

**MR. CHAIRMAN:** I want to call this meeting to order, this is Fort Myers Beach Town Council, on June 27th, at twelve noon, high noon. If you all would please stand, we'll have the pledge to the flag and then remain standing for an invocation. (PLEDGE OF ALLEGIANCE.) Let us pray. Heavenly Father, we ask you to bless us with your presence here today, grant to us the wisdom to see all things in true perspective, grant to us the patience to hear one another with open minds and hearts. Grant to us the strength to meet all present challenges. May all that we do this day bring honor to you and credit to ourselves. Amen. Please be seated.

Now as a preamble to this meeting, I want to tell you that we have one council member that says at 5:00 he's up and out of here, he's going to points north, and then I just got 63 little green cards here, everybody gets 3 minutes, so Howard, you've got a problem.

**MR. RYNEARSON:** What do I tell you?

**MR. CHAIRMAN:** We would ask you to try to hold them down to three minutes please, but we do want to hear what you've got to say, the first one is Kelly Leary, way in the back of the room, and the next one, so he'll be prepared, and he needs all this time to prepare, would be Daniel Hughes.

**KELLY LEARY:** Good afternoon, Mr. Mayor, Mr. Vice Mayor,

and Council Members.

**MR. CHAIRMAN:** Kelly.

**KELLY LEARY:** Kelly Leary, Mid Island Drive, Fort Myers Beach. I'm here today to talk about marine resources task force. Last year, there were eleven members on MRTF, this year the council members voted to reduce the number of MRTF members. That I thought was to be done by the A word, the attrition word. Three members chose not to reapply, eight members did reapply, I hate doing this, plus a letter of interest for a new person to become a member. Due to the reduction in the number of members, the Town Council voted not to accept the new application. Now it appears that having an even number of members is not a good thing.

Since Mr. Perry, along with two other members chose not to reapply, that indicates to me that they did not want to serve any longer. I realize that Mr. Perry has been a long MRTF member and that is all the more reason why he should have been aware of the time frame to reapply. He did not, while eight other members, plus a new bee did. To reappoint Mr. Perry at this time I feel would be very out of line. If you had no other people interested in the position, then that would be a different matter, but you have a person very interested in becoming a member. A person with many great qualifications, who would be a

valuable asset for you to have as a member on MRTF. The Town Council is always urging us town folks to get more active in town issues so this is your chance to get a new face involved. Thank you.

**MR. CHAIRMAN:** We'll keep going, Dan Hughes and then the next one is going to be Herb Acken.

**DAN HUGHES:** Good afternoon Mr. Mayor and Councilmen. I know you've got a difficult month and a busy day today, I well recall those awful Junes trying to get everything squared away. I'm going to just comment briefly on your draft budget, I want to commend the staff for the, I think, an excellent draft budget, and as always an outstanding budget message from the town manager. The budget message provides for several alternatives, in terms of the tentative millage rate, which must be established today, or at least prior to June 30<sup>th</sup>, and which is of course, subject to change, can be, can be reduced but not increased, in the fall. I favor the continuation that the council has at previous councils for the last oh I think about out of the last five or six years, there have been roll backs, full or partial roll backs every year, and last year this council went back to even lower than a full roll back, at .85. She poses an option of going to a .75 roll back position or alternatively to create a dedicated fund with the approximate \$250,000.00 that will be available by...as a

result of the increase in assessed valuation, to go into a traffic mitigation solution.

That's a good idea I think, its an imaginative idea, but I feel that there is adequate funds in reserve available for that purpose and I would like to see this council continue to roll back as much as possible and set an example for the rest of this county. I know it's minimal in terms of taxpayers total tax bill, being only 15% of the total tax bill, but we have set the pace on this over the years and one year, we were the only one in Lee County that did it. I would like to see you continue to do that or at least give it very careful consideration. Thank you very much.

Just briefly on one other item, on that confusion about the Mound House, the extension, I would just like to point out that that...if there was in fact an agreement extending the director's Mound House for 18 months, is that correct, 18 months. At the last, at the last meeting, it was, it was pointed out that there was no contract, I would just like to point out if an agreement under then, under the Statute of Frauds, if an agreement cannot be performed from its date, its, its an unenforceable contract, unless its in writing. So I would hope that that, that whole arrangement gets straightened out. Thank you very much.

**MR. CHAIRMAN:** Thank you, Herb? Oh there you are, I'd thought you'd left or something, and the next one will be J.T. Webb.

**HERB ACKEN:** Herb Acken, Palermo Circle. Thank you for your time gentlemen. I'm not here to make a fuss, I think most people know I'm here to speak about the local sign ordinance. The local sign ordinance, which has finally come into effect, has hurt and is continuing to hurt a load, a lot of local businesses. I'm not here to make a big fuss, and I'm not here to plead for mercy, I am here to read you the writing on the walls. As is often the case in politics, the pendulum of power and opinion tends to swing from one extreme to the other. We may be at one end of the extreme, rumors being said about the council members and about local government are disturbing. A local businessman who is a friend of mine was upstairs and was throwing his hands up in exasperation. He said to a high government official of this town, and in the presence of a council member, don't you people want new businesses to come to the island? He was told flatly, no we don't.

Many of you claim, I've been told myself that if I don't like it, and this again was by a high government official, if I don't like it, I should take my business elsewhere. That's scary. Many of you claim to be for less government.

I received several mailers prior to the last election stating that you were in favor of government light, less government involvement and I voted for you, and I do, I did and still do expect that, and I'm here to hold you to account for your campaign promises to that effect.

I've started two new businesses on this island and overall, my personal experiences with local government and the Town Council have been very positive. However, the endless stream of new restrictive ordinances and escalating property taxes are pushing many of us, reluctantly, into the political spectrum. If there is not change and relief, many of us will leave, many of us will go under, but before we go, we will do everything we can to change the face of this council. If you enjoy the current power base and nature of things, I strongly caution to give the new business, the businesses on this beach some relief, because otherwise the pendulum is going to swing back the other way and a lot of the ground that you have gained will be lost, and a lot of the positive changes and positive impacts that have been made are going to be lost. I thank you for your time, I apologize I won't be able to stay for the entire meeting, I will be watching for comment later on this evening. Thank you gentlemen.

**MR. CHAIRMAN:** J.T. and the next will be Linda Pribble.

**J.T. WEBB:** I'm J.T. Webb, owner of the Print Shop, Ink here on the beach, at 1661 Estero Boulevard. I appreciate the opportunity to speak with you this afternoon, I just have a few comments regarding the A frame signs that I'm here to speak on behalf of some type of extension or some type of, of resolution that will at least enable businesses to use the A frame signs. Its hard to distinguish between what's just a pop up sign and an A frame sign but there are many signs that...like parking and other signs you see along the beach and there are many businesses here that really need those A frame signs, especially the ones that don't have high visibility from the street. When you look at...it's generally...this is a very tough area to run a business and having been in businesses in many parts of the country, I find this the most difficult that I've been in, especially because of seasonality. And, and you also have a lot of turnover of people, we have a lot of, we have a lot of new residents in this area, and with these new people here, they don't really see all of the little things that are going on, they learn with time. But it's very important for the small businesses to be able to advertise without a great deal of expense, because they can't really afford it.

You could do all kinds of marketing campaigns but its hard

to reach people that way and its expensive to do so, and I know for example of one business last year that's no longer here, mostly because of the storm, but they really, they lost something like 50% of their business the minute their sign was pulled off the street, and I've heard similar kinds of numbers from other businesses. So I'm, I'm...I just want to at least express my opinion that I hope something can be done to enable the smaller businesses to get their word on the street and let people know. We do...not only are we here for the tourists, which certainly helps our business, but I know my business and many others really do a lot of the community itself. Thank you.

**MR. CHAIRMAN:** Linda, and the next will be Bob Knisley.

**LINDA PRIBBLE:** Good afternoon gentlemen. I, like many of the other business members, business owners...

**UNIDENTIFIED FEMALE:** Excuse ma'am, could you identify yourself for the record please.

**LINDA PRIBBLE:** My name is Linda Pribble and I am a business owner here on the beach, I own a store called Tropical Toys & Treats. I represent a group that now numbers between 30 and 40 businesses here on the beach, many of whom you'll hear speak today. Our businesses are struggling, as you all know, since the storm gave us all so many problems, we're struggling to come back. We also deal with the fact that we have business only six months out of

the year, normally, and the other six months we struggle. To begin with, a turtle tint was put on our windows, we went along, we said okay we'll tint our windows, you know its going to effect the turtles. So the tint was put on our windows, it was so heavy that people can't see into our businesses, in order to see in, they need to put their nose against our windows. Secondarily, we dealt with that, we opened our doors, we ran up our electric bills, we put our things out on the sidewalk so that people and passersby could see us and be, you know feel more invited into our businesses. We had much smaller budgets than the big people, so we put our A frame signs out on the sidewalk and dealt with the money that we had. Those of us who have tried to group together to buy and build more expensive signs have met with a lot of resistance from the board, not all, but some.

Our problem now is that you've come along, you've said to us okay you have to take down your signs outside, you have to not only bring in your merchandise, but if you are allowed to put your merchandise outside, you have to pay this council \$200.00 per year, to be able to advertise our business to the passersby. We feel it's unfair and unjust. My business personally was up approximately 12.5% over the last year, coming into June. From the beginning of June

until now, my business has dropped more than 24% below what it was last year. We all feel that this is due to the fact that we are no longer visible to the public. I hope that you will take into consideration and represent the businesses here, in their best interests, and that you will reconsider and think about what's happening to the businesses on Fort Meyers Beach. Thank you. (Applause.)

**MR. CHAIRMAN:** Please, please, no we don't allow that, no that's fine, come on Bob, we don't allow demonstrations, we've tried to cut that off. We understand where you're coming from. Bob.

**BOB KNISLEY:** Hey I'm Bob Knisley, owner of the Beach Barber Shop and I'm here to talk about the signs. We've been talking to the customers in the shop lately and it seems like they all would like the signs back, and something in a little lighter...you know what I was thinking about the signs the other day, we were talking about them every day seems like, instead of talking Florida football, now we talk about signs on the beach. So its...we were talking about how fun it used to be when they put the signs out and it would be \$.74 beer, a dollar and a quarter beer on the same street, five T-shirts for \$10, six T-shirts for \$8 on the signs, and everything they're selling in their restaurant was on the sign, the specials and everything. People got a ball, it was kind of like a

thing to watch, \_\_\_ \_\_\_ price and everything like that and it did help, and for years everybody that's been on the beach has automatically needed, you know needed a little help from the signs. It's expensive to be on the beach, and I used to love being asked the question of what do you do for a living, I'd say oh I've got a business on Fort Myers Beach. But a lot of people aren't going to be able to stay. It just keeps seeing to me...I can think of one lady down here in particular, I'm not going to say her name, but I don't think she's going to make it halfway through the summer. And I'm not, you know, my business has thrived and I'm very happy and lucky and we get a lot of new people, but we need these people that are coming over for the weekends, you know like some people working down... I just got done doing some customers that were working on the Sandarac(?) Apartments down there and they'd come by and say, every time I've come by here, you've had a sign out here, and I couldn't find it, we went and got a haircut over at the place up another place, which I'm not telling you guys. But anyway, they, they came in said what have you been on vacation? I said, no I just had, you know they took our signs we can't put them out there. You know I mean you can get into a lot of arguments about it and everything like that and everybody in here I know...and I'm just in here trying just like everybody else to get our

businesses and keep them going here and if there's anything you can do, I'd appreciate it. Thank you.

**MR. CHAIRMAN:** Angelo Oliveira.

**ANGELO OLIVEIRIA:** Oliveriria.

**MR. CHAIRMAN:** Oliveriria, and the next will be Ollie Curran.

**ANGELO OLIVEIRIA:** Thanks Mayor and councilmen. My name is Angelo Oliveira, I am the owner of the Subway on the Beach. I'm basically trying to get the A frames back on. Its personally hurting us, we're down about 28% from prior to June 1<sup>st</sup> when we were continuously doing 20-22% above last year. A lot of people, because it's such a transient island, don't know we're there, we're a little further back so we don't have the availability to be on the street. I was personally looking at expanding this year, I'm not quite sure I'm going to be able to do that for the simple reason that its hurt us tremendously. I think a lot of people that I've spoken to, the same type of thing, it's hurt them. I think there has got to be a way to help the business owners and possibly even help the community. One of the things that I spoke to is maybe having some kind of fee or something for the A frame signs and maybe we can use that revenue for maybe some type of non-profit organization on the beach. I think we're all trying to help as much as we can, but if we're being hurt, then its going to be

difficult for us to help. I mean I know I do a lot of stuff when people ask, whether it's donating money or sandwiches for lunches and things of that nature, but there is only so much that we can all do, if our businesses are hurting. One of the things that I had said was proposing some type of thing, having some type of fee, using that money for some type of non-profit organization, which the members of the council could decide on. I have no issue with that, I mean that's just a suggestion, I don't know if that's something that you'd consider, and that's all I really have to say. Thank you very much gentlemen.

**MR. CHAIRMAN:** Thank you.

**OLLIE CURRAN:** Hi my name is Ollie Curran and, and I own the Hair Etc., at Seagray(?) Plaza, Hair Etc. By Ollie. Anyway this has been like four years now that I've been, that we've been talking about the A signs, the LPA this and that, and they had different restrict, you know things that they needed to do to the signs. So what we did, we went and got a sign, as you all know that would have two businesses, so I had my sign Ollie and Perky's, so anyway we only needed to have three signs, sometimes other people would leave the other sign out, then there would be four signs, then people would call and we had the town hall well come and give us citations, fine we tried to abide that.

Well now that we don't have any of the signs, and I was not here for the meeting that they did not pass, then it was called to me, they said well nobody was there and, to protect the fact that you council members passed no on that effect. And so I was talking to Jessica Titus and it says it doesn't have, we don't have to be there for them to pass it. Every one of you know what the signs does for our business, because it's been going on for like four years now, about the A frames. People don't like the looks, well I had suggested a long time ago that we would have the town hall have a place where we could buy the sign, everybody would have the same sign. Then we'd take it to the printer and we do our own printing, I thought that was a great idea. Allie Sullivan, the Nails By Allie, has suggested one time that we would put some of the nice signs like on the pole, on the brass, it would have a palm tree and said this and that, things that would look pretty for the island. Well anyway, the conclusion is that we, we don't have ugly signs or pretty signs, so we have a problem in Seagrass Plaza as you know having an isolated \_\_\_\_ \_\_\_\_ \_\_\_\_ and guard so forth, and Mr. Thomas was there many times that we have this big sign that nobody drives up like this, that the manager doesn't take business already that they're gone, they've been gone for four years, so we have a problem. Yes we would like to have a sign, a big sign

that would say Seagrass Plaza and just a clean look and the owner doesn't want to buy us a sign so we have that problem, plus the problem of not having any business. Everything that people said there about losing business, yes we have lost a lot of business, because I'm there sometimes from 7:30 to 7:30 in the evening, and a lot of people pass by and they come for haircuts. That's the gravy money, that's the money that you get to, to do your extra stuff that you need for the summer. I don't have this year, I'm speaking for the whole Seagrass Plaza, the Cuban Restaurant, I feel tremendously sorry for those people and everybody else that's there. So, if you can help us to put some way that we can have something that it looks good, but the A frames is really the ones that attract people. I have...I'm not from this country originally, I have been in a lot of different countries that they have menus, A signs, and they look very sheik, they look very nice. If you could come up with an idea that we can have something that looks good, that would be fantastic.

Seagrass Plaza, we had a problem also with the parking and all of that crazy stuff as you know from before. Well then, they asked the bank to put you know Waucovia Bank, now actually that grass, if you look at it, it looks really

bad. They have four metals that says Waucovia Bank, then they have a sign that says Historical House that way and then they have one that says Church this way. So now we have all of this, okay I didn't see the light, so now we have all of this that I don't think even looks pretty. But anyway, we do need help and we voted for you and I hope you can help us, thank you.

**MR. CHAIRMAN:** Okay, being a gutsy person, I'm going to ask if anybody else wants to speak to the sign situation, because I have that onto all of those, and if there is nobody else, I'm going to call on next Frank Schilling.

**FRANK SCHILLING:** Thank you Mr. Mayor and council, Frank Schilling, 6672 Estero Boulevard. Three weeks ago council asked for information regarding re-nourishment, some simile questions. Why is there no information today? All of the questions were uncomplicated, clear and needed for council to make business decisions. There were no surprises among the questions. For a long, long time, these definitive questions have been asked of Steve Boutel(?), the project manager, repeatedly. He just does not answer and he even refused to answer Ray Juda(?) on these questions, we were there. Two weeks and seven Boutel years in the project is more than enough time. Some things are clear, Boutel's project changes with each audience. There is no flood protection, there is no flood protection with this plan,

there is no protection from hurricanes. Boutel's project gives extra widening to beaches that are either growing or stable, and you'll see that later. Boutel's project gives the least sand to the beaches that need it most. Is this the re-nourishment plan that you as council want to be known for?

Let's look further at erosion. After Hurricane Charlie, FEMA looked at our beaches for erosion and identified 27 properties that could be used for re-nourishment. On May 31<sup>st</sup>, the state's \_\_\_\_\_ signed a contract for \$890,000.00 to cover beach owners wanting to have dunes and have vegetation on those dunes. So they looked at our beaches, determined erosion. It did not take FEMA seven years to clearly identify some erosion that Boutel cannot or will not report on. Perhaps Boutel's silence is because FEMA says erosion could be fixed by trucking in sand and putting up dunes and planning's for under \$1 million. In contrast, Boutel wants \$7 million for his beach widening plan.

This explains some of Boutel's lack of erosion discussion. The mapping of erosion is very simple, there are vast amounts of data available, vast amounts of data, its all there. it's an easy engineering task, a computer aided design task, the simplest one you can possibly have in CAD,

to do this, to take and put this all on one piece of paper. It's not been done. Instead, Boutel has tossed volumes of raw data at Matt Feeney, who has worked very hard, and that just slows down Matt. The choice is up to council; either allow the county ineptness or stone walling to continue or call for a hold on re-nourishment and ask for a plan for council that can be simple. Re-nourishment in the erosion needy areas, that's key. Residents need only to decide whether or not they want dunes and vegetation. The latest \$890,000.00 gift from the state brings dunes back to the re-nourishment picture.

Why is the county project manager Boutel not here today? He knows all of the answers supposedly, its simple, an answer to that is simple, he has nothing to talk about. There's no flood protection or hurricane protection and he can't scientifically prove any significant amount of wave protection. Seven years is long enough, the game is over. Thank you.

**MR. CHAIRMAN:** Pat Smith.

**PAT SMITH:** Pat Smith, I was here principally, to support Frank Schilling and Tom Merrill(?) and the others who have asked the questions that needed to be asked about the beach so called re-nourishment project. I know very little about it and I'm certainly not an engineer, so I couldn't speak

to the technicalities of it. However, I certainly think that government, all government, should be transparent to the people that are paying the bills and we are the ones that are paying the bills and if they can't explain to us, in clear language, what exactly is going on here with so called beach re-nourishment, then I think we should hold off spending our hard earned money and that's hard earned to the governments and hard earned to the people, until they can answer those questions and answer them to our complete satisfaction. We're not stupid, but we've been treated like mushrooms, we know what that is, we're kept in the dark and people are shoveling fertilizer at us, and I think its time to stop putting up with that kind of treatment and go to transparent government. Get those questions answered before we take those big steps.

On another subject, I didn't...a couple of other subjects. I didn't intend to really speak to signs, I didn't even know that was on the agenda tonight, because I didn't do my homework ahead of this meeting, but I do want to speak... I have guests in is one reason that I wasn't even supposed to be here today, from out of town, they've been here many times before and they've already mentioned to me, they got in yesterday, and they've already mentioned to me, where are the signs? They can't tell where the stores are, they

don't know whether the restaurants are open or not and where they can go to shop and eat and so forth. They liked the looks of it, they liked our old beach resort sort of look, so I would tend to support, and as a resident support the fact that I'm interested in seeing whether that restaurant is open or not, what the special is for the day, what the goods are that might be for sale. I kind of like that look, I don't quite understand why it was that we had to get rid of them.

Another subject, the draft budget, I, I strongly support the fact that we are looking to at least not go up but...and I would support what Dan Hughes has said about rolling back and continuing to roll back as our property values increase at an astronomical rate here, and thus the tax revenues. And I also notice, I commend the, the staff for putting together what would appear to be a nice budget, except that it still makes no comparisons to last year's budget and it makes no comparisons to actuals today. I'll plan to do that, I'll take the numbers that I've been getting from town and put that package together for you, but I still don't understand why our staff can't do it. Thanks very much, bye-bye.

**MR. CHAIRMAN:** Tom Merrill.

**TOM MERRILL:** I'm going to need somebody to help me with

the charts here. I'm going to go through them one at a time. Tom Merrill, 21581 Indian Bayou, resident \_\_\_\_ \_\_\_\_.

Many of you have businesses, you have had businesses, I had a business for 20 years. One thing I learned in being in business is you better have the facts in front of you if you want to make good decisions. Government isn't any different, and it's even more important since it deals with the public good. This beach re-nourishment episode has thousands of pages of documents and many years of activity, but the simplest questions have not been answered, for instance, what protection is there during a hurricane? We have lots of statements of protection, but we don't have an answer to that. Many, also many comments have been made to show this project is replacing the beach that has been eroded, but this claim has never been substantiated. We applaud the recent council decision to get to the bottom of this, and we have found that Matt Feeney, the staff person now in charge of producing the facts, is quite competent and is really working in the best interests of the town. He's genuinely working hard on this project.

But we still have the problem of getting the real truth out in a usable format, its not coming, its not coming from the county, its not coming in a you know in an expeditious manner in any way, shape or form. Unfortunately, beach re-

nourishment is not on the agenda, so we must make this public comment period and we're going to try to show you some charts real quick, to show what we have found about this project that's pretty interesting.

It zeroes in on the area of erosion and what are we really doing with this new project. And Frank Schilling is showing here the first chart, I'll put up the second one to tie in with it. But what we did is we blew this, we blew up a map of our beach and it shows where our beach was in the green line here. The green line, starting right here, is 1927, '27 is a good year because that's the first year that we really had identifiable survey information. There is some survey information before but this is supposedly the best that we can go with, at that period of time. 1927 shows where it was 70 years ago, very interestingly, we have over 2,000 feet, that's almost getting close to a third to a half a mile. The island has moved north a third to a half a mile more than what we have, than what we had in 1927. You can see 1960, there's a blue line and a red line, is our line now, so we have had additional sand, additional island in this last 70 years, this is comparing to 1996.

Now when you take a look at where we're putting sand, our

largest part of build up of sand is in exactly the same area where we have grown about a third to a half a mile in the last 70 years. Now when we take a look at the area around the pier and Lynn Hall, that area generally has eroded, and you can see over periods of time that there has been erosion in that area. That area it's logical to put sand and fill in the area that's been eroded. You go through the island, all the way down here, and what we're doing is we're showing here the number of feet that this, that this beach is going to result in, and its about 300' in front of the Pink Shell, its about 243', 236' down to 181' and the area where we're having erosion, which is around the town, around the pier, and Lynn Hall and on down toward Lonnie Ky(?) that area is getting 181' of beach and we're getting 300' of beach up toward Pink Shell, and Pink Shell area has gained tremendously, over the last 70 years.

Then you get down here towards Denora, the fire station area, and again its 280' of sand. Now we're adding sand out again, and as you go down the island, you go further down the island and you can see the line here in red, down towards Aberdeen and Sterling, we've had tremendous amount of erosion. That's where we have zero sand being added, and we go up where there's an erosion area all the way up to Madera and Newton Park and that area is going to be 141'

of beach and then it goes on up to 184 and over 200' of sand. So the point is simply this; what we have been led to believe is that what we are doing is helping the areas of erosion, when in fact the areas that are eroding are getting less sand and the areas that have shown to be building up over a period of time are getting more sand. So this is only one area of this project that shows the facts are very different than what the true situation is and why are we adding sand in these areas? It adds more questions to the project. So this project needs a full review. I would suggest that what we do is we put this on hold, we're not getting the information from the county. If we were to say we're putting a hold on our funds until we get these answers, then that would maybe get the answers. Thank you sir.

**MR. CHAIRMAN:** Ceel Spiewler.

**CEEL SPIEWLER:** Ceel Spiewler, 7150 Estero Boulevard. I would like to comment on the decision of the council to cut the committee size of CELCAB, at this time. as a member of CELCAB whose committee is comprised of 12 members, I'm concerned about cutting our number to seven, and this is my reason. We, at last, have, under the directorship of Theresa and Corbit, are now beginning to bring about the long range plan of three key elements of the management plan. This includes not only the historic renovation of

the garage to house handicap bathrooms, but also a historic walk in archeological dig that was the swimming pool and the historic possibility of restoration, bringing the house back to 1921, hopefully for a national historic registration designation.

This is such an exciting time for us, all the background discussion that has taken place, all of the decisions that were made involve all of our members. These members have unique backgrounds, either was preservation, Florida history, family ties, actual contact with the house and owners, as well as very interested residents. It's rather unfortunate to be this close to following through on such an extensive project over all of these years and have our unique group cut to seven, at this time. I respectfully ask you to reconsider natural attrition for at least the next two years. Thank you.

**MR. CHAIRMAN:** Okay now that's all the, the little green cards I had, and being a very brave person, I'm going to ask if anybody else would like to speak during public comment time. I see one hand, I see two hands, okay, oh three, all right lets try to do it rapidly, young lady if you'll come forward. You need to give your name and address.

**DONNA LIBOLD:** My name is Donna Libold, I represent

properties at 5750 Estero Boulevard and 3561 Estero Boulevard. These are family properties, I came here originally to address something about re-nourishment and that being something that Mr. Merrill just touched on. 5750 is just south of Sterling, and the project ends now at Sterling. I thought originally when the project was put forward that Sterling and the area south of Sterling was also going to be included and it looks like its not. So and as pointed out, it needs re-nourishment, it is like zero on the re-nourishment scale.

Secondly, which I didn't come here to address was signage. I, I know Ollie, Ollie needs those signs, Seagrass Plaza needs the signage. I know Herb over here, Times Square are, those signs are entertaining, they have never been gaudy or out of place. I think they're necessary and I think that whole issue should be readdressed. Thank you gentlemen.

**MR. CHAIRMAN:** Thank you, Bob Simon.

**BOB SIMON:** Good afternoon, my name is Bob Simon, I live at 13 Sunview Boulevard, and I just have two things quick to talk about. One is the ordinance on the LPA membership. I've been on an LPA now for about a year and I've worked now with both a nine member panel and a seven member panel, and it's my opinion that the seven member panel is more

efficient and works better. My second topic is on historical preservation. We have a home at 109 Hercules Drive, owned by Patricia Southwick, who lives in Fort Myers, Florida. I think the historical preservation of a structure can be beneficial, if it is shared by all of the town of Fort Myers Beach. However, I don't feel that this structure qualifies as to the intent of the program. The owner is not a resident of Fort Myers Beach, lives in Fort Meyers and under questioning during the LPA meeting, she agreed that she was going to fix up the property, if she receives grant money, and then will rent it. Do the taxpayers of Fort Myers Beach have to pay or are obligated to assist anyone in repairing a property for rental purposes and profit? It is my opinion that this abuse of the program is not in the best interests of the taxpayers of Fort Myers Beach. Thank you.

**MR. CHAIRMAN:** Okay I'm sorry, I knew there was one more.

**CAROLYN EPPERSON:** One more, hi I'm Carolyn Epperson, I am the manager of Wahoo Willie's on Fort Myers Beach, on Times Square. I do want to address the signage. We are not, we don't have a big gaudy sign up there that says who we are at Wahoo Willie's. One of the reasons, there would be a lot of lighting up there, different things. What we do depend on is a small A frame sign out front, telling our daily specials. Not gaudy, just very professional.

Cheeseburger \_\_\_ \_\_\_ come on in and have a beer and have fun. That's what we want the Times Square area to be, very nice and very nicely done. We would really like for you to rethink this amendment for the businesses to profit. Since we have took the signs away, numbers and numbers of people, where am I at, what's the name of this business? You know it's a shame, they should be able to know where they're at and follow their little maps and go where they need to go and have a sign to do so and not to have to search or go up and back. We would really like for you to rethink this, for our business and the other businesses on Times Square, not just my restaurant, but the other ones too feel the same way, and I would like to work together as a team to do that. Thank you.

**MR. CHAIRMAN:** The next item on the agenda is the town attorney items, we have two items.

**TOWN ATTORNEY:** Thank you Mr. Mayor, the first item for consideration by the Town Council today is something that was requested of me to bring back, which is whether or not council members can serve on town advisory committees, and as outlined in my memo of June 16<sup>th</sup>, the initial decision is a policy decision, whether or not the council wishes to have Town Council members serve on advisory committees, the town advisory committees, and depending upon which way the policy goes, I have several other suggestions about how to

implement that policy.

**MR. CHAIRMAN:** We're going to bring it up to council, do we have any comments on this?

**COUNCILMAN:** I would like to make a motion to adopt option number two of Ann Dalton's memo of June 16<sup>th</sup>, which would be to modify ordinance 0108. That states that the compensation of council received shall not be deemed salary for the purposes of their service on advisory committees. I also believe that we need to clarify the term salaried officials, to mean any employee of the Town of Fort Myers Beach, whether by salary or as independent contractors, but not including Town Council Members. I personally do serve on the TMA, I have been asked by TMA members to stay on the committee, they believe that I have input that is valuable. I do not, as it is an advisory committee only, I do not see a conflict of interest and I believe that council members should be allowed to serve on advisory committees, if they so choose.

**COUNCILMAN:** Second.

**MR. CHAIRMAN:** I've got a motion and a second, discussion?

**COUNCILMAN:** Yes Mr. Chairman, I would want to ask our current rule on that.

**MR. CHAIRMAN:** You don't have your mike on.

**COUNCILMAN:** Thank you, I hadn't gotten around to putting that on yet. I was wanting to ask the Town Attorney to

look into that matter, and I don't think that saying, and with due respect, that saying that we are not a salaried member of the town is going to change the facts, which we are, and you can say it 100 times and 10,000 times, we are an employee of the town, that's where our money comes from. My chief objection is for any councilman especially, and I think I would extend that to any paid, any employee of the town, if I say any employee, I assume they are paid or they wouldn't be an employee. I don't see how that we can have...like we have one council member right now serving on two committees. Ann serves on one, so that's two, serving on three committees total, with the two different councilmen. I don't...I'm not so sure that's the best interests of the town if we have persons working with those committees promoting ideas and voting on those issues, and bringing them to council, I'm not sure that's the best interests of us, because that one person, that one councilman has a chance to promote issues in, in this case, three different committees divided between the two people. I just don't believe that's the situation we should get into and I would like to have people in the community serve on those committees and once you come through with those approved courses or directions, then I think its up to us to go ahead and made decisions based on your conclusions, not on previous promotions and voting of members of

council, and they come back and they vote again.

That's...well here, I have a problem with that and I would hope that no employee of the town would be serving on those, on those particular committees. If anybody...its open to the public, if anybody wants to go and attend those meetings, fine, and I can do it, in fact, I have done that and I know other council members have too. But we don't go in there and promote issues, we don't go in there and vote on those issues and then we don't bring them to council and vote on them again. I would hope, I'm speaking to council and I hope that we do not go that direction.

**MR. MAYOR:** Anybody else want to speak to this, okay and then the motion is that we adopt number two and then you added something to that just to clarify this motion. You added something else to that councilman.

**COUNCILMAN:** I think Ann has all that written down.

**TOWN ATTORNEY:** What I wrote down, what Councilman Katcko was saying, I believe he wanted to clarify salary to indicate who it covered, employees, independent contractors, etc., and not council members.

**MR. CHAIRMAN:** All right, if there are no other questions or discussions, I'll call the question, all in favor of the motion, signify by saying aye. (AYE.) Those apposed.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** Motion carries four to one, I believe you

voted in favor of the motion.

**COUNCILMAN:** Yes I did.

**MR. CHAIRMAN:** Councilman Massucco.

**COUNCILMAN MASSSUCCO:** Yes.

**MR. CHAIRMAN:** Motion carries four to one. The next item.

**TOWN ATTORNEY:** The next item, thank you Mr. Mayor, is also mine, its, it relates to the memo I did January, I'm sorry June 20<sup>th</sup>, 2005, regarding sunshine issues. I have been asked several questions, the most recent of which was a memo from Councilman Reynolds regarding tenant advisory committees and sunshine issues, and also asked questions of my staff. What I'm looking for today is perhaps some direction to incorporate the memo or the thoughts in the memo in my review of the policy procedures manual, which I've already receive direction from the council regarding it.

**MR. CHAIRMAN:** (Inaudible.)

**COUNCILMAN:** I would make a motion that we move this to the fall and discuss it when we do bring up policies and procedures. I think that would be a good place to put it, and that gives Ann some time to do her research.

**COUNCILMAN:** I'd like to second that,

**MR. CHAIRMAN:** I've got a motion and a second, and this is to continue this item until fall, discussion? No discussion, I'll call the question, all in favor of the

motion, signify by saying aye. (AYE.) Opposed? Motion carries unanimously.

**TOWN ATTORNEY:** Thank you Mr. Mayor.

**MR. CHAIRMAN:** The next item is the consent agenda, the consent agenda includes the minutes of our May 23<sup>rd</sup>, 2005 meeting, the financials for the month of May, the town attorney contracts and resolution 05-18, which regards, in regards to off shore drilling.

**COUNCILMAN:** Mr. Chairman, I move that we accept the consent agenda.

**MR. CHAIRMAN:** So motioned, do I have a second?

**COUNCILMAN:** Second.

**MR. CHAIRMAN:** I've got a motion and a second, discussion? All in favor of the motion, signify by saying aye. (AYE.) Opposed? Motion carries unanimously. Okay now we have a presentation, John Fumero(?), John. I knew it had to be one of these gentlemen with his jacket on.

**MR. FUMERO:** I didn't wear a tie.

**MR. CHAIRMAN:** Oh that's okay, I like that idea.

**MR. FUMERO:** While he's setting up, I'll go ahead and introduce myself, my name is John Fumero, I'm here today on behalf of Lee County and the Visitor and Conventions Bureau, who I represent on a variety of environmental and water resource related matters, and I want to point out that Tamara Bridgett(?) is here from the Visitor and

Convention Bureau with me, thanks. What I'm going to do is go through, quickly, I know you've got a lot to deal with. I'm going to...I've been asked today to present a PowerPoint presentation I provided to the Visitor and Convention Bureau, at the tourism breakfast that was about five or six weeks ago at the Santa Ball Harbor Resort. This is going to focus on some of the issues I know a lot of you have been hearing about. I will tell you, just by way of introduction, that I was formerly the general council at the South Florida Water Management District, for a number of years, and also headed their legislative and governmental affairs group, and I'm now in private practice, representing local governments and also private sector entities on environmental and water issues.

I was brought on about a year ago, by the Visitor and Convention Bureau to do some fact finding reporting, to deal with a number of issues that I know all of you have heard about, having do to with how the South Florida Water Management District is making decisions, how Lake Okeechobee is being managed and the impacts that Lake Okeechobee is having on the Kalusahache(?) River, the Estuary and as a result our beaches and shores here in Lee County. We also have been developing positions and identifying issues that we want to bring before these

governmental entities, and the governmental entities that we have been dealing with primarily are the South Florida Water Management District and the U.S. Army Corps of Engineers.

Basically what we have in place now is a two tiered team, we have...I'm working with Lee County staff, the county attorney's office, the natural resources division, the public works, water utilities, all as one cohesive group. The VCB, as also, as you probably know retained a firm in Washington D.C. to help with their beach, beach re-nourishment projects and lobbying on the hill. So we have formed a group and together we are moving forward with this water resource initiative and as indicated here, the basic objective is to strengthen the role of the county and the municipalities and the tourism industry in general, here in Lee County, so that these governmental bodies, these decision makers understand the implications of some of the decisions that they're making.

And I don't have to tell you what you've been reading about now for years and certainly in the last couple of months. There have been headlines from the Miami Herald, the Fort Myers News Press, the Naples Daily News, the Washington Post, the New York Times, all talking about what's

happening here in South Florida, and what's happening with Lake Okeechobee. This is a saying that's always been near and dear to my heart since I've been in this business, my adult life, and that is whiskey is for drinking and water is for fine(?). Samuel Clemens I think had it right, and I think we're starting to see that over the last couple of months.

In our involvement with the VCB, we have been meeting to set priorities, identify projects that need to be funded at both the federal, state and regional level, and what you have here are some of the priorities that we have identified. The southwest Florida feasibility study is basically the blue print for Lee County, for Southwest Florida, in terms of all of the everglades restoration projects. You've all heard about, almost \$8 billion in money, state and federal money, coming to South Florida. How is it going to be divided up? Which projects and which communities are going to benefit from that money? Well the Southwest Florida Feasibility Study is a critical piece, it is the blue print, unfortunately, it is years behind schedule for being completed. Our view is until and unless that's completed, we're going to have a difficult time lobbying for federal and state funds.

Forward pumping, which I'll get into shortly has to do with diverting water away from the Kalusahache River and the Estuary and sending it in a southerly fashion. I'll talk about the plumbing in a little bit. Lake Okeechobee discharges, the perfect storm is forming, the lake is at 16' as of this weekend, that's over 2' above normal for this time of year, 2' above normal and we're entering the rainy season. We're about to, I think, get into some very catastrophic impacts. Lake Okeechobee discharges are going to increase over the coming months as the rainy season comes upon us and the implications for the Kalusahache River and Estuary and the beaches I think are going to be significant.

We've also talked about, you've heard about the \$2 billion reservoir project out near La Belle. This is a 10,000 acre reservoir that will shunt some water from the Kalusahache and be stored so we can minimize the quantity impacts of discharges during the rainy season. What we're arguing, that's just dealing with the quantity of water, what we're arguing for, before these agencies is water quality has to be looked at as well. And I've seen a series of newspaper articles, from the Palm Beach Post and the Fort Myers News Press that have identified the fact that in the last month, month and a half, water quality of Lake Okeechobee has been

at historic lows. This, in part, started or was caused by the hurricanes last year, you know Lake Okeechobee is a 730 square mile lake that's very, very shallow, so wind action can very easily stir up all of the sedimentation that has accumulated in that lake over many, many decades. And so what we have now are these discharges having this sediment, and the sediment is farm run off from the everglades, agricultural area to the south of the lake and also historic phosphorus and nitrogen inputs from the north where there used to be a very large dairy industry, which is no longer there, but the implications of that still exist in the lake.

I just want to take a moment to talk a little bit about the history because as you all know, talking about where we are, you have to talk about where we came from. In South Florida, the southern half of the state has a very, very unique system. We have one of the largest water management systems in the world, 2,000 miles of canals manage water from Orlando to the Florida Keys. That canal network was constructed by the United States government, over the course of about 25 years, beginning in the 60's, and it is managed in large part by the South Florida Water Management District, and this basically shows why we have the situation we're dealing with now. You can see the

flooding, if I can get this thing to work. This right here, I don't know if you can, you probably can't see it now but this is downtown Fort Lauderdale in 1958, the water is waist deep. There were large portions of the southern half of the state were uninhabitable prior to this plumbing system being put into place.

As you might imagine, as we all know from last year, hurricanes have the ability to cause significant impacts and in some cases, change, and Florida suffered very, very serious hurricanes in the mid 1920's, about 2,000 people perished as a result of those two hurricanes in the 20's, and then 1947 was really the strong that broke the camel's back. There was significant flooding, there was a rudimentary dike at the southern edge of Lake Okeechobee, which blew open and you can see, in this bottom pictorial right here, all of this area right here is Belle Glade, Pahokee, Clouston, La Belle, all of these areas were flooded and remained flooded for the better part of a year.

What you have here is a side by side comparison of what was and what is. This is what was, this essentially is, where I'm pointing right now, is where Walt Disney World is. Its parts of Osceola and Orange County right up here. this is the historic headwaters of the everglades, and

traditionally, water that fell in this area, this is the Kissimmee River, would eventually accumulate and flow down into Lake Okeechobee. Once the lake reaches a certain elevation, its like shallow bowl, water would just flow over to the south and head down, primarily, in a southerly direction, and as you can see here, the Kalusahache was not connected to Lake Okeechobee.

When the Army Corps of Engineers came in, in the late 40's and early 50's, began dredging out. They took the Kissimmee River, which was kind of a meandering river and turned it into a straight 35 mile trench canal, which meant that water moved at an incredibly greater velocity, into Lake Okeechobee. They connected the Saint Lucy and the Kalusahache Rivers to the lake, which immediately dropped the lake anywhere from eight to twelve feet, just by making that connection, and then a significant network of canals was placed all along this area. As a result, most of the land that had been under water for the better part of the rainy season, was now dry. Unfortunately, what this caused was a significant amount of water that went into the everglades, here's the historical everglades, big cypress preserve, Everglades National Park is down here. All of that water was...

**(END OF RECORDING TAPE #1, SIDE A.)**

(TAPE #1, SIDE B.)

MR. FUMERO: ...to the coastal areas and lost the tide, so what you have here is the everglades, the historic everglades did not receive much water. What happened just south of the lake, about 700,000 acres in this area right here turned into some of the most fertile farm land in the country. This is called the Everglades Agricultural Area, it's mostly sugar cane and vegetable crops are grown there; very, very fertile muck farming area resulted. What happened basically is now we have a constriction, you have a large farming area here to the south, with a canal network and then you have a heavily populated eastern urban corridor. So what's been happening now over the last 20, 30, 40 years, the biggest outlets get used first, to the west on the Kalusahache and to the east down the Saint Lucy. These now turn out to be the major drainage areas for Lake Okeechobee and parts of Central Florida, because there are constrictions here, water cannot move at the same velocity and quantity. That's why we're dealing with the situation we have today.

You all have heard about everglades restoration and CERP, Comprehensive Everglades Restoration Plan, it was formulated in 1999, presented to congress, congress agreed to fund that project. In part, that project is intended to

open up some of the areas to the south so that more water can flow down to the south, because the everglades has a water quantity problem, its not receiving enough water. The idea behind CERP, it's basically a \$8 billion water supply plan for the environment. It's intended to take that water that has been shunted to the east and redirect it to the south, back into the glades.

Now I want to just change gears and talk a little bit about what we've been doing in our water resource initiative, on behalf of the VCB. First of all, we have obtained a commitment from the South Florida Water Management District to address water quality treatment in its design of the Kalusahache Reservoir. How much treatment, when will they do it, how will they do it? That remains to be seen, we're in negotiations with them now, in fact, we have the Colonel with the U.S. Army Corps of Engineers, who runs basically the southeastern United States region out of Jacksonville, will be here in Fort Myers on August 15<sup>th</sup> and 16<sup>th</sup>, he'll be meeting with county staff and myself and county commissioners, and he on August 16<sup>th</sup>, these are tentative dates, he will be addressing the Board of County Commissioners, on these very issues, and hopefully, we'll get a stronger commitment from them at that time.

The consultation process, I won't get involved in federal law and regulations other than to say that the county has asked, pursuant to federal regulation, to initiate a formal consultation process. That's why we have the Colonel coming here in mid August.

We're also trying to get the word out. We have met with the editorial board of the Fort Myers News Press and I think some VCB folks have met with the Naples Daily News as well. Education here is important, and that's one of the reasons why I'm here today. I think the citizens of Lee County need to understand what's going on, the decisions are being made in Washington and Tallahassee and West Palm Beach that are effecting the quality of their environment, the tourism industry and they've got to get involved, they've got to make their voice heard, and that's what we're, that part of what we're trying to do with this initiative.

Some additional accomplishments, we're monitoring a variety of meetings, literally dozens of task forces and committees and governing body meetings are taking place, every month, dealing with Lake Okeechobee management, dealing with everglades restoration and generally southwest Florida issue. Here's just a little sampling of them, governing

board meetings, the Water Resource Advisory Commission, which was formed by the governing board. There's a Federal Eco System Restoration Task Force that's also working on these issues, as well as regional water supply plan committees. We've also been involved in representing the county in the deliberations over water legislation in Tallahassee and we have also been attending and making presentations at some of the sub-committee meetings.

The bottom line is we need to keep the heat on. Any one of you who has ever dealt with large governmental entities, like the federal government or the state know you've got to keep the heat on. You've got to make yourself known and make yourself heard and that is what we're doing. The VCB has directed me to maintain engagement with the leadership at the water management district and the U.S. Army Corp of Engineers and that's going to be a critical focus over the summer, as some important decisions are made with respect to the lake and the Kalusahache Reservoir, and that concludes my presentation. If you have any questions, I'll be happy to address them.

**MR. CHAIRMAN:** John thank you for that presentation, I want to tell that I sit on the regional planning council board and... (Inaudible.)

**COUNCILMAN:** Bill your microphone.

**MR. CHAIRMAN:** This subject has been very pronounced at our last meetings and it had to do with the delays \_\_\_ \_\_\_ \_\_\_ in the South Florida Water Management District, and I, I know there's, there's a lot of comments made and some rather colorful language came out of that meeting that I hadn't heard in a public meeting before, but anyway its \_\_\_ \_\_\_ \_\_\_, and it is a problem. We need to be concerned, I never, I never realized that at one time the Kalusahache River was not attached to the lake. That's certainly something I never realized, anybody else got any questions for John? I thank you for your presentation, I know how much it affects us in this little small town here, thank you.

**MR. FUMERO:** Thank you.

**MR. CHAIRMAN:** Okay we have some public hearings now. Our first one is George Fico.

**COUNCILMAN:** Palko.

**MR. CHAIRMAN:** In reference to an extension of our present garage. I believe George is here and this is a, a land use case, so we will read the case number is VAR2005-00002 and I would ask anybody that's going to make a, a presentation to please stand, please stand to be sworn.

**FEMALE:** Could you raise your, raise your right hand please. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

**GEORGE PALKO:** I swear.

**MR. CHAIRMAN:** Okay this is a public hearing, I'm going to declare the public hearing open now, and I would ask any council members for any exparte communications.

**COUNCILMAN:** Yes I met with Mr. Palko on his property.

**COUNCILMAN:** I did also.

**MR. CHAIRMAN:** Okay I talked to Mr. Palko on the phone and have been to the property.

**COUNCILMAN:** I drove by the property and I read a good bit of coverage in here.

**COUNCILMAN:** I drove by the property.

**MR. CHAIRMAN:** Okay, Mr. Palko.

**GEORGE PALKO:** My name is George Palko, I am the applicant, Mr. Mayor, distinguished members of the council. The specific regulation from which we are seeking relief is section 34-1174A, which states no accessory use building or structure, such as a garage, shall be located closer to a street right of way, line or street easement than the principle building, and so forth.

Let me begin by telling you that my wife and I are permanent residents of Fort Myers Beach, when we purchased this property about eight years ago, it was in a very run down, very bad condition, both inside and out. It was overgrown with vegetation, including undesirable exotics.

After considerable work, it is one of the better looking properties on Washington Court. The underbrush, the Australian pines, the Malibu \_\_\_\_\_, the Brazilian Pepper are all gone. We have replanted with mostly native plants, including Gumbo, Limbo and Coconut trees, purchased through the town recently. We have put in crushed shell and stone instead of grass, to conserve water. Lately we've had to replace trees and shrubs that were destroyed by Charlie. We've installed hurricane shutters and last year, the entire house was re-stuccoed in a more modern pattern. The last phase of our refurbishment was to enlarge the garage so we could park a conventional sized car in the garage. The present garage will only accommodate a small contact.

The extension would come out only 7' from the house and be within the subset requirements from the right of way. The design is totally compatible with the neighborhood, and I think you have pictures of other homes in the neighborhood in your packet. There are at least six homes on the street and others in the surrounding Shelmount area with garages that extend closer to the right of way than the front of the house. As an aside, I may want to mention that up north where I come from, these homes were generally referred to as L-ranches and there were numerous of these homes.

The impact on the neighborhood would be insignificant. We know almost all of our neighbors on the street, we have submitted a letter and an E-mail correspondence indicating that my neighbors are not opposed to the addition. I have several other E-mails that are also in favor of the addition.

This garage extension will make our lives a bit easier. It would have no adverse effect either upon the neighborhood or upon the town. It will improve the property and incrementally the neighborhood. In conclusions, I would like to ask that you approve that variance that will greatly affect me and my wife. Thank you. I will ans, I will answer any questions you may have.

**COUNCILMAN:** \_\_\_ \_ \_ \_ parking?

**MR. CHAIRMAN:** (Inaudible.) Mr. Palko let me explain to you, we'll now hear the staff presentation and if you wish to respond to anything they, statements they make, you'll have that opportunity, do you understand?

**JOSH PHILPOT:** Good afternoon council, Josh Philpot for the record, representing the staff. Just to get started, I'll give you a brief introduction to the, to the site as well as the surrounding area. The subject property is located at 1331 Washington Court, as out, as highlighted in red on the aerial. To the north and the south are two single

family homes, again to the southeast, there's also Washington Court with single family homes across the street. To the northwest is a canal with single family homes across the canal. The homes in the area range in age, the subject property, or the house on the subject property was built in 1959, it's approximately 1,200 square feet. Some of the other houses in the area are two story houses that were built in the 70's, 80's, as well as some current houses that were built more recently, with elevated, elevated above, to flood elevation. Also the, there are conditions that exist in the area that are similar to the request today. Approximately seven other parcels on Washington Court have garages that extend closer to the right of way than the principle structure.

Basically, the request is a variance from section 11-47, excuse me 34-1174 sub B of the Town of Fort Myers Beach Land Development Code, to allow a 70 square foot garage addition, to be located closer to the right of way than the principle structure. Just going to attachment A of the staff report, or excuse me yeah attachment A. It's basically a site plan showing the addition they're proposing. The addition is a hatched 7' by 10' area that will extend approximately 7' from the front of the house, it will be set back approximately 25' from the right of

way. Not shown on the site plan is a 5' porch entry feature that is located in front of the house.

It's in the single family residential zoning category and the low density future land use designation. Based on the review criteria as outlined in 34-87 of the Town of Fort Myers Beach Land Development Code, staff made the findings and conclusions that are outlined on page 4 of 6 of the staff report. Just to briefly discuss some of those, number one, there are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question. Basically the property is a 70', 75' by 100' property that meets all of the criteria of the Land Development Code, the current Land Development Code. Also, number two, the act, the conditions justifying the variance are not the result of the action of the applicant taken after the adoption of the regulation in question. The applicant could extend, or could add the addition to the proposed, or to the house by only extending the porch two feet or extending the house an additional seven feet to bring that frontage of the house to the same set back as the garage addition.

Based on that, the staff finds that the variance granted is not the minimum variance that will be...that will relieve

the applicant of the unreasonable burden. The staff does not find that there is an unreasonable burden in this situation. The staff finds that the granting of the variance will not be injurious to the neighborhood, due to the existing circumstances that are in the area with the seven other houses along Washington Court. The staff find that with the addition of one, it will not be injurious to the neighborhood. Number five, the staff also finds that the condition or the circumstances of the situation or intended use of the property for which the variance is sought is of a general recurrent nature, so as to make it more reasonable and practical to amend the regulation. This type of house is a very standard house, it is very common, as you may see riding around the island, with the garages that extend closer to the right of way. Also, with, with the amount of non-conforming structures in the area, any addition or modification to those houses will incur the requirement of a variance and the staff finds that that will be a more general and recurrent request that you may see. Based on those findings and conclusions, the staff does recommend denial of this, of the request and we are here to answer any questions.

**MR. CHAIRMAN:** I've got a whole bunch of them but I'm going to \_\_\_\_ \_\_\_\_ first, does anybody want to \_\_\_\_ \_ \_\_\_\_.

**COUNCILMAN:** How far is it from the extension to where the

entrance will be?

**UNIDENTIFIED FEMALE:** Excuse me, can you all check your mike pads?

**MR. CHAIRMAN:** I'm okay aren't I?

**COUNCILMAN:** Mine's on.

**COUNCILMAN:** Mine is on.

**COUNCILMAN:** So anyway how far is it from the \_\_\_\_\_ extension to the right of way?

**JOSH PHILPOT:** Approximately 25', it will meet the principle structure set back.

**MR. CHAIRMAN:** Okay go ahead.

**COUNCILMAN:** On your drawing here, exhibit 7.4, on the front where you're showing that in a, in a hash mark, next to that, if you were to just bring out the entranceway along with that, he wouldn't need that variance would he? That would be part of the house and, and he could just do it without.

**JOSH PHILPOT:** Correct, the front porch entry feature would not, or extending the front porch from the current 5' that it is now to 7', an additional 2' would meet the criteria and not need the requested variance.

**MR. CHAIRMAN:** Thank you.

**GEORGE PALKO:** You know don't you?

**JOSH PHILPOT:** I know something is coming, no I'm just kidding.

**MR. CHAIRMAN:** Josh I'm going to start just by saying that I've, I've read all of the documentation, including the minutes from the LPA where they also recommended, after a lot of discussion, denial of this project and the main reason was because they were talking about something that was supposedly adopted by this Town Council in regards to snout(?) houses, and that's what they called these and that was the description. But I'm going to tell you that they're in error because it was not adopted by this council, we did not adopt that, they were talking about a design standard and snout house and that was denied and was not supported by this Town Council. So therefore, all of that discussion in their minutes about that, about that design standard and that discussion is irrelevant, it doesn't have anything to do with this thing.

Now the other thing that I, that I keep looking at this and I fought and battled for this thing, we're talking about section 34-1173 and its saying, this is when they're, they're basically discussing the snout, the snout house. But if you go to 34-1174, it says that any accessory building or structure, which is structurally a part of the principle building shall comply with all respects, in all respects, with the regular, regulations. That means it has to have the proper set back, etc., etc. It goes on to say

any accessory building or structure, if its not structurally made a part of the principle building, then it must comply with 34-11, 1174. What I'm saying is our code very definitely says that if he makes this, puts this addition on, connects it to the, to the principle building, that our code says that therefore; it doesn't have to comply with the snout house rules, which we didn't adopt anyway. I think the man is entitled to do whatever he wants, in accordance with the codes that we presently have, you know and I've, I've asked somebody to show me where this doesn't fit. I also would tell you that one of your findings is, and this is a very general finding, you're saying the conditions and circumstances of this situation, for this variance, is so general and recurrent in nature that it would be more reasonable and practical to amend the regulation in question. You're saying this thing happens all the time, so just change that regulation. I don't think we even need to do that with the regulations we presently have. If this structure is made part of the permanent building, and that's what he's going to do, he's going to add an addition to the garage, attach it to the existing building, so it becomes a part of the principle structure, therefore; he doesn't have to...I don't think he should have to go through this variance procedure anyway, and I'm going to scratch and claw. I'd like to make the

recommendation that there are extenuating circumstances, lets see, nope can't do that.

**COUNCILMAN:** Can we get...

**MR. CHAIRMAN:** I need to ask the applicant...does anyone else have any questions for Josh, okay go ahead.

**COUNCILMAN:** There's no question, I want to make a comment, its not a question. Is it all right now?

**MR. CHAIRMAN:** Yes go ahead.

**COUNCILMAN:** Yeah I was just...

**MR. CHAIRMAN:** I got too wound up here, I'm sorry.

**COUNCILMAN:** That's all right, I'm looking at the photographs that were supplied by Mr. Palko and to ask him to put an addition on the front of that beautiful building I think would be absurd really. It's a beautiful looking place, he's not asking for the world and I did drive that street and there were, I think he said seven, I counted six, I missed one it was pouring rain. But anyway, it's a beautiful neighborhood, even with these extended garages or whatever they might be. I can't see where this would hurt anything, his neighbors agree that its not going to hurt them. I just can't see why we have to carry this on any further, myself.

**MR. CHAIRMAN:** Okay.

**COUNCILMAN:** I would like you to get an answer to your question though, can somebody answer that?

**MR. KATCKO:** I can.

**MR. CHAIRMAN:** Oh okay, Ken.

**MR. KATCKO:** I thought I had my mind made up, but apparently our mayor has a totally different twist that I had not heard before, all I can do is make my decision based on the LPA and the staff report and this is completely new information to me. So I was not going to vote to allow this variance because of the information that I had received up until Mr. Van Duzer started talking because I feel it would set a precedent. I would probably go out and ask for a variance for my house so I could extend my garage out past the front of my home and get some extra garage space too. I think there are a lot of people on the island. But that was based on the facts presented to me by the staff that this is against the Land Development Code. If that's not the case, this is opening up a whole other ball of wax. I mean but when Mr. Palko bought this property, he knew the garage was small. I bought my home, I inspected it, I bought it because it had a big garage, you know I don't think we should be granting a variance because somebody maybe made a mistake and didn't buy a home that was suitable for their needs. I'm sympathetic to it, as a matter of fact, I rented a home on Washington Court that the entire garage sat forward of the home, so I'm not saying I'm 100% in agreement with

everything in the Land Development Code, there are design standards that I personally didn't, didn't care for but I was certainly led to believe, by the reports, that this should not be allowed, because it was against the code, so I don't know which way to go right now, because the mayor has produced information that's new to me.

**COUNCILMAN:** \_\_\_ \_\_\_\_ answer any questions.

**MR. CHAIRMAN:** Do you want to fire back at me or?

**JOSH PHILPOT:** As far as the interpretation of the Land Development Code, that was based on a series of E-mails and responses from town staff, directing staff on the, the interpretation of that section of the Land Development Code. I do have a copy of that E-mail to distribute to you, if you would like to see it, and it was distributed to the LPA as well. Would you like to see that?

**MR. CHAIRMAN:** Its up to the other council members, if they would like to see it, I've already come to my conclusion and I want to respond to something that one of the other council members said too. If in fact, on this property, if he were going to build this addition to this garage and it didn't meet the 25' set back, then I'd be opposed to it also, but it meets all of the requirements of our code, as far as the required set back to the structure. You know one of the...the thing that really got to me, and this is the, the motion that was made by the LPA was to accept this

variance and then there was some discussion and the discussion, and I'll leave the name out, said this lady said that when the LDC, Land Development Code, was being put together, there was then discussion about design standards in snout houses, where the garage sticks out further than the house and that was how it ended up in the LDC, she said it was the law. Its not the law, it was not adopted and this council didn't adopt that so therefore its not a part of the law and I think the interpretation of the law is, is really simple for me, I'm not an attorney, but it says 34-1174 must be addressed if you don't make it a permanent part of the structure. In other words, if you want to put a shed in your front yard, it doesn't count. Its an accessory structure, but this, the 34-1173 I don't think fits this at all. Therefore, now if everybody else is done questioning, you had another question?

**COUNCILMAN:** Another comment. You know we, we've, we've just gone through a thing with Terra South and they ended up with three stories over parking, two stories over parking is what's allowed, through the LDC. But we make these variances, you know for these condos and businesses and so forth, and here's a taxpaying fellow that comes up here and asks make my garage a little bigger so I can get my big car in there. I don't think that's asking for the world. We make the...the idea of this council is to take

these on an individual basis and either approve or disapprove. So I say where we make these exceptions for other people, it has to be a blanket effort here, and we, we've certainly got to consider the applicant's position. (Talking together.) (Inaudible.)

**MR. CHAIRMAN:** I think that's it.

**COUNCILMAN:** I did forget to mention one thing, another reason that I was going to vote against this variance was because this particular landowner did have the option of extending his whole property and not requiring any variance whatsoever. I know you mentioned that a porch on the front of his property would look ugly, but he still does have that option. As a matter of fact, he could add 500 square feet to the size of this building, almost 500 square feet and not come to us for anything. So I just think we're set, we're setting a precedent for variances and we're going to have a lot of, you know if its not in the code, then I guess we should you know, we should be voting to allow him to do it. But it doesn't...we seem to be having a difference of opinion between staff and the mayor and you're talking about 34-1173, they're asking for a variance of 34-1174, so I'm not quite clear on, on what that is either, could you clarify that for me Mr. Mayor.

**MR. CHAIRMAN:** Excuse me, I gave you the wrong numbers, the 34-1173 is the one that says it does comply, its going to

be part of the principle structure. He is applying for a variance from 34-1174 and my opinion is that it does not meet, in this particular case, that this is a...34-1174 says setbacks from the street, no accessory use building or structure shall be located closer to the street's right of way or street easement than the principle building. This is where they're using the snout idea, but if you go before that to 1173, it says if this building or structure is part of the existing building, then it doesn't have to meet that. In fact, it goes further to say if any accessory building or structure not structurally made a part of the principle building, if he was going to put this on but not attach it to the building, then he has to comply with 34-1174. That's not what he's doing, I don't think the man even needed to have a variance. He is attaching it to the building, making it part of the permanent building and when you do that, you don't have to meet that.

**COUNCILMAN:** So what you're saying it's a matter of what he thinks as to what you think. If its attached to the front of that garage, you're saying that garage is now a part of the permanent structure and if he's adding that 7' to it and attaching, its part of the structure.

**MR. CHAIRMAN:** Its part of the structure.

**COUNCILMAN:** Its not an auxiliary building. That's the question we've got to answer.

**MR. CHAIRMAN:** Yeah its not an accessory building, or accessory use, its part of the existing structure. Josh.

**COUNCILMAN:** I have one quick...

**MR. CHAIRMAN:** Okay.

**COUNCILMAN:** Josh, it seems to me that the ruling for denial was on a technicality because the man didn't want to build a porch also. Is that a fair statement?

**JOSH PHILPOT:** It comes down to the classification of whether or not its an accessory building, I think Mr. Van Duzer kind of hit the nail on the head on whether we classify attached garages as accessory structures or not. That really is the issue at hand and how these set backs apply to those accessory structures.

**COUNCILMAN:** Yeah I never had any trouble with this when I read it or when I drove through the area. Not because I saw other buildings that way, that wasn't my judgment, the fact that I thought it was not going out to the right away line and there's quite a setback there. I had...I didn't see any problems with that and I'm glad to hear Mr. Van Duzer explain it the way he did, because I'm firmly convinced that if the man doesn't want to build an extension on the rest of his building, he shouldn't be refused this small section. And perhaps I believe it will enhance the looks of the house, it won't, it won't, it won't make it look any different, but in the community it

will not sit any different in the community. It will not set a precedence in the community. I just have absolutely no problem with this.

**MR. CHAIRMAN:** Okay thank you. Now do you really want to say anything?

**GEORGE PALKO:** George Palko again, I really would like to make just a couple of comments, I appreciate what you've said Mr. Mayor and the reason initially that I applied for this variance, because my permit was denied based upon this snout house rejection, and so therefore, your very capable staff Jerry advised me that perhaps the best way would be go, would be to get a variance, and that's what I proceeded to do. I do agree that I can put some other type of a structure in front of the house, along with the garage, but let me just state that I would be the only house on the street with that type of structure in the front of the house. And if you talk compatibility with the neighborhood, that certainly is not the way to go. Is there anything else I can answer you? Thank you.

**COUNCILMAN:** Mr. Mayor I'd like to make a motion.

**MR. CHAIRMAN:** I need close the public hearing, anybody else in the public wish to speak to this? Seeing nobody, I'll close the public hearing and bring it to council.

**COUNCILMAN:** I'd like to make a motion that we approve the variance.

**COUNCILMAN:** Second.

**MR. CHAIRMAN:** We have a motion and a second. I'd like to, I don't know whether its proper or not, you can help me out, I wanted to take that word variance out of there, because I don't think it requires a variance. I'd like to clean that up by saying that we grant the permit for this construction closer to the right of way than the principle structure.

**COUNCILMAN:** Don't we have to go by what we're presented with though?

**MR. CHAIRMAN:** No I don't think so, well if you go by what we're presented, it says we're going to deny it.

**TOWN ATTORNEY:** Mr. Mayor, I believe there are three roads you can take, one is you can grant the variance, one is you can deny the variance and say that its permitted as of right, and the third is you deny the variance period, and make no finding.

**MR. CHAIRMAN:** Well I don't want to see the man held up so I guess approve the variance would be the cleanest way to do it.

**COUNCILMAN:** The second one would do the same thing.

**TOWN ATTORNEY:** No the second one...its up to you, you either grant the variance, in which case its granted. You can say no we're not granting the variance, but we do not believe a variance is required under the language of the

Land Development Code; it is an allowable use without the variance. Or thirdly, you can deny the variance and make a finding that the variance would be required, therefore, he may not extend. But I believe there's a motion and second so the motioner and seconder would have to approve any amendment that you're proposing.

**COUNCILMAN:** I'd be willing to amend the motion.

**COUNCILMAN:** I would second that.

**COUNCILMAN:** For option two.

**MR. CHAIRMAN:** Option two, okay so that we have clarity with this, we're going to go with your second idea.

**TOWN ATTORNEY:** Its actually your second idea.

**MR. CHAIRMAN:** But then your, and your terminology then.

**TOWN ATTORNEY:** Okay.

**MR. CHAIRMAN:** To make sure that we do this in a proper way.

**TOWN ATTORNEY:** All right.

**MR. CHAIRMAN:** We've got a motion and second, is there any further discussion?

**COUNCILMAN:** Yes. I'd like to ask Mr. Philpot if he has any problems with taking off the request for variance, do you have any, any special problems with that, as planners? Just discussion.

**JOSH PHILPOT:** As far as, excuse me, as far as this being basically a direction from, from council to the interpretation, the staff does not have any objection.

**COUNCILMAN:** Thank you.

**MR. CHAIRMAN:** I think that's our, I want to say our God given right, to make that exception, I believe anyway.

**COUNCILMAN:** I think so.

**MR. CHAIRMAN:** Okay, we've got a motion, a second, we've had all the discussion. All in favor of the motion, signify by saying aye. (AYE.) Opposed? The motion carries unanimously. The next item on the agenda is a public hearing for the petition to vacate a portion of Wesley Place and I think that's Mr. Baker. Let me find this thing Mr. Baker, so I don't... We really don't even have a, yes...no its just a vacation, we don't have a number on this one so I'm just going to call Mr. Baker up and anybody else that wishes to speak on this issue, if you would stand, if there is anybody else who wishes to speak on it, and I'll ask that you'd be sworn in Mr. Baker and Mr. Murphy.

**FEMALE:** Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

**MR. BAKER:** I do.

**MR. MURPHY:** I do.

**MR. CHAIRMAN:** Okay I'm going to declare this hearing open and I'll ask for any exparte communications.

**COUNCILMAN:** Yes Mr. Chairman I talked to the gentleman and was out there and looked at it.

**COUNCILMAN:** Yes I visited the property and talked with Mr. Baker.

**COUNCILMAN:** I've been to the property twice but I didn't talk to anyone.

**COUNCILMAN:** I drove by.

**MR. CHAIRMAN:** Okay I've talked to Mr. Baker via the telephone and have been by the property a couple of times now, after I got it found, found out where it was, I got it all set. Okay, Mr. Baker.

**MR. BAKER:** Okay I thank you very much for hearing me today and I want to apologize that my sister and brother are not here, they went to Cleveland to celebrate my sister's 50<sup>th</sup> wedding anniversary Friday, and I hope to join them after Friday. To give you a little more history of the property and myself, I came to Fort Myers Beach for two weeks over Christmas in 1948. In 1950, I spent three years in Fort Myers High School, staying at the Red Coconut Trailer Park. In 1951, we moved to 285 Delmar, which is now Island Bay Marina. In 1954, I graduated from Fort Myers High School and one of my classmates was Ray Miller. The following Monday after graduation, Ray Miller was next door at 293 Pearl, starting to construct a utility building and restrooms for the trailer park that was going in at 293 Pearl Street. This effectively closed the Wesley Place on the connection between Pearl Street and Delmar.

In 1960, my father purchased the property next to this portion of Wesley Place, in 1962 and '3, he moved the Edward home from 293 Pearl to 285 Delmar on the concrete there, to use as an office for Beach Boat Haven, which is now Island Belle Marina, the home is now still on that but a garbage truck has run into it and demolished most of it, but it was rebuilt. In 1963, my father was denied building ten condos on the property and instead, with that denial, he built the family home at 293 Pearl Street. In 1978, I found out that I had a heart problem and decided the only way to correct it was diet and exercise and I put plans in to return to Fort Myers Beach where I could walk every day and keep my health. In 1981, we were ready to build a lighthouse designed house, round house, two stories high, and with the review for permitting, they told us they were 4' too high in elevation and we would not be able to build it, because at that time, it went to the peak of the roof from the street level.

In 19, so in 1981, we went back to the design and came up with a new design in '86, which we got the permit in '89, in 1993, I moved in six months after my first wife, who wanted the house, had died. And now I am asking for you to vacate this so that I can proceed and allow my brother and

I both to join my sister in homes on the street. I've been a life member of the legion here and the historical society, and I have volunteered at the Moose for the last eight years as tax aide to the elderly. I thought that my presentation and eliminating the extra friends and relatives to come and talk to you today would make your time here shorter and I thought it was pretty straight forward that we're asking you for something that is reasonable. Thank you.

**MR. CHAIRMAN:** Thank you Mr. Baker. If you'll sit down and be a gentleman, I will call Mr. Murphy up and then if you have anything you want to respond to Mr. Murphy's comments, you'll be given that opportunity.

**MR. MURPHY:** I think Mr. Baker made a very good presentation, I don't really have anything to add to it unless you have questions of me. There is a staff report in your folder that details what's being asked in this case and an application to the vacation, so unless you have questions of me, I really don't have anything to add.

**COUNCILMAN:** I have a question. Mr. Murphy its been mentioned that the other part that connects Delmar has a structure, somebody built a structure on it, but that, that has nothing, no bearing on this because they can't block that, no matter how long they...how long it may have been built, because you can't claim public land like that. Is

that correct?

**MR. MURPHY:** My understanding is that the portion of Wesley Place that is part of the plat on the Delmar side has been vacated.

**COUNCILMAN:** It has gone through on all of the other properties?

**MR. MURPHY:** Yes sir, that was vacated by Lee County, that's my understanding.

**COUNCILMAN:** Any date on that?

**MR. MURPHY:** No I don't, I don't have a date.

**COUNCILMAN:** Just for that bit of information, I can tell you that you can build anything you want to on public property and it will never, never become part of your property. Its not the same as advert possession of private things. I have fought with this because we have been talking for a long time about having a hidden bike path. In some areas of this town, it will not work. If you close off those accesses across streets, it will never work there either. But with, with that particular one open, you will continue to have access from Pearl to Virginia and if this has not truly been close off, then you have an access all the way through Delmar. So I have problems with just wanting to get rid of town property. I feel that its better for the town to have it, for the benefits of the, future benefits that we may need, rather than close it off

and close off those possibilities. I just have a really hard time doing it. We vacated up to this point, I think one street just before we become a town, and then after we become a town, I don't know how many we've vacated, I'm only aware of one and this would be the second one, but I'm sure there's probably been others, I have a feeling there's been others. So I, I feel that that is not the proper way for this council to go.

**MR. CHAIRMAN:** Any other questions? (Talking together.)  
(Inaudible.) My head was this way for the moment.

**COUNCILMAN:** I'm sorry.

**MR. CHAIRMAN:** Ken.

**MR. KATCKO:** I would just like to know the details actually of why this is necessary, because there was a home on the property, it was burnt down, he can rebuild the home without this vacation, can he not?

**MR. MURPHY:** The home that he seeks to rebuild is actually larger than what the lot that he has would allow, with this vacation, he gains additional square footage that he would add to that lot, which would allow the lot to be on the gulf side that is currently vacant to be built, it's the lot he referred to as being built for his brother. It would allow him to rebuild the structure that he had before, without having to exceed the variances that were previously granted and it would allow then for additional

set backs for the property to the bay side. The other thing that it would do is it would allow for an easement back to Florida Power and Light for their electrical facility and it would also allow the town to gain a drainage easement.

**COUNCILMAN:** Okay the second part of this is there's only one residence there now, we're vacating a portion to give him one lot, which he intends to divide into two lots and put a home for his brother on it.

**MR. MURPHY:** That's not exactly true, there are actually two lots there, one of the lots is not developed, and this would allow him to increase the set backs so that additional variances would not be required to build on that existing lot.

**COUNCILMAN:** Well that's my, that's the thing is we're taking, we're taking a situation where only one residence could be built right now and we would be allowing two to be built, where its not currently allowed.

**MR. MURPHY:** We would be allowing two to be built, but the one lot could be built, it just would require that a smaller residence be built, because of the variances for the existing residence, or the residence actually that was destroyed. There are two platted lots there currently, then there is the street right of way, which is a paper street and has not been developed and then there is an

additional lot that belongs to the cistern(?), and we would basically be getting larger lots, because of the vacation of the street.

**COUNCILMAN:** But he could build on both lots right now, but they would be much smaller homes?

**MR. MURPHY:** Yes.

**COUNCILMAN:** In that comprehensive plan, is there any accommodation for that paper street at all, in the future?

**MR. MURPHY:** No and it's probably not viable as part of any sort of hidden path scenario because you've got a canal then basically two subdivisions and then another canal, so you'd be basically be going along Estera then all the way up, over and down. You know I don't know how viable of an alternative route that would be.

**MR. CHAIRMAN:** Howard, Howard you're the only one who hasn't spoken to this issue.

**Howard RYNEARSON:** The only thing I would say, I was out there, I looked at it, and by doing this, we'd gain, we'd gain a drainage easement, and Florida Power and Light gains an easement for them, and I... The land is absolutely being used for nothing and I see no problem with it at all.

**COUNCILMAN:** I just wanted to comment Mr. Murphy on what you said about the hidden bike paths. What you said is true throughout the island, okay, the only thing that's not true throughout the island, there are a lot of places, once

you go around the canal and back to \_\_\_ \_\_ \_\_\_ back to the \_\_\_ \_\_\_\_, and then go around, you can't go down and then cut across. So going...that's not a, that's not something peculiar for this location is what I'm saying. The peculiar thing is that this has an opportunity to cut across two streets and to go through another area, and it gives you the option of going back to the street, to the boulevard if you wanted to. This gives you an option. If we give this away, that option is forever lost.

**COUNCILMAN:** I think that the option was lost when the county vacated Wesley Place on the other side.

**COUNCILMAN:** Well you see that's not part of our information, we weren't given that, in fact I had something to say about that also because we were not given a map that shows the other side, to show that other street we're talking about, and that should have been a part of this too. That's all I have.

**MR. CHAIRMAN:** Okay Mr. Baker do you have any remarks or comments to make about the presentation?

**MR. BAKER:** (Inaudible.)

**MR. CHAIRMAN:** Well you got more than one?

**MR. BAKER:** I don't know if Jack has the other ones.

**MR. CHAIRMAN:** We're getting a little far afield here, you need to go to the mike, for purposes of our minutes, let it be shown that Mr. Baker gave Councilman Katcko a drawing.

**COUNCILMAN:** Maybe you can pass that down.

**MR. CHAIRMAN:** Yeah pass it down.

**MR. MURPHY:** I had given Jack Green five of them, for one for all of you and I guess he didn't put it in your package so that you could understand it.

**MR. CHAIRMAN:** Well we'll just get him up here and get the old wet noodle out and give him some lashes. We can give this one back to Mr. Baker or to staff, staff has one then okay. Any other questions? Mr. Baker do you have any questions of the presentation that was made?

**MR. BAKER:** No.

**MR. CHAIRMAN:** Anybody else on the public wish to say anything? Are you, I thought you were done Mr. Murphy.

**MR. MURPHY:** Yeah I was, if you look at exhibit E, Councilman Reynolds, you'll see that all of the properties that are on Delmar are now strapped.

**MR. REYNOLDS:** I saw that Mr. Murphy.

**MR. MURPHY:** And where Wesley Place would have gone is now in private ownership.

**MR. REYNOLDS:** But you see there are no street names or any, I studied that, there are no street names or anything indicated on that particular map, and I, I didn't know, like I said I, I presumed or assumed that 034 with the lines going through it may be the location we're talking about now.

**MR. MURPHY:** Its to the north of that.

**MR. REYNOLDS:** But you see there's no markers, there's no legend or nothing what that, so that didn't tell me any \_\_\_  
\_ \_\_\_. (Talking together.)

**MR. MURPHY:** It's a cross hatch and I recognize that its not labeled.

**MR. REYNOLDS:** That's the reason I made that statement, and even looking at it now, I still don't see those, I still don't see Wesley Place. Its just not recognizable in this.

**MR. MURPHY:** I understand.

**MR. CHAIRMAN:** Any other discussion, thank you. If there is no other public that wishes to address this, Mr. Baker?

**MR. BAKER:** Mr. \_\_\_\_\_, if you would look on the survey from Johnson Engineering, it shows where Wesley Place was and says that its not open, its part of the unreported plot.

**COUNCILMAN:** What exhibit is that?

**COUNCILMAN:** It's the last page.

**TOWN ATTORNEY:** It's the last page, its marked exhibit B, but it's the last page in your packet.

**COUNCILMAN:** I did see that one and lets see, I'm not really totally familiar with that area down there. I do see two locations here Mr. Baker, off of Pearl Street. I see one on the left, which would probably be the south and one on that would be the north wouldn't it? I see one on the north and I see one on the right, now which one...where

does it show the one leading to Baymar?

**COUNCILMAN:** To Delmar?

**COUNCILMAN:** Delmar excuse me.

**MR. BAKER:** The one that goes to, to the right where it says its not open.

**COUNCILMAN:** Mm-hmm (yes).

**MR. BAKER:** And that's where they started the trailer park in 1954.

**COUNCILMAN:** Okay yeah I did study this map but it didn't, it wasn't properly...it didn't show the other, connecting, the other streets connecting it didn't show that, so I had a little trouble with that. Thank you.

**MR. CHAIRMAN:** Thank you Mr. Baker. I'm going to close this public hearing and bring us back to council.

**COUNCILMAN:** Mr. Chairman, I make a motion that we take staff's recommendation for approval.

**COUNCILMAN:** Second.

**MR. CHAIRMAN:** We've got a motion and a second, discussion?

**COUNCILMAN:** Yes Mr. Chairman, if I may, I did read the materials as presented, I have visited the location twice, and I find that this is, Wesley Place has been asked to be vacated permanently and assigned to an adjoined property and speaking as a representative of the community, to vacate this property would be a bad idea and an unnecessary give away. This piece of town property could never be

reclaimed. Further, this property is a platted street, connecting Pearl and Virginia Streets and now I have learned, actually I wanted to say that no map has been presented to council that this is the only section of Wesley Place, and so I didn't see anything else. On my \_\_\_\_\_, I saw two parts, now I found out that there is another part that possibly may be closed, according to Mr. Murphy. There could be other connecting sections, which was my comment at the time when I studied this. But whether this is or not, Wesley Place could be an important link between Pearl and Virginia, some time in the future, especially for the hidden bike path for this particular area where it renewed for future consideration. The town stands to gain nothing by giving this platted street away and forever loses future possible usage that might be a benefit to the town. I would encourage council to deny this request, and Mr. Chairman, if I had the opportunity, I was going to make such a motion.

**MR. CHAIRMAN:** We have a motion on the floor.

**COUNCILMAN:** But a motion is on the floor so I can't do that.

**MR. CHAIRMAN:** Any other discussion? Okay the motion is made that we grant this petition, I'm going to call the question. All in favor of the motion, signify by saying aye. (AYE.) Opposed? (AYE.) The motion carries four to

one. The next item on the agenda is an ordinance about the early voting statute and if you would read that ordinance please.

**TOWN MANAGER:** Ordinance 05-15, an ordinance of the Town of Fort Myers Beach, amending the charter providing authority amendment, early voting for town elections, sever ability repealing clause and effective date. And I would just remind the council, which I'm sure they know this, voting in favor of this ordinance means we are opting out of the early voting statute.

**MR. CHAIRMAN:** Okay its been read, this is a public hearing, I'm going to declare this hearing open, does anybody wish to speak to it? Seeing nobody wants to speak to this, I'm going to close the public hearing and bring it to council. Yes.

**COUNCILMAN:** I make a motion that we approve this ordinance.

**COUNCILMAN:** Second.

**MR. CHAIRMAN:** I have a motion that we approve the ordinance and I have a second, discussion?

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Mm-hmm (yes).

**MR. KATCKO:** I would just like to recommend that we, the town advertise the ease of absentee balloting and the requirements of it, because originally I was against, I

wanted to have the early voting, but if we could do that, encourage absentee balloting, then I'm in favor of this motion.

**MR. CHAIRMAN:** Councilman Katcko I'll certainly jump on that bandwagon, I think that would be an ideal thing, rather than spending \$12,000-14,000.00 to, to do this early voting thing. Lets spend a little bit of that money and do some really good advertising, telling people how they can vote absentee and I think that's an extremely good idea. Any other discussion? All in favor of the motion, signify by saying aye. (AYE.) Opposed? Oh excuse me, this is an ordinance, we're going to have to have a roll call vote and the motion was maker was Howard.

**MR. RYNEARSON:** Aye.

**MR. CHAIRMAN:** And the second was Massucco?

**MR. MASSUCCO:** Aye.

**MR. CHAIRMAN:** Aye.

**MR. REYNOLDS:** Aye.

**MR. KATCKO:** Aye.

**MR. CHAIRMAN:** Did we get those recorded properly without the names? Van Duzer, Reynolds?

**COUNCILMAN:** Yeah.

**MR. CHAIRMAN:** Okay the motion carries unanimously. The next, next item on the agenda is also ordinance, we have three of them, I think we'll take, we'll do each one of

them separately, and I would ask you to read the first ordinance.

**TOWN MANAGER:** Ordinance 05-16, an ordinance of the Town of Fort Myers Beach, amending ordinance 96-19, the Town of Fort Myers Beach Recovery from Disaster ordinance, modifying definitions, changing the composition and requirements of meeting for the disaster advisory council, changing the composition of the post disaster recovery task force, correcting Scribner's errors, amending essential service and facility restoration priorities, to add reentry provisions, modify provisions of the initial building moratorium to include references to town, providing authority, sever ability, effective ordinance and effective date.

**MR. CHAIRMAN:** Okay this is a public hearing, I'm going to open the public hearing for anybody who wishes to make comment on this. You'll need to be sworn if you wish to do that. Seeing no public input, I'll close the public hearing and bring it to council.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**COUNCILMAN:** I make a motion that we accept the ordinance as presented.

**MR. CHAIRMAN:** I have a motion, do I have a second.

**COUNCILMAN:** Second for discussion.

**MR. CHAIRMAN:** I'll accept that motion and the motion and second to discussion.

**COUNCILMAN:** I have a comment. At the last council meeting, it was brought forth that I, as an elected community representative request that ordinance 05-19, presently being amended as 05-16, to include the mention that the Town Council is the ultimate control factor of the operating emergency team of Fort Myers Beach, during a hurricane, or any other serious disaster event that may befall our town. This was requested because happenings during Hurricane Charlie, \_\_\_ \_\_\_ three and a half days, council members were told by crew members of the emergency team that they were in charge of all town operations and not the Town Council. This maneuver should have had a heavy impact on all Town Council members but it did seem to do so. During this time, all council members were sharing input of ideas and suggesting ways to help the emergency operations. When the movements of the emergency team began still and indecisively bogged down at times, certain council members made suggestions to spur them forward, until it was announced by team leaders on day three council members were of great assistance in the emergency operations efforts. And I suggested that council members should be mentioned as authority figures on reviewing this ordinance, 05-16, on June the 16<sup>th</sup>, during operations in

these emergency situations. Neither council's members, the town attorney or the town manager agreed with the line of the reasoning and thought. However, as a representative of this community, I cannot ignore my responsibilities when there is an emergency, and I don't believe my colleagues should either, but that is their decision. So I request that I or some other council member be placed on the emergency team to represent the residents at those meetings, emergency meetings, who would keep council and the town's people informed. That was also ignored and rejected. Since I strongly disagree with ordinance 05-16, that I believe excludes Town Council from being a part of this town's decision making, I cannot vote to approve such an ordinance. I hope that I have made my stance clear.

**(END OF RECORDING TAPE #1, SIDE B.)**

**(TAPE #2, SIDE A.)**

**JOHN:** ...an opportunity to turn it on, turn it off, at your discretion, but that because of just the logistics of getting things done in a post emergency atmosphere that the operations group be able to operate separate from the elected officials. Now if you want us to look into changing that, I certainly can, I hadn't to this point because frankly I know of no other system that operates that way. I would have to do some research to see if there is a you know way to structure it that way.

**MR. CHAIRMAN:** I think its already, in my opinion, its already included in there, if you wanted to do it, its right after the 12 officials that are...have been designated on that committee. It says additionally, any disaster advisory council members who are not specifically listed by designation in this section shall be ex-official members of the post disaster recovery task force. So I think there is a way that this could be handled if you, if it, if we wanted to do that. I also, and I, and I take exception, I, and I wish this thing would just die, but I guess it won't. It was always my understanding, and I did attend those meetings, and thought that they were very well done by the disaster recovery team. I thought they did a splendid job. I went to those meetings, I did have some discussion in those meetings, not to tell those people how to do the job but just as a...just as somebody that was trying to help the situation, and only when it became a, a problem were we kept from going to those meetings. We went to the meetings, we attended the meetings, we offered our input, it was very well taken and accepted. Most of us were out trying to do what we could to, to try to make sure things moved along and we got back to it. But you know very frankly, the bottom line is I don't have any ability to tell somebody how to recover from a storm. But we have a lot of people on that team that have that ability. We

have a lot of people in Lee County that have that ability, and I, we established this, this team, by design as a council, to handle those issues.

**FEMALE:** Mr. Mayor.

**COUNCILMAN:** I think that's what we should do.

**TOWN MANAGER:** Just to hop on what John was saying, and I asked him to respond because he's been heavily involved in this, I think the point here is that as a policy making body, the council always has control. This is designate...this structure that John put together, I mean modifying the existing ordinance, not only does it mirror and track what other bodies do, state, etc., but also it's an implementation. You folks make the policy, the task force carries out that policy, so I don't think there's any abdication of responsibility on the part of the council whatsoever, implied or stated in any of these ordinances, nor would, nor would that be legal.

**COUNCILMAN:** Mr. Chairman, since I raised the question, can I respond to her...

**MR. CHAIRMAN:** I'm going to ask if there's anybody else, because we're going to give everybody a shot and then we'll go back to you. (Talking together.)

**COUNCILMAN:** We've still got the relief though, if we have an emergency and we feel its not being handled right, we can always call an emergency meeting of our council, and

there's where you have your relief valve to handle anything that comes up. I think these people should be left to their...to what they know best and be able to do it and if we have a problem with it, then we need to sit down in our own meeting and hash it out, not take up their time because believe me, those guys need to be on the street, so that's my opinion.

**COUNCILMAN:** Yeah Mr. Mayor, if my recollection serves me, we voted, I'm talking about this council voted to not attend these meetings, to eliminate ourselves from these meetings, did we not?

**COUNCILMAN:** For that reason, yes.

**COUNCILMAN:** What I'm proposing now is that we at least get to attend these meetings and we can answer questions from the public. We don't have to contribute to their meetings, it would be, we'd sit there and listen, just as a point of information.

**MR. CHAIRMAN:** That's what most of us do.

**JOHN:** And that's, that's perfectly permissible.

**COUNCILMAN:** Because I remember that vote that we took and I really thought about it after I voted and I'm not sure it was the right thing to do. We should have a presence at these meetings.

**JOHN:** No my understanding is that the presence of the council is not prohibited, participation could be

problematic, but obviously you could be there, gain knowledge and then do whatever the council decides to do as a group individually. You can go out, you can have an emergency meeting, you could also have, for example just planned, regular noticed meetings at your discretion, so.

**COUNCILMAN:** I would agree with Councilman Van Duzer that there's nothing that I could offer to these professionals, that's probably going to help them, it would probably hinder them, so if we could sit in and listen to is and then be able to answer questions.

**JOHN:** And frankly, not to extend this conversation, but frankly, that is, to a large extent, the role of town staff at those meetings, is to facilitate the needs and the requests of those other professionals that we're working with. In other words, the utility folks, safety folks, the fire folks. We are, to a large extent, there to, to assist them the way you would be there then to jump in with whatever you could do, as a group, separately.

**COUNCILMAN:** But while I have the floor, Mr. Mayor if I could, on the third page, its item D, these are double sided, so the third page over, if you could follow me here, its item D, number one, reentry to damaged areas as coordinated by law enforcement and fire district and public health and so forth. But they list, A, B, C, D, E and F, and I think this is a very, very important part of this

whole disaster scenario, and I'm wondering if we could get the cooperation of the local papers to publish this so that the people are aware of exactly what procedures are going to be followed, and they will be followed, once, once we settle on these. This is what's going to happen, and let them all be aware of you know what our format is and it states it very simply in this proposal here.

**JOHN:** The original ordinance listed criteria that would be used to assist in determining when it would be appropriate for example, in terms of water availability, of sewer system availability and what we did by adding this language, and you see that that language is all underlined, meaning its, its new language.

**COUNCILMAN:** Yeah.

**JOHN:** We tried to set out the criteria that we're looking at, in terms of establishing reentry. Frankly, we had thought that a lot of this was self-evident, if you read the rest of the ordinance as a whole, but there's certainly no, nothing bad about trying to just capsulize that so people have something they can look at and say okay in terms of reentry, these are the criteria that will be addressed and look at, in this order, and when the determination is made that its proper, it will be.

**COUNCILMAN:** Yeah because reentry I think...

**JOHN:** We will certainly publicize this as best we can.

**COUNCILMAN:** I think that's one of the more, most important aspects of the...

**JOHN:** Sure.

**COUNCILMAN:** ...of the policy, so if we could get cooperation, get it out there. That's all.

**MR. CHAIRMAN:** Is that all John?

**MR. REYNOLDS:** I want to remind John that at our last meeting when we approved not to allow it, I didn't approve it, I voted against it, but when council approved of not having it, not allowing any council members to attend those meetings, it was because you pushed it that way. Now you're saying that its okay for them to attend, but that's not in the, that's not in the print, and that is not what the council voted on. The council voted to not request that no council members attend those meetings, and now you're twisting this around a little bit, I believe.

**MR. CHAIRMAN:** Excuse me Councilman Reynolds, but I, I did some research into that because that was done on a one time basis, for one storm, and that was the one thing that was done. For this storm, this council met and said the people on this council will not attend these meetings for this incident, and that's the only one that we did that way.

**MR. REYNOLDS:** Okay now let me remind you that this had nothing to do with the storm, this was long after the storm that council did this Mr. Van Duzer, this was long after

that.

**COUNCILMAN:** Point of order.

**MR. REYNOLDS:** And now I have a question to ask the...I wanted to ask the attorney a question, and also John made a statement to this effect too, that this seems to be the way that everyone else does it, by not by the council people not being present and all of these things, I beg your pardon, both of you. That is not the way any, any town in Lee County did it during our distress time last summer. Council, you can ask any, ask, ask anybody on Santa Belle, ask any of the people on Santa Belle, they were clearly in control of everything. Now did they interfere with the disaster people, of course not, but they were in control. They told the people when they could go on the island, they even had rides(?) \_\_\_ \_\_\_ \_\_\_ as you know and that wasn't by the disaster team, that was by the Town Council, and the other counties did, the other towns did about the same thing. So what I'm saying is that council had zero to say during the entire time, in fact, our town manager was one of the more insistent people that council not be involved.

**FEMALE:** That's just absolutely not true.

**MR. REYNOLDS:** That is, that is true, I was there too.

**FEMALE:** It is not.

**TOWN ATTORNEY:** Mr. Reynolds I wasn't clear what the question was you were asking, when you said you had a

question for me.

**MR. REYNOLDS:** Well the question was...

**MR. CHAIRMAN:** It was a statement.

**MR. REYNOLDS:** Where did you, I would like to...could you get us some back up information regarding the statements that you've made that is the way they do it in other towns in Lee County, whereby the council is totally out of it, and it was suggested we could go into session.

Unfortunately, at that time, one of our members wasn't well and we didn't make any moves in that area, okay.

**TOWN ATTORNEY:** I think what I said, I'm sorry, I think what I said was that the, the council can certainly meet and, and act in a policy manner.

**MR. REYNOLDS:** Oh sure, I agree with, I have no problems with that, I know that.

**TOWN ATTORNEY:** Okay.

**MR. REYNOLDS:** But the fact is we did not, the fact is the other towns did, especially Santa Belle, that's the most prominent one because they had a similar situation as ours. So to, to have the town manager tell council they can no longer attend those meetings and that they're in charge of the town...

**MR. CHAIRMAN:** Garr.

**MR. REYNOLDS:** ...It doesn't set well with me.

**MR. CHAIRMAN:** Garr, I mean I know you like to get that

wording in there, but that's false.

**MR. REYNOLDS:** Its not false.

**MR. CHAIRMAN:** Its misleading.

**MR. REYNOLDS:** Its not false.

**MR. CHAIRMAN:** And we're getting way off the, the subject, lets get back to what we're trying to do here.

**MR. REYNOLDS:** Okay I'm not going to debate it.

**MR. CHAIRMAN:** You are, you are in control, you're always in control as on the, on the Town Council, to declare any of the actions and that's what we're trying to do here.

**MR. REYNOLDS:** All I'm trying to ask is if this could be stated in there and \_\_ \_\_ give the reference, instead of just giving the reference.

**TOWN ATTORNEY:** If what could be stated in there, that the council is always in control?

**MR. REYNOLDS:** That the council has the right to enter any of these functions.

**MR. CHAIRMAN:** We do have it.

**MR. REYNOLDS:** And we serve, and all I'm asking is this, where was it here? I just simply wanted to be, to be there so that we could represent ourselves to the public, to let them know where we stand. To be honest with you, I don't feel comfortable about a couple of other things in here, in this ordinance, and that is that the emergency team is going to announce when people can come back on the island.

I'm sorry, I don't like that because that is not their responsibility. Their responsibility is to see that this island is safe again and then that information should come to this council, the council will decide, after hearing all of the emergency people.

**TOWN ATTORNEY:** Mr. Reynolds.

**MR. REYNOLDS:** When they're going to be allowed to come back, and then council, in this case, Mayor Van Duzer, will make that announcement.

**TOWN ATTORNEY:** Mr. Reynolds.

**MR. REYNOLDS:** That's what I'm saying, so there are several things in here I don't agree with.

**TOWN ATTORNEY:** I believe section eight, which is what you're referring to, merely sets out what the procedures are, and the procedures state will help to govern the reentry, and I think that language just gives general policy guidelines about what, what are the conditions precedent to the reentry and I'm, I'm, I'm not understanding. I don't believe this is, that this abdicates any responsibility on the part of the council the way its phrased. I think it really addresses a little bit different subject than what I think you might be proposing right now.

**MR. REYNOLDS:** Section eight.

**TOWN ATTORNEY:** Mm-hmm (yes).

**MR. REYNOLDS:** Doesn't make any reference to what I'm talking about Ms. Dalton.

**TOWN ATTORNEY:** You were talking about the reentry, which is number D under section eight.

**MR. REYNOLDS:** Number D, section eight, I don't see D under there.

**TOWN ATTORNEY:** It's a, it's a whole, a whole underlined section on the, on the following page.

**MR. REYNOLDS:** Well I've read all that and I just don't see what I'm talking about in there. Also, on, Mr. Chairman, on the next page, that would be next to the last page, and that would be item B, duration. I'm glad to see there's been a change made there, and to this effect. After expiration of this initial building moratorium, in reference to the 72 hour thing, the following moratorium will become immediately effective unless modified by the board. By the board, originally what was, what is in here last was the commissioners, county commissioners, I'm glad that was changed to say Town Council.

**TOWN ATTORNEY:** Thank you.

**MR. REYNOLDS:** Because they, they shouldn't have anything to do with that, that's Town Council, I'm glad that change has been made. Now if you go down in the next one, section eleven, down to section, actually section eleven, it says section ten, if you go down to about four lines from the

bottom of that paragraph, the disaster advisory committee or post disaster recovery task force will determine and advise the, and it used to be the board of commissioners again. But that was changed and it should have been changed, these are things I'm talking about, and it reads now to advise the Town of Fort Myers, the Town Council of Fort Myers Beach whether the new development moratorium is necessary, etc. So those are two good things that we have had changed, I don't know who is responsible for that.

**TOWN ATTORNEY:** Thank you.

**MR. REYNOLDS:** But I am not going to vote for this, for the reasons given, because I don't believe that its sufficient at the time, this should stand alone, because those people are not going to have those book of ordinances there at that time. And all I'm saying is that your reference should be in there, that statement should be in there, and then reference that, the number of, that you're seeing that is already covered, I don't know where that is right now.

**MR. CHAIRMAN:** Mr. Katcko, do you have any comments?

**MR. KATCKO:** No.

**MR. CHAIRMAN:** Okay we have a...after all that, I'm not sure whether we, do we have a motion on the floor?

**COUNCILMAN:** Yes we do.

**MR. CHAIRMAN:** We do have a motion and second, the motion was by Howard?

MR. RYNEARSON: Yes.

MR. CHAIRMAN: Second by Massucco?

MR. MASSUCCO: Yes.

MR. CHAIRMAN: Any other discussion?

MR. REYNOLDS: Mr. Chairman, I don't like your comment after all of that, what I said is totally legitimate and there are two other corrections in here that came forward.

MR. CHAIRMAN: Well I'm going to, I'm just going to correct one thing that you said.

MR. REYNOLDS: All right.

MR. CHAIRMAN: We changed it from Board of County Commissioners, that's what this whole ordinance was about was to, to bring this thing up to date.

MR. REYNOLDS: Absolutely.

MR. CHAIRMAN: And that's what they've done and you don't need to comment on all of those things.

MR. REYNOLDS: Well I, I commented on them.

MR. CHAIRMAN: You've had your comment, I'm going to call the question, all in favor of the motion signify by saying...

TOWN MANAGER: No, no, roll call.

MR. CHAIRMAN: It's a roll call vote, those in favor and the motion maker was Ryneearson.

MR. RYNEARSON: Aye.

MR. MASSUCCO: Aye.

**MR. CHAIRMAN:** Aye, and the second was Massucco, aye, Van Duzer, Aye, Reynolds?

**MR. REYNOLDS:** No.

**MR. CHAIRMAN:** Katcko?

**MR. KATCKO:** Aye.

**MR. CHAIRMAN:** Aye, motion carries four to one. Next item on the agenda is an ordinance, 5-17 and this is the ordinance to, amending ordinance 99-06, Declaration of Local Emergency and if you would read that title please.

**TOWN MANAGER:** Ordinance 05-17 and ordinance of the Town of Fort Myers Beach, amending ordinance 99-06 designating, designating officials and authorizing action in the event of imminent threat of emergency, amending curfew times and implementation process, providing authority, sever ability, effective ordinance, and effective date.

**MR. CHAIRMAN:** Okay this is a public hearing, I'm going to open this to any public members that would like to make a comment at this point. Anybody like to make a comment? I'm going to close the public hearing and bring it to council.

**MR. RYNEARSON:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**MR. RYNEARSON:** I make a motion we accept the ordinance as written.

**MR. CHAIRMAN:** I have a motion, do I have a second?

**MR. KATCKO:** Second.

**MR. CHAIRMAN:** I have a motion and a second, discussion?

**MR. REYNOLDS:** Yes, Mr. Chairman, on section four two. I just want to make a point, I made...last time I mentioned this but it hasn't been changed and this is why, this is why we're doing this to make those changes and there's nothing has applied, been applied here. I just wanted to be clearly understood, on the records anyway, that this must apply to all businesses and their employees, and I emphasize the word all, and that's my only comment.

**MR. CHAIRMAN:** Okay any further discussion? No further discussion, I'm going to call the question by roll call vote.

**MR. RYNEARSON:** Aye.

**MR. CHAIRMAN:** Okay motion was made by Rynearson, aye, second one was Katcko.

**MR. KATCKO:** Aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** Aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** It's unanimous. Next item on the agenda is ordinance dash 5-23 a new ordinance regarding price gouging, if you would read that please.

**TOWN MANAGER:** An ordinance of the Town of Fort Myers Beach, relating to the provisions of a declared state of

emergency, providing the purpose and intent of the ordinance, providing for the prohibition of price gouging involving essential commodities in the Town of Fort Myers Beach, during an emergency. Providing for offense, offenses and penalties including but not limited to criminal penalties pursuant to the law, territory embraced, providing authority, sever ability, effective ordinance and effective date.

**MR. CHAIRMAN:** Okay this is a public hearing, I'll open the public hearing at this time, anybody that would like to make comments regarding this? Seeing no public wishes to talk to us, I close the public hearing and bring it to council.

**MR. RYNEARSON:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**MR. RYNEARSON:** I make a motion that we accept the ordinance as written.

**MR. CHAIRMAN:** I have a motion, do I have a second?

**MR. KATCKO:** Second.

**MR. CHAIRMAN:** I have a motion and a second, discussion?

**MR. MASSUCCO:** A question. These blank pages of commodities, is there going to be anything else added to these, is there going to be any prices is what I'm trying to say?

**JOHN:** We're going to try to mirror what the county is

doing. This is basically a reproduction of the county's new anti-gouging ordinance also, so whatever information they can get up with. If its applies here to the beach, we'll copy it and...

**MR. MASSUCCO:** You're talking about the average price that we list on the sheets?

**JOHN:** Yeah, mm-hmm (yes).

**MR. MASSUCCO:** There will be something in there?

**JOHN:** We hope to be able to get something in.

**TOWN ATTORNEY:** That's attached as a sample Councilman Massucco and year by year, there will be specific exhibits available and we're required under the statute to actually track what the county does, in terms of this type of thing. So we, we would have very little latitude to deviate, even I we wanted to, and certainly the counties would be incurring the cost of compiling this data and it would be free to us, so we wouldn't pay for it. I would just like to make one comment, if I may. There's been a new statute signed into law last week, by the governor. Its not, not something that would be incorporated into this ordinance, but it's an FYI where the...anyone who has committed price gouging will be subject to having their...

**COUNCILMAN:** Occupational license.

**TOWN MANAGER:** Occupational license withdrawn and voided out, which is an additional penalty for price gouging.

**MR. CHAIRMAN:** Any other discussion? I'm going to call the question, the motion maker was...

**MR. RYNEARSON:** Aye.

**MR. CHAIRMAN:** Councilman Ryneerson.

**MR. CHAIRMAN:** Second was Katcko.

**MR. KATCKO:** Aye.

**MR. CHAIRMAN:** Aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** The motion carries unanimously. The next item F on our agenda is a public hearing that has to do with beach rental equipment boundaries, that's an emergency ordinance, would you read that please.

**TOWN MANAGER:** Ordinance 05-24, an ordinance of the Town of Fort Myers Beach amending the Land Development Code, the writing authority, emergency amendment to chapter 14, environmental and natural resources article one, beach and dune management, second 14-5(d), beach furniture and equipment, amending regulations to provide for placement of beach furniture and equipment for rent by commercial vendors, providing for automatic repeal, setting forth public emergency, sever ability, effective ordinance, and effective date.

**MR. CHAIRMAN:** This is a public hearing, I'm going to open the public hearing to the public. Anybody wish to make a comment? Seeing no public, I'll close the public hearing

and bring it to council.

**COUNCILMAN:** Mr. Chairman, I make a motion that we accept the staff's recommendation to set back 25'.

**MR. CHAIRMAN:** I have a motion, do I have a second?

**COUNCILMAN:** Second for discussion.

**MR. CHAIRMAN:** I've got a motion and a second, discussion.

**MR. REYNOLDS:** Yes Mr. Chairman, there are a couple of items in here, if you go down to section 14-5, the third line, fourth line down, it says excluding water, \_\_\_\_\_ equipment shall be set land ward of the main high water tide at least 10', I believe that should be, I'd like to see that 50', and then in the next one down is fine, at 25' sea forward that's fine from the wet sand. But then it says 10' from a sea turtle nest and dunes vegetations, I'd like to see that 10' changed to 50'. Ten feet from a turtle's nest is just too close to allow those to have equipment set up. So I'm hoping that the guy who made the motion, who first made the motion will accept the 50' instead of the 10 and then going into the last line, this amendment regarding beach equipment vendors shall automatically stand to repeal, as of the 61<sup>st</sup> day, following the date of its adoption. I'd like to see that be the 91<sup>st</sup> day, instead of two months, I'd like to give them three months on that.

**TOWN ATTORNEY:** Mr. Mayor?

**MR. REYNOLDS:** Which would carry us through the season.

**TOWN ATTORNEY:** I'm sorry I didn't mean to interrupt to you, I thought you were done, actually that's a legal requirement, we can't go past the timeframe in this ordinance. The emergency ordinance...

**MR. REYNOLDS:** We can't go past 60 days?

**TOWN ATTORNEY:** The emergency ordinance language specifically says its sunset after 61<sup>st</sup> days.

**MR. REYNOLDS:** Okay then I'll cross that one out but I would stick with the other two, they should be farther away than 10', and 50'. If the motion would allow that to be in there, do you see where you're talking about?

**COUNCILMAN:** I see where you're talking about, I've talked to Eve Haberfield, she doesn't have any problem with it, so the motion is staying.

**MR. CHAIRMAN:** Okay I've got a motion and we've got a second, did you second that down for discussion?

**COUNCILMAN:** For discussion, yeah. Yeah I was going to question that 10' myself.

**MR. REYNOLDS:** I would have to talk with her too on that.

**COUNCILMAN:** Yeah I thought maybe we could increase that a little bit, 10' doesn't seem like...

**MR. CHAIRMAN:** How about a compromise guys, are you interested in any compromise, lets go to, lets go to 30'.

**COUNCILMAN:** This only a temporary ordinance.

**MR. CHAIRMAN:** I realize that.

**COUNCILMAN:** They will rewrite this the way they want it, so this is only 60 days and then they'll change it, so that's why...

**MR. CHAIRMAN:** Well we're right in turtle nesting season, so I could, I could support 30' if you could.

**COUNCILMAN:** I've got no problem with 30' that's fine.

**MR. REYNOLDS:** That sounds good.

**MR. CHAIRMAN:** Are you good with 30'?

**MR. REYNOLDS:** Fine.

**MR. CHAIRMAN:** Boy am I a diplomat at the moment or something?

**COUNCILMAN:** Mr. Chairman, I believe any further than 10' and I couldn't run fast enough to catch those turtles for my soup. (Laughter.)

**COUNCILMAN:** Oh that's a point.

**MR. CHAIRMAN:** I'm glad you got that in the minutes.

(Laughter.)

**COUNCILMAN:** All right.

**MR. CHAIRMAN:** Can we, can we have the motioner and the seconder accept 30' instead of 10'?

**COUNCILMAN:** That's fine.

**MR. CHAIRMAN:** You said you're okay with that and you're okay with that? Okay so we have an ordinance now that we've changed those, that wording from 10' to 30'.

**TOWN ATTORNEY:** Yep.

**MR. CHAIRMAN:** Any other discussion? All in favor of the motion signify by saying aye.

**COUNCILMAN:** Roll call.

**MR. CHAIRMAN:** Excuse me roll call again.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** Aye.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** Motion carries unanimously, you may make it by 5:00, somebody laughed.

**COUNCILMAN:** Yeah.

**MR. CHAIRMAN:** The next item on the agenda is G and this is the first public hearing for ordinance 5-22 LPA Membership, and of course I would tell you there's two that's going to be required so, isn't that right?

**TOWN MANAGER:** Yes the second public hearing will be September 12<sup>th</sup>, at 6:30.

**MR. CHAIRMAN:** And would you read that please?

**TOWN MANAGER:** Ordinance 05-22, an ordinance amending chapter 34 of the Town of Fort Myers Beach Land Development Code, providing authority, amendments to section 34.113 comment division three, Local Planning Agency, article two, zoning procedures of the Land Development Code, which is

titled "Composition Appointment and Compensation of Members", providing for increase in numbers of members of the Local Planning Agency, sever ability, effective ordinance and effective date.

**MR. CHAIRMAN:** Okay this is a public hearing, anybody that wishes to speak to this? Hughesie?

**MR. HUGHES:** I haven't been sworn.

**MR. CHAIRMAN:** Oh excuse me, you need to be sworn.

**MR. HUGHES:** We don't have to, I guess at a non-zoning case.

**TOWN MANAGER:** Yeah that's right you don't need to.

**MR. HUGHES:** It wouldn't matter to me anyway. Do we have to?

**TOWN MANAGER:** You don't have to be sworn.

**MR. HUGHES:** Again, good afternoon gentlemen, I'm in favor of the...

**TOWN MANAGER:** Would you identify yourself for the record, I'm sorry.

**MR. HUGHES:** I'm sorry, I'm sorry, I'm Dan Hughes, 270 Randy Lane, former councilman, mayor and member of the LPA, and I served on the LPA when it had both seven members and had nine members and as a matter of fact, the increase from seven to nine was essentially a consequence of my illness. We had two non-voting members on at the time, in the fall of 1996, and we felt that they should be able to vote and

participate and it was increased to nine and it's been that way ever since, so I would favor going back to the nine. But I'm going to take this opportunity to raise a procedural issue, which just occurred to me some time back when, when you changed it from nine to, to seven, and that is the...I believe that ordinance was invalid, in that it didn't, it didn't comply with section 34-232 of the chapter 34, which requires that any proposed amendment to this shall be enacted in accordance with federal statute 166041. But more significantly, prior to a final required hearing by Town Council, Local Planning Agencies shall review the amendment at a public hearing. And the, before its heard by the Town Council in section 34-233, the Town Council should receive a substantive recommendation by the Local Planning Agency. This didn't happen when you adopted the ordinance, which changed it from, from nine to seven, so in my opinion, that ordinance is void. Now I've spoken with the mayor and the manager and they, they feel well there was a glitch ordinance that was adopted, which, which cured a number of defects, alleged defects in chapter 34. If you take that position, that an omnibus ordinance like that can change something that wasn't even in, in the public hearing or in the notice, I think that is totally inappropriate and a bad rationale and a bad principle.

For example, if you took that position, you could, you could have, you could hold a...lets just take some outrageous examples. You could have a, a public hearing at the LPA and then at the Town Council on short term rentals and when it got to the Town Council, you could decide you want to change the home occupation divisions of chapter 34. Gentlemen I don't think that's correct, or you could be having a public hearing at the local level, LPA level, on signs and when it got back to the Town Council, you decided that you wanted to change something like mobile homes, without prior, any prior notice, any prior knowledge. So, to me, the argument that the glitch ordinance, just because its chapter 34, you can...its another amendment to chapter 34, that's not, that's not a good argument and to, to take the, that position to me is manifestly against the clear language of the ordinance and I think it deprives the public of their right to notice of a proper, of a proper amendment to the Land Development Code.

Now it's not a big deal in this case because its seven to nine, nine to seven, if you hold the original ordinance invalid, you'd need to take no action tonight. If you think I'm wrong, then you can take some action. But I, I, I raise it not because it's a big deal on this particular incident, because I think it's a very bad principle and

if...I don't think that's something you should think that you, you could be able to do in the future, I think it would be a dangerous precedent. Thank you.

**MR. CHAIRMAN:** Okay I want somebody to, Ann would you respond to that please.

**TOWN ATTORNEY:** Mr. Mayor, I have reviewed that issue and I believe that the action in Town Council in passing the original ordinance was correct and proper. I believe that fact that the glitch ordinance went in front of the LPA and came forward in proper fashion for this council does legitimize what that ordinance stated and this ordinance is properly before this council.

**MR. CHAIRMAN:** And of course that's the...

**TOWN ATTORNEY:** I respectfully disagree with Mr. Hughes.

**MR. CHAIRMAN:** Yeah that's the information I got, but I, what he's, what Former Mayor Hughes is saying is that this part of that glitch ordinance didn't go in front of that, this particular part and that's what he's saying, is you could bring an ordinance in front of this and we could add the whole world to it. You know bring us an ordinance about disaster relief, and we put in there that...we just add to that ordinance that we get paid \$150,000.00 a year.

**COUNCILMAN:** Okay.

**MR. CHAIRMAN:** And then if I could make for a couple of years, I'd been okay, I mean that's offering some comical

commentary to is, but if in fact there is any merit to what he's saying, then we don't even have to consider what we're doing here because they'd be back at nine members.

**TOWN ATTORNEY:** I believe there are two issues in what you're talking about Mr. Mayor. The first issue is was the action by the council legal, that's the first question, and I believe the action by the council was legal in addressing the first ordinance. I believe inherent in your question is a second question, which is it proper policy that the council sits as a policy making body? And, and certainly you can determine as a policy issue, if you want to send specific things back to the LPA, you have that ability, in the future. But I do not believe that anything that this council did, in terms of the prior ordinance, was improper or illegal.

**MR. CHAIRMAN:** Okay and I'm going to ask is there anybody else in the audience that the public would like to speak to this issue? Seeing none, I'll close the public hearing and bring it back to council.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** And I want to be first. (Laughter.)

**COUNCILMAN:** You want to be first.

**MR. CHAIRMAN:** I want to be first because this is something that's very near and dear to me, I will tell you that I served on that council, I mean on that LPA with Dan Hughes

and I, and I believe that some of the information that's been offered to us, in comparison, like the Lee County LPA and some of those statements, and because they only have seven members, I think they're not appropriate in this case. I think what is appropriate in this case, and it's something very near and dear to me, I believe that the LPA has done a really outstanding job of our town, and they give hours and hours and hours of time, and they've done this very willingly. They're all volunteers, they've just done a tremendous job and I, I just, it almost breaks my heart to think that we'd cut them from, from nine to seven members. When they started, they were seven members, and that group decided they should add those other two that were just, were hanging around, they came to every meeting, and they added them to that group because they felt it was the proper thing to do, and I, I just think this is a real hurtful thing, it is to me because I served on it. And I would ask you to please support this idea to take that group back to nine members. In fact, I would like to move this ordinance be set for the second public hearing in September.

**TOWN MANAGER:** It's not required that the council vote on this at this time, I mean the requirement of this ordinance is two public hearings. So the second public hearing would be September 12<sup>th</sup> at 6:30 so there is no action required of

the council.

**MR. CHAIRMAN:** Okay, but I had to say all of those words anyway, anyways, okay the second public hearing will be September the 12<sup>th</sup>?

**TOWN MANAGER:** Yes.

**MR. CHAIRMAN:** September the 12<sup>th</sup> at what time?

**TOWN MANAGER:** Six thirty.

**MR. CHAIRMAN:** Six thirty, okay.

**COUNCILMAN:** There's no discussion on this, we don't need a discussion?

**MR. CHAIRMAN:** No.

**COUNCILMAN:** Okay.

**MR. CHAIRMAN:** Well I guess you can if you wish to make a statement.

**COUNCILMAN:** No I'll wait.

**MR. CHAIRMAN:** You're going to wait for the big night hunh?

**COUNCILMAN:** I'll wait for the big night.

**MR. CHAIRMAN:** Okay, item number H is a memorandum on the MRTF Appointment and I'd like to suggest that we defer that to I 2 and J, because that's going to determine what we, what we really are doing with this thing anyways. I would ask us to consider that, can I get some agreement to that that we defer that item?

**TOWN MANAGER:** You can defer without a motion.

**MR. CHAIRMAN:** I can defer without a motion?

**COUNCILMAN:** Yeah.

**MR. CHAIRMAN:** All right then the next item on the agenda is a public hearing on the amendments to the committee ordinance, and I would ask you to, and we have what three of them?

**TOWN MANAGER:** Yes sir.

**MR. CHAIRMAN:** I would ask you to read the first one please.

**TOWN MANAGER:** Ordinance 05-18, an ordinance amending the Town of Fort Myers Beach Cultural And Environmental Learning Center Advisory Board Ordinance, providing authority, amendment to section three, composition and appointment, sever ability, effective ordinance and effective date.

**MR. CHAIRMAN:** Okay this is a public hearing and I'll open the hearing, anybody wish to make any remarks in this regard?

**COUNCILMAN:** Before we go on, I lost you.

**TOWN MANAGER:** 05-18.

**MR. CHAIRMAN:** 05-18, its item number I.

**COUNCILMAN:** I thought you deferred that one.

**TOWN MANAGER:** H was deferred.

**MR. CHAIRMAN:** No I referred H. Okay this is the CELCAB and we're doing 5-18. If nobody wishes to speak to it, I'll close the public hearing and bring it to council.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**COUNCILMAN:** I'll make a motion that we approve the motion as written.

**MR. CHAIRMAN:** I have a motion, do I have a second? I'll second that motion for discussion. We have a motion and a second, discussion?

**MR. REYNOLDS:** Yes, I noticed that the LPA has a clause in their ordinance, which says that no member of LPA shall be salaried officials of the town. I would like that extended to every committee that we have, right on down the line.

**TOWN MANAGER:** It is an \_\_\_\_\_ ordinance Mr. Reynolds.

**MR. REYNOLDS:** It is?

**TOWN MANAGER:** Yes.

**MR. REYNOLDS:** Read it to me on this, okay, I'll...

**TOWN MANAGER:** Its in the, its in the main ordinance, and this is just an amendment to the main ordinance, but you had asked me that the other day and I had checked it and every ordinance with the town advisory committee does in fact have the language regarding salaried officials.

**MR. REYNOLDS:** Is there some reason that it can't be included here so it will be clear because its included in the LPA.

**TOWN MANAGER:** This is an amendment and the original ordinance stands except to the extent that its amended, so we wouldn't, we wouldn't reiterate it because it stand in

the original ordinance.

**MR. CHAIRMAN:** The LPA is different than this too because its in our...

**COUNCILMAN:** Its an agency.

**TOWN MANAGER:** Land Development Code.

**MR. CHAIRMAN:** ...Land Development Code.

**TOWN MANAGER:** That's true.

**MR. CHAIRMAN:** So it's a little different than out other...

**MR. REYNOLDS:** So...

**MR. CHAIRMAN:** But its included as one of the general.

**MR. REYNOLDS:** So you're saying then that no member of CELCAB shall be a salaried official of the town, and now, and all the other committees will have salaried officials of the town.

**TOWN MANAGER:** The existing...

**MR. REYNOLDS:** You're saying this is a, this is a criteria for all of our committees on the island?

**TOWN MANAGER:** The existing ordinance, ordinances for the town advisory committees has the language that you've just quoted in each ordinance. It was, it was preexisting language, it has not been modified by any ordinances before you tonight.

**MR. REYNOLDS:** Mm-hmm (yes). So, but council changed that tonight by allowing it.

**TOWN MANAGER:** No that wasn't, that's not being addressed

tonight.

**COUNCILMAN:** The only thing that's being addressed is what's underlined.

**MR. REYNOLDS:** No I mean earlier, earlier in the evening, we did approve...

**MR. CHAIRMAN:** Earlier in the evening we passed a...

**TOWN MANAGER:** Direction.

**MR. CHAIRMAN:** ...a direction that the...

**TOWN MANAGER:** To bring an ordinance back.

**MR. CHAIRMAN:** ...because the salary we receive as Town Council, people doesn't.

**COUNCILMAN:** Well that's...

**TOWN MANAGER:** Earlier the council gave me direction to bring forward an ordinance at the next meeting of saying that the Town Council members can serve on town advisory board committees.

**MR. REYNOLDS:** So that effectively nullifies this because, at least as far as council members are concerned.

**TOWN MANAGER:** It doesn't now because it hasn't been before the council for a hearing or review.

**MR. REYNOLDS:** Okay, well I'll tell you until, until I see this added in every ordinance, every, excuse me every town advisory committee, I cannot accept it.

**TOWN MANAGER:** It is in every town advisory ordinance, Mr. Reynolds currently.

**MR. REYNOLDS:** Even in the amending, even in the amended ones Ms. Dalton? What was that what we just said.

**MR. CHAIRMAN:** Point of order, we're getting off the subject here totally Garr, its been explained to you that it is a general condition of all of these ordinances, and what we did prior to tonight is just to send that forward so it can be brought back to council for their action.

**MR. REYNOLDS:** Okay now let me finish what I was going to say Mr. Chairman. The LPA says, and its in here, in section two, and this is what I'd like to have over in the others, in each one of these advisory councils, and here's what it says. No member of the Local Planning Agency shall be salaried officials of the town. I'm simply adding...and this is amended, this is an amendment we're talking about. Exactly the same thing we're talking about over here Ms. Dalton, and I'm asking you to do the same thing with CELCAB and every other committee, just the same as you have on this one.

**FEMALE:** Mrs. Dalton, maybe you'd like to explain to the councilman that, how an ordinance is amended.

**TOWN MANAGER:** Mr. Reynolds, when we amend an ordinance, the reason why its in the LPA amendment 05-22 is that we amended section 34-113(a) that that paragraph consists of two sentences. Good drafting requires that when you add or change something in a paragraph of this type, you quote the

entire paragraph, if its short. That's the only reason why this was incorporated, in general, you wouldn't quote different sections and reiterate different sections in an ordinance, over and over again, because it, its just not, its not proper procedure.

**MR. REYNOLDS:** Thanks.

**TOWN MANAGER:** It is in the underlying ordinance.

**MR. REYNOLDS:** Thanks but...

**COUNCILMAN:** Mr. Chairman, the only thing that we are discussing is what's underlined, that's all we're discussing, am I wrong or right?

**MR. CHAIRMAN:** That's right.

**COUNCILMAN:** All right, can we move on then with what we're discussing here?

**MR. REYNOLDS:** Excuse me, where is that?

**MR. CHAIRMAN:** Exactly what you have there.

**MR. REYNOLDS:** From section three. I know that's, that's what we're discussing but we should be discussing more than that.

**COUNCILMAN:** This is all, the is all the motion is about. This is all the motion is about.

**MR. REYNOLDS:** If we're amending this, we should be amending it.

**MR. CHAIRMAN:** Its not part, its not part of the ordinance, its been presented to us Garr and what you're, what you're

talking about is something that's in the general ordinance. Nobody that serves on these committees can be salaried employees.

**MR. REYNOLDS:** Would you make reference to those, in fact and give us a copy of that part of that ordinance that you're saying. Its in one amended ordinance here but you can't put it in other amendments. I have trouble with that.

**TOWN MANAGER:** The reason why its not in this amendment is it wasn't part of that paragraph and therefore, we wouldn't normally do that.

**MR. REYNOLDS:** Could we have a copy of this, of each section that pertains every advisory committee that has that state in there.

**TOWN MANAGER:** Mister...

**MR. REYNOLDS:** But I've never seen it in there.

**TOWN MANAGER:** Mr. Reynolds, you inquired of that the other day, you inquired of me regarding that matter the other day and I looked up every ordinance, every advisory committee ordinance and ordinance 98-9, second 4 is the CELCAB ordinance that references these salaried official of town, no salaried officials of the town shall be on the committee. I have written out every other advisory committee number, ordinance number if you want me to read them.

**MR. REYNOLDS:** If I could have a copy of those, I'll pull it down myself.

**TOWN MANAGER:** I believe that our finance director is getting you right now, but it is section four, if you look at the ordinance under consideration, it is section three that's being amended from that ordinance, so we would not normally reiterate an entirely different section in an amendment to an ordinance. Its, its just not proper drafting procedure.

**MR. REYNOLDS:** An amendment is an amendment, okay.

**MR. CHAIRMAN:** Any other questions? Any other comments? We had a motion and a second.

**COUNCILMAN:** I'm sorry I didn't speak soon enough.

**MR. CHAIRMAN:** Okay.

**COUNCILMAN:** But I still will hold to my original proposal and I'm responsible for this reduction in committee membership, I don't think, I probably should be arguing this at the next meeting, but 12 members on this committee doesn't appear to me to be the best way to go. I mean 12 different opinions on something and you know they're not earth shattering, this is not an earth shattering committee, CELCAB. I think they can do just as well with seven, it would, they would reach decisions quicker, I think points will be made quicker. I don't see the reason to have 12, you can have 7 voting members and have as many

ex officio members as you like, 10, 15 or 20, 7 voting members. I think would streamline it, it would cut down the time they have for when they're considering this issues, and you know I agreed to this ordinance at the last meeting, and I won't go back on that. And the wording in here is the way I remembered it, for the 2005/2006 year, if anyone leaves, they will not be replaced and I'll go along with it. But I still hold to my original opinion that I think this should be modified. I can't see the need, at all, for 12 voting members, period.

**MR. CHAIRMAN:** I was almost going to call point of order there, because that's not what we're discussing either.

**COUNCILMAN:** I know, I know its what's underlined.

**MR. CHAIRMAN:** But since you brought that up, if you get away with that comment without being ostracized, I'm going to be really surprised that this is not an earth shaking committee, you know if you get away with that, wow.

(Laughter.)

**COUNCILMAN:** I mean no disrespect to CELCAB.

**MR. CHAIRMAN:** I know, well anyways, and I do have in front of me the ordinance 98-9, which reflects on CELCAB and it says qualification of members, section four, and that's what she's saying, that's not part of what we're changing here. Qualification of members, no members of CELCAB shall be salaried officials of the town, and that's part of the

original.

**COUNCILMAN:** Point of order.

**MR. CHAIRMAN:** So we have a motion and a second, we've had a lot of discussion, can I call the question?

**COUNCILMAN:** Roll call, aye.

**MR. CHAIRMAN:** Roll call vote, we've got a motion was aye, I think I seconded, aye.

**MR. REYNOLDS:** Reluctantly aye.

**COUNCILMAN:** Aye. (Laughter.)

**COUNCILMAN:** That's an aye.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Its an aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** Motion carries, unanimously.

**TOWN MANAGER:** May I have that back Mr. Mayor?

**MR. CHAIRMAN:** Yes, oh do you need that back, okay.

**MR. KATCKO:** Mr. Mayor I think we're still showing Bill Thomas on that one.

**COUNCILMAN:** Yeah I didn't see that one, I hadn't seen that anywhere thank you very much.

**MR. CHAIRMAN:** We need to correct that, it was just drawn to my attention that we have, still have Bill Thomas' name listed on that, if we can take care of that please.

**TOWN ATTORNEY:** Yes sir, sorry about that Mr. Katcko.

**MR. CHAIRMAN:** Okay and since I came up, I do want to know

to everybody that we have a very distinguished lovely lady in the audience this evening.

**FEMALE:** Yes we do.

**MR. CHAIRMAN:** Diane Thomas, Diane its nice to have you here, I think you must be nuts, but anyways, its nice to have you here Diane. (Laughter.) Our first lady of Fort Myers Beach, its nice to have you. Okay the next item on the agenda is MRTF, 5-19, if you would read that please.

**TOWN MANAGER:** An ordinance amending the Town of Fort Myers Beach Marine Resources Task Force Ordinance, providing authority, amendment to section three composition and appointment, sever ability, effective ordinance and effective date.

**MR. CHAIRMAN:** Okay this is a public hearing, I'll open it to public input, would anybody like to speak on this issue, Matt, Mr. Feeney, Admiral Feeney wishes to speak to us.

**MR. FEENEY:** I know that the council deferred item H and I, I just wanted to speak to it briefly, because it would pertain to your consideration of 05-19. Basically the change in reappointment procedures this year inadvertently resulted in one of the standing Marine Force Task Force members from missing the deadline for application to serve this year. That's due in part to the reappointment timing as well as my own failure to mention at the April meeting that Town Council was actually taking appointment

recommendations or requests. Mr. Perry has been on MRTF since its inception, he expressed a desire to continue serving and staff asks that council consider that, as they take into consider amendment of or adoption of ordinance 05-19.

**MR. CHAIRMAN:** Okay.

**COUNCILMAN:** Did you close it, you didn't close it yet?

**MR. CHAIRMAN:** No I haven't closed the public hearing, anybody else like, wish to speak to this? Okay I'm going to close this public comment.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**COUNCILMAN:** I would make a motion that we accept the ordinance as written, except change eight to nine.

**COUNCILMAN:** I'll second.

**MR. CHAIRMAN:** I have a motion and a second, discussion?

**MR. MASSUCCO:** Mr. Mayor?

**MR. CHAIRMAN:** Yes.

**MR. MASSUCCO:** Yeah I'm opposed to the ordinance, it goes against what I've been saying, I mean we're trying to set this at 7. We keep going back on our word, I mean these things have been going on since back in April and you know I sympathize with this gentleman, he was an asset to the, to MRTF and he didn't get his application in on time. Well unfortunately, you know we, we decided we wanted 7 on these

committees and that's the way it should be. I've got a letter in front of me disputing the fact that because he didn't submit his application on time, he should be considered, and I have a letter in opposition to that. And I, I, I would hold to my original ordinance 05-11 and that was back on April 18<sup>th</sup>, no less than five, no more than seven, period.

**MR. CHAIRMAN:** Okay, let me see Howard, does anybody down here wish to speak to this before I...

**COUNCILMAN:** I was just going to mention, this is only for a year, and then its going to go back to seven just like the previous ordinance, so I believe Councilman Massucco's concerns would be addressed.

**MR. CHAIRMAN:** Garr do you wish to speak to this or not?

**MR. REYNOLDS:** I have no problems with going to nine.

**COUNCILMAN:** I agree with you Don 100% and I back you on these ordinances, but I...this was an older member, that letter is a new member and that's why I felt that we should address it with the older member. They got one year to make up their minds whose going to serve on it and it will go back to seven, so I agree with you whole heartedly, it should be seven. But I will hold with the motion to nine for one year.

**MR. CHAIRMAN:** Okay is there any other, further discussion? All in, it's a roll call vote.

COUNCILMAN: Aye.

MR. CHAIRMAN: Who made the second?

COUNCILMAN: Ken.

MR. KATCKO: Aye.

COUNCILMAN: Aye.

MR. CHAIRMAN: Aye.

MR. MASSUCCO: No.

MR. CHAIRMAN: Okay so four to one was the vote on that, and boy I'm getting ordinance out now.

TOWN MANAGER: 05-20 is next.

MR. CHAIRMAN: The next ordinance is 05-20 CRAB, would you read that please.

TOWN MANAGER: An ordinance amending the Town of Fort Myers Beach Community Resource Advisory Board ordinance number 02-3, providing authority, amendment to section three, composition and appointment, sever ability, effective ordinance and effective date.

MR. CHAIRMAN: Okay this is a public hearing, does anybody wish to speak to this item? Seeing nobody, the public hearing is closed.

COUNCILMAN: Mr. Chairman.

MR. CHAIRMAN: We'll bring it back to council.

COUNCILMAN: Mr. Chairman I make a motion we accept the ordinance as written.

MR. CHAIRMAN: I have a motion, I'll second that motion,

discussion? Discussion? Being no discussion, I'll call the question, all in favor...

**COUNCILMAN:** No roll call.

**MR. CHAIRMAN:** Oh roll call.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** Aye.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**MR. CHAIRMAN:** The motion carries unanimously. The next item on the agenda is J and this is approval of CELCAB and MRTF committee members.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**COUNCILMAN:** I would make a motion that we approve the CELCAB member that is there today for the next year, and then I would also approve, make a motion that we approve, in the same motion, excuse me, Marine Task Force to go to nine and adding the name of Bill Perry.

**MR. CHAIRMAN:** I've got a motion, do I have a second?

**COUNCILMAN:** I'll second.

**MR. CHAIRMAN:** I've got a motion and a second, discussion?

**TOWN ATTORNEY:** Mr. Mayor may I make a legal point here?

**MR. CHAIRMAN:** Yes.

**TOWN ATTORNEY:** Until such time as the members of MRTF, the

reconstituted MRTF, are approved by this body, every applicant is still under consideration, which means that the new applicant would also be under consideration technically, so perhaps...

**MR. CHAIRMAN:** Lets take the one at a time.

**TOWN ATTORNEY:** ...it might be better to do.

**MR. CHAIRMAN:** That's what we need to do.

**COUNCILMAN:** That's fine.

**TOWN ATTORNEY:** Or have the maker cite...

**MR. CHAIRMAN:** Could we get you to change your motion just to go to CELCAB?

**COUNCILMAN:** Yes Mr. Chairman, I will make a motion that we accept CELCAB as is, with the 12 members, for this year.

**COUNCILMAN:** I'll second.

**MR. CHAIRMAN:** I've got a motion and a second, discussion?  
Roll call.

**COUNCILMAN:** Aye.

**COUNCILMAN:** No its not a roll call.

**MR. CHAIRMAN:** Oh right, no roll call. (Laughter.) All in favor of the motion, signify by saying aye. (AYE.)

Opposed?

**COUNCILMAN:** Reluctantly aye.

**MR. CHAIRMAN:** The Motion carries four to one, reluctant, five unanimous. Okay the next item is the Marine Resource Task Force.

COUNCILMAN: Mr. Chairman?

MR. CHAIRMAN: Yes.

COUNCILMAN: I would make a motion that we accept the eight names that are there and add number nine as Bill Perry, to be the ninth member.

MR. CHAIRMAN: I've got a motion, do I have a second?

COUNCILMAN: I'll second.

MR. CHAIRMAN: I've got a motion and a second, discussion?

MR. REYNOLDS: Question, do we have any other names that has applied?

TOWN ATTORNEY: There was one other person who did apply for an opening yes.

MR. REYNOLDS: So that name should be here beside of Bill Perry's then, should it not?

TOWN ATTORNEY: I believe that name was brought forward before to the Town Council and that person is still under consideration.

MR. REYNOLDS: Councilman Massucco you were mentioning something about a letter.

MR. CHAIRMAN: Well we all got that letter, I believe.

MR. REYNOLDS: I didn't get it.

MR. CHAIRMAN: Well I believe everybody else did.

MR. REYNOLDS: All concerned about, if we have other applicants, their name should be in this list here and then we will vote accordingly.

**MR. MASSUCCO:** Mr. Chairman I did take that into consideration and my motion was to put Bill Perry on this, now if they don't agree with the motion, they can not, they can say no.

**MR. REYNOLDS:** That's not my point Councilman, my point is where are the other names?

**TOWN ATTORNEY:** I believe there's one other applicant.

**MR. CHAIRMAN:** There's one other name I'm trying to...it was Audry...

**COUNCILMAN:** I have it, Angelos.

**MR. REYNOLDS:** Angelos yeah, so we have two applicants.

**MR. CHAIRMAN:** Have I got that right was it Audry?

**COUNCILMAN:** Mm-hmm (yes), yeah Audry.

**MR. REYNOLDS:** Yes we got it today, here.

**MR. MASSUCCO:** Audry Angelos submitted her letter of interest on time.

**MR. CHAIRMAN:** Yeah, yeah here it is. Okay but I think the motion is that we accept, we accept the, the eight that are listed that were agreed to before, plus Bill Perry as the ninth.

**COUNCILMAN:** Yes that's my motion.

**MR. CHAIRMAN:** That's the motion?

**COUNCILMAN:** Yes.

**MR. CHAIRMAN:** And we have a second to that motion, now do we have any further discussion? All in favor of the

motion, signify by saying aye. (AYE.)

**MR. MASSUCCO:** No.

**MR. CHAIRMAN:** Opposed, motion carried four to one, with Councilman Massucco dissenting. The next item on the agenda K, this is a request for a waiver from the six events per year by the Ramada Inn Group.

**COUNCILMAN:** Mr. Chairman I would make a motion that we accept this waiver for one year.

**MR. CHAIRMAN:** For this site only?

**COUNCILMAN:** For this site only.

**MR. CHAIRMAN:** If you'll add that, I certainly would second that motion.

**COUNCILMAN:** Okay.

**MR. CHAIRMAN:** Now this would be for that site only?

**COUNCILMAN:** Yes.

**MR. CHAIRMAN:** Okay we have a motion and a second, discussion?

**MR. REYNOLDS:** If we, if we allow this extension and this is just for discussion, if we allow this much extension for one business, and then how are we going to say no to someone else who comes up and here was going from six to ten. How are we going to say no to the next person who has five and they want to go up to ten? Pretty soon...that's a very congested area down there and they've had the six already this year, I don't know the exact date, but they

have one more coming up or two more coming up. I'm concerned about congestion that's going to be created if we continue to have all of the businesses down there and they have the same option this business does. We have to have some kind of a restrictive policy somewhere. We can't allow one and then not allow the other, so I'd throw this out for consideration.

**MR. CHAIRMAN:** Well by our action, Garr, if I can respond to that, we are restricting it because we, we made, the motion was made that we do this to give this waiver, but for this site only. Now if another one comes along, anybody could come and make the request, but this is for this site only and I believe that the people that made the motion and seconded it thought it was a rather unusual circumstance and that's the way I'm looking at it if, if somebody else came along, they'd have to rely on the merits of their case.

**MR. REYNOLDS:** Well all I'm saying Mr. Chairman is that I have problems of saying yes to one request and no to a similar request, and that we have to draw a line somewhere and the line had been drawn for six, at that particular business. That's where I'm having...I just want the council to think about that call.

**MR. KATCKO:** I believe this is obviously a very special circumstance, these businesses were all closed because of

Hurricane Charlie, and God willing, this won't happen to any other business, and that's the only way I could support this. Any other businesses that came along asking for this special event permit would almost certainly not be doing so because of hurricane damage, and at that time, we would certainly have the right to reject their application. I do have one concern though and that is traffic issues with these events. I believe that this is an issue that has to be looked at for any events in the future. How much traffic are these events going to create and I believe that the organizers need to bear some responsibility for trolleys or some transportation issues, parking, to bring these events to the beach. I'd like to throw that up in front of council and see if anybody else has any concerns, with regard to that issue.

**COUNCILMAN:** Mr. Mayor, I agree with Councilman Katcko that traffic is a problem when we have these types of events and I also agree with Councilman Reynolds that its going to awfully hard to justify saying no to somebody else because they don't have the same circumstances as this particular Ramada Inn does. But by the same token, they've had a very falling off of businesses now too because of the season, and we could see another one coming to us at the next meeting and the meeting after that and the meeting. They're all extenuating circumstances I believe, so I don't

think we can do it for one, regardless of the circumstances, and not be prepared to do it for others down the road.

**MR. CHAIRMAN:** Okay any other discussion?

**MR. REYNOLDS:** Yeah I feel very strongly about keeping this restricted and I feel somewhat the same way as Ken, this is special circumstances, but what am I going to do if somebody comes back next week? They've got two more to go this season, and I don't know, I can't go for one and not another person that comes up. I just can't do that.

**MR. CHAIRMAN:** Okay I think those mirrored your first comments, any other discussion?

**MR. REYNOLDS:** I try to change.

**MR. CHAIRMAN:** Okay I'm going to call the question, all in favor of this request, signify by saying aye. (Aye.)  
Opposed?

**COUNCILMAN:** No.

**COUNCILMAN:** No.

**COUNCILMAN:** I didn't vote yet.

**MR. CHAIRMAN:** Well the motion fails then with a two to two vote.

**TOWN MANAGER:** He can't abstain.

**COUNCILMAN:** No I have to vote, I have to vote, I realize that. I'm going to have to vote against this at this time.

**MR. CHAIRMAN:** Okay motion fails, by a three to two vote, so

the request is denied. The next item on the agenda is the Policy and Award of Historical Preservation Grants.

There's three items in this, in this memo that's been, so three things that we need to move on and I'm going to tell you one of them I, I cannot vote on because I have a conflict, but I can handle the two other items. We have a...we're being asked to approve funding for last year, in the amount of \$40,000.00 and to put that back in our budget because, because of the storm, it wasn't used.

**COUNCILMAN:** Mr. Chairman I would move that part of it.

**MR. CHAIRMAN:** Well let me ask, does anybody here need to...is somebody going to make a presentation in that regard or you're ready for us just to go with it? Jack.

**MR. GREEN:** Good afternoon Mr. Mayor, council members, I'm Jack Green, town staff, there is actually four issues that you folks should be addressing. One is the grant program policy changes that we've recommended.

**MR. CHAIRMAN:** I'll get to that one.

**MR. GREEN:** Okay but I think the one you may have missed was the authorization for the town manager to sign in your, in your absence.

**MR. CHAIRMAN:** Oh.

**MR. GREEN:** During recess, for the \_\_\_ \_\_\_.

**MR. CHAIRMAN:** Well I didn't see that to tell you the truth.

**MR. GREEN:** Its in the, its in two different memos

actually.

**MR. CHAIRMAN:** Okay.

**MR. GREEN:** And I was afraid you might miss that so that's why I \_\_\_\_ \_\_\_\_\_. (Talking together.)

**MR. CHAIRMAN:** Okay so there's four items that we need to do.

**MR. GREEN:** Yes sir.

**MR. CHAIRMAN:** And we just...

(END OF RECORDING TAPE #2, SIDE A.)

(TAPE #2, SIDE B.)

**MR. CHAIRMAN:** ...this one about the funding for last year's program that wasn't used and...

**MR. GREEN:** Yes sir.

**MR. CHAIRMAN:** And we'll handle that and then we'll go on to the next one.

**COUNCILMAN:** Mr. Chairman, I make a motion that we reallocate that \$40,000 back into the grant because it wasn't used.

**MR. CHAIRMAN:** I have a motion, I'll second that motion, discussion?

**MR. REYNOLDS:** Yes Mr. Chairman I have some strong feelings about this, this historical preservation, as we are doing it here on the island, two. Number one, we're not getting any grants anywhere, this comes directly from the residents of the island, that I object to. Secondly, these buildings

that are being, are being reserved, there's nothing, there's nothing pertinent about the buildings, except they happen to be a certain age. That is not what historical preservation is about, not only that, you don't even have to live in the property. You can invest as an investor and all of these things. I think it's a bad direction for our town to go.

**MR. CHAIRMAN:** Okay, Councilman Reynolds, the item that we're talking about now is to reallocate the funds that were approved and designated for two projects last year.

**MR. REYNOLDS:** Yeah and that's...

**MR. CHAIRMAN:** I think one of them happens to be the...

**MR. REYNOLDS:** I didn't make that very clear, that's why I'm against putting any more money into this or approving any money whatsoever for any this type of...for this particular problem.

**MR. CHAIRMAN:** But these are two projects that were approved last year, and then unfortunately because of the storm, that money wasn't held in the budget when the budget was changed in September.

**MR. REYNOLDS:** Let me ask you this, I don't see anything where we are obligated in here. If we were obligated to those, and as probably we should be, since they were approved, then they should be approved to cover those particular two.

MR. CHAIRMAN: They were approved by council.

MR. REYNOLDS: Yes and they certainly should be honored, but this new one that's come should be cast aside.

MR. CHAIRMAN: Well lets wait until we get to that issue please.

MR. REYNOLDS: Okay.

MR. CHAIRMAN: It would be helpful to me if you would refrain from talking about that at the moment.

COUNCILMAN: I would go for that for those two.

MR. CHAIRMAN: Okay any others?

COUNCILMAN: We're committed to those two.

MR. REYNOLDS: We're committed.

MR. CHAIRMAN: Okay so the motion was that we approve that \$40,000.00 that was allocated last year and put it back in the funding.

COUNCILMAN: Reallocate it yeah.

MR. CHAIRMAN: Reallocate that.

COUNCILMAN: Mm-hmm (yes).

MR. CHAIRMAN: We have a motion and a second, any further discussion? All in favor of that motion, signify by saying aye. (AYE.) Motion carries unanimously.

COUNCILMAN: Mr. Chairman?

MR. CHAIRMAN: Yes.

COUNCILMAN: I would make a motion on the recommendation of policy to go ahead and accept policy, showing that we

don't exceed \$30,000.00 in the grant limits and that it be spent on the exterior of the properties and I said not to exceed 50%, so I would make that motion, and I think that would be a good place to put in, possibly, that...give town manager the power to go ahead and sign these, as needed. Do I need more than that or is that a good enough answer? That's good enough, okay that would be my motion.

**MR. CHAIRMAN:** Okay we've got a motion.

**COUNCILMAN:** Can I ask a question Mr. Mayor, are you asking to reduce that \$40,000 to \$30,000 or just in this case?

**COUNCILMAN:** No this is the pol, this is the second motion on the policy, the staff has recommended a policy to follow from now on and I'm just recommending that we take their recommendation on policy.

**COUNCILMAN:** Oh okay.

**MR. CHAIRMAN:** Okay I'll tell you, if you can hold there just a moment, you made the motion, I'll second the motion. Jack would you address this issue please?

**MR. GREEN:** Yes sir, as I had stated in the memo, in the introduction of the program a year and a half or so ago, a great deal of effort was made to get the program going, make it as flexible as possible and get it out there. One of the issues that I experienced in my previous administration of a program like this was the fact that you

need to establish some limits, because there is limited funding. And also, the secretary of interior's guidelines for historic rehabilitation generally relate to exterior activities. They will allow for interior activities as well, but its generally for exterior type of rehabilitation, and so that's the essence of this policy change, to restrict the funding to no greater than \$30,000.00, or 50% of the project cost. Now that doesn't mean that you would, you would fund that much each time, I mean for example, if you had a project that was \$75,000.00 total project cost and the exterior work was only \$20,000.00, then our cap would be \$20,000.00.

**MR. CHAIRMAN:** Okay.

**COUNCILMAN:** I'm not sure I'm understanding, the amount would depend on the request? The cap would depend on the request, is that what you're saying?

**MR. GREEN:** No, the cap would always be \$30,000.00.

**TOWN MANAGER:** Never more than that.

**COUNCILMAN:** But we've always had a cap of \$40,000 haven't we?

**COUNCILMAN:** No.

**COUNCILMAN:** I'm really confused.

**MR. GREEN:** Yeah I see where he's going. The \$40,000.00 is what the council has provided for the program in total.

**COUNCILMAN:** Right, mm-hmm (yes).

**MR. GREEN:** Now depending on how many applications we have, we could have one, as we have this year, or we could have many, as we had, last year we had five actually, and then the council made a determination as to which projects would be funded and how much each of them would get, based on staff recommendation. So with a program funding limit of \$40,000.00, we're trying to restrict or at least spread that money as far as possible, hence, the restriction of no more than \$30,000.00 in any case.

**COUNCILMAN:** Got you.

**MR. GREEN:** Or \$50,000.00 is the total project cost, whichever is less, but the example I tried to indicate, it could be actually less than that at any time.

**COUNCILMAN:** I understand.

**COUNCILMAN:** Okay you understand it.

**MR. REYNOLDS:** Mr. Chairman, Mr. Green, what happened to the other three applicants who applied last year?

**MR. GREEN:** There were four, okay, there were five in total, one pulled their application and two were not recommended and the two that were recommended were 251 Pearl Street and Saint Raphael's Church.

**COUNCILMAN:** So that, so none of those other three reapplied then?

**MR. GREEN:** No, no sir, only one applied this year.

**MR. REYNOLDS:** Thank you.

**MR. CHAIRMAN:** Okay any further comment on this?

**MR. REYNOLDS:** Are you bringing it back to council now?

**MR. CHAIRMAN:** Yes.

**MR. REYNOLDS:** I have something I'd like to share, I think all of, I think you have a copy of what I have here, all of the council members. The local residents are funding 100% of this historic preservation grant program status, and seen in print or heard, it sounds impressive and it seems an important thing to do. However I beg to agree, disagree with that vision, as the program is now operated. This request from Town Hall staff to approve \$30,000.00 to improve an old junk building is rather embarrassing. The building was purchased as an investment from an out of town person that wants it to be personally renovated and perhaps torn down for redevelopment.

**MR. CHAIRMAN:** Garr, Garr, point of order, point of order Garr.

**MR. REYNOLDS:** Okay.

**MR. CHAIRMAN:** You're discussing, and I specifically asked you not to discuss that portion of this thing. We are talking now about changing and the policy to make a maximum of a \$30,000.00 commitment and to allow the town manager to sign the documentation and move it along quicker. It has nothing to do about the request.

**MR. REYNOLDS:** Okay, I apologize, I misunderstood the

motion, I thought you wanted to approve this \$30,000.00 for this project.

**MR. CHAIRMAN:** No, no.

**MR. REYNOLDS:** I apologize, I withdraw my comments at this time.

**MR. CHAIRMAN:** Is there any other discussion in regards to the motion.

**TOWN MANAGER:** Mr. Mayor, did we get a second on that motion?

**COUNCILMAN:** Yeah Bill seconded.

**MR. CHAIRMAN:** I seconded that.

**TOWN MANAGER:** Okay thanks.

**MR. CHAIRMAN:** Okay I'm going to call the question. All in favor of the motion, signify by saying aye. (AYE.)  
Opposed?

**MR. REYNOLDS:** No.

**MR. CHAIRMAN:** Motion carried four to one, I believe, you said aye on that Councilman Massucco?

**MR. MASSUCCO:** Yes, I'm sorry, yes.

**MR. CHAIRMAN:** All right at this point gentlemen, I'm going to turn the gavel over to the vice mayor and read you very briefly a, a notice that I've filed for the town. This is form 8B, it's a memorandum of voting conflict for the municipality and I filled this out because I am involved in this case that's coming before you and I have a special

private gain and I have also represented the owner of the property and I've received a retainer to complete construction plans and details needed to make an application for a permit. So therefore, I can't vote on this issue and I'm going to sit back and let you all have fun with it.

**MR. REYNOLDS:** Mr. Chairman, before I called a point of order here. On this one, you said that this...what I was saying wasn't pertinent. There's a request in here for this \$30,000.00 that we just approved and change of policy.

**MR. RYNEARSON:** This is a different motion.

**MR. REYNOLDS:** Two pages...

**MR. RYNEARSON:** What the \$30,000.00 was for is the...just to put a cap on future spending that we do, \$30,000 is for exterior, it's a policy change, its not anything to do with this that's come before us right now.

**MR. REYNOLDS:** Oh you mean this application form that we have here is not coming before us at this point.

**MR. RYNEARSON:** This application is now, he just, he just turned it over to me, now we're going to vote on this \$30,000.

**MR. REYNOLDS:** Now we're going to vote, right. Thank you.

**MR. RYNEARSON:** And I would be looking for a motion to either accept the \$30,000 or whatever.

**TOWN MANAGER:** You mean accept the project?

**MR. RYNEARSON:** Accept the project yes, excuse me yes.

**MR. REYNOLDS:** Mr. Chairman I make a motion that we reject this request.

**MR. RYNEARSON:** I have a motion to reject the request.

**COUNCILMAN:** I second.

**MR. RYNEARSON:** I have a second. Any discussion?

**COUNCILMAN:** I wish that I would have had time to drive by this property, but I did not, so just by looking at all of the information provided by staff, this building is in terrible condition. However, it does not appear to me to be any special type of structure that needs to be saved or financed by the Town of Fort Myers Beach. Perhaps, it would stand out a little more if I saw it in person, but I, I can't vote for giving this applicant a grant aware, at this time.

**MR. RYNEARSON:** Any other discussion? No? Call the question. All in favor of denying?

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**COUNCILMAN:** Aye.

**MR. RYNEARSON:** Aye. All opposed? Motion passes unanimously. I guess we will be moving on.

**COUNCILMAN:** We're going to have to turn the page here pretty soon.

**MR. RYNEARSON:** Yeah I know it. Request for the D, DEP grant for beach accesses.

**TOWN MANAGER:** Would you like me to go get Mr. Van Duzer?

**COUNCILMAN:** I'll get him, I got him.

**MR. RYNEARSON:** Yeah that would be nice. (Laughter.)

**COUNCILMAN:** Lets see how much we can get done without him.

**MR. RYNEARSON:** That's what I was trying to do.

**COUNCILMAN:** He's hold up the show.

(Inaudible.)

**MR. RYNEARSON:** Yes please.

**MR. FEENEY:** Matt Feeney, for the record. Before you...the Department of Environmental Protection, in the aftermath of Hurricane Charlie, they came down and they assessed Fort Myers Beach, in terms of erosion and tried to, to come up with something that they could offer the town, in terms of emergency protection that may offer the residents some relief, in the event of a potential small storm coming back on shore in the following year, so prior to beach restoration. As an outcome of their assessment, they determined that they could offer the town \$890,000.00 in grant funding to construct a vegetative berm, to offer that type of protection, along about a four mile stretch of the beach. This would require a town match of \$89,000.00.

I spoke to the DEP staff, informing them that you know the

town was in the process of considering a beach restoration project, and would there be any potential flexibility with these funds. As a vegetative berm, its probably something that our residents may not express extreme interest in, but there is a vegetative component of the beach restoration project that's an open offer and maybe this funding could be used in conjunction with that. They indicated that there was flexibility, we didn't go into further detail, because they really need a commit, either a commitment of the town intends or potentially intends to use some of these funds or not, prior to our break. They did indicate that there was flexibility with the use, but how far remains unforeseen. So I'm asking the council to consider this, this request. It can certainly be used for the construction of a vegetative berm and then the DEP had indicate, as they had indicated, we chose not to pursue that route, they would be open to some dialogue you know to consider an alternate use of those funds.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**COUNCILMAN:** I would like to make a motion that we do ahead and do due diligence on this, with, with a couple of restrictions to go with it, and we can work on this over the summer. Such as, we do a rope and Baller, we do a width and we do a height on them, but I do think that we

should proceed trying our best efforts to get this grant, because I think its something that we possibly can, we can use, and if we don't use it, we can always decline it, but at this point I think we should go forward.

**COUNCILMAN:** And I second that for discussion.

**MR. CHAIRMAN:** I've got a motion and second.

**MR. REYNOLDS:** I agree with part of what you're saying councilman, but I'd like to see a stipulation that says it can only be used for dune and plant, dune restoration and planting, and not for any other use. When he says flexible, I'm not sure just what that would entail. I don't want to see that being used for something else.

**MR. FEENEY:** Well like I said, the, the state is, they need a, unfortunately they need a commitment or an indication of what the town's intentions are, prior to our summer break. In terms of flexibility, that's as far as the conversation went, we didn't, we didn't get into any specifics, I didn't have any specifics to offer them for alternate use of these funds.

**MR. CHAIRMAN:** Yeah.

**MR. FEENEY:** The concern was that its specific for a vegetative berm. There's a similar offer from FEMA for only 27 properties that was mentioned earlier and there's been very little interest from the upland property owners in that. so, the concern from the staff's point of view

was assuming the experience there would be common throughout that there might not be very much interest in this vegetative berm offer from the state, in that in conjunction with the prospects of a beach restoration project, the money may be better used, in terms of the vegetation offer that is standing to upland property owners, with the beach restoration project, and funding that component. But I didn't have any more specifics to, you know to discuss with them.

**COUNCILMAN:** These are specifically for beach front residents requesting...

**MR. FEENEY:** Exactly.

**COUNCILMAN:** ...those funds for that purpose.

**MR. FEENEY:** Exactly, no intention other than if an upland property owner expresses the desire to utilize this.

**COUNCILMAN:** What would happen to that money should we not avail ourselves of it? I mean except...

**MR. FEENEY:** Well in the words of the folks from the DEP, if the town has no intent or doesn't use it, it would go to some other community for a similar type project. Its an emergency offer from the state based on their assessment of our town.

**COUNCILMAN:** But can we dictate conditions, if we accept this grant?

**MR. FEENEY:** I don't see why not, they seemed very open to

that.

**COUNCILMAN:** You know specific to beach front property owners only.

**MR. CHAIRMAN:** (Inaudible.) Okay.

**MR. REYNOLDS:** I want council to know that I did call Matt about this and I was very jubilant when I first read it, as I think most of you were, until you read the fine print and then zeroed in on the title. I thought, hey this is great, we're getting extra help with our refurbishing of the beach, but its not, its strictly dune, and our narrow beach hasn't been very popular with the residents to have these dunes put out on the beach, because the beach is so narrow all the way you know up and down. I would hate to pay...I would hate to tie something like this up, needlessly, I just don't see how we can use it, and that's terrible I have to say that, because you don't just turn around and give \$890,000.00 back to the state on something, but what are we going to do with it? And that's a serious question, and as Matt as you had indicated, there's not really a lot of people running to want to do these things. If we could get part of that perhaps, like \$100,000 or \$200,000 and then put our share in on that, then those folks who are wanting to do it, I'm sure that would probably be enough to cover any dunes that they would want to put in. But if you, if we say go ahead and take this, we put up \$89,000 of

our money, to guarantee it, then after a certain amount of time, likely I don't see how you can keep from having to give it back.

**MR. FEENEY:** Well the indication was not that it was a, a...I mean \$890,000 is the cap amount, its on a 10% basis, so if the town indicated to the state that they wished to use this, these funds and then in fact did not expend or did not have a need to expend the full \$890,000, it would be based on a 10% return.

**MR. REYNOLDS:** Okay.

**MR. FEENEY:** So you wouldn't be out the full 10% of \$890,000.

**MR. REYNOLDS:** I guess what I'm asking is, is it possible that we could get \$200,000, do you have any idea on that.

**TOWN MANAGER:** Matt, it's a draw, so I mean we would only be drawing as much as we would have use for, and then we only have to pay 10% of that.

**MR. REYNOLDS:** I believe I understand that.

**TOWN MANAGER:** Well then, then your question didn't make sense.

**MR. REYNOLDS:** And then, well it made sense to me, I just didn't want to bring the whole \$900,000, approximately to us and knowing we can't use it, and then turn around a year later and have to send it back.

**MR. FEENEY:** Well I would, the only thing...I am sure

that you could reduce that amount of the draw or the potential draw, I would caution you that these funds have not been...I mean it hasn't... This vegetative berm has not been directly offered to the folks, you know obviously because council hasn't approved, so we don't know exactly what that monetary requirement would be.

**MR. REYNOLDS:** Okay let me ask you a simple question with a simple, I hope you can give me a simple answer. What would be your recommended recommendation?

**MR. FEENEY:** I would recommend to approve this and then determine you know whether we want to pursue a vegetative berm or whether we want to see if we can use a portion of that in conjunction with the beach restoration project.

**MR. REYNOLDS:** Okay just to clear this up for anyone who is still wondering. It is not required, that has been sold to us for several years, for, for front, gulf front residents to have dunes.

**MR. FEENEY:** That's correct.

**MR. REYNOLDS:** Okay, with that in mind, if that, if you feel we should have it, and as the town manager has said a draw, I could go along with that.

**MR. CHAIRMAN:** Go ahead Ken.

**MR. KATCKO:** Yeah I guess my only concerns were that if we accepted this offer to use \$890,000.00 that when this expires on July 1<sup>st</sup>, 2006, if we don't use it at all,

obviously we don't pay our 10% share, and that there's not going to be any cost to the town in the event that no property owners come to us and ask to have these funds, correct?

**MR. FEENEY:** That's correct.

**MR. KATCKO:** Okay my second thing is how would we implement this, would we be going to all beach front property owners and asking them hey would you like to have free dune plantings in front of your property? I mean basically that's what...

**MR. FEENEY:** Essentially, yes, within the, within the project boundaries there, you know its not for the entire length of the island, its within essentially the beach restoration area. You can offer, you can offer the vegetative berm, I have designed a plan actually very similar to the FEMA emergency protective berm and solicit information, find out if anybody who is interested.

**MR. KATCKO:** So for anybody who is concerned because this is called you know a dune restoration project grant, there's no way that they're going to be forced to put dunes in, this is totally voluntarily, and they would have to ask for funds to have these installed.

**MR. FEENEY:** And then the second component to that, and that's I guess why I mentioned the flexibility is if you had little or no interest or \$200,000.00 worth of interest,

the state had indicated that maybe those additional funds that are remaining could be used for the vegetative offer in conjunction with beach restoration, should the town proceed. That way you'd be able to provide that on a voluntary basis again, with little or no cost to the town.

**MR. CHAIRMAN:** Okay no, everybody gets to speak and then we'll go back, go ahead.

**COUNCILMAN:** That's it.

**MR. CHAIRMAN:** You know I think this, unfortunately, I got an E-mail just before I came down here, from a citizen saying here we are trying to be devious and dishonest and whatever, and, and we're not doing any of those things. We have a chance here to get \$890,000.00 worth of money, if we find a need for it, but we need to tell them now that we're interested. If in fact we use ten bucks, we give them a dollar. That's what it amounts to, I mean that's, we'd have to put a dollar in. We're not saying that we're going to use this for any specific purpose and they have said, as I understand it, from Matt's presentation, that they, they may be a little more giving than what they say in the documentation to start with. But we need to say simply that yeah, if we find a need for it, we'll dig into this taxpayer's money, which we pay, if we don't, we don't have any cost at all. That's pretty simple to me.

**MR. FEENEY:** Yeah, its, I mean...staff is well aware that

it, particularly in the climate with dune plantings, that this clouds the beach restoration project that this may appear something more than it is. Essentially its an offer from the State Department of Environmental Protection, based on their assessment. If we choose to use it, its available.

**FEMALE:** Mr. Mayor, I just wanted to comment, after Hurricane Charlie we went out looking for you know all dollars that were available for rehabilitation projects. So I mean they, this is you know the result of work that Matt did and that's why they're offering these dollars, so its not you know like they just came you know and knocked on our door and say you know would you like to have \$800,000. (Laughter.)

**MR. CHAIRMAN:** Okay and before we spend a penny, it comes back to council anyway doesn't it?

**MR. FEENEY:** Yes.

**MR. KATCKO:** All I wanted to say was I want to clarify that motion that this is not mandatory dunes, I want that in there, because we are not forcing anybody to put these dunes in. If you want dunes, fine then we have a way that we can help you, or that we can pay for it, and then we put the restrictions in there to also let them know that we are not trying to shove anything down anybody's throat. So with that, I'm very satisfied.

**TOWN MANAGER:** The seconder would have to agree with that motion, with the amendment to the motion.

**MR. CHAIRMAN:** Do you agree with that?

**COUNCILMAN:** Was that an amendment?

**TOWN MANAGER:** I think you did.

**MR. KATCKO:** Well I just want to make sure that people know that we're not forcing anyone to put dunes in.

**MR. CHAIRMAN:** Okay.

**TOWN MANAGER:** I think was an amendment.

**MR. CHAIRMAN:** I seconded the motion I think didn't I?

**COUNCILMAN:** Yes you did.

**MR. CHAIRMAN:** Okay well I'll certainly accept that, I understood that before but maybe I...

**MR. KATCKO:** Well I did too and it sounded like it wasn't coming through so.

**MR. CHAIRMAN:** I was going to see if I could get us all...no I better not do that, anyways, okay.

**COUNCILMAN:** I have another comment.

**MR. CHAIRMAN:** Yeah.

**COUNCILMAN:** Yeah Matt you know you kind of lead me to believe that that word flexible means just that, that it, it...could this money conceivable go to the beach re-nourishment project?

**MR. FEENEY:** I did not ask in terms of how, the only question I asked them with...because there was a vegetative

component to it, and that offer has been out there with the beach restoration project, that should people choose vegetation, it would be at no cost to them in conjunction with the beach restoration project. I asked them for example would you be willing to consider these funds being applicable to that offer? That's all.

**COUNCILMAN:** Mm-hmm (yes).

**MR. FEENEY:** There has been no indication that they could be used as a direct monetary match, and quite frankly I would, would doubt that that would be the case, since the state already has a monetary match of those type projects. I don't see why that this money would...but I didn't ask that direct question.

**MR. REYNOLDS:** You know I find it very difficult...

**MR. FEENEY:** I would find it very hard to believe that they would do that.

**MR. REYNOLDS:** Yeah, well you know I find it very difficult myself to refuse \$890,000.00, but I thought if we could attach one or two stipulations to that to better understand where that money could and couldn't be spent, that would be helpful. But I you know I want to see that money come to the town.

**MR. CHAIRMAN:** Any other questions? Okay no other comments, I call the question. All in favor of the motion, signify by saying aye. (AYE.) Opposed? Motion carried

unanimously. Next item on the agenda, Gerald Murphy is going to speak about transportation enhancement and mitigation projects.

**MR. MURPHY:** Thank you Mr. Mayor, for the record, Jerry Murphy, this is the next logical step in what basically began when the beach area resort in Mainland \_\_\_\_ County was approved. The, the idea was to look at alternatives for mitigation of the transportation impacts for projects in un-incorporated Lee County that would directly effect the beach. We have received a proposal based on the direction that I received in April, to work with the county's consultant and the proposals in your packet, and we're just looking for some direction to carry that forward, during the course of the break. The first phase that we would be pursuing would be the brainstorming section, after that would be completed, we would be bringing that back to council to let you know what the experts have advised, in terms of how we would go forward.

**TOWN MANAGER:** And, and this project was briefly discussed at the TMA and they were very, they're very supportive. This is one of the items that's on their list.

**COUNCILMAN:** I would move that we move it forward.

**MR. CHAIRMAN:** Okay I've got a motion, do I have a second? I'll second the motion for discussion. Howard.

**MR. RYNEARSON:** Mr. Mayor if I could, it has a price tag of

\$100,000.00, is that right Jerry?

**MR. MURPHY:** Yes sir.

**MR. RYNEARSON:** And that would be recouped probably through the fees would we collect to the...

**MR. MURPHY:** Not only might it be recouped through those fees, but actually I think that, and I'm, this is one of the questions I'm going to ask during the summer is I think that we could actually fund it through impact fees for transportation as they currently exist on the books. Because this would be a capacity enhancement and so it would be, it would qualify that funding, as I understand it.

**TOWN MANAGER:** And we're only, we're only looking for phase one.

**MR. CHAIRMAN:** You're not on.

**TOWN MANAGER:** I'm sorry we're only looking at phase one right now.

**MR. RYNEARSON:** That's \$37,000?

**MR. MURPHY:** No its 15 and change.

**TOWN MANAGER:** No, \$15,000.

**MR. RYNEARSON:** Oh just for brainstorming?

**TOWN MANAGER:** Yeah.

**MR. MURPHY:** Yes sir.

**TOWN MANAGER:** So we can find out if we have something to bring back, you know something that we think might work,

and of course you need to understand on this, we have to basically come up with the, the plan and then take it to Lee County, because Lee County is going to have to adopt it as part of their road impact fee, because we're looking at properties off the island, so that, that's a really important part of this. I mean whatever we come...we have to come up with it but Lee County has to ultimately agree to it.

**MR. RYNEARSON:** Lee, Lee County has their own impact fee schedule, I think we saw that.

**MR. MURPHY:** Correct.

**TOWN MANAGER:** Yes but...

**MR. RYNEARSON:** And there's, there's no way we could work that in and save ourselves?

**MR. MURPHY:** None of that money comes to us.

**TOWN MANAGER:** And there's no transit component, you know we're looking for a way...the traditional impact fees address...you know if you have a problem, then you widen the road. That doesn't help us, so we have to look at other ways you know to deal with our traffic and we have to find funding for it. so this would be dealing with projects like Beachway and other, other projects that are developing around us, to try and find a way that they could be assessed, to help us pay for things we have to do to try and deal with that added congestion.

**COUNCILMAN:** Yeah I, I was encouraged by the Beachway settlement that Jerry and them came up with, but you know and I look further and I see \$175.00 an hour for these consultants, average \$175.00 an hour.

**MR. MURPHY:** And that's over and above what they've listed, the prices that they've quoted in the main schedule is not to be exceeded and anything over and above that would come back to Town Council.

**MR. RYNEARSON:** Okay, no more questions.

**COUNCILMAN:** I have a question, Jerry just to be sure I understand that last statement, these hourly rates are included in this \$98,000?

**MR. MURPHY:** Yes sir.

**MR. REYNOLDS:** Okay and phase one is \$37,000 plus, and it was indicated...

**MR. MURPHY:** I think that's phase two.

**MR. REYNOLDS:** I'm sorry.

**MR. MURPHY:** I believe that's phase two.

**TOWN MANAGER:** Phase one is \$15,390.00.

**MR. REYNOLDS:** Oh you called the brainstorming session, you're just saying that. I hope that we will not go farther than brainstorming. I read this material through and it seems to me they were appealing to larger cities here, with...they don't give... This appointing thing here, they don't give, or I didn't see it, the population

of any of these towns that they have operated in.

**MR. MURPHY:** Well I would say for the most part most of them are larger than Fort Myers Beach.

**MR. REYNOLDS:** Well yeah.

**MR. MURPHY:** You know we're breaking new ground with this type of study, I think its something certainly that has not been done anywhere in Florida before, but its something we have to do out of self defense.

**MR. REYNOLDS:** Well I don't mind breaking new ground but we are a small place, and I'm wondering where they're going to get all of these impact fees. Can you name some of them?

**MR. MURPHY:** Well the idea would be, the idea would be that projects in un-incorporated Lee County that are going to have direct impacts to the beach, would actually facilitate the mitigation of those impacts. In other words, they would pay for their impacts to the beach.

**MR. REYNOLDS:** On the approval of the county.

**MR. MURPHY:** Yes, the county would have to adopt whatever mitigation measure is ultimately, ultimately comes out of this process.

**MR. REYNOLDS:** It sounds to me like we're doing a lot of wishful thinking here.

**MR. MURPHY:** Well I think you know if we don't have any wishful thinking at all, we're just basically you know, we have nothing.

**COUNCILMAN:** Our wishful thinking has already gave us twenty grand.

**MR. MURPHY:** Well that's true.

**COUNCILMAN:** So I think its very wishful.

**MR. MURPHY:** A year.

**COUNCILMAN:** Yes.

**MR. REYNOLDS:** Have you consulted with anyone in the county to see the possibility of their cooperation in something like this?

**MR. MURPHY:** Yes we've had initial conversations with Maine(?) County staff and they're willing to cooperate.

**MR. REYNOLDS:** I see, I don't...the only, my whole back(?) here is, is if you go into tack fund, just a brainstorming session alone, I know what's going to happen, or I think I can pretty well envision what's going to happen in the future, we're going to go into this other. I simply do not see enough properties that we're going to be able to have impact fees that its going to benefit the beach.

**MR. MURPHY:** Well and that would be what the brainstorming session would be, would accomplish, would be to quantify what it is we're looking at and whether or not its feasible. After that point, we would come back to Town Council in the fall and say you know here's what we've come out with, do you want us to pursue it?

**MR. REYNOLDS:** And whose going to hear the ruling, the

brainstorming, excuse me I didn't mean to cut you off.

**MR. MURPHY:** No that's all right.

**MR. REYNOLDS:** Who is going to hear the brainstorming, who is going to participate in that?

**MR. MURPHY:** That would be town staff and the consultants.

**MR. REYNOLDS:** But not Town Council.

**MR. MURPHY:** Well no you would be on break, but whoever came out of that would come back to Town Council and for that matter to the TMA.

**MR. REYNOLDS:** I think something this important should be brought before council and I certainly cannot go along with such a program.

**MR. MURPHY:** Well again not to be argumentative, or I hope I'm not being confusing. Whatever came out of that brainstorming session, and there probably will be multiple options, those options would be brought back to Town Council for additional direction and before we would go on the phase two or phase three, we would be directed by Town Council to do that. We may not be able to come up with something, I mean again, we're trying something very new, and if we weren't, you know we would tell you that too.

**MR. REYNOLDS:** Well if, if council had a chance to meet with these folks, Mr. Murphy, I would like to see the first step, the first task, I'd like to see that. But if its going...if council is not going to be a party to that, then

I don't believe that we should become a party to any of it, so I'd have to go no on that.

**MR. CHAIRMAN:** Any other discussion? If not, I'm going to call the question, and as I understand it, the motion is that we go along with task one, is that right?

**COUNCILMAN:** Yeah.

**MR. CHAIRMAN:** Any other discussion? That's going to allow an expenditure of \$15,390.00.

**COUNCILMAN:** Is that the only thing we're discussing right now?

**MR. CHAIRMAN:** That's the only thing we're going for right now, and then it will come back to Town Council. Any other discussion? Seeing none, I'll call the question. All in favor of the motion, signify by saying aye. (AYE.)  
Opposed?

**MR. REYNOLDS:** No.

**MR. CHAIRMAN:** Motion carries four to one.

**COUNCILMAN:** Aye, you didn't give me a chance to say it.

**MR. CHAIRMAN:** You've got to be a little quicker down there. (Laughter.) The next item on the agenda is the draft budget and the adoption of the tentative millage rate. I'm going to open this to any discussion that we feel we need, but the only thing that we really need to do is set the tentative millage rate for the year 2005-2006.

**COUNCILMAN:** Mr. Chairman.

**COUNCILMAN:** I would make a motion that we move this to pub, or next, or first public hearing at set it at .85.

**MR. CHAIRMAN:** We've got a motion, I'll second that motion. I've got a motion and a second, discussion?

**COUNCILMAN:** Leave it at the present rate.

**COUNCILMAN:** To move it ahead yes.

**MR. CHAIRMAN:** Now what happens, just as an explanation what happens is, and its explained to you, this means that we can't go more than that millage rate.

**COUNCILMAN:** That's right.

**MR. CHAIRMAN:** And that's our present millage rate. It doesn't mean we can't lower the millage rate.

**COUNCILMAN:** We can come down but we can't go up.

**PARTICIPANT:** There is a process to go, I'm sorry, there is a process that would allow you to go higher than that, but its very involved and involves direct mailing to all residents. I just wanted to be clear.

**MR. CHAIRMAN:** Don't even tell us that.

**PARTICIPANT:** I just wanted to be clear about that.

**COUNCILMAN:** Too much information.

**COUNCILMAN:** Don't go there.

**MR. CHAIRMAN:** Okay any other discussion? All in favor of the motion, signify by saying aye. (AYE.) Opposed like sign? Motion carried unanimously. The next item on the agenda, I'm on the second page, third page, is a

presentation by, whose doing this Damon? This is the maintenance department staffing needs.

**MR. GRANT:** Good afternoon, Mr. Mayor and councilmen, Damon Grant for the record. I'm here today to provide back up information requested by council a few months ago, at its April 12<sup>th</sup> meeting, and follow up on my original request for additional maintenance staffing. As you may recall from my previous request, I asked for an additional maintenance worker position and for council's approval to create a more supervisory role for one of our current crew leaders, John Scott. All of this in an effort to better be able to allocate our human resources department within the maintenance.

This request came with the knowledge that several new maintenance responsibilities will fall on this department in the very near future, including the Newton Park property, the maintenance and garbage responsibilities associated with the trolley stops, sidewalk and roadway sweeping, as well as maintenance assistance to water distribution facilities, just to name a few. At the conclusion of my previous request, council had asked for an outline or a list of the maintenance department's daily activities and I have provided that in an attachment to you, as well as the supervisory roles and responsibilities,

as well. The second attachment to my memo that was presented to you for today's discussion outlines some of the cost benefits associated with bringing the maintenance department in house, and again, that was at the council's request from that April 12<sup>th</sup> meeting.

In addition to responding to council's request, the memo provided to you for today's discussion discusses the ability to add two maintenance positions, dedicated to the beach and beach shoreline and beach accesses, and paid through our TDC budget, really at no expense to the town. As well as the ability to budget significantly, one position through CRA/DRA funds, with little to no again significant monetary burden to the general fund. And that is the request that I'm asking you for today, two maintenance positions that would be budgeted through TDC's funds and then one that would be budgeted through the CRA/DRA fund.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** I would make a motion that we accept staff's recommendation for three positions, two of them being funded through TDC and the other one through CRA/DRA. I think that's a great initiative you've taken there. We're ending up with people that we're not even having to pay for, so I think that's great. That would be my motion.

**MR. CHAIRMAN:** I have a motion, do I have a second?

**MR. RYNEARSON:** Second for discussion.

**MR. CHAIRMAN:** I have a motion and a second, discussion?

**MR. RYNEARSON:** Just a question if I could Damon, these are funded not out of the general fund?

**MR. GRANT:** Correct the TDC...

**MR. RYNEARSON:** And so what would happen to benefit packages and that sort of thing, they get their own?

**MR. GRANT:** I don't know if I understand the question.

**TOWN MANAGER:** No they would be employees, but the price of their benefit package would, the TDC would be paying the whole amount, and the same thing with the CRA, so the whole package, per employee, would be paid out of those funds. No impact to the general fund.

**MR. RYNEARSON:** That was my question okay.

**COUNCILMAN:** Chairman, Damon, I see our staff increasing so rapidly that pretty soon our funds are going to be staff and staff hospitalization and the health, general health plans. I think, I recall that you were going to do an analysis of the cost of personnel that we had that came in from the town, you were going to do an in house cost versus a, a, well actually you were going to do the out sourcing cost of 2003 I guess it would be now, and then you were going to do, give us how you thought... You had already told us about what was coming out on 2004, I didn't get anything on that. You didn't, actually you didn't know if

you had it but the manager said that you had it and that you'd give us a copy, well I haven't, I don't believe any of us received a copy.

**MR. CHAIRMAN:** Is that what...

**MR. GRANT:** Yes there should be a spreadsheet that did compares 2003's, the last known out sourcing for maintenance, that was compared to our maintenance expenses for this past full year, and again those were... There are several different segments of how we can make those comparisons. I did what was obviously, well what was currently quantifiable, which would include Times Square, Elton(?) Carlos and some of the other.

**MR. REYNOLDS:** Who did you give this to?

**MR. GRANT:** It should be in your packet, it may be on the back of one of your pages.

**COUNCILMAN:** Its on the back of...

**MR. CHAIRMAN:** It's the third sheet.

**MR. REYNOLDS:** Of this package?

**MR. CHAIRMAN:** Right there.

**MR. REYNOLDS:** Okay, I, I, I over looked that. I thank you for doing that, I missed that for somehow, I've only got one part here I looked at it and forgot about it. So I, at any rate, I have really strong reservations about increasing three positions. We already had one.

**MR. GRANT:** Just let me add one thing with the TDC fund, we

have \$135,000 that came in for this past year. That was what TDC budgeted for us to do the maintenance beach access and the maintenance beach access is in the beaches and shorelines, \$135,000. Of that, we spent \$89,000.00, \$42,000.00 of that was for actual labor hours, the other \$46,000 was for actual equipment and materials. That left, so say roughly \$90,000, we have \$45,000.00 still in that budget that was untouched, and we also have a demand for more maintenance on the beach and beach accesses, and because we're only operating two/three man crews, its difficult to spend more time on the beach accesses or the time that's needed to adequately provide the maintenance to the beach and beach access, because we're running out to do other maintenance responsibilities. The second half of that is if we don't increase the budget, if we don't increase it up to 135, in the next couple of years, I would imagine that TDC is going to see that we're coming in at \$85-90,000, they're going to reduce our budget to that amount.

**MR. REYNOLDS:** Okay.

**MR. GRANT:** I'd like to take advantage of those budget dollars, and I think we need to take advantage of it, or we're going to lose it. We'll still have to pay into the TDC, those moneys will just go elsewhere to one of the other municipalities, it won't come back to us.

**MR. REYNOLDS:** Okay that was my next question, what's the outlook for the future, of continuing this support?

**MR. GRANT:** Okay well I think if we can put together two maintenance spots, funded through TDC, which we, you can tell from the budget that I put in, in the letter, we obviously have room to do that, and what its going to do is free up our current maintenance personnel to do the additional work that I listed also in your memo. We have a lot of maintenance requirements and responsibilities that are coming down the pike to us and the only, and one of... I think a very, a very good way to accommodate those is to take advantage of the money that's available to us through the TDC budget, and free us up to the other maintenance crews, it fees them up to go ahead and do that work.

**MR. REYNOLDS:** Okay, now with these three extra positions, do you think maybe that we will have some plantings that will seem to come along the public accesses, because some of them got wiped out in the storms and I don't think anyone has every looked at them.

**MR. GRANT:** I get those requests issues and I've...  
(Talking together.)

**MR. REYNOLDS:** \_\_\_ \_ \_\_\_ with that situation.

**MR. GRANT:** Right, and I've got your request too, there's several things on the beach accesses and the beach, especially South Island, that when we can't make it all the

way down there to pick up the debris, to make sure that the maintenance is kept up, this will allow us to do that, yes.

**MR. REYNOLDS:** Okay, I appreciate your explanation very much and I thank you for doing a good job and especially with this. I understand it much better now, thank you.

**MR. GRANT:** Thank you.

**MR. CHAIRMAN:** Okay we had a motion and a second, do we have any further discussion from down there on the end?

**COUNCILMAN:** Sure why not?

**MR. CHAIRMAN:** Okay lets go.

**MR. KATCKO:** (Laughter.) I had a couple of questions, first of all, I'd like to you know point out that you've done an excellent job with the in house maintenance and I don't know if anybody has mentioned that the town has saved almost \$76,000.00 by brining this in house, so that's very significant. You also explained the TDC funds for me and I believe I asked you earlier that TDC money, once we get these employees, that TDC money is not going to run out at any time in the future. I mean we're going to keep continuing to get this money, because I mean these are not short term employees, so to insure that the town does not end up paying for them, we're certain that the TDC is going to be giving us those funds for a very long time, correct?

**MR. GRANT:** That is correct.

**MR. KATCKO:** Okay.

**MR. GRANT:** And I did speak briefly with TDC and I did tell them about a designated maintenance crew to the beach and actually they believe it to be a good idea.

**MR. KATCKO:** Okay my only other question was with regard to the maintenance person paid for out of CRA or DRA. That will be funded through the \$2 million that the county gave us, in a lump sum.

**TOWN MANAGER:** No.

**MR. KATCKO:** Is that correct?

**TOWN MANAGER:** No, we collect every year, there's a TIFF from the town that's based on those properties in that district, so that's a continuing some of money that is set aside every year and in fact, its increasing as those properties are increasing in value.

**MR. KATCKO:** And that is not collected from residents or business owners?

**TOWN MANAGER:** No its only, its only in the downtown district, yes.

**MR. KATCKO:** Thank you.

**MR. MASSUCCO:** While we have Damon, there's that bothers me very much and that's the repeated use of garbage of that \_\_\_\_\_. (Laughter.) I would like to strike that from any future correspondence, replace it with trash. Garbage is a very repugnant word to me, we don't pick up garbage off the beach, we pick up trash.

MR. GRANT: Okay.

MR. MASSUCCO: Could we do that?

TOWN MANAGER: Sure.

MR. MASSUCCO: Just strike that from there.

MR. GRANT: I thought you were going to say you don't want use garbage anymore, because I know you took a ride with the maintenance guys.

MR. MASSUCCO: Yeah.

MR. GRANT: And I thought maybe you had a, a new found respect for that, but okay, yes.

MR. CHAIRMAN: I was going to tell you that sounded like garbage but to comply, I'm going to say that sounded like trash.

MR. MASSUCCO: It sounds better doesn't it?

MR. CHAIRMAN: I don't know, anyways, okay we have a motion and we have a second to that motion, we've had a lot of discussion. All in favor of the motion, signify by saying aye. (AYE.) Motion carries unanimously. The next item on the agenda, Mr. Spakowski has come to see us.

COUNCILMAN: That will cost us. (Laughter.)

TOWN MANAGER: He, he has the next two items.

MR. SPAKOWSKI: Mr. Mayor, members of the council, Bill Spakowski planning consultant of the town, thank you. At our shorette(?) sessions back in March and April, we developed an idea of building a new street from Crescent to

the foot of the bridge, and we showed it as being an, an addition two way street that would run parallel to Estero Boulevard and would provide relief for that congested stretch. Since that time though, in the discussions with the TMA and LPA and town staff, we realized that that same alignment actually could be used a number of different ways, other than that way. It could be part of a one way pair with both of those new lanes going off the island and existing lanes coming on the island. Or it could be used to open a portion of Estero Boulevard as a pedestrian mall, with no traffic at all or to make it a primarily pedestrian way that would also allow public transit vehicles, trams.

In the memo I provided to you, I've actually shown drawings of all four possibilities, and I'm sure there are a couple of additional ones as well. Many of the ideas we talk about for traffic are things that we don't really have to do too much on until we decide to actually try them. This is one though that the town needs to...if you want to keep the option open of acquiring and building this new street, regardless of which of these four or other alternatives you might choose to use it with, the town does need to move ahead with preliminary engineering and determine the exact location of the street, how it would intersect with the foot of the bridge and at the same time, determine what

additional right of way might be needed on Crescent Street or Estero Boulevard, which are both extremely narrow rights of way. An additional right of way either for the pedestrian median or for tram stops, for sidewalks, etc., and as well as the additional possibility of the beach park.

These are things that the town needs to invest some money on. I think the TMA used the term gamble on determining exactly how this would work best for the town. The ability to actually acquire that depends on those alignments and right of way decisions, working with the land owners' plans, or hopefully having the land owner design his plans around them. If we do nothing, we will then be in the position only of reacting to the land owner's redevelopment plans, which I can't imagine them being as interested in our larger traffic goals, and our larger pedestrian goals, as we would be if we did the work ourselves.

Because you're taking a break for a couple of months, and time is definitely of the essence, I don't think this is something that can wait a couple of months to get started, and I suggest to you that you authorize the preliminary engineering work to determine the right of way widths for those items, so that work can be underway while you're on

break or while the planning for that parcel is still in the fluid stage that its at right now.

Last week, the LPA and the TMA both discussed this in fairly lengthy discussions about you know the pros and cons of the different alternatives, as well as some additional possible alternatives. But both of those bodies did vote unanimously, to recommend that the town go ahead with this preliminary engineering work, to keep the options available to the town.

**COUNCILMAN:** Mr. Chairman, I would move that we go ahead and give them direction to continue on through our break, to get the preliminary engineering ready and done.

**COUNCILMAN:** I'll second.

**MR. CHAIRMAN:** I have a motion and a second, discussion?

**MR. REYNOLDS:** How can you do that without coming up with an option, you want to recommend an option don't you?

**MR. SPAKOWSKI:** No, no sir actually I don't and the good part of the, one of the good parts about this is even if you, if this goes ahead and you choose one of the options, you're not foreclosed from going back and trying the others later, should it be more advantageous. Basically, all four of those would use the same right of way for the new street. Three of them would use the roundabout and one

would not, so you still have that option. But actually I'm not recommending that you choose an option, I don't think you need to, I think it really requires a little more thought on everybody's part, before we do that.

**MR. REYNOLDS:** Why would they agree to put a street through the center of their property? Are they, are they having plans or are they planning a good sized garage there?

**MR. SPAKOWSKI:** Yes they would be planning a good sized parking garage and the reason the location, the exact location of the street, is so important is it would divide the Sea Farer's and Helmerk(?) Parcel in half. And in order to build the garage on now half the block, its very critical that that block be large enough to build the garage completely inside the building, so from all the way around you see regular doors and windows, building space, and the garage be hidden. So if this new street is a little bit too far south, then the property is not viable for redevelopment. It needs to be far enough north so that the property is not damaged but we'd like it as far south as we can, can so that it's the most direct route.

**MR. REYNOLDS:** How many spaces are you going to shoot it for, 300?

**MR. SPAKOWSKI:** It could be somewhere between three and five hundred and we've talked with the developer about it, the town would require, I believe its 300 spaces. That's

what we require, the town codes don't prohibit a land owner from building more spaces than the minimum. Mr. Myers has discussed putting the garage as a valet park type situation, rather than self park, so that he can get more vehicles in the same size garage. He feels with the hotel he's planning, that that would be more advantageous to him, so he'd want to provide valet parking anyway for his customers. So the number, the number of spaces depends really on whether its self park or valet park.

**MR. REYNOLDS:** Have you had a, a traffic engineer give you an estimate of all of the increasing congestion for the bridge, if we put space in there for three to five hundred cars?

**MR. SPAKOWSKI:** The development that we're talking about on that site, would be the development that's already approved, which was a combination of rebuilding the beach front motels and the development that's already been approved for Sea Farer's and Helmerk, through the agreement that we have with Mr. Weebley(?), so we're not looking at an increase. As far as the effects of congestion, Mr. Hall has come back to the TMA, after his earlier sessions and analyzed the traffic characteristics with two of these four alternatives. He is going to be doing, analyzing three more alternatives besides those and coming back to the TMA, hopefully in July with his results, which basically shows

how these, these four with a couple of variations will perform, and some perform better and some perform worse in the simulation with the traffic model.

**MR. REYNOLDS:** Could you...do you have any idea when those were approved, I don't remember those, they certainly had to come before this council, those plans that have been approved, when were those approved, because we're talking about something here that we don't even, I don't know anything about, I don't know maybe everybody else does.

**MR. SPAKOWSKI:** There are two parts, the Sea Farer's development agreement was approved, I think about three or four years ago and it has a life of ten years and its assignable to future land owners, so even though Mr. Weebey no longer controls the property, it, it you know whoever he sells that to has the rights, and responsibilities under that agreement. So that part of its been approved, that will have to be modified, for all of this to go ahead, because that was approved with some contingencies, including dealing with parking. The valet parking method would solve, would I believe meet the town's criteria, but that would have to be modified with the different arrangement of the buildings, and including moving some of the units from the beach side, to be built around the garage, to accommodate a donation of the beach park. So that development agreement would come back to you, it would

have to be approved by you and by the land owner for this to go ahead in full.

**MR. REYNOLDS:** You painted a, you paint a really dim, a dim picture for us.

**MR. SPAKOWSKI:** A dim picture, I'm sorry?

**MR. REYNOLDS:** Yes, with all of this development that you're talking about and we, see we haven't been able to get into that part of it, we haven't heard of it.

**MR. SPAKOWSKI:** You approved the development agreement, now the rest, the rest of the property I didn't finish my answer, I'm sorry. The beach front property, the Days Inn, Ramada property would be rebuilt on a square foot per square foot base, basis, so you haven't see that yet, but I assure you, you will. I mean it will be coming to you either as, you know in a couple of different formats, but that will come to you. And we're not proposing in this to increase the amount of development rights that are on that property, we're just talking about arranging them differently, so its not going to increase the potential.

**MR. REYNOLDS:** Well you see the problem that all of us on the council should have is to know exactly what is approved there already. Maybe some of the folks here do, I do not. I member that I voted against a whole bunch of things at that time, when Mr. Weebly was coming here wanting this and what he had to do to make his property work and all of

this stuff and all that, and where's Mr. Weebly today, whose got the problems today?

**COUNCILMAN:** Mr. Chairman point of order.

**MR. CHAIRMAN:** I agree with you, I mean we're getting way off the...

**MR. REYNOLDS:** Well we may be getting off, but its hard to approve a circulation pattern of traffic without knowing what...

**MR. CHAIRMAN:** We're not approving anything.

**TOWN MANAGER:** We're not approving.

**MR. CHAIRMAN:** We're not approving anything.

**COUNCILMAN:** I would have to call a motion.

**MR. REYNOLDS:** Well we're not voting to make it in concrete, but we are approving a direction. That's my understanding.

**MR. KATCKO:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**MR. KATCKO:** I'd just like to point out that what this is...we are not looking at any specific options right now, as far specific traffic patterns, all we want to do is identify easements and right of ways, in the event that we pick a certain traffic option, yet to be determined. Now as far as a parking garage, I think what Mr. Spakowski is saying is probably going to make people scared because council has not approved a parking garage there. There are other options available, there's a realignment of Estero

Boulevard, where a beach front park would be put in, you know these are all things, possibilities that could come up in the future. So I don't want people to think that there's a big development coming and we're voting on trying to figure out how to do these traffic circulation problems. This is just a preliminary report on what right of ways are available so that we can decide the future traffic patterns in the downtown area, which would benefit our residents.

**TOWN MANAGER:** And, and if I could just add something, this is about exiting the island, and there has been criticism that no one is working fast enough on finding ways for our residents to exit the island and do it as quickly as possible. And the common road that Bill has been talking about is the road that is common to all the design and it all has the prime, it would have one of its primary characteristics is to offer, you know that exit you know for the folks on the island.

**MR. REYNOLDS:** Mr. Chairman, Ken stated something opposing what Mr. Spakowski and I'd like him to confirm this. I understood you to say that the garage was approved and Ken said its not approved. I didn't know it was approved.

**MR. SPAKOWSKI:** I'm sorry, the Sea Farer's development agreement is approved and it was the...it had been proposed with the garage and the Town Council did not approve that garage because it was going to be located on the outside of

the block and you'd see it as you come over the bridge, it's the first thing you'd see.

**MR. REYNOLDS:** So the point is its not approve.

**MR. SPAKOWSKI:** So what the council did is approve the development levels but said the final phases of the project are contingent on him being able to provide the parking on the site, in a manner, in a manner that is acceptable to the Town Council.

**COUNCILMAN:** That's not what we said.

**MR. SPAKOWSKI:** I believe that's what it said.

**COUNCILMAN:** We did not approve that garage.

**MR. SPAKOWSKI:** You did not approve the garage, you approved the development level, contingent on him finding a way to provide the parking and it could be on the site in a garage that you find acceptable or it could be off site nearby. So that, that's the, that's I believe the exact wording of it.

**MR. CHAIRMAN:** Well you know...

**COUNCILMAN:** We're way off base here.

**MR. CHAIRMAN:** I know we're getting way, I'm going to, I'm going to call the question on point of order, because I think we're way off, what we're really talking about here is this little thing that says new street, and we want to add some continued study to see if that could be advantageous to us and what we're doing here is saying I

believe that we're going to allow them to do that while we're on break this summer, is that right?

**MR. SPAKOWSKI:** Exactly.

**MR. CHAIRMAN:** Doesn't that hit it?

**MR. SPAKOWSKI:** Yes.

**MR. RYNEARSON:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**MR. RYNEARSON:** There's something that bothers me about the four options and this new street is this is based on an agreement with Mr. Weeb(?), now would that stand up to litigation, that agreement?

**MR. SPAKOWSKI:** I'm sorry, the, the agreement shows buildings around the double block, so in other words, in order for us to have the street through the middle, we actually have to modify the agreement, both sides have to modify it. If he were to proceed to develop in accordance with the original agreement, we've signed it, he signed it, I don't see that anybody would have the ability to challenge the existing agreement. But this would be renegotiating that agreement, in our mutual interests.

**MR. CHAIRMAN:** And it comes back before us, I mean no matter what happens, you know I, my only comment to add to this thing would be that we made an agreement and we, we formed a Traffic Mitigation Agency and we said don't leave any stone unturned, we want to do and consider any possible

manner that we can improve traffic, traffic circulation on this island. And this is just a possibility, we're not setting anything in stone, we're saying take a closer look at that and see if there's any merit to it. I mean I already know the one that would work, except you'd have to change a couple of things. The one that works for me and that's the one that's just one way off. (Laughter.) I think Dan Hughes made that when he said we need another bridge, but it would be a one way bridge, you can leave but you can't come back on that. (Laughter.) But anyways, I, you know I, I think we need to move forward with this and let them take a look at this, and anything that happens, nothing will happen until it comes back before the Town Council for their consideration.

**COUNCILMAN:** Call a vote.

**MR. CHAIRMAN:** And these are all volunteers that are willing to take a look at this thing, well except for a couple of them.

**MR. REYNOLDS:** I'd like for Mr. Spakowski to play down the idea of this turn around, because if you'll take a...

**(END OF RECORDING TAPE #2, SIDE B.)**

**(TAPE #3, SIDE A.)**

**MR. REYNOLDS:** ...look about that, and any place a car can contact, and Wilson Miller would call it a hot spot, if you'll take a look at that, that's going to be such a

jammed up situation, such a small congested space that that nothing is going to work, not even our present situation without a three to five hundred car garage or whatever, parking the car. Its not going to work with an increase, it won't even work with what we have now, so I would hope that that would be laid down.

**MR. SPAKOWSKI:** Some of the alternatives have it, some don't, and that's what the further analysis that's underway now...

**MR. REYNOLDS:** Yeah I know, I know.

**MR. SPAKOWSKI:** ...will help everybody understand.

**MR. REYNOLDS:** Sure.

**MR. CHAIRMAN:** I think the motion is that we move this forward.

**COUNCILMAN:** Yes it is.

**MR. CHAIRMAN:** I think we've had actually we've had enough discussion, so I'm going to call the question. All in favor of that motion, signify by saying aye. (AYE.)  
Opposed?

**COUNCILMAN:** To move forward only.

**MR. CHAIRMAN:** Okay the next item on the agenda is Bill Spakowski.

**MR. SPAKOWSKI:** Again, I'm Bill Spakowski for the record.

**MR. CHAIRMAN:** I hope everybody out there in TV land is listening carefully about this.

**MR. SPAKOWSKI:** The last item was about some exciting new possibilities for the town and this is about a depressing possibility for the town. The way the flood insurance program works, the federal government designs it, they creat all of the maps and they tell every city and county in the country that if you enforce it out way, we'll offer flood insurance to all of your residents and property owners. So it's a partnership but they're in the driver's seat and we carry out their orders.

They're in the process of changing the maps that we're required to use to continue participating in the program, and basically the bottom line is it appears that in the very near future they will release maps that will require all buildings on the island to be built two feet higher in the air than they have been since this program began in 1984. As to somebody building a new house, its just a little bit extra expense, but it has two major effects that are of much greater concern, just than money. One is people who have built in conformance with the current rules will no longer be conforming with the new rules, and if they're not conforming with the new rules, you're limited, we the town have to limit people, in order for everybody else to be able to buy flood insurance, \_\_\_ \_\_\_ improving that building by more than 50% of the value of the

building. So somebody who I getting a building permit this month and building a brand new house, if they...unless teacher they go two feet higher than they have to, their building will be non-conforming.

**COUNCILMAN:** And they won't even let you do that Bill, they won't let you do that, if they're building, excuse me, I'm sorry, I'll wait until you get done, but I've run into that already.

**MR. SPAKOWSKI:** I need to hear it. The other problem is that the beach front properties have to be built a lot higher yet, and also right on the beach, you're not allowed to put commercial space at ground level in what's called the V zone or the velocity zone. And again that line is anticipated to move inland, perhaps by fifty or a couple of hundred feet, and so that has...in the residential areas, residential parts of the island, it doesn't make too much difference, but in the commercial parts, it has a huge difference. And parts of our existing Times Square development are already in the V zone, which makes it impossible for people to expand those buildings without putting them 15' in the air, and basically all of Times Square will be in that area, the way its looking, in addition to many other parts of our, commercial parts of Estero Boulevard.

So the way this works is FEMA has engineers that they use around the country to create these maps and they've been working on ours for quite some time and we have just a little bit of a sneak preview that I summarized for you. they'll be releasing these maps and the only people who can appeal the maps is city and county government, and you only have 90 days if you choose to appeal. And appealing isn't a matter of just filing a notice saying we appeal, you can only appeal based on scientific and technical grounds, and those grounds have to be stated in full at the time you appeal. Clearly, this is designed to have very few successful appeals.

This process itself has been done by consultants out of the state and its been going on for a number of years, we're just now seeing, we haven't seen the results, we're now hearing of the results. I really believe its in the town's interest to get fairly deeply involved in this in the immediate future, because by September, we probably will have the maps released and the 90 day period may begin. If we're to be in any position either to appeal those maps before they go into effect, or hopefully to have our ducks in a row enough that we may be able to negotiate with FEMA to have a less harmful outcome of the maps when they are published. We need to be knowledgeable about what they've

done, determine whether they've made any mistakes that would hurt the town and also be able to think through are there any other ways that the maps could be drawn that would meet FEMA's requirements but hurt us less. And this is a very specialized niche in the coastal engineering business, its not something that most coastal engineers do, let alone most engineers generally. But there are a dozen or two companies across the country who do this kind of work, either for FEMA or for local governments or occasionally for individual developers. I believe its in the town's interest to contract with one of those capable firms and get started immediately on getting up to speed on what FEMA is doing, so when those maps come out, whether its August, September, October, or December, we're not caught flatfooted, unprepared to make sure we do everything we can to make this work out the best.

**COUNCILMAN:** Mr. Chairman?

**MR. CHAIRMAN:** Yeah.

**COUNCILMAN:** I would make a motion that we move forward on this and, and get as much information as we can, so when we come back in September, then we can move on this with intelligent information.

**COUNCILMAN:** I second for discussion.

**MR. CHAIRMAN:** We've got a motion and second, discussion.

**COUNCILMAN:** Bill could you tell us, well not, I know you,

you don't have a positive answer, but what's the track record on these companies that you've mentioned that you know delve into these FEMA ideas? What is their track record? Could we possibly be successful in turning it around?

**MR. SPAKOWSKI:** I think we have a decent chance of making a difference, turning it around and stopping it all together, I'd say our chances are very slim, but we need the same information either way, whether we fight hard or whether we negotiate with them and try and come up with a less harmful outcome. FEMA takes a lot of grief from everybody and really they don't like to come into a community and have everybody hate them for years and so if we're, you know if we got into this trying to find a better solution, but also prepared to fight if that's what it takes, I think that's the best chance of, of succeeding. I think if we merely go in with lawyers in the end, instead of with engineers in the beginning, our chances would be very, very small. Naples and Collier County are going through this right now and they're moving into the...they've tried to work on the engineer, at the engineer level for a number of years, they did, were successful in getting some changes made but not as much as they wanted. They're now moving into the lawyer stage. Apparently, if they, if they win, it would help us, at the lawyer stage, actually it will

help us greatly. But their, Collier Commissioners and Naples Councilmen are wondering whether its even worth it at this point or whether they should just give up. So, at that...when it comes to the lawyer stage, you'll have a second kind of decision, but I think the best chance will come through the engineer and negotiate stage, which means we need to get started right away.

**MR. CHAIRMAN:** Any idea of any kinds of costs? I mean have we got any kind of idea at all?

**MR. SPAKOWSKI:** I'm suggesting we, we think it might be up to \$50,000.00. The individual studies are typically about half of that, but depending on what's the best way to go, there's a number of, of options how we do it and if you were meeting every two weeks, we could start with the low number and come back to you. But given you're not going to meet for two weeks, I think we'd like to have the approval to go up to \$50,000.00 at this stage, before you come back.

**COUNCILMAN:** Motioner would agree.

**MR. REYNOLDS:** I have a question. Mr. Spakowski, it sounds to me like we, you've got really a technical maneuver here to change the flood boundaries on an island where the levels haven't changed, the elevations haven't changed. But yet you're going to try to change FEMA's mind about readjusting the new flood line, the flood plain boundaries.

**MR. SPAKOWSKI:** Their opinion is that their original maps

didn't take into account an important factor and that the flooding actually was a little bit higher than they thought it would have been when they did this in '84 and they're...this is the same thing they're doing down in Naples, exactly the same issue. They feel their previous work was flawed and therefore they're just doing the right thing to make sure that all new buildings are elevated. The effect we have is more on existing buildings and on our commercial areas, which is just something that they its sort of say its not our problem. We're in the flood, in the business of protecting buildings from flood damage and, and we have a national band-aid to do this from congress and, and they don't really like to talk about effects that this, the negative effects it can have on communities. Obviously it can have a lot of positive ones and that's why we participate in the program. In the whole, it's a good program, but some communities get caught in a wrench like we are right now, and I think there's more than one way to draw those lines. They, they try and sort of a black box, but I, I don't believe its as much of a black box as, as they indicate. But its hard to talk with the engineers, unless you have somebody who has equal competence to know whether they're giving you the straight story or not.

**MR. KATCKO:** Mr. Chairman?

**MR. CHAIRMAN:** Yes.

**MR. KATCKO:** You know this, this issue, to me, appears to be the most serious issue before Fort Myers Beach right now. I mean this makes beach re-nourishment look like playing in the sandbox, its nothing compared to this. This could change the, the face and character of Fort Myers Beach as we know it today, if FEMA adopts this flood maps. I mean I think we should tell FEMA that we want to pull out their, pull out of their program and they can stick their map where the sun don't shine. (Laughter.)

**MR. SPAKOWSKI:** That might not work. I suggest a more gentlemanly approach.

**MR. KATCKO:** Well that's my suggestion and I'm sticking to it. (Laughter.)

**COUNCILMAN:** I'll pass that on.

**COUNCILMAN:** They'd probably be tickled to death, they'd just say okay you don't have any flood insurance folks so that's the way it is. But it's a very, very serious issue Bill and for all kinds of reasons. You know understanding that presently to build something in the V zone, you've got to be 20' above sea level, 20' above sea level. Now we're going to have to go 22' above sea level, well that's no big thing, you know its, you've already got to put an elevator in every house you build for people to be able to get up to their unit. Now take that in consideration of a pretty near miss called Charlie and a really major storm called

Donna that put three or four foot of water over this island, in most parts of the island, not all of the island. But you know what, I'm just, I'm just blown away with the idea that they say well yeah but if, if it had gone two degrees left, we would have had a 16' storm surge, you know and life is a gamble but its just, its very upsetting. And knowing that this has happened, some people that happen to be in that business, like me, I'm telling my own, I just told an owner you know maybe you better build that thing a couple foot higher than you're planning on building it, you know what they couldn't do it, unless they cut their ceiling heights down to 7', because we have a little ordinance in our town that says you can only go 25' above flood plain.

**MR. SPAKOWSKI:** You're saying because the level hasn't been raise yet.

**COUNCILMAN:** It hasn't been raised yet.

**MR. SPAKOWSKI:** But the ceiling will go up 2' to match it, oh I see, you're saying in the meantime.

**COUNCILMAN:** Yeah so right, right now, I mean this owner is saying hey I wanted, I mean they wanted 12' ceilings and they can't have them. Now its becoming a...I mean I know a man right now that's building a house with a 50' ceiling, so that may be a little high, but you know this, these things are serious issues and I just keep thinking about

you know the structures that I'm building right now that are 20'9" to the bottom of the lowest supporting member, and then the floor slab is a couple of feet above that, so its already 22', now its going to say its 24'.

**MR. SPAKOWSKI:** Well some of those buildings on the beach are actually that high because of the state rules, which are independent, and there are a number of feet higher than the FEMA rules. So it may be that the very high ones won't end up being higher, but certainly everything out of the V zone will be, everything out of the coastal construction zone will end up being higher.

**MR. CHAIRMAN:** You just, you know I just keep looking at that and thinking the highest water we've had across this island in all the years, the last 100 years and then use that as a comparison to what we're doing and then I go down to some place like Marathon and their flood plain elevation is 3' above the ground, 3' above the ground, and you know and this is a FEMA elevation that's established down there, and there's something wrong with it, there's something wrong with these map drawers from Dewberry, Virginia. (Laughter.) I hope nobody here is from Virginia, but anyway.

**TOWN MANAGER:** Mr. Mayor.

**MR. CHAIRMAN:** Yes, I'm getting off the subject okay.

**TOWN ATTORNEY:** I have a technical point to raise. Due to

the, due to the possible application of state statutes in forming competitive negotiation, I believe Mr. Spakowski is suggesting that the town enter into an agreement with the Coastal Engineering Firm and we're not going to have an opportunity to conduct the proper procedures required by state statute. I would suggest that if the maker of the vote...if this is going to move forward that the, that the motion incorporate an emergency element because Mr. Spakowski has clearly outlined the nature of an emergency situation here.

**COUNCILMAN:** I have not problem with that, the maker agrees, and I also agree to the cap of fifty.

**MR. CHAIRMAN:** Okay.

**TOWN MANAGER:** Does the second agree?

**COUNCILMAN:** Mr. Spakowski, what effect will this have on the new project, in Times Square?

**MR. SPAKOWSKI:** In Times Square?

**COUNCILMAN:** Yes.

**MR. SPAKOWSKI:** If the V zone line were to move inland 150', at that location, it would effect the ground floor of the building that would have the parking garage in it. It wouldn't keep the project from being built, but it would mean instead of having shops and restaurants along the sidewalk, they wouldn't be allowed to have shops and restaurants, there would be...it would really make it less

good for everybody.

**COUNCILMAN:** Yeah but if, if we went by their rules, if we didn't change it...

**MR. SPAKOWSKI:** If the new rules come out the way I'm worried they may, it could effect that project as well as every other one in that second of Estero Boulevard. Now other places down Estero Boulevard, the V zone line isn't right near the boulevard, its near the beach. But at that point, its right in the middle of Estero Boulevard, so moving it back 100' would dramatically change the outlook of what the entrance to our town looks like.

**MR. CHAIRMAN:** I'm going to make a positive comment now, it seems to me Bill, if I'm correct, that we've been pretty good at getting FEMA to agree with some of our dialogue have we not? It seems to me that we were pretty successful.

**MR. SPAKOWSKI:** We've won some and we lost some.

**MR. CHAIRMAN:** So you know its certainly, I certainly think its something we need to look at, for as Ken said, I think its probably the most important thing that's going to come in front of us for some time now. Anyways, and I accept the suggestions of the town attorney as the seconder of the motion and he has accepted it in the motion. Have we got any further discussion? I'm going to call the question. All in favor of the motion, signify by saying aye. (AYE.)

Opposed?

**COUNCILMAN:** No.

**MR. CHAIRMAN:** Motion carried four to one. The next item on the agenda Council Member Items and Reports, Howard you're going to go first because I think you're wanting to leave.

**MR. RYNEARSON:** I just want to ask everybody and just express to everybody have a good summer, drive and be safe, don't do anything dangerously, and we'll see you in the fall when we get back.

**MR. CHAIRMAN:** Okay Councilman Massucco?

**MR. MASSUCCO:** I, I don't have anything.

**MR. CHAIRMAN:** Councilman Reynolds?

**MR. REYNOLDS:** Yes, we are not looking forward to a hurricane this summer, so if our prediction is right, against all of the other folks, we're not going to have any serious hurricanes this summer.

**MR. CHAIRMAN:** Okay.

**MR. REYNOLDS:** But in the event that we are wrong, I hope that the people of the island can come back and check their homes, I don't care what it, what happens. I think they have a right to come back and check their properties and I hope that Mr. Chairman you being the mayor and chairman of council that you will call meetings, during those times, so we can assess the effectiveness and the direction of the,

the emergency team, because we cannot, and as the town manager and the town attorney have told us, we cannot ignore our responsibilities, no matter who we've got overlooking the emergency situations. Ultimately, we have to make the call. I would leave that with, with you and with all of the council members and we are continued responsible, and I wish everybody have a good summer. Hopefully, we don't have to go through all this like we did last year. Thank you.

**MR. CHAIRMAN:** Councilman Katcko.

**MR. KATCKO:** I have a couple of items, first I'd like to thank the business people who came here to speak, with regard to the A frame signs, for taking time out of your day. As a small business owner, I know its difficult to do that and I appreciate your input. I would like to address this issue again, when we come back off of break. I'd like it put on the agenda, I, I guess there's nothing I can do now, as far as a resolution or whatever, but I do believe it is hurting several businesses and we should readdress this issue. I also wanted to ask if, I don't know if this is possible, I assume it probably isn't, but we have been discussing recently purchasing property for the use of a town hall. We can't do anything because it would have to go before the voters. Could this be put on the ballot in November, asking voters if they wish to move forward with

allowing the town to secure funds to purchase a town hall.

**PARTICIPANT:** Yeah I'm not sure, I think there are some very hard and fast rules, in terms of how long you need before you can get items, wording for referendums to the elections board, and I think we may be beyond that, we can take a look at that. But frankly, that was one of the things, I'm sorry, frankly that was one of the things that we were going to be putting together for the council during the course of this next year, was an analysis of what the options are and what the process would be to get to either of those options, and one of them may be a referendum.

**TOWN MANAGER:** You have to pass an ordinance with the correct language and of course, there's you know, I mean by the time you come back, I know for sure it would be too late. But we could look, I mean I know we could look for the next election.

**MR. KATCKO:** Well I just wanted to explore those options, I guess that was, that's it. I hope everybody has a good summer and lets hope we have no storms come our way.

**MR. CHAIRMAN:** Well I hope we all have a, a good time off. If, if we need to do anything, if anything comes up, feel free to call and I'll see if I can round up the rascals and we'll get together if we need to. But anyways, oh I'm sorry these kind gentlemen. Anyways, one of the things that you mentioned, I was going to mention, I'm also

terribly concerned about this sign ordinance. You know I want the people that are watching and those people that are business people to understand that we went through this thing seven years ago I believe is when we started this thing.

**TOWN MANAGER:** Sandwich signs was two years ago.

**MR. CHAIRMAN:** Well that was...no we did an extension, we extended it, they were going to be out of here two years ago an we extended it for two years, and I guess some people paid attention to it and some people didn't. I don't want to hurt anybody in business, I didn't want to hurt about in the residential community, and until a few days ago, the, all the calls I got were people calling saying man its, its beautiful, there are no signs all over the place. And then all of the sudden, I got one call and I went to see the young lady and she was here today, and I've heard a lot of complaints about it since. We certainly are in a position I think that we need to do everything we can to try to assist the people on this island whether the residential residences or commercial people and I think we need to go back and take another look at that and see if there's something that we could do. My suggestion would be though that maybe the people that I've looked at and the places that I've seen, I think there are alternative signs to sandwich signs that would help them.

If they were agreeable to take a look at those alternatives, then maybe they'd have to have a variance. You know the place the I'm going to tell you that most sticks out in my mind is the Gulf View Shops, and I think there's a very positive and easy way to handle that sandwich sign thing but it would take a little consideration by our staff and the people in that structure to make it work. So, I think there's a solution for it.

Anyhow, we need to discuss that some more. We've had a long meeting today, but not real long, we've done very well, I compliment everybody on their efforts and other than that, I'm not going to say any more. Thank you very much. Town manager.

**TOWN MANAGER:** I have two things. This morning, or around noon in public comment, there was a comment made that the town's budget, or the, is 15% of the tax bill, of a person's tax bill. Last year, we were 5% of someone's tax bill and we are now 4.2% of the tax bill, so I just wanted to make that clear, and we are closely approaching half the millage, that our millage rate will be half of what it was when we incorporated. So the millage in the town has consistently dropped over the last ten years, and if the council goes to that roll back rate, we'll be at half of what the millage rate was when, that the town inherited

from Lee County. So, I think those are really important things, particularly that we're only 4.2% of the tax bill and also that that millage rate has consistently gone down.

The other thing that I wanted to make the council aware is, is that we received a positive ruling from Judge Rossman in the Eutelco(?) case, on a partial summary judgment, all of those large claims were knocked out and all we have left is the, basically where we started with Eutelco when we went into litigation, which is the last draw, with regards to what we felt they were due at the conclusion of the project, and what they felt they were due. But all of those large claims of \$5 million in lost wages, lost business, lost part, those have all been knocked out, so we have never done very well with Judge Rossman, so it was nice to finally get a positive ruling.

**MR. CHAIRMAN:** Good, that sounds very good. John do you have anything?

**JOHN:** (Inaudible.)

**MR. CHAIRMAN:** Do you have anything?

**TOWN ATTORNEY:** I was at the beginning, I'm done thank you.

**COUNCILMAN:** Make a motion.

**MR. CHAIRMAN:** Okay we have the public comment.

**COUNCILMAN:** Oh public comment.

**TOWN ATTORNEY:** Mm-hmm (yes).

**MR. CHAIRMAN:** Any public comment? Okay Merrill you took twice as long as you should have before so I'm cutting you tight. You're not brining those up are you? (Laughter.) He never pays any attention to me.

**MR. MERRILL:** Tom Merrill, resident Indian Bayou. Since we're only allowed to talk in public comment on this issue and we're stuck with three minutes, you get us both front and back today. I just want to clarify something that was said but I got some comments when I was out and it didn't seem like it came clear, so I want to make it clear. We'll just take a look at the front, at one chart that we've done at the very top of the island, and that shows...green shows 1927 is what our beach looked like then. Blue shows what it was in 1960, and red shows what it was in 1996. So the point is that this area has grown somewhere between a thousand and two thousand feet over the years, somewhere around a third of a mile.

When we take a look at the design for adding sand, beach re-nourishment, that same area has the bulk, has the largest area of sand being added to it, so there have been many, many comments made that this project is only restoring what we've lost. But the fact is, you can see very clearly from the charts, this is not restoring what was lost, in fact, this is, this is an area of very, very

high accretion and we are adding far more sand to an area that is now bigger than it has ever been before. And so that is only one part of the re-nourishment story, but I wanted to make sure that the fact is clear, we are not simply restoring sand to what's lost, but we are actually making a far bigger beach, in places where it is actually getting bigger by itself. Thank you very much, and I also hope that everybody has a good time for the next two months and we have no hurricanes.

**MR. CHAIRMAN:** Anybody else? This meeting is adjourned at four, oh I'll accept a motion for adjournment at 4:48. Do I have a motion?

**COUNCILMAN:** So moved.

**COUNCILMAN:** Second.

**MR. CHAIRMAN:** And we don't even need to vote on it, the meeting is adjourned. Thank you.

**(END OF RECORDING TAPE #3, SIDE A. NO RECORDING SIDE B.)**