

**FORT MYERS BEACH
TOWN COUNCIL – SPECIAL SESSION
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
October 22, 2005**

I. CALL TO ORDER

Mayor Bill Van Duzer called a special session of the FMB Town Council to order at 11 AM on Saturday, October 22, 2005.

Mayor Van Duzer indicated that four of the five Council members were present, with Vice Mayor Rynearson not in attendance.

II. PLEDGE OF ALLEGIANCE/INVOCATION

All present stood for the recitation of the Pledge of Allegiance, and remained standing for the invocation given by the Mayor.

III. PUBLIC COMMENT

Jeannie Biggus, with the Outrigger Beach Resort, came forward. She asked for clarification of the Council's position regarding whether or not residents and business owners would be allowed free access on and off the Beach after the declaration of a mandatory evacuation. She had been told by some deputies from the Sheriff's Department that, as of noon of this day when the mandatory evacuation would go into effect, people would not be allowed onto the Island, even if they were residents or businesses owners returning to take care of their property and storm preparations.

Ms. Biggus said that last year, she had had a pass from the Chamber of Commerce so that she could get back onto the Beach after the storm, yet was denied access. She asked that the Council address both issues she had raised.

That concluded the Public Comments.

IV. HURRICANE WILMA STATUS AND PREPAREDNESS

Deputy Town Manager John Gucciardo reported on the status of the storm and the Town's preparedness.

Regarding the storm itself, Mr. Gucciardo said he had been on a conference call with the EOC, during which he had been told the computer models of the storm's track showed it making landfall south of Naples, although he noted there were no guarantees. He said the intensity of the storm at landfall was still estimated to be a Category 1 or 2 hurricane. He added that the speed at which the storm would travel was estimated to be between 20 and 25 mph. He said this meant that those who experienced hurricane winds should do so for only a three to four hour period. He characterized all the news as positive, although cautioned that Hurricane Charley had proved that things could change rapidly in a lot of different ways. He also pointed

out that there was a wide disparity with regard to what the models were predicting in terms of landfall – from as far south as Cuba to as far north as Houston.

Regarding the Town's preparations, Mr. Gucciardo said the Town was in good shape regarding pre-impact. He explained that if the storm stayed on a southerly track, storm surge would not be an issue, and that storm surge was the most worrisome thing in terms of the safety and health of the residents and properties on the Island.

Mr. Gucciardo said the Town had coordinated with both the Fire District and the Sheriff's Department prior to this meeting, and everyone was clear as to where they would be positioned during impact on Monday, as well as after impact. He said the Town had made arrangements to open the off-Island site at the Masonic Temple on Pine Ridge Road, and although it was not expected to be fully operational as yet, people could drop by there to get information. He said the website, hotline and local media would be easier to access. He said that, for safety purposes, they did not expect the off-Island site or Town Hall on the Island to be operational at all during the actual storm event.

Mr. Gucciardo offered to address the concerns expressed by Ms. Biggus during Public Comment. Mayor Van Duzer asked him to please do so.

Mr. Gucciardo said the Town had been trying to be consistent in terms of how access to the Island may or may not be impacted under the mandatory evacuation order. Mr. Gucciardo clearly stated that the mandatory evacuation did not mean that there would be any restrictions on access to the Island on this day or the next (Sunday). He said both bridges would be unrestricted. He said the only time traffic would be restricted would be if weather conditions dictated it – typically 40 mph sustained winds – at which point the Sheriff's Department and the Fire District would deem it unsafe. He hoped it was clear that, up until the weather dictated that traffic should stop, the Town had no intention to restrict or prohibit traffic flow on or off the Island. He asked that any messages heard to the contrary be reported to Town Hall so that it could be corrected.

Regarding the Chamber of Commerce passes, Mr. Gucciardo said the Town recognized that if a hurricane struck the Island and caused a certain degree of damage, one of the first things that had to be done was a damage assessment. During that time, there would be no access for anyone – residents and business owners alike - until it was deemed safe and all infrastructure damages had been assessed and dealt with to the point of safety, which he said was done as quickly as possible, and did not include a house-to-house assessment. He said if infrastructure damages were limited, then property owners and residents would be allowed back, and that would be when the passes would “kick in”.

Mayor Van Duzer read an explanation he had worked up to explain what mandatory evacuation meant: “All citizens need to protect themselves, complete preparation and seek shelter.” Mayor Van Duzer said the message that had been gotten out to the

public on the previous evening had clearly stated that people would have access on and off the Island during the evacuation period, unless or until weather conditions deemed it unsafe.

Mr. Gucciardo said one other issue had come up regarding curfews. He said Sanibel had added a curfew component in their evacuation order, but per Council's will, that had not been added to the Town's evacuation order. He said if the Sheriff's Office asked them to impose a curfew because conditions warranted it, then the Town would do so.

Councilman Massucco wanted to stress that the message, that went out to every telephone on the Island, was very clear and very precise. He asked any Town residents who did not get the call – "reverse 911" – to report it to Town Hall so that their number could be added to the list. Mr. Gucciardo said that, during testing of the system, people who received the test call were asked to speak to their neighbors to see if they had also received it. He added that he could not promise that any new numbers that came in at this time would be added to the system in time for the Hurricane Wilma event. Councilman Massucco pointed out that people with unlisted numbers or cell phones would have to call in to Town Hall to get their numbers added to the database. Mayor Van Duzer remarked that there were 16,000 numbers in the database. Mr. Gucciardo clarified that that number was for the FMB Fire District, which covered a bit more than the Island itself.

Councilman Reynolds thanked Mr. Gucciardo for giving a clear explanation of the mandatory evacuation. Councilman Reynolds said he received three calls about it, and that one person who did not identify himself said they had something that needed to be brought to the attention of the Council and those giving news releases. He related that the man's confusion was about access on and off the Island, which Councilman Reynolds felt Mr. Gucciardo had cleared up. He went on to say that while people would be allowed on and off the Island, there was always an exception to every rule, and in this case, if the weather dictated as such, access would be denied. He said he understood that when the storm was over, the Sheriff's Department would probably check for identification to keep unwanted persons off the Island during post-disaster clean-up. He said another call to him had been about looters, and said he hoped that the Sheriff would check I.D.'s immediately after the storm to prevent looting.

Councilman Reynolds said he had not received the emergency "reverse 911" call, as he had not during the testing in the spring. He hoped something could be done about it, but noted he was close enough to the situation that he wasn't worried about getting the call.

Councilman Reynolds encouraged residents to make arrangements to leave the Island before the storm arrived. He pointed out that every town in the County was preparing for it and had ordered evacuations, and he didn't think one should play around with Mother Nature.

Mayor Van Duzer thought one piece of information given by Councilman Reynolds was incorrect, and asked Mr. Gucciardo for clarification regarding the Sheriff's Department and Fire Department establishment of a barricade at the bottom of the Bridge once there were sustained winds of 40 to 45 mph. Mayor Van Duzer didn't think there would be a checkpoint set up there at that time. Mr. Gucciardo said he was correct, in that there would probably not be anyone at the base of the Bridge turning people away, but weather conditions would dictate that it wouldn't be safe for anyone to go over the Bridge.

Councilman Katcko thought one reason there had been confusion regarding the Town's mandatory evacuation policy was because of a report he had seen on television in which it was said that once people evacuated Sanibel, they would not be allowed to return. He said there had been no mention that the same was not true for FMB. He felt this caused people to assume that all the barrier islands were operating under the same rules.

Councilman Katcko said he had spoken to several people who were planning to evacuate, or had already, to a fairly distant location. He said they had the Town's Hotline number, but, if phone lines were down, they would have no way to get information. He asked if there were plans to erect a tent at the base of the Bridge if access had to be restricted, where people could get flyers of information about where the off-Island site was. He felt it should be there for people arriving there with no information, and that the tent should be staffed by knowledgeable local resident or Town Staff person.

Ms. Segal-George said the alternate location would open today, and that ten phone lines had already been installed, so that when Town Hall closed, the phones would be transferred to that system. She said she couldn't see a situation where the Town's hotline wouldn't be in service quickly after the storm, as they also had generators there. She said the Town's website would be up as well, so that people who were leaving or had already left should be able to access the website or call the hotline. She said signage could be placed at the foot of the Bridge that directed people to the off-Island location where all information would be available and distributed.

Councilman Katcko reiterated that in a worst-case scenario, phone lines could go down. Ms. Segal-George said she understood that, and that was why generators were in place to keep the phone lines up. Councilman Katcko maintained his position that information should be available at the base of the Bridge if access is restricted.

Mr. Gucciardo said that in a worst-case scenario, such as after Hurricane Charley when power was out Countywide for an extended period of time and cell phone communication had been impacted, there had been some discussion about "pinching" traffic further up the road, but perhaps at the Pine Ridge/San Carlos intersection. He said it was not really anticipated as being what the situation would be with Hurricane Wilma.

Mayor Van Duzer asked Mr. Gucciardo to discuss the shelter situation regarding both people and pets. Mr. Gucciardo didn't think the County had as yet made a decision with regard to pet shelters. However, he said people could call the County's hotline – either 211 or 433-3900 - to get information as to which shelters were open and when. He said some of those shelters had opened as of noon of that day (Saturday), including Germain Arena. He said the special needs shelter had opened as of 8 AM that morning. Mr. Gucciardo added that LeeTran would begin at noon that day to run their emergency service, giving free trips to the shelters from their regular routes at specially marked stops. He said the four stops on the Island were located at Santini Plaza, Mound Road, Publix and Donora.

Ms. Segal-George said some calls had been received from people who anticipated difficulty in getting to the designated stops. She said if anyone had this issue, they should call Town Hall and a ride to a pick-up point would be arranged.

Mayor Van Duzer asked if Town Hall was going to be relocated to the Masonic Lodge at noon on this day. Ms. Segal-George said the Town would continue to operate at Town Hall until about 4:30 PM, but the other location would be up and manned from noon until 4 PM. She said it would be open on Sunday from 10 AM until 4 PM.

Mayor Van Duzer complimented the residents and businesses for preparing their properties so well, as was evident on his ride down Estero Boulevard. He also noted that traffic was almost nonexistent.

Town Attorney Dalton then announced, at the Mayor's request, that Emergency Resolution 05-33 was before Council at this time, and that it formalized the vote regarding mandatory evacuation that had been taken during the Council meeting on the previous day. She requested that the Council consider adopting the resolution in a formal manner.

Mayor Van Duzer then read announced that Resolution 05-33 had to do with the declaration of mandatory evacuation as of noon on this day.

MOTION: Councilman Massucco made a motion to adopt Resolution 05-33. Councilman Reynolds seconded the motion.

VOTE: The motion carried unanimously.

Councilman Massucco thanked all the candidates and real estate people for getting all their signs off the road.

Councilman Katcko said, with regard to the political signs, that while he had had people going around the Island to pick them up, that folks should feel free to pick up any of those signs and to stow them away.

V. PUBLIC COMMENT

Dennis Boback came forward. He asked where the Council would meet for the next several days.

Mayor Van Duzer asked the Council if they wanted to meet again on Sunday off-Island. Mr. Gucciardo said that a dramatic change in the forecast was not anticipated at this time, so that a Sunday meeting did not necessarily have to take place. He added that if conditions did change, that they could call for an emergency meeting. He understood that the Council would meet after the storm “wherever the people were” – if access to the Island was restricted, they would meet off-Island, and vice versa.

Councilman Reynolds said he wanted the Council to meet at the Masonic Lodge (sic) at 11:00 AM on Sunday so as to get a feel for the situation, and that all public who wanted to could attend the meeting there and get familiar with the operations there. Councilman Massucco agreed, and Mayor Van Duzer said it was fine with him.

Councilman Massucco asked if there would be television capability at the Masonic Temple, and he was told there would not be. He noted that to anyone watching this meeting on television, and invited them to come to the meeting at the Masonic Temple.

Councilman Katcko said he would prefer to meet at Town Hall, but if the consensus of the Council was that the meeting should be off-Island, it was fine with him. He felt having the meeting televised was important, though.

Mayor Van Duzer felt it would be a mixed signal to order mandatory evacuation and then have the meeting on the Island.

Mr. Gucciardo asked if a notice had to be posted for the meeting, or if they were simply going to visit the off-site location. Councilman Reynolds felt it should be a Council meeting just like this one. Mayor Van Duzer said it would have to be “noticed”. Attorney Dalton said it would be a special meeting, but would require a notice.

Mayor Van Duzer directed that staff offer the proper notice at this time about the off-Island Council meeting to take place at the Masonic Temple on Pine Ridge Road at 11:00 AM on Sunday, October 23rd. He asked if posting it on the door of Town Hall would be proper notice. Ms. Dalton said that would be fine, as the requirement was “reasonable notice under the circumstances”. She also suggested posting notice on the website.

Lee Melsik came forward. He said he was not clear about something, although Mr. Gucciardo may have addressed it. He said he understood that they were going to meet on Sunday off-Island. He asked if all the meetings would be held off Island,

including those with emergency management teams, if the Island were shut down after Wilma or any other hurricane.

Mayor Van Duzer said they had looked into the issue. Ms. Dalton believed it would depend on the circumstances. She believed it was not prudent to say “we will always to this or that” under an emergency situation. As indicated in the memo she had issued to Council on the previous day, Ms. Dalton said under some circumstances the meeting(s) could be held on the Island and still be in compliance with the Sunshine Law. Secondly, she said in terms of meeting with the Emergency Response team, that team had the independent ability to meet and the Council members had the ability to attend those meetings, as long as there was no interaction between the Council and the Emergency Response team members that would violate the Sunshine Law. She added the mere fact of an Emergency Response team meeting on the Island would probably be their obligation under the circumstances, and they were not a Sunshine task force or committee and thus did not have Sunshine requirements. Mayor Van Duzer reiterated back what Ms. Dalton had just said, then further noted that Council sets the policy, and the emergency task force was the entity that carried out the policy established by the Council. Ms. Dalton confirmed his understanding. He stated it would behoove the Council members to attend the task force meetings, but then Council meetings would have to be held where Island residents could attend.

Ms. Dalton felt the confusion was if the emergency response team came to the Council for direction. She said there could be a scenario where they would need some direction from Council, which she said was a distinctly different scenario from their internal meetings, which were not Sunshine meetings.

Councilman Massucco asked Mr. Melsik if that answered his question, and Mr. Melsik said it had to a certain extent. Mr. Melsik then said the intent of the Sunshine Law was to see that the public was included in every step of the decision-making process. He opined that that process included those people who were putting together information that resulted in deciding whether one could or could not return to one’s home, which he felt was one of the most important decisions the Town could make. He said he understood the emergency task force was not subject to the Sunshine Law, but whether they were or not, they were part of the decision-making process. He said if the public were to be locked off the Island, then the public should have the right and the access to attend the emergency task force meetings, so as to see and hear the complete decision-making process – the Council interacting with their emergency management team.

Mayor Van Duzer commented that Mr. Melsik had conveniently drifted off the subject that was not listed on the agenda. Mr. Melsik said it had been brought up the other day. Mayor Van Duzer apologized but disagreed. Mr. Melsik said the Town Attorney had been asked to bring an opinion about the issue back to this meeting, the Mayor had brought it up, and then Mr. Melsik had given his opinion in response.

Councilman Reynolds said he didn't know what the problem was with holding the meetings off-Island so that everyone could attend. Mayor Van Duzer stated that the meetings were going to be held off-Island. Councilman Reynolds asked, if the Emergency Task Force leaders were going to meet the Council in Town Hall, why they couldn't do it off-Island. He said if the Island were blocked off, he couldn't see why they couldn't let the residents sit in at those meetings.

Attorney Dalton asked to address Councilman Reynolds question, and Mayor Van Duzer asked her to please do so.

Attorney Dalton said she believed it was the function of the Town's legal counsel to provide options and to advise as to the legality of various scenarios. She said she had advised the counsel that, under some circumstances, the Council could meet on Island after an evacuation and people were not allowed on the Island, without a violation of the Sunshine Law. She said the Council was a policy-making body under the Town Charter, and whether it chose to have those meetings was up to them. She said it all depended on the circumstances, such as an extreme emergency, and wanted the Council to have the comfort to know that they had the ability to meet on Island and it would not be a violation of the Sunshine Law, even if the residents were not permitted on the Island. She said that was because the safety of the citizens was one of the first duties of a Council member.

Councilman Reynolds said while he wasn't an attorney, he was not that completely naïve either. He believed it would be a violation. He said he wanted to see the Council approve a meeting off the Island so that any public that wanted to be there could be there, and would "not be passed off by a lot of mumbo jumbo." He said it was a cut-and-dried issue.

Mayor Van Duzer said the cut-and-dried issue was what the attorney advised them and was what he felt they should abide by without confrontation. Councilman Reynolds said he was sure he welcomed the Mayor's opinion about as much as he welcomed the Mayor's. Mayor Van Duzer said, "Excuse me..." and Councilman Reynolds continued to say "the bottom line is, we should not try to isolate ourselves from the public". Mayor Van Duzer said they were not. Councilman Reynolds said he didn't know why anyone would argue with his statement. Mayor Van Duzer said he didn't feel the Council was arguing with it.

Mayor Van Duzer said the discussion had gotten way off the issues regarding the report on the status of the hurricane and what the Town was doing to prepare for it. He understood there still remained questions about the legality of what the Council was doing, but hoped they would get past it and do what was in the best interest of the citizens. He said they could continue arguing the legal point as time went on.

Councilman Reynolds they would be leaving it without an answer.

Councilman Katcko felt one major issue had not been addressed. He said the fact of the matter was that if they held meetings on the Island, people who were evacuated would complain that they could not be able to attend them. He said if they held meetings off the Island, people who did not evacuate would complain that they could not go off the Island to attend the meetings. He suggested that all meetings be held off the Island, and allow residents who did not evacuate to attend the meetings and then allow them to return. He said there would be some who would feel it was unfair to allow those people to travel on and off the Island when some residents would not be allowed to do so. He said it was a no-win situation because people would complain no matter what Council decided.

Councilman Massucco pointed out that the people who might remain had the opportunity to leave. He felt the first consideration should be given to the people who evacuated.

Mayor Van Duzer agreed with Councilman Massucco. He said the complaint last year had been that people who had evacuated had not gotten any information, and that the meetings should have been held off the Island. He said that had been established. But he said people were now complicating the matter by demanding access to the emergency meetings. He said there had been a legal determination that what the Council planned to do was proper, and he felt it was time to move on. He said if the Council wanted to argue “these issues”, they certainly would be.

Councilman Reynolds, in response to Councilman Katcko’s remarks, said he had not been concerned about people who would stay on the Island. He didn’t see it as an issue, as those people would not have the problem the evacuees would have regarding getting back to their homes. He reiterated his belief that Council should have their meetings off the Island. Mayor Van Duzer pointed out to him that that was what the Council had already decided to do. Councilman Reynolds said “Well, good.”

Mayor Van Duzer said they would not be bringing the emergency team with them, and thought that might be the issue to which Councilman Reynolds was objecting. He said the emergency team acted under the Council’s direction, so that if there were an off-Island Council meeting, the Council would have already attended the emergency team’s meeting and would have an understanding as to what they were doing. Councilman Reynolds said he did not agree with that, and felt the emergency team should be meeting with Council at the off-Island site.

Attorney Dalton said it was not legally prudent to run through a bunch of possible scenarios. Mayor Van Duzer didn’t think it was either.

Carl Conley, of 2915 Estero Boulevard, came forward. He said anyone of any reasonable degree of intelligence would understand what was going on at the meeting. He said there came a point when the questions became political debating, and that the Town was not currently in the midst of a campaign, but in midst of

preparing for a hurricane. He said he had just stated his opinion of what was happening at this meeting.

Richard Lowry of Publix supermarket came forward. He said if the hurricane did hit the Island, he understood there would be a damage assessment and the determination would be made as to when it was safe to return, at which time the people holding passes would be allowed to return. He asked at what point the general public would be allowed to come onto the Island.

Mr. Gucciardo said it would be dictated by circumstance. He said until they knew what they were dealing with, it would be impossible to say how long it would be before people would be allowed back on the Island.

Mr. Lowry said his concern was re-supplying the store to serve the needs of the community. Mr. Gucciardo asked if Mr. Lowry was asking about the residents or the general public. Mr. Lowry explained that his concern was for his employees, and when they would be allowed back. Mr. Gucciardo said the Town would coordinate with Publix, Topps and drugstores and any businesses that provided needed services, and that they would be allowed back ahead of the public so as to gear up in anticipation of the residents' return. Mr. Gucciardo said that, instead of taking up the time of the Council, he could get together with him to work out those details with him. Mr. Lowry said he was concerned because currently his store only had three passes, which would not be sufficient. Mr. Gucciardo said the passes were strictly for damage assessment. Mr. Lowry, with a better understanding of things, said he would get together with Mr. Gucciardo later.

Public Comment was closed at this time.

Councilman Massucco asked Mr. Gucciardo if there would be any problem with having the disaster team meet off the Island. Mr. Gucciardo said he had heard the conversation that had taken place on that subject, and in his mind, he didn't see a lot of contradiction in what had been said. He thought Mr. Melsik's main concern was for the public to have access to any time that the decision-making policies were being worked on, which he thought meant, in Mr. Melsik's mind meant any time Council interacted with the emergency team. Mr. Gucciardo didn't see any problem with a member of that team meeting with the Council where the residents were, if there was a need to interact. The difference was, which he felt needed to be recognized, was that the emergency team will need to meet on line in an operational mode at certain points. He didn't see the two as being mutually exclusive. He could see the team working on the Island to effect recovery, but when and where they would interact with Council, and decisions were being made about policies and potential policy changes, he didn't see any reason why their representative(s) couldn't meet with the Council off-Island where the residents were.

Ms. Dalton felt Mr. Gucciardo had expressed what she believed and had advised earlier. She said she had addressed a more extreme hypothetical situation, and felt what Mr. Gucciardo had said was the more plausible scenario.

Councilman Massucco clarified that the emergency team would have the ability to come onto the Island to do what they had to do, and then could meet with Council off-Island.

Mr. Gucciardo said the first objective of the emergency team would be to get the job done, but as long as one did not expect to see the entire team at every meeting, a representative could be there to interact with Council. He said the team would still have to have their own on-Island meetings so as to get their work coordinated and done, as it was their duty.

Mayor Van Duzer said all the discussion about the logistics of the meetings had come to a good end, and that he had no problem with the arrangements Mr. Gucciardo had envisioned as being workable. Mayor Van Duzer asked Councilman Reynolds if that type of arrangement would satisfy his concerns.

Councilman Reynolds said that was precisely what he had been talking about, and added that if the leader of the team couldn't be present at the off-Island meetings, he or she should send an alternate representative.

Mayor Van Duzer asked the rest of the Council if they were comfortable with that arrangement, and no objection was raised.

VI. ADJOURNMENT

MOTION: Councilman Massucco made a motion to adjourn the meeting. Councilman Reynolds seconded the motion.

No vote was taken, but Mayor Van Duzer adjourned the meeting at 11:55 AM, and no objection was raised.

Respectfully submitted,

Jo List
Transcribing Secretary