

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
DECEMBER 6, 2004  
Town Hall-Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER:** The regular meeting of the Fort Myers Beach Town Council was called to order on Monday, December 6, 2004 at 6:30 p.m. by Mayor Bill Thomas.

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

**Excused absence from the meeting:** None.

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

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

**III. INVOCATION – REV. LORRAINE DILL, CHAPEL BY THE SEA**

**IV. PUBLIC COMMENT:**

Harold Huber came forward representing the 140 owners of Harbour Point Condominium at the request of the President. His comments concerned a DRI granted in 1994 for a group of docks at Bay Beach, wherein Harbour Point was granted 14 docks. There have been 3 votes and he is asking for a 3-year extension so there can be one or two additional votes. He described the docks and the reasons for the request to enlarge them to accommodate larger boats. Ms. Segal-George said Staff is aware of this, and she was under the impression it would be included on the agenda. Mr. Murphy explained that this will require an application for a notice of proposed change, but Council can extend if they so desire due to the December deadline.

William Buehler came forward representing the Royal Pelican and added that they have 6 slips. He referenced Mr. Huber's comments and described the docks for which they are requesting a permit.

Bill Shenko, Jr. came forward and presented 3 items concerning Charter Review. (1) He expressed disappointment with the last Public Hearing at which he recalled there was no dialog between the public and Council members. (2) He referred to an October memo from Deputy Town Manager John Gucciardo indicating the Council is able to make non-substantive clerical changes to the Charter without referendum and said he does not agree. (3) He made reference to residency requirements and called attention to a recent court case involving Bonita Springs on this subject.

Claude Bowyer of 42 Avenue E came forward and explained that he was a member of the CRC. He described how the CRC arrived at its recommendations after lengthy research of other communities' charters. He also noted that while there had been some public attendance and input at the CRC meetings, these would have been the proper place for those who have comments to voice their concerns. As a full time resident and property owner for 10 years, and a member of several committees and boards, he observed that people do not presently seem to be stepping forward and volunteering for the work of the Island.

Dan Hughes of 270 Randy Lane came forward and asked Council to consider a waiver of the 3-minute rule during the Charter Public Hearing portion of the meeting. He noted that the CRC has put forth 16 substantive provisions and there is no way to comment on all 16 within the 3-minute limitation. He emphasized the importance of Charter review.

Anita Cereceda came forward and mentioned the plans for the New Year's Eve event. It was agreed that she would make her comments under this agenda item.

**V. CONSENT AGENDA:**

Vice Mayor Reynolds requested to withdraw Items V.A.1 and V.B.

**A. APPROVAL OF COUNCIL MINUTES:**

1. **NOVEMBER 8, 2004**
2. **NOVEMBER 15, 2004**

**MOTION:** Motion to approve the balance of the Consent Agenda was made by Councilman Rynearson and seconded by Councilman Van Duzer.

**VOTE:** Motion was passed by unanimous vote.

Mr. Reynolds called attention to Page 6 of the November 8, 2004 minutes under the vote on the Council meeting time and asked who cast the vote against the motion. It was recalled that the vote had been unanimous in favor of the motion, 5-0.

**MOTION:** Motion was made by Mr. Van Duzer and seconded by Mr. Reynolds to approve the minutes of November 8, 2004 with the above correction.

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

**B. ANNUAL UPDATE OF THE TOWN'S "FLOODPLAIN MANAGEMENT & FLOOD HAZARD MITIGATION PLAN"**

With respect to Item V.B, Mr. Reynolds called attention to Exhibit A and said he did not recall voting in favor of a 1988 resolution. He requested that the voting record be read by the Chair prior to posting. He referred to Page 4 of 14 of Exhibit B and the terms "base flood level" and "mean sea level." Town Attorney Richard Roosa discussed the definitions of these terms. It was pointed out that this measurement will vary throughout the Island. Mr. Reynolds also questioned repetitive loss on the next page, and Mr. Murphy advised that this provision is required by FEMA to be included in the ordinance. Mr. Murphy explained the intent of the provision. Ms. Segal-George pointed out that this agenda item is for the purpose of an update, not approval by Council, since the Code was previously approved by Council in June 2004. Mr. Reynolds had several further questions which came under discussion.

**MOTION:** Motion to approve Item V.B was made by Mr. Rynearson and seconded by Mr. Van Duzer.

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

**VI. ADMINISTRATIVE AGENDA:**

**A. SPECIAL EVENT – NEW YEAR'S CELEBRATION:**

Ms. Cereceda came forward and described the plans for the New Year's Celebration. She recalled that December 31<sup>st</sup> marks the anniversary of the Town's incorporation, and that this has been an annual event.

There were some questions and discussion about alcoholic beverages. Ms. Cereceda recalled that over 9 years this has been a very well-behaved event. Mr. Reynolds recalled that the Civic Association had served cake and cookies the first year, and this will be the 10<sup>th</sup> anniversary.

**MOTION:** Motion was made by Mr. Van Duzer to allow consumption of alcoholic beverages in the areas as shown on the map, and also approval of funds not to exceed \$12,800 which is a matching grant including fireworks. Motion was seconded by Mr. Thomas.

**DISCUSSION:** Ms. Cereceda pointed out that the event is already under budget because the band is costing less this year.

Mr. Massucco asked about the budget item for transportation, and Ms. Cereceda explained that this is for 5 additional free trolleys until 2:00 a.m. the length of the Island and to Summerlin Square.

Mr. Rynearson asked to add to the motion that beginning at 12:00 p.m. and ending at 1:00 a.m., and Mr. Van Duzer explained that his motion was intended to cover the request from Damon Grant.

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

**B. FINAL PUBLIC HEARING FOR CHARTER REVIEW REPORT:**

Mayor Thomas advised that he had received numerous calls on this subject with various suggestions for discussion. He expressed disappointment that the public did not attend earlier workshops and public hearings. Mr. Thomas observed that this only comes up every 10 years, and the CRC members had put in a great deal of time and effort in making their recommendations. Pointing out that discussions could go on indefinitely, he said that after giving this a great deal of thought, in his opinion the public has had sufficient opportunity to ask questions and provide input. He agreed to make one concession to allow people to speak for 4 minutes, a 25 percent increase. Public Hearing was opened at this time.

Pat Smith, a full time resident of the Island, came forward and thanked the CRC members for volunteering and for their time and efforts. She expressed the opinion that the Charter should be changed only based on demonstrated need, objecting to many of the proposals because they will take responsibility away from elected officials and giving specific reasons for her objections.

Dan Parker came forward and read a statement concerning the CRC review. He recalled serving on the original incorporation body, the first CRC, and chairing this one.

Dan Hughes came forward and disagreed that there had been sufficient opportunity for public participation in Charter Review. He did not recall there having been a workshop. He said he did attend many of the CRC meetings and commended the group for their efforts, making specific reference to the narrative summary. He detailed his opinions on 2 of the 16 CRC recommendations during the time limit. He stressed that Council's vote is not to approve or disapprove of the recommendations, but whether to place the issues before the voters in the form of a referendum, regardless of their personal positions on each of them. Mr. Hughes suggested that many of the issues would be better addressed in the form of ordinances.

Al Van Horn of 6895 Estero Blvd., a property owner for 19 years and resident for 13 years, came forward and recalled serving on the incorporation committee and its Charter committee, as well as serving as Vice Chair of the current CRC. He also expressed concern that there had been enough opportunity for public input, adding that he hopes Council has given the recommendations thorough review and will ask CRC members present if there remain any questions. He emphasized that throughout CRC deliberations, home rule had been a focus, with no intent to diminish Council's authority but a strong feeling that there should be a referendum. He said he was disturbed that there had been recommendations to make no changes whatsoever and that there have been changes since incorporation that warrant such Charter revision.

Pat DeVincent of 160 Bahia Via came forward and asked that Ms. Smith's comments be considered his own. He also expressed concern over communication among CRC members.

Tom Babcock of 5130 Williams Dr. came forward and thanked the Council for giving him the opportunity to represent the Town on the 2004 CRC. He read a statement emphasizing previous comments and stressed his opinion that the voters have the opportunity to decide.

Bill Shenko, Jr. came forward and pointed out that while 2 public hearings are required on Charter review, there is no maximum. He suggested that the 16 items be continued and addressed a few at a time rather than all at once.

Anita Cereceda came forward and requested that for the benefit of those watching on TV, the suggestions made by the CRC be reviewed so the public will understand what is being discussed. She made specific reference to the elections and spoke in favor of electing Council members at larger rather than by specific seats.

Public Hearing was closed at this time.

Mr. Van Duzer expressed a preference for more dialog on the issues before making a decision and suggested delaying action for that purpose.

Mayor Thomas noted that there were less than 100 in attendance and questioned the value of taking time for more input. He felt that there had been sufficient opportunity for the public to participate.

Mr. Rynearson advised that he has read the minutes of every CRC meeting and reviewed the matter thoroughly. He expressed appreciation for the time and effort of the CRC and said he was ready to move forward.

Mr. Massucco referred to a memo from Mr. Gucciardo to Mr. Parker in which the CRC was tasked to do a specific job, upon completion of which the group was disbanded. He questioned the appropriateness of CRC members' continuing to advance their views and added that he was ready to move forward.

Mr. Reynolds recalled having suggested appointment of another CRC because he had been disappointed upon reading these recommendations. He said he feels that Council should go forward, but agreed with Mr. Van Duzer regarding additional public input. He made reference to specific items which he agreed should be done by ordinance.

Mayor Thomas observed that the consensus appeared to be in favor of moving forward. He asked Council members for their opinions of how to proceed.

Mr. Van Duzer suggested that each item should be discussed separately. Mr. Reynolds agreed. Mr. Van Duzer was then requested to read the first item, which he proceeded to do. He expressed the opinion that this should not be on the ballot, and that non-resident business and property owners should have the right to be on the CRC. All Council members agreed.

Item #2 (elections): Mr. Van Duzer expressed the opinion that if it is to be considered, it needs to go to the electorate. Mr. Reynolds was not in favor of this change. Mr. Thomas, Mr. Massucco and Mr. Rynearson agreed that it should not be placed before the public.

Item #3 (Council residency requirement): Mr. Van Duzer noted that as mentioned earlier, there is a court case on a similar subject in Bonita Springs, and he did not believe this should be put on the ballot. All Council members were in unanimous agreement.

Item #4 (Mayor and Vice Mayor terms): Mr. Van Duzer did not feel that this should be on the ballot. All Council members were in unanimous agreement.

Item #5 (Establishment of campaign spending limits): Mr. Van Duzer did not feel that this should be on the ballot, but suggested it should be considered for an ordinance to include signage. All Council members were in unanimous agreement.

Item #6 (Addition of condition to list of Council member requirements): Mr. Van Duzer had no problem with this going before the electorate. Mr. Reynolds felt that there was no need to further clarify what is already in the Charter. Mayor Thomas and Mr. Massucco agreed. Mr. Rynearson agreed with Mr. Van Duzer. Mr. Roosa was asked for an opinion. He felt that this was adequately addressed in existing Charter language. Mr. Van Duzer said he disagreed and chose not to change his vote.

Item #7 (Density/intensity and building height referendum): Mr. Van Duzer expressed disagreement due to the constraints it would place on property owners. He did not feel this was appropriate for inclusion in the Charter. Mr. Thomas expressed annoyance with those who continually attempt to circumvent the LDC by requesting variances. After discussion during which Mr. Reynolds put forth his reasons for being in favor of inclusion in the Charter, the vote was 4-1 against placing the issue on the ballot.

Item #8 (Annual amendments to the Comp Plan): All Council members agreed unanimously that this was adequately covered and should not be in the Charter.

Item #9 (CRC right to hold public hearings and place recommendations directly on the ballot): Mr. Van Duzer was in favor of public hearings, but not in favor of allowing the CRC to go directly to ballot. Mr. Rynearson pointed out that CRC meetings already contain provision for public comment. Mr. Van Duzer pointed out that if this provision were in effect, there would be no

opportunity for Council to discuss any of these issues. Council members unanimously voted not to include this item on the ballot.

Item #10 (Tolls): Mr. Reynolds agreed that the public should be given the opportunity to vote before tolls are imposed, but did not believe it should be in the Charter. Mr. Thomas agreed. Mr. Massucco disagreed, and stressed that any vote on tolls should be a binding referendum. Mr. Rynearson noted that the public has clearly expressed its opinion regarding tolls and agreed that it does not need to be in the Charter. Mr. Van Duzer agreed with Mr. Massucco in the hope that it would put the subject permanently to rest. Mr. Thomas changed his vote for this reason, as did Mr. Reynolds. There was discussion about the expense of a special election and when any Charter changes would appear on a ballot. There was a unanimous 5-0 vote to place this Charter amendment on the ballot.

Item #11 (Number of votes to remove Town Manager): There was unanimous agreement that this does not need to be in the Town Charter and should not go to referendum.

Item #12 (Minimum amount in reserves): There was unanimous agreement that this does not need to be in the Charter.

Item #13 (Frequency of Charter Review): There was unanimous agreement that this needs no change.

Item #14 (Establish compensation for Mayor and Council members): There was unanimous agreement that this does not need to be in the Charter. It was pointed out that compensation should be raised to encourage younger members.

Item #15 (LPA Authority to act as Zoning Board with final authority): Mr. Thomas felt that this was an insult to the residents of FMB, noting that the LPA does not have to answer to the Public, while Council does. It was unanimously agreed that this would not go to referendum.

Item #16 (Establishment of FMB Code Enforcement Board): Mr. Van Duzer pointed out that this could be pursued in another way. There was unanimous agreement on this issue.

### **C. FIRST PUBLIC HEARING OF ORDINANCE 04-16 – PROHIBITING REPAIR/REPLACEMENT OF NON-CONFORMING SIGNS DAMAGED BY NATURAL DISASTERS:**

Ms. Segal-George advised that the second Public Hearing would be December 20<sup>th</sup> at 6:30 p.m. and referred to a memo from Jerry Murphy outlining the LPA action on this issue. The LPA recommended that owners of the signs make business decisions whether or not to repair or replace non-conforming signs now, and to eliminate the 50 percent rule on signs. She advised that Council does not need make a decision on this tonight.

Mr. Murphy added that he was available to answer questions.

Meeting was opened for Public Hearing at this time.

Ms. Cereceda came forward and said she is not speaking as Chair of the LPA but rather as a small businessperson who sustained significant losses during Hurricane Charley. She described her sign as 100 percent legal to the 2007 standards. She estimates that the hurricane damage to her sign will cost approximately \$1,000 to repair, which is a small percentage of her overall storm damages. She stressed that business owners should be allowed to make their own decisions concerning signs. Ms. Cereceda pointed out that many small business owners are unable to attend Council meetings and requested that prior to the next meeting Council members make it a point to speak with them about this. Mayor Thomas emphasized that he has not made any position statements concerning signs.

Public Hearing was closed at this time.

Mr. Massucco observed that he sees many damaged signs which could be a hazard. It was pointed out that once an ordinance is adopted, the Town can enforce its requirements.

Mr. Reynolds asked about extensions for temporary signs, which Mr. Murphy explained. Mr. Reynolds said he has spoken with some business owners, who say they are financially unable to bring signs up to 2007 code at this time. He expressed the opinion that they should be given the opportunity to replace what they had at this time.

**MOTION:** Mr. Rynearson moved the item to Second Public Hearing. Motion was seconded by \_\_\_\_\_.

**VOTE:** Motion was passed by unanimous vote.

**D. CAROUSEL FLUEDRA OUTCOME:**

Mr. Murphy referenced his memo outlining the options from which Council will be required to choose at the next meeting on December 13<sup>th</sup>. He also referred to the record of agreement which follows that memorandum and described the contents. He advised that the Town has never gone through the FLUEDRA process before and the item was placed on this agenda for preliminary discussion. It was pointed out that Council is not being asked to vote on this item tonight. Mr. Murphy suggested that after the next meeting Council remand the item to the LPA to establish the specifics.

Mr. Reynolds expressed the opinion that signing an advance agreement without seeing actual plans was not a good way to do business. Mr. Murphy explained the FLUEDRA mediation process. The application and current code requirements came under discussion.

**E. INTRODUCTION OF ORDINANCE 04-19 – PERMANENT STATUS OF TMA:**

Ms. Segal-George established that it was only necessary to read the caption of the proposed ordinance and set the Public Hearings. Mr. Roosa read the caption of the ordinance. The public hearing was announced as December 20<sup>th</sup> at 6:30 p.m.

**F. INTRODUCTION OF ORDINANCE 04-18 – AMENDING LPA MEMBER TERM BY ESTABLISHING AN EFFECTIVE DATE:**

It was established with Mr. Roosa that 2 Public Hearings would be required. He advised that a change in the procedure ordinance is required because the LPA is part of the Town's Land Use regulations. This item was stricken because it must first go to the LPA.

**VII. COUNCIL MEMBER ITEMS AND REPORTS:**

**Councilman Don Massucco** reported that on December 1<sup>st</sup> he was taken on a tour of the Mooring Field by Matt Feeney, who he said was very knowledgeable about the facility. He learned that there are many hulks under County jurisdiction rather than the Town's, and that there has been much progress in removing such vessels. The tour also included signage fabrication, and he commended Mr. Feeney on his knowledge.

Mr. Massucco also reported attending the Coastal Advisory Committee meeting with representatives from various surrounding counties discussing beach renourishment and problems with funding. He said he found this, his second meeting, very informative.

**Councilman Howard Rynearson** added that the County is aware of the derelict vessels under their jurisdiction, and that this had been brought up at their Commission meeting last week. They are working on an ordinance to take care of the situation.

Mr. Rynearson referred to memos from Mr. Feeney and Ms. Segal-George regarding Bay Oaks and Treasures by the Sea. A full time person has been put on Bay Oaks staff to deal with this.

**MOTION:** Motion was made by Mr. Rynearson to do away with Treasures by the Sea. Motion was seconded by Mr. Van Duzer.

**DISCUSSION:** Mr. Massucco felt that this was an opportunity that should be taken advantage of to save a \$10,000 fee. There was general agreement. Mr. Reynolds reported visiting Bay Oaks and complimented the staff there.

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

Mr. Rynearson also reported that the TDC meeting had been held on FMB with good attendance.

**Vice Mayor Garr Reynolds** reported attending a recent fund raising event with a very good turnout and results of bidding on auction items. He said it was very enjoyable.

**Councilman Bill Van Duzer** reported participating with the work party at Matanzas Pass Preserve recently with former Vice Mayor Terry Cain. They pulled out “mother-in-law’s tongue” in great abundance. He pointed out that more volunteer work parties are needed to take care of the Preserve.

Mr. Van Duzer has established a meeting with the School Board to discuss property on which to relocate the Newton Home. He will meet with Dr. Jane Kuckel and Dr. Browder on January 11<sup>th</sup> and has also talked with Jean Matthews, who has also spoken about this project with the Chair of the School Board. A letter of intent has been drafted for discussion on an informal basis. Ms. Matthews and Roxie Smith will accompany Mr. Van Duzer representing the Historic Society.

He reported on an MPO meeting last Friday at which it was agreed to place the study for the tram and Estero Blvd. redesign on their schedule with the understanding that the Town will split the cost of a “fatal flaw study” with the County.

Mr. Van Duzer reported that he had also attended a monthly meeting of the SW Florida League of Cities with Jerry Murphy.

**Mayor Bill Thomas** reported attending the SW Regional Council Meeting on November 18<sup>th</sup> at Terry Park. Nothing directly pertained to FMB.

On November 28<sup>th</sup> he attended the FMB Art Foundation play at the Mound House with about 200 attendees. He complimented the production and said he looks forward to future productions, perhaps in partnership between the Town and the Art Foundation.

Mr. Thomas reported having been invited to speak at the TDC meeting, observing that the TDC had chosen the Beach as the first location for its series of roving meetings. He reported a good turnout.

On December 2<sup>nd</sup> Mr. Thomas attended the Spirit of the Holidays at Warfield’s that Vice Mayor Reynolds mentioned previously. He believes they raised quite a bit of money for less fortunate people on FMB.

- VIII. TOWN MANAGER’S ITEMS:** No items.
- IX. TOWN ATTORNEY’S ITEMS:** No items.
- X. PUBLIC COMMENT:** None.

Mr. Massucco made mention of the official Town tree, which is a Gumbo Limbo.

- XI. ADJOURNMENT:** Meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Patricia L. Middlekauff  
Transcribing Secretary