

**FORT MYERS BEACH  
TOWN COUNCIL  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931  
September 26, 2005**

**I. CALL TO ORDER**

Mayor Van Duzer called a regular meeting of the Ft. Myers Beach Town Council to order on Monday, September 26, 2005 at 6:30 PM.

Members Present: Mayor Bill Van Duzer, Vice Mayor Howard Rynearson, Councilman Don Massucco, Councilman Garr Reynolds, Councilman Ken Katcko

Town Staff Present: Town Manager Marsha Segal-George, Town Attorney Anne Dalton

**II. PLEDGE OF ALLEGIANCE**

All present stood and recited the Pledge of Allegiance.

**III. INVOCATION**

Mayor Van Duzer gave the invocation.

**IV. PUBLIC COMMENT**

Mayor Van Duzer opened the floor for Public Comment.

Brad Hill, of 111 Bahia Via, came forward. He thanked the 77 sponsors and all those who participated in the cardboard boat races, and said the money was raised for the Beach Elementary School. He said it was a lot of fun and hoped it could be held again next year.

Pat Smith, of 50 Fairview Boulevard, came forward. She said that after two or three significant revisions to the Town Budget since September 12<sup>th</sup>, she felt the budget was still fattened by gross overestimations of revenues and expenses. She said the millage rollback reduced the ad valorem revenues by approximately \$254,000, but there appeared to be about \$100,000 in other taxes that had not be known about two weeks prior to this meeting. She had indicated in past remarks that she felt initial carry-overs into various reserves were excessive considering the reserves that were already in place, it appeared to her that the Council had since authorized spending instead of putting the money into reserves, with total addition to reserves having been changed from \$3.7 million to \$2.7 million, which she said meant that \$1 million had gone into authorized spending. She said the administrative budget was now over \$2.5 million, or well in excess of the total estimated rollback ad valorem revenues of \$2.1 million. She said every penny of property taxes was now authorized to support Town Hall, and must be supplemented from other revenues. She said the administrative budget had increased by \$188,000 since September 12<sup>th</sup> to over \$663,000 over last

year's budget, which she said was a 36% increase in one year. She said the Town Manager's explanation for the increase was that more maintenance crew had been necessarily hired, and that it was offset by savings in contractual services, which Ms. Smith said was not apparent due to the 88% increase in contractual services from last year. She said services had gone up 27%. She spoke about grants, and felt they were nice to get, but often committed the Town to expensive maintenance of things obtained or established with the grant money. She said that the reported amount of grant revenue estimates had been \$12.8 million cumulative, while the actual receipts had been \$2.8 million, and said that was a shortfall of several millions of dollars. She said the Town had been overtaxing the businesses and homeowners of Ft. Myers Beach for several years. She felt the Town put money where it was not needed, while drainage, finding a permanent site for Town Hall, and other significant and necessary projects for the Town were left undone.

Bill Shenko, 581 Carlos Circle, came forward. Regarding Item 6E on the agenda, Mr. Shenko said Mr. Katcko had met privately with the developer who had requested a special permit beyond what was allowed by ordinance, which Mr. Shenko said resulted the permit being granted. He asked if the waiver applied to any night of the week. He asked if there was any limit to the number of events this developer was going to be allowed. He asked if the events were profit or non-profit in nature. He asked if there was a time limit to the waiver, or if it was limitless. He asked if there were any provisions to revisit the issue, or if the ordinance would be waived indefinitely for this one person, who, he pointed out, had chosen not to rebuild after the hurricane. He asked the Council to stand their ground and stick with the ordinance. He felt once one business was granted a waiver, all the bars in Town would do likewise. He asked the Council to protect the citizens who would be subjected to the noise of these events.

Mayor Van Duzer asked the remainder of the attendees who had indicated they were there to speak about the sandwich sign issue if they wanted to wait until that came up on the agenda. Those people indicated that they wished to wait.

Mayor Van Duzer closed the Public Comment at this time.

**V. CONSENT AGENDA**

- A. Approval of Minutes: September 1, 2005**
- B. Financials for Month of August**
- C. Amendment to Interlocal Agreement for Animal Control Services**
- D. Annual Progress Report of Floodplain Management Plan**
- E. Letter of Support for Save Our Homes**

**MOTION:** Vice Mayor Rynearson made a motion to approve the consent agenda. Mayor Van Duzer seconded the motion for the purpose of discussion.

Items B, C and E were pulled by various Council members. Vice Mayor Rynearson withdrew his motion, and the seconder, Mayor Van Duzer agreed to that.

**MOTION:** Vice Mayor Rynearson made a motion to accept Items A and D. Mayor Van Duzer seconded the motion.

**VOTE:** The motion carried unanimously.

**Regarding Item B:** Councilman Reynolds had asked to have this item discussed. He said Pat Smith had introduced an explanation for some of it, but he had a question on the balance sheet for August 31<sup>st</sup> with regard to the assets. He said he had gone around the room and had gotten explanations about the operating investment of \$1 million to Sun Trust, and wanted it followed up. He had more questions about the other things, including the total assets, which he felt needed to be rechecked. Regarding the Film Festival income statement, he said he had growing concerns about it. He was glad about the money that the TDC had decided to contribute to it, and listed out several other grants and donations slated for it, totaling \$39,000, which he said was a start. But he believed the festival had cost \$135,000 in 2004, and felt it needed to be checked out to see if the festival warranted that level of expense. He said he tried to participate in it, but he didn't see that it provided that much benefit to the taxpayers. He said he would participate in the future and do the best he could with it, but felt the cost of it was excessive.

Councilman Reynolds prefaced his next remark by saying there was only one Town Manager, and he really didn't want to do it, but he really wanted to understand the total salary. He said the year-to-date budget was \$108,000 but the Manager's salary was listed as \$118,000, which he said threw him. In the month of August, he said the salary paid was listed as \$15,886 for that pay period, which he said could have been carried over a bit from before. He said the budgeted salary for the current month was \$9800. He felt there was a better way to put these things in perspective. He then cited the year-to-date actual, which he said was the money actually spent, which was \$124,807 for the Manager's salary, and the figure under it of \$9440, which he believed was a bonus paid to the Manager, which he believed was an 8% bonus received after some overtime pay had been received. He quoted a few more figures and percentages, and said it was difficult to understand. He said if the figures he saw were added together, and 40% for benefits were added to them, it would come to \$57,600 that he said would bounce the Town Manager's salary for 2005 to \$201,680. He asked not to be corrected about the figures he had arrived at unless someone could show him.

Councilman Reynolds then referred to an item on Page 3 having to do with the Town Attorney. He said the former Town Attorney had received \$59,000 annually. He said he had had a hard time following the new Town Attorney's salary because it was listed at \$66,000 year-to-date, which included the present attorney and what had been paid to Mr. Roosa. He felt it was running way ahead of the \$59,000 that had normally been paid for legal services. He had asked this item to be separated from the outside legal expenses, and it had not been done. He said \$14,800 had already been paid year-to-date on outside legal expenses, but \$137,000 had been budgeted for

the year, plus the \$52,800 budgeted for the Town Attorney, which he said totaled over \$200,000. He said he wanted to know “where we’re coming from” on that.

Councilman Reynolds said he had trouble figuring out another item in the financials, but couldn’t immediately find it, and said it would come out later.

Mayor Van Duzer suggested that the issues raised by Councilman Reynolds be looked at so that answers could be found to his questions. Mayor Van Duzer said he understood what some of the discrepancies were, but didn’t take these items up at this time.

**MOTION:** Vice Mayor Rynearson moved to accept the financials with the request for clarification on the items brought up by Councilman Reynolds under Item B. Councilman Massucco seconded the motion.

Councilman Katcko said there were several items he had had questions about in the financials, but he had taken the time to discuss them with the Deputy Town Manager, and did not intend to go over them at this juncture. He requested that, on the second page of the balance sheet, that specific names be attached to the three unnamed fund balances so that it would be known exactly what those funds were being used for. Regarding Page 2 of the Income Statement, Councilman Katcko noticed there was a merit bonus for employees, with a year-to-date actual amount expended of \$52,629.20. He requested a breakdown of those merit bonuses, by employee and department, which he felt would give a better idea as to where those bonuses were paid. He noticed the Mound House budget had been broken down very well, in terms of how the money was spent there, and felt it gave a lot of information. He also noticed that the Beach Renourishment funds appeared in the reserves, which had been carried over every year and had not been spent.

**VOTE:** The motion carried unanimously.

Mayor Van Duzer directed Town Staff to look at the questions raised by Councilman Reynolds.

**Regarding Item C:** Councilman Massucco had asked that this item be pulled. He said there wasn’t anything grandiose, but he had remembered having a conversation with Deputy Town Manager John Gucciardo about the Town being billed according to the use of animal control services. He noticed that the figure had increased by \$6,000 about which Councilman Massucco quipped that apparently they hadn’t listened to the Town’s argument that it should be cheaper because the Town didn’t use their services. He asked Mr. Gucciardo what had happened.

Mr. Gucciardo said the overall cost for animal services county-wide went up considerably, primarily because of manpower issues. He said the Town’s increase wasn’t as great as it was in other areas of the County. He said the Town was now receiving much more detailed reports from Animal Services, broken down as to the

types of calls, frequency of calls, and the type of services they had provided, on a monthly basis. He said it was still a fairly big number budgeted for the year, but relative to the population of the Town and the number of calls, the Town was in better shape than some of the other places who receive their services. Councilman Massucco asked how many calls were made from the Island, and Mr. Gucciardo said the report was broken down into service calls, nuisance calls, complaint calls, and actual pick-ups of animals. He said he could get the year-to-date figures for Councilman Massucco if he wanted to see them, and if the rest of the Council were interested, he would supply the reports to all of them. Councilman Massucco opined that the budgeted amount for Animal Services of almost \$37,000 was a substantial amount. He understood that the County based the amount on population, so that it was probably less for the Town than other parts of the County. Mr. Gucciardo said that, unfortunately, he didn't believe the Town would ever be in the position to provide the service itself, and pointed out that just about every city and town in Lee County contracted with the county for the service. Mr. Gucciardo wished the Town had more leverage in negotiating the numbers, but felt the Town was doing as well as it could in this regard.

Mayor Van Duzer understood Councilman Massucco's concern about the rising cost of Animal Services, but he believed the figure was based on population, and there was a need for the service.

Councilman Reynolds recalled that several years ago the Animal Control people had sent over an amount in the high \$40's, and that Mr. Gucciardo had been able to talk them down, and had done a good negotiating job with that.

**MOTION:** Vice Mayor Rynearson made a motion to move Item C. Councilman Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

**Regarding Item E:** Councilman Katcko had asked this item to be pulled. Councilman Katcko said he had brought it to Council, and believed if property owners didn't have portability, Ft. Myers Beach would lose the diversity that makes it unique. He said one had to be fairly wealthy to buy a home on the Beach now. He said as owners die, and younger people cash out on the property value increase, those homes taxable values then go up to the current market value. He said the income and net worth required to purchase those homes and pay the high taxes would make Ft. Myers Beach an exclusive playground for the rich. He said when that happened, the rich would want tolls and restricted beach access to keep middle class people off their Island, which he preferred did not happen. He said he wanted Ft. Myers Beach to be inclusive, not exclusive, community, which was why he was supporting the amendment. He felt the Town should support Senator Saunders' bringing it to the state senate.

Mayor Van Duzer said the Council had sent a letter of support to Senator Saunders. The Mayor said he had heard from an outside source that most of the government entities were not doing that because it may affect their taxable income. He felt the Town was leading the pack with regard to this issue, and felt it was a good idea.

**MOTION:** Councilman Katcko made a motion to approve the letter. Vice Mayor Rynearson seconded the motion.

**VOTE:** The motion carried unanimously.

## **VI. ADMINISTRATIVE AGENDA**

### **A. Continuation of Public Hearing on “Sandwich Signs”**

Mayor Van Duzer said the Council had proposed an emergency ordinance, 05-25, and asked Town Attorney Dalton to read it, which she did.

Mayor Van Duzer then asked Ms. Dalton to swear in those who wished to speak. When that was done, Mayor Van Duzer then opened the public hearing.

Pasqual Loffreno, of 8002 Estero Boulevard, came forward. He said there were two items he wanted to bring to the attention of the Council. He said when Dan Hughes was mayor, the people of the Laguna Shores community had agreed to pay \$39,000 for the dredging of a canal so that they could bring their boats into it. He said they had not heard anything about it since.

At this point, Mayor Van Duzer pointed out that a Public Hearing about the emergency sandwich sign ordinance was in progress. Mr. Loffreno apologized, explaining he was still upset from dealings he had had that day with the County. Mayor Van Duzer asked Mr. Loffreno to fill out a card so that he could speak during Public Comment at the end of the meeting.

Jane Plummer, of 340 Fairweather Lane, came forward. She said the business owners had met for the purpose of coming up with a way to address the sandwich sign issue without bringing back the sandwich signs permanently or having to readdress the entire sign ordinance. She said the palm tree shaped sign had gotten favorable response, and that they had talked about it with Jerry Murphy, who had helped them come up with a plan, although there were many details to work out. Basically, she said in order to avoid having to redo the sign ordinance, the palm tree signs would be owned by the Town, the business owners would pay for them to subsidize the cost, and would also pay the maintenance fee each year to ensure they are kept in good repair. She said it would give signage for businesses that don't have it. She said that by sunseting the sandwich signs, there would be a two-year period where many people will have no sign at all. With regard to a comment she had heard that Sanibel has no sandwich signs, Ms. Plummer said she had gone to Sanibel and said it now had very few trees making their businesses and signs very visible, while Ft. Myers Beach had lots of trees around buildings, with result that one couldn't see the businesses or

their signs. She said the palm tree signs would make it easier for people looking for places to locate them, and would make many businesses known to people who did not realize they existed due to the lack of visibility and signage. She felt the business owners had a good plan, and a way to put it in operation, and asked that the Council help them. She then said the hurricane benefit could use the Council's services, but realized they would probably not be done with this meeting in time to attend.

J.T. Webb, owner of the Print Shop, Inc. at 1661 Estero Boulevard, came forward. He thanked the Council for continuing the hearing, and understood that it was a very touchy subject for many people. He said he had spoken a lot about the issue, but wanted to let them know that some businesses were experiencing severe problems since the sandwich signs were banned. He said it was more severe than he had thought. He said they needed the emergency extension if it was possible to get it. He said they recognized that it would only last two months, but it would take that much time to implement the new signage idea. He thanked Mr. Murphy and other people who had been so helpful.

Ollie Curran, of Connecticut Street, thanked the Council for putting this item back on the agenda. She asked the Council to allow them to have something in place as soon as possible, as she was tired of coming to the meetings for four years to talk about the same thing. She thanked Mr. Murphy for getting together with the business owners to talk about the palm tree sign idea. She hoped the business owners would be allowed to have the sandwich signs until an alternative could be agreed upon and implemented. She said she had been in Orlando and she had seen beautiful posts with things like fish and mermaids, with lights, which were the directional signs. She said they were awesome, painted different bright colors, and directed people to various businesses. She said the business owners would appreciate any help the Council could give, and that they needed something right away. She said Seagrape Plaza was having an especially hard time.

Sandi Suter, of 291 Palermo Circle, came forward. She said she had been a resident of the Beach for over 28 years, and a realtor in the area for 26 years. She said the Ft. Myers Beach had 216 pages, with an average number of businesses per page being 18, which she said added up to about 3,888 businesses. She said some of those were located off the Island, but if only a quarter of them were on the Island, of the businesses who had lobbied for the return of the sandwich signs, she had reviewed who had actually represented a business and who had been referred to as a business. She said the total businesses represented was 21. She said she had looked at the advertising put out by those businesses during the summer, and of those 21 who had lobbied for the signs, 18 had done no advertising whatsoever. She felt it was not the government's job to subsidize the businesses, but that it was their responsibility to the people who had elected them and the general citizenry of the Island, and to adhere to the democratic process that had produced the sign ordinance. She said that Councilman Reynolds had expressed his understanding that sandwich signs could not be placed on public property, easements, and right-of-ways, etc. She asked him if he

was willing to amend his motion to include this as a clarification, if the emergency ordinance were passed.

Councilman Reynolds tried to respond, but Mayor Van Duzer pointed out that the Council was not supposed to directly answer questions raised during the Public Hearing until after it had been brought back to Council for discussion.

Ms. Suter then concluded her remarks and thanked the Council.

With no one else coming forward, Mayor Van Duzer closed the Public Hearing, then brought the discussion to the Council, and invited Councilman Reynolds to speak first.

Councilman Reynolds believed all Council members would agree to amending the motion to include that the sandwich signs could not be placed on public property.

**MOTION:** Councilman Reynolds made a motion that, in the extension of the sandwich signs for two months, they must not be put on public right-of-ways, which would include the sidewalks.

Mayor Van Duzer asked if Councilman Reynolds had made a motion to adopt the extension. Councilman Reynolds said the Council had already said they were going to do it, and felt they couldn't back off, so as to give the business people time to study their new signage ideas.

Mayor Van Duzer seconded the motion for discussion.

Jerry Murphy was asked to speak with regard to comments that had been made by the public about a meeting they had had with him. Mr. Murphy said subsequent to the last hearing on the signs, he had met with several business owners in order to discuss some of their ideas and proposals for signage. He felt the discussion had been very productive, but acknowledged that nothing could be done until it was brought forward to Council for final approval. He said with Council's direction, he would continue to work with the business owners to bring something forward as an alternative to the sandwich signs.

He said there was nothing in the LDC that would allow the sandwich signs to be placed in a right-of-way, even if the emergency ordinance were to be passed. Mayor Van Duzer believed that concurred with what Councilman Reynolds had asked to have specifically stated in his motion. Mr. Murphy said it was already in the LDC, and didn't really need to be included in the motion.

Mayor Van Duzer said it was a difficult issue and felt it was an emergency situation. He said the business owners had been given several years time to prepare for the permanent removal of the sandwich signs, to come forward and speak to the issue before Council. He said he realized the hurricane had happened a year ago, but

people had had a difficult time since. He felt what the Council was saying was that the business owners had not addressed the issue, but that they would be given 60 more days to come up with an alternative. He felt, under the circumstances, and emergency ordinance was reasonable and fair to all involved. He had gotten a lot of letters from homeowners who were not in favor of the extension, but he felt that the circumstances over the last year warranted this minor extension.

Vice Mayor Rynearson applauded the business people, and said they had done a good job, although it had taken a long time. He thought they had come up with an idea that might work, and said he thought Ms. Plummer had been correct that the new signage ideas needed to be moved along as quickly as possible. He said he had voted against sandwich signs, but would go along with the extension if it produced the new signage. He said the Town Staff had also proposed another good idea, and he thought it was great that the Staff and the business people were working together. He felt if the extension would contribute to that, he was supportive of it.

Councilman Massucco said he could not support the emergency ordinance idea. He thought that using Hurricane Charley as a motivating factor in declaring it an emergency situation – which Dave Sharples had alluded to in a memo dated September 15<sup>th</sup> – diluted the original intent of the emergency clause. He cited Chapter 30-6A.19 of the Town's Land Development Code, from which he read: "A public emergency exists when it affects life, health, property or the public peace." Councilman Massucco said that none of those things applied in this situation, and that therefore he could not support the amendment and the resulting change to the Land Development Code. He said at the Council meeting on April 18th, at which the Council had voted to approve the Glitch Ordinance, which cemented the end of the use of sandwich signs on the Island, there had been no public input. He said that he had stated at the September 12<sup>th</sup> Council meeting that reinstating the use of the sandwich signs, even temporarily, was not the way to go. He said Ordinance 03-06, duly passed by the Town Council, was a perfectly good ordinance that he felt should be protected. However, he said it was extremely important to keep the line of communication open so that meaningful solutions could be found, such as the ones that had been discussed. He said he had been very gratified to see and hear the ideas coming from the business owners who had attended the last two Council meetings. He wanted the public to understand that he was in total sympathy with the businesses affected by Ordinance 03-06, and that he would do all he could to help, not only with the signage issue, but also with the future growth and prosperity of all businesses on the Island. He didn't think amending the ordinance, which would effectively change the Land Development Code, Chapter 30-6A.19, was not the right action. He opined that negotiations were going very well, and that Jerry Murphy had helped the Town take a big step forward on the issue. He felt that the negotiations should be kept moving forward, and said he did not support the extension of the use of sandwich signs.

Mayor Van Duzer explained that Councilman Katcko had filled out the necessary paperwork to excuse himself from participating in the discussion and the vote on the

issue because of his conflict of interest, owing to the fact that he was a business owner on the Beach who had used a sandwich sign.

Mayor Van Duzer said an emergency ordinance required something more than just a majority of the vote, but required  $\frac{3}{4}$  of the majority, which meant three of the four Councilmen who could participate in the discussion and vote, would have to be in favor of it for it to pass. Ms. Dalton said 66% had to be in favor for it to pass, but in essence he was correct in that it would require 3 of the 4 Councilmen to vote in favor of it for it to pass.

Councilman Reynolds said that when he had made the motion he had missed a major point, and appreciated Councilman Massucco for bringing it up. He said that, as Ms. Dalton knew, he did not think it was an emergency issue, and he and she had discussed it on at least two occasions. He said did not approve of the issue coming back as an emergency. He asked Ms. Dalton if he had not stated that he did not approve of the emergency status during their conversations. Ms. Dalton asked for clarification of what he had asked her, but added that he had expressed that sentiment to her. Councilman Reynolds said that when he had made the motion, he had failed to realize that it was going to be voted on as an emergency issue. He said it was not an emergency issue, as he had mentioned before and about which he had not changed. He said when he was asked to show that the signs wouldn't be allowed on public property, he said it was a given, which he thought Mr. Murphy had indicated. He said he would go along with the extension, but couldn't because it was not an emergency. He said he had made the motion and gotten himself into a fix, because he couldn't vote for it.

Attorney Dalton said that, if the Council were to adopt the ordinance, inherent in that adoption was the finding of an emergency. She said if there was no emergency in the opinion of the Council, then there would be no ability to pass the ordinance, as it would otherwise go through the normal process through the LPA. Councilman Reynolds said he understood that, but that it was not his problem. He said his problem was that it was not an emergency. He said he would not vote for it as an emergency, but had overlooked an important thing. He said he could not support it as an emergency ordinance. He said he had been willing to give an extension, but not as an emergency.

Mayor Van Duzer didn't think it made any difference as to whether he had made the motion or not, but that if Councilman Reynolds wished to vote against it, that was fine. He asked him to reconsider what he had said. Mayor Van Duzer felt, even with what Councilman Massucco had read from the ordinance, the situation qualified as an emergency because it did affect the health of the businesses. He said the business owners had come before Council and explained that their businesses were not going to survive. He said the business owners had shown that they had been hurt, and that they did not have an adequate way under the present code to display signage for their business. He felt the business owners had a real, dire need to have the extension for 60 days.

Vice Mayor Rynearson said the way he had read the emergency ordinance was that Hurricane Charley had used up some of the portion of the two-year grace period for having sandwich signs that had been allotted the business owners, which was assessed to be about two months, which was the suggested length of the extension. He said because of that interpretation of the emergency ordinance, he was in support of it, and asked if he was correct in his interpretation. Ms. Dalton said the ordinance didn't specify a time period, but felt Vice Mayor Rynearson's reading of the ordinance had been correct. She added that she had a point of information about the ordinance that she would make when it was appropriate.

Councilman Reynolds reiterated that he believed the businesses needed an extension for the use of the sandwich signs, but did not believe it was an emergency, and added that he knew someone was encouraging another direction.

Attorney Dalton offered a point of correction. She said, as the Council knew, the issue had been considered in a prior hearing, and therefore, in the actual body of the ordinance, it was written: "Sandwich signs may be used on a temporary basis between September 19, 2005 and November 18, 2005". She said if the Council adopted the ordinance at this meeting, dated September 26<sup>th</sup>, it would have to be corrected to read "between September 26, 2005 and November 25, 2005" to bring it into conformance with an adoption tonight, maintaining a 60-day period of extension.

Councilman Reynolds recounted a discussion he had had with Attorney Dalton regarding palm trees being on right-of-ways on Cape Coral. He said the Cape Coral Council had intended to require the trees be moved, but it had become an issue of hardship for some people who had no space into which they could move them. He said what Cape Coral's council did was to pass a waiver of the ordinance for 60 days, or possibly three months, and Councilman Reynolds said he could support something like that. He said the waiver allowed time to study the situation and come up with solutions to it. He said he would prefer this path, even though it would produce the same results as an emergency ordinance. He said that in good conscience he could not call it an emergency. He went on to point out that summer was a bad time for business anyway, and that someone had written a good letter about it recently in a local paper in which it was remarked that no data on whether the businesses were suffering because of the sandwich sign removal or because of other factors. He said he responded to that letter by speaking with a lot of business owners, and they had told him their needs, and which was why he had been in favor of sandwich signs for two years. He said it had now come to pass, and he had intended to go forward with it, but not as an emergency.

Attorney Dalton asked the Mayor if he wanted her to address the Cape Coral issue. Mayor Van Duzer said it was okay with him, but that he had understood that an emergency ordinance was the only alternative available to the Council that would allow for the sixty-day extension. Ms. Dalton said that he was correct, and added that she believed the Cape Coral situation was factually a little different than what

Councilman Reynolds had indicated. She said it had been a variance, and the Cape Coral Council had voted to table the variance request.

Mayor Van Duzer strongly stated his belief that the situation with the business owners was a public emergency. He said it was affecting the health of the businesses and their investment into their property, which he believed satisfied the requirements for an emergency ordinance. He remarked to Councilman Reynolds that if he voted against it, there was no other recourse. He said it was a minor and legal adjustment.

Councilman Reynolds apologized for overlooking the fact that his motion was made in favor of passing an emergency ordinance. He said he should have revealed how he felt about it when they were formulating the ordinance.

Councilman Massucco said he just couldn't see amending an ordinance that would effectively change something that was in the Land Development Code. Mr. Murphy said the emergency ordinance would have the effect of amending the section of the LDC, to which Councilman Massucco had referred, for a period of sixty days, at which point it would become self-terminating. Councilman Massucco said that meant that they would be changing the LDC, which was something to which he had always been opposed.

Councilman Massucco said the obligation of the mall owners had not as yet been addressed. He asked if they had assisted their tenants in any way, or come forward with any suggestions to help the businesses. He thought that, in the lease agreements, there should be some sort of clause that gave each business owner the right to advertise their businesses, and that it should be provided by the property owners.

Vice Mayor Rynearson said he agreed with Councilman Massucco, and that it was something that needed to be addressed in the big sign ordinance. He agreed that it was a responsibility of the mall owners and he acknowledged that they had not come forward. He said it was something the Council needed to talk about.

Mayor Van Duzer called the vote.

**VOTE:** The motion failed 2 –2 with Councilmen Reynolds and Massucco dissenting, and Mayor Van Duzer and Vice Mayor Rynearson voting in favor of it.

Mayor Van Duzer closed the hearing on the sandwich sign emergency ordinance.

Jerry Murphy asked the Mayor for clear direction with regard to continue to work with property owners and business owners in order to move the coconut palm idea forward. Mayor Van Duzer gave him that direction.

## **B. Final Public Hearing of Town Budget and Millage**

### **1. Resolution 05-27: Establishing and levying ad valorem taxes**

Mayor Van Duzer opened the Public Hearing, then asked Attorney Dalton to read the resolution, which she did. The Mayor then declared Public Comment open, and Attorney Dalton swore in those who wished to speak.

Pat Smith, of 50 Fairview Boulevard, came forward. She said she was in favor of the rollback this year. She said she had furnished the Council with information at the September 12<sup>th</sup> Council meeting, and had furnished additional information on the Town budget at this meeting as well. She said there was no justification whatsoever for not rolling back the millage rate in full this year. She said the Town had ample reserves and ample spending within the rolled back ad valorem rate, and the other revenues that were expected. In her opinion, the budget allowed for too much questionably high spending in several categories, and authorized that spending, which she didn't think was a good thing. She thought the budget should be examined more thoroughly and carefully, although she thought it had gotten more scrutiny this year than in any previous years. She said she had been happy to hear that, at the September 12<sup>th</sup> Council meeting, the Council had directed the Town Manager to provide them with historical information, which Ms. Smith said anyone would need in order to carefully examine a budget. She said a budget document was often considered dull and dry, but that it was a critical and important tool of any corporation, business or organization that purports to be serious about what they do. She told the Councilmen they needed to be serious with the taxpayers' money.

As no one else wished to speak, Mayor Van Duzer closed Public Comment, and brought the discussion back to Council.

Deputy Town Manager interjected that, procedurally, one of the things that needed to be noted on record was that since the Council was considering the rollback rate, that it reflected no increase over the amount collected in the previous year. He added, if the rate had been held, rather than rolled back, there would have been a percentage increase over what had been collected in the previous year. He said based on direction from Council at the last meeting, Staff had computed the rollback rate which meant there would be no increase in dollars collected over last year.

**MOTION:** Vice Mayor Rynearson made a motion to accept .7498 as the millage rate for 2005-06. Councilman Massucco seconded the motion.

As Mayor Van Duzer began taking a roll call vote, Councilman Reynolds interrupted to say that it was a resolution. Mayor Van Duzer acknowledged that comment. Attorney Dalton said the Mayor had the ability to call for a roll call vote if he so chose. Mayor Van Duzer asked if that meant a roll call vote was not required, and Ms. Dalton said it was up to him. Mayor Van Duzer stated that he wanted a roll call vote. Councilman Reynolds said he didn't have to because it was a resolution. Mayor Van Duzer said he wanted it recorded.

**VOTE:** Vice Mayor Rynearson            aye

Councilman Massucco	aye
Mayor Van Duzer	aye
Councilman Reynolds	aye
Councilman Katcko	aye

The motion passed unanimously. Mayor Van Duzer closed the Public Hearing on this item.

**2. Resolution 05-28: Adoption of Town Budget for 2005-2006**

Mayor Van Duzer opened the Public Hearing, and then asked Town Attorney Dalton to read Resolution 05-28, which she did. Mayor Van Duzer asked those who wished to speak in Public Comment to stand to be sworn in. Seeing no one wishing to come forward, Mayor Van Duzer closed Public Comment and brought the issue back to Council.

Deputy Town Manager John Gucciardo asked to address Council. He said there was a memo included in the draft budget, based on a direction Town Staff had gotten from Council at the last meeting. In this memo, Mr. Gucciardo said he had explained, as clearly as he was able, some of the changes that had been made since that last draft budget, including some of the suggestions that had been made during the last hearing about the budget. Mr. Gucciardo said one change that had not been made had to do with the funding of the LeeTran Park & Ride, based on the Council's last discussion about it. He said there was representative from LeeTran present at this meeting if the Council wished to direct questions to him, and hoped they could gain a clearer picture of LeeTran's position about the service. He also reminded the Council that Councilman Massucco had brought up a program that is related to the historical grant program, which was also part of the budget, and which he thought should perhaps be part of their discussion at this meeting.

Mayor Van Duzer said he had gone before the County Commission last week because at the last Town Council meeting the Council had determined that the Town would not fund the Park & Ride service, and he had been asked to appear before the County Commission. He said they had put into their budget \$260,000 to finance half of the Park & Ride expenses, and asked that the Town consider it again. He said the major cost of the system last year had been paid for by a federal grant. He said if the Town suspended that service this year, the remainder of the grant funding would be lost. He said there wasn't another TMA meeting until Thursday of this week. Mayor Van Duzer thought the Council should put some funding back into the budget, and send the issue back to the TMA. He said the biggest complaints received last year, in terms of the trolley system, had been with regard to the dedicated lane, and that more people were brought over to the Island and held up traffic when crossing the street, and that they had been brought over free of charge. He thought the issue should be sent back to the TMA with some suggestions, such as: removing the dedicated lane from the Bridge; consider continuing with the Park & Ride because it was known that it had kept vehicles off the Beach; no longer providing the service for free; establishing two dedicated exit lanes off the Island, which he thought might help

move the traffic more rapidly. He didn't believe the Park & Ride had helped move traffic more rapidly, but remarked that he didn't know what would have happened had those extra 50,000 been driven onto the Island. He again asked the Council to consider putting some money back in the budget for the Park & Ride, pointing out that some of the money could come from the grant funds.

Vice Mayor Rynearson said that when they had had the ribbon cutting ceremony in Lynn Hall Park for the trolleys last year, everyone had been happy, there were three commissioners who had gone back to the mainland on the trolleys from the ceremony, and all had agreed that Lynn Hall Park needed to be redesigned so that the trolleys could pull into it rather than stopping on Estero, effectively dumping a lot of pedestrian traffic onto the street causing more traffic stoppages. He wanted the reconfiguration of the park to be added to the suggestions given by Mayor Van Duzer. And as Mayor Van Duzer had suggested, take the money for the service out of the grant funds. He also thought they should consider having six trolleys in service, rather than eight.

Councilman Massucco said that at least two TMA members had applauded the Council on its bold move to restrict the funding for the Park & Ride. They agreed that it was a good idea to give the responsibility back to the County Commissioners. He agreed.

Mayor Van Duzer informed the Council that the County Commission had already adopted its budget already, and the figure they had dedicated to the Park & Ride was not negotiable. He added that he had been contacted by one of the members of the TMA, and had traded e-mails back and forth, who was one of the two Councilman Massucco had said applauded the Council's decision. Mayor Van Duzer said he had presented his suggestions to this TMA member, and that person had told Mayor Van Duzer that he thought it was a great idea, and that he was not opposed to trying the Park & Ride under different circumstances.

Councilman Massucco suggested that Mayor Van Duzer formally propose his ideas to the TMA for their consideration, and that the Council withhold further action until the TMA came back with their input. Mayor Van Duzer felt the Council needed to put the money in the budget in the event that it got approval, with the understanding that if it didn't get approved, the money budgeted for the Park & Ride would not be spent. He felt the Council did need to discuss both this and Councilman Massucco's suggested grant program, and to make a decision about putting both in the budget with the understanding that the funds would be there if needed, but it wasn't an automatic approval of either of those programs.

Councilman Massucco understood that the budget had to be completed. Mayor Van Duzer said the County was willing to consider cutting down the number of Park & Ride trolleys. He said then reminded the Council that, in the same decision about the Park & Ride, they had wanted to make the Beach Trolley service free. He said they needed to give adequate direction to the TMA, and they needed to be sure there was

adequate funding available to effect whatever decision was made. Ms. Segal-George informed the Council that the TMA was to meet the following Wednesday, which meant it could go to them very quickly. She said a few key members of the TMA would not be present at that meeting, which she said could be a problem, but that she could e-mail those who didn't attend.

Councilman Katcko thought they had voted unanimously at the last meeting to go back to the core level service, and to provide free beach trolleys, and to charge 25 cents for the Park & Ride. He thought it was a done deal, and felt that was the way to go. He said he understood that Lee County had promised more trolleys if the Town gave the County additional funding, which he characterized as "an offer with a hook". He thought the Council should stick to their decision, which would require Lee County to pay for more than two trolleys. He said if they were not going to do that, then their residents will have to sit longer to get a trolley to the Beach. He felt the County needed to realize that it was their residents jamming up the Beach's roads and causing the Town's residents not to be able to move back and forth. He said last year, there had been a lot of publicity about the number of cars that had been taken off the Beach because of the Park & Ride, but the traffic was horrendous. He said the Park & Ride was an experiment. He thought that, if the experiment had worked, the movement on the road would have improved, which it had not. He said the Town could not afford to keep increasing the number of trolleys, and Lee County needed to increase its participation. He did not believe that two Park & Ride trolleys was enough, but he was not willing to throw more Town money at it. He felt the Town Council needed to look at other ideas to get traffic moving, and thought this issue had been decided at the last meeting, and that his mind had not changed since that meeting.

Mayor Van Duzer said nothing had changed since that decision had been made, and that they were simply discussing the County's offer. He said he had an obligation to report what had occurred between the Town and the County Commissioners and that was why it was up for discussion.

Councilman Reynolds felt the Council should not be discussing the issue, because they had already dealt with it. He wondered when they would make a decision and stick to it. He said every other week this Council was bringing back something that had already been decided. He thought the discussion they had had about the Park & Ride had been good, and if the Town lost funding for it, "so what". He said last year the traffic had been horrible all the way down the Island, and felt the Town would be the winner if it lost the remainder of the grant funding. He said it didn't bother him to lose the remainder of the grant funding, but that it did bother him to throw money at the Park & Ride to keep it going. He felt it was not the taxpayers' job to pay for people to come to the Beach. He said there were problems already and the Town didn't need to pay to add to it. He did not believe the Park & Ride program kept traffic off the Beach last year. He said the TMA didn't have much of a say in the decision, because the Council had already clearly voted on it. Regarding the two dedicated exit lanes suggested by Mayor Van Duzer, Councilman Reynolds said it

was not possible. He said he had researched the various exits routes, and the fastest way off the Island was via Estero Boulevard, and that the Crescent Street bypass did not work. He added that they could pass the budget as it stood, because the County would not automatically get the money just because it was in the budget. He said if their decision last week meant nothing, then they needed to make a motion to delete those funds from the budget before approving it.

Mayor Van Duzer said it was not in the budget, because of their vote against funding the Park & Ride in the previous meeting. Councilman Reynolds said he had thought it wasn't in the budget, but that Mayor Van Duzer had just said that it was. Mayor Van Duzer said he had not said that it was now in the budget, but had said if they wanted to set the money aside in case they wanted to go along with the County's suggestions, they needed to do it at this time. Councilman Reynolds said he had misunderstood that. Mayor Van Duzer said that, at this point, the Council's motion had been to not fund the trolleys. He said he was only reporting what had happened and been said at the County Commission meeting.

Mike (last name obscured by comments from Mayor Van Duzer), of LeeTran came forward to answer any questions the Council had. For clarification, he believed there were three different proposals presented by County Staff: the eight trolley scenario with the Park & Ride; the six trolley scenario; a third option on which he did not elaborate. He said the County was willing to pay for 50% of those enhancements this year, as opposed to not having done that last year.

Mayor Van Duzer thought the Commissioners had discussed the reconfiguration of Lynn Hall Park. The LeeTran representative said the main destination for the Park & Ride customers was Lynn Hall Park. He said there had been issues with large numbers of passengers deboarding near the 7-11 across from the park, and then walking across the street. He said it had been a dangerous situation and a big problem last year. One proposal the County had made to the Town was that, instead of going to Bowditch, they would loop over onto Old San Carlos and drop passengers there, and then loop under the bridge and back down to Summerlin Square. Councilman Massucco opined that the turn onto Old San Carlos would be a fairly tight turn. The LeeTran representative (Mike) said they had tested it with a trolley and it had been successful. Vice Mayor Rynearson felt it would only make a bad problem worse. He said the ideal place would be to drop the passengers in Lynn Hall Park, and he felt the Commissioners were all in support of that idea. He didn't understand why County Staff had a problem with it, because it was a safe and convenient location to drop large numbers of people who wanted to be in the Times Square area without them having to cross any streets. Mike said he didn't know if the Commissioners had given any direction to Parks and Recreation Staff as to doing a feasibility study or preliminary design for the reconfiguration of the park to accommodate a trolley stop and turn-around. He believed there was initial resistance to that idea, as he felt there was with any new concept. He said he would check into it.

Councilman Reynolds said last year, as he came off the Bridge on three separate occasions, people had crossed in front of traffic next to the median to get to the street next to Ocean Jewels. He said that didn't normally happen during off-season, but felt those people had to have been part of the hordes of people delivered by the Park & Ride. He did not believe the residents or businesses had benefited from that service at all. He thought the local merchants in Time Square might have been, and if that were the case, he suggested dividing up the federal money and giving it to the merchants.

Town Manager Marsha Segal-George pointed out that the Council had received statistical information not only on the percentages of who was riding the trolley, but also how much money they spent. She believed the average expenditure per rider had been \$20. She felt those statistics proved that it was no great boon to the businesses.

Councilman Reynolds thanked Ms. Segal-George for supplying him specifically with that information. He said he didn't need it and he already knew it. He said maybe he was being a little facetious, but the Town was having problems because so many people were walking through the Times Square area. He said even if the County wanted to continue the Park & Ride, he objected because the Town didn't need all the extra people being brought to the Island. He said if they wanted to sit in the traffic line, so be it. He said he would rather sit in line with those people willing to sit in traffic to get to the Beach, than to sit in line and watch them go buzzing by him in the trolleys. He didn't see how the Beach would benefit from having the extra trolleys coming to the Beach, but he could see how the people of the Island were hindered by it. He didn't believe it was a selfish thing, but that it was a fact that it created some real problems.

Mayor Van Duzer thought he had not stated his suggestions clearly enough. He then reiterated his original suggestions. Mayor Van Duzer and Councilman Reynolds went back and forth about the elimination of the express lane for the Park & Ride, although they both wanted the lane to be eliminated. Mayor Van Duzer said he was not trying to be argumentative, and asked if anyone wanted more discussion on that item.

Mr. Gucciardo said the only thing that could change was the exact dollar amount for the addition of a fourth beach trolley, and to make all the on-island trolleys free, would have to be plugged in, which he said were listed on Exhibit C. Councilman Reynolds thought the Council had asked for two beach trolleys, and Mr. Gucciardo said they had opted for four. He said the County would bring it up to three trolleys, and pursuant to the Council's recommendation, a fourth would be added, and the fare would be eliminated on those trolleys. Mayor Van Duzer asked for some figures to effect those changes, and Mr. Gucciardo referred him to Exhibit C. Mayor Van Duzer asked Mr. Gucciardo to give the figures verbally. Mr. Gucciardo asked Mike to clarify Exhibit C.

Mike said the total expense to add a trolley, bring the total to four, and eliminating the fares on the beach trolleys, would be approximately \$100,000 and that the County

was willing to split that cost 50-50, which would make the Town's cost for that enhancement of service \$50,105. Mike estimated the trolleys would run every fifteen minutes instead of every twenty minutes with the enhanced service.

Mayor Van Duzer asked the Council if they wanted to add the \$50,105 to the budget. Mr. Gucciardo said more than that amount was already in the budget, because at the point the decision had been made by Council, Town Staff had not known the exact cost and had estimated a higher figure, which he said they would pare down to the correct amount. Mayor Van Duzer then clarified that it was already in the budget before them.

Councilman Katcko thought Mayor Van Duzer's suggestion, that they put a little money into the budget to give the Council more time to think about the Park & Ride service, was good. He said he was man enough to admit he had been mistaken about what he had thought the County had offered the Town. Mayor Van Duzer thought Councilman Katcko should get the flip-flop award. This evoked some chuckles around the room. Councilman Katcko explained to the public present that the Council had just gotten the trolley proposals that day, and he had been told that the County was going to give the Town a dollar figure, and that the Town would have to match it. He had not been under the impression that they would pay 50%. He said he was in favor of Proposal C: Two Park & Ride trolleys with twenty-five cent fares and four beach trolleys with no fares. He had not known that, when he had proposed a return to "core level" service, it meant two trolleys – he had thought core level service meant there would be six trolleys. He felt that, in light of the fact that the County was willing to pay 50% of the total cost service, he wanted to give it a little more thought. He said spending \$400,000 for the Park & Ride would be a gross misspending of the taxpayers' money. But he said they were now looking at spending \$50,000 – half the cost for free trolleys – or, if they upped the level of service to six free trolleys, it would cost \$200,000. He felt the Council may want to consider one of those two options.

Councilman Reynolds asked how many trolleys regularly ran the routes between Bowditch, Bonita and so forth. Mike said two trolleys were currently being operated for beach service, which covered the entire Beach service area from Summerlin Square, Bowditch Point, the entire length of the Beach, and down to Bonita Springs. Councilman Reynolds asked Councilman Katcko if he had suggested adding three more trolleys to that service as opposed to the Park & Ride service. Before he answered, Mike clarified that Proposal B from the County did not propose free fares up and down the Beach, as Proposal C did. He went on to say that Proposal C included adding a fourth trolley with free fares. He said Proposal B offered the same level of Beach trolley service as had been in place last year, for which he believed the Town had paid \$350,000, whereas the same level of service this year would cost the Town \$202,000, according to Proposal B. Councilman Reynolds couldn't see any reason for having the additional two trolleys as proposed in Proposal B. He asked how often they ran, and Mike said approximately one per hour. Councilman Reynolds thought that would take care of the Island residents, as there would already

be four trolleys going up and down the Island, bringing the total to six trolleys in service going up and down the Island. Mayor Van Duzer said six trolleys would not be going up and down the Island. Councilman Reynolds said he was counting the four free trolleys that would be running, plus the two that came through each hour, which he said would bring the total to five trolleys. Mike said if four trolleys ran the length of the Beach, on paper there would be a trolley every fifteen minutes. He said the two Park & Ride vehicles would provide service to and from the mainland approximately every forty minutes. Councilman Reynolds said he was not talking about the Park & Ride at all, but was talking about the two core service trolleys that presently serve the Island. Mike said the County's core level of service changed in season, and that December through April it was two vehicles on the Park & Ride and three vehicles on the Beach.

Mayor Van Duzer clarified that the Park & Ride trolleys did not go up and down the Beach. Councilman Reynolds said he knew that and was why he was trying to rule them out. Vice Mayor Rynearson asked if the Beach trolleys went to Bonita in season. Mike said they stayed on the Beach, and turned around at Lovers Key. Councilman Reynolds said that was what he had been trying to get clear, and added that it was only the two from Summerlin once an hour that went to Bonita. Mike said that the Bonita service did not exist during the December – April time frame.

Mayor Van Duzer was not certain as to how to proceed to have the Proposal C dollar amount included in the budget. Mr. Gucciardo said that there was \$210,000 in the line item currently, although it was not all dedicated for the in-season trolley service. He said approximately \$10 - \$20,000 was usually set aside in case there is a need for extra service for a special event or something like that. He suggested leaving the line item as it stood, because the Town could continue to work with LeeTran to see if something could be worked out that would be acceptable to the Council, and there would be enough money in the budget, or Council could decide to stay with Proposal C. Mr. Gucciardo thought that would leave the Council with enough flexibility to go with a variation of one of the other options if they so chose at some future date. Mayor Van Duzer said that was what he had been trying to accomplish with his suggestions earlier in the discussion.

Councilman Reynolds said the Council had beaten the subject to death, and suggested the Council stick with the decision they had made at the last budget hearing, and that they move on to another subject. Mayor Van Duzer said that he understood what Councilman Reynolds was suggesting, but that Council was in the middle of discussing whether the Council should backtrack or not, which he explained they would not unless Council took some sort of action to do so.

Mayor Van Duzer suggested an additional \$50,000 to \$100,000 be plugged into the budget to create some flexibility for the TMA in their consideration of the proposals that had come from the County. He added that he liked the idea of getting rid of the dedicated trolley lane because it just irritated people, and he liked the idea of creating an additional exit route off the Island.

Vice Mayor Rynearson suggested leaving the line item amount of \$210,000 as it stood, as they could always pull \$50,000 out of the grant if they needed to, as that was what the grant funds were designated for. He asked Mr. Gucciardo if that was feasible. Mayor Van Duzer thought all the money was going to come from the grant. Vice Mayor Rynearson said that was true, but felt they could always take more of it if they needed more money. Mayor Van Duzer thought that no direction needed to be given to Staff if they followed that suggestion. Councilman Reynolds disagreed, and felt Staff was being given additional direction to spend money, and to continue something the Council had voted against. He had hoped it would be left as it was. Mr. Gucciardo thought the direction was to go ahead with the plan outlined in Proposal C, which was exactly what the Council had suggested at their last meeting – four trolleys on Island, all free for riders. He said he thought the direction was to leave the line item amount at \$210,000 even though Proposal C would cost only \$50,105, so that there would be flexibility to implement a possible variation of one of the other proposals if Council decided to do so. Vice Mayor Rynearson added that they wanted to hear the TMA's opinion of the various proposals from County, which was why the TMA was there. Ms. Segal-George pointed out that any change would still require action by the Council, and therefore was not permission to spend anything. It was determined that no action had to be taken with regard to the dollar amount for this item.

**Mayor Van Duzer then invited Councilman Massucco to address Item F** on the agenda at this time. Councilman Massucco said he was sure that the Councilmen were aware of the "Improve Our Neighborhoods" program he had proposed at an earlier Council meeting. He said it would be inclusive of, and not a replacement for, the historical designation grant program already in existence. He said there could even be concessions made to anyone with property over 50 years old, so that they would go to the front of the list. But he still wanted to have a program available to the everyday person who worked hard for a living and obeyed all the laws. He wanted to give that type a person "a shot" at getting some money to upgrade their property. He said there was a program for low and moderate income levels, and a program for properties that were 50 or more years old, but there was nothing for the "ordinary guy". He said minor adjustments could be made - the \$250,000 was not necessarily the amount that had to be budgeted. He said the Council could decide on a different amount of money to start with, but he really wanted to get something going for the average person to help him improve his property. He asked for comments from his fellow Councilmen.

Mayor Van Duzer said he was not familiar with the program because it was something that was in Boston. Councilman Massucco said it had been initiated in Boston over thirty years ago, so he didn't know if he could find any information about how it had been done. Mayor Van Duzer asked if it was still in operation, and Councilman Massucco said it had been phased out over the years, mainly due to a change in the administration. He said it was self-explanatory, and that he had had it in all the papers, and was also going to appear in Tidelines. He asked if they thought

it had merit enough to get into it. He said he had guidelines and details about the program. He said there was plenty of information available to them if they had any questions about it.

Councilman Reynolds said that the present preservation program currently in place had had no guidelines, and that non-residents were being given money to fix up rental properties, which he felt was an embarrassment to use taxpayers' money for that purpose. He said he had sent a memo around about Councilman Massucco's program the day before, so that each Council member had a copy of it. In the memo, he had thanked Councilman Massucco for having explored other possible avenues for the program. He felt that they needed to recognize that property values on the Island were high, and felt individual owners should be capable of repairing their own property. He said if there were circumstances in which a property owner could not afford to do the repairs, then and only then should the taxpayers consider giving any money to help those people. He said he could not support Councilman Massucco's proposal, and said the present historic preservation program had an annual budget of \$40,000 while Councilman Massucco had proposed an annual budget of \$250,000 for his proposed program. Councilman Reynolds acknowledged that Councilman Massucco had already suggested that he would be very open to suggested dollar amounts from the other Council members, but Councilman Reynolds said he had based his decision on the original proposed amount of \$250,000. He then suggested returning the \$250,000 to a Land Acquisition line item, for the purpose of purchasing a Town Hall site. He felt Council should decide at this time to set aside additional funds for that purpose. He pointed out the increase in the lease amount for the current Town Hall offices, which he said was a 100% increase in the cost of the leased site during 2005-06. He said the Town Manager and the Council had obviously not been very alert for the past ten years, and that it was time for Council to wake up and do something. He felt in-house problems should be a priority. He said not one Council member had supported the Town Hall issue except himself. He hoped each of the other Councilmen would reject Councilman Massucco's proposal. He then said that, since Mayor Van Duzer was a voting member on the Historic Preservation committee, he believed Mayor Van Duzer should excuse himself from discussing and voting on this issue due to a conflict of interest. He said that, as the Town's solid person, the Town Charter clearly stated that none of the Council members should vote on such committee issues. He said he was not going to detail what had happened with a resolution recently, but it hadn't changed what the Town Charter said – that Council members should not serve on a committee if they received a salary from the Town. He said he hoped the Council could hear what he was saying, because they were trying to allot taxpayers' money to do repairs in a community in which he felt most people were capable of taking care of those things themselves. He suggested taking other avenues if they could.

Councilman Massucco didn't see why people should be penalized just because their property had appreciated, because they still had the same needs as everyone else. He said it shouldn't disqualify a person from getting some kind of help from the Town to improve their properties.

Mayor Van Duzer said he had to mind his manners because he had found several things wrong with the statements made by Councilman Reynolds. Councilman Reynolds told the Mayor to point out what he thought was wrong because he didn't think one thing was wrong with his statements. He said he would rather have them pointed out than to have insinuations made. Mayor Van Duzer said the figures were wrong that led Councilman Reynolds to pronounce that the lease amount the Town was paying for the premises had gone up 100% for the 2005-06 year. He added that Councilman Reynolds had shot in comments about campaigns and candidates. He said that several years ago, the Council had looked into the purchase of the building the Town currently occupied, so that Council people before had considered it, contrary to what Councilman Reynolds had claimed. He also pointed out that the Council had voted to put \$250,000 into the Town budget for land acquisition one year, and Councilman Reynolds had been the one to vote that down, which he found amusing. Councilman Reynolds asked what the correct figures were regarding the lease agreement, but Mayor Van Duzer had the floor and said he didn't agree that the lease had gone up by 100%. Councilman Reynolds told the Mayor to ask Mr. Gucciardo if he didn't believe it. Mayor Van Duzer pointed out that over 100% increase would bring the amount to \$110,000 and that Councilman Reynolds had said it was over that. Councilman Reynolds said "give or take a plus or minus". Mayor Van Duzer asked him if that meant it didn't matter that his figures were wrong. Councilman Reynolds said it did make a difference, and Mayor Van Duzer said it was incorrect.

Vice Mayor Rynearson clarified that there wasn't \$250,000 floating around, as it had gone back into the general fund and had since been allocated to different projects.

Councilman Reynolds believed that, with the reserves the Town had, they could easily find \$250,000 or even \$500,000.

Councilman Massucco restated that the \$250,000 amount in his proposed program had been an arbitrary number, and added that his proposal was to try the program on a trial basis for one year. Councilman Massucco explained he had come up with that figure after that amount had been taken out of the budget for land acquisition last year, mainly at his insistence because he could not see the Town spending the money on more land acquisition. He said his proposal was something entirely different from land acquisition. Mayor Van Duzer said Councilman Reynolds wanted it to go back into land acquisition rather than putting into Councilman Massucco's proposed program.

Mayor Van Duzer said he wanted to get more concrete information as to how the program would work, and opined that someone must have a program like it in operation somewhere that they could look at. Councilman Massucco explained that, in the Boston program, the city of Boston reimbursed the work done by the property owners 100% - no matching funds. Mayor Van Duzer said the historic preservation element was part of the Town's Comp Plan. Councilman Massucco explained that

the intent of his proposed program was not to replace the historic preservation program, but rather to incorporate it into his more inclusive program.

Ms. Segal-George said there had been a number of programs that support beautification and repair with regards to business properties, which could be seen in a lot of downtowns. She said that style of a program could be adapted to residential properties. She felt Councilman Massucco had supplied enough information to fashion the type of program he had proposed, if the Council wished.

Mayor Van Duzer said Ms. Segal-George's microphone was going on and off. She said it was because she had to push a button for it to work. Mayor Van Duzer joked that that microphone had been given to her on purpose. She dryly said she knew that it was so she wouldn't get caught saying inappropriate things. Councilman Massucco said he liked what she had been saying. This drew some chuckles from around the room.

Mayor Van Duzer said there were ample reserves, and wanted to get a consensus to move forward, or not, with the program Councilman Massucco had proposed. He said nothing had to be put into the budget, but it was something that could be considered. Ms. Segal-George said she would be willing to work with Councilman Massucco in getting more structure to his proposed program, as she thought there were existing programs that could show how a program like it could work, if that was what the Council wanted. She felt it would have to be more in the realm of beautification and repair for residences rather than façade work for businesses. Vice Mayor asked if there might be federal grants for a program like that. Ms. Segal-George said there may be. She said the State of Florida had come forward more and more with neighborhood-style grants. She said the hurricanes had put things on the back burner, but more of those types of programs were in existence, and so the Town might be able to link the program with some grant money. Vice Mayor Rynearson conjectured that in the future, as the hurricane ramifications subsided a little, there might be some grant money available for it. She felt the difficult in the formulation of this type of program would be in determining the criteria a property owner would have to meet to qualify for the program, so that it was fair and predictable to all.

Councilman Reynolds asked the Mayor if he knew how the Historic Preservation program had been developed. Mayor Van Duzer said he did, and that it was in the Town's Comp Plan. Councilman Reynolds said that was not what he had asked, and then told the Mayor it had come about through the LPA, which had created the Historic Preservation Subcommittee. He further explained that Ms. Segal-George had told the LPA they did not have to go through Council to form the subcommittee, and that they had the authority to form it themselves. Mayor Van Duzer apologized for misunderstanding the question Councilman Reynolds had asked him, as he had thought the question had been how Historic Preservation had come about, which he repeated could be found in the Comp Plan, where he said it was written that there would be a committee established. Councilman Reynolds said his point was that the committee had not been appointed by the Council to begin with, yet the LPA said

they wanted \$40,000 to apply to two selected projects annually. Mayor Van Duzer pointed out that that had been approved by Council. Councilman Reynolds said it had not been. Ms. Segal-George said it had been approved by Council. Councilman Reynolds said the budget was approved by Council, but, initially, the committee had not been approved by Council, unless the LPA minutes were wrong. Mayor Van Duzer said they could argue about how the committee came to be at a later date, and Councilman Reynolds said he was not arguing. Mayor Van Duzer told Councilman Reynolds that the Comp Plan had the historic preservation element that established that there would be a committee to work on that design element. Councilman Reynolds said it was the subcommittee that had brought the program to the Council. Councilman Reynolds added a comment about the Massucco situation. He said he couldn't see how his program was really changing the historic preservation program. He pointed out that in Councilman Massucco's proposed program that only owners who were planning to live in the property should be eligible for the grant, which he thought was a good point. He said the subcommittee's program allowed for two properties located just about anywhere on the Island. Regarding the most recent request for the grant money in June, Councilman Reynolds said the owner of that property had planned to take her house down, but when she had learned about the historic preservation grant program, she decided to try for it. He added that she lived in Ft. Myers, and was probably a fine lady. He said she had been told that \$20,000 would not be enough to do the preservation work that would need to be done to maintain historic designation, and so she had asked for \$30,000. He said the rule was that the maximum grant amount could only be \$20,000 per individual, but it had been recommended by the historic preservation committee that she be given \$30,000 because there had only been one applicant for the grant this year. He said if they were going to have a program such as the one Councilman Massucco proposed, the criteria that the owner occupy the building was much in order. Councilman Reynolds said the grants should not be awarded for rental units. He said they couldn't have a helter-skelter program with no limit, and they needed to determine how many properties the taxpayers wanted to pay for.

Councilman Massucco felt, if there were no applications submitted to participate in the program, it would be a clear indication that there was no interest in it. Councilman Massucco said he wanted to get back to what the Mayor had suggested earlier with regard to getting a consensus to see if the rest of the Council members were interested in pursuing more information about it. Mayor Van Duzer said he had no problem with looking into it further, and Councilman Katcko said he wanted to look into further also, adding that bringing forward a high cost for the Council to consider at this budget hearing was not something he was at all comfortable with. At this point, Mayor Van Duzer said it would be looked into further, and returned the discussion to the budget.

Mayor Van Duzer said there was a one-page budget summary included with the budget, which he found very interesting. He added that he was ready for a motion, if someone wanted to make one.

**MOTION:** Vice Mayor Rynearson made a motion to adopt the operating budget for 2005- 2006. Mayor Van Duzer seconded the motion.

Councilman Reynolds said he really wished he understood the budget better. Someone in Council mumbled, "So do I." Councilman Reynolds said he hated to vote against something he didn't fully understand. He said he didn't know why he was concerned because he had done it for six years in a row, and supposed it couldn't be that much different. He said since had returned to a Council seat, he wanted to vote for things he understood and knew would be for the benefit of the Island residents. He said there were so many things in this budget, although some of the other Council members had told him how easy it was, that he didn't think were easy at all. He felt if some of the information had been given to him sooner he would have had the chance to study it and would have helped a lot. He said that studying the proposed budget drawn up by Pat Smith had been a lot better and that he understood it a lot better than the one before Council. He then asked the Town Attorney what would happen if the budget before them were not approved. Ms. Dalton said there was a statutory requirement to have it done in September. He asked what would happen if it didn't pass in September. Ms. Dalton said the requirement was that any amendments to the budget had to be made at this hearing, and then to move forward with it. He asked what would happen if it didn't get approved until October, and Ms. Dalton said it would not be a proper act on the part of the Council. Councilman Reynolds said they had been afforded a very limited time within which to pass a tremendous budget for a year that they didn't understand. He said if he were going to serve the people properly, and not tie up the budget, then they were obligated to vote for it even though they didn't understand it. He said he was going to vote for it this year, but he wanted the motion amended to require that at least four Council meetings be dedicated specifically to budget information and explanations at the end of the coming fiscal year in June, where everything would be explained to the entire Council all at one time. He said he did not want to meet with anybody individually. He wanted it done so that anyone on the Island could hear what was said. He asked the motioner if he would allow that to be included in the motion. As he explained what he wanted included in the motion, Councilman Reynolds changed his proposed amendment from four meetings to two meetings a month to go over the proposed budget. He said they could be special meetings set specifically for that purpose, advertised accordingly, apart from regularly scheduled Council meetings, where only the budget would be discussed, where he hoped there would be a full house present so that all could understand the budget better. He said he would feel a lot better about voting for the budget with his proposed amendment included. He said he was going to vote for it anyway because he had no choice at this point in time.

Vice Mayor Rynearson said he wanted his motion to stand as it was, because they were doing everything legally, in the way it was supposed to be done, and he saw nothing wrong with the way it was being done. Councilman Reynolds interjected an apology for having asked the Mayor to make the amendment to the motion, as he had not known that the Vice Mayor had made the motion. He said he would not have said it if he had known that Vice Mayor Rynearson had made the motion.

Councilman Katcko said the first thing he had noticed with the budget was that the Town was operating on a big deficit this year, which had concerned him. He said that running his own business, he didn't understand how operating on a budget could be done. He said he had researched it and found out that there had been a large carry-over that had been from taxes collected the year before that had been saved, and that this year a substantial amount of them were going to be used to go towards road and drainage maintenance - \$250,000; road drainage projects - \$500,000; canals - \$200,000; North Estero Improvements - \$700,000; side street resurfacing - \$100,000. He said those were all projects that would be done for the benefit of the residents out of the fund reserves, and said the \$3.8 million carry-over was carried over was to pay for many of the projects for the residents and that the money was going to be used this year. He then thanked John Gucciardo for preparing the budget comparison, as the Council had asked him to do, and he said it was helpful, as was the explanation of different items that had stood out with regard to revenue and expenditures. One suggestion he made for the comparison budget between 2004 -05 and 2005-06, was that a percentage plus or minus figure be added, which he thought would be helpful. Councilman Katcko also wanted to see funds identified when carried over in full or in part, so that the figures would be more understandable. Under expenditures for administrative costs, Councilman Katcko said the maintenance crew salary was going up \$77,000 this year, but understood two new people had been hired, but had thought they were supposed to be TDC-funded.

Mr. Gucciardo said that needed to be looked at. He said he had mentioned to Council that his understanding was that John Scott, who was given a separate position on the maintenance staff dealing primarily with the Times Square and Old San Carlos areas, was to be funded out of a combination of TDC and CRA dollars. He thought he had not reflected that in the budget, and that he might have to make a minor adjustment as to where the dollars would come from, but no change would be made to the total dollar amount being spent.

Councilman Katcko then cited Page 29 of the draft budget, with regard to the Town Attorney and outside counsel. He said the budget called for the expenditure of \$250,000 for those services, and thought that, in the future, the Council might have to consider the possibility of hiring a full-time Town Attorney on Staff. He said that switching to in-house maintenance had save the Town money, and meant no offense to Town Attorney Dalton. He didn't know if it was a reasonable thing to consider or not.

John Gucciardo explained that the line item amount for outside counsel had changed dramatically from year to year. He said the line item could be eliminated altogether, but the Council would have to understand that if there were any outside counsel needed, it would have to come out of contingencies or reserves. He said the policy about this line item with past Town Councils had been to show the line item so that it was known that it was a path that might have to be taken, and that money had been set aside for that purpose.

Councilman Katcko apologized for taken up time to ask his questions, as he usually tried to get all his questions answered before Council meetings, but he had not had time to do that in this instance. Referring to the pie charts on Page 41 of the draft budget, and the 23.5% for Council, Staff and Town Hall, Councilman Katcko asked exactly what that was. Mayor Van Duzer said it was the \$2,503,957.00 on the Budget Summary sheet listed as Administration, which included all the administration costs. Mr. Gucciardo said it was also reflected in detail on Page 24. Mayor Van Duzer said the five items for revenues and nine items for expenditures listed out on one particular sheet of the draft budget to be particularly helpful. He hoped they would be able to maintain the revenues, cut the expenditures, and maintain a comfortable reserve. Councilman Katcko said he had looked through all that information, but had not referred back to it when he had been looking at the pie chart. He thought if only 23% were being spent for Staff and so forth, he wanted Mr. Gucciardo to come work for him because his salary costs were 43% in his business.

Councilman Massucco said the narrative was very helpful, as was the comparison information.

Councilman Reynolds remarked that he didn't want to keep a secret, and said he had called Mr. Gucciardo a few times about the budget, and that Mr. Gucciardo had been very helpful.

Vice Mayor Rynearson said he understood what Councilman Katcko had said about the comparison information, and that it could be put into the budget in the future.

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

The motion carried unanimously, although when he cast his vote, Councilman Reynolds said "reluctantly".

Mr. Gucciardo said when the budget was prepared, it was often difficult to project what the Town may or may not get, grant-wise. He said the Town often applied for grants, and their status was often not known until either acceptance or rejection. He said that, although it did not appear in the budget because it was just learned today, the Town had just been approved for \$95,000 for the reforestation grant from the Department of Forestry, which was a result of Hurricane Charley. He thanked Lois Poff and Sylvia Lachappelle from the Garden Club who had worked on it for some time. He said he didn't know yet what conditions would be placed on the use of those funds, or if those conditions would be acceptable to Council. He mentioned it because Staff believed the \$95,000 would become revenue this year, although it

couldn't be put formally into the budget until it was known how the money could be spent.

The public hearing on this item was closed.

**3. Resolution 05-29: Adoption of Downtown Redevelopment Agency Budget**

Mayor Van Duzer opened the Public Hearing, and asked Ms. Dalton to read the resolution, which she did. Mayor Van Duzer opened Public Comment, and asked Ms. Dalton to swear in those who wished to speak, but no one came forward to speak, so Public Comment was closed and the issue was brought back to Council.

**MOTION:** Councilman Massucco made a motion to accept the budget. Vice Mayor Rynearson seconded the motion.

Although he could not locate his copy of the DRA budget, Councilman Reynolds said there were three items in it of different amounts and wondered why they were included in this budget, especially because one of the figures had had to do with the north end of Estero.

Mr. Gucciardo explained that the \$75,000 was for North Estero Boulevard improvements, and was for the area adjacent to Lynn Hall Park and the commercial buildings across from it, and then across Old San Carlos to the Winds store. Councilman Reynolds asked why that expense wasn't part of the DRA, and Mr. Gucciardo said it was part of the DRA budget. Councilman Reynolds said it had been listed as the North End, and Mr. Gucciardo pointed out that it was listed as North Estero Boulevard Improvements, and that the part of Estero referred to was within the DRA area. Councilman Reynolds said the terminology had thrown him.

Mayor Van Duzer gave Councilman Reynolds his copy of the DRA draft budget, as he wanted to ask about some other items on it, and still had not located his copy of it. Councilman Reynolds then asked about a \$50,000 item. Mr. Gucciardo said it was a combination of planning services at \$5,000, activities approved by the Council at \$20,000, and legal services for the Old San Carlos lawsuit at \$25,000, which totaled \$50,000. Councilman Reynolds said he had had a question as to what legal services were being furnished. Mr. Gucciardo said the Utelco lawsuit had not as yet been completely resolved, and believed the Town Attorney would address that specifically later on in the meeting.

<b>VOTE:</b>	Councilman Massucco	aye
	Vice Mayor Rynearson	aye
	Mayor Van Duzer	aye
	Councilman Reynolds	aye
	Councilman Katcko	aye

The motion carried unanimously. Mayor Van Duzer closed the Public Hearing.

#### **4. Adoption of Fort Myers Beach Water Utility Budget**

At this point, the Council recessed as the Town Council and convened as the Town of Ft. Myers Beach Public Works Services, Inc. board. Noting a quorum present, Mayor Van Duzer called the meeting to order. He said it was not a public hearing.

**MOTION:** Vice Mayor Rynearson moved to adopt the FMB Water Utility budget. Councilman Massucco seconded the motion for discussion.

Councilman Massucco, referring to the Repair and Maintenance item of \$75,000, said it always concerned him because he knew what was under Estero Boulevard, and that dollar amount wouldn't "scratch the surface" if there should be a catastrophe. He felt the amount ought to be larger. Mr. Gucciardo said the Town had lowered that number each year since the Town took over that utility. Councilman Massucco felt the Town had been very lucky, with which Mr. Gucciardo agreed. Mr. Gucciardo then pointed out that the operators were liable for the first \$35,000 of any repairs and maintenance, per the contractual agreement with the Town, which meant there actually was \$110,000 per year coverage. He agreed that if there were a major break, the Town would have to go into reserves. He said that in the future, Staff would bring ideas to Council for capital improvements, now that it was known what the utility could produce in revenue. He hoped that would help take care of potential problems before they became real problems. Mayor Van Duzer pointed out a reserve of \$2 million was in the utility budget, although it wasn't growing very fast. Councilman Massucco said the explanation made him feel a little bit better.

Councilman Reynolds asked how much money the Town still owed on the system. Mr. Gucciardo said the system had been refinanced last year at 3.6, and that 2 principal payments and 1 interest payment had been made, and believed another payment was due October 1<sup>st</sup>. Councilman Reynolds asked if the figure paid was \$276,000 annually, which Mr. Gucciardo confirmed. Councilman Reynolds asked what the owed balance was. Mr. Gucciardo guessed it was around \$3.2 or \$3.4 million. Councilman Reynolds thought it had only cost \$3 million originally. Mr. Gucciardo said \$3.6 million had been borrowed the first time at point of purchase, and the same amount had been refinanced. Councilman Reynolds had thought the Town had only paid \$3 million for the system, which he thought had been a good deal. Mr. Gucciardo said the purchase price had been close to \$3 million, but there had been additional funds borrowed for initial operational costs and some capital.

Councilman Reynolds commented that he was glad the system was not in-house. He remarked on how well it was working now after the initial problems.

**VOTE:** The motion was carried unanimously.

At this time, the Council adjourned as the Town of Ft. Myers Beach Public Works Services, Inc. Board and reconvened as the Town Council.

**C. Request for funding Sand Sculpting event/Waiver of Open Alcoholic Beverage Container Ordinance**

**MOTION:** Councilman Massucco made a motion to move the item. Vice Mayor Rynearson seconded the motion.

Councilman Reynolds said he couldn't locate a total amount, and Mayor Van Duzer indicated that it was on the next page of the request. Councilman Reynolds noted that the TDC was going to contribute \$9600, and it was being requested of the Town to contribute \$5800. Mayor Van Duzer pointed out the total of \$49,392 to Councilman Reynolds. He said it was a really nice event, and that a lot of businesses contributed to it also and was glad about that.

Councilman Katcko suggested that, in the future, the Chamber of Commerce could show where the signage would be that would indicate the point beyond which alcohol could not be taken on the site map. He said it was not a roped off event and didn't see any clear definitions as to where alcohol would be limited to. Councilman Reynolds said it was mentioned in the request that there would be signs placed strategically.

Councilman Massucco noted that, under Security, the Boy Scout Troop 999 would again act as security. He asked if they would get any formal recognition for doing it, because it was a very civic-minded organization. Mayor Van Duzer believed the Chamber recognized them in some fashion. He thought the troop should get some sort of recognition because they did so much in the Town.

There was a bit of a stir, and then Mayor Van Duzer invited someone named Georgia to come up to the microphone to address the Council.

Georgia Reymuth, with the FMB Chamber, came forward. She said the Chamber recognized the Boy Scout troop with a certificate, but they also liked to do the security because it helped them earn their badges. She said the Chamber also made a donation to the troop.

**VOTE:** The motion carried unanimously.

**D. Public Hearing for Sun Stream Realty Office Building to rezone.  
Property located at 6231 Estero Boulevard: Resolution 05-30.**

Mayor Van Duzer read the resolution and opened the Public Hearing, and asked for ex parte communications from the Council members.

Councilman Massucco – none.

Vice Mayor Rynearson – spoke with Mr. Swanson.  
Councilman Reynolds – none  
Councilman Katcko – none.  
Mayor Van Duzer – none.

The applicant was called forward to make their presentation.

Beverly Grady, an attorney representing Sun Stream, came forward. She said Sun Stream was requesting to rezone .51 acres at 6231 Estero Boulevard from Commercial Boulevard CD to Commercial Planned Development for a three-story office building. She said it was located at the intersection of Estero Boulevard and Bahia Via, which she said was a commercial node area, with a 7-11 store to the north, with Charley's Boat House restaurant to the south, and with the Outrigger Resort to the west. She said to the east were single family homes.

She said the parcel had been developed since 1966 as a gasoline service station, with two access points on Estero Boulevard and one on Bahia Via. Through the request for an 18,000 square foot office building, Ms. Grady said it would be three stories, with parking underneath the building, with the second and third floors being around 7078 square feet each. She presented the Master Concept Plan included in the request. She said the proposed use was for a less intense office use, as opposed to the more intense gas station use. She said the access point would be reduced to one on Estero Boulevard and one on Bahia Via. She said the landscaping would be increased greatly from what was in existence prior, with a landscape buffer area and a fence, which was described in detail in an attachment to the Staff package.

Ms. Grady said the subject property met the FAR. She said there was a Town Staff Report that recommended approval. She said there had been no public in attendance at the LPA hearing. She said the phone calls about the project had been favorable once the callers learned the parcel would be developed for an office building. She said the LPA minutes reflected that they were very complimentary of the design of the building and grounds, and the LPA recommended approval.

Ms. Grady said the architectural renderings were included in the pack, and that Brook Swanson, the licensed architect who had designed the project, was present to answer any questions the Council may have. She said the architectural renderings were being submitted in compliance with the commercial design standards of the Town. She said Tim Pugh, the civil engineer with Source Engineering who had designed the paving and drainage, was also present.

Ms. Grady then reviewed the conditions. She said the developer was in agreement with the conditions presented to the LPA from Town Staff, and was also in agreement with the recommendations of the LPA.

Condition 1: Adopts the Master Concept Plan.

Condition 2: Sets forth the site development regulations for the site, which she listed out.

Condition 3: Requires the 20% open space area.

Condition 4: Ms. Grady said she would come back to this because it was the only one that was going to change.

Condition 5: Sets forth the requirements for landscaping, which she listed out.

Condition 6: Requires replacement of the wooden fence with one designed and set forth in Attachment G.

Conditions 7,8, and 9: Ms. Grady said these were standard zoning conditions.

Ms. Grady pointed out two deviations, one having to do with the buffer area described in Attachment G, and one having to do with the intersection separation to permit the one access point on Estero Boulevard.

Regarding Condition 4, Ms. Grady said it was added at the LPA hearing, which had to do with the tanks that had been in the ground for the gas station. She said, since the LPA meeting, those tanks had been removed, and a Tank Closure Assessment Report would be filed. She said the soil had been removed from a small area that had had some contamination. She said the soil was tested in the area around and underneath where the tanks had been, and no contamination was found. She said the ground water had also been tested, and the firm that had removed the tanks and done the tests would be requesting a No Further Action letter from the DEP, which signified that it met the environmental regulations. Regarding Condition 4, and the removal of the tanks, Ms. Grady said she had worked with Town Staff and that language had been added to it. She read the original language of the condition, which had been attached by the LPA and Town Staff, and which basically said that the gas tanks had to be removed, and testing had to be done and mitigation had to take place as the result of any type of pollution resulting from current or prior uses before the issuance of a local development order. She said Staff had suggested the following language be added: "...and will enter into an agreement to hold the Town harmless against any third party claims resulting from such current or former uses. Prior to the Certificate of Compliance of the D.O., this agreement would be recorded in the public records." She said how they would show satisfaction of this agreement was set out as "An official determination by the agency or agencies with jurisdiction over environmental compliance, if the property complies with all relevant environmental regulations, must be provided to the Town to satisfy this agreement." She thought that if the agreement were satisfied prior to getting the Certificate of Completion of the D.O. the agreement would not need to be recorded, otherwise the Town would just file a notice that the agreement had been satisfied.

Ms. Grady and her clients felt the building would be an asset to the commercial node and the Town, and that it would be viewed as a positive addition to the Town.

Councilman Massucco asked if anyone from the Town had been present for the removal of the tanks or the testing of the soil and water. Mr. Murphy said no one from Town had been present, but normally they would not have been present for something like that. Ms. Dalton remarked that jurisdiction over the issue was

reserved to the DEP, and the contract was administered by Lee County, so that the DEP was responsible for monitoring that.

Councilman Massucco complimented the architect, and said it was a beautiful building, which he agreed would be an asset.

Mayor Van Duzer pointed out that Council had asked for all the information about the removal of the tanks, which they had gotten.

Councilman Reynolds said he had had to leave the meeting for a moment, but that he had read the materials from Ms. Grady. He said it looked like the sidewalk was running alongside of the building, and he had thought the sidewalk was on the right-of-way. He asked if that meant the building would come up to the right-of-way. He said there was hope that, in the future, the road could be widened in the area. He asked how far back from the right-of-way the building would be. Brooks Swanson, the architect, explained that there was a five-foot space between the sidewalk and the colonnade at the closest point. Councilman Reynolds asked if the LPA had had questions about that. Mr. Swanson thought that, in the CD district, the front setback was anywhere from 0 to 10 feet, and the building was ten feet away from the property line. Councilman Reynolds said his house, located on Estero Boulevard, was set back about 35 feet, and that he could not build any closer than 25 feet from the street. Mr. Swanson said that was the case in a residential district. Councilman Reynolds asked Mr. Swanson if he meant that residents shouldn't have the same rights, and Mr. Swanson said he did not mean that at all.

Jerry Murphy told Councilman Reynolds there was a distinction for commercial properties, and through the CPD they were allowed to utilize a setback less than was normally required. He said for this project, they had brought the colonnade out to the right-of-way, and the colonnade itself was about ten feet wide, which put the face of the building ten feet back from the right-of-way. He said the idea was that while the sidewalk was in the right-of-way, the colonnade would provide shade to any pedestrian passing by. Councilman Reynolds asked if the applicable regulations were in the Comp Plan or the LDC, and Mr. Murphy said they were in the LDC. He said there were provisions in the Comp Plan with regard to walkability, but the regulations came from the LDC. Councilman Reynolds said there was nothing that required the Council to accept the design proposal. Mr. Murphy said that was correct, and that it was a Planned Development and was open for negotiation. He said Town Staff and the LPA believed the building would be suitable in the area, because it would provide the shaded walking area. Councilman Reynolds asked Mr. Swanson why he felt he couldn't operate with a "CB". Mr. Swanson felt they were required to. Councilman Reynolds said the design didn't really qualify without variances on a CPD. He added that Mr. Murphy had a contradiction in that at one point it said the developer could "do that" and at another point it stated that it wasn't supposed to be done. Councilman Reynolds asked why they felt they had to have a CPD. He said the site was butting into a residential area, which concerned him.

Mr. Murphy said the idea behind the CB Zoning District was to allow the various enclaves of commercial property throughout the Island to exist as they were. He said that, prior to the adoption of the recent LDC, the code had been set up so that anything that was going to be redeveloped had to be a CPD. He said the CB district allowed the property owners to develop certain things within that district without rezoning. He said they were generally for residential or less-intensive commercial uses. He said that in this particular case, the CPD allowed Town Staff to put some conditions on it, including the mitigation for the tanks, and the requirement of the rear fence. He said the CPD allowed for give and take. He said that, because this project was going to be three stories high, it was appropriate to go through the CPD process so that Staff could recommend conditions. Councilman Reynolds read from Page 6, and cited various references, including one that stated that the CPD category was not intended to allow commercial uses of all properties. Councilman Reynolds felt the project perfectly qualified under CB. He said it would be the only building in the area that would almost protrude into the street, which he said would set a precedence for all the others. He said the gas station had been built back far enough so as to be less obtrusive. He said the building looked nice, but he believed the excuse for building the colonnade so close to the sidewalk – that it would afford shade to passers-by – was not a very good reason to put it next to the street. He said he wanted to see the building set back at least 20 feet. Other than that, he thought it was a great project.

Ms. Grady said the code had been designed to place buildings right up to the sidewalk so that parking would be in the rear. She said having parking lots next to Estero Boulevard was not the vision of the code. She then filed an aerial photo that showed the area in question was a commercial node. She said the Town Staff and the LPA had found that the office building would be a passive use as compared to the gas station that had been on the site. She said the office building would be a reduction in intensity.

Councilman Reynolds said he was not questioning the concluding statement of the applicant's case, but had wanted to raise the issue about the set back with his colleagues, to let them know that they did not have to allow the building to be built that close to the right-of-way. He felt the applicant should be amenable to moving the building back. Mr. Swanson felt moving the building close to the street enhanced the pedestrian traffic, and it was located in a commercial node. He said the one residential area was to the east of the parcel, and the positioning of the building in close proximity to the Boulevard kept it further away from the residential area.

Councilman Reynolds thanked the architect for that explanation, and added that if the Council didn't want to get into the issue of the set back, he just had wanted to bring it forth.

Councilman Massucco cited Page 2, under Schedule of Uses, and asked what "commercial accessory uses" meant for the building in question. Ms. Grady said parking spaces and a telephone booth were examples of that. Councilman Massucco

asked what “personal services” were. Mr. Murphy cited Page 4 of 19 in the LPA’s minutes, and pointed out the last paragraph wherein Betty Simpson had asked the same question as Councilman Massucco had, and then read into the record, “Use of a structure or premises that is customarily incidental and subordinate to the principle use of a commercial structure or premises.” He said that would typically be a parking lot, indoor storage, telephone booths, etc.

Nettie Richards, a principle planner with the Division of Lee County Zoning representing the Town of Ft. Myers Beach in this case, came forward. She said Ms. Grady had already covered everything in the Staff Report, but took up the Comp Plan considerations that had been voiced. She said that the office building was considered less intense than the existing gas station that had been on that site, and so fit into the Boulevard Land Use category. She said because they were doing a Planned Development, in a conventional zoning district the Town could not place conditions on the applicant to provide additional buffering, or to take away an access easement, but the developers voluntarily did those things. She said the Town’s code stated that any new commercial development in a CB zoning district was required to do a planned development. She said the developer was consistent with Policy 4C-2, the floor area ratio, as well as Policy 4C-3, similar to Policy 4B-5, which had to do with being sensitive to residential areas, which she said they were by providing additional buffering to the east, which the resident abutting that buffer had okayed. She cited Policy 7E-3, which she said discussed putting buildings closer to the street for the pedestrians, and Staff felt they were consistent with that policy. She said the front walls of stores, restaurants and offices were supposed to have large windows rather than blank walls, and she pointed out that this building was designed as such. She felt the colonnade was preferable to the canopies or awnings that most buildings typically used. She said the fact that parking was going to be located behind the building in this development, and that one point of access on the Boulevard was going to be eliminated, were both good things. Citing Section 34-706D of the LDC, she said it required that the existing driveways be located to other streets. She said Staff recommended approval of the applicant’s request to the CPD, with all the conditions outlined in the Staff Report dated June 3, 2005, and with the modifications that had been read into the record at this meeting, as recommended by the LPA, as well as Condition #4, which had to do with removal of the gas tanks. She said she would be happy to answer any questions, but said she was hungry, which evoked a few chuckles.

Councilman Reynolds asked if the zoning remained CB, if the developer would be allowed to put businesses in the first level of the building. She said no, and that the existing use was all that could stay there in that case. She cited Section 34-703B, and read into the record, “Any landlord wishing to place new or expanded commercial uses on property that is zoned CB, must rezone the property to a Commercial Planned Development.” Councilman Reynolds asked what their chances were of getting businesses on the first floor now that they were going to get the CPD zoning. As outlined on the Staff Report on Page 6, she said it would contain parking spaces, the lobby, the elevator, the equipment room, rest rooms and staircases. She said they had

window designs for the first floor, which would give it the look of commercial offices.

Mr. Swanson said there were going to be commercial offices on the first floor, and that it was allowed as long as the building was flood-proofed up to the AE Elevation 13. He said the first floor footprint was smaller than the upper two floors, but there were approximately 3000 square feet of office spaces on the first floor. Councilman Reynolds said he couldn't have done that without the CPD.

Councilman Massucco asked what the height was to the top of the cupola on the roof. Mr. Swanson said it was 42 feet. Councilman Massucco said the cupola gave the impression that the building was higher than it actually was.

Mayor Van Duzer asked Ms. Grady if she wished to respond to the Staff presentation. Ms. Grady said they were in agreement with the Staff Report.

Attorney Dalton said Ms. Grady, Staff and she had worked on the language of Condition #4 shortly before the meeting, and said she had a technical addition to the condition, with which she believed Ms. Grady was in agreement, and read the added language: "Otherwise it will be recorded in the public records." Secondly, Ms. Dalton said Mr. Green had checked with the DEP, and any time one had contaminated soil, one had the possibility of residual contamination, and the reason for the indemnification agreement was for protection of the Town. She said it was the first time such a case had arisen, and though liability was unlikely, it was still possible.

Mayor Van Duzer asked if anyone from the public wished to address the issue.

Brad Hill, of 111 Bahia Via, which is situated directly behind the proposed project, came forward. He said he had discussed the project with some of the Sun Stream people and he had no opposition to it. He said he was glad that it was going to be built up close to Estero Boulevard. He said other than the fence along his side of the property, he had no objections. He said he had had experiences with vinyl fences during hurricanes, and felt that a vinyl fence would fly apart fairly easily, although he had not discussed this with the developers as yet.

No one else expressed a desire to speak on the issue, so Mayor Van Duzer closed public comment at this time.

**MOTION:** Vice Mayor Rynearson made a motion to accept the Staff's recommendation with the clause to hold harmless. Councilman Massucco seconded the motion.

Councilman Reynolds said he was still concerned about putting buildings in those locations next to the street. He said it was a nice-looking project, but he was a little disappointed in that he had not read anywhere in the applicant's paperwork that there

were going to be businesses on the first level, which he had reservations about. He said it seemed like Council was for it, and he was not going to be an antagonist about it. He said he would go along with the project, but he knew it was setting a precedent that he didn't believe they should allow.

Councilman Katcko thought "five feet wide" on the back of the resolution should be deleted because the LPA minutes showed the proper figure was 4.5 feet. He said he was happy to see Mr. Hill at the meeting, and had been very concerned about his thoughts because Mr. Hill lives directly adjacent to the proposed development. He was happy that Mr. Hill was pleased with the way the development had turned out. Mr. Hill quipped "It's better than Taco Bell." This evoked some hearty laughter and hums of agreement.

**VOTE:** The motion carried unanimously.

**E. Revisit Special Event Waiver Request – Councilman Katcko**

Councilman Katcko said he was finally going to address the personal attack at the public comment. He said he would not do any political grandstanding because he did not feel like participating in that type of behavior. He stated that he met with the owner of the Ramada Inn property and his manager, the reason being that the manager had been extremely upset after Councilman Katcko had voted against his proposal, and had replied to his upset, but after consideration had decided that that was not the way for a Town Councilman to do business. He called the owner, and the owner had arranged a meeting between himself, his manager and Councilman Katcko. Councilman Katcko had originally turned down the request because he had had several concerns, as they had not submitted any information about the parking or the attendance figures of their events. Councilman Katcko inspected the property and looked at the parking, and was satisfied that the additional events would not have an adverse effect on the community. He had also checked with the Sheriff's Office, and they said they were not aware of any problems having taken place at that site during any past events. For these reasons, Councilman Katcko then brought the waiver request back to Council. He admitted he loved the "evil rock and roll music", although not all of the requested events were music events, but were community events, and only one was a music event. He asked the Council to reconsider allowing the Ramada Inn four more special events permits this year. He said the estimate was a maximum of three hundred people in attendance for each event. He believed the estimate for the New Year's Eve party should be changed to 350 because that was last year's estimate. He pointed out that between the properties, there were 333 parking spaces. He had a few attachments to add to the waiver: the waiver would only last until January 1, 2006 and would include a requirement that a traffic control person or officer be present two hours before and two hours after any event. With those additional requirements, he asked Council to consider granting the waiver.

**MOTION:** Councilman Katcko made a motion to allow the applicant a waiver so that he could have four more events, with the added conditions, for this year only. Vice Mayor Rynearson seconded the motion for discussion.

Mayor Van Duzer thought the applicant had requested the waiver for five more events. Councilman Katcko said he was asking for four only. When Mayor Van Duzer counted five events, Councilman Katcko pointed out that they had not held all of the six allowed events as yet. Vice Mayor Rynearson asked if it totaled ten events being requested, and Councilman Katcko said that was correct. Vice Mayor Rynearson asked if it applied to this year only, and Councilman Katcko said it would only last through January 1, 2006, that they would have six events next year, and if they wanted additional events they would have to come back before Council.

Councilman Reynolds said he didn't believe it was meant to be political, because Councilman Katcko was one of three who had voted no. He believed the business owners expected Councilman Katcko to vote in their favor, no matter what, because of the Councilman's ties with the Chamber of Commerce. Councilman Reynolds said they had not called the other two Councilmen who had voted against granting the waiver. He said he had the same problem with it, and nothing had changed. He said there were other businesses in the same area that may want to have events, and thought some of them were having events the Council didn't even know about. He said if they granted this waiver, they would have to grant them to other businesses so as to be fair across the board. He said that while the hotels had had damage, it had been the owner's choice not to build back, and so believed the argument that the events brought some revenue to the properties was not applicable. He didn't believe increasing the number of events allowed was the answer. He said if, at the end of the year, the Council decided to allow more events, it should be advertised so as to give the other business owners the opportunity to apply for added events.

Councilman Massucco agreed with Councilman Reynolds. He said there was already enough noise and confusion in the Times Square area, and having the events at the Ramada would not improve that environment.

Mayor Van Duzer pointed out that several of the events were boating and sailing club events, and one was a swimming meet. To him, it sounded as if the events were wholesome. He said the only rock and roll event was on New Years Eve party. He said everyone had to come before Council to obtain a special event permit, and he didn't believe they would be setting a precedent by granting these permits. He said he had no problem with the events, but still counted five events being requested. Vice Mayor Rynearson pointed out to him that they had only had five of their six previously approved events thus far, which was why it appeared to be five events on the list. This clarified things for Mayor Van Duzer.

Councilman Reynolds remarked that this was the third time they've had this issue before them. He said he was not judging whether the events requested were good or bad events, but he felt the Council needed rules and decisions that they stood by. He said they hadn't been and it concerned him a lot. He said he didn't know any of the gentlemen involved, and was not objecting as a form of vendetta against them. He

felt the Council would be short-changing other businesses in the area if they wanted to do the same thing.

Councilman Massucco said the estimated attendance figures were high for that area, and thought they would be asking for trouble to allow the events to take place. He said the area wasn't built for that many people, and it was not the intent of the property to be used in this fashion.

Councilman Katcko said if there were another situation where a single owner had lost four or five hotels in one disaster, he would be in favor of helping them out also. He said it was not a request for a particular person. He said all those hotels were closed now, so there was no traffic there now. He said if the hotels were open, there would be a lot more traffic than the events would generate. He said that the New Years Eve party was going to take place at a time when that area will be congested, and he felt the event would not add any stress to the area at that time. He did not agree that any of those events would have a negative impact on the area, especially since speaking with the Sheriff's Office. Someone had told Councilman Katcko that there had been a traffic problem at only one of the events – the skim board event – and was the reason he was insisting that there be traffic control two hours before, during and two hours after each of the events. He said he had nothing to gain by granting the waiver, and that it was up to the Council to decide. He said that, as a Councilman, he would re-address issues if he got new information, and believed it was the proper thing to do.

Jerry Murphy said the way the property owner in question had been operating prior events was to use Jimmy B's Bar, and then expanded the area of service into what had been the parking lot of the Ramada. He said they had also asked to be allowed to expand the service area onto the private beach adjacent to the property. He asked for some direction from Council as to whether they should be allowed to do so, and said he had been reluctant to okay it himself.

Vice Mayor Rynearson asked that the Council be allowed to finish with the motion that was on the table before addressing Mr. Murphy's request for direction.

Councilman Katcko said that the issue raised by Mr. Murphy was not part of any proposal he had brought forward.

**VOTE:** The motion carried 3 – 2, with Councilmen Massucco and Reynolds dissenting.

With regard to Mr. Murphy's request, Mayor Van Duzer asked if it had to do with the events they had just approved. Mr. Murphy said it did, and that in the past, the Town had allowed them to use the area of the Ramada adjacent to Jimmy B's, but that they had also asked permission to use the area beyond the sea wall on the private beach that they control. He said he had been reluctant to approve it in the past, but if it was not a problem for Council, he could work with them in terms of taking that request forward. Vice Mayor Rynearson asked what the ruling had been on everything else

around that area, and Mr. Murphy said everything else in that area was non-conforming and had been going on for a long time. He said beverage consumption within 500 feet of another business that specializes in beverage consumption required a special exception approval, which was why he had been reluctant to expand the applicant's area too far. He said if he had specific direction from Council, he could work with the applicant. Councilman Reynolds asked Mr. Murphy if he expected the applicant to next ask for approval of open containers on the Beach. Mr. Murphy said they had asked repeatedly for open container to be allowed on their private beach. Vice Mayor Rynearson asked where Alcohol and Tobacco stood on the issue. Mr. Murphy believed they would follow what the Town would approve.

Ms. Segal-George suggested that Mr. Murphy write a memo on the issue to the Council members, and then it could be brought back on the agenda. She said he was asking the Council to react to information that was not in front of them. Mr. Murphy agreed to that.

Mayor Van Duzer said he had attended an event there where alcohol was served, but it had been in the Ramada parking lot area. He expressed concern about allowing open containers on the private beach, as it went all the way to the high tide line. Mayor Van Duzer asked Mr. Murphy to bring it back to Council. Mr. Murphy said he would.

**F. Improve Our Neighborhoods Program – Requested by Councilman Massucco.**

This item was discussed in full during the budget hearing earlier in the meeting.

**G. Update of FEMA maps.**

Mayor Van Duzer understood that the Council did not need to take any action with this item, but that it was a report. He was glad the people who watch the Council meetings on television were going to have the opportunity to hear the report.

Matt Feeney said he provided a memo to the Council which was an update regarding a meeting he had attended with the Town's flood map consultant Tom Masello, Bill Spikowski, the Town's planning consultant, some people from Lee County staff, other municipalities, and FEMA. He said it was an introductory meeting, where FEMA began to discuss their flood insurance map restudy for Lee County. Although the process had been going on for a while, Mr. Feeney said FEMA had only recently started to take action on it. He said previously, with Council's direction, the Town Staff had requested from FEMA a preliminary copy of the draft maps, but the requests had gone unanswered until the meeting on September 12<sup>th</sup>. He said at that meeting, FEMA unveiled a draft map for the Beach area, which has the potential for some very significant impacts to commercial as well as residential uses on the Island. He said it was similar to the situation in Naples, which they were still working through, in that the velocity zone (V Zone) had been moved further inland. He said the V Zone was currently seaward of Estero Boulevard for the most part, but in the proposed maps, the V Zone would move significantly inland, and would, for the most

part, be landward of Estero Boulevard. He said that meant that any future development, or structure that fell under the 50% rule, would be required to elevate anywhere between 16 ½ feet and 20 feet. No commercial activity, or dry flood proofing would be allowed in front of that line. Mr. Feeney said that, additionally, the A Zones would be increased roughly 1 ½ feet, so that any buildings or homes built right at the old existing line would fall under a foot and a half extension, so that if 50% or greater improvement were done on such a building, they would be required to come into compliance with that elevation. He said it would be a very significant impact for the Island, but that FEMA had a very formal process from official unveiling to adoption of a new rate map, which he said was a period of eleven months, and that formal time line had not yet been started. FEMA had indicated that they wanted to do a lot of public outreach before starting the process. When FEMA was asked what the earliest time was that they could start the process without any public outreach, they had indicated the November/December time frame. Mr. Feeney said it didn't seem as if they were eager to start the time frame then, and that they seemed very interested in working with the community before the formal process was begun.

Mr. Feeney said FEMA had begun to pass technical data to the Town, which had been forwarded to the consultant. He said the Council had a few options to consider: 1) Accept the maps; 2) Challenge the maps on a technical basis; 3) Request that FEMA consider changing Federal guidelines.

Councilman Reynolds asked one could fight the wave surge that had been added as a new factor. Mr. Feeney said that, from talking with the consultant, what had caused the issue was a term called "wave set-up" which was the idea of waves stacking up on one another as they came on shore. He said a lot of the data used to redraw the maps was obtained through mathematical figuring and computer models. He said they base the calculations of the wave set-up based on observed still water elevations and water marks from previous storm events in any given area. He said the technical argument was that, in the original establishment of the rate maps, the wave set-up factor would have already been implicitly accounted for.

Councilman Reynolds said the waves on top of the waves were what caused the most damage, and opined it was going to be hard to convince FEMA otherwise. Mr. Feeney said there were multiple components to damage, but obviously, with the V Zone, the concern from the waves was the concussive impact of them.

Mr. Feeney said addressing this would be no small undertaking. He said Naples had already begun down the path of challenging the technical data, and their main argument was that the previous maps implicitly accounted for it, as observations had already been made in previous storms that presumably had wave set-up.

Vice Mayor Rynearson believed the Town should engage the County with them on this issue, and every Representative the Town could "get their hands on", because he

believed it was a bigger fight than the Town could take on alone. He felt it needed to be done now.

Ms. Segal-George said she had already spoken with two County Commissioners about it, and had also spoken with the County Manager and Assistant County Manager, and felt that, at this point, they were very supportive. She said another issue was that Captiva and Boca Grande don't seem to be showing the same wave action. She said there were questions as to why the science was affecting Ft. Myers Beach and not those areas.

Councilman Massucco wished to delineate the seriousness of the issue. He asked if any of the businesses at street level on Estero Boulevard were to be damaged 50% or beyond, if they could only rebuild if they raised the structure. Mr. Feeney said that was correct. Councilman Massucco wanted to know how high they would have to raise their structure, and Mr. Feeney explained that there were different elevation requirements dependent on where the structure was located in relation to the V Zone. He said the new maps employed a different measuring datum, which was about 1 ½ feet higher than in the old maps. Thus, on the new maps, when one saw the number 17, it really represented 18 ½ feet. Councilman Massucco said if one pictured what Estero Boulevard would look like, one could see it was a very serious problem. Mr. Feeney said the V Zone ran through the middle of Times Square currently, and the new maps would push it to about 4<sup>th</sup> Street, near the old Kentucky Fried Chicken building. He said that degree of shift in the V Zone translated about the same down the entire length of the Island. He said there was only one small section of Estero Boulevard where the new V Zone would lie seaward of the Boulevard.

Vice Mayor Rynearson said there were going to be a lot of residences badly affected. Mr. Feeney said it would impact any home built right to the levels, and if they had 50% or more damage or remodel, they would have to elevate to the new elevation. He said any condo with dry storage or common areas below flood would have to lose those areas if 50% or more damage or remodel were to occur.

Vice Mayor Rynearson said if a person were compliant with their property currently, and the map was changed as it appeared in the draft, just about everyone on the Island would be non-conforming to the laws, and if they did anything to their homes, they would have to elevate them. He said it was a very bad situation.

Mayor Van Duzer said he had begun building a new home, and had decided to set the elevation higher, and when he had applied for the permits, and had been told it was too high. He said he had tried to allow for the foot and a half that may come to bear on the Island, but he had had to bring the house down to comply with current elevation regulations. He said if the new maps were adopted, that new house would no longer comply. He said if that house sustained terrible damage, they would have to tear it down and build it all over again. He said there was something wrong with that, and that he had continued arguing with the building department, but they had not

allowed the higher elevation. He said everyone on the Island would be adversely affected. Vice Mayor Rynearson said it was serious.

Mayor Van Duzer felt the issue needed to be addressed immediately, and felt Mr. Feeney's suggestion about challenging the maps on a technical basis made sense.

There ensued a period of free-form comments regarding the issue, in terms of the impact of the new map, and the various ways the Town could challenge it. Councilman Reynolds wished Mr. Feeney a lot of luck with it. Councilman Massucco agreed that garnering as many allies as possible was a good idea, noting that Ms. Segal-George had already begun that process. Mr. Feeney said it wasn't just a FMB phenomenon, but was part of a routine FEMA restudy process, and all of Lee County was being restudied. He said there may be other municipalities that the Town could enlist, that may also be seriously impacted.

Councilman Massucco commented that the Town did not want to get into an adversarial position, as Collier County found out.

Councilman Katcko said the new V Zone would disallow putting businesses at ground level and flood-proofing them, as was allowed currently. He said the buildings would have to be 20 feet in the air, with nothing under them but open space and possibly parking lots. He said he just couldn't imagine what downtown would look like after a major hurricane event build back. He joked that the road would have to be elevated to get to the businesses. He said it was a very serious issue for businesses and homeowners.

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

Councilman Katcko thanked Staff for having the Council packet available the Monday before the meeting. He really appreciated it. He also had a question if the Town was taking a position on the bed tax, and asked if the County Commissioners had already voted on it. Ms. Segal-George said they had not voted on it yet, but the TDC recommended the extra pennies in a phase-in approach over two years. She said Staff wouldn't take a position on it, and the Council hadn't taken a position either. Councilman Katcko thought that the Council might want to address it because the Town was a tourist destination. He wasn't asking for it to be an agenda item at this time. Mayor Van Duzer respected the position of the Tourist Development Council. Vice Mayor Rynearson said the Commissioners would have the final say, and felt it needed to go there first to see how they would react to it. He said the Chambers and the hotel people were at the TDC meeting, and had a discussion. Councilman Reynolds asked if there could be no discussion because of the late hour. Mayor Van Duzer apologized.

Councilman Reynolds said that, at the September 8<sup>th</sup> Board of County Commissioners meeting, Vice Mayor Rynearson had gone before them and asked them about \$7 million that Ray Judah had mentioned. On the 12<sup>th</sup> of September, Council had a meeting but didn't know anything about it. On September 13<sup>th</sup>, he said the Town

Manager had written a letter to Ray Judah supporting the information he had shared with the Commissioners on the 12<sup>th</sup>, and now the Board of Commissioners had a letter dated September 13<sup>th</sup>, the day after the Council meeting, which the Council hadn't known about. He said that on the 14<sup>th</sup> of September, Councilman Rynearson had an announcement in the newspaper stressing these very same things. On September 15<sup>th</sup>, he said there was a reply from Mr. Gilbertson rejecting the idea of requesting the \$7 million. He said he had gone through the chronological events because Council had not known about it. He suggested that those things not be done unless it is discussed in Council. He then asked Attorney Dalton about a letter she had written on September 15<sup>th</sup> regarding the status of the Utelco case. He said Attorney Roosa had been working on it, and had done it for \$125 per hour, and that the newly engaged lawyer now wanted to charge \$300 per hour and an additional \$125 per hour for his legal aide. He asked if another attorney could be found who would not charge so much. Mayor Van Duzer explained, with trepidation, that the Policy Manual said that Council Member Items and Reports should not be used to obtain information from the Town Manager or Town Attorney that could be obtained outside the Council meeting. Councilman Reynolds said the letter was dated on the 15<sup>th</sup>, and he had received it on the 22<sup>nd</sup> when he picked it up. He didn't believe they would be in violation of anything by responding to a public document.

Ms. Dalton said she could address it now, but that it should be addressed under Town Attorney Items. She said she brought the lawyer's fee forward for a specific reason, and with Councilman Reynolds' consent, she asked to defer the issue until Attorney Items. He said that was fine.

Councilman Massucco congratulated the Pilots Club on the beach clean-up under very extenuating circumstances. He said they and the kids had picked up about 2900 pounds of trash. He felt it was a vital activity on the Island. Councilman Massucco then asked to read something, and said to stop him if he was out of order. "There have been statements made during this campaign concerning the performance of this Council. Not me personally, but as a Council member, I feel I must respond. Please understand I speak only for myself, and in no way is this statement for or against any of the seven candidates for Town Council. One of the statements relates to the 70 day summer break, and the inference that for those 70 days, the 2005-2006 budget just sat there waiting for me to return from my vacation. Nothing could be further from the truth. A copy of the proposed budget is given to each Council member prior to break so that they can become familiar with it over the break. Not only that, I have constant contact with Town Hall by phone and mail. I have an arrangement with Rachel, by which she mails me packets of information on everything that is happening in Town Hall – memos, schedules, notices of all kinds. Everything is mailed out to me. This past break I received two packets of such information, each about an inch and a half thick. I am completely up to date when I return from my vacation which, incidently, is no where near 70 days long. Upon my return I sit down with John and go over anything that I feel needs additional information or attention, including the budget. One further item: Never, since I have been on Council, have I met with anyone behind closed doors in secret meetings, or made secret deals. The only behind-

closed-doors events I have been at are executive sessions and they're properly noticed – so they're legal. I felt I owed this explanation to you folks who put your trust in me when you elected me to Council, and to those of you also who did not vote for me. I wish to dispel any thoughts of secret deals, or that I walk away from Town Hall for 70 days and have no further contact. I assure you, folks, it does not work that way. Thank You.”

Councilman Katcko asked if he could second that. Mayor Van Duzer and Vice Mayor Rynearson said “ditto”.

Vice Mayor Rynearson said when he went to the County budget hearings on September 8<sup>th</sup>, he had not asked for one dime. He said he sat there and listened to what they had to say, and it had been Commissioner Judah had been the one that brought up the \$7 million. The Commissioners told him they wanted to bring it back to a second public hearing. He said he had nothing to do with the letter that had been written, but that it had been requested by the Commission. As far as what he had done on the 22<sup>nd</sup>, he went into the Commission, and had not asked for \$7 million. He said that, because the Town's fatal flaw study was nearly done, he had asked them to consider putting the money that was needed toward the engineering and design of Estero Boulevard, which he pointed out was their road and their money. He said he had gone to the meeting as a citizen, and had not gone as a representative of the Town, nor did it have anything to do with the Town. He said that had been the total involvement he had had there, and he had just wanted to set the record straight.

Mayor Van Duzer thanked the Town, especially Rachel Lambert, for their effort to put out the candidate forms.

#### **VIII. TOWN MANAGER ITEMS**

Ms. Segal-George said Councilman Reynolds had commented that the Council kept bringing things back that had already been decided. Also, she pointed out that he said the Council shouldn't backtrack and should move on to other subjects. She thought that he had then said, with regard to another item, that it had been the third thing the Council had had back. She said the reason she brought it up was because Councilman Reynolds himself had requested that Ms. Segal-George's performance evaluations from last year be put on the agenda again. She said those were performance evaluations from the previous year, and one had been done by the former Mayor who was now deceased and Councilman Katcko had not been on the Council at that time. Councilman Reynolds interrupted and said he did not ask that, just one year. Ms. Segal-George told Mr. Reynolds that it was her time to speak. Councilman Reynolds continued making comments. Ms. Segal-George continued her remarks that it had been one year, from the past, and was a previous evaluation. She thought it improper that it be raised again and placed on the agenda again to rehash that had already been done and voted on by the Council. She asked for Council's direction with regard to it, because she believed it was inappropriate and that it was clear why it was being done.

**MOTION:** Vice Mayor Rynearson made a motion not to bring it back to Council.

Councilman Reynolds made a point of order, in that it was not an appropriate time to make a motion. Mayor Van Duzer concurred.

Mayor Van Duzer said he understood what Ms. Segal-George was saying, but his understanding was that if someone asked to have something put on the agenda, they were beholden to do so. He felt she was asking them to make a decision that he didn't think they could make at this part of the meeting. He personally felt it was obscene and was being done for all the wrong reasons and he had every feeling that no one would support it if it did come forward.

Ms. Segal-George felt the Council should not support the kind of actions about which they were speaking. Mayor Van Duzer said he had sent a memo to the Council members and had asked them to abide by the rules of civility. He said it was unfortunate, and was perhaps because it was a political season, but he felt it was shameful. Ms. Segal-George said she had been in the business for twenty-five years and she had never been exposed to anything like what she had been subjected to recently. She said if the Council allowed it to go on the agenda at Councilman Reynolds' request, that it would allow people to come in and comment again on an evaluation that had been done a year ago for the previous year. She felt it was terribly inappropriate.

Mayor Van Duzer said he was doing what he had accused other people of doing, in that they were having a conversation and he didn't know if they should be. He asked the Town Attorney if the Council could determine at this time whether they wanted to that item to come forward or not. Attorney Dalton said the Mayor had the authority to allow motions or giving of direction or other action during any of the items on the agenda if he so chooses.

Mayor Van Duzer then seconded the motion made earlier by Vice Mayor Rynearson.

Councilman Reynolds said the reason he had requested it was not to be mean, but was because it had been mentioned by one of the candidates at the first candidate forum. He believed it had been Mayor Van Duzer who had mentioned that Ms. Segal-George had had four good appraisals out of five. He said at the last forum, Councilman Katcko had also mentioned it, and that one of the candidates had mentioned Councilman Reynolds' name, although he couldn't recall who it was. He said it was mentioned again, and that was why he was prompted to bring it back for discussion. He wanted everyone on Council to have a copy of all five of the evaluations. Mayor Van Duzer pointed out that they were public record, and that anybody could get a copy of them if they wanted to see them. Councilman Reynolds said that was why he wanted them brought to Council, because he wanted everyone on Council to have the opportunity to make their own appraisals and wanted everyone "out there" to hear what it was all about. He didn't think the candidates should be able to do something that he couldn't do. He said he couldn't get up and say anything at the forums, or use

his name or anyone else's name. He thought it was a way to bring it back fairly so that everybody could say something.

Vice Mayor Rynearson remarked that he had never used Councilman Reynolds' name.

Councilman Massucco said he didn't see what purpose it would serve to put that item on the agenda.

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

Councilman Reynolds prefaced his vote by saying "Bill, since you're censoring this from the public, I vote no."

Ms. Segal-George asked to say something for anyone watching the meeting on television. Mayor Van Duzer told her she could. Ms. Segal-George said that her job evaluations were public record, and when people have asked for copies, Staff had always made copies for them. She said she would be glad to provide the evaluations to anyone who came to Town Hall and asked for them.

Councilman Reynolds said he thought that was good. Mayor Van Duzer said "Public Record."

#### **IX. TOWN ATTORNEY ITEMS – Status of Utelco Litigation**

Attorney Dalton said that on September 15<sup>th</sup> she had brought a memo forward to Council regarding the status of the Utelco litigation, which she believed Councilman Reynolds had referenced in Council Members Items. She said Bob Burant, who was Counsel of Record, advised her a few weeks ago that Judge Rossman had scheduled a case management conference. She explained there had been an argument of counsel in May regarding a motion for partial summary judgement, which was in the Town's favor. Unfortunately, she said the judge had instructed counsel to drop an order that reflected what his ruling had been. She said the common practice was for counsel to exchange drafts of those orders before they are forwarded to the judge. Apparently the counsel for the Town, Mr. Berant, and the counsel for Utelco could not agree on that order and it became fairly adversarial during the process of discussion, which she said was not uncommon. She said Judge Rossman stepped in and called the case management conference, the function of which is for the judge to discuss with counsel, in the absence of parties, where the case was going, how it was going to get done, to determine if there was a way to keep the costs down, and to determine if there was any way to expedite the litigation. Mr. Berant had advised her, subsequent to the memo she had sent because the case management conference happened after the memo was sent, that at the conference the confrontation between counsels had been so aggressive and so difficult that the judge had stopped the conference and said he was going to set a formal hearing. She said the hearing would not be to rehear the motion for partial summary judgement, but would be a formal hearing to determine the terms of the order which the judge had entered the ruling on last May. She said it

was a fairly uncommon thing, and told her there was a pretty high level of acrimony involved with the case.

Ms. Dalton said Bob Berant had advised her that he anticipated a ten-day trial on the remaining issues, which she believed were straight forward issues. She advised him that mediation was absolutely the way to go for two reasons: One, it is an extremely cost effective manner of resolving disputes and two, she was familiar with Judge Rossman and he has a standing order that if anything has not been mediated within twelve months of going to trial, it must be re-mediated. She said he never waived that standing order. Bob Berant had subsequently told her that he would advise the judge of the Town's request for mediation. She felt the only thing that had been advanced significantly during the case management conference was that the judge had vehemently advised all parties that they needed to move ahead and get into mediation, and certain other things. She said the unfortunate thing was that the judge had ordered the formal hearing for the purpose of determining what the order should state, which she said was the third go-round on this order. She addressed a remark Councilman Reynolds said, in that it was her understanding the Mr. Roosa had not been directly involved in the case, and Mr. Berant was counsel of record, not Mr. Roosa. Councilman Reynolds agreed with what she said. Ms. Dalton said Mr. Berant advised her that, as a courtesy to the Town since his partner was involved as Town Counsel at that time, he had reduced his fee to \$125 per hour. Since Mr. Roosa was no longer the Town's attorney, Mr. Berant advised he would like to increase his fee to \$300 per hour. She said she did not know what his paralegal's prior rate had been while Mr. Roosa was Town Attorney. She said Michael Kennedy, who was counsel and was brought in by the Town because of his special expertise in this type of litigation, had issues related to the litigation. She sent him a message to see if she could get more information about the case, but he had not gotten back to her as yet. She suggested to the Council that, until she had the ability to speak with Mr. Kennedy so she could fill in some of the missing blanks, any consideration of the matter be deferred.

**MOTION:** Vice Mayor Rynearson made a motion to defer the item until the rest of the information was available for consideration. Councilman Massucco seconded the motion.

Mayor Van Duzer said he would rather get a consensus than do it through a motion. Vice Mayor Rynearson asked Ms. Dalton said consensus would be fine. She added that she was very disappointed, because although she had not been involved in the litigation, she was part of the legal community, and she was very disappointed that a resolution had not been reached.

Mayor Van Duzer felt Ms. Dalton was taking care of the case as capably as she could, and hoped the judge would get the people involved straightened out.

Councilman Reynolds asked if Ms. Dalton could do anything about the \$300 per hour fee, or if she would look for another attorney. Ms. Dalton asked for Council direction

regarding that. She felt if it was the Council's will to defer the issue until she had more information, that Councilman Reynolds' question be deferred until that time. She said, to her knowledge, there was not going to be substantial activity in the litigation currently, and believed the hearing had been set for December. Councilman Massucco made a comment off the microphone, but Mayor Van Duzer responded by agreeing with him that they should just leave it in Ms. Dalton's capable hands. Vice Mayor Rynearson agreed, and said she should get the information. Ms. Dalton told Mr. Massucco she appreciated the compliment and was grateful for it. She answered the question he had asked by saying she thought it would premature for the Council to take direct action of any kind because she felt there was a missing piece, which was Mr. Kennedy's involvement, and she wanted the opportunity to provide that missing link so that she could give a substantive recommendation. She said it was possible that they would have to do it in the context of an Executive Session because it was still on-going litigation. In response to another off-mike question from Councilman Massucco, Ms. Dalton said the judge was not going to address anything until December, which she said was frustrating for her as a litigator, but she didn't think the Town was in jeopardy.

The consensus was to leave it with Ms. Dalton.

**X. PUBLIC COMMENT**

No one came forward.

**XI. ADJOURNMENT**

Mayor Van Duzer adjourned the meeting at 10:55 PM.

Respectfully submitted,

Jo List  
Transcribing Secretary