

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
December 5, 2005**

**I. CALL TO ORDER**

Mayor Garr Reynolds called a regular meeting of the Ft. Myers Beach Town Council to order on Monday, December 5, 2005 at 6:30 PM.

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

**II. PLEDGE OF ALLEGIANCE**

All present stood and recited the Pledge of Allegiance.

**III. INVOCATION – Reverend Jeanne Davis, Beach United Methodist Church**

All present remained standing for the invocation.

**IV. PUBLIC COMMENT**

Maria Humphrey of 5 Glenview Manor Drive came forward. Ms. Humphrey spoke of the MPO and its possible adoption of a new 2030 Transportation Plan for Lee County and its cities, which she said would replace the current 2020 Plan in its entirety. Within the new plan, Ms. Humphrey said a second bridge was planned from the east end of San Carlos Island to Estero Island. She said that bridge, and another over the Caloosahatchie, were slated for funding by imposing tolls on them. Ms. Humphrey announced that a public hearing about the new plan, before it is adopted, would be held on Wednesday, December 7<sup>th</sup>, by the MPO at the SW Regional Planning Council Offices at 1926 Victoria Avenue, and urged the Council and all interested Islanders to attend the meeting. Ms. Humphrey asked who would represent the Town at the meeting, what testimony the Town would give, and if a hard copy of the Town's testimony could be made available to the citizens of the Island by noon the next day, so that there could be public input. She felt the issues were of major import to the Town and felt they deserved the Council's immediate attention.

Jo List of 240 Sterling Avenue came forward. Ms. List expressed concern about the speed with which Ms. Gibbs had been hired to represent Council, and applauded Vice Mayor Massucco's dissenting votes on that issue. Ms. List hoped that proof of wrong-doing on the part of the Town Manager would

be made public. Ms. List felt the Council's decision regarding the abolition of the Park & Ride was questionable, and urged the Council to work on another public transportation plan. She also asked the Council to consider the 5 million dollars spent by the County on advertising for the area, as she felt it was counterproductive to the goals and wishes of the Town. She commended Vice Mayor Massucco, Councilman Meador and Councilman Shenko for their handling of an alleged incident involving a public person and a Town employee which occurred at a prior Council meeting. Ms. List also asked the Council to do something proactive about water pollution in the area.

Ceel Spuhler of 7150 Estero Boulevard came forward. As a resident of eleven years, Ms. Spuhler thanked Ms. Segal-George for her years of tenure. She said the "love of her life" was the Mound House and thanked Ms. Segal-George for her guidance with regard to obtaining it for the Town.

Jeff Werner of 7150 Estero Boulevard came forward. Mr. Werner recounted the final public hearing of the Charter Review report that took place in Council chambers one year ago. He said the recommendations had been given short shrift and "railroaded into oblivion" by the then-Mayor, Bill Thomas. As Mr. Werner discussed a review of the minutes of that meeting, Mayor Reynolds interrupted him and asked him not to use the names of people who were not present "to defend themselves". Mr. Werner went on to say that former Mayor Dan Hughes had emphasized the importance of the Charter Review and had suggested that a more lengthy public hearing was needed, but the then Mayor had disagreed and had questioned the value of taking more time for public input. Mr. Werner, again referring to the minutes of the meeting, said that then-citizen and now-Councilman Bill Shenko had stated his disappointment with the lack of dialogue between the public and Council members on the Charter Review issue, and had pointed out that there was no legal limit on the maximum number of public hearings required. Mr. Werner felt that Mr. Shenko's comments implied there was a need for more public input and more debate by the Council. Mayor Reynolds again interrupted Mr. Werner, and told him that he should stick to issues, that a "he said, she said" presentation was okay but not to use names. Mr. Werner agreed to those terms, and continued. He said the Council had adopted only one of the sixteen substantive recommended changes to the Charter in the meeting about which he was speaking, which he said had been the referendum on tolls which had been on the ballot in the Town's recent elections. He said one of the fifteen recommended changes that had been summarily dismissed during the Charter Review meeting had been the method by which Council seats are filled, as well as limits on campaign spending and greater public input with regard to future density issues. He then distributed copies of the minutes of the meeting to which he had been referring during his comments, as well as a summary of the Charter amendments which had been dismissed at that meeting, to the Council members. Mr. Werner said that, while all the proposed amendments might not be worthy of consideration, the Council

owed it to their constituents to have adequate public input on the subject, followed by an open review and an in-depth discussion and subsequent vote by the Council. He challenged the Council to revisit the Charter Review issue. He hoped that, during Council Members Items and Reports, the issue would be recommended for placement on a future agenda.

Anita Cereceda of Ft. Myers Beach came forward. Ms. Cereceda spoke glowingly of Ms. Segal-George, and recounted her experiences with her as the Town Manager since the Town's incorporation. Ms. Cereceda said Ms. Segal-George had been the only person in the beginning who knew how to bring to fruition the dreams and plans of the newly-formed Town. She said Ms. Segal-George's accomplishments had been many, and that the Town Council through the years had gotten credit for them, although those that worked with her knew that she had been responsible for everything that had been done right. Ms. Cereceda said Ms. Segal-George had also taken the blame for everything the Council had done wrong. Ms. Cereceda said that, as the first and former Mayor of the Town, she wanted it on record that there was no list long enough or angry enough to contradict "the courageous and professional job" Ms. Segal-George had done for the Town.

Carol Schardt of 21650 Medera Road came forward. She thanked all those who ran for Council in the recent elections, which she said had given the voters a lot of choices. Ms. Schardt felt that 1100 residents of the Beach had had a great injustice done to them when the Council had banned weekly rentals in selected areas of the Town, and felt the ban had been adopted illegally. She recounted that the LPA, after several hearings, had recommended no changes to the then-existing short-term rental ordinances. She said 90% of the residents had been opposed to the ban, but had been ignored by the then-Council. Ms. Schardt asked the Council to repeal the ban. She said the homes that were allowed short-term rental were now worth approximately \$100,000 more than those under the ban, which she felt was a great injustice. She said the ban divided the Island, and had pitted neighbor against neighbor. She suggested the question about short-term rentals should be decided by the citizens in a referendum vote. Ms. Schardt also expressed her desire to limit voting rights on the Beach to property owners only, which she called "landowner elections" that would allow those who are not residents, but property-owners only, to vote.

George Whistler of 21630 Madera Road came forward. Mr. Whistler distributed his prepared remarks to the Council, and then spoke. He welcomed the new Council members, and expressed his thought that the Council had a big job ahead in correcting some of the things that had been done over the past ten years in Town. He said he had not voted for incorporation because he had not liked the Charter, and had thought the Mayor should be elected and paid a fair price to run the Town, so that if the residents didn't like what he or she was doing, they could vote for a new

Mayor in four years. He said a Town Manager would tend to build a machine, which he said anyone would do in that position, so as to protect him- or herself. Mr. Whistler said he had been in Town for 25 years, and agreed with Ms. Schardt in that he believed the short-term rental ordinance was borderline illegal in the way in which it was passed. He agreed it should be put out for referendum vote. He thanked the old Council for things they had done, although he had not agreed on all their decisions, which he felt had been based on bad advice. He felt the Town should address the issue raised by the Supreme Court with regards to allowing private developers to take over private property via eminent domain.

Sylvia LaChappelle of 781 Estero Boulevard came forward. Ms. LaChappelle said she was a resident, business owner and member of the Estero Island Garden Club. She announced that the Town would offer trees for sale to the residents. She said they would be in 7 gallon pots, and that the Town would pay for 50% of the cost of each tree. The trees available would be: gumbo limbo – the official Town tree, silver buttonwood, and sweet acacia, which Ms. LaChappelle said were all native to the Island, and were salt, wind and drought tolerant. She said orders would be taken at Town Hall until January 7<sup>th</sup>, and the trees would be distributed from the Mound House on Friday, January 27<sup>th</sup>. She noted that 600 trees had been sold last year. Ms. LaChappelle said the Estero Island Garden Club was in support of the Tree City ordinance. Ms. LaChappelle then thanked Vice Mayor Massucco for his letter, which appeared in the Island Sand Paper, in which he discussed the shameful appearance of Estero Boulevard. She agreed that home and business owners should clean up the street in front of their properties, and didn't feel one should expect the government to do it all. She suggested that property owners could plant some wildflowers at the edge of their properties to make the Boulevard more attractive, and said the Garden Club would be happy to assist those who wanted to plant native plants on their properties.

Mayor Reynolds thanked Ms. LaChappelle for the information the Garden Club had furnished to the Council regarding the proposed Tree City ordinance.

Sean Carney of 2915 Estero Boulevard came forward. Mr. Carney said he was there regarding the Island Arts Foundation's request for funding which appeared later on the agenda, and offered to save his remarks for that portion of the meeting. Mayor Reynolds suggested that he do that.

Will Bustin, a business owner in Times Square, came forward. Mr. Bustin commented on the importance to the Times Square business owners of New Years, Fourth of July and other events. He hoped the Council would be supportive of those events.

Carolyn Epperson of 270 Ostego came forward. Ms. Epperson was there to represent the Times Square Alliance, and offered to make her presentation when the Times Square Alliance's request appeared on the agenda. Mayor Reynolds thought she should wait until then.

Michael Short of 470 Madison Court came forward and congratulated the Council on the recent election. Mr. Short said he had lived in Town for about sixteen years. Mr. Short commended County Commissioner Ray Judah for his "clarion call" with regard to cleaning up the water, and his remarks that the beauty of the Island was at risk because of the pollution, and that the area was on the verge of ecological collapse. He hoped the people of the Island would get interested in the issue, as it was affecting people's health as well.

Pat DeVincent of 160 Bahia Via came forward. Mr. DeVincent spoke in favor of establishing a memorial to Rolfe Schell, recently deceased. Mr. DeVincent distributed a letter from his wife on the subject to the Council, in which she explained why Mr. Schell should be memorialized. Mr. DeVincent suggested placing a plaque, visible from the street, which denoted the El Rancho motel and former home on Bahia Via, a street which Mr. Schell had named himself. He said both the current owners of Mr. Schell's former home, as well as the current owners of the Outrigger, were willing to discuss the placement of such a plaque. Mr. DeVincent asked the Council to consider a lasting memorial to the memory of Mr. Schell, who Mr. DeVincent characterized as one of the founding pioneers of the early development of the Island's history. Mr. DeVincent, citing a list he had distributed to the Council, asked that those on the list be recognized for their contributions to the incorporation of the Town.

George Vukovich of 4531 Bay Beach Lane came forward. Mr. Vukovich asked the Council to revisit an ordinance that had been passed by the former Council, which he felt was illegal, and which he said had created great hardship for the owner/residents of the Royal Pelican condominium complex.

Ray Murphy of Ft. Myers Beach came forward. Mr. Murphy, who was the second mayor of Ft. Myers Beach, directed his comments to Town Manager, Marsha Segal-George. He thanked her for her years of service to the Town, and said that a lot of things had been accomplished during her tenure. He felt the best decision the Town's first Council ever made was to have hired Ms. Segal-George, and added that it was probably the best decision ever made in the history of the Town. Mr. Murphy said the recent elections had been about the issue of firing her, and that although he could have gone along with that sentiment in order to boost his chances to be elected, he had not done so, nor would he ever have done so, as it would have been a compromise of his integrity. On behalf of his family, and a very large circle of friends in Town, Mr. Murphy thanked her for everything she had done for the Town, and wished her well.

Mayor Reynolds closed Public Comment at this time.

**V. CONSENT AGENDA**

**A. Approval of Minutes – November 7, 2005**

No corrections were indicated.

Mayor Reynolds noted that on Page 1 of the minutes, someone during Public Comment had stated that Matanzas Bridge was owned by the County, and pointed out that that was untrue. He said the Bridge and San Carlos Boulevard were both owned by the State. He said there was federal, state and county money invested in the Bridge itself. He said the County controlled the State part through the traffic light on the Island. He wanted the minutes changed to reflect this data. **[Note: The transcriptionist cannot change what someone said].**

**MOTION:** Vice Mayor Massucco made a motion to accept the minutes of November 7, 2005. Mayor Reynolds seconded the motion.

**VOTE:** The motion carried unanimously.

**VI. ADMINISTRATIVE AGENDA**

Mayor Reynolds asked for a motion from Council to move Item H to the top of the Administrative Agenda.

**MOTION:** Councilman Shenko made a motion to move Item H to the top of the Administrative Agenda. Councilman Boback seconded the motion.

**VOTE:** The motion carried unanimously.

**ITEM H: Town Manager's Contract Termination**

Mayor Reynolds asked Attorney Gibbs to come forward with her recommendations regarding this issue.

Ms. Gibbs said she had been unable to reach a settlement of the matter with Ms. Segal-George and her attorney. She offered the following options, with regard to the termination of Ms. Segal-George's contract:

- a. Allow Ms. Segal-George to continue to serve under the existing contract.
- b. Suspend Ms. Segal-George with or without pay.
- c. Terminate Ms. Segal-George without cause.
- d. Terminate Ms. Segal-George with cause and no severance.

Regarding Option C, Ms. Gibbs pointed out what appeared to be discrepancies in the contractual agreement Ms. Segal-George had with the Town with regard

to a severance agreement in the event of being terminated without cause, citing the original contract and the amended contract. Ms. Gibbs said that, whereas the original agreement allowed for 6 months severance pay with accrued vacation and sick days included after two years of service, the amended agreement allowed for a full year's severance pay with accrued vacation and sick days included after two years of service. Ms. Gibbs said that, at the Council meeting of April 3, 2000 under the item Town Manager Evaluation, a number of changes had been passed by the Council, but she had not found any record of a motion having been made on benefit changes at that meeting. She concluded that the change in severance had not been formally approved by the Council, so that the amount of severance would remain at half a year's salary with accrued sick and vacation days included.

Regarding Option D, Ms. Gibbs said there would be no severance. Ms. Gibbs said that during her review of the Town Manager's contract, the Town Charter, minutes of the Town Council, statutes and professional codes, she had found a number of irregularities and matters of concern under the headings of Professional Code, Questionable Conduct and Improper Conduct, which she proceeded to disclose in detail, including, but not limited to:

- a. questionable e-mails
- b. articles written for local papers
- c. involvement in local elections
- d. utilization of Town resources for personal use
- e. unprofessional comments
- f. disclosure to others of confidential information acquired in the course of Town Management duties for personal gain or benefit

At the conclusion of her presentation, Ms. Gibbs offered to answer any questions the Council had.

Councilman Meador asked if Ms. Gibbs had stated that severance without cause would allow for one half year's pay plus accrued vacation and sick time. Ms. Gibbs said that was her opinion. Councilman Meador assumed Ms. Gibbs had not had the opportunity to review a recording of the Council meeting in which the amended contract had been discussed. Ms. Gibbs said he was correct. Councilman Meador asked, if the amended contract were binding, if anyone knew exactly how much Ms. Segal-George would be given in severance, if she were to be terminated without cause. Ms. Gibbs assumed it would either be \$50,000 or \$100,000 dependent upon which agreement was honored. Councilman Meador asked what disagreements had been put forth by Ms. Segal-George and/or her attorney, Mr. Garaghty, when Ms. Gibbs had attempted to work out a settlement. Ms. Gibbs asked Mr. Garaghty if he had any objection to discussing what had transpired in their discussion.

Attorney Garaghty did not wish Ms. Gibbs to discuss what had been said during their meeting. Councilman Meador said if the discussions had been

deemed confidential, he would withdraw that question. Councilman Meador asked if there was anything in the Town Manager's contract that had required her to subscribe to a particular code of ethics, or was the code simply advisory. Ms. Gibbs said she was not aware of anything in Ms. Segal-George's contract that required adherence to a particular code of ethics. Councilman Meador asked if Ms. Segal-George was a member of the Florida Association to which Ms. Gibbs had referred during her presentation of possible code violations, but Ms. Gibbs did not know. She said she had asked for a complete personnel file, but no resume had been included in it.

Councilman Shenko asked for a clarification regarding the differences, if any, between the original and amended contractual agreement, in terms of accrued vacation and sick time that would be paid as part of severance. He asked if it was unlimited in the first contract, but limited in the amended one. Ms. Gibbs believed the amended agreement limited the number of accruable vacation days to forty.

Vice Mayor Massucco asked if anyone knew how many vacation and/or sick days had been accrued by Ms. Segal-George. Ms. Gibbs said Ms. Segal-George could be compensated for no more than 40 days accrued vacation days and 40 days accrued sick days. Ms. Gibbs believed Ms. Segal-George had stated that she had accrued 300 sick and/or vacation days. Deputy Town Manager believed Ms. Segal-George had said she had 300 hours of accrued sick and/or vacation days, not "days". Vice Mayor Massucco asked if Ms. Segal-George had counter-offered during the meeting between Ms. Gibbs, Ms. Segal-George and Attorney Garaghty. Ms. Gibbs said that Ms. Segal-George's attorney had asked her not to reveal the substance of their settlement discussions. Vice Mayor Massucco concluded his questions, but said he had a prepared statement to read at the conclusion of the Council's discussion of the matter.

Councilman Boback asked if the severance agreement included retirement or other benefits other than accrued sick and/or vacation time. Ms. Gibbs said the Town would be required to pay 6 months salary plus accrued vacation and/or sick days not to exceed 40 days, if Council chose to terminate Ms. Segal-George's contract for no cause.

Mayor Reynolds thought the Council was leaning toward termination without cause, which he believed meant the severance package would include \$50,000, or half a year's salary, with accrued vacation and sick days. Mayor Reynolds asked Ms. Gibbs to review what would occur should the Council make a determination with cause. Ms. Gibbs said, in that case, no money would be paid in severance.

Mayor Reynolds said he was leaning toward termination with cause because of all the problems the Town and some Council members had had. However,

in trying to get it settled, he said he would be agreeable to whatever the rest of the Council wanted to do. He did feel that, based on Ms. Gibbs recommendations, there was good reason to terminate with cause. He said he didn't want to be loose with the Town's money, but wanted the issue settled.

Councilman Shenko pointed out that Ms. Segal-George had not agreed to half a year's pay, with accrued sick and vacation days, for severance, and Ms. Gibbs concurred, and felt Ms. Segal-George's attorney would object "violently" to that assumption.

Vice Mayor Massucco asked if the second severance agreement would supersede the original contract, as it had been signed by both the Mayor and the Town Attorney. Ms. Gibbs said if the second agreement had been properly adopted by the Council, then it would do so. However, she had found no evidence that the second agreement had been properly adopted by Council. Ms. Gibbs believed she had all the minutes pertinent to that issue, and saw no official adoption of that new agreement.

Vice Mayor Massucco pointed out that if the Town offered Ms. Segal-George the half-year's pay settlement the Town would end up in litigation, and there was no doubt in his mind about that. He said it would be very costly to go through litigation, and asked if Ms. Gibbs' cost would still be \$250 per hour. Ms. Gibbs indicated that that rate was not for litigation, with the implication that litigation would cost more per hour. Vice Mayor Massucco said there was no way to predict how long the litigation would last, and no guarantee of the outcome. He felt the Town would expend a lot of money and time in litigation, and that it would probably be more desired, on the part of the Town's citizens, to pay Ms. Segal-George the severance she felt she was guaranteed in the updated agreement. Vice Mayor Massucco suggested paying Ms. Segal-George the year's salary guaranteed in the updated agreement, along with accrued vacation and sick days not to exceed 40 days, thus terminating her contract without cause.

Mayor Reynolds asked Vice Mayor Massucco if he had suggested that the Town should make a settlement with Ms. Segal-George based on a contract that had not been approved by Council. He then asked Ms. Gibbs if the minutes she had reviewed would hold up in court, or if Ms. Segal-George's attorney could produce contrary facts. Ms. Gibbs said any information they had which complied with the laws of evidence would be submissible. Mayor Reynolds felt the Council did not have enough information to hand in order to make a decision. Ms. Gibbs felt the Council had as much information as they would be able to get, and pointed out that it was always a risk to go into litigation. She also reminded the Council that it took two parties to settle a problem.

Town Attorney Ann Dalton commented that the tapes of the meetings, in which Ms. Segal-George's contract was discussed for amendment, would be considered the best evidence in a court of law. She assumed the minutes of the meeting were merely a summary of what occurred.

Mayor Reynolds asked if Ms. Gibbs had been given the tapes of the meeting, and Ms. Gibbs said she had not, but had not asked for them either. Ms. Gibbs thought Ms. Dalton had suggested that, if the issue were to go into litigation, that the tapes would be the best evidence.

Councilman Shenko said that while the Council had several options, he felt the Council had the obligation to the Town and the Staff to get on with the business of governing as quickly as possible. He said the Council could decide to end the issue at this meeting, or to go forward with other options. Councilman Shenko felt, after looking at the faces of the people in attendance, that it would be in the best interest of the Town to make a decision that moved things forward. He did not believe the Council needed to determine whether or not the amended contract was properly passed or not.

**MOTION:** Councilman Shenko made a motion that Ms. Segal-George be terminated, from her positions as Town Manager and attorney for the LPA, without cause under the terms of the amended contract; to be paid a severance not to exceed \$100,000 plus the accrued vacation and sick time not to exceed 40 days. Vice Mayor Massucco seconded the motion for discussion.

Vice Mayor Massucco asked if Councilman Shenko's motion excluded severance for the LPA attorney position. Councilman Shenko said that it did exclude that. He felt no severance should be paid for the termination of the LPA attorney position, as he felt it was an at-will position. He felt his motion was in the best interest of the Town, including the fulfillment of the severance agreement in the amended contract.

Councilman Meador asked if there was any indication that the proposed severance in the motion would be accepted by Ms. Segal-George. Ms. Gibbs said she had no information about that. Councilman Meador pointed out that the Town may still find itself in court even if the second contractual agreement were honored in the severance offer. However, Councilman Meador was in agreement with Councilman Shenko, and hoped the Town Manager would be in agreement with the Council's offer. He wanted the matter resolved in a quick fashion, and in such a way that the Town Manager did not feel she had been "kicked out into the street with nothing."

Councilman Meador recognized that he had not received 100% support of the Town's voters, and there were still about 45% of the residents who disagreed with the firing of Ms. Segal-George, and wanted the issue handled in a way that was fair to everyone. Councilman Meador concluded his remarks by saying he was in favor of the motion.

Mayor Reynolds said he understood that Councilmen Meador and Shenko were supportive of the first contract severance agreement. They both corrected him to say they were in favor of honoring the amended contract. Mayor Reynolds pointed out that the amended contract had not been approved. Councilman Shenko said that was not known for sure, and in his opinion, the Council could honor the amended agreement.

Ms. Gibbs said the issue of whether or not the amended agreement was valid would be a litigated issue, and whenever there was such an issue, the option was available to resolve it by settlement, and thus the Council had the ability to pay her \$100,000 if they wished.

Mayor Reynolds said he was concerned that no matter what the Council offered Ms. Segal-George, the issue would still end up in court. He asked, if they passed the motion, if the Council could renegotiate if the offer were rejected, and asked if Council would be “off the hook”. Ms. Gibbs said the way the motion was stated, that Council would not be “off the hook” unless the offer in the motion was contingent upon acceptance of it as final.

**AMENDMENT TO THE MOTION:** Councilman Shenko amended the motion to include that it was contingent upon Ms. Segal-George’s acceptance of the offer as full and final. The seconder, Vice Mayor Massucco, seconded the amendment.

Mayor Reynolds felt better about the motion with the amendment added, and said he could vote for it.

Councilman Boback asked Ms. Gibbs if, by voting to approve the motion, the Council was in effect stating that the amended contract was valid. Ms. Gibbs said that was not the case. Councilman Boback asked if the Council could fall back to its original position – that the original contract is the valid document, and not the amended one – if their offer to Ms. Segal-George were rejected. Ms. Gibbs said the Council was making a settlement offer and was not binding for any factual determination. Councilman Boback just wanted to ensure the Council was not binding itself to the amended contract by passing the motion. He restated his opinion that the original contract, and not the amended one, was the agreement the Council should honor. He asked if another amendment to the motion, with regard to the termination of the Town Clerk, should not also be added.

Ms. Gibbs said that, in the Town Charter, it was stated that the Town Clerk position was appointed by the Town Manager. Councilman Shenko confirmed that to be correct. Ms. Gibbs pointed out that, within their motion, the Council had not made the determination as to when the termination would

go into effect and final. She asked, if Ms. Segal-George did not accept their offer, was she to continue as the Town Manager.

**AMENDMENT TO THE MOTION:** Councilman Shenko amended the motion to include that the termination would be immediately upon the passing of the motion. He also amended the motion to include the reservation of all rights of the Council to argue both cause and validity of the first contract. Vice Mayor Massucco seconded the amendments.

At this point, Ms. Gibbs asked if she and Attorney Garaghty could have five minutes to discuss something. Mayor Reynolds, with the Council's agreement, called a five minute recess.

Upon resumption of the meeting, Mayor Reynolds remarked that there were problems with the sound system, and that it needed to be resolved, as people were having trouble hearing what the Councilmen were saying.

Ms. Gibbs related to the Council that Ms. Segal-George's attorney requested that the Council give him two days to respond to their offer. Ms. Gibbs said Ms. Segal-George would like to make a statement to the Council and the public, after which she would turn in her keys and leave Town Hall and consider herself terminated from the Town Manager position at that point.

Attorney Dalton believed that Mr. Garaghty's requests needed to be made by him for the record. Attorney Garaghty came forward in representation of Marsha Segal-George. He said, based on the conversation among the Councilmen before the break, that whatever offer was going to be made by Council, that his client be given two days to accept or reject the offer, and assumed that, effective immediately, she would be terminated and would turn in her keys. He also related her request to make a brief statement to the Council and the public. He hoped the matter could be resolved, which he said was the wish of both Ms. Segal-George and himself.

Councilman Boback restated his firm belief that the first contract was the binding agreement, which included a six-month's severance as opposed to the one-year severance. He also believed that the Town needed to move on as quickly as possible, and therefore would support the motion as it stood.

Vice Mayor Massucco indicated his agreement with the motion.

Councilman Shenko jokingly indicated that he agreed to the motion as long as he didn't have to restate it, which evoked some chuckles around the room. Mayor Reynolds said that it wouldn't be necessary unless someone needed to hear the motion in its entirety, at which point he would ask Attorney Dalton to do it.

Councilman Meador said he had no comments and indicated he was fine with what Ms. Gibbs and Mr. Geraghty had discussed.

Mayor Reynolds asked if they should vote on whether to allow for the requests as stated by Attorney Garaghty on behalf of Ms. Segal-George. Ms. Dalton thought, given the gravity of the issue, although it was obvious there was a consensus on the Council, a vote for the record would be advisable.

Councilman Shenko said there was a motion and second on the floor. Mayor Reynolds stated that they had already voted on it, and Attorney Dalton and several other people said they had not. Ms. Dalton added that it had been amended twice.

**VOTE:** Mayor Reynolds asked Mr. Gucciardo to call a roll call vote, but Ms. Dalton pointed out that, under the rules, the Mayor would call the vote. Mayor Reynolds said he had misunderstood her that day, but that he didn't mind doing it.

**ROLL CALL VOTE**

Councilman Boback: aye  
Vice Mayor Massucco: aye  
Mayor Reynolds: aye  
Councilman Shenko: aye  
Councilman Meador: aye

The motion passed unanimously.

**MOTION:** Mayor Reynolds made a motion to accept Mr. Garaghty's terms as stated earlier. Councilman Meador seconded the motion.

Ms. Gibbs asked to clarify exactly what was being voted upon. Her understanding of the motion was that Council would allow Ms. Segal-George two days to accept or reject, by 5:00 PM on Wednesday December 7<sup>th</sup>; and that Ms. Segal-George would leave the Town Hall and her position as Town Manager at the moment she finished her statement; and that Ms. Segal-George would turn in her keys before leaving.

Councilman Shenko asked that the motion be amended to reflect the exact assessment as stated by Ms. Gibbs.

**AMENDMENT TO THE MOTION:** Mayor Reynolds moved to amend the motion to reflect the assessment just given by Ms. Gibbs as to what the motion entailed. Councilman Meador seconded the amendment.

**VOTE: ROLL CALL VOTE**

Councilman Meador: aye  
Councilman Shenko: aye  
Mayor Reynolds: aye  
Vice Mayor Massucco: aye  
Councilman Boback: aye

The motion carried unanimously.

Mayor Reynolds felt the issue about termination of the LPA attorney position needed to be discussed. Ms. Gibbs and Councilman Shenko indicated that the issue had been covered in the original motion regarding the severance offered by Council.

Attorney Dalton indicated that Ms. Segal-George was to be given the opportunity at this time to make a statement. Mayor Reynolds thanked Ms. Gibbs and asked when she would get back to Council. She said she would contact them at 5:05 PM on Wednesday, December 7<sup>th</sup>.

Mayor Reynolds felt an additional Council meeting would need to be scheduled. Councilman Shenko pointed out that a meeting was already scheduled for December 12<sup>th</sup>. Mayor Reynolds asked if a special meeting needed to be convened with regard to the termination issue, but Councilmen Shenko didn't think it was necessary. Attorney Dalton said it was up to the Council, but if the offer were to be accepted, she could not see why a special meeting would have to be convened to discuss it. Mayor Reynolds said they would continue the item to the next meeting, although the next meeting was a Land Use meeting scheduled for the following Monday at 10 AM. He asked the Town Attorney if that meeting had to be exclusively land use items. Ms. Dalton said it could be added as a special meeting item. Mayor Reynolds asked the Council how they felt about adding the item to the land use meeting agenda.

Councilmen Boback and Shenko both felt if the offer made to Ms. Segal-George were accepted, there would be nothing to discuss. Councilman Shenko added that if it were rejected, the Mayor could then decide to add the item. Mayor Reynolds said he knew that, but was trying to plan for the next meeting. Ms. Gibbs asked when that meeting was scheduled, and Councilman Shenko said he understood she could not attend that meeting, but felt the Council had gotten enough information from her to go forward with the issue.

Mayor Reynolds announced that Ms. Segal-George would say what she needed or wished to say to the Council and the audience.

Ms. Segal-George said she had already turned in her keys and cell phone. She said she had led a very interesting life and had often been the first woman to hold her various jobs. She said she had worked hard to have her family and a

career, which had made her life more challenging. She said that for anyone who had done business with her, she had always believed in honor and dignity, and that she would leave the Town Manager job with both. She said the Island had changed a lot over the ten years of her tenure, and she was proud to have been a part of it. She said she had walked into a divided community, and was leaving a divided community. She said her accomplishments over the past ten years were real, and no amount of revisionist history would change that. She said she had worked for “some great elected officials, some wonderful committees” and was “blessed with an incredible staff.” She expressed her pride in her family. Ms. Segal-George went on to say that with the dynamic partnership among herself, the elected officials, the staff and volunteers, they had changed the face of the Island. She thanked everyone for having been given the opportunity to work here, and believed that one should have a positive attitude about life. She said “It is easy to point the finger and complain, but it is the doing of the work and realizing the accomplishment that is lasting and of value.”

Ms. Segal-George concluded her remarks, and the audience applauded through her departure of the Council chambers.

Mayor Reynolds said that while the process of finding a new Town Manager was ongoing, an interim Town Manager would be needed. He then asked Deputy Town Manager John Gucciardo if he would accept the position of Acting Town Manager until such time as a permanent replacement could be found.

Mr. Gucciardo indicated he would accept the position.

**MOTION:** Vice Mayor Massucco made a motion to make John Gucciardo the Acting Town Manager until the position was filled permanently, and that compensation for Mr. Gucciardo would be discussed at the next Council meeting. Councilman Boback seconded the motion.

Mr. Gucciardo asked if his taking the position, and the particulars inherent with that decision, would be discussed and negotiated at the next Council meeting, or if someone from the Council was to be appointed the “point man” to work out the details with him to be brought back to the Council for approval. He said his preference was to work it out with a “point person” before the Council meeting.

Councilman Boback volunteered to be the “point man” to negotiate with Mr. Gucciardo regarding his terms, and also as “point man” with regard to beginning the search for the new Town Manager and all the details of that. He also offered to help with finding the new LPA attorney. Councilman Boback pointed out his background in management recruitment.

Mayor Reynolds asked if Councilman Boback had offered to work out the arrangements with Mr. Gucciardo, and Councilman Boback said he had, and that he and Mr. Gucciardo would bring all the information back to Council at the next meeting.

Mayor Reynolds asked the other Councilmen if they were in agreement with Councilman Boback's offer. Councilman Meador thought it would be much less time-consuming to do it that way. Mayor Reynolds moved from that issue, the implication being that there was consensus regarding Councilman Boback's offer.

Mayor Reynolds said he was sure "the LPA people won't like to hear" his question, but asked if it was really necessary to have an LPA attorney. He said he knew the people who had worked with the guidance of an attorney would say "of course they need one". He asked the other Council members and the Town Attorney what they thought. He also asked, because there was no Deputy Town Manager designation in the Town Charter, if the title could be changed to "Clerk", as he believed that was what it really should be. He thought if there were a Clerk, the Clerk would deal with the LPA and would also serve the Council instead of the Town Attorney. He said he had heard that concept promoted in other situations.

Councilman Shenko pointed out that there was a motion on the floor to make Mr. Gucciardo the interim or Acting Town Manager. Mayor Reynolds said there was consensus. Councilmen Boback and Shenko, and Town Attorney Dalton, all said there was a motion on the floor. Mayor Reynolds asked if he hadn't called a vote on it, to which Councilmen Boback and Shenko, and Town Attorney Dalton, replied "no". Mayor Reynolds apologized, and told Ms. Dalton, to whom he referred as "Town Manager", to keep him "on the ball". Mayor Reynolds then called the vote.

As the vote was taken, Vice Mayor Massucco asked for a point of clarification. He asked if Mr. Gucciardo's designation was being changed from Deputy Town Manager to Clerk. Ms. Dalton explained that the motion was to make Mr. Gucciardo Acting Town Manager.

**VOTE:** The motion carried unanimously.

Councilman Shenko opined that determining whether or not the LPA needed an attorney, and whether to change the position of Deputy Town Manager to Clerk, was beyond the Council's immediate agenda. He suggested a workshop could be put together to discuss it, but felt the attorney for the LPA was one of the most important people that the Town could have on Staff. He thought it was a critical position, because "if we don't have zoning and land use, we don't have anything." He said if Councilman Boback and Mr. Gucciardo got together and brought back a package with regard to advertising,

that the Council could schedule a later workshop with Council to discuss the overall structure of things.

Mayor Reynolds asked Councilman Shenko to offer his comments regarding the idea of changing Deputy Town Manager to Town Clerk. Councilman Shenko said he did not want to discuss it at this time, but it could be discussed at length at a workshop.

Mayor Reynolds said he wasn't looking for a decision to be made at this time, but wanted to hear comments on the idea, and thought they did need a workshop.

Councilman Boback agreed with Councilman Shenko in that a land use attorney was very important, in light of all the development that would be taking place in the near future, in order to protect the Town. With regard to the Town Clerk idea, Councilman Boback felt it was something that should be left to the new Town Manager "to set up his own organizational structure" to bring to the Council for approval. He said there was no sense in "tying their hands" before that.

Councilman Meador agreed with Councilman Shenko, and said there was no question but that there should be an LPA attorney. As far as the Town Clerk issue, Councilman Meador said it was a Charter position with specified duties that varied widely from what an assistant Town Manager did.

Mayor Reynolds thought a workshop could be scheduled for sometime in January.

Councilman Shenko thought they should wait to see what a new Town Manager would bring to the table in terms of structure.

Vice Mayor Massucco said he would be opposed to changing the Deputy Town Manager to Town Clerk. He said the Deputy Town Manager dealt with very high profile people, on a lot of committees, and had to represent the Town on many important issues.

Mayor Reynolds said he didn't disagree with what Vice Mayor Massucco had said. Mayor Reynolds commented that they needed to change the Town Charter because "we have been operating ten years against the Charter". Councilman Shenko said those were matters a new Town Manager could bring forward with recommendations. Mayor Reynolds said the reason he had mentioned it was because he felt they needed to "get back following the Charter a little bit".

## **A. Special Events**

### **1. Request by Times Square Alliance**

Carolyn Epperson, of 270 Ostego, came forward. Ms. Epperson said she was the assistant manager of a business at 1021 Estero Boulevard. She presented the Times Square Alliance request for shared funding of the New Years Eve event scheduled for New Years Eve in Times Square, which she said had become one of the most important events of the year for the businesses of the Times Square area, as well as for the residents who participate. She said it was a family-oriented event, which she said helped the area's hotels and businesses as it was a "play and stay" event. She said the event has been advertised as a celebration of the Town's anniversary. She said every precaution was taken to ensure that everyone had a wonderful evening, including the extra trolleys provided, free of charge to everyone on the Island, until 2:00 AM. Citing a derogatory letter in a local paper, in which the writer called the event a "cocktail party", Ms. Epperson took exception to that characterization of the event, and said families and couples from all over the country come to it. She said that in ten years, there had never been any arrests or "ugly incidents". She said several deputies had told her that it was much easier to enforce open containers in the confined area, than it would be to disallow it from the area, as then every door to every restaurant would have to be policed. Ms. Epperson hoped the Council would continue its support of the event, as it had done every year. She said the Alliance was committed to raising matching funds for the event, and complied with the strict guidelines of the Special Events ordinance. She invited the Councilmen to be on stage for the countdown to the New Year. She respectfully requested, as the Chairman of the event, the eight items listed in her proposal, which had been distributed to the Councilmen prior to the meeting. She said as a resident and a manager of a restaurant, she hoped the Council would waive the open-container ordinance as described in the request. She pointed out that the \$300 for advertising in an off-Island publication had been withdrawn, as the Alliance planned to have only on-Island advertising for the event, and that no radio advertising would be done for the event either.

Vice Mayor Massucco asked if the amount being requested was the same, and Ms. Epperson said the \$300 she mentioned earlier would be minused from the total requested amount.

Councilman Boback asked if the amount requested by the Alliance was in conjunction with the request from the Fireworks Committee. Mayor Reynolds said the costs had been compartmentalized, and that there was a grand total, half of which was being requested from the Town. Councilman Boback asked if the total cost included the fireworks. Ms. Epperson said it did, and that the Alliance was requesting half of that total.

Councilman Shenko wasn't sure he should express his feelings about funding this type of event before a motion was made.

Mayor Reynolds said he wasn't doing it quite the way it had been done traditionally on Council. He said if they needed to talk about it, he wanted them all to be together with what they were doing. He said that before someone would make a motion right away without any additional knowledge or feelings of anyone else. He said he was trying to delay until they heard something about where they were going before a motion was made. He said that was why he had not entertained a motion. He felt Councilman Shenko and everyone else on Council had the right to voice their opinion before a motion was made. He said after everyone had had the chance to share their feelings, then a motion would be entertained.

Councilman Shenko said he preferred Mayor Reynolds way of going about it, as it allowed for more open discussion, although he was not sure it met with the strict Roberts Rules of Order, but it leant to much more open discussion before any motion was made.

Attorney Dalton said Roberts Rules of Order provided for a motion, but also provided flexibility if the Council chose another path.

Councilman Shenko said he may differ with other Councilmen, and although he was for funding the fireworks, he had a fundamental problem spending taxpayers' money on amplified outdoor entertainment. He felt that people in their homes who chose not to go to Times Square until midnight or two a.m. should not be forced to listen to amplified outdoor entertainment, especially when their tax money was paying for it. He said he could not support any Town money being paid for amplified outdoor entertainment. Regarding the open consumption of alcohol on New Year's Eve, Councilman Shenko noted that there were fine restaurants in the Times Square area that served alcohol. He said the premise that people were easier to police when they were allowed to wander around, not necessarily knowing where the products were purchased...He felt if he were a merchant he would want to know if the people were bringing their own alcohol.

Ms. Epperson asked if she could address Councilman Shenko's concerns, which he invited her to do. Ms. Epperson said normally a person would not be allowed to walk out of an establishment with an alcoholic beverage they had purchased in it. She said there would have to be deputies posted at every entrance and exit at every restaurant. She said the deputy cost was up this year because of safety concerns, and it would be easier for the deputies to police a confined area around the restaurants, than to police each individual establishment.

Councilman Shenko said if the open container law was waived in Times Square, and wondered if the people would still be required to buy their alcohol from the merchants within the Times Square area. Ms. Epperson said they would be, because of the way it would be set up. She explained that at

Citrolla's and Top 'o the Mast were where the boundaries would be, and no one would be allowed beyond that point with alcohol.

Councilman Shenko said he was concerned, in that the merchants serving alcohol were the eyes and ears for the Town, as they ensured minors would not be served, and ensured that people were not over served. He thought it was a potential liability to the Town, as minors could be given alcohol and could wander in front of traffic. He said he preferred that service and consumption of alcohol remain within the licensed establishments that sold alcoholic beverages.

Councilman Boback said he had been in the restaurant business before, and had also been to Times Square for the New Years Eve celebration. He said he was not in favor of supporting businesses on the backs of the taxpayers. However, having been at the celebration, he believed it served the residents of the Island as well as the businesses, and felt it was one of the few things that brought everyone in Town together to everyone's benefit. For those reasons, he said he had no problem funding the celebration. Councilman Boback thought the logistics of trying to monitor and police the open containers in Times Square, and limiting it to just within the restaurants, would be "a nightmare". He felt the plan as described by Ms. Epperson would be much easier to police and handle. He mentioned that he had received a memo from a citizen who wished that no alcohol was served in the area during the celebration. Councilman Boback said that while that might be ideal, the restaurants in that area had licenses to sell alcohol, and didn't believe Council had a right to stop them from doing so. He felt it would just be easier in that one controlled area to contain it. He said he had never seen any problems in the area during the New Years Eve celebrations, and that the event had always been an enjoyable evening.

Vice Mayor Massucco said the event had been going on for ten years, and the Sheriff's Department would attest that there had been no real incidents of any kind. He said he was in favor of the Times Square Alliance request. Vice Mayor Massucco, addressing Councilman Shenko's remarks about amplified music, said it was New Years Eve, and one could tolerate a lot more on that night than on any other night. He didn't believe noise would be an issue, as people were normally prepared for that on New Years Eve.

Councilman Meador said he had spoken with the Deputy Town Manager about the issue, and that his understanding was that the Sheriff's Department for the past four years, from an enforcement standpoint, preferred that the open container law be waived in the specified area within Times Square for the New Years Eve event.

Mayor Reynolds asked what the parameters would be of the designated open container area. Ms. Epperson explained that the boundaries were within the

Times Square area, from Citrolla's to the other side at the Top o' the Mast, and that it was a very controlled area. She reiterated that the Sheriff's Department had expressed their preference for a controlled open container area as opposed to having to patrol every restaurant exit.

Mayor Reynolds said he had received communication from a citizen of the Town who had expressed his complete dislike of tax money being spent on entertainment that would contribute to the use of alcohol. Mayor Reynolds asked the Town Manager if the Council could take input from the public on the issue, although the respondent was the Town Attorney, Ms. Dalton.

Ms. Dalton said the Council would not normally have public input on something under discussion, except in the Public Comment section in the beginning of the meeting, in which comments are supposed to be confined to agenda items, and in the Public Comment near the end of the meeting.

Mayor Reynolds said if he opened the floor to Public Comment for one person, he'd have to allow everyone who wanted to speak to do so. Ms. Dalton said it was up to the Council, as the normal procedure appeared in the Policy and Procedures Manual, was not statutory, and could be changed if the Council chose to do so.

**MOTION:** Vice Mayor Massucco made a motion to fund the request as stated.

Mayor Reynolds said making a motion was not the concern at that time, but was rather whether the Council should allow public input on the issue under discussion. Mayor Reynolds asked the Council members how they felt about accepting public input, pointing out that there had been strong objections to using public money for alcohol.

Councilman Shenko said the Council members had all received letters to that effect, and that the public had already had the opportunity to have input. He said he hated to quell public input. Councilman Boback pointed out that it would open the door to every issue. Mayor Reynolds asked Vice Mayor Massucco not to let him forget to get back to his motion.

Mayor Reynolds said he understood Councilman Shenko's objection to amplified music, and asked Ms. Epperson why it had to be so, and wondered if there were going to be a lot of people at the event who couldn't hear well.

Ms. Epperson explained that the Laurie Starr Duo would be performing, which was not a rock and roll band, but was very low-key and contemporary. Mayor Reynolds asked Ms. Epperson if it was music that everybody liked. Ms. Epperson said Laurie Starr Duo was a local husband and wife duo that was very low-key.

Mayor Reynolds said Mary Winters (sic) was going to perform in the afternoon, and said her amplification was low, and didn't believe she would drive anyone away because she wasn't that loud. He said he would have no problem with controlled amplification, and believed Councilman Shenko would have no problem with that either. Councilman Shenko commented that he did not like taxpayers' money paying for bands. Ms. Epperson suggested that the Town money not be used to pay the musicians, saying the \$1500 could come from the Alliance's money. She added that she respected Councilman Shenko's feelings completely.

Councilman Shenko said he could support that idea. He said he was not happy with the outdoor consumption of alcohol, but could understand the premise and knew that it had occurred in the past. He quipped that the band would not play his requests this year, because of his earlier comments. This remark sparked some chuckles around the room. He said the Alliance didn't have time to bring back a new proposal at this point, and didn't feel it would be fair to withdraw the Town's support at this time. He said with the amendment, that the Town money would not be used to pay the bands, he could support the motion.

Mayor Reynolds said what he found wrong with the Alliance's request was that last year, the Alliance had "gotten by" with less than \$5000 assistance from the Town, and this year, the request was for \$10,700. Ms. Epperson said both the fireworks and the Sheriff's Department expenses were much higher this year.

Councilman Meador had a question about the money totals, and Ms. Epperson pointed out that there was a revised breakdown of the financials that explained the discrepancies.

**AMENDMENT TO THE MOTION:** Vice Mayor Massucco amended his motion to include that the musicians would not be paid with Town money. Councilman Boback seconded the motion.

**VOTE:** The motion carried unanimously.

Vice Mayor Massucco, referring to the enabling ordinance – 9605 – asked Ms. Epperson if there would be glass containers used in the service of alcohol, and Ms. Epperson assured him that only plastic cups would be used. Vice Mayor Massucco asked Ms. Epperson to ensure that no glass containers were used in service of alcohol, and to be sure it was well-publicized. Ms. Epperson said she would do that. Councilman Boback was sure the deputies on duty would keep an eye on that.

Ms. Epperson thanked the Council.

## **2. Request by Island Arts Foundation**

Sean Carney of 2915 Estero Boulevard came forward to represent the Island Arts Foundation in its request for funds. He pointed out that the Town had been “gracious and generous” in its support of the cultural and arts programming. He said the IAF had used less than half of the Town’s allocation for IAF events last year. He said there were more than 140 members, 12 board members, and several local business members of the organization. He said the IAF was a non-profit 501- C(3) organization. He said the upcoming Christmas event, for which the request had been submitted, was special because it would feature a local singer, Jo List, a gold record awardee. He said the band would play holiday music in addition to swing and blues. He said the IAF had secured private funding for most of the expenses associated with the event. He said the original request had been for \$4000, but based on Vice Mayor Massucco’s advice given at the November Council meeting, the request had been reduced to \$1,829. He said \$1500 would cover artist expenses. He said \$329 would cover the IAF’s share of the required insurance coverage favorable to the Town. He said the Sheriff’s and Fire Departments had both signed off on the event, and a Special Events Permit had been issued for it. He said all contingencies had been met, that alcohol would not be served, and that the concert hours were 1:00 – 5:00 PM. Mr. Carney then introduced the IAF Secretary, and one of the performers, Jo List.

Jo List expressed her appreciation for the years of support from the Town Council over the years with regard to prior IAF events.

Mr. Carney asked the Council, in the spirit of the holidays, to support the IAF’s request, but added that the IAF would seek private support for the event if funding from the Town was denied.

Vice Mayor Massucco asked Mr. Carney to state the requested amount. Mr. Carney said it was \$1,829. Councilman Boback asked if it was a holiday concert, which Mr. Carney confirmed. Councilman Shenko pointed out that the request before Council was not the earlier submitted request, as the original request was for four events. Mr. Carney said that was correct, and that he had understood that Mayor Reynolds had asked that the IAF request the funding on an event-by-event basis. Mayor Reynolds confirmed that that was what the Council had decided, but then pointed out that the requested amount and the date of the event were both incorrect in the written request the Council had before them.

Councilman Shenko said he had no information on the concert other than dollar amounts. He asked if the IAF was going to “blast everybody out of Shell Mound Park again”. He couldn’t see how the Council could make a decision based on the information supplied to them. Mr. Carney said he would be happy to answer any questions, but Councilman Shenko felt the

information should have been submitted with the proposal, and felt the request should be resubmitted.

Mayor Reynolds asked for specifics about the event. Mr. Carney said it was to take place on Saturday, December 17<sup>th</sup>, and the location of the event was 2915 Estero Boulevard, which was the future home of the Island Sand Paper. Councilman Shenko commented that it was Carl Conley's house, which Mr. Carney confirmed. Mayor Reynolds asked what the expected attendance was, and Mr. Carney said the IAF expected 75 attendees. Mayor Reynolds wondered if the people who lived in the neighborhood behind the event location would be bothered by the concert. Mr. Carney didn't anticipate any problems as the volume would be kept down for the event, and that the performance itself would be in the afternoon rather than late at night.

Councilman Shenko said it was a privately funded, private Christmas party, and that he could not support it.

Councilman Boback asked why there was a discrepancy with regards to the cost of tents for the various events planned. Mr. Carney said they were rental costs for different needs, which did not satisfy Councilman Boback's question.

Mayor Reynolds didn't feel the Council should be discussing other events. While looking through the figures on the Christmas event, Mayor Reynolds asked what sort of transportation was going to be provided for \$2300. Mr. Carney said it would cover artists' transportation to and from the airport. Mayor Reynolds asked if the artists were going to be paid as well, and Mr. Carney said they would be as they were professionals. Mayor Reynolds asked to whom the IAF was appealing with the concert. Mr. Carney said the appeal was to the people of Ft. Myers Beach, and pointed out that typically 95% of the audience was made up of residents of the Island, and felt Vice Mayor Massucco would vouch for that as he had attended one of the events.

Mayor Reynolds asked the Town Attorney if she had any ideas regarding the insurance as it related to the event. Ms. Dalton understood that the IAF had purchased insurance for the event.

Mayor Reynolds said he was having trouble promoting a party on private property with other people's money. This remark drew a smattering of applause from some of the people in attendance, for which the Mayor thanked them but said applause was not something needed. Mayor Reynolds said the area in which the event was to take place was a small area, and that there was no parking available. Mr. Carney said the parking lot next door at Sea Grape Plaza would be available to attendees, which he said had been approved by both the Fire and the Sheriff's Departments. Mayor Reynolds reiterated that he did not support using the residents' money for a party on private property.

Vice Mayor Massucco said he did not want to discourage the Island Arts Foundation, as he felt it was an important aspect of the Island, and felt the IAF had produced some quality shows. However, he felt there was a lot of opposition to the venue, and would be more supported if the event were to be held in a public venue. Mr. Carney said it was not a private party, and that anyone was welcome to buy a ticket to attend. Vice Mayor Massucco reiterated that he didn't want to discourage the IAF as he felt it was a worthwhile organization, and should be a part of the Island.

Mayor Reynolds said he hoped the Council was not discouraging the IAF, but he could not support using Town funds for this particular event.

**MOTION:** Councilman Shenko made a motion to deny the IAF request for funding of the Holiday Concert, but that the Council reserved that the IAF could bring other request forward. He added that date, time and place should be included in any future proposals. Councilman Boback seconded the motion.

During the making of the motion, Councilman Shenko felt the IAF had not been up front in its request by omitting the time, date and venue from the request before Council, and Mayor Reynolds agreed with that assessment.

**VOTE:** The motion carried unanimously.

Mayor Reynolds asked Mr. Carney to take the suggestions that had been given with regard to the inclusion of time, date, location, expected attendance, parking arrangements, etc. in any future requests. He felt compliance with those suggestions would give the Council more insight before considering any request.

Mayor Reynolds remarked that they needed to move things along as the time was getting late, but added that it was more important that issues be addressed fully and correctly than it was to do things quickly.

**B. Last Public Hearing for the "Tree City" Ordinance**

Ms. Dalton read the Ordinance 05-26 caption into the record. She then noted that this was the last public hearing on it.

Mayor Reynolds said it was the second and final hearing, and asked for Public Comment at that time.

Pat DeVincent of 160 Bahia Via came forward. He spoke off mike as he approached the lecturn, but his comments seemed to be an objection to not having been able to make public comment on an advertised agenda item.

Mayor Reynolds apologized and said the Council had to go by the rules, unless or until they were changed.

No one else came forward, so Mayor Reynolds closed the Public Comment portion of the hearing.

Ms. Dalton said that at the first hearing, Councilman Meador had raised a question, to which Jerry Murphy, Community Development Director, would respond.

Mr. Murphy said the Town had contacted the Division of Forestry and had given them a copy of the proposed ordinance, and at that level, it had been green-lighted. He said the ultimate approval would occur further up in the State, and the Town had not heard back from that echelon as yet. He believed, however, the Town was “in pretty good shape” with regard to the approval at that level. Councilman Meador asked what question had been posed to the Division of Forestry, to which Mr. Murphy replied: “Will this ordinance satisfy the requirements of the Tree City USA designation?”.

Vice Mayor Massucco asked if the ordinance the Council was considering would only allow for the Department of Community Development to go ahead with a work plan, which would be submitted to the LPA and then brought forward to Council. Mr. Murphy confirmed that, and explained that the work plan was to be vetted out to the Garden Club and any other interested community organizations, and then ultimately submitted to the LPA.

Councilman Shenko said he had met with the Acting Town Manager to discuss a few concerns he had had with regard to the ordinance. He didn't want to create “tree police” who would come to his private property and tell him what he could or could not do with regard to trees. He said there was an ability to adopt such an idea within the ordinance, but understood that idea was not a part of the proposed ordinance before Council. Mr. Murphy confirmed that, and said the requirements and regulations contained in the LDC were the only ones that would apply, and the proposed ordinance would not change that at all. He said it opened the opportunity to revisit that idea if, in the future, it was deemed necessary. Councilman Shenko also expressed concern with regard to placing more burdens on the Town Staff when there were already a lot of issues before them. While he felt the concept was an excellent idea, he did not want Town Staff to take on yet another role, albeit a very good one. He said Mr. Gucciardo had assured him that the ordinance would not place any more responsibilities on the Staff. Mr. Gucciardo assured him that if that were to occur, Staff would inform Council immediately. Councilman Shenko asked if the Town had the ability at any time to withdraw from the Tree City USA designation, to which Mr. Gucciardo replied: “Absolutely”. Councilman Shenko said he would support the ordinance.

Mayor Reynolds said he had had the same concerns as Councilman Shenko. He commented that “these guidelines shall be brought before LPA and Council for approval, for inclusion in the Comp Plan” and possibly the LDC. He said he did not want to overburden people with more regulations, and asked that the work plan be kept simple and to the point. He said if that could be achieved, then the ordinance would be okay. He said the people didn’t want to be regulated more than they had to be. Mr. Murphy assured the Mayor that it would have to come back to Council for approval before anything were put into effect, adding that it would not affect the Comp Plan, but only the LDC.

Councilman Meador pointed out that there was a specific reference in the ordinance with regard to guidelines for the issuance of “arbor permits”. He felt it sounded as if a person would have to pay the Town a permit fee in order to plant a tree in one’s yard. Mr. Murphy said that was not anticipated, and explained that an arbor permit was language that had been used in the draft ordinance – he said it would be applied to any kind of vegetative removal permit, which already existed in the LDC. He said if that were to be modified, it would have to come from the LPA with recommendations to Council.

Mayor Reynolds said overregulation was the biggest concern of most of the Council members.

**MOTION:** Vice Mayor Massucco made a motion to adopt Ordinance 05-26. Councilman Boback seconded the motion.

When Mayor Reynolds called the question, Ms. Dalton pointed out that it needed to be a roll call vote when an ordinance was up for adoption, which Mayor Reynolds said he knew.

**VOTE: Roll Call Vote**

Vice Mayor Massucco: aye  
Councilman Boback: aye  
Mayor Reynolds: aye  
Councilman Shenko: aye  
Councilman Meador: aye

The motion carried unanimously.

**C. Renewal of Agreement for Election Services**

Ms. Dalton said the Supervisor of Elections had advised the Town’s Administrative Services Director Rachel Lambert that she would no longer proceed under the former agreement with the Town, and had put forth a new agreement for those services. Referring to her memo of 11-25-05, Ms. Dalton said there were three specific areas she felt the Council should address: 120

days notice prior to any election date including qualifying period, with limited exceptions such as the death of a Council member; the Town must reimburse the Supervisor of Elections for services, supplies, expenses and costs of whatever kind she would incur – Ms. Dalton noted there was no ability to negotiate a flat rate, and was concerned about the arrangement that provided no negotiation; the Town would be required to indemnify the Supervisor as to her own negligence while conducting the Town’s elections. Ms. Dalton said she had had extensive discussions with Mr. Hart, counsel for the Election Supervisor, and he had indicated that the Supervisor of Elections was not comfortable renegotiating any of the above provisions with the Town. Pursuant to Councilman Boback’s request, Ms. Dalton had contacted other municipalities and was advised by Mr. Kyler, Sanibel’s City Attorney, that they had signed the agreement as-is because there had been no other option. She said the City of Cape Coral had not as yet signed a new agreement with the Supervisor, but had been advised that the contract was not open for negotiation. Ms. Dalton said the Attorney for Bonita Springs, Audrey Vance, had indicated that they had also been told the contract was not negotiable.

Ms. Dalton advised the Town Council that the wording of the contract, even if the Council decided to go forward with it at this time, allowed for the Council to opt out at any time. She said the contract would be activated only if the Town contacted the Supervisor and asked her to run a specific election. She said if the Town wished to conduct its own election, the Supervisor didn’t have to be contacted.

Mayor Reynolds asked if the Council were under any obligation to use the Supervisor for all elections if they went forward with the renewal agreement before them. Ms. Dalton said if the Council approved the agreement, it would go into effect if the Town utilized the Supervisor’s services. Ms. Dalton said she had not been the Town Attorney when an earlier discussion regarding the Town running its own elections had taken place, and had not investigated that option. Mayor Reynolds asked why the Supervisor of Elections position existed, if the services rendered by that person were provided as a courtesy, as he thought the Board of Elections was there to oversee elections. Ms. Dalton said the Supervisor of Elections was not required to provide election services for municipalities. Mayor Reynolds again asked why they existed. Ms. Dalton said they ran elections for the County and provided other services, such as the registration of voters. She said that while the Election Supervisors do provide services to the municipalities, it was a constitutional office, independent, elected office that was not required to provide services to municipalities. Mayor Reynolds said the statute clearly stated that the Supervisor of Elections could not require the Town to use her services. He thought the Supervisor was supposed to furnish her own insurance to cover her own negligence. Ms. Dalton said Mr. Hart had pointed out language in Paragraph 2.7 which she read: “The extent permitted by Section 768.2819 Florida Statutes, Town shall indemnify...” etc, etc. He had told her that

language protected the Town. Ms. Dalton felt the agreement created an ambiguity, and could possibly waive defenses the Town might otherwise have by allowing the negligence language to be in the contract. Mr. Hart's feeling was that the Florida Statute she had quoted from was clear in that a government body couldn't sue another government body, and that her concern was a moot issue because of it. Ms. Dalton said if it were a moot issue, it should be removed from the Supervisor of Election's proposed agreement.

Mayor Reynolds felt the Council had no choice but to go along with the proposed agreement as-is, with the understanding that the Town could opt out at any time. Ms. Dalton confirmed that that was the representation made to her, and confirmed by the other municipalities. She noted that, if the Town opted out, it would have to hire someone or run the election itself.

Vice Mayor Massucco thought the statute cited by Ms. Dalton seemed very simplistic. Ms. Dalton said that had been her point, but the Supervisor's attorney, Mr. Hart, had indicated that it was a non-negotiable point. She reiterated that the other municipalities had experienced that same assurance that the Supervisor would not remove that language from the agreement. Vice Mayor Massucco expressed some dismay that the other municipalities had "caved in" on the agreement.

Mayor Reynolds said it was a "take-it-or-leave-it" scenario. Ms. Dalton didn't know that the Supervisor of Elections would put it that way, as she did want to have an amicable relationship with the municipalities, but was unwilling to modify the agreement.

Vice Mayor Massucco asked what constituted a liability for "simple mistakes", and wondered how extensive they could be. Ms. Dalton said Mr. Hart had given the example as follows: If the names on a ballot were not placed alphabetically as they normally would be, and the person whose name was supposed to have been first on the ballot lost the election then sued and won, the Town would be liable. Vice Mayor Massucco said he didn't like that, and that the agreement did not sit well with him at all.

Councilman Shenko said he was familiar with the Supervisor's agreement because she had entered into that type of agreement with the Fire District for years, and all those agreements had been "take it or leave it" as she was under no legal obligation to run the elections.

**MOTION:** Councilman Shenko made a motion to accept the new agreement with the Supervisor of Elections, as it had a termination provision in it and the Town could terminate at any time, and the Town could run its own elections although he thought that would be more costly. He added that he felt the advice given my Attorney Dalton had been absolutely correct. Mayor Reynolds seconded the motion.

Councilman Meador said that, per the agreement, it wasn't known if it would be more costly for the Town to run its own elections, because the Supervisor of Elections would not be required to give an up-front cost for running an election for the Town. He thought the Town would not know how much her services would cost until after an election, which Ms. Dalton confirmed. He felt the agreement was tantamount to handing the Supervisor a blank check. Ms. Dalton said that had been her biggest concern of the three areas which she had brought to the attention of the Council. She said it was "cold comfort" that the language was such that the Town might challenge "expenses incurred", but that she could charge a percentage for overhead, which she said would be difficult for the Town to effectively challenge. Councilman Meador asked if it provided the Town with the ability to ask for an accounting of the expenses, and Ms. Dalton said it did not. However, she construed the word "reimbursement" to mean that the Town would be allowed to audit and get an accounting of the expenses. She said she was not comfortable with the provision, but restated that it was non-negotiable.

Mayor Reynolds said he agreed with the comments made by Councilman Shenko. He said the agreement was a "back up program" that the Town didn't have to use, but that the Supervisor ran an established business, knew how to do a good job, and the Town needed something. He felt the Council should accept the agreement, but felt the Council could explore the possibility of the Town running its own elections as well, or finding another independent group to run the elections.

Councilman Meador asked if there was a date by which the agreement had to be signed. Ms. Dalton said there was no "drop dead" date, but assumed it would have to be done before the next election. This remark drew some laughter from the Councilmen.

Mayor Reynolds said they would not be putting themselves on the line for anything by renewing the agreement at this time. Ms. Dalton said the Council was not obligated to use the Supervisor's services. Mayor Reynolds said the Council would not hurt anything by renewing the agreement, but if they rejected it outright, it would obligate the Town to run its own elections. She suggested that the Town work in tandem with Cape Coral to try to get the agreement changed, but held slim hope for success.

Councilman Meador preferred that the Town explore that option with Cape Coral, as there was no election coming up soon. He understood that the Supervisor had no intention of negotiating with anyone, because it would open the door to everyone wanting those changes. Ms. Dalton had suggested that the form be changed so that all the municipalities could agree to it, but the Supervisor's attorney had indicated that that was not a possibility.

Councilman Shenko joked that the Town should just not tell any of the other municipalities.

Vice Mayor Massucco, citing Florida Statute 768.28.19, read: “Such a contract must contain any provision that requires one party to indemnify or insure the other party for the other party’s negligence, or to assume any liability for the other party’s negligence.” He felt that was a “golden” argument. Ms. Dalton said her e-mail to the Supervisor’s attorney had included that language from the statute. His response was that the language of the agreement gave “wiggle room” to the Town. Ms. Dalton had responded to him that it created ambiguity.

Mayor Reynolds felt they were going in circles, and spoke in favor of the renewal with the understanding that they could back out of it. He then asked for a vote on Vice Mayor Massucco’s motion. Vice Mayor Massucco said he had not made the motion. Mayor Reynolds replied that he had said “Bill Shenko did” and that he had seconded it.

**VOTE:** The motion failed 4 – 1, with Mayor Reynolds in favor of the motion.

Councilman Shenko indicated that he had voted against his own motion, and Mayor Reynolds told him that if he were going to do that in the future, it would be proper to withdraw the motion rather than vote against it. Councilman Shenko said he had forgotten that it had been his motion, and had thought it had been Vice Mayor Massucco’s motion.

**MOTION:** Councilman Shenko moved to have Council direct the Town Attorney to revisit the issue with Mr. Hart, to let him know there had been a Council vote on it, and that the Council had not been comfortable with the indemnity language. Mayor Reynolds seconded the motion.

Ms. Dalton asked if the Council wished to include that she discuss the “blank check” aspect of the agreement. Councilman Shenko said it had been in Ms. Harrington’s agreements for years, and while one might try to get it changed, he doubted it would be as there were many variables in each election. He also pointed out that the Supervisor of Elections had a ten-year track record running the Town’s elections and that she had always done an excellent job.

Councilman Boback deferred to Councilman Meador’s earlier opinion that the Town should wait to see what Cape Coral did with regard to the agreement, which he felt might give the Town a better bargaining chip.

Mayor Reynolds thought Councilman Shenko’s motion had included waiting to see what Cape Coral decided. Councilman Shenko said he had not made a motion, and asked someone if he had made the motion. He then said he

would if it was desired that he do so. He said he wouldn't put a time limit on when Ms. Dalton should bring the issue back before Council, and thought she could wait to see what Cape Coral did. He felt they had more elections than Ft. Myers Beach, and believed they would make their decision quickly. Ms. Dalton didn't believe Cape Coral would make their decision any more quickly than the Town.

Mayor Reynolds asked Councilman Shenko if he had made a motion. Councilman Shenko said if he had made a motion, he wanted to withdraw it at this time.

### **MOTION WITHDRAWN**

Mayor Reynolds asked Councilman Meadors (sic) to make a motion in a different direction in which had had wanted to go. Councilman Meador said he was not in favor of what Councilman Shenko had proposed, and would not make a motion. He said that in the last contract the Town had had with the Elections Supervisor, she had provided an estimate of costs, and no obligation had been incurred by the Town until it accepted the estimate. Councilman Meador said in the new agreement, there would be no estimate required before the fact, and that only a bill for expenses incurred would be submitted after the fact, and the Town would be liable to pay it.

Ms. Dalton expressed puzzlement over the shift in policy, from providing an estimate before the fact, to submitting a bill after the fact.

Mayor Reynolds had thought Councilman Meador's suggestion that Ms. Dalton proceed to work with Cape Coral to see if they wanted to join the Town in attempting to get the agreement renegotiated, and thought he would want to make a motion to that effect.

Councilman Meador asked if it was necessary to make a motion. Ms. Dalton and several Council members believed consensus was all that was necessary. Mayor Reynolds said he thought that would work faster, as he was "looking for speed".

Councilman Boback thanked the Town Attorney for doing the research with regard to the new agreement and the other municipalities considering it.

Mayor Reynolds said there was consensus. Mr. Gucciardo asked if the item was continued to a date uncertain. Mayor Reynolds said the direction to Ms. Dalton was continue researching the issue without a date certain for a report on her findings. Ms. Dalton said if she was being directed to work in conjunction with the Cape Coral Attorney's office, the date would be determined by when Cape Coral decided on the matter.

**D. Town Council's Selection of Areas of Responsibilities and Their Off-Island Committee Appointments**

Mr. Gucciardo suggested that the item be continued because of the late hour, but said the MPO appointment had to be taken care of at this time. He said the MPO had the only time-critical issue coming up with the Town, that being the summit on the Transit Authority on December 14<sup>th</sup>.

Mayor Reynolds said former Mayor Van Duzer had been on the MPO while in office, and until the position was assigned, Mayor Reynolds wanted to attend the summit. He added that he wanted the rest of the appointments not brought back on the agenda until the second Council meeting in January. Ms. Dalton said there was an earlier, regular MPO meeting on December 7<sup>th</sup> as well, at 9:00 AM. Mr. Gucciardo pointed out that the December 14<sup>th</sup> summit would take place at the Harborside Convention Center beginning at 8 AM. Ms. Dalton said that Mayor Humphrey of Ft. Myers had indicated that it was critical that someone from Ft. Myers Beach Town Council be in attendance at the December 7<sup>th</sup> meeting.

It was determined that Mayor Reynolds would be considered temporary until the meeting in January when all committee appointments would be decided. Councilman Shenko asked that Mr. Gucciardo let the Council know if there were any other time-sensitive meetings to take place before the appointments were made. Mr. Gucciardo confirmed he would do so. Councilman Boback thought the appointments were something the Council could discuss in a workshop, which he hoped they would have soon. Mayor Reynolds said it was holiday season, and that he would rather not schedule the workshop now. He hoped the workshop could be scheduled in January.

**MOTION:** Councilman Boback made a motion to temporarily appoint Mayor Reynolds as the Town representative in the MPO. Vice Mayor Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

**E. Recommendations from Public Safety Task Force**

Mr. Gucciardo offered to give some background. Mayor Reynolds asked him to make his comments brief, as the Council members had all read the recommendations.

Mr. Gucciardo said the recommendations had been condensed and brought forward quickly because one of the recommendations was time-sensitive – the PSTF asked that Council allow them to move forward with a Spring Hurricane Preparedness Seminar. He said the other recommendations had been included to give Council a feel for how the PSTF worked, and what their approach was. He said they considered themselves to be directed by the Council, and some of the things in the recommendation were a result of tasks they had been directed

by the former Council to pursue. He said the PSTF members wanted to get an idea as to whether the new Council felt they were on the right track in terms of priorities. He asked the Council to make a decision about the Spring Hurricane Preparedness Seminar, but left it up to Council with regard to consideration of the other recommendations before them.

Mayor Reynolds said the original purpose for the PSTF was to address bike and pedestrian safety issues, but it had gone beyond that scope and it concerned him. He said there was no expertise on that committee. He said they were going to be working on the Emergency Response Team in conjunction with the Fire Department, and didn't believe the PSTF needed to be involved in that. He said that should not be pursued, but a volunteer group that would serve to help individuals would be okay.

Regarding Item 3, Mayor Reynolds did not believe the Town should sponsor a Spring Hurricane Preparedness Seminar, as he wasn't sure that would fall under the auspices of the PSTF. He believed the Council was the group that should address that issue.

Regarding Item 2, Mayor Reynolds didn't believe the PSTF should bring possible regulations forward for the Council's consideration, which he felt either the Council or some member of Town Staff should do. He said Segways were a questionable thing to have in the Town because of the narrow width of the sidewalks. He said the PSTF could bring recommendations to Council, but not suggested regulations about the Segway.

Mayor Reynolds said the recommendation to look into better street cleaning of Estero Boulevard was improper, as he felt a volunteer group should not be contacting the County. Mr. Gucciardo started to explain something, but Mayor Reynolds told him to wait until he was through. He felt it was a Staff function to deal with another government body.

Mr. Gucciardo apologized if the memo had been misleading or confusing. Mayor Reynolds told him to respond only to what was before them. Mr. Gucciardo pointed out that the recommendation regarding the cleaning of Estero Boulevard was that Council direct Staff to look into the matter. He said the PSTF was not looking to do any of the actions in their recommendations. He said they had responded to tasks that had been assigned to them by the former Council, and their recommendations were the response to the Council now. Mayor Reynolds agreed with that.

Mayor Reynolds said he had no problem with the recommendation having to do with pedestrian safety. He asked who took the minutes for the PSTF, as he had never seen any. Mr. Gucciardo said Jo List provided the same service to the PSTF as to the Council and other volunteer groups. Mayor Reynolds asked if the Council members could get copies of the minutes from now on.

Mr. Gucciardo said yes. Mayor Reynolds thought the Council should get copies of the minutes from every committee for the next several months, unless an individual Council member didn't want them. He thought the minutes would serve as an orientation to the committees for the Councilmen, especially the three new Council men.

Councilman Meador thought that Mr. Gucciardo had asked for guidance with regard to the Spring Hurricane Preparedness Seminar only. Mr. Gucciardo concurred as it was the only one that was time-critical. Councilman Meador disagreed with Mayor Reynolds, as he believed the Town should have as many hurricane seminars as possible before hurricane season. Mayor Reynolds said he believed that, too, and that he had not said otherwise. He explained that he wanted the Town Staff to organize it, not the PSTF.

Councilman Boback believed the PSTF had asked for Council to direct Staff to organize the seminar. Mayor Reynolds said he was with Councilman Meador regarding his sentiment about hurricane seminars.

Councilman Meador told Mr. Gucciardo that he was in support of the recommendation regarding the Spring Hurricane Preparedness Seminar.

Ms. Dalton asked, in reference to Mayor Reynolds' direction that the minutes from all the various committees be supplied to the Council members as soon as they were available for distribution, if he meant that they should get copies of the approved minutes, or the minutes that were up for approval at each committee's subsequent meeting. Mayor Reynolds said the approved minutes should be distributed to Council.

Councilman Shenko agreed with Councilman Meador in that he believed the Town needed to conduct as many hurricane preparedness seminars as possible, and that the Town needed to present a good hurricane plan at those seminars. Councilman Shenko felt it would be more informative if a member of the PSTF were there to present to Council the background for their recommendations. He noted that it was ten o'clock at night, and that Council was lucky to have volunteers on the committees who would come to late Council meetings. He felt a representative from the task force coming to give background information on the other recommendations before Council would be very helpful in Council's considerations. Regarding the hurricane seminar recommendation, he agreed Council should move forward in the development of a hurricane plan and make it known to the public as quickly as possible.

Mayor Reynolds hoped they would take up that issue as soon as possible after the holidays. Mr. Gucciardo said the Staff hoped to schedule a retreat/workshop soon with the Council so that, among other things, the Staff could present more context on all the volunteer committees. He said the only

reason the seminar recommendation had been brought forward for immediate consideration was because of the time factor.

Mayor Reynolds said the word “retreat” was a bad word, and didn’t want to hide meetings and retreats from the local residents, and thought a retreat should be held in Council chambers. He wanted the public to be able to listen to their discussions. He felt going to retreats made it appear that there was something to hide, and that the sitting Council had nothing to hide. The other Council members supported the Mayor in the idea of having retreats in Council chambers, open to the public.

Vice Mayor Massucco said the memo from Mr. Gucciardo contained four items for which the PSTF was asking for Council’s direction. He commented on each item:

Item 1 – Vice Mayor Massucco said it mentioned signs, and felt too much signage on Estero Boulevard – saturation signage – would actually create a loss of effectiveness.

Mr. Gucciardo said the suggestions made by the PSTF had come from the Lee County Bicycle and Pedestrian Advisory Committee, particularly Dan Moser. He said did try to get people with some level of expertise to address and interact with the committees. He explained in detail what type of signage had been suggested by Mr. Moser – an arrow attached to stop signs at the Estero end of side streets that pointed to the stop bar painted on the road, so as to stop a vehicle before it entered the pedestrian/bike path. Vice Mayor Massucco said the bars were almost superfluous, as there was so much foliage at the end of many of the streets than a driver would have to pull out further in order to see.

Item 2 – Vice Mayor Massucco said he was disappointed in their recommendation, but accepted their position.

Item 3 – Vice Mayor Massucco felt this was the most appropriate recommendation, having to do with moving forward with the Spring Hurricane Preparedness Seminar. He said “The dissemination of information is the responsibility of Council, especially in times of stress. This recommendation will go a long way in fulfilling that responsibility.” He said he was in favor of the recommendation.

Item 4 – Vice Mayor Massucco said he would be interested in establishing a CERT organization in the Town, but would need a lot more information about it. He felt it paralleled the current DAC, and wondered if they could work together.

Mr. Gucciardo said they wouldn’t necessarily together. He said the PSTF would not take on items or initiatives unless the Council directed them to do

so. Regarding Item 4, he said it had been brought to the PSTF by Mike Becker, the assistant fire chief. He said the PSTF members didn't want to pursue until or unless they had direction from the Council to do so.

Item 5 – With regard to sidewalk sweeping, Vice Mayor Massucco said, “Of course – by all means. Let's do it two times a day.”

Councilman Boback said he had spoken to Mr. Gucciardo about having a hurricane seminar in mid-March for the snowbirds. Because of his experiences with snowbirds, he felt he had a good idea as to what should and shouldn't be included in such a seminar. He felt the Town would be remiss not to attempt to give the snowbirds some direction. Reading from the PSTF's recommendations, Councilman Boback said the task force had simply asked Council to direct Staff to organize a spring hurricane seminar, and had not, as Mayor Reynolds had said earlier, suggested that they themselves organize and oversee the seminar. Councilman Boback believed such a seminar should be held in mid-March. He felt another one should be held in mid-May for the residents who plan to stay through hurricane season.

Mr. Gucciardo cautioned the Council that it may be too late to organize a seminar to take place in mid-March, which was why the PSTF had rushed the recommendation to the Council. He said the Town would need to coordinate with the media and emergency operations, and he could not speak on their behalf in terms of their availability, and was not able to pursue that until he was given direction from Council to do so. He said he would make every attempt to secure their participation in a mid-March seminar.

Councilman Boback said even if the media and emergency operations people couldn't participate, that any information the Town could make available to the snowbirds in mid-March would be helpful.

**F. Update on Lake Okeechobee (verbal)**

Mr. Gucciardo said the County was moving forward with an independent, nonprofit legal consulting group with regards to the water releases. Ms. Dalton said she had been in contact with the Sanibel city attorney, and he had said that if the County moved forward to litigation, Sanibel would definitely join forces with the County; if the County did not, Sanibel would decide what to do next. She said David Owen, the County's attorney, was going to report back to the Board of County Commissioners on December 20<sup>th</sup> regarding the various legal issues, and had requested that all the municipal attorneys stay in contact with him.

**G. Update – On-Island Trolleys (verbal)**

Mr. Gucciardo said he received an e-mail from Steve Meyers of LeeTran on December 1<sup>st</sup>, and another on this day. Mr. Gucciardo said the County would provide three trolleys on-Island, which LeeTran considered the core level of

service in season, and the Town would subsidize two additional trolleys, for a total of five on-Island trolleys in service on the Island during season – January 19<sup>th</sup> through April 22<sup>nd</sup>. Each trolley will run 9 hours per day, which Mr. Gucciardo assumed meant 9:00 AM to 10:00 PM. He said the total cost to the Town was estimated to be \$173,000. Mr. Gucciardo said when he had the above information confirmed by LeeTran, he will request an inter-local agreement that would come before the Council. The trolleys will be free-of-charge for the riders.

Vice Mayor Massucco asked if holiday service was included, and Mr. Gucciardo said it was not.

Mr. Gucciardo asked if Staff could sign the inter-local agreement once all the figures he had just given to Council were confirmed. Mayor Reynolds told Mr. Gucciardo to get a copy of the agreement immediately to the Council.

Councilman Shenko asked how much the two on-Island trolleys in service had cost last year. Mr. Gucciardo said LeeTran had given him an hourly cost of \$71 as compared to \$92 per hour for the trolleys LeeTran would provide. He knew the \$71 rate was similar to the rate charged over the past few years. Councilman Shenko asked why the LeeTran-financed trolleys were \$92 per hour, and Mr. Gucciardo said it was one of the questions he had for LeeTran.

Councilman Shenko was hesitant to authorize the signing of any inter-local agreement without knowing the dollar amounts, but it was important to ensure the trolleys were secured.

Mayor Reynolds pointed out that there was very little time left to complete the negotiations with LeeTran.

Councilman Boback and Mayor Reynolds both wanted clarification regarding no holiday service, in terms of which actual days would be affected. Mr. Gucciardo was directed to get that information. Vice Mayor Rynearson believed there were six holidays within the January 19<sup>th</sup> through April 22<sup>nd</sup> time period. Councilman Shenko asked if the core level of service would be provided on holidays, and Mr. Gucciardo said that had always been a problem as LeeTran always shut down on holidays.

Mayor Reynolds felt that at some point in the future, Council should discuss the lack of holiday service to see if it could be remedied. Mr. Gucciardo said that Mr. Meyers of LeeTran needed to know fairly soon whether the Town wanted the 5 trolleys or not. Mr. Gucciardo said he would bring the inter-local agreement back to Council before anything was finalized. Councilman Shenko opined that if there was a time constraint, it could be continued to the Land Use meeting, and advertised.

**H. Town Manager's Contract Termination** (See the first issue under this agenda item).

**I. New Items**

Mayor Reynolds said he had "New Items" permanently added to the Council agendas, and explained that the Council didn't have to act on new items. He said if the item was worthy of consideration, it would come back as "Old Items" for further discussion, or as a particular agenda item. He felt this would give the Council the opportunity at every meeting to bring up any items about which they felt it would be important to discuss. He didn't feel it would be proper to vote on a New Item without advance notice, although he had no regrets about what Council had last week's meeting because things had to get done in a timely fashion with the special attorney.

No new items were brought up.

**J. Old Items – Follow-up**

No old items were brought up.

**VII. COUNCIL MEMBER ITEMS AND REPORTS**

Vice Mayor Massucco said that, while he didn't have authentication, on December 7<sup>th</sup> at the VFW Post on Pine Ridge Road, there would be a commemoration of Pearl Harbor. He said the ceremony was always very solemn, and would begin at 11:00 AM. He said there would be lunch served and entertainment following the ceremony.

The rest of the Councilmen deferred due to the late hour.

**VIII. TOWN MANAGER'S ITEMS**

Acting Town Manager John Gucciardo had no items.

**IX. TOWN ATTORNEY'S ITEMS – Selection of Date for Executive Session**

Ms. Dalton said an executive session needed to be convened regarding the Utelco litigation prior to the mediation scheduled for December 16<sup>th</sup>. She said that on December 12<sup>th</sup>, Judge Rossman would renew the case management conference, which he had convened on two former occasions for the purpose of getting the language and order settled in terms of the partial summary judgement that he entered last May in the Town's favor. Ms. Dalton requested that Council set a date for the executive session to fall some time between December 12<sup>th</sup> and the following Friday, December 16<sup>th</sup>. She said if they wished to schedule an evening session, the outside counsel Mr. Berandt was willing to come at 6:00 or 6:30 PM. She said if the session were to be in the day, it could not be an add-on to the Land Use Council meeting.

After some discussion, Mayor Reynolds directed Ms. Dalton to set up the session sometime before December 15<sup>th</sup>, to let Mr. Gucciardo know when it

was set for, and that Mr. Gucciardo would get the information to the Council members. All the Councilmen expressed their preference for an evening session. Mayor Reynolds suggested that if any of the Council members had a time or day that would be very difficult, that they should communicate that to Ms. Dalton.

**X. PUBLIC COMMENT**

Joellyn Reckwerdt, Chair of the PSTF, came forward. She thanked Councilman Boback and Vice Mayor Massucco for recognizing the need for an early hurricane seminar. Mayor Reynolds felt that the entire Council agreed with it. Regarding the CERT program, Ms. Reckwerdt said the FMB Fire Department had brought the idea to the PSTF, and that the task force had simply forwarded to Council for consideration. She explained some of the details of the program, and pointed out that it would not be limited to task force members only, as the number of people who would be trained and certified in the program would be approximately 60. Ms. Reckwerdt explained to Council that the PSTF was there simply to gather information on items as directed by Council, as well as passing on any information or complaint communicated to the task force members.

Pat DeVincent of 160 Bahia Via came forward. He apologized to the Council for two interruptions that had been unnecessary, and particularly apologized to Councilman Boback for having interrupted him, and stressed his apology to Mayor Reynolds, and said it would never happen again.

Pat Smith of Fairview Boulevard came forward. Regarding the Supervisor of Elections contract, Ms. Smith hoped the Council would quickly ask Staff to determine what alternatives were available and projected costs of same, as the Town needed to be prepared well in advance of the next elections. Ms. Smith said she was amazed at the amount of money per person the Town had furnished to the IAF for some of their events. She hoped the Council would do whatever was necessary or appropriate, with regard to Times Square assessments, to direct the Town to begin checking into whether those assessment billings had been made or not, and to ensure they were made appropriately and in a timely fashion from now on. She said it appeared that the billing had not occurred last year, or that they hadn't been paid, because only \$75 had been collected for the entire year – for garbage and maintenance reimbursement assessments.

Theresa Schober, the co-director of the Mound House, came forward. She thanked the Mayor and Vice Mayor for having attended the inaugural event of the Friends of the Mound House organization. She said it had been triggered by two Mound House Advisory Board members – Barbara Hill and Ceel Spuhler. She said there had been about 80 guests at the event, most of whom had never visited the Mound House before. She said there would a few Mound House items on the Council agenda soon. She said she would bring

forward bids for the Shell Mound Exhibit at their December 19<sup>th</sup> meeting, and would bring forward a recommendation from CELCAB regarding landscape architects at their January 9<sup>th</sup> meeting. Ms. Schober invited Councilmen Boback, Shenko and Meador to visit the property sometime within the next few weeks. She said she would be happy to make herself available at their convenience.

Mayor Reynolds closed Public Comment at this time.

Mayor Reynolds read a prepared statement, and hoped those listening would get the meaning of it and would recognize it:

“If you can dream and not make dreams your master;  
If you can think and not make false your aim;  
If you can meet with triumph and disaster,  
And treat those imposters just the same;  
If you can bear to hear the truth you’ve spoken,  
Twisted by knaves to make a trap for fools,  
Or watch the things you gave your life to broken  
And stood, and build up with worn out tools...”

Mayor Reynolds stopped reading, and commented that he knew that most of those present knew where that had come from, and suggested that everyone think about it.

## **XI. ADJOURNMENT**

**MOTION:** Vice Mayor Massucco made a motion to adjourn. Councilman Shenko seconded the motion.

No vote was taken.

Mayor Reynolds adjourned the meeting. No time was given.

Respectfully submitted,

Jo List  
Transcribing Secretary