

**FORT MYERS BEACH
TOWN COUNCIL
LAND USE MEETING
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
June 13, 2005**

I. CALL TO ORDER

Mayor Bill Van Duzer called a Land Use meeting of the Town Council to order on Monday, June 13, 2005 at 10:00 AM.

Members Present: Mayor Bill Van Duzer, Vice Mayor Rynearson, Councilmen Don Massucco, Garr Reynolds and Ken Katcko.

Excused Absent: None

II. PLEDGE OF ALLEGIANCE

All present stood and recited the Pledge of Allegiance.

III. INVOCATION

Mayor Van Duzer gave the invocation.

IV. PUBLIC COMMENT

Fran Myers of Widgeon Terrace came forward to talk about CELCAB. She said their understanding was that the Mound House directors' contract had expired on May 31st of this year, and that there seemed to be some confusion as to whether it had been extended or not. She felt more enlightenment was needed about it because what she had come to see, and what CELCAB had seen, seemed to be two totally different things now.

V. CONSENT AGENDA

A. Grant Application through Dept. of Agriculture, Division of Forestry

Mayor Van Duzer explained that the Town Staff had requested permission from the Council to submit this application for a grant.

MOTION: Vice Mayor Rynearson made a motion to give that permission. Council Massucco seconded the motion.

VOTE: The motion carried unanimously.

B. Set Public Hearing Date to Vacate a Portion of the Right-of-Way for Wesley Place – Don Baker

Mayor Van Duzer explained what this item was about, and said Mr. Baker had requested it. Mayor Van Duzer said they only needed to vote to accept the petition and set it for public hearing.

MOTION: Councilman Katcko made a motion to accept the petition and set a date for the hearing. Vice Mayor Rynearson seconded the motion.

Councilman Reynolds hoped everyone on Council would take the opportunity to look at the property in question. He said it was a connection between Pearl St. and Virginia St., and thought vacating a portion of the right-of-way would close that connection off forever, which would obstruct a bike path should one be installed on the Island at some point. He said he did not want to see that street vacated.

Vice Mayor Rynearson said that he didn't disagree with Councilman Reynolds, but it would all come up in the hearing, and the action they were voting on would simply give Mr. Baker the right to do what he had the right to do. Mayor Van Duzer agreed and repeated that all they were doing at that time was voting to accept Mr. Baker's petition and set a hearing date.

Councilman Reynolds said he realized they were moving it forward, but he wanted to encourage all the Councilmen to visit the property before the hearing.

VOTE: The motion carried unanimously.

The hearing for this petition was set for June 27th at noon.

VI. ADMINISTRATIVE AGENDA

A. Mound House Directors' Contract Renewal continued from June 6, 2005 Agenda Item VI.I.

Theresa Schober, co-Director of the Mound House, came forward to address the Council. She said she had heard Councilman Katcko's comment at the last meeting when he had said that he didn't like to get a lot of paperwork if they would not have time to read it. Therefore, she said she had a written form of the statement she was about to make, and would distribute after her comments. She added that she had waited until she had received a copy of the Interim Town Attorney's memo on the previous Friday before drafting her statement.

Ms. Schober then read the statement she had prepared, copies of which she then distributed to the Council. After she had finished reading, she said that in February, when she had come before the Town about the contract extension, she believed that she had highlighted the benefits to the Town to grant that extension, and didn't go over them again, but did say they had included savings to the Town of at least \$13,000 in terms of in-kind labor by the Director of the Mound House, which would have been cash paid to an outside firm if the extension had not been supported.

She said she was there to request a wage increase for the directorship of the Mound House, and which had been supported unanimously by CELCAB for recommendation. She said their current contract amount of \$48,000 included all daily operations of the facility – child and adult educational programming, special events, oversight of

maintenance and capital improvements, grant writing, budget preparation, exhibit and report preparation, public relations, volunteer recruitment and coordination, and interfacing with CELCAB and Town Council. She said it was a full time position with the Town that was not a Staff position and did not include any benefits or bonuses.

Ms. Schober explained the apparent incongruity between Councilman Reynolds comment at the previous Monday meeting, wherein he said the cost of this position to the Town had increased, and cited information she had furnished to the Council, and appeared in their packs at this meeting again, that stated there had not been a rate increase in the Directorship of the Mound House since it had been created. She then recounted the history of the Directorship and stated that the rate of \$25 per hour for the first person to hold the position was a matter of public record. She said that when she and her husband had interviewed for the Directorship in 2002, it had been explicitly stated by Council that it was a full-time position. She said they had agreed to the contract for one year, and thought that they and the Town had viewed it as a test scenario because of the turmoil that had been generated by previous directors. After their first year, they had requested that the contract be renewed at \$25 per hour, as had been previously determined as appropriate for the job responsibilities and qualifications of the position, and that rate was still in force.

She said that while the cost of the directorship had increased through time - \$35,000 in 2002 to \$48,000 currently – she urged Council to view those numbers in light of their demonstrated capabilities, qualifications and success at the facility. She pointed out that three previous directors/event coordinators had brought in approximately \$30,000 in grant funds, and they had acquired ten times that amount since they had taken the position - \$303,850 in grant revenue, a lot of which was designed to increase the facility's ability to generate proceeds from programming. She then gave an example of the kayak facility, built with grant funds they had secured, pointing out that it will provide the Town a continued return from program fees. She also pointed out that a flyer they had created had been selected by the Director of Grants for the Florida Humanities Council for distribution to their grantees as an example of a successful cultural heritage grant project, and that the flyer has served and will continue to serve to increase site visitation. She said the \$269,500 grant for the pool project will provide a unique archeological exhibit and an unparalleled attraction to add to the other offerings on the property and on the Island. She pointed out that the exhibit admissions revenue will offset costs of the facility through time.

Ms. Schober said that in three years she and her husband had generated a 237% return on their salary, and had already submitted an additional grant for the first phase of the structure's restoration – another \$350,000 grant. She said they had streamlined the operations and maintenance budget line item from \$75,000 in 2002 to \$53,000 last year. She said they had already estimated \$60,000 for the coming year.

She didn't mean to imply that Council was not appreciative of their efforts, or that Council thought that their operation of the facility was not a success. She was confident that they could see what she and her husband had accomplished, and that some of the

Council members had said as much to them. She said it was difficult to come before Council justifying their success at the Mound House in financial terms. She said the Directorship of the Mound House was a line item in the Town's budget that highlighted what a single independent contractor to the Town received as compensation, which she thought could be easily targeted as an observable increase, and the Council was charged by voters to keep costs down. She believed the data demonstrate that she and her husband had reduced the cost to Island residents to maintain the Mound House, and that they had invested a tremendous amount of energy and enthusiasm and believed that their job performance would be reflected in their compensation beyond a pat on the back. She said that cost of living increases, coupled with the lack of benefits for the position, was driving their request.

Ms. Schober stated that she was 35 years old and her husband was 46, and they were both well educated, intelligent, competent and had shown exemplary job performance. She sincerely felt that an increase in compensation was warranted at this time and that their request was a fair one. She said the increase had been calculated based on the benefits package offered to full-time Town Staff, and pointed out that they were full time. She said that if the cap on the pay had been reached for the position, she thought the Council would understand why it would not be in their best interest to continue.

She then referred to a comment made by a Councilman at that last meeting, wherein he had said that some residents did not feel the expense of the Mound House was warranted. She said that as a historic preservation professional, she assured them that there would always be individuals who did not see the value in history or archeology or the natural environment. She recounted how Anita Cereceda had teased her publicly at the LPA hearing for the Mound House rezoning case, because Ms. Schober had needed directions to Times Square. Ms. Schober pointed out that people have different interests and motivations. She felt a lot of credit was due to the Town for embracing the property, and its benefits would become more apparent as time went on. She said the Mound House was a tribute to the history of the Island, and if embraced by Council, would go a long way to offset the concerns the residents.

Ms. Schober said the Town had a responsibility to provide a place with a diverse set of experiences so that as many people as possible with different interests could find something at the Mound House they could treasure, and that had been one of their goals as co-directors. She thanked the Council for the consideration of their request, and looked forward to continued success with the Mound House, which she said was a landmark property.

Vice Mayor Rynearson said they were discussing a contract, not an employee. Citing the verbatim minutes, he pointed out that Ms. Schober had asked for an extension of the contract with the Town to January 2006, including an extension of \$35,000. He said he had made the motion to extend the contract at that amount because he felt it was a good deal. He said the Council had already extended that contract, and had a letter from the Town Attorney that stated that the contract and the funds had been extended. He said it was an eighteen-month contract, and broke it down as follows:

\$48,000 for twelve months	
\$24,000 for the additional six months' extension	
\$37,000 for the additional wages granted	
<hr/>	
\$109,000 total for eighteen months	

Vice Mayor Rynearson then divided the total amount of wages contracted for the eighteen months, divided it by 12 months, and said it would amount to \$6,055.00 per month, which he said amounted to \$72,660 per year, and said it further broke down to \$34.62 per hour. He said the Council had given the directors what they said they wanted in February when they had voted to approve the contract extension. He felt the Town was compensating them very well.

MOTION: Vice Mayor Rynearson made a motion to deny opening the contract again, because the Council worked for the Town and not the contractor. Councilman Massucco seconded the motion for discussion.

Councilman Reynolds said he wanted to deviate from the figures given by Ms. Schober. He then read something he had distributed to his fellow Councilmen. He said that after he had worked with the figures regarding the Mound House and the new contract, he found the fragmentation of salary increases was very difficult to understand. He said Council had not been supplied anything from Staff with regard to comments or recommendations, and he believed the Town Manager should do it because she was the overseer of the Mound House project. He thought most of the Council could recognize that since 1998 that salary for one full-time person would be \$48,000. However, he said the Town had begun operating the Mound House with the idea that a part-time person could handle the project, and thought that it had suddenly jumped to two people. He said felt the \$37,000 that the directors had requested was for a crash program to dig into the edge of the pool. He did not believe there was anything in the project that required a crash program for an extra \$37,000. He said that the current rate of \$48,000, with \$37,000 added as of April, added up to \$85,000 a year, which was going to be split between the two directors. He then indicated the requested rate increase for the coming year, as of May 31, 2005, which he said was an increase of \$14,400 on top of the \$48,000, which would bring the annual pay rate to \$62,400. He said if they approved that, and added the \$37,000 that had already been approved, it would bring their total salary to \$99,400 for the Mound House directorship. He said the Mound House salary appeared to be out of control, and that he had asked the Town Manager for some guidance and recommendations. He said prior to 1998, it was a part-time job and paid about \$24,000 annually, and if the request went through, the Town would be paying the rate of a full-time person of \$99,400. He thought the Council and Staff should look at it and get a handle on things.

Mayor Van Duzer said he took exception to the figures offered by Vice Mayor Rynearson and Councilman Reynolds. He thought Ms. Schober was correct in her assessment that she had misspoken at the original request for the extension in February. He said that the co-directors currently had a \$48,000 contract and were asking for an increase to \$62,400

annually, which amounted to \$14,400 more per year. He said that was all in relation to the contract for the co-directorship of the Mound House. He said what had been approved by Council in February had been an additional contract for \$37,000 for a year and half period to pay them for a separate project outside the parameters of their contract. He said it appeared to him that the co-directors would be getting a total annual amount of \$86,733 which would cover them both and would include the extra work on the pool project. He believed those were the correct figures, and that the Council had been politicizing part of the issue. He said he would not support the motion because he thought what the co-directors were asking for was a \$14,400 annual increase on the contract that ran out on May 31, 2005. He said he had gone through all the pertinent minutes from the various meetings about it, and through all offered information, including the memo from the Town Attorney Dalton, and he believed his figures were the correct figures. He said Ms. Dalton's memo stated that the \$37,000 was an additional compensation for an eighteen-month period, and had nothing to do with their annual contract.

Councilman Massucco told Ms. Schober that they appreciated all she and her husband had done, and that they had done a magnificent job. He didn't want Ms. Schober to think they were tearing her apart, but said the Council had a responsibility. He felt, with all the figures flying back and forth, that it all depended on how one looked at them. He thought the \$37,000 was the sticking point, although he understood it was going to be paid for a special job she and her husband were going to do for the Town. He said it was part of their net salary at the end of a year and a half. He said there was one figure that put the total for that period up to \$99,400 and another figure of \$109,000, and that there was no doubt that they would be up in that range when the money was paid. He then asked Ms. Schober if she had gotten any of the \$37,000 grant money. Ms. Schober said they had invoiced approximately \$1,000 for the initial groundbreaking at the pool. She stressed it was two people working full-time, and they had been talking about a \$48,000 contract for two people, and so even if they got up to the \$100,000 range, it would be divided by two and would put their salary right back into the range it was currently in. Councilman Massucco pointed out that that was what everyone had agreed on, and Ms. Schober concurred. Councilman Massucco didn't think Ms. Schober's remark that the \$48,000 pay rate went back to 1998 was true because when she had left FGCU and went into a contract with the Town, she had accepted the \$48,000 as the salary. He said she could not say they had not received a raise since 1998. Ms. Schober said she had not tried to claim that. She said what had not changed since 1998 was that \$25 per hour was what had been paid to people in the directorship position. She said the hourly rate had dropped when Council made the directorship a full-time position, and after their first year on the job, they had asked that the rate be put back up to \$25 per hour, which they thought had been an appropriate rate for the services that were then being provided. She said the increase she was requesting, if approved, would mark the first time the hourly pay rate would have gone above the \$25 per hour mark that went back seven years.

Vice Mayor Rynearson asked Mayor Van Duzer if the discussion could be brought back to Council, and said it was not the way Council did things. Mayor Van Duzer explained

that Councilman Massucco had asked Ms. Schober a question. Vice Mayor Rynearson countered “just one”.

Councilman Massucco said he was in agreement in that the Council had to put some control on the money and that this was a good time to do it. He said, in referring to the extra compensation paid for projects that were going to be done, that they should look at that type of thing more carefully. He said he could have negotiated the amount of the raise requested, but felt the additional \$37,000 changed the picture. He felt it was still open to negotiation, but he couldn't agree with a pay increase in addition to the already approved \$37,000.

Councilman Katcko thought the issue had not been handled properly. He said there was mass confusion with everyone coming up with his own set of figures, including himself. He couldn't see how they could decide on it when no one knew what the truth was. He thought the Council should have had a copy of the contract to review. He guessed they were talking in terms of one full-time position, and didn't know how many hours each of the directors worked at the Mound House each week, and wanted to know if their hours were documented for Town Staff in some way. He also wanted to know how many additional hours were spent on the duties related to the \$37,000 grant, and didn't know if they were getting done within the 40 hour week, or if they were having to work additional hours and on the weekends. He thought the memo from Anne Dalton stated that a contract had not been signed. He thought that was a problem, and it seemed that they had a contract extension, and that no contract had been signed with regard to the additional \$37,000. He said there were a lot of problems with it, and a 30% increase in one year, from \$48,000 to \$62,400, was very substantial. He said he couldn't make a decision based on twelve sets of numbers. He thought it had been presented in a better format because everyone was confused over it.

Vice Mayor Rynearson said he wanted to debate the figures, but no matter how many people were holding the position, and whether or not the contract was signed or not, the added \$37,000 had raised the pay rate to \$34.62 per hour. He said the contract in 2002 was \$35,000, the contract in 2004 went up to \$48,000, the contract in 2005 – the extension – went up to \$72,660, and if it were to be reopened again and the request were approved, it would go up to \$86,400, which he felt was way out of line. He then asked Attorney Dalton asked if the approved extension, although a verbal agreement, was a valid contract, even if it wasn't in writing. He also asked Ms. Dalton if she was of the opinion that Council had extended the contract to a year and a half, and that the Council had extended the directors' wages for an extra \$37,000. Ms. Dalton said it was a contract because it had been an offer and an acceptance according to the minutes. She said the written contract would have memorialized the agreement between Council and the contractor. She said she was of the opinion that a contract had been entered into for additional compensation for \$37,000 for an additional period of eighteen months. Referring to her memo, she said that, assuming that there was a new contract, it would need to reflect not only the old job description, but also any additional duties that had been accepted under the February extension.

Vice Mayor Rynearson then said his motion stood, and that he wanted to add to it that the extended contract be cleaned up and put in writing to be sure everyone understood.

MOTION (amended): Councilman Rynearson made a motion to reject opening the contract, to leave it as is, and to clean up and put in writing the February extension agreement. Councilman Massucco seconded the motion.

Councilman Massucco said the Town Attorney was correct because in the verbatim minutes of 2-7-05, Ms. Schober had said “So we’re asking for a wage increase over the next year and half through June of 2006 of \$37,000”. He said there was a contract already.

Ms. Dalton said the June 2004 contract had not been signed by the Council. She said apparently the contract had been sent to the Town Attorney at the time for review, and while Ms. Schober and Mr. Torrence had signed it, the Town had not executed it. She said it still was in force, but there was no signed contract.

Mayor Van Duzer strenuously objected to what was taking place, because the Council had approved \$37,000 for the additional workload. He said the wording was unfortunate, but was supposed to have been a totally different contract for the pool exhibit archeology mitigation, all of which was going to be paid from grant funds. He said the co-directors were currently requesting that the annual pay rate be increased from \$25 to \$30 per hour. He said if they hadn’t given them the extra money for the pool project, the Town would have had to hire someone to oversee it and would not be able to use the grant money. He said the Town was going to save \$13,000 by having the co-directors do it. He was sure his figures were accurate, and that he was in business and it would cost him \$30 per hour for a skilled laborer on a job site, taking into consideration the hourly pay, plus the Workman’s Comp rate, plus the Social Security, plus what Mr. Van Duzer was required to pay him in other benefits. He thought the co-directors had done a terrific job and thought the Council was picking the issue to pieces. He said there were two contracts – one to run the Mound House and one for archeological mitigation on the pool project. He felt the Council should get the contract with the pay increase renewed before it escalated into something more.

Councilman Reynolds believed that the co-directors were implying that if they did something else, that they should be paid extra. He believed that they were already adequately compensated all along, and that it should cover anything that needed to happen at the Mound House. He said they should not have to be paid extra on a separate contract to do what needed to be done at the Mound House. He said that Ms. Schober had implied that writing a grant justified the increases. He believed she was compensated so that she would do things like write grants, and that she had a certain number of hours in the day to work on the various things that had to be done. He thought the Council had erred when they had extended the \$37,000. He didn’t understand why the Council was negotiating the contract in the first place, because he thought it was something Town Staff was supposed to do. He said it should have come to Council with a recommendation from Staff. He didn’t think the Council should be expected to work

with every committee. He suggested to Council that they had obligated themselves to pay the \$37,000 even without a written contract, and that it should be kept in force, as it was no one's fault but the Council's. He hoped they would not increase the rate of pay.

Councilman Massucco said they had a contract for \$48,000, and that the co-directors had requested an extension of that contract in February, which the Council had agreed to. He asked Ms. Dalton if they could negotiate a new contract without nullifying the first contract. Ms. Dalton said the Council had the ability to consider further compensation if it was the will of the Council. Councilman Massucco asked if that would require two separate contracts. Ms. Dalton explained that the minutes reflected the contract that had been entered into in February, even though it was not in writing, and if they so chose, everything would be rewritten into one new contract that would include everything agreed to thus far, including the additional job duties under the \$37,000. Ms. Dalton opined that a solution down the road would be to have a standard service provider contract, and then add attachments to it. She felt there might not have been so much confusion had the agreement been memorialized in writing as an addendum to the original contract.

Councilman Katcko said he knew the Mayor wanted to call the vote, but he wanted to talk. This remark caused a few laughs. Mayor Van Duzer said it was all right because he wasn't sure if he was done talking. Councilman Katcko said he understood that the \$37,000 was a separate issue, and he had no problem with it. He said he had a problem with the raise, because it was a 30% increase. However, he did agree that as independent contractors who had to find their own health care services, it was a big and expensive issue for them. He said that, as a business owner, he didn't know how many employees he had lost over the past ten years because, no matter how much he paid them per hour, he couldn't afford to give them health insurance. He thought it was a legitimate issue for the co-directors. He said he would be agreeable to some sort of wage increase over the \$48,000 to help them defray health insurance costs, but he believed some of the cost should come out of the additional \$37,000 and that it should be considered a wage increase. He believed the value the Town got from the current co-directors of the Mound House was above a \$48,000 job, and that they were very professional and were doing an excellent job.

Vice Mayor Rynearson said he agreed with Councilman Katcko. He said the co-directors had come to Council in February and had told Council what they wanted. He said when he presented a contract to someone, he made sure all his expenses and everything he wants to get in that contract were included, and if it got signed, it was a binding contract. He said if they wanted extra money for insurance, they should have asked for it. He said the sum they would be earning per month under the current contract was enough to afford health care. He felt the Council had gone far enough and had been fair, and that the Council was obligated to look after the Town's money and not the contractor's money.

VOTE: The motion carried 3 –2 with Mayor Van Duzer and Councilman Katcko dissenting.

Ms. Schober asked to speak again, which the Mayor allowed. Ms. Schober stated that their contract had a one-month termination clause that they would be enacting. She concluded her statement by thanking the Council.

Vice Mayor Rynearson said the discussion had to continue because Ms. Schober had just given a thirty-day notice to terminate her contract. He asked if Council could direct Town Staff to put out an advertisement for a Mound House director, and then bring it back to Council in September. He said the Council had to move on, and that it couldn't be threatened. Mayor Van Duzer asked Vice Mayor Rynearson if he wanted to make a directive to the Staff, and Vice Mayor Rynearson asked that the Council collectively direct the Staff to advertise for the position. Mayor Van Duzer wanted to put it on the next meetings agenda, but both Vice Mayor Rynearson and Councilman Massucco remarked that they needed to do it at this meeting for continuity's sake, and because the agenda for the next meeting was already full. Mayor Van Duzer asked if that was the direction and will of the Council. Councilman Reynolds asked if they needed a motion, and both the Mayor and Vice Mayor said they just needed to give direction to Staff. Mayor Van Duzer then checked to be sure Town Staff had gotten the directive.

B. Public Hearings:

1. David Parilla in ref. to 1335 Santos Road – VAR2004-00042

Mayor Van Duzer asked all who wished to speak at the hearing to be sworn in, which they were. He then asked the Council for declaration of ex parte communications.

Vice Mayor Rynearson and Councilman Massucco said they had visited the property but had not spoken to anyone. Councilmen Reynolds and Katcko had none to declare. Mayor Van Duzer said he had also visited the site but had not spoken to anyone.

Matt Uley, representing Mr. Parilla, came forward. He said they were asking the Council to follow the recommendation of the LPA and approve the variance. He then handed out some exhibits to the Council, which consisted of a number of letters of no objection from residents, as well as some photographs and a graphic.

He said the parcel was located north of Santos Road, and consisted of approximately 5600 square feet and contained platted and unplatted areas. He said it was in the Santos zoning district, a relatively unusual mixed-use district that had been created several years ago in response to a specific plan that had been created for the area. He said the street was a transition area between intense commercial uses in front of it on Estero Boulevard and the residential uses behind it. He said offices were permitted, as well as single-family residential. He said the mix of uses reflected the way Mr. Parilla used his property. He said Mr. Parilla had a single-family and a home office, which was part of the problem for him. He then used the photos and graphic he had distributed to show the Council members how Mr. Parilla's home office was situated relative to the rest of his home, the problems he had with it currently, and what he proposed to do to improve the situation, for which he needed a variance.

Mr. Uley said the condition of the property was unusual and difficult to describe unless one saw it. Indicating the graphics he had brought to the meeting, Mr. Uley pointed out that the lot was one of several located south of a canal, and that most of the lots had a boundary along the canal that ran east to west in a fairly straight line. In the case of the lot abutting the eastern side Mr. Parilla's lot, the canal boundary started to "dive" to the south, and continued in that direction through Mr. Parilla's lot so that his western property line was shorter than his eastern property line. He said Mr. Parilla's lot was irregularly shaped relative to the other lots south of the canal. He said a variety of people throughout the years had exacerbated the unusual condition of Mr. Parilla's lot. He said a prior owner of the property had filled a substantial amount of property seaward of where the platted line was on the graphic, and that the property line on the east side of the property intruded further into the canal on the west side. Referring again to the site plan, he said the property to the east of Mr. Parilla's property continued the angle of the lot line, intruding more and more into the canal as one moves east. He said the house on that lot was substantially to the north of Mr. Parilla's property, although it complied with the regulations. He said Mr. Parilla was proposing to build the expansion on his house so that it was consistent with the existing line that had been created by the house in the abutting lot to the east. He added that one of the letters of No Objection was from that property owner. Mr. Uley then reiterated most of the above points while indicating various lots and property lines in the five photographs he had distributed to Council. He said the basic intent was to make the build-to line on Mr. Parilla's property consistent with what the building line was to the east of his property. He then pointed out a large structure, the photo of which was taken on the lot immediately to the east of the lot located east of Mr. Parilla's property, which Mr. Uley pointed out was very close to the sea wall and was clearly an illegal, non-conforming structure, but that it was substantial and wouldn't be gone any time soon. Another photo taken of a building four or five doors down from Mr. Parilla's property showed a very substantial structure located very close to the walkway on the lot, and was an illegal, non-conforming structure.

Mr. Uley said the intent was to be consistent with the existing pattern of construction in the area. When applying the variance criteria to the facts he had presented, Mr. Uley thought the Council would find the variance should be approved. He said the unusual circumstances with regard to the property – the platting, the unusual dimensions of the property, the filling of the lot prior to Mr. Parilla's ownership – and the unreasonable burden created by the regulations was the inability to expand the building. He added that the expansion complied with the Town's floor area ratio requirements. He said without the expansion, Mr. Parilla would not have a reasonably large and functional office/residence. Regarding the impact to the public, Mr. Uley pointed out that the neighbors had all sent letters of No Objection, which he felt was the best evidence that there would be no public harm. He said it was not a situation that would call for an amendment to the regulation. He asked that the Council approve the variance, citing the unanimous recommendation for approval from the LPA.

a. Staff Report

Pam Palke with Lee County came forward, and apologized for the lateness and mix-up in the reports. She said Staff was recommending approval with a more conservative

approach, and recommended only a seven-foot variance on the westerly property line. She said that would leave adequate area to build a reasonably sized addition while complying with the 25' water body setback on the rear of the property.

Mayor Van Duzer asked Ms. Palke about the Staff denial of the 18.3 feet, from Condition Two of the Staff Recommendations. Ms. Palke said Mr. Parilla had asked to the maximum of 7 feet, and Staff believed he could comply with the 25 feet, and have minimum reasonable use of the property.

Vice Mayor Rynearson said the first thing he had noticed when he visited the property was that there was no parking. He asked if the addition would affect parking. Ms. Palke said her understanding was that the addition was residential, so that adding space did not add cars.

Councilman Reynolds asked if it were possible for the water body setback to be 15 feet rather than 7 feet. He thought it would look as bad as the building to the right of it, and once it was built it would be there forever. Ms. Palke explained that the 7-foot setback was in reference to the westerly property line, and maintained the existing building setback, allowing 7 feet instead of the 18.3 feet requested. Councilman Reynolds asked for clarification. Ms. Palke said the location of the canal would be approximately 7 feet to the proposed addition, and was where the canal turned at a right angle. Councilman Reynolds wanted to know how far away from the canal the structure would be after the turn in the canal. Ms. Palke said the addition would come out about 8 feet from the house and would maintain the 25-foot setback, per Staff's recommendations.

Mr. Uley came forward and said he could understand Councilman Reynolds' confusion over the seven feet and the eighteen feet. He said the initial application for the variance was for 18 feet, but Staff had concluded that a variance to seven feet was also needed. He explained that the Staff's recommendations basically said that Mr. Parilla could maintain the existing setback to the west, where the notch in the sea wall occurred, but as far as expanding out in the same direction as the lot immediately to the east of Mr. Parilla's, it couldn't be done. He said the Staff's recommendation was effectively a complete denial of what Mr. Parilla had requested. He said the eighteen-foot setback from the water body was needed to make the addition work.

Councilman Massucco asked what Staff's recommendation would do to Mr. Parilla's plan, and Mr. Uley said it would destroy it. Councilman Massucco observed that, in essence, the Staff had denied the request, but the LPA had approved it. Mr. Uley concurred with that observation.

Councilman Katcko asked if all the properties surrounding Mr. Parilla's property were residential. Mr. Uley said they were. Councilman Katcko said he had a problem with their asking for expansion of a commercial space in a residential area. He didn't believe it was the Town's problem that there wasn't enough space for Mr. Parilla to run a business out of his home. Mr. Uley said he understood his concern, but that he had talked about the purpose of the Santos zoning district to point out that the use, to which Mr.

Parilla wanted to put his property, was consistent with the zoning category and with the planning that went into the zoning category.

Councilman Reynolds said the it had been intended that the zone would allow for office space or some low-impact business on the Santos side, but it had not been intended for building onto the back of the buildings. Mr. Uley said the zoning category applied to the entire parcel. He said Mr. Parilla's property had historically been used for both home occupation and a residential use, but when the Town created the new zoning district, Mr. Parilla got the permits to turn his office into a general office, which was totally permitted by regulation. He said that, even as a home occupation, it was very limited in terms of the amount of space. He said Mr. Parilla really needed to reconfigure and expand the space, so as to create a separation between the residential and the commercial activities in his home.

Councilman Reynolds said, after reading the LPA minutes, it seemed to him that the LPA had not wanted to approve this variance at first, but then someone on the LPA had mentioned the idea that it might be able to be done if the building was declared historical, and then it appeared everyone on the LPA "jumped on the band wagon" and recommended approval with the idea that he would build it to make it look like the rest of the structure. Councilman Reynolds asked Ms. Palke if she understood that part of the conversation. Ms. Palke said she did not really understand what he was talking about, but did say that the building had not been designated historical. Councilman Reynolds said that was where the discussion had changed in the LPA meeting, and then they approved it. He asked Ms. Palke if that was correct or if she recalled that. Ms. Palke said she did not recall the LPA had approved the variance due to a historical designation of the building. She believed the LPA felt there were unique circumstances based on the lot configuration and the location of the existing structure. Councilman Reynolds said it was an unusual curve the LPA had thrown at Council.

Jerry Murphy said he had been the one to bring up the idea of Mr. Parilla's building having historical designation, due to a confusion he had about the age of the structure. He said that had been clarified for the record before the LPA. Councilman Reynolds said the discussion had seemed to change at that point in the LPA meeting. He felt the suggestion of an historical designation should not have gotten into their decision-making process. He said the Council and the Town planners were obligate to go by the rules in existence, because the decision would affect everyone in the area, and any future owners of that property. Mr. Murphy said he did not believe that the LPA made their recommendation based on any consideration that the building was historical.

b. Town Council Resolution – Parilla

MOTION: Councilman Massucco made a motion to accept the way the resolution was written, in agreement with the LPA recommendations. Mayor Van Duzer seconded the motion.

Mayor Van Duzer clarified that the motion was to accept the resolution allowing for the 7-foot water body setback and the 18.3 rear water body set back.

Councilman Reynolds said he agreed with the planners' recommendations, but he did not believe 18.3 should be allowed, and could not support the motion.

Councilman Massucco said he had looked at the pictures provided by Mr. Uley, and had visited the property, which he characterized as somewhat remote. He said none of the neighbors had any objection to Mr. Parilla's plans, and that Mr. Parilla would not be violating any FAR regulations. He did not think the Council should have any objection to someone trying to improve their business and, at the same time, their residence.

VOTE: The motion failed 3 – 2, with Vice Mayor Rynearson, Councilman Reynolds, and Councilman Katcko dissenting.

MOTION: Vice Mayor Rynearson made a motion to support Staff's recommendation. Councilman Katcko seconded the motion.

Mayor Van Duzer pointed out that the neighbors had no problem and had offered their support for Mr. Parilla's request. He felt that the Staff's recommendations would eliminate a large part of the proposed addition to the structure, and that it was very restrictive with regard to the use of the property.

Vice Mayor Rynearson said that the neighbors supported Mr. Parilla because their structures were in violation. He felt giving the right to go ahead with the 7-foot restriction was reasonable. He said he didn't want to hold up Mr. Parilla's business, but believed the expansion of his property could be accomplished the way Staff recommended it be done. Mayor Van Duzer said it was going to take it down to a six-foot addition. He went on to say that it was an exceptional area, with its own zoning classification, and none of the neighbors objected to the plan. He then reiterated that the motion was to approve the 7-foot, as opposed to the 18-foot, setback.

Councilman Massucco pointed out that they needed a Resolution Number. There was some discussion as to how the number would be assigned. Ms. Dalton said a resolution number would be assigned when it was voted on, and believed that Mr. Murphy had a resolution number, and then said it was 05-15. Ms. Dalton said that they would just delete Section 2 on the first page, second paragraph, containing the language about the 18.3 feet.

VOTE: The motion carried 3-2, with Mayor Van Duzer and Councilman Massucco dissenting.

2. The Sandarac 1 & 2 Assoc. in ref. to replacement fence – SEZ2005-00011

All those present who intended to give testimony in this case, were sworn in. Mayor Van Duzer then asked for ex parte communication disclosure from the Council.

Councilman Massucco said he had spoken with Mr. Schilling and Mr. Thomas, and had visited the property.

Vice Mayor Rynearson said he had spoken with Mr. Schilling and the property manager.

Mayor Van Duzer said he had spoken with Mr. Schilling and Bill Thomas on site.

Councilman Katcko said he had inspected the property with Frank Schilling and Bill Thomas.

Frank Schilling of 6672 Estero Boulevard came forward and said he was the applicant. He noted that Councilman Reynolds was not present at the moment, and referred to ex parte communication with regards to him. Mayor Van Duzer said he would check with Mr. Reynolds when he returned to Council. Mr. Schilling thanked Council and Staff for their help with the process. He said their case was simple, and believed they had a unique situation. He characterized the Sandarac residents as good stewards of their property, and that their petition was about responsibly rebuilding a fence that had performed its environmental functions in an effective manner. He said the fence had enabled their drainage system to perform as it was designed in 1976, both the fence and drainage system having been approved by Lee County. He said the 2002 replacement fence system had been thoroughly reviewed and co-designed with Lee County's participation, approved by the Town, reviewed and approved by the state DEP, and everyone had been entirely satisfied. He said the Town had since adopted Ordinance 03-03, which recognized the 1978 CCL line, and which had changed their situation legally. He said the fence permit of 2002, using the 1978 line, had been known by Lee County and the state DEP, and that variance had been noted in writing on the DEP permit, a copy of which was included in the booklet Mr. Schilling had provided to the Council. He said the only thing that had changed, since the Town had deferred to the county and state DEP in the 2002 variance, was the new ordinance. Mr. Schilling said the Sandarac structures had some of the highest flood elevation protections on the Island – 12 feet. He said dunes, as proposed by the LPA, would not help the elevation in terms of flood protection. He said Sandarac had one of the widest beaches on the Island – over 950 feet. He said both of those things, in existence together, were unique to the Sandarac property. He said the beach had grown an average of 27 feet a year since the building had been built, due to the well-designed fence system. He said they did not need dunes for beach protection, and cited a comment Councilman Katcko had jokingly made that maybe, if everyone on the Beach had a fence system like Sandarac's that maybe their beaches would get bigger. He said their beach was well groomed and unobstructed by vegetation, and was what the owners bought, and was what Lee County had acknowledged in 2002. He said that Rick Joyce had inspected and discussed the property many times. He said that in 2002, with the Beach and Dune Ordinance, the Town had formally reaffirmed their right to keep their beach in the same condition the owners had purchased. He acknowledged that Council took property rights questions very seriously. He referred to the invocation given by the Mayor at the beginning of the meeting, and asked the Council to open their minds and hearts to a good situation, well preserved, well protected and well maintained, and asked the Council to exercise their right to approve their fence system. He said all parties – the Town, Lee County DES, and DEP – approved it less than three years ago.

Mr. Schilling then referred to the concept of restoration, and said there was a real possibility that it could fall within the rebuilding of a non-conforming structure within the less than 50% rule. He then asked Sandarac's administrative assistant, Bill Thomas, to address that issue, and discuss the drainage system, about which the Sandarac residents were most concerned. He then asked the Council to look at a picture he had furnished which showed the fences as they were floated out after Hurricane Charley.

Bill Thomas, the administrative assistant for Sandarac I & II, came forward. He asked the Council to grant Sandarac the right to rebuild what had been in place when Hurricane Charley struck the Island in August of 2004. Referring to photographs furnished by the Sandarac, Mr. Thomas pointed out that the fence had been washed out of the ground, and not destroyed. His opinion was that much of it could be put back into the ground for less than 25% of the original total cost of it. He said the residents had begun putting it back into the ground when code enforcement had asked them to cease and remove what they had put back into the ground because there was no permit, and then asked them to remove some sections that had not been taken out by the hurricane. He said they wanted to protect the retention-type drainage system on the property, and needed to maintain the current elevations of the property. He asked the Council to approve the fence, along with the plantings that had been destroyed in the hurricane, so as to have both the fence and plantings back to their original condition prior to the hurricane in August of 2002.

a. Staff Report

Pam Palke, of Lee County, came forward and said that Staff had recommended denial of the request. She said Staff had always taken a very conservative position with regard to variances. She said this was their first special exception for a structure seaward of the Coastal Construction Control Line, established in 1978. She introduced the Staff Report, dated May 6, 2005 and prepared by Josh Philpot, into the record. She said the applicant had described the property, the wall and the permitting history. To date, she said the wall did not have a completed permit – the permit had expired – and that was why they had not been allowed to rebuild it. She said the implementation of the special exception process in that zoning district had brought them to this point before Council. She said Staff believed there was a reasonable way to protect the Sandarac property through the establishment of a dune system, but through several meetings with the applicant, they were unable to reach an agreement regarding the establishment of a dune system. She pointed out the updated memo from Staff, which included the conditions Staff believed had been alluded to by the LPA for the dune system. Staff recognized there was a problem with sand in their inlet system, and believed there were other ways they could protect it other than by the construction of a wall or hardened structure along the shoreline. She indicated that Ms. Bankston, the County Planner that works with Town Staff, and Mr. Trebituski the principal planner in Lee County's Environmental Sciences Department who had expertise in shorelines, were both present and could answer any questions the Council may have of them.

Mayor Van Duzer thought that in the Town's LDC that fences were one of the allowances seaward of the Coastal Control Line. Ms. Palke said that fences were, but by

Special Exception. Mayor Van Duzer said that was what they were asking for, and it there was an allowance in the LDC for it.

Kim Trebituski, the principal Environmental Planner with Lee County, came forward and said she had been with the County for eight years, and that she had a Masters Degree in Coastal Management with a specialization in barrier island ecology and hurricane storm impacts on barrier islands. She then explained the reasoning behind Staff's recommendation. First, she said that although the Sandarac residents claimed that they had beach protection with their wall, in reality they hadn't and was why the hurricane had taken out the fence. She said the problem they said they were having with sand getting into their drainage system could be resolved by creation of a 50-foot wide dune system with vegetation, which would serve two purposes: one, the vegetation would trap sand and should protect them better than the wall had; and two, with a dune system, there would be no wall to be knocked out, and the wall would not have protected them from a storm surge. She said she had been visiting Ft. Myers Beach since the early 1970's, and had witnessed the growth of the beach in front of the Sandarac, and had witnessed the raking and then the depositing of sand in areas that were drainage ways. She said that while the Sandarac residents had kept the beach extremely clean, over time it had made the beach more unstable, and by putting in the 50-foot wide dune system, and allowing the vegetation to establish well, the Sandarac residents will have provided themselves with better long-term protection. She said it was also more ecologically sound for the beach itself. She said the Town's Comp Plan was well written and encouraged natural protection over hardened structures. She said if the Town wanted to utilize the Town's Comp Plan to make shoreline protection be in the form of more natural systems on the Island over the years to come, it would overall improve the ecology of the Island and would provide better long term storm protection.

Ms. Bankston offered to give more specific reasons as to why they had come to the conclusions they had in the Staff recommendations. Mayor Van Duzer asked the Council if they wanted that, and several of them replied that they had not had a chance to read the Staff Recommendations yet.

Councilman Massucco, referring to the 50-foot dune system Ms. Trebituski had mentioned, he said just a few condos down from Sandarac there was a dune planting, and all sorts of debris had blown into it. He thought the Sandarac residents were worried about that happening on their beach. He said the fence they had had for so many years had seemed to service them well, and now they were being told they couldn't have it. He said it was a fact that it had helped the Sandarac's drainage system to survive over the years. Councilman Massucco asked Ms. Trebituski how to maintain dune plantings. Ms. Trebituski said the County would work with them as they do with any of the indigenous preservation requirements – if there were vines or noxious weeds that came in, they could be controlled and removed. She said once a healthy dune system was established, it was self-maintaining. Councilman Massucco said the planting could exceed the 50 feet very easily. Ms. Trebituski said if the Town were to disallow raking of the beach, there would be a dune system established on that portion of the beach naturally. She said hardened structures had been allowed in many areas around the state of Florida in other coastal

communities, and they had learned over time that they were not the best form of protection. She reminded Council that between 1976 and last year, this area had not been directly hit by a hurricane, and that Ft. Myers Beach had not gotten the direct hit that Captiva had gotten with Hurricane Charley. She felt it would be prudent for the Council to consider the fact that when the Town's Comp Plan was written it had taken this situation into account. She said it had been proven time and time again that dune systems were better protection than a hardened structure. She recounted that, after Hurricane Frederick had hit Pensacola, the homes that had dunes in front of them may have had the dunes pushed closer to their houses, but their houses had less damage than the people who had removed dunes. She said it was at a point where the Council had to determine which way they wanted to go, and was a situation they had run across regularly. In her professional opinion, a natural system would protect the Sandarac better and would protect their drainage system.

Vice Mayor Rynearson asked if there were a more palatable way to approach the subject of dunes. He said that up until seven years ago, he had been dead-set against dunes, but the more he had learned and understood about them, the more he agreed they were needed. Conversely, he understood the Sandarac residents. He thought a blanket percentage could be established on the Island, where so much of anyone's property should have dunes, and that the dunes could not be allowed to get higher than three feet. He said something needed to be in writing that could show people like the Sandarac residents that nine- or ten-foot dunes were not being installed. Referring to Councilman Massucco's remarks, he thought the Council ought to come up with a plan for cleaning and patrolling them.

Ms. Trebituski said debris did become an issue in preserves because people tend to drop things in natural areas. With regard to the height of dunes, she said that it couldn't be said that a dune would never get taller than three feet. She said Staff had never come up with a policy regarding the percentage of the shoreline having dunes because a barrier island system was very dynamic, and each property had to be looked at individually with regard to its beach width, and where the tide line fell, in order to determine how much dune would be needed so that it didn't wash out. She said other options existed where people had built a wall and then built dunes with it. She felt Staff was very open to working with each applicant who came forward in an attempt to improve and/or protect their property, and learning what their needs and concerns were, and educating them as to why certain things were better options. Ms. Trebituski said it was a very complicated and specialized field for which she had earned a masters degree, which she thought indicated how specialized the field was, and Vice Mayor Rynearson agreed that the Council had not had that education. She felt that in the case of the Sandarac residents, they simply did not want to do anything but replace their fence system, but that the County was still very open to helping and working with them.

Mayor Van Duzer said he did not want to get into discussions about what the Council may need to do in the future in terms of policy-making with regard to dunes. Vice Mayor Rynearson said people were upset because they didn't understand dunes. Mayor Van

Duzer understood it was germane to the issue, but the Council needed to stay on the agenda.

Ms. Bankston, from Environmental Sciences, came forward and apologized again for not getting the Staff Recommendations and pictures to Council before the meeting. She said the number of feet that had been set by Staff for the dune had been extrapolated from the Gull Wing plantings that were put in as a dune restoration, where she had measured the widest point of the dune was 100 feet from the property. She then ran an imaginary line down in front of the Sandarac property, and said it was a little more than 50 feet, but felt that 50 feet was a good number, because of the width of the beach, which amounted to less than 20% of that area to be committed to dune restoration plantings. She felt that was reasonable.

At this time, Mayor Van Duzer asked Councilman Reynolds, who had been absent earlier, if he had any ex parte communication to declare regarding this case. Councilman Reynolds said he had gone and walked over the Sandarac property by himself, and then later had spoken with Frank Schilling and Bill Thomas.

Frank Schilling came forward to respond to the Staff recommendations. He rhetorically asked if what was good for some was then good for everyone, and opined that it was usually not true. He felt the Sandarac residents had clearly demonstrated that their fence system had protected their property and their drainage system, as well as the environment, and that the fence system had been approved as recently as 2002. He said it had worked well, had been low maintenance, and he didn't know why they had to change because of someone's vision of what the beach ought to be without fundamental reasons for making the change. He said they had storm protection because of their wide beach, and flood protection because of their elevation, and that those two conditions were unique to their property. He asked, under Special Exception, for Council to recognize the unique situation, and that one size does not fit all.

Bill Thomas came forward to respond to the Staff recommendations. He felt they had gotten way off base talking about storm management and storm surges, and that was not what they were asking for. He said they were asking for a windbreak to keep the blowing wind at bay, and that they had never had an issue or a concern with tidal or water damage at Sandarac. He said the residents just wanted what they had when they bought their property.

b. Town Council Resolution – Sandarac

MOTION: Councilman Massucco made a motion to approve the applicant's request to replace the fence. Mayor Van Duzer seconded the motion.

Mayor Van Duzer assumed that Councilman Massucco's motion did not include a dune restoration plan and he said that was correct.

Councilman Katcko said he was for allowing Sandarac to put the fence back the way it was before the hurricane, but he thought it would include specific plantings landward of

the fence, and did not want to add any dunes. He said the dune on the property next to Sandarac was taller than he was, and pointed out that the Sandarac had ground floor units, whereas the next-door property did not, and that the ground floor residents' view could be completely obstructed over time. He felt it was a unique situation that deserved a unique solution.

Councilman Reynolds said he had looked at the property as soon as he had heard about this case. The first thing he had noticed was the beautiful lawn there, and presumed it had been there since 1976. He said in a subsequent visit to the property, he had met with Mr. Schilling and gone through all the documentation with him. He said the planners had never said they wanted the dune system put in for storm or flood protection. He said the building was high enough, and said the fence was wanted for protection against blowing sand. He said their drainage system had been filled up with sand. He said the Sandarac residents should be complimented on the work they had done with the property, and how well they had maintained it. He said if the fence had solved their problems in the past, and with confidence that the residents would take care of the property as they had in the past, he didn't think they should fix something that wasn't broken. Regarding dunes, he thought the dunes in front of Gull Wing were taller than six feet. He then said that the blowing sand at Sandarac, without the fence, had moved into an area that would be difficult for the residents to deal with. He had no problem with allowing them to have the fence so as to protect them from the blowing sand. He said they were planning to have plantings outside of the fence, and thought it was a good system.

Vice Mayor Rynearson repeated that the Council needed to address the idea of creating restrictions on dunes, with regard to height and width. He said he did support dunes, but that the Town had not found a way to approach the issue. He said he supported the motion.

Councilman Massucco thought the Sandarac should tout their fence as a great beach renourishment project.

Town Attorney Dalton pointed out that Mr. Katcko had suggested amending the motion, and asked if the motion maker and the seconder had agreed to that. Mayor Van Duzer said he would not agree to that amendment. He said he didn't want require the plantings, or to tell the Sandarac residents where and what to plant.

Mayor Van Duzer believed in private property rights, and also believed a fence was allowed to go seaward of the Coastal Control Line, saying he had been fighting that battle for a long time with Town Staff. He thought that in this case, the Council was supporting private property rights, and in the case earlier, he felt they had violated private property rights. He felt it was fair that the Council regarded each case differently, and believed that the Council made decisions that they felt would benefit their community. He said supported the motion. He felt the people at Sandarac had been harassed on this issue.

Jerry Murphy told the Mayor that the original County permit, issued to construct the fence they were now seeking to restore, had a condition that required landward plantings,

and if he didn't want the plantings, that had to be made clear. Mayor Van Duzer asked the applicants if they had a problem with the plantings landward of the fence. Mr. Schilling said their Special Exception application clearly stipulated restoration of the previous system which did include specified plantings landward of the fence, and had been given a list of plants from Rick Joyce, and the answer was yes.

Councilman Katcko wanted to amend the motion to include the original permit condition from Lee County in 2002, which included the addition of plantings landward of the retaining wall. Both Councilman Massucco, the motion maker, and Mayor Van Duzer, the seconder, agreed to that amendment.

Town Attorney Dalton cited Page 2 of the proposed resolution saying that it made various findings a fact. She said the Land Development Code required the findings as part of the hearing if they were going to move forward with it. She assumed, from the motion on the table, that the motion maker would be deleting Finding #1, which was the eight conditions that are not part of the motion. She said they would be modifying Finding #2 to only add the dune planting as set forth in the permit condition. She asked Mr. Massucco, if part of his motion was to incorporate the Findings of Fact and Conclusions, as was required by the LDC. She believed Finding #1 was inconsistent with his motion, and should be modified to remove the referenced conditions, and in paragraph 2, should be modified. She cited LDC Section 3488, Subsection 3, saying it required specific Findings of Fact. Councilman Massucco understood that the 8 Conditions of Approval on the front page of the resolution would be deleted, if the motion passed, and would be supplanted by Mr. Katcko's amended, according to Ms. Dalton. Mayor Van Duzer agreed it had to be modified to go along with the direction of the Council. He asked Ms. Dalton if the Council should do that with each of the Findings of Fact, or if they could just give direction to have it changed to align with the action of the Council. Ms. Dalton said they could just give direction that the resolution be altered consistent with the motion. Mayor Van Duzer said the resolution needed to be rewritten to mirror the action of the Council.

VOTE: Councilman Massucco	aye
Mayor Van Duzer	aye
Vice Mayor Rynearson	aye
Councilman Katcko	aye
Councilman Reynolds	aye

The motion carried unanimously.

Mayor Van Duzer called a fifteen-minute break at this time.

C. Jeff Hansen in ref. to 71 Mango – ADM2005-00004

Ms. Dalton said it was an administrative appeal, but that the Mayor needed to ask the Council for ex parte declarations, and that anyone who was going to come forward to speak on the issue needed to be sworn in. After the swearing in, the Mayor asked for ex parte communications declarations from Council.

Councilman Massucco had spoken with one of the Hansen family on the phone. Vice Mayor Rynearson said he had gone to speak with Jeff Hansen and his father at the project.

Mayor Van Duzer said he had met with Mr. Hansen and his father at Town Hall, and had several phone conversations.

Councilman Reynolds said he had visited the property but had spoken to no one.

Councilman Katcko said he had spoken with Jeff and Greg Hansen and had inspected the exterior of the property.

Greg Hansen, representing Sea Breeze Properties at 71 Mango Street. He pointed out that part of the timeline they had supplied to Council had been missed, and then distributed the missing part to Council.

Councilman Katcko interrupted to say he needed to amend his ex parte declaration because he thought Jeff Hansen's father was Greg, and he had never seen the man standing before Council in his entire life. This was found very funny by many present.

Greg Hansen said they were before Council to ask that they fulfill the promise that had been made by Dan Foulk to them when they purchased the property – a commitment the Town had made that would protect the square footage on their property, and then allow them to sell each separate building as individual condos. He was sure that Mr. Murphy and Ms. Grady would provide numerous arguments, but he did want to address some issues as well as the timeline of the project over a period of a little more than a year.

Mr. Hansen said that Mr. Murphy's report was well written and believable but he thought it omitted a few facts, in that it didn't speak to the Town's commitment by Dan Foulk to allow the Hansen's to do the project, or the letter from Mr. Foulk, which addressed the condos and the square footage. In the letter, Mr. Foulk had stated that if the buildings had been built before 1984, and there was proof of that, that the square footage would be allowed. He said they had performed due diligence in meeting with Mr. Foulk before purchasing the property, in researching the County tax records, and in talking with realtors and the prior owners. He said it seemed reasonable at the time, and was an attempt to assure that their investment would be protected. He said that Mr. Murphy's report didn't mention the delays the Hansen family had gone through over the course of the project, and tended to put them in the timeframe of the present, rather than the timeframe he felt they should be protected on, which was when they purchased the property. He said that, had they known about the problems that had subsequently arisen, they would not have purchased the property. He said what was under discussion at this appeal was the reduction of the value of the property by hundreds of thousands of dollars. He said Mr. Murphy's report did not recognize Mr. Plenczik's affidavit, which supported and provided the only available testimony that affirmed the property's legality as it stood since 1968. Mr. Hansen cited a portion of Mr. Murphy's report where it was stated that the Hansen family had given up on their attempt to sell the property as one parcel, and said it was not true, and that they had tried to sell it to an individual owner, but that was because that was the only available option they had currently. He said they wanted to get

back to the original option, proposed by Dan Foulk, which was to separate it into two condos and sell the property in that fashion. He said they had lost four potential sales as a result of their case dragging on. He said they had spent a lot of time with Mr. Murphy, and the purpose of the timeline he had provided Council was to show that. He said they provided facts to Mr. Murphy as he had requested them, as Mr. Murphy had come into the situation more recently in the timeline. He said every time they had successfully provided what was asked, another thing would be asked for. He then discussed the key points of the timeline. He said they had met with, or spoken with, Mr. Foulk on numerous occasions both prior to and following the purchase of the property on May 1, 2004. He said as a result of that, the Hansen family had believed they had been acting in the Town's and their own best interest when they purchased the property. They proceeded with a condominium package, at Mr. Foulk's suggestion, and did some cosmetic repairs to the exterior of the property to prepare it for sale, while waiting for the acknowledgement letter from Mr. Foulk, but a change of personnel and mindset had impacted them severely. He said they had postponed the sale, and tried to understand what Mr. Murphy wanted and why they were being held up. He said the process took some time, and Hurricane Charley had come through and had damaged some of the property, which again delayed the selling of it. He said that Mr. Murphy had told them, in their first meeting with him, to go to the County to see what records might be available on the property. They had asked Mr. Murphy what would happen if there were no records available, and Mr. Murphy had said they would address that if it were so, and that he would help them. Mr. Hansen said there were no records available, because the County did not have good record keeping in place prior to 1968. He said that Mr. Murphy had then suggested that they have an apartment inspection, to see if they could prove that things had been done pre-1984, and that when Mr. Murphy and the code enforcement had done the inspection, the code enforcement person had said it was clear the work had been done prior to 1984. He said that was supposed to have proved the legality of all the units on the property, and that was what they had expected would come out of that inspection. He said that Mr. Murphy had sent an e-mail to him on February 24, 2004, which said they had six units, two-family dwelling units each with an accessory apartment below. They believed they were done at that point, and the next thing was to separate the properties as Mr. Foulk had suggested. Subsequent to that, Mr. Murphy had sent them a letter on March 17, 2004 that changed it completely, taking them back to one legal unit with five accessory apartments. He said that in a buildback situation, they would basically lose everything, and their investment would be completely gone. He said they would end up with property with a small residence on it, and he understood that was the direction of the Comp Plan, but it was not what was promised to them when they purchased the property. He said the most recent letter from Mr. Murphy forced them to file for appeal, which alluded to the Glitch Ordinance. He said the timely completion of the appeal should have been thirty days, but it was a moot point. He said they had met with Mr. Murphy with the hope that they wouldn't have to bring it before Council. In the process of reviewing the whole thing, the Hansens believed they had purchased 7 legal units, and had uncovered that one of the owners after 1984 had split up one of the lower units, so while the square footage was still intact, that had turned it into two units. He said they were willing to give up that unit as not being a legal split. He said how the whole situation unraveled did not seem fair to the Hansen family. He said the letter and

suggestions from Mr. Foulk had led them to spend additional money on condo documentation, and it was not an inexpensive process. He said holding the property had cost them in maintenance as well as legal fees. He felt that granting them the six units, or protecting their square footage in some fashion, would bring it back to the original intention that Dan Foulk had given them, and didn't believe granting them that would impact the property or the Town Council, in that they had reduced the density, and the buildback was protected into the future by the Land Development Code. He said they were not asking to be held to a different standard, but were asking to be held to the standard that had existed at the time they had purchased the property. He said Mr. Murphy's report also stated that not taking the Staff's recommendation would have negative effects, but Mr. Hansen felt taking the Staff's recommendation would have negative effects, in that the Town would be going back on their word that was promised by their Staff, but his family would lose hundreds of thousands of dollars.

Beverly Grady with Roetzel-Andress came forward in representation of Sea Breeze Properties of SW Florida LLD. She said the appeal was in regard to two issues, and was not a rezoning case, but rather was a case to determine the property rights that exist on the property. The first issue was how many lawful units there were at 71 Mango Street; and the second was, did the LDC today permit lawful units to be in a residential condo, or was the condo form of ownership prohibited by the LDC.

Ms. Grady said the property was in the boulevard category in a multi-family zone, and had always been zoned as such. She said the Hansens had purchased the property in May of 2004, and was in the Seagrape subdivision. She said their goal was to protect the square footage inside each of the two structures and a lawful determination as to the number of units. She indicated three aerial photos of the property, and explained the zoning of the property. She said that in another of the photos, it clearly showed one of the structures on the property in existence in 1966. In the 1968 aerial photo, she said it clearly showed there were two structures on the property. She said that historically the property had always been zoned so as to allow multi-family. She said that on Thursday, June 9, 2002, Greg and Jeff Hansen had delivered a package to the Mayor and the Council, as well as a copy to the Town Attorney and one copy for staff, and asked if they had all received the package, and said they wanted to enter it as Exhibit 5 and filed for the record. She said it was well known that the building permit history prior to at least 1980 no longer existed, and even some from the early 80's no longer existed. According to property appraiser records, the first structure was built in 1950, but Mr. Hansen had been able to contact a prior owner, who had owned the property from 1964 until 1985 – Mr. Plenczik. Ms. Grady then recounted the history of the structures, including when each was built, and the history of usage and zoning for the property.

Ms. Murphy then cited a letter to Jerry Murphy from the Hansens dated February 18, 2005 which stated they had done their homework, had located prior owners, and in which the Hansons had provided the phone number so that the Town could call two of the prior owners – especially the Plencziks because that was when the property had two structures each with three units. Ms. Grady, in looking at the Staff report, believed the Town had never made that call, but that Mr. Hansen had contacted Mr. Plenczik and arranged to

have him available for this hearing. Ms. Grady explained that Mr. Plenzcik had been 31 when he had purchased the property in 1964, now lived in Georgia, and was willing to take a phone call and be asked anything about the property. She said the Town could have called him because they had been provided with the number. Ms. Grady then stated that owners of Ft. Myers Beach can no longer control that the permit records weren't kept, but the best primary evidence was to contact the original owners if possible, which the Hansens had done.

Ms. Grady then said the Town had declared the property multi-family, and so the units were lawful, and most certainly the interior square footage was lawful. She said the Town had learned to deal with illegal accessory apartments on the Island through the LDC and Comp Plan, and cited Section 341177, which permitted to count the square footage of those apartments during a rebuild, as long as they were in a legal addition, which was the case in the Hansen's property.

Ms. Grady said that although the Hansens had agreed to four dwelling units in an e-mail to Mr. Murphy, but felt it was important to give them maximum square footage. She had heard a comment about how much paper she had with her when she had arrived at Council chambers, but she wanted to ensure they had the hand delivery item that had been delivered to Mr. Murphy the previous Thursday, but also included the timeline because the Staff Report had not been available until the previous Friday afternoon, and that it did not address all the pertinent issues of the case. She said they had had to add the application from the Hansens which had been filed April 1, 2005 which belonged in the "notebook", and which she submitted as Exhibit 7A. She expressed concern that their appeal and analysis had not been included in the information distributed to Council by the Town, even though it was an administrative appeal and should have been included. She said Code Section 3491 required that any appeal to an administrative determination had to be filed within fifteen days, which had been done by the Hansens; she said the same Code Section 3491 required Council to hold the hearing within 30 days of receipt of that appeal. She pointed out that the appeal was filed in April, and it was now well over 60 days.

Ms. Grady said that the parcel was zoned multi-family, pointed out that the FAR 1.2 permitted 7,200 square feet, and what existed on the property currently was less than 50% of what is allowed in interior square footage. She said the request was for the recognition of the higher density as was asked for that was shown in Mr. Plenzcik's affidavit, and the recognition of the downstairs square footage. She said they had originally gone along with the four units so as to work cooperatively with staff, but they really needed to have the downstairs square footage that had been lawfully constructed by the Plenzcik family included. She said the Hansens could submit whatever number the Town thinks is lawful to the condo form of ownership, but not when the new code went into effect after today. She then read the letter from Dan Foulk's to the Hansens in 2005 which advised converting to condos, and that was why they created the condos.

Ms. Grady then respectfully submitted the request that all the square footage in the six units be counted as interior square footage that can be rebuilt; and also hoped it would be

found that the Hansens could file the condo documents with regard to the property. In conclusion, she asked that they could respond after Staff made their presentation.

Jeff Hansen, one of the owners of 71 Mango Street, came forward and clarified that the Plencziks had owned the property for 21 years. He thanked those of Council who had spoken with him and looked at the property. He said they had spent time and effort a year ago, per the Town's advisement, and they had acted accordingly and in good faith. He said they had never asked to have all the units split into condos, and never intended to ask for that. He said they only are interested in selling each of the houses separately, or allowing separate ownership. He said there was plenty of evidence available to show the units had been on the property for a long time, including stamped dates on fixtures which attest to them having been put in prior to 1984. He said loss of the two legal ground floor units would lower the value of the property by at least \$200,000, and felt it would be unfair for them to lose those units. He said they had always been willing to compromise, and were willing to do whatever needed to preserve the square footage of each structure on the property. He said that whatever the decision was, given the delays and lack of due process in their case, he hoped it would not be dragged out any further.

Jerry Murphy came forward and entered the Staff Report into evidence as Staff's testimony on the case. He said procedurally this was an appeal of an administrative determination, and was not an appeal of a Comp Plan determination, and thus the Section of the Code to which Ms. Grady referred, that required Staff to respond and for Council to have a hearing within 30 days was incorrect, and that there was no time limit requirement on Council for this particular case. Regarding the apparent controversy between Mr. Foulk and himself, Mr. Murphy thought Mr. Foulk's letter was instructive for what it did not say, including the fact that Mr. Foulk had never inspected the property personally, and had not looked at any documents that determined where things were located on the property. Mr. Foulk had also said that the LDC did not permit the conversion of multi-family buildings to condo, and Mr. Murphy said that was true. He did say it would prevent the conversion of something illegal or not built to code to conversion. He said the State of Florida required Town Staff to determine that a building complied with zoning before a condo was converted. Mr. Murphy said the property doesn't comply with zoning. He said his involvement since Mr. Foulk left had been all-factual, whereas Mr. Foulk's had been conceptual. Mr. Murphy said that he could not confirm that the units were legal, and said he would not "stick his neck out" and tell the Hansens to convert to condo. He said it was clear there were many illegal units on the Island, but it was not his job or in his power to legitimize them. He said he offered to help discover the history of the property, and said the Staff Report included what the history was from his factual determination. He said everything he had found showed that everything done on the property after 1952 would have required permits, and that there was no record of any permits. He said the zoning, over the period of time of the structures existence, would never have allowed anything more than four units. He said if there was unfairness involved, it was not on the part of the Town. He said it was not the Town's role to legitimize illegal units, and if the Hansens believed, in their due diligence, that they had purchased 7 units, and had found out they were not legal units, there was a flaw in the due diligence, and there was cause back against the realtor and the person who

sold them the property. Regarding the affidavits, Mr. Murphy said Town Staff did not depose people over the telephone. He said that in the case of not being able to find permits, the evidence would be something from Lee County saying those permits would have been issued, or that there were no records available. With those, one would still have to do the research as laid out in the Staff Report. He said the application had a lot of paper but not a lot of information.

Councilman Reynolds asked how many properties similar to 71 Mango Street existed on the Island. Mr. Murphy said he had no specific information, but another resident, who had been in litigation with a realtor over a similar property, had provided Mr. Murphy with a ten-page spreadsheet listing out similar properties he had discovered through his research. Councilman Reynolds said he knew at least two other residents who had similar structures and were very interested in the outcome of the Hansen case. He said he had seen the Hansen property about four or five years ago, before the Hansens bought the property, and they had looked terrible. He said the Hansens had done a tremendous upgrade to the property. Councilman Reynolds said he had counted 8 units, and Mr. Murphy said there were 7 currently, with both structures having two units above, with the older building having two ground floor units and the newer building having 1 ground floor unit.

Vice Mayor Rynearson thought the lower units had 7'6" ceilings, and Mr. Murphy said they were less than 7 ½ feet high, which he felt made it more likely that they would not have been permitted because they would not have complied with the building code at that time. Mr. Murphy thought the new code allowed 7' ceilings.

Mayor Van Duzer said that in the past, someone had had a problem with zoning, at which time Ms. Segal-George had said that if the Town couldn't prove that the units had not been pre-existent, then the property owner had the rights to do the project they had wanted. Mayor Van Duzer thought in the case before them today, the situation was that the owner claimed the units were pre-existing and Mr. Murphy did not believe it had been done in the period of time the owners were saying it had. Mayor Van Duzer said the owners had done a great deal of effort to try to prove their claims, and the Town was saying it did not agree, even though the Town didn't have any proof to support that viewpoint. Councilman Massucco asked if he was looking for burden of proof.

There was an off-mike comment from Ms. Segal-George that was unintelligible. Ms. Dalton asked if Mr. Murphy had concluded his testimony, and he had.

Marsha Segal-George thought that Mr. Murphy had provided some evidence to back up his position in the Staff Report. She said that it had bothered her during the Hansens' testimony, when they had asked the Council to give them what the Town had promised them. Ms. Segal-George said she had spoken with Dan Foulk about this case, and had read the letter Mr. Foulk had given the Hansens. She said since the property on the Beach had become so valuable, there were people looking at every parcel and trying to find a way to maximize an investment. She said her office was inundated with people who wanted the Town to justify whatever they wanted to do with the property so as to

make a lot of money. She didn't think making a lot of money was wrong, but she said the Town did not and does not promise units. She did not believe a particular number of units had been promised to the Hansens, nor did she believe that Mr. Foulk's letter promised them that their units would meet the code requirements in order to be condominiumized. She thought Mr. Foulk had tried to be as cooperative with the Hansens as possible, and thought Mr. Murphy had also tried to be cooperative. She said the hurricane and the aftermath of it did delay the Hansens' ability to turn their investment. She said the timeline was misleading, because her office received so many lengthy, detailed phone calls from many people all over the Island wanting to get immediate answers of a similar nature to the Hansens, and so it was not that the Town had not acted promptly to their calls. She said the Town had recently tripled Mr. Murphy's staff in an effort to be more responsive to the upwardly spiraling number of calls about land speculation. She repeated that she felt that Mr. Murphy had presented evidence to the Council to back up the Staff Report.

Councilman Katcko asked Mr. Murphy how the Hansens could prove due diligence if Lee County didn't have any permits on record. He said he had been in the same situation himself and had been taken advantage of by the landlord, because there were no records, and it ended up costing him money. Mr. Murphy said the normal manner would have been to hire a Land Use attorney familiar with the regulations of Lee County and the Town, who would then go through the same research Mr. Murphy had in preparing the Staff Report. Councilman Katcko said that interpretation of those regulations was why the case was before them now.

Ms. Dalton said that when testimony was closed, she wanted to address the legal sufficiency of the evidence that had been provided to the Council, specifically the question Councilman Katcko had asked Mr. Murphy. She said from a legal perspective, once the testimony was closed, she wanted to address that legal question.

Councilman Katcko, who is 6'1" tall, said he had been in a motel on the Beach, and he had had to duck because the ceilings were so low, and so the argument about the ceiling height in the Hansen units didn't hold weight for him. He said the units were obviously permitted, and had been there for many years. He said the things Mr. Murphy had pulled off the Lee County Property Appraiser's website showed a finished lower level on the units in 1950 and 1968 respectively. He asked if that meant nothing. Mr. Murphy answered affirmatively, and added that as the property appraiser updated their information with field reports, if they do not have permits in hand that show when something was built, it will be attributed back to the date of the original construction.

Greg Hansen came forward to respond, and opined that his brother and Ms. Grady also wanted to respond. Mr. Hansen, in response to Ms. Segal-George's remarks, conceded that Mr. Murphy has a very difficult job. He said the issue with Mr. Foulk's letter, and what it says or doesn't say, put Mr. Foulk in a difficult position because he still worked for the County. He said that what Mr. Foulk had said was truthful, but the Hansens had had numerous phone calls with him, and the Town had not had such a hardened stance as to how they determined the legality of units at that time. He said they would never have

purchased the property had it been just the upstairs levels because it would not have had the same value. He said that, in terms of due diligence, the Hansens had gone to the only party who was available – Dan Foulk – and he did give them a level of confidence that what they were purchasing had the value they had anticipated, including the square footage and the ability to separate the two houses into two separate condos. He said they would never make individual condos out of the ground floor units, although what would happen in a buildback situation he could not say. He contradicted Mr. Murphy's remarks in that Mr. Murphy had asked for Mr. Plenczik's phone number, but had not asked for affidavits or for the prior owners to come to the Town offices. He said Mr. Murphy chose not to contact Mr. Plenczik directly, and they had offered to set up a phone call with him during this hearing. They had gotten an affidavit, as Mr. Plenczik is 72 years old and couldn't travel to Florida. Mr. Hansen said that while Mr. Foulk had not literally promised them anything, he had led them in the direction they went with the property. Mr. Foulk told them that if the units were pre-1984, which they were able to determine, they could go in that direction. He said it was the same standard that Mr. Murphy had held them to as well. Mr. Hansen said they had showed both Mr. Murphy and the code enforcement person the evidence that the units were pre-1984, and Mr. Murphy had sent them an e-mail that stated they had six units. He felt their case was a test case for Mr. Murphy, and that he was learning as he went along. He said the ground floor units were within current code regarding ceiling height, but they weren't asking to condominiumize them.

Beverly Grady came forward to respond. She said once one got past the no-records situation, the best evidence was talking with the people who had gotten the permits and done the construction. She said they had that person, albeit in Georgia, but they had obtained and presented an affidavit from him, and that was the best they could do. She said if that was going to be challenged as legally insufficient, she would ask for a continuance. She said Mr. Plenczik had been very forthcoming, but he could not be forced to come to Florida. She said there were avenues available to get Mr. Plenczik's information if his affidavit was going to be an issue and deemed false. She said it would involve the Town's involvement in getting that evidence, which she repeated was the best evidence for an entity where the permits no longer exist.

Jeff Hansen came forward to respond. He said at the very last meeting, of which there were at least a half-dozen face-to-face meetings with Mr. Foulk, after all the effort, they asked Mr. Foulk if they were done and if he would provide to them an acknowledgement letter, which was the last thing they needed for the State. He had said, at that point, he saw no reason why he wouldn't. Mr. Hansen agreed that might not be a promise, but was close to one. Regarding the field appraiser's report, Mr. Hansen said it was extremely hard to read. He said he had spoken with at least 15 people, including supervisors, trying to understand the report. He said there was more evidence that the units were finished, both upstairs and downstairs. He took exception to Ms. Segal-George's implication that the Hansens were speculating with the Mango Street property. He said they were hoping to have the option to sell one of the houses so as to better afford the other structure and keep it in their family.

Ms. Dalton believed that before the testimony phase of the hearing was concluded, a decision had to be made with regard to whether or not testimony should be sought from Mr. Plenzcik by phone. She was not clear if Ms. Grady had requested that his testimony be obtained by phone. She added that her concern about a continuance was that the new ordinance would be taking effect the following Wednesday. Ms. Grady said that frequently in Land Use cases, affidavits have been acceptable, but Mr. Plenzcik was available by phone and so they had offered that. She thought it was important that the Council hear from Mr. Plenzcik because of the questions raised by Mr. Murphy regarding the affidavit. She said it was a primary source of information, and was requesting that Council speak to him on the phone.

Vice Mayor Rynearson suggested that the testimony be closed and the discussion be moved back to Council. He said if it seemed as if it were needed, they could ask for a continuance. Ms. Dalton said the problem with a continuance was that the new ordinance would take effect on the following Wednesday. Vice Mayor Rynearson said the reason the case was before them was because it had fallen through the cracks, and the Council would not be limited as to what they needed to do. He felt the Hansens should have the option of a continuance. Ms. Dalton said this was in a quasi-judicial hearing, and the Council was sitting in a judicial capacity, and that normally they would take in all testimony, deliberate and then render a decision. Vice Mayor Rynearson said he personally didn't need the phone call because he understood the case and was ready to make a decision. Ms. Dalton clarified that she had not meant to imply the situation was the affidavit vs. live testimony – she did not object to the affidavit as a form of testimony. She had meant that she was going to comment on the contents of the affidavit. She didn't know if Ms. Grady would amend her request for the phone call.

Mayor Van Duzer said the affidavit from Mr. Plenzcik was sworn to. Ms. Dalton said she had no objection to the affidavit as a substitute for live testimony, but rather, she intended to comment on the best evidence rule.

Councilman Katcko said he did not need to phone Mr. Plenzcik to make a decision, and that the affidavit carried sufficient weight for him. He went on to say he didn't think Council should be phoning people, and that sworn affidavits were what the Council needed. Councilman Massucco agreed.

Councilman Reynolds asked the Town Attorney why she felt it was pertinent to have testimony as to when the structures were built, as they already knew they were built before 1984. Ms. Dalton thought Ms. Grady should respond to that question, as Ms. Dalton was not the proponent of that evidence. Ms. Grady said she was hopeful the affidavit would be sufficient, and if it was sufficient for the Council, they didn't need to pursue the telephone call. Councilman Reynolds asked what evidence the affidavit supplied. Ms. Grady said the issue was how many lawful units the Hansens had, and the affidavit gave evidence as to how and when the prior owner had obtained permits, and when things had been constructed. She said that made them lawful units, and that was the issue of the case. Councilman Reynolds asked if it were true that whether they were

lawful units or not, if they were not up to code now, they could be requested to remove them. Ms. Grady said that was not true.

Mayor Van Duzer believed the Council had to decide whether the units were legal or not, and whether the Hansen's request should be approved or not. Ms. Dalton asked him if he wanted to take further testimony. Councilman Massucco believed there was no reason to call Mr. Plenzcik because he would undoubtedly say what he had said in his affidavit. Mayor Van Duzer thought it was time to close the testimony portion of the hearing, but wanted to reserve the right to ask those who had testified any questions as needed. Ms. Segal-George pointed out that there was still public comment. Mayor Van Duzer asked if anyone wanted to speak to the issue, and so closed the public testimony. Ms. Dalton said, providing guidance, that as a quasi-judicial body, one of Council's duties was to consider the evidence that had been presented. She said some of the considerations were subtle, and the discrepancy between what Ms. Grady and she had been discussing, was that normally if a person were available to testify by phone or in person, an affidavit would not be accepted because live testimony trumped an affidavit. She then referred to the "best evidence" rule, and said she had a different slant on it than Ms. Grady seemed to have. Ms. Dalton said the very best evidence in this case, as to whether some of the units had been legally constructed, would be a factual determination for the Council to make. She said the best evidence would be permits, if available, and testimony given stated they were not. She mentioned there was a hole in that testimony, in that when a permit is obtained, one copy would be retained at the issuing authority, but a duplicate would be retained by the person who got the work done also, and there had been no testimony from anyone, and nothing contained in the affidavit, saying what happened to the copy given to Mr. Plenzcik. She said that was one concern she had as to the quality of the testimony. She said when an official document is not available, the next best evidence would be an affidavit from the issuing authority that said the permit history was not available, and that they had heard testimony at this hearing that Lee County didn't have it, but there was nothing in the written or verbal testimony from Lee County. She said that in considering the probative value – how much weight would be given to Mr. Plenzcik's affidavit – she suggested that he would be legally termed a "party in interest", meaning he could possibly have an interest in the outcome of the case. She was not suggesting the Council discount Mr. Plenzcik's affidavit, but that they should ask questions as to the truth of it.

Testimony was closed at this time.

Councilman Reynolds read Mr. Foulk's comments, from the letter entered as evidence, which he said had been misused. "I advise that selling a multiple-family structure that was owned by an individual to separate owners through the creation of a condominium was not a change of use, but simply a change of ownership and that the LDC did not prohibit this change." Councilman Reynolds said the state would permit it, but not if it was a nonconforming property. He said the Hansen's property was nonconforming. He thought if Council approved this request, they would hear a lot more similar cases, as he knew a lot of people on the Island who wanted to do it to their property. He said he was concerned about the future owners of the property, and didn't want to be a party to bringing that forward. He complimented Mr. Murphy on his research on the case. He

commented that while he disagreed with Ms. Segal-George 95% of the time, but in this case he agreed with her 100%. He thought Mr. Murphy had gone overboard to help the Hansens out, and thought it would have cost the Hansens between two or three thousand dollars to have it done by a land use lawyer. Councilman Reynolds thought Mr. Murphy had given the Hansens an accurate picture of the situation, but that they didn't want to see it, and that they had been hard on Mr. Murphy. He thought the Council had to uphold Mr. Murphy's recommendations, in that the lot was not in compliance with the zoning, and that the Council needed to live by the LDC. He encouraged Mr. Murphy not to go to such an extent, with regard to the depth of the research he had done for the Hansen case, in future cases, and that the Town did not have the resources to go to such lengths for individual investors. He told the Hansens they were fortunate to have come to such an understanding Staff, and to have received so much information from the Town. He added that if the structures were not up to standard, the Town could ask them to remove them, and he knew of one that he knew about that had been built around the same time as the Hansen's property.

Councilman Massucco said what was compelling to him in the Staff Report was on Page 6, and read "What is clear is that the below-flood grade level apartments were not constructed in compliance with the zoning and building code requirements. This means that regardless of whether permits were actually applied for and issued by Lee County, the units were not authorized and were, and are, illegal units." Councilman Massucco said it didn't matter whether there were permits issued or not. He read on: "With regard to the second issue raised by appellant, the proposed condominium development results in further subdivision, a parcelization of the subject nonconforming lot, and is inconsistent with the Town's Comprehensive Plan and LDC." He said those statements were what governed his reasoning.

MOTION: Vice Mayor Rynearson made a motion to take Staff's Recommendation; that the each structure be made a duplex unit; that the lower units of both buildings be made common area as part of the condo documents and could never be sold as condos; that if and when something happened to the building, everything had to be raised above flood elevation; leave the parcel unsplit, but sell each unit as a condo.

At this point in the motion, Vice Mayor Rynearson said he didn't see any reason to split the parcel. He thought the condos could be sold separately. He asked Mr. Murphy is that were true, which Mr. Murphy said it was. Mr. Murphy, responding to a question Vice Mayor Rynearson had regarding his motion, said that what condo would be that he was envisioning would require some specifics to be discussed between the applicant and Town Staff, as to how it could be made into something the Town could sign off on. He said the Town would need direction, as there were a number of nonconformity issues that would have to be addressed in order for the Town to sign off on the condo documents. Vice Mayor Rynearson added that to his motion.

Councilman Katcko seconded the motion for discussion.

Councilman Massucco asked, with regard to the proposed common area, where the square footage would be applied. Mr. Murphy said that would be one of the issues that would have to be worked out. Councilman Massucco asked if they could find out if this would be amenable to the applicant, and Mayor Van Duzer said they already knew what his answer would be and it was not necessary.

Councilman Reynolds understood the motion to be: the duplexes would be allowed, and four units would be allowed to be turned into condos; to allow the ground floor units to operate. Vice Mayor Rynearson said they were never to be sold as condos, and would only be allowed to be used until they were damaged, at which point they would have to be raised to flood grade and completely brought up to code. Councilman Reynolds said the two units in each structure that would be condominiumized would have to have firewalls. He asked if they were going to allow the underneath units without fireproof floors. Mr. Murphy said he wasn't sure how to address the units below, and was one of the issues that would have to be discussed in greater detail if the appellant was even amenable to that. Ms. Dalton said if it was the will of the Council, they could take a brief recess to give Staff an opportunity to discuss the new developments with the applicant.

Mayor Van Duzer said he was ready for another recess. Councilman Reynolds felt they were heading down a path that they would later regret, and said it was not very kind to some people who were dumb enough to buy a condo in that fashion. He didn't think the Town should allow the ground floor units to be rented. He asked who would care for, and collect rent from, those units if the upstairs units were sold as individual condos.

Vice Mayor Rynearson said this would be the one and only case of its kind because of the new ordinance that was going to go into effect the following Wednesday, and wanted it on record. He said this case fell through the cracks, and needed to be addressed, but that their decision would not come back on them because of the new ordinance. He felt the Council needed to be as lenient as it could. He said as far as who got the money for the ground floor units, it would be spelled out in the condo documents. He then suggested the Council continue with its agenda while the Staff and the Hansens had their conversation outside of Council chambers. Ms. Dalton said they could recess the hearing, without recessing the meeting in general. Mayor Van Duzer said he had no problem with that.

Mayor Van Duzer continued the hearing on the Hansen case until 3 PM, at which time they would bring it back to Council.

Mr. Murphy then asked the Mayor to put the next agenda item at the end of the agenda, to which he agreed.

At 3:15 PM, Mayor Van Duzer reconvened the hearing. He took the opportunity before everyone got settled in their seats to offer his congratulations to Ms. Dalton for having been voted in as the Town Attorney. He joked that maybe he should offer his condolences, which drew some chuckles. Ms. Dalton thanked him. He told her the Council had asked him to meet with her to come up with some basis of agreement that

they could put together for the meeting on June 27th. He told her she had received overwhelming support, and she thought that made it even nicer to know.

Ms. Dalton said that Staff had had the opportunity to speak with the applicant, and this was an appeal scenario. From the applicant's standpoint, the appeal could be successfully resolved under the following conditions: They would agree to withdraw the appeal and agree the property would not be subject to a lot split if the property would be comprised of a total of four units – 2 two-family dwellings; Staff recommended the Hansons be allowed to rent the ground floor units for a period of up to 12 months, subject to pre- or post-disaster buildback, but any usage of those two units as dwelling units after the 12 months would cease, but the applicant wanted to address that one point. The applicant would like the square footage preserved going up in a pre- or post-disaster buildback scenario.

Jerry Murphy added that they had had a discussion just before returning to this hearing about the idea that the four units might become two units in a redevelopment scenario, and the owners were amenable to that condition, but they were concerned about the length of time they would be allowed to maintain the rental of the ground level units.

Greg Hanson said they were trying to reach a compromise, and believed they had met the intent of what his family was after, because it preserved their square footage, and gave them four units, which gave them good marketability. He said the only concern they had was the length of time regarding the ground floor units' rental period. He said they hoped for a five-year period, so that future owners would be able to rent them while they came up with a plan to redevelop. He said other than that issue, he felt they were pretty close to an agreement. He said the only other point was that the ordinance would go into effect the following Wednesday, so it was agreed they would file the condo documents, as they existed on this day, and then amend them and work with Mr. Murphy to make sure the amendments were correct. He said they were doing this in good faith, and thought the Council would pass a resolution that would say the intent of what had just been described, and then patch up any minor details that could occur within the next few weeks.

Mr. Murphy said they hadn't figured out precisely how to document the agreement they had just made. He said they wanted to have their condo documents recorded today so that there would be no question about what would happen on Wednesday re: the new ordinance. But, they would need to be amended and the Hansens had agreed to do that. He said the condo documents were not enough for the Town, and the Town would need some other formal document for its records. He said if it were Council's direction, they would work on that and bring it back. Ms. Segal-George asked if the appeal was being withdrawn. Ms. Dalton said the proposal that had been formulated would be subject to Council approval as part of the withdrawal of the appeal. Ms. Grady thought that because they had worked out how many units, which had been a question in the appeal, so that it would be a Town motion resolving the issue at hand, and thought there should be a motion or resolution. Mayor Van Duzer asked if a simple agreement could be negotiated to cover the talks that had just occurred between the Town and the applicant,

subject to the Hansens withdrawing the appeal. Ms. Dalton said if the Council wanted to move forward with a motion, it would be in the form of a resolution and she was sure Ms. Grady would issue a letter accepting it, and didn't think they needed a formal agreement as such.

Mayor Van Duzer asked if they could talk about the disparity on the time limit for renting the ground units. Ms. Dalton believed the Staff had a perspective on why it should be 12 months. Mr. Murphy thought Mr. Hansen had made it clear why he wanted a longer time period, and Town's concern was for the propagation of the square footage down below, which Staff believed had never been lawfully constructed. He said the Town compromised by allowing them to retain the square footage, but that everything on the ground floor of both structures was nonconforming with all the regulations and codes, and Town did not want to see that recognized for any long length of time. He said he had a problem with the 12-month allowance, but that was as far as he could go because the longer it went on, the more muddled the issue would get. He said he was concerned how it was documented, because in a year's time he could be gone, or any number of mistakes could be made. He recommended the resolution be recorded into public record so that a future purchaser could be on notice to the fact that those limitations were there. Ms. Dalton believed the applicant had agreed that, however Council chose to resolve the issue about the ground floor units, they would agree to be bound by that decision, and asked Mr. Hansen if that was correct. Mr. Hansen said it was, but restated that twelve months, notwithstanding Mr. Murphy's situation, would put them in a bind in terms of marketability with future people. He asked for the Council's leniency, and hoped for 5 years or 3 years time instead.

Vice Mayor Rynearson asked if the length of time could be in the resolution, suggesting 2 years. Ms. Dalton said they had the legal decision to make it two years, but it was against Staff's recommendation. Vice Mayor Rynearson said he understood that it was against the Staff's recommendation. Councilman Reynolds remarked that Council had the legal latitude to make it 5 years if they wanted to, or ten, but thought one year was a more appropriate length of time, as Staff had recommended.

MOTION: Vice Mayor Rynearson made a motion, in the form of a resolution, which Ms. Dalton read:

“Resolution of appeal of administrative action ADM2005-00004. There would be no lot split of the subject property; there would be a total of four units comprised of 2 two-family dwelling units; as to the two units, one of which is at the bottom of each dwelling, they would be able to continue to be rented to the shorter of a period of 24 months, or the pre- or post-disaster buildback, or any subsequent redevelopment, at which time it would be converted to non-habitable space; the square footage on the ground would be preserved and could be reused in a buildback or redevelopment situation for a total of 3000 square feet, 1500 per structure.” Mayor Van Duzer seconded the motion.

Councilman Massucco asked if there would be any ramifications from FEMA, as they were allowing the rental of buildings that do not comply with flood plain elevation. Mr.

Murphy said that, potentially, FEMA, being a federal agency, could do whatever it wanted to do, but did not think it would be the worst thing they had ever seen, because there was a time period set for the unlawful units to be gone. He thought it was likely the property would be redeveloped within the 2 years, but if it were not, the property owner would have to convert the below-flood units to a use other than habitable space – a garage, a storage area, or some such thing. Ms. Dalton said the language about converting those spaces to non-habitable use needed to be added to the motion. That was agreed to, and was so added.

VOTE: The motion carried 4 – 1, with Councilman Reynolds dissenting.

Mayor Van Duzer complimented everyone for having gotten together and working it out, and for their willingness to discuss the issues.

D. Permit Fee Schedule

Mr. Murphy stated this issue was on the agenda because Councilman Reynolds had asked to revisit it, especially with regard to outdoor display and sales, the fee for which is \$200. Councilman Reynolds asked if he had a fee schedule for everything including accessory apartments. Mr. Murphy said someone had gone upstairs to get copies of the list for Council. Mayor Van Duzer gave his copy to Councilman Reynolds. He asked if the only one there was a problem with was the outdoor display. He opined that all the other fees seemed reasonable, mentioning the open fire permit fee, and the short-term rental fee. Ms. Segal-George said there was significant code enforcement responsibility with regard to outdoor displays, so it had to be factored into the fee. She went on to explain that one of the biggest problems was trying to keep everyone on the same page, so that no one was allowed to do more than another. She said there were a lot of people who turn each other in, so there was a lot of code enforcement that goes with it. She said the fee wasn't set so much to cover the time to issue the permit, but rather the constant follow-up. Mr. Murphy said it was an annual application requiring an annual review, maintenance of the information, but that the largest portion of the fee was the code enforcement.

Vice Mayor Rynearson, referring to an earlier discussion in Council, said there were going to be a lot of weekend activities, and didn't think it should come out of the taxpayers' money to enforce rules and regulations that were being broken. He said the burden should go on the backs of the businesses.

Mr. Murphy said one of the Town's largest enforcement issues were outdoor displays and signs. He thought it was not an unreasonable fee, and if it was found that, in the future, outdoor display did come into compliance, and there was no enforcement issue in the future, and everyone was educated and abiding by the law, the fee could be reduced. Mayor Van Duzer said that would not happen. He then asked how many permits were issued on an annual basis. Mr. Murphy said the Town had put a notice in the paper in May letting everyone know they had to apply for their outdoor display. He said when they process those applications, and then there were people who had outdoor display without a permit, they will be informed that they need one and that they were in violation. He said there were six applications for outdoor display that had been submitted thus far.

He said it was the first year they've processed the permits, and so there was no historical information, but he thought there were potentially between 20 and 50 properties that could have outdoor display.

Vice Mayor Rynearson asked Mr. Murphy if it was true that no one was forced to have outdoor display. Mr. Murphy said that was true. Ms. Segal-George said that, as an historical note, the Town did not allow outdoor display in times past, and now that it was being allowed, the Town wanted to be sure everyone was on the same page with regards to what could and should be allowed. Mr. Murphy said the reason the Town had not allowed outdoor display prior to the Town's incorporation was because of Lee County's code, which does not allow outdoor display.

Councilman Massucco asked, if someone with a cart was approached, if they could not be hit with a \$200 fee immediately, but rather be given a grace period of perhaps two days. Mr. Murphy said that would definitely be the way it would be done.

Councilman Reynolds asked how much would be charged for two carts. Mr. Murphy said that would depend on the type of business and what was being displayed, but each business would get only one permit for outdoor display, and if they were allowed two carts, they would pay the one fee for those carts. Councilman Reynolds said that, at the last meeting when he had brought up the issue in Council, he had expressed something that the County had become known for, and that was that people felt if they had paid a fee of a few thousand dollars, they had better not be turned down. He said that was the feeling out there. He said he remembered not too long ago, when people could place boards here and there on the front of their businesses without any kind of permit, and he believed they could still do it. Mr. Murphy said there were certain things that could be done without a permit, and gave putting runners on stairs as one of those things, but doing the risers on the stairs was structural and would require a permit. He said someone in his neighborhood had built a fence about ten years ago, and his permit had been \$25. He thought it would be several hundred today. Mr. Murphy said he was not sure what Lee County charged for fence permits. Councilman Reynolds said the question people had was what the permit fee paid for. He thought the salaries paid code enforcement should pay for maintenance of enforcement of the codes. He didn't think the Town should go in the same direction as the County, matching their fees. He hoped the Town did not get into the business of selling permits. He wanted the display permits to be \$10 per year, as supervising it was part of the job of code enforcement. He said a lot of the small businesses can't afford the fees. He said that someone had called him and told him that he had started his business on the Beach a year and a half ago, and that 95% of the businesses that had started when he did had left the Beach, and although he couldn't vouch for the 95% figure, he said the Beach had a high turnover of businesses.

Mayor Van Duzer said it was his understanding was the fees were charged so as to pay part of the cost of enforcement, otherwise the tax payers would have to pay it out of their property taxes. He said the fees ensure that the user would pay for it. He said he would be happy if Councilman Reynolds could get his idea passed on the County level so that he (Mayor Van Duzer) wouldn't have to pay \$12,000 to get a building permit.

Councilman Reynolds opined that Mayor Van Duzer never got turned down after he paid that \$12,000. Mayor Van Duzer, who was obviously unhappy with that last remark, told Councilman Reynolds that that fee included impact fees, user fees, money to the fire department, and money to parks and recreation, and that there were many things those fees covered.

Vice Mayor Rynearson said he wanted to do nothing to the ordinance. Mr. Murphy said it was not an ordinance, but a policy. Vice Mayor Rynearson acknowledged that, and went on to say it brought money into the Town, and helped to offset the cost of building and code enforcement staff, and thought it was a good move for the taxpayers of the Town.

Councilman Reynolds said he appreciated that it had been brought back for discussion, but he was not going to try to get the fee schedule changed. He said the Council members do not get paid for going to properties under consideration for something, but that it was considered part of the job. He felt code enforcement should be viewed the same way. He did not believe the money was needed to operate financially.

E. Set Public Hearing Date – Introduction of Ordinance 05-15 Early Voting Statute

Ms. Segal-George said there had been a mix-up at the last meeting, wherein the Council had voted on an ordinance that was only supposed to have been set for public hearing. She said the ordinance language was to opt out of early voting, which the Council voted to do. She said it had only been an introduction, but that the Council had voted on the ordinance itself, so they needed to set it for public hearing at this time. She said all that needed to be done was to read the ordinance heading, and then set the hearing date.

Vice Mayor Rynearson asked if the date for the hearing could appear on the agenda when ordinances were being introduced and dates were being set for hearings. Ms. Segal-George said that could be done.

Ms. Segal-George then read the heading so as to introduce the ordinance. The hearing was set for June 27th at noon.

F. Selection of Town Attorney

Mayor Van Duzer asked if anyone on Council had a comment before they voted.

Vice Mayor Rynearson thought that Anne Dalton more than proved herself at this meeting, and he really thought she had caught on quick and knew what she was doing, and thought she would be a great choice.

Councilman Reynolds said he really liked the lawyers from Naples, but he thought the Town couldn't afford them. He thought they would have done an excellent job. He said Jack Pankow had also impressed him. He thought they had shown to be independent in their decision-making without needing encouragement to go in any particular direction.

After the ballots were marked and initialed by each Council member, the votes were counted and announced as such:

First Choice:	Second Choice:
Lombardo 1 vote	Pankow 1 vote
Dalton 4 votes	Cicerone 4 votes

Ms. Segal-George said the Council had selected Anne Dalton for the position of Town Attorney. Councilman Reynolds said she was a good person. Mayor Van Duzer told Ms. Segal-George that the Council thought a contract was needed, or some terms and conditions, unlike the agreement they had had with Attorney Roosa. He said the Council wanted to speak with Ms. Dalton about that. Ms. Segal-George said she would put it on the agenda for the next meeting. Vice Mayor Rynearson wanted a form put together. Ms. Segal-George suggested the Mayor could be designated to discuss it with the Town Attorney, and then bring a document back to the Council on June 27th. Mayor Van Duzer and Vice Mayor Rynearson agreed with that.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Rynearson said all the committees went on vacation during July and August, which gave Town Staff the time to coordinate what Staff needed to get done. He wanted to give direction to Staff that all committees, including agencies, go on vacation for the months of July and August, until Council resumes. He asked for consensus from the Council. Mayor Van Duzer said he didn't want to make this type of decision during Council Member Items and Reports, and would rather have it on the agenda. Ms. Segal-George told them the TMA did not plan to take a summer break, and the LPA had a meeting scheduled for August.

Councilman Katcko said he had an issue with regard to the TMA, citing a memo from Ms. Dalton in which she talked about Council members serving on Town advisory committees. He quoted part of it: "Ordinance 419, Section 4 states that members of the TMA shall not be salaried officials of the Town. This language also appears in other advisory committee ordinances." It was previously interpreted to mean that Town employees could not be committee members, but that Town Council members could be on advisory committees, and if they wanted to change it, the Council should let her know. He said his interpretation of the ordinance was that he was a salaried official of the Town, and per the memo, he should not be serving on the TMA. Another item he had was that he serves as a representative to the Horizon Council, and had attended a meeting, which he found interesting. He said they had put out a brochure with regard to various demographic profiles in Lee County, and found it interesting for people on the Beach. He pointed out one thing the Horizon Council had done was to disperse 191 loans to small businesses for Hurricane Charley repairs, under the Bridge Loan program, and he had received one of those loans. He said it had helped him a lot, and that the HC had a great deal of good information. He said they had been looking at the Local Option Tax for the school board, which would impact the Beach if it were voted into being. In conclusion, he said someone at the Taste of the Beach had approached him about run-off or whatever was contaminating the beach water, and that the Town paid the price for the

contamination of the water, and there needed to be a program in place so that it did not happen. Ms. Segal-George said there was nothing the Town could do in that the testing was done by Lee County and the Health Department issued the advisories, and the Town rarely knew about it ahead of time. She said it was all part of the fresh water discharge from Lake Okeechobee, so that it was not just red tide and algae, but also some of Ft. Myers sewer plants that still had the right to discharge into the Caloosahatchee River. She said the Town had nothing to do with that contamination, and there was nothing the Town could do. She said the Town's hope had to do with a resolution the Council had passed at their last meeting, with regard to SWFL Water Management and the discharge from Ft. Myers. She said she could see a time in the future when more often than not the beach would be closed due to contamination, which she said was the "horrible downside" to the dirty water discharges not having been dealt with. She said the SWFL Water Management lawyer was going to come to Council's last meeting before break to speak with the Council on those issues. She said Lee County had taken some initiative, and the fight would be against the Everglades and the Florida east coast.

Councilman Massucco, citing a memo from Jack Green to Council, concerning the Historic Preservation Grant Assistance Program, said that there had been no direction as to where this money could be spent, except that it can only be spent on exterior areas. Councilman Massucco thought Mr. Green's suggestions for use of that money were good. They included limiting "grant funding to the cost of all permissible exterior work, not to exceed the lesser of 50% of the total project costs, or \$30,000", to which Councilman Massucco agreed. Ms. Segal-George told him that the item was on the agenda for the Council's last meeting before summer break.

Mayor Van Duzer said there had been raw sewage running off into the water after Hurricane Charley because the Town had not had an operational sewer system. He agreed it was a problem, and that a major portion of the resolution they had passed was to get Lee County to go ahead with a filter system on this end of Lake Okeechobee. He added that the Horizon Council had asked for the Town's annual donation.

Councilman Massucco commented about John Gucciardo's memo regarding the update on the storm season preparations. He wanted it known that there was a lot of activity on the part of the Town to prepare for the eventuality of another storm. Ms. Segal-George said there were ads in all three local papers every other week with regards to emergency information. She said the Town was the only city in the area to place an ad in the News-Press hurricane guide that recently went out.

Councilman Reynolds said he had gone to the boat races on Saturday and Sunday, and nothing had been happening, and that it was mass confusion. He wanted to correct one thing about beach renourishment: he had heard no one say they were against beach renourishment. He said that people had said to stop the pretense and state facts. He said he was in Times Square over the weekend, and he observed that they could use some more sand in that area. He felt the main point some people were making was that they wanted the distribution of the sand to be equitable up and down the beach. He then asked Mr. Murphy if there was code enforcement on the weekends. Ms. Segal-George said

there had been code enforcement over the past weekend, but it was not regular because it was an overtime situation. She said when the second position was filled, the Town would be able to have more code enforcement on the weekends. He said there had been a big sign outside of Helmerich Plaza that said "Paid Parking – See Attendant". Ms. Segal-George commented that it should not have been out there. He then brought up the historical building designation, and that it had been decided that no more than \$20,000 would be put into any individual project. He said there was now \$30,000 going into a single project, and was told that it was because there had only been one applicant. He disagreed with that line of reasoning. He then commented on how good the buildings at 71 Mango Street looked.

VIII. TOWN MANAGER'S ITEMS

None.

IX. TOWN ATTORNEY'S ITEMS

Ms. Dalton effusively thanked the Council for their vote of confidence. Vice Mayor Rynearson asked if effusive meant good or bad. Ms. Dalton said it meant it was good. Mayor Van Duzer then informed Ms. Dalton that while she had been in the meeting with regard to the Hansen property, that Corbett Torrence had come in during Public Comment and had asked that Ms. Schober's comments about exercising the 30-day termination clause in their contract be disregarded, and apologized for his wife's upset, and that they did not wish to withdraw from the directorship. Ms. Segal-George thought the contract could be taken care of then, and at least have that in writing.

X. PUBLIC COMMENT

Corbett Torrence, co-Director of the Mound House with his wife Theresa Schober, came forward and noted that there had been contract discussion regarding the Mound House directorship earlier in the meeting, whereupon his wife had gotten upset, and he said she apologizes for that, and he was sorry too. He didn't think it was in anyone's best interest to terminate their association and relationship with the Town. He said there was a lot going on at the Mound House, and that he and his wife had done a good job over the years there, and thought if they were terminated, because they were not going to quit, that it would probably cost the Town more in the long run. He thought it would negatively impact the volunteer pool at the Mound House, as well as relationships he and Ms. Schober had established in the area. He hoped the Council would consider this as an option to searching for a replacement, because conducting a search for a replacement would mean they were being released. Mayor Van Duzer told him he was glad Corbett had come, and that he had had no desire to look for someone else to hold that job, although it was up to Council. He hoped everything could be resolved. Vice Mayor Rynearson pointed out that it was Ms. Schober, not the Council, who invoked the 30-day notice. Mr. Torrence said he was completely aware that she had said there was a 30-day termination clause and that they would be exercising that. He said that they were partners, and all decisions were made together, and that her comment from her had been made under duress. He opined that after all the work she had put in, that the issue had been made personal. He didn't think it had been personal, and in retrospect, she didn't think so either, she had just been upset. Vice Mayor Rynearson said they had given Staff

direction to go look for another director because they had been told that the 30-day termination clause was going to be exercised. He said whether or not she was upset, it was a business and the Council had to run it as such. Mr. Torrence fully acknowledged what the Vice Mayor said. Vice Mayor Rynearson said he had no problem not going out for a new director, but he wanted it clear that it had been initiated on their side, not the Council's. Mr. Torrence felt that both he and Ms. Schober fully acknowledged that and that if she were given the option again, it would have been completely different. Councilman Massucco said that Mr. Torrence presence and comments proved something. He asked if they were willing to sit down and negotiate, because the problem had been strictly about money, not about the quality of their work. He said he was open to negotiating the money. Mr. Torrence thought that had been the goal, but he had not been present and could not explain what had happened. He said that some days, one wakes up grouchier than other days. Mayor Van Duzer said it would be very difficult to take it up before the break. He thought they could get together after the break, some time in September. Mr. Torrence said that would make them extremely happy, and that they were very dedicated to the Town and the Mound House and to the Council. Councilman Reynolds had no problem with that, and that the problem had been about the contract extension. Mr. Torrence said he thought that contract caused more confusion because the pool project was an expensive endeavor and if the Town had to "farm it out" it would probably be more expensive. Mayor Van Duzer said that was getting into it too much. Mr. Torrence agreed and concluded his remarks by saying that they both would really like to serve the Town, and hoped the search for a replacement would cease. Ms. Segal-George remarked that that decision meant she might be able to take a vacation this summer. This drew some chuckles.

Mayor Van Duzer asked if the Council was comfortable with putting the motion to find a replacement Mound House director aside, and there was general agreement.

XI. ADJOURNMENT

MOTION: Vice Mayor Rynearson made a motion to adjourn. Another Council member seconded the motion.

VOTE: The motion passed unanimously.

Mayor Van Duzer adjourned the meeting at 3:45 PM.

Respectfully submitted,

Jo List
Transcribing Secretary