

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 1, 2004
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

- I. EXECUTIVE SESSION:** The Executive Session was called to order at 5:00 P.M.
- II. CALL TO ORDER:** The regular meeting of the Fort Myers Beach Town Council was called to order on Monday, November 1, 2004 at 6:30 P.M. by Mayor Bill Thomas.

Members present at the meeting: Mayor Bill Thomas, Vice Mayor Garr Reynolds, Councilman Howard Rynearson, Councilman Don Massucco, Councilman Bill Van Duzer.

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George, Town Attorney Richard Roosa, Deputy Town Manager John Gucciardo, Community Development Director Jerry Murphy

- III. PLEDGE OF ALLEGIANCE:** All those present assembled and recited the Pledge of Allegiance.

IV. INVOCATION – DEACON SKIP KIESEL, CHURCH OF THE ASCENSION

Mayor Thomas announced that Item VIII.E of the Administrative Agenda, Discussion of Bay Beach Golf Course, has been withdrawn from the agenda and will not be acted upon at this meeting.

V. PROCLAMATIONS – HONORING ALL WHO HAVE HELPED IN THE RECOVERY EFFORT FROM HURRICANE CHARLEY:

Mayor Thomas expressed appreciation for the large attendance and also to those who volunteered their services in the recovery efforts and who are being honored by receiving proclamations. He said there were over 60 proclamations, and he proceeded to read the first one in its entirety and thereafter only read the parts that concerned each individual. These individuals received certificates and had photographs taken individually and as a group. Mayor Thomas again expressed his appreciation to everyone for their efforts on behalf of FMB. He asked that the names of any individuals who had been overlooked be given to Town Hall for recognition at a later time. Mr. Massucco pointed out that he had not heard Publix Supermarket called, and Vice Mayor Reynolds added that the Lunch Box had participated as well.

- VI. PUBLIC COMMENT:** Mayor Thomas again announced that there would be no Council action on Agenda Item VIII.E at this meeting, but invited anyone present who wished to speak on the subject to do so rather than wait until the end of the meeting. He explained that there was a 3-minute limit on each speaker.

Mr. Lauder of 4531 Bay Beach Lane came forward and said he thanked and congratulated everyone on the excellent cleanup effort. Coming from England 4 weeks ago, he said they were awestruck by the enormous effort that went into it. With respect to the golf course, he expressed concern about a letter in the paper and said he did not believe Mr. Huber's comments represent those of the EBIA. He said he is prepared to go to considerable time and effort to fight this particular suggestion. He requested the opportunity to obtain the opinion of a majority of the EBIA on this subject for presentation before Council at a future meeting.

Gladys Silva of 4531 Bay Beach Lane came forward and said that she agreed with Mr. Lauder and that he had covered most of her comments. She asked why this was taken off the

agenda with short notice. Mayor Thomas explained that Public Comment does not include questions and answers, although he agreed to allow Councilman Van Duzer to reply to this after everyone has spoken. She also asked whether there was any fact to the rumors that the Town is looking into purchase of the golf course.

Mayor Thomas asked Town Attorney Richard Roosa for an opinion as to whether Council members are permitted to answer questions from the public. Mr. Roosa said this would be up to the Chair and the Council members, after all of the public who wish to do so have made their comments.

Dan Hughes, 270 Randy Lane, came forward and thanked Council for appointing him to CELCAB. He expressed appreciation to Charles Hester for withdrawing his name. He said he is here as a member of CELCAB in support of Administrative Agenda Item VIII.A which will be presented by Mound House Director Theresa Schober, and he urged Council approval of the CELCAB recommendations made at their most recent meeting. He said he is also speaking in support of the request from the Island Arts Foundation that will also be addressed later under Administrative Agenda Item VIII.B. He added that this evening was a delightful distinction in contrast to other recent meetings. He singled out Ceel Spuhler, who he said epitomizes the spirit of those who serve on these committees. He also quoted from a recent newspaper article concerning arts and historic preservation, asking Council to support events that continue to perpetuate what the article called "quirky, creative charm."

Ceel Spuhler of 7150 Estero Blvd. #607 came forward as spokesperson for CELCAB at the request of Chair Fran Myers to ask approval of the rest room project at the Mound House. She said the committee all heartily recommend approval and ask for expenditure of the funds that have already been allocated in capital expenditures for the Mound House. She explained that rest room facilities have been an issue for some time because the rest rooms in the house are no longer operable, and those in the apartment are not capable of handling the public. Ms. Spuhler explained that the plan includes handicap access as required by law, and also considers the historical aspects of the building where they will be located. She added that there are many future projects planned for the Mound House, and that the vote to recommend Council approval of the rest room project was unanimous at CELCAB. She invited everyone to the Grand Opening on December 3rd and 4th.

Harold Huber, 4263 Bay Beach Lane, came forward and referred to earlier comments on his letter concerning the golf course and EBIA. He said that if he had not been involved in EBIA he would not have known that they were looking for offers on the golf course, and what he did was personal and had nothing to do with EBIA whatsoever. He said that while he put a disclaimer in the paper that he was doing this as an individual and not seeking a commission, the individual called him from Canada and advised that the price was \$3.6 million, saying he hoped Mr. Huber could sell his golf course, which to Mr. Huber indicated that it was for sale. He recalled some articles that he submitted in the paper in the past and apologized if he had hurt anyone's feelings, adding that he asked Carl Conley and the *Sand Paper* to run a 2-page spread in which he is attempting to "build the love on this Island that we had years ago." He made a pledge to the Town and everyone present that he will not say a bad thing about anybody anymore.

Dick Smith, 4183 Bay Beach Lane, came forward to speak about the golf course. He said Harold Huber is a good man who has done many good things for the community. Mr. Smith expressed the opinion that this is not a good proposal and would have a negative effect on the value of the property owners. He noted that it would also have a negative effect on the entire Island because with the loss of this golf course there is no land available for another. He also asked that Council check into restrictive covenants and other land records and determine whether or not the land can be used for anything other than a golf course, which many people feel was represented to them.

John Kelly of Top Dogg's Restaurant, 1028 Estero Blvd., came forward and thanked whoever was involved in removing piles of debris from in front of his business. He said an informal business group is in the process of being formed. He explained that he is a non-resident business owner who has been in the area since July and is unfamiliar with Season. He asked if efforts are being made to advertise in Northern papers to alleviate fears about hurricane damage. He also described the new business organization as being open to everyone on the Beach.

Mark List of 240 Sterling came forward and said he is a member of the Orpheus Players, a local theatrical group. He recalled the production that took place at Bowditch Point last year and spoke in support of the Island Arts Foundation's request, Item VIII.B. He explained that there is a coalition of FMB artists that has been formed and registered as a non-profit organization in Florida. He spoke of the importance of the arts to the community.

Ken DiBiagio of 1160 Estero Blvd. and Director of Operations for the hotels on the north end of the Beach came forward. He reported attending a meeting of business owners last week at which he was appointed chair of the committee of which Mr. Kelly spoke. He also offered his congratulations for the efforts in cleaning up hurricane debris, which he described as phenomenal. He said this was his first experience with a hurricane and is happy to be here. He described the appearance Estero Blvd. and how this influences visitors, saying that the group, which as yet has no name or mission statement, intends to be positive and proactive to attempt to generate more business while at the same time preserving the quality of life on the Island. He anticipates coming before Council for unspecified help in the future and said the goal is to make it good for everyone.

Jo List of 240 Sterling Ave. came forward and said that in spite of differences, it was impressive at how quickly recovery efforts came together after the storm. She also spoke on behalf of artists and cultural programs, and in support of the IAF proposal.

Mayor Thomas gave permission to Council to respond to questions specific to the Bay Beach Golf Course because that had been withdrawn from the agenda.

Mr. Massucco noted that the people in attendance from Bay Beach were disappointed to learn that the item had been withdrawn without prior notice. He expressed the opinion that this was not proper and that some information should be provided.

Mr. Van Duzer explained that this item had been put on the agenda at Mr. Huber's request, and he withdrew it at Mr. Huber's request as well. He said he was disappointed that it was withdrawn because he felt that the subject needed to be openly discussed by the residents and property owners, emphasizing that it was put on the agenda by himself and that Ms. Segal-George had nothing to do with it. He said he was disappointed in the reaction to its being put on the agenda, he did not write the articles, and he had no feeling one way or the other, but he thought this was a very important possible event on FMB and it was important that it be discussed, without politics, no matter what the outcome. He explained that a possible future purchase would have to be discussed by Council at an open meeting before any action could be taken. If this is a future possibility it would have to be done under the guidelines established for that property and its use. He said he has no opinion whether this would be a good idea or not, but that he felt it was important that it be discussed in an open, non-political forum.

Ms. Segal-George informed the public that the Town has been working to get its agenda on line, and this is the first one that is actually on the Website. She said she had provided Council a memo with several documents intended to provide information for discussion and explained that Council cannot purchase any property unless they get two appraisals, and they cannot purchase property for more than appraisals state, so Council would first have to give approval, followed by a very lengthy and complicated process. She said the subject had been brought to her under the question as to whether it is possible for any operator to maintain an economically viable golf course at that location, and the beginning premise was that if a golf course cannot be operated on the property, are there other options. She said there was no intent to take a viable golf course away. She offered to provide the documents to anyone who wished to copy them, saying that they would provide answers to most of the questions that had been asked.

Vice Mayor Reynolds noted that the Town has not been contacted by the seller. He added that he did not see any indication of politics.

VII. CONSENT AGENDA:

- A. APPROVAL OF MINUTES:**
- 1. SEPTEMBER 27, 2004:**
 - 2. OCTOBER 4, 2004:**
 - 3. OCTOBER 11, 2004:**

MOTION: Motion was made by Mr. Ryneerson and seconded by Mr. Van Duzer to approve the minutes of September 27, 2004, October 4, 2004 and October 11, 2004.

DISCUSSION: Vice Mayor Reynolds asked to withdraw the minutes of September 27, 2004. He noted that in the last 2 lines of Page 5 it should have been noted that the question he asked Ms. Calabrese was confirmed.

VOTE: Motion to approve the minutes with the above correction passed by unanimous vote, 5-0.

- B. FINANCIALS:**
- 1. MONTH OF JULY 2004:**
 - 2. MONTH OF AUGUST 2004:**
 - 3. MONTH OF SEPTEMBER 2004:**

MOTION: Motion was made by Mr. Ryneerson and seconded by Mr. Van Duzer to approve the Financials for the months of July, August and September 2004.

DISCUSSION: Vice Mayor Reynolds asked that these be provided within a month after the end of the reporting period. He acknowledged that there were reasons for these to be delayed.

VOTE: Motion was passed by unanimous vote, 5-0.

C. INTERLOCAL AGREEMENT FOR STATE ATTORNEY SERVICES:

MOTION: Motion was made by Mr. Ryneerson and seconded by Mr. Reynolds to approve the Interlocal Agreement for State Attorney Services.

VOTE: Motion was passed by unanimous vot, 5-0.

D. GARDEN CLUB PROJECTS:

MOTION: Motion was made by Mr. Ryneerson and seconded by Mr. Reynolds to approve the Garden Club Projects.

DISCUSSION: Mr. Ryneerson said he was strongly in favor of this project and that it would do a lot for the Beach. He expects this will be a good partnership.

VOTE: Motion was passed by unanimous vote, 5-0.

VIII. ADMINISTRATIVE AGENDA:

- A. MOUND HOUSE REQUESTS – THERESA SCHOBER**
- 1. GARAGE RESTORATION:**
 - 2. DISPOSITION OF CERTAIN MOUND HOUSE CONTENTS:**

Ms. Segal-George explained that the items were on the agenda, and Ms. Schober was available for a presentation if desired.

MOTION: Motion was made by Mr. Rynearson and seconded by Mr. Van Duzer to approve these items.

DISCUSSION: Mr. Massucco said he would like to hear some comments. Vice Mayor Reynolds also wanted to ask Ms. Schober and Ms. Segal-George some questions. He referred to the 2nd page where redesign of the garage and addition of restrooms is estimated at \$96,330.00 with an additional \$6,300.00 for architectural fees, or a total of \$102,630.00. He asked how many bids were obtained. Ms. Schober explained that her request is to go to bid for this project and that the figures were based on the architect's cost estimate. She will be obtaining 3 bids and bring those back to Council. She recalled appearing at Council in June with the proposal to rehabilitate the garage at the Mound House for this purpose. She explained the reasons why existing facilities on the property are not adequate and explained her efforts to obtain grant support which resulted in approval of only \$11,000.00. After bringing the matter back to CELCAB, that group recommended approval of the use of existing capital improvement funds for this purpose. Mr. Reynolds noted communications from Chris DeManche and the LPA as well as CELCAB and asked whether this had not already been approved. Ms. Schober explained that although the overall capital improvement funds have already been approved, expenditure of such a large sum is being brought to Council for approval so that everyone is aware of the purpose. Mr. Massucco noted some items listed that are not included and asked for an estimate of those costs. Ms. Schober explained that some of these items are already on site and presently in use elsewhere.

VOTE: Motion was passed by unanimous vote, 5-0. It was verified that the motion included both Items VIII.A.1&2. Mr. Reynolds noted that he had not understood this but did not change his vote.

B. REQUEST FROM THE ISLAND ARTS FOUNDATION - CARL CONLEY:

Carl Conley of 130 Eucalyptus came forward representing the Island Arts Foundation, which he recalled was founded with specific mention of the performing arts. He also recalled that during the 3 years since IAF was formed, they have produced 17 events, and have asked for financial assistance from the Town for approximately 3 of them. He acknowledged that previous conversations before Council and with individual Council members were concerned with the IAF's attempts to find private funding. The original special event request for a Shakespearean production has been changed due to the inability to find a Shakespearean troupe of sufficient caliber for less than \$20,000.00. They have substituted *Man of LaMancha*, and Mr. Conley said they were fortunate to find an 18-piece musical group which has already performed locally and which includes members with Broadway experience. In presenting the estimated figures, he noted that if the Town co-sponsors the event as they did last year's production at Bowditch Point, the insurance line item will not be required. He explained that CELCAB gave unanimous approval of his request, with stipulations, at their last meeting to hold this production at the Mound House. Mr. Conley pointed out that this troupe has already performed at the Cape Coral Cultural Center, and many of the expenses, such as rehearsal, have already been paid during that production. He expressed the opinion that the Mound House can accommodate a larger audience than the 200 maximum which CELCAB approved, noting that parking will be at several other locations. There will be no catering, so this \$1,200.00 item is eliminated, and he stressed that it was agreed there would be no alcohol. He advised that there is \$6,500.00 on deposit for this production that was raised privately, and there may be another grant. He emphasized that all the work that has been done is volunteer, while a professional theater group might incur expenses as high as \$25,000.00. They originally asked for \$5,000.00, and the amended request has been reduced to \$3,810.00. He announced that there are now approximately 150 members of the IAF, whereas the first time they appeared before Council there were about 20. He invited everyone to the Membership Party on November 14th at the Channel Mark, anticipating paid membership growth to possibly 250 by January 1st.

Mr. Reynolds asked what the attendance had been at the Bowditch Point production, and Mr. Conley advised that there had been approximately 90. In response to a follow up question,

Mr. Conley explained the reasons he anticipates such a larger audience this time. They have had no less than 100 at any event since then.

MOTION: Motion was made by Mr. Van Duzer and seconded by Mr. Thomas to set aside funds in the amount of \$3,800.00 for this request.

DISCUSSION: Mr. Massucco recalled that at the September 27th Council meeting a funding request had been received from the IAF in the amount of \$5,000.00 to be used to help defray the cost of *Shakespeare on the Green*. He recalled speaking against approving this request because he felt from the figures submitted the production could generate a profit, noting it is against Town policy to fund a profit making event. He noted an editorial written by Editor/Publisher Carl Conley that appeared in the October 8th edition of the *Island Sand Paper* to which he took offense, calling it a vicious personal attack and a disservice to himself, the Council, the Town, the *Sand Paper*, and to the IAF.

Mr. Rynearson said he would support the motion but commented on several issues. He expressed the opinion that \$2,500.00 was excessive for advertising and that the media should take a large share of this in support of the community. He believes the Town should be a sponsor because the Town can then provide insurance for such events without additional cost to the Town. With respect to CELCAB's provision that there should be no charge for tickets, Mr. Rynearson expressed concern that the role of CELCAB and the Mound House should be studied. He said he wanted to go on record with his concerns, stressing that there should be a special fund created with events being profitable in themselves and privately funded.

Mr. Massucco agreed that \$2,500.00 for advertising with 3 local newspapers on the Island is questionable. He suggested that the media provide free advertising as a public service, noting that the Town incurs considerable expense placing its legal ads.

Vice Mayor Reynolds asked the Town Manager to verify that in the case of Town sponsored events, the organization can come under the Town's insurance. She confirmed that this was the case. He also mentioned some negative editorials by Mr. Conley concerning himself. Mr. Reynolds agreed with the previous comments that \$2,500.00 for advertising is excessive. He also said he would support the motion.

VOTE: Motion was passed by unanimous vote, 5-0.

C. INTRODUCTION OF SIGN ORDINANCE 04-16 – NON-CONFORMING SIGNS DAMAGED BY RECENT STORMS:

Ms. Segal-George advised that it was only necessary that the heading of the ordinance be read, which she proceeded to do, since this is an introduction. She advised that although this is the introduction, the ordinance is going back to the LPA for resolution of some issues they have with it, so this will be set for 2 Public Hearings in December, the first on December 6th at 6:30 P.M. and the second on December 20th at 3:00 P.M.

Mr. Van Duzer asked whether it would be proper to continue the item since changes would be made to it, and Ms. Segal-George explained that this has been done before. No further Council action needs to be taken on this item at this meeting. The 2 Public Hearings will be advertised as required.

D. REQUEST TO TELEVISION THE LPA MEETINGS:

Ms. Segal-George referred to her memo advising that the LPA had unanimously requested that the Council consider televising the LPA meetings. Currently 3 Council meetings per month are televised, and they are rebroadcast, for a total of 6 broadcasts per month. By including the LPA with rebroadcasts, this would be an additional 4, or 10 broadcasts per month. She can staff those 10, but wanted to make the point that if other committees want to be televised also, she does not have the personnel to take care of more than this.

Councilman Rynearson said he cannot support this because tapes are available and meetings are open.

Mayor Thomas said he has attended LPA meetings and has not seen any public in attendance. If people are interested they should come to the meetings. He expressed concern with setting a precedent or implying that one committee was more important than others.

Councilman Massucco agreed that this was not necessary and an additional expense to the Town.

Vice Mayor Reynolds said he did not see the need and agreed that few public show up at the meetings. He complimented several of the committees on their work and expressed the opinion that meetings other than Council should not be televised.

MOTION: Motion was made by Councilman Ryneerson and seconded by Mayor Thomas to deny the request to televise the LPA meetings.

VOTE: Motion was passed by unanimous vote, 5-0.

E. DISCUSSION OF BAY BEACH GOLF COURSE – REQUESTED BY COUNCILMAN VAN DUZER * PLEASE NOTE: COUNCILMAN VAN DUZER HAS WITHDRAWN HIS REQUEST.

IX. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Howard Ryneerson said he thought the Deputy Town Manager should congratulate the Mayor on his big win. Congratulations on the Red Sox win were extended.

Councilman Don Massucco reported attending a water monitoring program where he went through all of the testing procedures. He missed the ranger at Koreshan but will attempt to go back.

He also mentioned that there was some activity in the front row that he wished would cease in the future.

Councilman Bill Van Duzer reported on an event on FMB that he described as exciting. One of his constituents called and reported a fallen tree that was blocking her street at about 10:00 A.M. on a Saturday morning. He called Ed Lawler, who answered his cell phone in Daytona Beach, where he was attending a motorcycle rally. He called a crew he had working, and 25 minutes later the lady called and referred to Mr. Van Duzer as a hero, because the crew had arrived and cut the tree up and got it out of the way. Mr. Van Duzer complimented the staff and wanted this to be reported on record for the public's information.

Vice Mayor Garr Reynolds referred to a letter sent by Councilman Ryneerson to the County Commissioners and FDoT for funds for an Estero Blvd. transit study by the MPO and follow-up design engineering study. Mr. Reynolds said Council did not approve this letter, and it is his understanding that a Councilman cannot send out items to another governmental facility without approval. He also referred to a letter written by Mayor Thomas to Lee County Park management requesting that gates or a stop bar be installed at one of the FMB County parks. This was not discussed in Council, and Mr. Reynolds does not believe it appropriate to send out requests for action on issues without Council discussion and approval. He then asked Mr. Roosa for a statement on these issues. Mr. Roosa agreed that each individual Council member should always present the collective vote of the Council. When dealing with other agencies, regardless of an individual's personal feelings, he said that one should promote the intent of the Council. As far as contact prior to Council discussion, issues should be first brought to Council for a collective opinion on what position it wishes to take.

Mr. Reynolds made a comment on short-term rentals and said he had spoken with Mr. Murphy about this issue. He asked Mr. Murphy to simplify this. Mr. Murphy explained the locations where these restrictions apply, and outlined what the restrictions are in differing areas. He referred to several memos he has written on the subject that address concerns raised by Mr. Loffreno in September and offered to provide further explanation if required.

He noted that the Town office hours are now prominently posted on the front door. He also noted that the calendar is posted with 13 different meetings in November, but there is no posting of the weekly Staff Meeting hours of 10:00 to 11:30 A.M. each Tuesday morning when the doors are locked. He believes these hours should also be posted on the calendar and on the door downstairs. Ms. Segal-George stated that this is always posted, and Mr. Reynolds asked that it be prominently posted and included on the calendar.

Mr. Reynolds referred to the Newton Home and some articles in the *Sand Paper*. He said he is strongly in favor of saving the Newton Home.

He said he agreed with a previous comment by Councilman Van Duzer but could not recall specifically what it was.

He expressed appreciation for the large attendance by the public at this meeting and also acknowledged some of those who helped after the storm.

Mr. Massucco made a motion to adjourn, but was advised that everyone who wished to speak had not yet done so.

Mayor Bill Thomas noted that short term rentals had been finalized by a previous Council.

With respect to the gates, he had addressed this issue also with a previous Council and was not taking unilateral action.

Mayor Thomas asked Ms. Segal-George whether it was true that Vice Mayor Reynolds had sent something to the County Commission about the Newton Property. Mr. Reynolds acknowledged that he had done so and explained that he had sent the letter to 50 to 70 people and that he did not intend to commit Council to anything. Mr. Thomas noted that by sending out these letters he had done the same as he had objected to other Council members doing.

Mr. Thomas reported visiting Las Vegas last week and described the street and sidewalk patterns and pedestrian traffic control. There are attractive dividers used there that he felt could be applied on FMB.

He thanked everyone for attending.

X. TOWN MANAGER'S ITEMS: No items.

XI. TOWN ATTORNEY'S ITEMS: Mr. Roosa offered to visit Las Vegas and take pictures.

XII. PUBLIC COMMENT:

Theresa Schober came forward and clarified some points. Regarding the IAF, 150 to 200 people was the number of guests that Mr. Conley present, this was not instituted by the Mound House. She added that they brought the request for an event that was free to the public, and this was not a requirement imposed at CELCAB. They did request no alcohol, and an earlier start of the event due to the time of sunset on that date. The main concerns were with parking and restroom use.

She offered to send a memo to Council for the benefit of the public and those who comment on the cost of the Mound House. She has researched all of the budget records, and reported that to date they have secured \$1,373,775.00 worth of grants for the Mound House, whereas the Town cost since 2000 has been \$386,832.00, so 78 percent of the cost of the Mound House has been grant support, and the Town has expended less than \$100,000.00 per year over the last 4 years. She added that the total amount budgeted is a great deal more than has actually been spent at the facility.

XIII. ADJOURNMENT: Motion was made by Mr. Massucco to adjourn. Meeting was adjourned at 9:50 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary