

Councilman Reynolds asked if it could be placed early on the agenda, and wanted to know if it could be. Ms. Segal-George said they could put it wherever they wanted on the agenda, and to just tell her where to put it. Councilman Reynolds said the business people had been to the meetings three times in three weeks, and thought it should be earlier on the agenda. Ms. Segal-George asked if he wanted it to be placed first on the agenda. Councilman Massucco said he would be amenable to meeting as soon as Vice Mayor Rynearson was able to be present. He said he knew the issue was important to the public in attendance, and didn't want to see it delayed another week, and he would meet as soon as there was proper representation on the Council to hear the matter.

Councilman Reynolds said some people had prior commitments and it would be difficult to meet before the scheduled meeting. He believed it should be continued to the meeting on Monday, September 26th, and place on the agenda early enough so people didn't have to sit for two hours waiting for the hearing on the signs.

Mayor Van Duzer asked if Councilman Massucco wanted the hearing to be earlier on the agenda, as Councilman Reynolds had suggested. Councilman Massucco said that would still put the hearing a week away, and thought they should try to do it sooner. Mayor Van Duzer said they could do it that afternoon or the next day – he didn't care when it happened. Councilman Massucco wanted it to be as soon as Vice Mayor Rynearson could join them. Mayor Van Duzer said that there was no way to predict when Vice Mayor Rynearson would be able to attend the meeting. He was reluctant to schedule it any sooner because of the terrible ordeal Vice Mayor Rynearson was going through currently. He agreed that the sooner the emergency ordinance hearing took place, the better.

Councilman Reynolds said he had no problem doing it sooner, but felt it would be a problem because everyone who wanted to attend would have to be notified. He felt for the sake of doing things in an orderly fashion, that it should be continued until the next regularly scheduled Council meeting on September 26th. He told Councilman Massucco that his only problem with trying to schedule the hearing before then was the notification issue. Councilman Massucco said a week from this day was fine.

Ms. Segal-George told the Council that the schedule was clear on the coming Thursday or Friday if they wanted to have the hearing before Monday. Town Attorney Dalton said that under the Town Charter rules, a special meeting would have to be held during the day, which the business owners had indicated presented a hardship for them.

Councilman Katcko asked if he could make a comment before his head exploded, which caused a ripple of laughter in the audience. He suggested amending the motion to continue the hearing to whatever date was suggested, but if there was a quorum present, that a decision must be reached on that day, even if Vice Mayor Rynearson were not present. This remark drew applause from those in attendance.

Councilman Massucco accepted that. Mayor Van Duzer said he had no problem with that suggestion, as he was troubled by what they were doing now. He then continued the hearing until September 26th, to be placed on the agenda as early as possible. Ms. Segal-George said it would be the first item after the consent agenda.

Mayor Van Duzer then said he had a problem with what they doing, because if something happened to Vice Mayor Rynearson's mom in the next day or so, he would still have a commitment to his family for some time afterwards. He thought, if the continuance could be set earlier than September 26th, that the business owners could be contacted about it through Mr. Webb, of the Print Shop, as he seemed to be in the forefront of the discussion. He felt it should left up to Vice Mayor Rynearson when the hearing would take place.

Attorney Dalton pointed out that, procedurally, because there had been a motion, a second, and a vote on continuing it specifically to September 26th, there would have to be motion, a second, and a vote on the possibility of having the hearing before that.

MOTION: Mayor Van Duzer made a motion that the hearing be continued to an earlier date if Vice Mayor Rynearson wants it. Councilman Massucco seconded the motion.

VOTE: The motion carried unanimously.

Mayor Van Duzer said they would just let it go in this "haphazard" way to see what would happen.

Mayor Van Duzer asked if there was anything else anyone had to say about the sign issue. Councilman Katcko asked if anything could be addressed under the Council Member Items and Reports agenda item other than the signs. Both Attorney Dalton and Mayor Van Duzer said no. Councilman Katcko said he wanted to say something about the signs, and wished to address the issue under the next agenda item.

VI. COUNCIL MEMBER ITEMS AND REPORTS

Councilman Katcko felt as if he had been muzzled by the government, which had made him very angry. He thanked everyone who had come to testify and make public comment at the meetings addressing the sandwich sign issue. He appreciated their input for and against the signs. He wanted the public to be very clear about the fact that Florida statutes had muzzled him, and that it had not been his choice. He said the statute stated that one had to abstain from voting on only one condition, that being if there was a conflict of interest or a financial gain on a particular issue. He referred to Councilman Reynolds comment that maybe it had been the right thing to do – for Councilman Katcko to abstain from voting on this issue, but Councilman Katcko said there was no “maybe” about it per the Florida statute about it. He said it was the right thing to do, but went against everything he believed in – freedom of speech.

Councilman Reynolds asked when he had said that “maybe” it was the right thing for Councilman Katcko to do. Councilman Katcko told him to check the minutes. Councilman Reynolds said he wouldn’t have minded if he had voted, to be honest with him.

The tape ended with that last comment from Councilman Reynolds.

VII. TOWN MANAGER’S ITEMS

None.

VIII. TOWN ATTORNEY’S ITEMS

None.

IX. PUBLIC COMMENT

None.

X. ADJOURNMENT

No formal adjournment was made.

Respectfully submitted,

Jo List
Transcribing Secretary