

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
December 12, 2005**

I. CALL TO ORDER

Mayor Garr Reynolds called a Land Use meeting to order on Monday, December 12, 2005 at 10:00 AM.

Members Present: Mayor Garr Reynolds, Vice Mayor Don Massucco, Councilman Dennis Boback, Councilman Charles Meador, Councilman Bill Shenko

Excused Absence: None

II. PLEDGE OF ALLEGIANCE

All present stood for the recitation of the Pledge of Allegiance.

III. INVOCATION

All present stood for the invocation given by Mayor Reynolds.

IV. PUBLIC COMMENT

There was a discussion about what the nature of the comments could be at this time, as well as when public input would be accepted for various agenda items. Ms. Dalton advised Mayor Reynolds that this would be the appropriate time to accept public comment about agenda items.

Herb Acken, a resident and merchant on Ft. Myers Beach, came forward. Mr. Acken expressed his support of the street performer program in Times Square, and said all performers involved had always acted in a professional and courteous manner. He asked the Council to support the program. He hoped a Council member would consider revisiting the sandwich sign issue during Council Member Items.

Eddie Foster, of 2440 Cottage Avenue, came forward. She recognized that this was a land use meeting, but she had wanted to speak about vagrancy on the beach. She characterized vagrancy as land use and land abuse and asked if she could speak for three minutes. Mayor Reynolds said public comment should be limited to what was specifically on the agenda. Ms. Foster said she would do whatever she was told, but that she would be back and was not “going away”. Mayor Reynolds said her comments would be more appropriately made at the final Public Comment section of the agenda. Ms. Dalton concurred.

Todd Pravatera, a local resident and street performer, came forward. He commented on the opportunity afforded the general public with regard to getting a permit to work on Ft. Myers Beach.

Seeing no others who wished to speak, Mayor Reynolds closed Public Comment at this time.

V. LAND USE CASE – VAR2005-00029 Williamson Variance

Mayor Reynolds introduced the case, and noted that it was in regards to a property at 8150 Estero Boulevard.

Ms. Dalton advised the Mayor to open the public hearing at this time.

Mayor Reynolds asked for ex parte communications.

Councilman Boback – went to the site, but did not speak with anyone, but had received a memo. Mayor Reynolds said that was not ex parte. Ms. Dalton said that under the Land Development Code, it was considered ex parte. Mayor Reynolds said that only direct communication with someone had ever been considered to be ex parte communications. Ms. Dalton said it was required under the LDC.

Vice Mayor Massucco – visited the site, but spoke to no one.

Mayor Reynolds – visited the site, but spoke to no one. He said he had walked up the stairs, but had been afraid to walk back down. He commented that it really was a situation.

Councilman Shenko – visited the site, but spoke to no one.

Councilman Meador – visited the site, but spoke to no one.

Those who wished to give testimony stood and were sworn in by the Town Attorney.

It was determined that the applicant was not present. Ms. Dalton said if the applicant were not present, the materials that had been submitted by the applicant would be considered by the Council. She said the Staff should proceed with its testimony.

Sean LeMay, with Lee County Community Development, Division of Zoning, came forward to represent the Town of Ft. Myers Beach in the case. Mr. LeMay noted that the Staff Report for this case was numbered VAR2005-00029, dated November 1, 2005. At that point, Mr. LeMay incorporated the Staff Report as part of the record. Mr. LeMay proceeded to review the Staff Report, first explaining that the applicant wanted a stairway built 18 feet from

Estero Boulevard, and that the requirement was 25 feet. He said the parcel was located in a single-family residential, and environmentally critical, zone. After a complete review and analysis of the case, Staff had to ensure the case qualified for a variance. Staff found that it did not, as the hardship was created by the applicant, and there were options open to the applicant that would not require a variance. Mr. LeMay said granting the variance would set a precedent that had yet not been allowed. He said the request was also not consistent with the streetscape of Estero Boulevard, and would create an adverse effect on neighboring properties. Mr. LeMay said that Staff recommended denial of the variance.

Vice Mayor Massucco said that, in reading what had been presented to Council for consideration, the stairs conformed to code as they existed, but had been deemed unsafe. He asked if that was a correct assessment. Mr. LeMay said it was not. Mr. LeMay said the plans that had been submitted to the plan reviewers had appeared to be in compliance. He said that the site plan, in Attachment C of the Staff Report, did show that the stairs met the setback requirements of the LDC. He said that somehow the stairs that were built were different than those that were in the approved site plan, and different from the stairs that appeared on the building plans. Vice Mayor Massucco said he had read that the contractor claimed the existing stairs had been built to code, but had been deemed unsafe. Mr. LeMay asserted that the stairs had not been built to code. Vice Mayor Massucco wanted to find that data in the materials supplied to Council, but had not as yet done so. Mr. LeMay said he had a photocopy of the building plans that had been submitted to the Staff, and said he had something that would explain it better that showed the approved building plans for the stairway in detail. He said what had been given to Staff, and what had actually been built, were completely different.

Ms. Dalton amplified Mr. LeMay's comments. She said the Certificate of Occupancy had not as yet been granted on the house because the stairs had not been built in compliance with the plans.

Vice Mayor Massucco found the reference, to what he had noted earlier about the stairs having been built to code but deemed unsafe, in the LPA minutes. He read that section aloud: "Mr. Miller, who is the contractor, said the particular set of stairs met the absolute minimum width allowed in terms of tread and rise. Mrs. Plummer observed they were legal steps as they stood. Mr. Miller said they were legal. But, whoever wrote the code..." should reconsider. Mr. LeMay believed that later on in his testimony, the contractor had gone back on his remarks. Mr. LeMay believed the contractor, as his testimony went on, admitted that the stairs were not built to code.

Ms. Dalton believed the testimony to which Mr. LeMay and Vice Mayor Massucco had referred appeared in the third paragraph of Page 5 of the LPA

minutes. Vice Mayor Massucco then read that section: “Bob Raymond (a member of the LPA) asked if the stairs, as they existed, were conforming. Mrs. Segal-George said they were not, although she acknowledged that Mr. Miller, the contractor, had said they were in his testimony.” Mr. LeMay said anyone who walked up the existing stairs would know there was no way they could have been built to code.

Mayor Reynolds said it was frightening when one looked down the stairs from the top landing. He referenced the second paragraph of the LPA minutes, where Jane Plummer had asked Mr. Miller if he had built the home, and he had said that he had. He read, “No one expected the owner to know what size steps were required, or what the incline and grade should be.” Mayor Reynolds said Ms. Plummer did not expect the owner to know there were setback rules, as the applicant was from England. He read further: “She asked if no one realized the steps were too small and too steep when they were being constructed.” Mayor Reynolds thought it had been a reasonable question, and didn’t believe she had gotten a good answer. Citing the next paragraph, Mayor Reynolds read: (The contractor) said the owner’s taste was always senior to what any contractor thought about a plan” which the Mayor said was one of many excuses given by the contractor, Mr. Miller. Mayor Reynolds felt once someone accepted a contract, he or she was in charge of the project, and was obligated to follow the plans. He referred to the testimony to which Vice Mayor Massucco had cited, and reiterated that the contractor had claimed the stairs were built to code, but the code was bad. Mayor Reynolds then read another section of the LPA minutes, when Ms. Plummer asked if the responsibility didn’t go back to the engineer. Mr. Miller’s response to her had been that a draftsman had rendered the design. He read another section of the LPA minutes: “(Mr. Miller said) it had been a poor design, but the owner believed he had hired the right person, and didn’t realize the problem inherent to the design itself.” Mayor Reynolds believed the statements made by the contractor were all excuses. Mayor Reynolds then asked why the plans had been approved if it the design had been poor, and remarked that Mr. Miller had built the stairs knowing that there were problems with the plan.

Mayor Reynolds felt there was a serious problem facing the owner through no fault of his own. He felt everyone who had been involved from the plans, through approval and construction seemed to have known about the problems, and now the owner would bear the brunt of others’ mistakes. He said the steps as they were built created a very unsafe situation. He cited that Ms. Plummer, during the LPA hearing, had pointed out that the plans, including the stairs, had been approved. Mayor Reynolds said that conflicted with Mr. LeMay’s testimony that the stairs were not approved. He felt the LPA had been given far more extensive testimony than what the Council would be given at this hearing, and pointed out that Council would have to make a decision about it. He wondered why it had not come to Council before the building construction had been started.

Mr. LeMay said the initial plans that had been submitted had looked as though everything was in compliance. Mayor Reynolds asked who had approved the site and building plans, and gave the go-ahead for the commencement of construction. Mr. LeMay cited Attachment C of the Staff Report, and said the setback on the site plan was 25 feet, and therefore, to the plan reviewers, it looked like it was in compliance. He said the person who had reviewed the building plans had looked at the stairway detail, and on the plans, that had complied as well.

Mayor Reynolds asked again who had approved the plans and given the contractor the go-ahead to build the building. He said nothing had come through Town Council for approval beforehand, and opined that if it had, maybe someone would have caught the error.

An unidentified woman said it had been approved by the building department because the plans submitted complied with code. She said what had been built was what did not comply with code, which was why it had gone before the LPA and then Council at this time.

Mayor Reynolds asked if plans are approved without the LPA or the Council having reviewed them. The unidentified woman said that, under the current procedure, that was how it was generally done. Mayor Reynolds believed that anything built on the Island should have to be approved by the LPA and Council. He said the owner of the building in question was now faced with a serious problem, and the only answer to it was the elevator and an inner staircase installed in the house. He said the owner of the house effectively did not have a front entrance. He said “somebody dropped the ball somewhere” and felt if it had had to go through the LPA and the Council first, the problem probably would have been caught ahead of time.

Mayor Reynolds said there had been a case before Council a month or so ago, where a business was granted approval for building very close to the sidewalk. He said the right-of-way was no wider where that building was being built, than it was at the applicant’s property site. Mayor Reynolds wondered why one building would be allowed to come so close to the street in one location, while this applicant would be denied his variance.

Mr. LeMay said Staff had taken a strong stance on this particular issue. He acknowledged that the Council men were the elected officials, and were able to view the “grey areas” of the situation where he could not in his position. He said he had to stick with the facts, but said he agreed with Mayor Reynolds that the stairs were dangerous. He said the applicant was not present at this hearing, but the last time he had spoken with Staff he had indicated that there had been a lot of miscommunication between him and the engineers, architects, the draftsmen, etc. and the Town was caught in the middle.

Mayor Reynolds asked if all applications for construction could be brought through the LPA and Council in the approval process. The unidentified woman said “it” would have to be amended. Mayor Reynolds remarked that it was frightening that the Council didn’t have a say about what was going on in the Town.

Jerry Murphy, the Community Development Director, said the procedure that had been followed in this and every case was laid out in the LDC. He said the changes to the permitting process as laid out in the LDC would have to be brought forward from the LPA in the form of a recommendation, and that ultimately the LDC would have to be amended as such by Town Council. Mayor Reynolds did not respond to Mr. Murphy’s statement.

Mayor Reynolds said he did not want to give Mr. LeMay a hard time, but had asked some hard questions for which answers were needed.

Councilman Shenko said he would be the last person on Council who would want to read every set of building plans that went through Staff or County. He felt if the LPA had to do that, it would be very difficult to find volunteers for the LPA. He said the LDC and building codes were in place. Councilman Shenko pointed out that the plans that had been submitted for the structure in question had complied with those codes, but the builder had not built what was in those plans, and as Staff had indicated, Councilman Shenko did not believe that was a Town problem. He cited the builder’s testimony from the LPA minutes, and pointed out that the builder had told Ms. Plummer, in answer to one of her questions, that he had changed the steps in an attempt to make them less dangerous, and those actions had thrown the stairs out of compliance. He felt the resolution, as prepared, stated it well: the builder had built all the way to the property line, had changed the stairs, and was now asking the Town to grant a variance to resolve a problem that he had created.

Councilman Meador agreed with Councilman Shenko. He said he would hate to see the LPA become a second building department, and would hate to see Council get mired in the issuance of building permits. He said there was too much detail, and didn’t believe either the LPA or the Council had the expertise to do it. He said he had built a home on Ft. Myers Beach, and the same issue had come up, because his contractor had said “It’s a nice picture, but your stairs don’t meet code.” Councilman Meador felt it was the contractor’s problem, in that if he got a set of plans that didn’t comply, he should make sure the plans comply and that he should build in accordance with the approved plans. Councilman Meador expressed concern that no one was present to represent the petitioner, and wondered if it was known whether the petitioner had received notice that the hearing was going to take place at this time on this day.

The unidentified woman, who had on several occasions responded to questions from the Council during Mr. LeMay's testimony, said the petitioner did receive notice, and they had been given notice at the LPA meeting as to when the request was to go before Council.

Ms. Dalton said if Councilman Meador was not comfortable with the applicant being absent, the hearing could be continued. Councilman Meador said if they had received notice, and neither the applicant nor the contractor had any more interest in it, their absence spoke for itself.

Mayor Reynolds expressed concern that the building had been appropriately recommended according to code. He said the building had been built out to the right-of-way. Mr. LeMay said the building itself was set back per code. Mayor Reynolds asked how far back the building had been built, and the unidentified woman said it was set back 25 feet. Mayor Reynolds said that although the house may have been built according to the plan, no space had been left for the stairs. He thought the applicant should be given some relief. He said there was no way it would affect anyone in the area, even if the stairs went out another 10 feet toward the Boulevard, and they had only requested another 8 feet. He hoped the Council would allow the variance as requested. He said if one building had been allowed to do, there was no reason not to allow the applicant to do it.

Councilman Boback said there was no question that the stairs were very dangerous. However, he said the builder and homeowner had submitted plans to meet code and all the setbacks and boundary requirements. He didn't believe the Council should have to supervise the builder to ensure he built the structure according to the plans. He felt the homeowner might have recourse against the builder or the architect, and that was the direction in which the applicant needed to go. He said the steps had not been properly built, and could have been built further back into the house. He said just because the builder made a mistake, it was not up to the Council to rectify it. He said it was between the homeowner and the builder, and if Council made the exception in this case, it would set a precedent that would create a lot of problems. He felt the Staff had done a fine job in their conclusions.

Mayor Reynolds said the Council had allowed a building to come out to the zero line just a month ago, and wondered why they couldn't allow the applicant to come out eight feet. He said if Council gave a business a variance, they should give a resident the same variance. Mayor Reynolds hoped this Council would allow it, so that the applicant wouldn't have to go to court.

Councilman Boback understood the point the Mayor had made, but felt just because the previous Council had allowed it to happen before didn't make it right, nor did it mean this Council had to follow that same course of action.

He felt this Council needed to stick to the code the way it existed, so that the situation did not happen again.

Mayor Reynolds asked Mr. Murphy, if the Council was to apply the code equally, could it be applied equally to both businesses and residences, or was it going to be applied only one way. Mr. Murphy said the distinction between the case of a month ago, and the case before them at this meeting, was that the other building was in a different zoning district which provides for a different setback, whereas the case in question at this meeting, per the zone in which the building was located, was subject to a 25-foot setback. Mayor Reynolds said he had been misinformed, as he had believed the zoning had been changed to CPD. Mr. Murphy said that, through the planned development process, they were allowed to craft their own setback regulations, and in that earlier case, that had been one of the setbacks they had provided. He said the Town's plan and code encouraged a zero setback for commercial properties so as to provide for engagement with the street and to take the cars back behind the building rather than in front.

Mayor Reynolds said the Town had provided special zoning to allow it to happen. He said the end result was that the commercial building was going to be built right up to the right-of-way. Mr. Murphy said that was true, and that it was a result that the Town's Comp Plan and LDC had envisioned. Mayor Reynolds found that unacceptable, and believed Council should think about making some kind of a plan so that residents needing a variance along the Boulevard, such as the applicant in this case, could get one. He said allowing the stairs to be built per the applicant's request would still leave 15 feet for a setback. He said that was what this Council was for – to give a variance to some of the directions and LDC. He said one couldn't cover everything in those codes. He felt one of the reasons for being on Council was to try to level it out and make it fair for those people who run into "this Catch-22".

Ms. Dalton said the LDC set out the specific findings that needed to be made before a variance could be granted. She said if he were interested in granting the variance, the individual findings would have to be considered as the Council went through the process. She said the prepared draft resolution, which anticipated denial of the variance addressed those findings and conclusions, in line with a denial. She said if he was considering another course of action, he would have to make specific findings along the way.

Vice Mayor Massucco said just because the Council did something in one instance, it did not mean they had to do it in all instances, as Council did have that flexibility to determine which variances were warranted and which were not. He said each case was considered on an individual basis, and what the Council did in the past had no bearing on the case before them at this meeting. Mayor Reynolds agreed, but said he had pointed out the previous case as an example. Vice Mayor Massucco said if the Council had to review every site

plan and all the documentation that came along with them, he would be lost. He said he was neither an engineer nor a contractor. Citing Attachment C in the Staff Report, the original site plan, Vice Mayor Massucco said that it showed 25 feet with a big black arrow, but on the revised plans, 18 feet was indicated. He didn't believe Council could ever get into the dimensions in site plans.

Mayor Reynolds cited Bob Raymond's remarks, as they appeared in the LPA minutes, in which he said someone had to have known beforehand that the plans for the stairs were bogus. Mayor Reynolds asked the Council to think about that, adding that the owner and his wife had gotten into a real situation, and it didn't seem that Council was giving them an answer. He understood that each case the Council handled was an individual case, and could give variances accordingly. He said the applicant needed relief, and felt it was the Council's responsibility to try to level the playing field if "something creepy like this" happened.

Ms. Dalton said it was time to call for public input.

Councilman Boback pointed out to the Mayor that the reason the applicant's stairs were eighteen feet back instead of twenty-five feet was because the house had not been built according to the plans that had been submitted. He said "It's easier to beg forgiveness than it is to ask for permission."

Mayor Reynolds said he did not agree with that. He felt the people who had approved the plan should have thought about the setbacks, and should have indicated that the building would not be set back far enough to allow for a front staircase. He said the previous case was different, but zoning had been changed and so forth to permit it. He said the case before them only required was a small variance, which he said was not nearly as serious as what had been granted in the previous case.

Ms. Dalton reminded the Mayor that he needed to call for public input. Mayor Reynolds remarked that he got carried away when he saw differences being made between residences and businesses. He felt there should be a fairer plan that they could live by. He then called for public input.

No one came forward, and Mayor Reynolds closed public input.

Ms. Dalton indicated that the LPA minutes and the LPA resolution were both part of the record for consideration by the Council. She also noted that the applicant had not yet appeared for this hearing.

MOTION: Mayor Reynolds made a motion to approve a ten-foot extension so that the steps could be made useable for the applicant. **No one seconded the motion.**

MOTION: Vice Mayor Massucco made a motion for Council to deny the request for VAR2005-00029. Councilman Shenko seconded the motion.

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

Councilman Shenko commented to Ms. Dalton that the findings needed to be specifically delineated. Ms. Dalton asked if Council would make the findings and conclusions and reconsider the motion and then pass it.

Mayor Reynolds asked if a roll call vote had been needed for the motion. Ms. Dalton said a roll call was not needed on a resolution. But, she said the findings and conclusions to be specifically made. Councilman Shenko asked if they could be made in terms of “As submitted in writing in Resolution 05-43 as presented to Council.” Ms. Dalton said that was correct.

AMENDMENT TO MOTION: Vice Mayor Massucco amended his motion to include the findings and conclusions as submitted in writing to Council in Resolution 05-43. Councilman Shenko seconded the motion.

Ms. Dalton believed it would be reconsideration of the motion, rather than an amendment to the motion.

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

VI. STREET PERFORMER PROGRAM – REPORT

Mayor Reynolds introduced this item as having to do with suggested guidelines for the street performers program.

Mr. Gucciardo asked if the Council needed any background information.

Mayor Reynolds did not respond to Mr. Gucciardo’s question, but read the eight categories of guidelines:

- Annual Registration
- Guidelines for Performances
- Instrument and Performance Restrictions
- Loud Sounds and Music
- Electrical Power
- Enforcement Guidelines
- Street Performer Management
- Contact Information

Mr. Gucciardo gave background information about the program. He explained that the program had originally been managed by the Times Square Alliance, but that management had been taken over by the Town at the Alliance’s request. Mr. Gucciardo said that recently, John Scott – from the

Town's maintenance department – had been tasked with doing a lot of reorganization in the Times Square area, including the Street Performer program.

Mr. Gucciardo said Mr. Scott had put together guidelines as well as a map that laid out acceptable locations for the performances, as well as a template for an identification card. He said the general consensus was that the street performances were a benefit, but they would now be better managed. Mr. Gucciardo said there was one point around which there had been disagreement and controversy, and that was with regard to what constituted a *performer* as opposed to a *vendor*. Mr. Gucciardo felt Mr. Scott's proposed guidelines clearly spelled the difference between the two, and believed that if the Town approved those guidelines, the Town would then have the tools it needed to ensure the program operated the way it should.

Councilman Boback complimented Mr. Scott on the fine program he had put together. Councilman Boback asked what a *digiree doo* was, and Mr. Scott explained it was an Australian horn. Councilman Boback wondered if the proposed fees would cover the cost of monitoring the program, and Mr. Scott didn't believe they would. Councilman Boback said he didn't want any Town money spent on street performers.

Mr. Gucciardo said the assumption was that the program would not fund itself. He said Mr. Scott's extra time in the Square was paid for out of a CRA grant, but because oversight of the Street Performer's program would be one of Mr. Scott's functions, Mr. Gucciardo said the assumption was that the Town would pick up part of the costs of that.

Councilman Boback asked if a representative from the Alliance were present as he had requested. Mr. Gucciardo said he had not been able to reach anyone in the Alliance, but believed their input was contained in the proposed guidelines, and that a written correspondence, from one the Alliance members, was in the Council's packets. Councilman Boback felt the street performance program strictly benefited the Times Square merchants, and that the costs should be covered by the fees generated by the program itself; and any shortfall should be paid by the Times Square merchants. Mr. Gucciardo said it would be looked into if it was the will of the Council.

Mayor Reynolds thanked Mr. Scott for the work he had done on the proposed guidelines, and then asked him if he foresaw huge expenses being incurred by the program, as he himself couldn't see that. He pointed out that the performers were not going to be paid, and provided entertainment for people in the Times Square area.

Mr. Scott said the additional expenses would be for enforcement by the Beach Patrol - 3 random nights per week a deputy would check to ensure the

performers were staying within their assigned areas, not overcharging, not using foul language, etc. Mayor Reynolds pointed out that the patrol was in the area already, and asked why they had to be paid extra to patrol the area. Mr. Scott said he had asked the Beach Patrol to help out with enforcement, but supposed if they were on patrol in the area already, it wouldn't cost anything extra.

Mayor Reynolds pointed out that in one part of the proposed guidelines, groups of performers were prohibited, but in another part, the fee to be charged a group was listed. Mr. Scott said that could be corrected, as it was not desired that more than 2 performers would be part of any given performance. Mayor Reynolds thought the annual registration fees - \$75 per individual and \$150 for a duo - were high because there were no additional expenses being incurred and the performers were not getting paid.

Vice Mayor Massucco told Mr. Scott he had put together a very comprehensive plan. Vice Mayor Massucco jokingly complained about the proposed ban on bagpipes (and digiree doos). He then commented on Guideline #5 - Loud Sounds and Music. He read that the sale of musical recordings would be prohibited, and wanted it to be rewritten to say that the sale of anything was prohibited. Mr. Scott said no product of any kind would be allowed to be sold by a street performer, and that ban was spelled out in several different sections of the guidelines.

Councilman Shenko complimented Mr. Scott on the work he had done on the proposed guidelines. Councilman Shenko felt the program effectively created a Town Entertainment Police Force, which would cost the Town money. He said there had been street performers before, and that most street performers work when Town Staff is off duty. He believed if Beach Patrol was asked to police it, that the Town would end up having to pay for that. Councilman Shenko said the program had been policed by volunteers in the past, and that he had seen some performances and felt they had helped create an enjoyable atmosphere in the Square, but was concerned about costs. With regard to the Community Redevelopment Agency for Times Square, Councilman Shenko said there was tax increment funding from the base year forward, and asked if it the funding was just Ft. Myers Beach tax or if it included Lee County tax. Mr. Gucciardo said it was just the Town of Ft. Myers Beach tax. Councilman Shenko said he had a basic problem with that, because using money from the CRA for the program was like taking money from one pocket and putting it in the other. He said a bureaucracy was being created just to move the money from one place to another place. He didn't believe there was a difference between using general tax revenue or incremental tax for the program because it was all tax money collected from the Town. Councilman Shenko said he wanted to see a complete cost analysis worked up for the program.

Councilman Meador expressed concern about the program adding more workload to the Town Staff when the exact costs were not known.

Mayor Reynolds said the street performers program was a good one, and felt Mr. Scott's program was good, especially in terms of arranging for the Beach Patrol to do the enforcement. He said the BP already patrolled the areas where the performers would be set up, and felt it would be a simple, inexpensive way of doing things. He said if the Council wanted to eliminate the program altogether, someone would have to make a motion as such. He said the Council had not been asked to do anything other than come to a consensus as to whether the guidelines Mr. Scott had worked up were deemed workable by Council if the street performer program were to be continued.

Councilman Boback asked about the scheduled hours of the performances – from 2 PM to Midnight. He asked if a reduction of the hours would save on some of the costs involved in the program. Mr. Scott didn't think so. He said the Beach Patrol was usually out of that area by 10 PM, but the extra two hours gave the performers more time to make more money. Councilman Boback asked how many performers were involved, and Mr. Scott said there were six. He said the Times Square advisory board wanted to extend the program to as far as the fountain on Old San Carlos, which would mean there would be more performers than the current number. Councilman Boback said he enjoyed the street performers in Key West, but pointed out they only performed for about three hours during the Sunset Celebration. He said his main concern was what it was going to cost the Town in time and money to support the program.

Mayor Reynolds believed spreading the performers over a wider area might make it very hard to keep control of them, and recommended limiting the street performer areas. Mr. Scott explained that some of the business owners on Old San Carlos wanted to entice more pedestrian traffic to their area, which was why there was a proposal to spread the performance areas out. Councilman Boback thought the street would have to be closed off to vehicular traffic on Old San Carlos because there wouldn't be enough room if the performers were set up along there as well. Mr. Gucciardo said the extension of the street performance program down Old San Carlos would not take place before it was brought before Council for approval.

Vice Mayor Massucco said that while six performers were part of the street performance program, the most he had ever seen performing at one time in Times Square had been two or three. He felt the benefit the street performers brought to the entire Times Square area would be worth the minimal costs involved to run the program. He said everyone enjoyed the performers in the Square, and didn't see that there was a lot of cost involved. He felt the Town would get its money's worth from the program.

Councilman Boback thought Mr. Scott's proposed guidelines were heading in the right direction. He suggested that the proposal be brought back before the Council in about a month, so that the actual costs, in money and Staff time, could be calculated before the Council reconsidered the program. Mr. Gucciardo said that would give him the opportunity to reach out to the Times Square advisory people in order to garner some cooperation from their members and contacts, to help with both enforcement and organizational issues. Councilman Boback thought if the program were tracked for 30 days, it would give them a much better idea as to actual costs in time and money. Mr. Gucciardo then suggested that he allow Mr. Scott to put the program in place for the month of January. Mr. Scott said there were six performers slated to begin on January 1st.

Mayor Reynolds said information-wise, the program had already been going on for a number of years. Mr. Gucciardo pointed out that, while that was true, the Town's involvement had changed and that was why it needed to be monitored by the Town for a month to glean information about it with regard to how much it would actually cost the Town to run it. Mayor Reynolds said what they wanted was to put a monitoring situation in now, but was sure all of Council had known it had been going on for a while. Mr. Gucciardo said they could bring it back to Council with the information gathered through a month's monitoring.

Vice Mayor Massucco asked how the proposed registration fees - \$75 for an individual performer; \$150 for a duo – compared with the fees charged by the Alliance when they ran the program. Mr. Scott said that, in its inception, the program had no registration fees, and then subsequently, the Alliance charged a \$35 registration fee. Mr. Scott felt that wasn't enough to cover costs, which was why he had proposed the higher registration fees. Vice Mayor Massucco commented that it was a substantial increase.

Mayor Reynolds asked if Mr. Gucciardo had enough direction from Council on this item. Mr. Gucciardo felt there was consensus from Council to go ahead with the guidelines as proposed, while monitoring the program so as to quantify the Town's actual costs in labor and dollars, at which point the information would be brought back to Council.

Councilman Shenko asked Councilman Boback if that was the idea he had had with regard to the proposal. Councilman Boback confirmed that it was. He felt after the program had been monitored for a month, the Council would have the hard facts to hand in order to make an informed decision about it. He reiterated that he had no problem with the street performers, and had enjoyed them himself. He felt giving the program a 30-day run would give them a track on what the Town's involvement might be, in terms of labor and costs.

Councilman Shenko felt an inquiry of the Beach Patrol, to determine what their costs would be, was very important, as he felt there would definitely be increased costs. He felt the ultimate question would be to determine how much tax money the Council would be willing to spend on the program.

Councilman Meador wanted the program to end when the Beach Patrol went off duty, which Mr. Scott had indicated was around 10 PM. He didn't think the performers would make that much additional money after that time, as he didn't think the crowd in the Square would be at all substantial after 10 PM. He said the shorter hours may cut down on some of the additional policing costs.

Mayor Reynolds said he was glad Councilman Meador had brought that up, as he felt the same way about it. Mr. Gucciardo said that sounded like the one substantive change that would be made to the proposed guidelines.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Mayor Reynolds said Lee County was planning to form a transportation authority, which he said was frightening unless one loved independent taxing authorities. He said he didn't know how many fire districts were independent taxing authorities, but know the Island's Fire District was. Councilman Shenko said there were 17 Fire Districts in the county that were independent taxing authorities. Mayor Reynolds said those independent taxing authorities didn't come to the voters with millage increase requests, they simply levied them.

Vice Mayor Massucco pointed out that the subject under discussion was not an agenda item. Mayor Reynolds said he was presenting it as a Council Member Item. Vice Mayor Massucco said he understood that, but pursued his comment no further.

Mayor Reynolds said there was a meeting about the formation of the transportation authority scheduled soon, and he wanted everyone on Council who could attend it to do so. He said the Lee County MPO asked that the Council be well-represented at that meeting. He felt if any of the Council members had strong feelings about either the creation of an independent taxing authority, or the creation of a transportation authority, they should attend the meeting. Mayor Reynolds said the decision made regarding the formation of a transportation authority would greatly impact the Town's citizens, as they would have no choice but to pay whatever tax was levied by that authority, which concerned him very much. He said the meeting was going to take place at the Harborside Convention Center in downtown Ft. Myers on December 14th from 8 to 11 AM. Mayor Reynolds distributed papers to the Council members regarding the issue.

Mayor Reynolds then took up the issue regarding the administration approvals process for major construction on the Island. He acknowledged that the other Council members had indicated that they did not wish to take that process on in Council because of the time that each application process would take. He felt if the Council didn't take the time, more problems would arise similar to recent variance cases that had been before Council. He really wanted Council to give some serious thought to the idea of taking on the approvals process currently handled administratively. He said most Councils had expressed the desire to keep the density down on the Island, and that most people felt that density converted to intensity, although he had heard some people argue the opposite. He felt if the Council didn't step in and do something, they would really "kill the golden goose" that was operating on the Island. He felt the Council had to the best it could to keep traffic down, and that every construction project had a lot to do with that.

Councilman Meador asked the Town Attorney if it would be possible, in future land use meetings, to have a separate tabbed item for the criteria as well as the proposed resolution, as he felt that would help Council focus better on what the specific issues were that were involved when making a land use determination. Councilman Meador agreed with the Mayor that the owners involved in this meeting's land use case had a tough situation, but if the Council had reviewed the same plans the building department had looked at and approved, which showed the property was going to be built to code, the Council would still have found themselves in the same position if the contractor did not follow the approved plans. He didn't believe it was the place of a policy-making body, such as the Town Council, to get into individual building plan approvals. He said the code was in place, and the Council could only hope that when contractors did present plans to the building department that do comply with the codes, that they would then follow those plans. He said the owner in today's case found himself in a tough situation because his contractor had not followed the approved plans.

Councilman Meador then asked Mr. Gucciardo if a date had been set for a workshop for Council members. Mr. Gucciardo said that item was included in the Council's agenda packet for the December 19th Council meeting. He said he had obtained calendars for January and February, and some options as to when the workshop could be worked into the schedule. He said he had included some descriptive elements as to what would be considered a workshop as opposed to a regular Council meeting.

Councilman Shenko said he had received many comments that the microphone system in Council chambers didn't work very well, and that people in Council chambers, as well as those watching the meetings at home, could not hear the proceedings very well. He wondered if the Council could use the microphones they used to have, as opposed to the lapel microphones.

Councilman Shenko felt that perhaps, when an agenda item came forward in a Council meeting, it be presented and opened to Public Comment at that time, as to that agenda item, as opposed to accepting all Public Comment at the beginning of the meeting, with the items about which comments were made coming up hours later in the meeting. He said having Public Comment before each agenda item could be abused by some people, and if it were, the Council could revert back to the way in which it was done currently. He suggested they try his suggestion, and added that any item that was not on the agenda, which might come up in the course of the meeting, could be addressed in Public Comment at the end of the meeting.

Councilman Shenko suggested that a member of Staff call the names on the submitted cards and operate the timer, which he said were Town Clerk functions. He didn't feel it was fair to the Mayor to have to keep track of who was to come up next in Public Comment, and which light was blinking, and so forth. He felt those functions being done administratively by someone from Staff would allow the Council to give their undivided attention to those who spoke during Public Comment. Councilman Shenko said the issues he had raised were procedural in nature, and said he would bring them forward at another Council meeting.

Mr. Gucciardo said another item scheduled for the December 19th Council meeting was a discussion about the appointment of a Town Clerk and felt it might be appropriate during that discussion for Council to give Staff guidance on what functions that position might entail. Councilman Shenko felt what he had described would be a role of the Town Clerk.

Referring to the Council's Policy and Procedures Manual, Vice Mayor Massucco recalled that only agenda items could be discussed in the first Public Comment section of any given meeting, and felt the Council had not held to that policy. He added that the last Public Comment section in any given meeting could be opened up to any item.

Councilman Boback agreed with both Councilman Shenko and Vice Mayor Massucco that the initial Public Comment could be eliminated and that each agenda item could be opened for Public Comment as it was introduced, and then open the final Public Comment section, at the end of the meeting, for any item or comment.

Councilman Boback indicated that he had met with Mr. Gucciardo over the weekend, at which time they had worked out some details with regard to his appointment as Acting Town Manager, and had put together a package for Council's consideration at the December 19th Council meeting with regard to advertising for a new Town Manager search. He said the Town Attorney would draw up paperwork for the Council's consideration with regard to what

they had discussed in terms of details related to Mr. Gucciardo's interim appointment.

Mayor Reynolds said some people came to the Council meetings to interject some ideas that they wished Council to consider that had nothing to do with agenda items. He said some people would abuse it, but felt the majority would not. He said the early general public input had been at the end of the Council meetings traditionally. He said a lot of the public were concerned about having to sit through the entire meeting, until late in the evening, before they could give their input. He did not want to replace the early input for that reason. He felt the public would have the choice of sharing something at that time, or, if they wished to comment on a particular item, they could wait until the item came up in the meeting. He said agreed that Council couldn't have people commenting on something at the beginning of the meeting, and then have them come up again during the discussion of that same item later in the meeting. He felt the public input should be kept early in the meeting, and then, just before each item, if someone wanted to share something at the start of the discussion of each item, limited public input should be allowed. He felt public input for each item should be restricted to those people who had a bearing on the particular issue upon which they commented. He asked Councilman Shenko if that had been his suggestion.

Councilman Shenko explained that his suggestion was that, as an agenda item came up in the course of a meeting, it would be opened to public input for that particular item. He objected to having public input at the beginning, for each item, and then at the end, as he felt that would make the meetings last "forever". His idea was to eliminate Public Comment as a separate agenda item at the top of the meeting, open Public Comment specifically for each agenda item, and then have general Public Comment at the end to give people the opportunity to bring an item they wished to the Council's attention.

Mayor Reynolds said that, as Chairman of the Council, he did not wish to have someone else call the names out. He felt it was the only time the Council had a chance for communication with the public. He wanted the Chair to retain the responsibility of calling people forward for Public Comment. He said the Chairman was the only person who would have the authority or justification to correct someone if they were running too long. He didn't want anyone else to do that. He felt it needed to be discussed further in Council, but in the meantime he would continue as he had been, and would retain that responsibility. He said there had been one gentleman, during the last meeting, who had looked into the television cameras while speaking, rather than directly addressing Council. He said that, while one was giving input during Public Comment, comments should be addressed to Council and not the cameras.

VIII. TOWN MANAGER'S ITEMS

Mr. Gucciardo said his Staff had received a large number of requests, from various Council members, for information, input and backup needed to get the new Council members up to speed on what the Staff actually did. Mr. Gucciardo asked that, unless the information was time-critical, the Council members give his Staff a reasonable amount of time to respond to their requests. He said the Staff had been highly motivated and eager to get the information to the Councilmen as fast as possible, but felt that, unless it was time-critical, he wanted to relieve some of the pressure on his Staff.

Mr. Gucciardo thought a discussion as to the best way for Staff to communicate with Council was in order. He said some Council members preferred a hard copy of information, while others preferred e-mails and faxes. He said he and the Town Attorney had discussed this issue, and asked if there was a consensus in Council as to a preference for the form in which communications should be sent to them from Staff.

Attorney Dalton asked the Council's indulgence for one comment. She said they should keep in mind that 99%, if not 100%, of the communications would be public record. She said that meant that any e-mails sent to one's private office or home would be a public record.

Mayor Reynolds said that was a good point and was glad Ms. Dalton had brought it forth.

Vice Mayor Massucco said he had no objection to any form of communication. He said if someone needed to contact him, they should use whatever method possible at any time.

Mayor Reynolds felt that, time-wise, it would be best to use e-mails as much as possible. He said since he had become the Mayor, he had spent at least an hour or so each morning at the Town offices, unless he had to attend another meeting somewhere, which he said had happened too often already. He said he tried to be in the Town offices from about 9:30 AM until about noon every day. He encouraged his fellow Council members to go look at any information about meetings he had attended which he left on the desk for a week or two before filing. He said the office was there for all of them to use, although it was unfortunate that it was the only space available to them.

Mayor Reynolds said any time any communication went out from Council it was public record. He said any time they sent something to a specific individual regarding Council, he believed it was a requirement to CC every Council member, the Town Manager and the Town Attorney. He said that would cover the individual who sent the communication. Mayor Reynolds said the Council was not allowed to answer another Councilman's message, as he felt that would be a violation of the Sunshine Law. He said he found it was very important to get some information to Council beforehand, so that each

Councilman could think about it before addressing it in a meeting. He said if the Town Attorney had no objections, he indicated to Mr. Gucciardo that he could do that as well if he had special things he wanted to bring up.

Attorney Dalton said one Council member could generate a document for consideration. She said a problem would be created if, as Mayor Reynolds had indicated, there were any type of response or interaction on that memo, it would be a Sunshine issue.

Mayor Reynolds, referring to something he had said earlier and which he had heard several of the candidates, now on Council, say, said: "The work that you see done here will be done here in the Sunshine. It won't be done someplace else." He said that was in line with what he had said about communication sent out by Council members.

Councilman Meador indicated that he preferred all communications to be placed in his mailbox in Town Hall. Councilman Boback said that worked for him as well. Councilman Meador added that if there were an emergency, Mr. Gucciardo should call him. Councilman Shenko said he, too, preferred using his mailbox in Town Hall to receive communications. He added that if there were any communications to the Town Manager or other Council members, his would be in writing, signed and in the mailboxes, and not sent via e-mail. Mayor Reynolds suggested that everyone on Council be communicated with in this fashion, but told Mr. Gucciardo to send any e-mail he wished to send to him. Councilman Boback said Mr. Gucciardo was welcome to use e-mail as well, but wanted the hard copies.

Mr. Gucciardo, referring to the situation with Ms. Segal-George, said that as of late Thursday afternoon, December 8th, he had received a signed copy of the release and wanted some direction from Council as to whether the matter could be considered closed. He said his only interest in getting beyond it was that he had an office and a computer that he wanted to put back into use. He was particularly concerned about use of the office space because an audit was coming up and the use of that office would be "wonderful", as it could be locked up at night.

Mayor Reynolds said Mr. Gucciardo's question raised a point which he felt Councilman Boback might want to comment on.

Councilman Boback said he had planned to speak with the Town Attorney after the meeting. He said, based on some of the information that had been received from Ms. Gibbs, with regard to the e-mails cited by her, Councilman Boback felt it behooved the Council to have the computer looked at to see what other information might be available to Council. He thought it might be a good idea to send the computer out to someone who could reconstruct any information that may have been inadvertently erased.

Mayor Reynolds asked if this had been advised by the attorney, Ms. Gibbs. Councilman Boback said that was correct, but had intended on speaking with Ms. Dalton about it, to determine how Council could go about accomplishing that. He felt it would be minimal cost-wise, and that it might produce a lot of pertinent information of use to Council.

Attorney Dalton said she didn't have any information with regard to Ms. Gibbs' suggestion about the computer, which Ms. Dalton said put her at a bit of a disadvantage. She said if the Council wanted to do that, they certainly could. Councilman Boback asked what the Council's procedure would be, in terms of getting it accomplished. Ms. Dalton said Council should find someone who could do it, and should keep the computer in a secure location until such time as the transfer of data could occur. Councilman Boback said Council needed to give Mr. Gucciardo some direction, as Mr. Gucciardo had been the only person with a key to the office in which the computer was installed. Mayor Reynolds felt that had been the basis of Mr. Gucciardo's question, with regard to wanting the go-ahead to use that office.

Ms. Dalton felt it would be appropriate to determine if the entire Council wanted to move forward with Councilman Boback's suggestion with regard to the computer. She felt the cost of the action needed to be determined as well. Ms. Dalton further felt more discussion was needed, as the determination needed to be made as to whether Ms. Gibbs involvement would be continued or not.

Councilman Meador thought Ms. Gibbs' concern had been that there may be information on the computer Ms. Segal-George had used as Town Manager that may be of future value to the Council, and had suggested the computer be secured to give Council the opportunity to investigate it. He believed the computer had been secured already, and that basically it had been disconnected from the Town network since Ms. Segal-George had left. He remarked that an entire office space was not needed to house the secured computer. As far as pulling data off of the hard drive, as he had explained to Mr. Gucciardo earlier, Councilman Meador had had to have information pulled off a hard drive last year, and it had cost him about \$1500 to send it to Tampa and have an entire drive read. He thought the \$1500 had been a maximum cost, because in his particular case, it had been a failed hard drive. He said Council may not want to make a decision about it immediately, and could just direct that the computer be secured for the time being, so as to open up the office in which it currently sat for use. He asked if there was anyone who did tech/repair work for the Town currently. Mr. Gucciardo said there was. Councilman Meador suggested removing the hard drive from the computer in question, so that the computer could be used as well.

Mr. Gucciardo asked if Council would be comfortable with his simply physically moving the entire computer to his Deputy Town Manager's office, which he would lock up at the end of his working day. He said this would make the Town Manager's office immediately available for use. Councilman Meador said he had no problem with that.

Mayor Reynolds said perception was reality, and didn't think it was a good idea for Mr. Gucciardo to be involved with the security of the computer in question. Mr. Gucciardo remarked that he would just as soon not be. Mayor Reynolds felt, for Mr. Gucciardo's protection, that it would be best if he was not involved. He hoped Council would let Councilman Boback follow through on the suggestion from Ms. Gibbs, rather than locking the hard drive up for some length of time. He said either the Council wanted to do it, or didn't want to do it, and he didn't think it would cost a lot of money to get it done. He felt they should just go ahead and let Councilman Boback proceed.

Councilman Boback said if Councilman Meador already knew of someone who did the kind of work under consideration, Council could just turn it over to Councilman Meador to send to that person.

Vice Mayor Massucco said he would be violently opposed to the idea if it were to be used as an investigative tool to look into wrong-doings. He said if it were purely for information, then he agreed the Council had a right to know. He said he did not want to get into an investigation, as it would be costly, and he didn't see what purpose it would serve. He felt it should be made clear that it would be for informational purposes only.

Both Mayor Reynolds and Councilman Boback expressed their understanding that it would be done for information-gathering.

Mayor Reynolds asked if there was a consensus to get the information off the hard drive from the computer Ms. Segal-George had used as Town Manager, and to give it to Councilman Meador to send to the person whom he knew could do the job.

Councilman Shenko said some sort of secure method should be used to get the hard drive to the person who would do the work, and back to the Town, for the purpose of getting information that may be available, and not with the intention that it be an investigative tool.

Mr. Gucciardo had heard that part of the release agreement with Ms. Segal-George was that the settlement figure be divided 50-50 between payment in this calendar year and the next calendar year. He wanted the Council's consensus on that, as although he had been told of that arrangement, it did not actually appear in the release agreement.

The consensus from Council was that that was part of the agreement. Mr. Gucciardo thanked the Council.

IX. TOWN ATTORNEY'S ITEMS

Not to belabor the Public Comment issue, Ms. Dalton pointed out that in the context of a zoning hearing in a land use meeting, if someone wanted to step forward with Public Comment at the beginning of a meeting, prior to the hearing being convened, they should be able to do that. She said it this type of hearing was a quasi-judicial matter, and needed to be followed very strictly. However, she said if a person only spoke at the Public Comment portion of the meeting, and not at the time Public Input was indicated in the hearing itself, then their comments would not be considered in the context of the hearing. She said that, as to any other aspect of Public Comment at the beginning, during, and at the end of a meeting, it was entirely subject to the Policy and Procedures of the will of the Council. She said it would be prudent of Council to advise anyone who came forward during Public Comment to address an issue that was scheduled for a hearing, that they would need to come forward again at the hearing itself so that their testimony could be a part of that hearing record.

Mayor Reynolds said the Council was trying to get away from duplicating input from the public. He felt the public needed to get themselves organized better so that they didn't cause the meeting to be extended unnecessarily. He felt Ms. Dalton's advisement would set the Council back into the situation they had wished to solve.

Ms. Dalton pointed out that her advisement had to do specifically with zoning/land use hearings only. She felt Council could advise people who came forward during Public Comment on a specific hearing item, to hold their comments until the hearing itself was opened so that their input would be considered in the context of the hearing. She thought that might encourage people to speak only once on a hearing item.

Vice Mayor Massucco said it had been observed that when people were given the option of waiting to make their comments during the actual hearing items, they most usually opted to wait until that time to give their input.

Councilman Meador asked Ms. Dalton if it was necessary that Council permit general public comment at the outset of a land use meeting. Ms. Dalton said there was no requirement as such. Councilman Meador remarked that they could proceed directly to the agenda item – the land use case – and take the Public Comment pertinent to that case, and then, if they so chose, Council could take Public Comment after the case was closed. Ms. Dalton said that was exactly right. Councilman Meador said that procedure might help to avoid the potential of duplicative comments.

Mayor Reynolds believed some people need to make their contributions right away in a meeting. He did not want to turn those people off. He wanted them to have their chance to share their thoughts. Otherwise, he wanted Council to go in the direction they had discussed, where input would be accepted on specific agenda items as they came up. As a general practice, he did not want to cut people out of public input. He said he had seen that happen through the years, and didn't want to see it happen again.

Ms. Dalton asked if the Council wished her to craft a motion approving the variance, and a motion denying the variance with the specific findings. She said it would be easy for her to do, and although the resolution was there that did have the findings, she would be happy to craft the motion until everyone "got their sea legs under them". Councilman Shenko asked if she was referring to doing this on zoning and land use items only, or on all items. Ms. Dalton clarified that she was speaking only about zoning and land use items. Councilman Shenko remarked that there were specific findings which was the problem Ms. Dalton was trying to solve, and he thought each case was different. He thought a motion approving Staff's recommendations was in order, but if Council decided not to approve Staff's recommendations, they needed to have specific findings that would be at that specific hearing, which he said would vary so much from case to case.

Mayor Reynolds asked if this would affect public input. Ms. Dalton said it would not, as it was a completely different subject she had raised regarding crafting motions with specific findings. She said land use motions were often very technical, in the context of a hearing.

Vice Mayor Massucco wondered if the Policy and Procedures manual should be updated to reflect the change. He said the manual definitely stated that only agenda items could be addressed in the first Public Comment section of Council meetings. Ms. Dalton suggested that. She said the manual could be waived, but thought the Council would want consistency for the sake of the citizens. She concurred with Vice Mayor Massucco that once the Council had reached a consensus regarding public input, the manual should be updated to reflect their decision if it deviated from current procedure.

Mayor Reynolds said if it became a problem, they could change the procedure again.

Ms. Dalton said the City of Ft. Myers had conducted a study earlier this year, as to how different municipalities handled Public Comment at their meetings, and Grant Ally had sent her a copy of the findings. Ms. Dalton said she would be glad to share those findings with Council. Mayor Reynolds jokingly remarked that Council needed more things to review. Councilman Meador jokingly asked if there was a summary section, which sparked a round of laughter. Ms. Dalton said she would be happy to prepare a summary of the

findings for Council, based on what had been provided to her. Mayor Reynolds said that would make more sense, because with all the papers he had been getting, he didn't know how he would be able to handle any more reading.

X. PUBLIC COMMENT

Eddie Foster, of 2440 Cottage Avenue, came forward. She said traffic and sand replenishment were not the only crises that the Town had. She said she needed the Council's help. She said the homeless and vagrancy issue had reached a critical level. Citing a paper she had distributed to Council earlier, Ms. Foster said it had been generated and handed out to people by Chapel by the Sea when it had its garage sale about a week ago. She read from the paper: "What is God's Table? God's Table is an ecumenical program that serves the homeless and needy of Ft. Myers Beach. We are located at Chapel by the Sea on Ft. Myers Beach, and sponsored by the Ft. Myers Beach Ministerial Association and Kiwanis Club. We have volunteers from many churches on the Beach as well as volunteers affiliated with churches in Ft. Myers and Bonita Springs. We provide breakfast, a bag lunch, canned food for an evening meal, clothing, blankets and personal items. Showers and haircuts are available, as well as Human Services such as medical assistance, a social worker, crises assistance provided by St. Vincent de Paul, and representatives from the Salvation Army and Veteran's Administration. We assist people with making appointments and transportation for medical reasons, obtaining identification, getting into detox programs, and other programs of self-help. God has richly blessed our program." Ms. Foster said it sounded like a good program, except she wondered if Council had noticed there were at least two important components missing – jobs skills and sleeping arrangements. She said without those components, it was simply an enabling program. She said she saw the same faces coming across the street at eight o'clock in the morning month after month and year after year. She asked "why work?" when everything was handed out. She said after Hurricane Charley, she had tried to get a couple of the vagrants to help her out, and had offered some of them ten dollars an hour to help her get rid of 14 inches of sand that had blown onto her property. She said those people had said to her that they had tried working before and hadn't liked it. Ms. Foster thought it was biblical to say "If you give a man a fish, you've fed him; if you teach a man to fish, you've given him a life." Her understanding was that breakfast was served at 7 AM, and that those served had to be off the property by 8 AM, and no one knew where those served went when they left. She chuckled and said she knew where they went because they would sleep on her property, as well as her neighbors' properties. She said she and three neighbors had had break-ins, and one intruder had had a knife. She noted that while many churches were involved, only one church physically served the individuals. She had brought the issue to Council last year, and had been told that United Way in Ft. Myers could offer job counseling and sleeping arrangements. She wanted that pursued.

Jerry Murphy, the Community Development Director, interjected at this point, and asked the Mayor for permission to speak. He indicated to the Mayor that Ms. Foster had already used her three minutes of allotted public input time.

Ms. Foster said she appreciated the Council's being financially responsible to the tax payers and home owners on Ft. Myers Beach. She cited the newspaper (the Observer) in which appeared at least a dozen arrests reported by the Sheriff's department. She said many appearing on that list had no known or fixed address. She said she would return with more input on the subject at a subsequent Council meeting.

Mayor Reynolds said he had not interrupted Ms. Foster because she had been addressing an issue that had become a concern because of the number of people involved. He said that had been the reason why he had not interrupted her.

Todd Pravatera came forward. He said he was a local resident and a street performer. He thought the comments from Council about bagpipers and digiree doos had been interesting. He said he had a lot of friends who made a good living playing them, and that he liked them himself. He said it didn't cost the city anything except electric costs to have a performer in the Square, and it never had. He said they had always gotten permission from the Town to plug into the outlets near the trees in the Square if they needed to amplify their voices. He said some of the rules in the proposed guidelines, if read carefully, cancelled each other out, and some were duplicative. He felt it needed to be rewritten and reviewed by a performer. He said the Beach Patrol had always watched over their performances. He said there had been few problems, and those that arose were worked out amongst the performers and the Beach Patrol. Mr. Pravatera said the Town had handpicked the performers for Times Square, and that no one had been allowed to go to Town Hall to apply for a spot as a performer. He said someone, whose identity he did not know, had mailed permits to pre-selected performers. He said he was a local, and yet he had not gotten one mailed to him, although permits had been mailed to performers in other countries, and different states. He said when he had come home to perform on the Beach, his hometown, he had been denied a permit. He didn't think that was right. He said street performers worked from sunset until 9 PM, as there was no crowd after that. He said they couldn't perform outside of the Square because there wouldn't be enough people to perform for. He said he would like to work out the problems with John Scott himself. He said he would like to be a representative of the Times Square street performers. He said he had been one of those performers, and wanted to be one again. He felt the number of permits granted needed to change. He said there were certain shows that would occur in one location, and certain side shows that would occur simultaneously.

Herb Acken, a beach resident and business owner, came forward. He said all the Councilmen had run on a platform of being responsive to the residents. He said by cutting out any opportunity for Public Comment, he felt the Council would be doing the residents a disservice. He realized some people were long-winded, or came up with the same issues over and over, and he apologized for that. He asked the Council to keep the Public Comment section at the beginning of the meetings, and appreciated the addition of public comment for individual agenda items. Regarding Public Comment occurring just before adjournment, Mr. Acken felt by only allowing general comment at that time, it precluded the Council from addressing any issue raised at that time. Regarding the street performer issue, Mr. Acken felt what Mr. Pravatera had tried to address was that there had been no public advertisement for street performers, and that it had just been mandated over the course of the summer with the previous administration that selected people would be allowed to perform to the exclusion of any other performers. He said there had been an application period, but no notice had been given about it, and had ended before most of the street performers had returned to Town. He thought a remedy would be to reopen the application period.

Public Hearing was then closed.

XI. ADJOURNMENT

MOTION: Vice Mayor Massucco made a motion to adjourn the meeting. Councilman Boback seconded the motion.

No vote was taken.

Mayor Reynolds adjourned the meeting. No time was given.

Respectfully submitted,

Jo List
Transcribing Secretary