

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
DECEMBER 20, 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 20, 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, Finance Director Janeen Paulauskis, Community Development Director Jerry Murphy, Town Attorney Richard Roosa, Public Works Director Damon Grant.

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

**III. INVOCATION – REV. JEANNE DAVIS, BEACH UNITED METHODIST CHURCH**

**IV. PRESENTATIONS:**

**A. PLAQUE FOR CAPT. KERRY GRINER**

A plaque was presented for his service to Captain Griner as he leaves his post with the Lee County Sheriff's office on Fort Myers Beach.

**B. PLAQUE FOR EAGLE SCOUT CHRIS DESROSIERS**

Councilman Massucco noted that Troop 999 from FMB as well as the parents of the honoree were present. A plaque was presented to Chris Desrosiers, who has just attained Eagle Scout status. Mr. Massucco also noted that in order to attain Eagle Scout status, a Scout must take on a community project. Chris' project was a run-down community playground which he revitalized by obtaining over \$6,000 in materials from Home Depot and recruiting volunteers to help with the work. A copy of the Town Charter was also presented to Eagle Scout Desrosiers. Mayor Thomas thanked Ms. Massucco for his efforts in bringing this to the Council's attention.

Mayor Thomas read a proclamation honoring Ted Fitzsimons which will be followed by a plaque observing the 10<sup>th</sup> anniversary of the Town of Fort Myers Beach on December 31, 2004 and Mr. Fitzsimons' contributions to the Town.

**V. PUBLIC COMMENT:**

Jaime Diaz came forward and commented on the position of Town Manager. He asked that this be taken up again as an agenda item. He also suggested recognition of others who made contributions after the hurricane.

Pat DeVincent of 160 Bahia Via came forward and noted that his FAXed request for 2 items to be added to the agenda had not arrived in a timely manner for inclusion in this meeting's agenda. He asked for procedural guidance in resubmitting the request. He said he also spoke at length with Bob Janes and County Commissioners Tammy Hall and John Albion on these 2 issues.

**VI. CONSENT AGENDA:**

**A. APPROVAL OF MINUTES, DECEMBER 6, 2004:**

**MOTION:** Motion was made by Councilman Ryneerson and seconded by Vice Mayor Reynolds to approve the minutes of December 6, 2004.

**VOTE:** Motion was announced as having passed unanimously, 5-0.

**B. FINANCIALS FOR THE MONTH OF NOVEMBER:**

**MOTION:** Motion was made by Councilman Ryneerson and seconded by Councilman Van Duzer to approve the financials for the month of November.

**VOTE:** Motion was announced as having passed unanimously, 5-0.

**C. PROFESSIONAL SERVICES AGREEMENT:**

**MOTION:** Motion was made by Councilman Ryneerson and seconded by Councilman Van Duzer to approve the Professional Services Agreement.

**DISCUSSION:** Mr. Massucco noted that this is for the renewal of Mr. Spikowski's services, and said he is highly in favor, adding that Mr. Spikowski is an asset to the Town.

Vice Mayor Reynolds agreed with Mr. Massucco concerning Mr. Spikowski but said he had a problem with \$130 per hour for Victor Dover's services plus expenses.

**VOTE:** Motion passed unanimously, 5-0.

**VII. ADMINISTRATIVE AGENDA:**

**A. ARCHITECT SELECTION FOR MOUND HOUSE WALK-IN SHELL MOUND EXHIBIT:**

This item was withdrawn by Town Manager Marsha Segal-George.

**B. FIRST PUBLIC HEARING OF ORDINANCE 05-01 – COMPREHENSIVE PLAN AMENDMENT FOR ANNUAL UPDATING OF THE FIVE-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS:**

Ms. Segal-George advised that this is a routine Comp Plan amendment which is done every year. Public Hearing was opened; there being no public comments, Public Hearing was closed.

**MOTION:** Motion was made by Mr. Van Duzer and seconded by Mr. Ryneerson to move the second public hearing to January 3, 2005.

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

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

Public Hearing was opened at this time.

Cody Connor of 151 Matanzas came forward and said that he would prefer to speak after he had heard Council deliberations on the item. He was advised that he could either speak now or at the end of the meeting. He then stated that as a sign maker he wanted to make Council aware of the issues involved in making signs. He said he is advising all of his clients what is involved, cautioning them that they must comply by 2007 and noted that some businesses are waiting to repair or replace signs due to cash flow. He stressed that there should be flexibility to allow people to deal with their circumstances.

Public Hearing was closed at this time.

Jerry Murphy came forward and explained that emergency ordinances were enacted after the natural disaster, and this is the final hearing to make them permanent. He explained the provisions and intent of the ordinance, noting that the LPA has recommended that this ordinance not be enacted and the emergency ordinance be repealed. He made reference to a memorandum with 3 points made by the LPA. He suggested that if Council takes the LPA recommendation, business owners be required to sign an affidavit that they fully understand that the sign must come into conformity by 2007.

**MOTION:** Motion was made by Mr. Van Duzer that Council follow the direction of the LPA and not adopt the ordinance and that the 50 percent provision in the Land Development Code Chapter 30 be removed. Ms. Segal-George verified with Mr. Van Duzer that he was not including the affidavit. Motion was seconded by Mr. Reynolds.

**DISCUSSION:** Mr. Reynolds said he would like to see the affidavit included since Mr. Murphy had said he would be uncomfortable with enforcement of Item #3, the 50 percent rule. Mr. Van Duzer explained that he is not in favor of the affidavit because a permit is still required to work on the signs and suggested that verbal mention of the 2007 deadline would be sufficient. He noted that the LPA's position is that these are business people who should be able to make their own decisions concerning signs at this time. Mr. Reynolds explained his reasons for favoring the affidavit and said that if the motion were not amended, he would withdraw his second. Mr. Rynearson added that he would not be able to support the motion without the affidavit. Mr. Massucco and Mr. Thomas also agreed. Mr. Van Duzer explained that he felt this was an unnecessary extra step in the permit process, but he agreed to amend the motion.

**VOTE:** Motion to reject the ordinance was passed by unanimous roll call vote, 5-0. Councilman Van Duzer: Aye; Vice Mayor Reynolds: Aye; Councilman Massucco: Aye; Councilman Rynearson: Aye; Mayor Thomas: Aye.

**D. PUBLIC HEARING OF ORDINANCE 04-19 – PERMANENT STATUS OF TMA:**

Mr. Roosa read the title of the ordinance. Public Hearing was opened at this time. It was verified with the Town Manager that only one public hearing is required on this ordinance. There being no public comment, Public Hearing was closed at this time.

Mr. Massucco noted as a point of information that Section 15 on Page 3 provides that the TMA's day to day operations shall be under the supervision of the Town Manager, and asked if this is normal practice for all committees. He was advised that this is the case.

**MOTION:** Motion was made by Mr. Rynearson and seconded by Mr. Van Duzer to approve the ordinance.

**DISCUSSION:** Mr. Reynolds noted that he has supported this group and is pleased that the Town has a committee to specifically address traffic problems. He expressed concern that an estimated 75 percent of funds will be spent off the Island and only 25 percent on-Island, making specific reference to the buses using the dedicated center lane if approved. He expressed the opinion that there should be restraints on this committee. He also made reference to the recent test of an alternative route. Mr. Reynolds emphasized that the primary purpose of a traffic committee should be to improve traffic for the residents of the Island. He also made mention of the proposal to hire a public relations firm for Park-N-Ride and the possibility of hiring a new employee to work with the TMA.

**VOTE:** Motion was passed unanimously 5-0 by roll call vote: Rynearson: Aye; Van Duzer: Aye; Reynolds: Aye; Massucco: Aye; Thomas: Aye.

**E. ESTERO BOULEVARD RIGHT OF WAY ENCROACHMENT:**

**MOTION:** Motion was made by Mr. Ryneason and seconded by Mr. Van Duzer.

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

**F. APPLICATIONS FOR LPA VACANCY:**

Ms. Segal-George advised that there was one vacancy on the LPA and Council had been provided with a list of applicants. Ballots were furnished and a written vote was taken. There were 3 votes for Bob Raymond and 2 votes for Carleton Luke. Mr. Raymond is the new appointee.

**G. APPLICANTS FOR TRAFFIC MITIGATION AGENCY**

Ms. Segal-George advised that there had been 13 applications and 7 members were to be selected. Ballots were furnished and a written vote was taken. The members appointed to the permanent TMA are Warren Babcock (5 votes); Tom Cameron (5 votes); Charles Diemer (3 votes); Ken Katcko (5 votes); Tom Merrill (5 votes); Tom Myers (5 votes); Frank Schilling (4 votes).

**H. REQUEST FOR CONTRACTING OF PUBLIC RELATIONS PROFESSIONAL FOR PARK-N-RIDE:**

Ms. Segal-George pointed out that there are no plans whatsoever to hire an employee for the purposes of working with the TMA. She recalled that when the TMA package was approved last Spring there was mention that significant PR would be necessary to encourage use of the Park-N-Ride. She pointed out that the importance of the Park-N-Rides to Island residents is that visitors to the Island will not be bringing additional cars if they use this service. She also noted that the original list of proposed projects prepared by the TMA at the beginning has never been changed or modified, and each has been brought to Council for approval. Ms. Segal-George observed that this is the last piece of the Park-N-Ride project being brought before Council, stressing the benefits to Island residents of each of the projects. She also made reference to a good working relationship between Town Staff and the TMA members and explained the purpose of the PR campaign.

Mr. Grant added that the Lee Tran program will be significantly enhanced. He pointed out that the State contacted the Town regarding the express lane implementation and referred to his memo describing the Park-N-Ride program. He also described the perceived benefits.

Mr. Thomas made mention of the unfounded rumor that another employee would be hired and asked for its source. Mr. Reynolds advised that it had come from a reliable source which he declined to identify and said that he considers this a logical next step. He also noted that the Park-N-Ride patrons will be day trippers.

**MOTION:** Motion was made by Mr. Ryneason to approve the item with the provision that the funds come out of the \$500,000 grant. Motion was seconded by Mr. Van Duzer.

**DISCUSSION:** Mr. Massucco agreed that information about the program must be disseminated through a PR effort. He noted that there is grant money available and said he considers this a great opportunity to get the word out. He added that if he were sitting in a car being passed by buses, he would prefer to be on one of the buses. He also complimented the "Solar Express" logo and said he is in favor of hiring a PR firm.

Mr. Reynolds expressed concern that the program will escalate but will support it since it is a test program over the winter months this Season.

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

**I. ORDINANCE 04-20 TERMS OF OFFICE; AMENDMENT TO THE CHARTER  
SUBJECT TO REFERENDUM:**

Councilman Ryneerson noted that the Town is in litigation on this issue and suggested that this is not the appropriate time for Council to address it. He recommended that no action be taken on the item.

**MOTION:** Motion to table this item was made by Mr. Ryneerson and seconded by Mr. Thomas.

**VOTE:** Motion passed by a majority vote, 4-1, Mr. Reynolds casting the “nay” vote.

Mr. Reynolds brought up a point of order and verified that when an item is moved and seconded, discussion may be called for before a vote is taken. He asked what a remedy would be, at which time Mr. Thomas gave Mr. Reynolds the floor to speak.

Mr. Reynolds recalled that when this item was voted on at a previous meeting, there was a misunderstanding regarding 3 year versus 4 year terms. He said that he wanted to bring that distinction before Council, which was his reason for requesting it be on this agenda and described in detail his reason for doing so. He recalled that the other issue of tolls being put to a public referendum had been approved and requested that the 3-year term be put to referendum also.

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

**Councilman Howard Ryneerson** wished everyone Happy Holidays and a prosperous and healthy New Year.

**Councilman Don Massucco** seconded the sentiments of Councilman Ryneerson. He also thanked Chris DeManche for his help in securing the plaques.

Mr. Massucco read a statement concerning the previous meeting’s Carousel case. He noted that the Special Master had met with Attorney Roosa and the developer and had arrived at a conceptual agreement which Council approved at that meeting. Mr. Massucco said he has been hearing from the public that Council voted to approve the Carousel expansion plan and described the procedure that will be followed in determining whether or not the project is finally approved. He stressed for the benefit of the public that it was only the concept that was approved under this new process of mediation.

**Councilman Bill Van Duzer** wished everyone a Happy Holiday season and told a story about a lion and a bull.

**Vice Mayor Garr Reynolds** agreed with Councilman Massucco regarding the mediation process. He expressed the desire that this process be avoided so Council will not be asked to approve concepts without specific details. There was discussion about a specific computed number which Mr. Roosa advised is based on existing land use regulations to which the applicant is entitled.

Conditions at the Post Office were mentioned. A tree stump and large piece of concrete are involved.

Mr. Reynolds wished everyone a Happy Holiday and Merry Christmas.

**Mayor Bill Thomas** wished everyone a Merry Christmas and complimented himself on a fine job as Mayor this year, which he said he intends to continue in the New Year.

**IX. TOWN MANAGER’S ITEMS:**

Ms. Segal-George referred to Mr. DeVincent’s FAX that was mentioned under early Public Comment. She said she has prepared a memo to Council which was also FAXed to Mr. DeVincent and explained that one of his 2 items has to do with the FGCU documentary which

was funded in the amount of \$12,000 by Council, which was the Town's only involvement. She suggested that if Mr. DeVincent is not happy with the content of the documentary, he contact FGCU. Mayor Thomas asked Mr. DeVincent if this was clear, and Mr. DeVincent replied that he has talked with FGCU, who could not tell him how they made their selection, and he has also talked with the Historic Society, which was not asked to participate. He wants it brought back to Council because the Town funded it. Ms. Segal-George explained that all of the various communities in the area funded documentaries done by FGCU as they requested. Ms. Segal-George expressed objection to being accused of collusion in Mr. DeVincent's memo and questioned what purpose would be served by putting this issue on the agenda. Mr. DeVincent expressed the opinion that by funding this documentary, Council was allowing FMB history to be buried.

Ms. Segal-George also responded to Mr. DeVincent's accusation that she had rewritten history and described circumstances surrounding the issue.

Mr. DeVincent asked to be put on the agenda at a regularly scheduled meeting. Mr. Van Duzer recalled being contacted by Mr. DeVincent, after which he reviewed the documents he had been provided and also viewed the disc more than once. He said he would have no objections to having the issues put on the agenda so that everyone could make a determination, as he has done. Mr. Reynolds agreed and said he could see value with having Mr. DeVincent come before Council. Mr. Thomas asked that the item be placed on the next agenda so the issue can be put to rest and settled. Mr. Massucco agreed and asked whether other individuals should appear as well. Mr. Van Duzer verified that the agenda item would include 2 issues: The historical documentary by FGCU and the MPO project. Mr. Van Duzer pointed out that the agenda item should be limited to these 2 issues.

**X. TOWN ATTORNEY'S ITEMS:** No items.

**XI. PUBLIC COMMENT:**

Laurie Diaz, 260 Egret St., came forward and commented as a citizen that she did not understand how Council could approve a \$12,000 expenditure without some kind of editorial or creative control. She felt that individuals with historical background should have been involved.

Jaimie Diaz came forward and expressed disappointment that Item I had not been acted upon. He expressed displeasure with the way certain Council members treat each other.

**XII. ADJOURNMENT:** Meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Patricia L. Middlekauff  
Transcribing Secretary