

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 21, 2004
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER: The regular meeting of the Fort Myers Beach Town Council was called to order on Monday, June 21, 2004 at 6:30 P.M. by Mayor Bill Thomas.

Members present at the meeting: Mayor Bill Thomas, Vice Mayor Garr Reynolds, Councilman Howard Rynearson, Councilman Bill Van Duzer, Councilman Don Massucco.

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Town Attorney Richard Roosa, Bill Spikowski, Planning Consultant to the Town, Director of Public Services Matt Feeney.

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

III. INVOCATION – CHAPEL BY THE SEA: The invocation was given by Sheila Morales of Chapel by the Sea.

IV. PUBLIC COMMENT:

Bill Snell came forward to call attention to a serious problem with the Fort Myers Beach water distribution system which has been in service for more than 50 years. He described the pipe material which he said has a design life of less than 20 years, causing the system to have little structural integrity. He recommended it be replaced as soon as possible. He added that problems with the water system were discovered during the FMB sewer construction project, pointing out that during 1977 through 1979 he had made recommendations for improvement. He furnished a written summary to the Council.

Bob Gaydos came forward with 2 items: (1) He apologized for what he called his brash action at the last Council meeting, which he said was an emotional act of the heart and meant no disrespect to the Council or the members. (2) He presented his resignation as a member of the Public Safety Task Force advisory committee, saying he hopes to qualify as a candidate for the Fire Commission for the FMB Fire Control District, Seat #4, referencing F.S. 99.012 as applicable to his situation. He recalled serving on the PSTF since its inception in April 1998 and expressed the hope that his contributions have been of benefit to the Town. Mayor Thomas thanked Mr. Gaydos for his service.

Dan Hughes came forward and recalled attending the last several meetings of the Charter Review Committee, stating that they did an excellent, in-depth job. He noted that there were several issues presented by the CRC on which public hearings will be held in the Fall. He commented on one issue, which was eliminating Council seats and running on plurality, which he said was an excellent idea, and he wanted the public to be aware that this was coming up for a decision in the Fall. Mr. Hughes expressed the opinion that this would be an improvement to the political situation on the Island, pointing out that it would eliminate runoffs and confusion between multiple elections. He urged favorable consideration of this issue and added that he was impressed with the depth and effort and time put forth by this committee with the assistance of Deputy Town Manager John Gucciardo.

V. CONSENT AGENDA:

- A. APPROVAL OF MINUTES, MAY 17 & JUNE 7, 2004**
- B. FLOOD MITIGATION ASSISTANCE PROGRAM GRANT**
- C. FINANCIALS FOR THE MONTHS OF APRIL AND MAY**
- D. RESOLUTION TO LEVY A SPECIAL ASSESSMENT LIEN AGAINST THE PROPERTY OF CARSON E. GRIFFIN & MARIANN GRIFFIN**
- E. RESOLUTION TO LEVY A SPECIAL ASSESSMENT LIEN AGAINST THE PROPERTY OF MARGARET A. TESORO AND LEONA M. TESORO J/T**

MOTION: Motion was made by Councilman Van Duzer to approve the items on the Consent Agenda. Motion was seconded by Councilman _____.

DISCUSSION: Vice Mayor Reynolds requested to withdraw Items A, B and C. Mayor Thomas announced Items D and E for the benefit of the listening public. Mr. Reynolds had the following corrections to the minutes: On Page 2 of the 5/17 minutes he called attention to Item C which he had begun at an earlier meeting and had not finished; he said there was only one item on the agenda but 2 items in the packet and addressed the Mound House approvals jumping from \$5,000.00 to \$25,000.00. He had no further comment on the salaries but wanted to clarify his position on the expenditures.

MOTION: Mr. Reynolds moved that the May 17 2004 minutes be accepted with the above notation. Motion was seconded by _____.

VOTE: Motion was carried by unanimous vote.

On Page 10 of the June 7th minutes, beginning on the 3rd line, Mr. Reynolds took exception to the words "expressed concern" and stated that it was his position that all 5 individuals live on the Island. On Page 11, Item VII under his Council Member Item and Reports, on the 4th line he wanted "at" deleted and replaced with "... before each meeting." On Page 12 Mr. Reynolds clarified his intent with regard to the point of order.

MOTION: Motion was made by Mr. Reynolds to approve the minutes of June 7, 2004 with the above notations/corrections. Motion was seconded by _____.

VOTE: Motion was carried by unanimous vote.

Mr. Roosa and Ms. Segal-George pointed out that the vote had not yet been taken on Items D & E and explained the usual procedure when items are withdrawn is to vote on the balance and then vote on the individual items for discussion.

VOTE ON ITEMS D & E: Motion passed by unanimous vote.

With respect to Item B, Mr. Reynolds said that this was an extensive document which he had discussed with Ms. Segal-George. He discussed the amount of funding in the grant and said that he had needed assistance in understanding it. Councilman Massucco also said that the document has 43 pages, all of which are administered by the Town as overseers and recipients of the FEMA funds for redistribution. He expressed concern that this results in a great deal of paperwork with no benefits to the Town for its efforts. Councilman Van Duzer responded that the Town realized many benefits because it aids the Town in its relationship with FEMA and the classification that property on the Island is put into. He added that all the people on the Island benefit. He said that the property in question was subject to repeated flooding, and that this is a Federal grant system that the Town must agree to and administer, but the property in question is now above flood plane and will not have such a loss again. The total funds are provided by the Federal Government and the recipient. Mr. Massucco agreed that there are non-monetary benefits but still felt that the Town should be reimbursed for the time spent in administering the program. Mr. Reynolds verified with Mr. Van Duzer that Mr. Van Duzer, who has done construction projects for the individual in question, was absolutely not involved in the project under discussion. Mr. Reynolds agreed with Mr. Massucco and added that thought should be given to a fee to cover administrative expenses.

MOTION: Motion to approve Item B was made by Mr. Van Duzer and seconded by _____.

VOTE: Motion passed by unanimous vote.

With respect to Item C, Mr. Reynolds advised that he had examined the financials with the assistance of Mr. Gucciardo since he had been away from the subject for some time. He pointed out specific items that he had been concerned with and recommended that everyone obtain a copy and read it.

MOTION: Motion was made by Mr. Reynolds to accept Item C. Motion was seconded by Mr. Van Duzer.

VOTE: Motion passed by unanimous vote.

VI. ADMINISTRATIVE AGENDA:

A. ELECTION ISSUES – TOM BABCOCK:

Tom Babcock came forward and explained that his wife is not participating in the presentation, as this subject was part of the Charter Review. He also clarified that the actual topic should be "Charter Issues" and not "Election Issues" inasmuch as election issues will be only one of the subjects discussed. He agreed with Mr. Hughes that he is looking forward to discussion of the proposed Charter amendments in the Fall. He apologized for the matter being in the newspaper prior to his appearing before Council, explaining that he was not able to get on the June 7th agenda. Mr. Babcock recalled that the issues came to light during his research for the Charter Review Commission and that there had been public hearings on these subjects. He referred to written background material and "evidence" which he had submitted, suggesting that the best way to resolve these issues is by submitting to a court the resolution with a declaratory judgment. He explained that this involves 2 Charter amendments made/initiated by 2 ordinances, the first in 2001, Ordinance 01-06 when as a result of election problems in 2001 there were requests to move elections from Fall to Spring. State Statutes were passed to make it easier for municipalities to do this without going to referendum. However, at the same time the term of Council members was changed from 3 years to 4 without referendum. The second was an ordinance passed last Fall, 03-10 which he felt was initially for the purpose of better defining the qualifying times for candidates but also changed the election process from a primary in the event of multiple candidates for seats to a runoff. Once again, this was done without a referendum, reversing the earlier Ordinance 99-10 establishing the primary process and which had been passed by a referendum. He acknowledged that the ordinances were probably well intended but questioned whether the processes used were compliant with Article 13 of the Charter and Section 166.021 Section 4 of the Florida Statutes.

Vice Mayor Reynolds recalled that he served on the Council at the time these items were addressed and the Council was aware of both items. He also recalled that the Supervisor of Elections encouraged the change to March because of her workload, and on the direction of Mr. Roosa, Council took this action. He said that Council had been aware of the legal issues, and recalled that he himself had been concerned about the change of term from 3 to 4 years, but with advice of Mr. Roosa the Council decided to move ahead.

Mr. Babcock asked that Council vote on whether or not to have a declaratory judgment, pointing out that, Mr. Reynolds' comments notwithstanding, the issue is whether or not Council had the legal right to do what was done. He said he has heard several different opinions, and the only way the issue would be resolved is by obtaining a declaratory judgment. In response to comments by Mr. Reynolds, he explained that he is not challenging the intentions but the advice that Council received, pointing out that the Elections Office does not have the power to mandate changes in the process.

Mr. Roosa was asked to address the issue, and he called attention to a State Statute which addresses this particular issue. He said the Legislature understood that local government may be required to make changes in their time of elections by the Supervisor of Elections, and because of that possibility the Legislature gave the local governments the authority to modify their charters to bring them into line with the requirement of the Supervisor of Elections, which is what the Council did. He acknowledged Mr. Babcock's contention that there are provisions in the Town Charter which prohibit such actions, pointing out that those provisions are in conflict with the State Statute, which prevails. It is therefore his position that this issue was addressed by the Legislature. With respect to the issue of a declaratory judgment, he advised that in any lawsuit it would be necessary to have a plaintiff and a defendant, or a respondent and a petitioner, such as the Town of Fort Myers Beach v. another party, and he is not aware of any procedure whereby the Town could sue the Town.

MOTION: Motion was made by Mr. Rynearson that Council stand by its decision and the Town Attorney's advice. Motion was seconded by Mayor Thomas.

VOTE: Motion was passed by unanimous vote.

Mr. Babcock then asked to address the last issue raised by Mr. Roosa, acknowledging that the Town cannot sue itself, but he was of the opinion that both ordinances can be challenged. He said he came forward to inform Council that he intends to pursue obtaining a judgment on this issue himself; however, since the issue arose out of his duties as a member of the Charter Review Commission, he expects his legal expenses to be paid by the Town. He said he feels that he is representing the voters of Fort Myers Beach and that these changes made to the Charter without referendum must be challenged, leaving him no alternative but to pursue the matter in court. He felt that it would be fairly easy to resolve the issue sooner rather than with a lengthy court process. Mr. Van Duzer emphasized that there had never been any attempt to restrict the voters and that everything had been very open, and he also verified that Mr. Babcock had asked the Charter Review Commission to make this an issue and they refused to do so. Mr. Babcock acknowledged this, explaining that it was found to be outside of the primary purpose of the Charter Review Commission, which focused its activities on changing the amendments. However, he feels that before amending a Charter it must be ascertained that there is a legal Charter to begin with, and he expressed the opinion that the issue does fully fall under the responsibilities of Charter Review. Mr. Van Duzer stated that he would not be willing to pay legal expenses for anyone who files suit against the Town on this

matter. Mr. Rynearson verified with Mr. Roosa that the Town is not liable and does not have to pay, stating that he is not in favor of doing so. Mayor Thomas said he was not in favor either, pointing out that the CRC had chosen not to pursue the matter and that Mr. Babcock was on his own. Mr. Massucco asked what would happen in the event a declaratory judgment were to go against the Town, and Mr. Babcock pointed out that Council should be concerned with resolving the matter as soon as possible because the elections could be declared null and void, with everything passed by Council since then also found to be illegal.

Mr. Roosa observed that perhaps at the time Council places CRC recommended changes before the voters it could also consider placing these issues on the same referendum. He said that this is not a requirement but would be an option which the Council has the authority to do.

B. PUBLIC HEARING OF ORDINANCE 04-09 TO AMEND CHAPTER 6 OF THE LDC, FLOOD PLAIN REGULATIONS:

Bill Spikowski, Planning Consultant to the Town, came forward and explained that this is the First Public Hearing on this ordinance. He read the title of the proposed ordinance and referred to his memo which provides background on the origin of this ordinance, which is in response to FEMA's community assistance visit. He further explained that this is similar to an audit of the Town's flood plain program and referred to a FEMA letter with 12 required revisions to the LDC and 7 recommended changes. He advised that while this ordinance is dissimilar to what he usually presents, in that it a "few small steps backwards," it is an ordinance that must be approved in order to protect the flood insurance program for the entire Town. In the event FEMA after their review wishes to include some of the non-required items it would be an issue for Council to address in the Fall. He explained that the form of the ordinance is dictated by the Federal Government, using definitions written 30 years ago, and it is unacceptable to customize these definitions to meet local conditions. He advised that the Final Public Hearing would be on June 30th at 9:00 A.M., stressing that if any Council members desire any alternative language he would need time to make revisions.

Mr. Van Duzer advised that after conversation with Mr. Spikowski he had several concerns, all but one of which were addressed. This has to do with the provision that any outside appraisal be within 20 per cent of the Property Appraiser's valuation, which Mr. Van Duzer considers to be very low, perhaps only 50 to 60 per cent of market value. Since a property owner is only allowed to go up to 50 per cent of fair market value, should an appraisal exceed 20 per cent more than the Property Appraiser's estimate, review of their request would be required. In view of this, Mr. Van Duzer recommends increasing the 20 per cent to approximately 35 per cent. Mr. Spikowski explained that the 20 per cent figure is not mandated by the Federal Government, and any change would be within the discretion of the Council. Mr. Reynolds had a concern about the amount of Government assistance with respect to buildback costs, which Mr. Van Duzer attempted to explain. Mr. Spikowski was also requested to explain, which he did.

Mayor Thomas opened the meeting for Public Hearing at this time.

Mr. Bill Whittaker, owner of the Dairy Queen on FMB, came forward and stated that this issue concerns him directly, referencing increased property values and taxes.

There being no further public comment, the Public Hearing was closed.

Mr. Van Duzer pointed out that there is only one more Public Hearing on this ordinance and asked for further discussion. He referenced examples used by Mr. Reynolds in previous discussion and explained that his intent in recommending a higher percentage was to protect private property rights, not to increase the amount received from the Government. He acknowledged that the current practice has been abused, resulting in Federal intervention. Mr. Rynearson agreed to support 35 per cent as a fair figure in view of rising construction costs. Mr. Massucco expressed concern that an outside appraisal would result in a higher assessed value by the Property Appraiser. Mr. Spikowski explained that while this could be possible, the Property Appraiser generally uses their own formula and adjusts all properties uniformly, rather than looking for instances in the public record such as the theoretical one being discussed. In order to arrive at a consensus, Mayor Thomas polled the Council: Mr. Van Duzer, 35%, Mr. Reynolds, 20%, Mayor Thomas, 20%, Mr. Rynearson, 35%, Mr. Massucco, 35%.

Ms. Segal-George advised that the final Public Hearing will be June 30th at 9:00 A.M.

Mr. Van Duzer discussed the mobile home section and the elevation requirements, which would now require a mobile home to be raised to eleven feet. Mr. Spikowski advised that this is a Federal requirement which has been addressed by a special allowance in the applicable zoning district providing the option for such sites to be used as transient RV sites instead. He said that this was the only way to stay within the FEMA rules. There was a discussion of definitions pertaining to RVs and mobile homes.

C. PUBLIC HEARING OF ORDINANCE 04-08 TO AMEND CHAPTER 34 OF THE LDC, OUTDOOR DISPLAY IN DOWNTOWN ZONING DISTRICT:

The title of this ordinance was read by Mr. Spikowski. He explained that this ordinance affects only specific parts of Times Square and Old San Carlos in the Downtown Zoning District. The basic regulations were adopted in March 2003, and shortly after there were unanticipated problems encountered. There have been a

number of workshops, with LPA review on at least 3 occasions, most recently on June 8th with respect to the draft being presented at this meeting. The LPA found this ordinance consistent with the Comprehensive Plan and recommended adoption with the elimination of lettering on umbrellas which they also deleted. This is strictly a local matter with no State or Federal intervention. He explained the intent of the ordinance and described some of the conditions it is intended to alleviate.

Mr. Reynolds had a question with respect to a particular location which it was determined to be outside of the Downtown Zoning District. Mr. Spikowski added that the LPA has agreed to address other locations at a later date.

The meeting was opened for Public Hearing at this time.

Kerry Hendry came forward and said she has recently acquired a lease to a small store in Times Square and wanted to be sure of the rules. She had been given some papers by John Richard and wanted to question the raised porch area, which her store does not have. She asked whether she would still be able to have a rack outside. Mr. Spikowski advised that the answer depends on whether or not she is the primary lessee of the space and whether the space intended for her display is on private or public property, which she may not know. He explained that the ordinance is very specific on a number of issues. With respect to the porch issue, the original ordinance allows merchandise on raised porches, which was added at one of the Public Hearings when one merchant who attended raised an objection. As a result, people began building porches for the purpose of additional displays, which was not the intent.

Public Hearing was closed at this time.

Mr. Rynearson described a personal observation in Old San Carlos and expressed disappointment that outdoor displays were being allowed on public property in that area. He recommended that everyone personally inspect the area in question prior to the next Public Hearing. Mr. Spikowski directed attention to the applicable portion of the ordinance and pointed out that Council has the authority to determine whether or not to allow displays on public property. He added that most communities are very restrictive with respect to outdoor displays. He said the question to consider is whether outdoor displays make the area more interesting to pedestrian traffic and conducive to shopping, or does it create clutter and an undesirable atmosphere. Mr. Reynolds said he concurs with Councilman Rynearson and is not in favor of using public property in Old San Carlos. Councilman Van Duzer observed that this was intended to be a pedestrian friendly area when the Comprehensive Plan was adopted. He observed that the merchants have requested outdoor displays and that this ordinance would give a measure of control. Mr. Spikowski explained that the LPA was concerned that allowing this on a trial basis might result in creating a vested interest, which was the reason for the permit process. Mr. Van Duzer asked whether there had been a number of business owners at the LPA hearings, pointing out that there were none at this meeting. Mr. Spikowski explained that there was very little input at the LPA, but most came out of a series of meetings held by former Community Development Director Dan Folke with the merchants. He verified that the draft before Council came out of those meetings. Ms. Segal-George added that she had attended these meetings, which had been well attended with a great deal of discussion, and there had been merchants who wanted no displays on public property. The subject of enforcement came under discussion, and Ms. Segal-George expressed the opinion that this version could easily be enforced, although she acknowledged that unforeseen events can occur. Mr. Rynearson asked for a consensus that there be no outdoor displays on public property, which he said was his only concern. Mr. Massucco observed that the restaurants have been given wide latitude and asked whether vendors should not be given similar consideration. Mr. Van Duzer agreed that there should be a year's trial with respect to public property, observing that once the ordinance is passed the merchants will attempt to find ways to circumvent it. Mr. Reynolds agreed with Mr. Rynearson that the area should not encroach on public space. Mayor Thomas also agreed that public property should not be used, making the decision 3 to 2 against using public property for outdoor displays. Mr. Spikowski will prepare a memo for the next meeting accordingly. It was verified that this applies to Old San Carlos only. Mr. Spikowski added that the meeting on June 30th which was originally scheduled for 3:00 P.M. has been changed to 9:00 A.M. because of the lengthy agenda.

D. PUBLIC HEARING OF ORDINANCE 04-11 TO AMEND PARKING VIOLATIONS:

Mayor Thomas announced that this will be the only Public Hearing on this subject. Ms. Segal-George read the title of the ordinance and explained that Council had changed the fine from \$32.00 to \$25.00 and this memorializes that change.

The meeting was opened for Public Hearing. There being no public comment, Public Hearing was closed.

MOTION: Motion to adopt this ordinance was made by Mr. Van Duzer and seconded by Vice Mayor Reynolds.

VOTE: Roll call vote was taken. Van Duzer: Aye; Reynolds: Aye; Thomas: Aye; Rynearson: Aye; Massucco: Aye. Motion was passed by unanimous vote, 5-0.

**E. PUBLIC HEARING OF ORDINANCE 04-12 TO SET DISTRICT NAME OF OLD SAN CARLOS
M.S.B.U.:**

Mayor Thomas announced that this would be the only Public Hearing on this item. The title was read by Ms. Segal-George. She verified with Mr. Roosa that the purpose was so that maintenance could be charged in Old San Carlos. She then asked if the Times Square Advisory Board could be used for this as well, and Mr. Roosa advised that the Council could appoint the same members to this advisory committee. She also said that Vice Mayor Reynolds had raised the question on whether an assessment ordinance had been passed for Old San Carlos when the Town assessed the property owners for the cost of construction; it was verified that this was done. The question then was how this differs from that instance. Mr. Roosa advised that it was the difference between capital investment and ongoing annual maintenance, explaining that this mechanism would be used yearly to maintain the initial capital investment. The first assessment was a one-time capital project, and this is a maintenance item that will be recurring. Vice Mayor Reynolds obtained some further clarification from Mr. Roosa.

The meeting was opened for Public Hearing at this time. There being no public comment, the Public Hearing was closed.

MOTION: Motion to adopt the ordinance was made by Mr. Ryneerson and seconded by Mr. Reynolds.

VOTE: A roll call vote was taken. Ryneerson: Aye; Reynolds: Aye; Van Duzer: Aye; Massucco: Aye; Thomas: Aye. Motion was passed by unanimous vote, 5-0.

F. FINAL PUBLIC HEARING ORDINANCE 04-10: REQUEST TO AMEND THE FUTURE LAND USE MAP OF THE FORT MYERS BEACH COMPREHENSIVE PLAN:

Ms. Segal-George advised that this is the second and final hearing on these 4 cases. For convenience she suggested taking each case individually.

REQUEST INITIATED BY THE TOWN:

CASE NUMBER: FMB-SSA-04-03 Request to change the future land use designation from Mixed Residential to Recreation. The subject property is located at 4600, 4610, & 4650 Estero Blvd., known as Newton Beach Park. The property is 0.8 acres.

The case title was read by Ms. Segal-George. She explained that under the Comprehensive Plan, when the Town acquires property the zoning should be brought into compliance with its use, and this approval will remove development rights from the property and place it into the appropriate category for a public park. She further explained that it is consistent with the Comprehensive Plan Policy 4-C-10, 4-B-13, 10-D-3, and 10-F-3 and is of benefit to the public as a public park.

The meeting was opened for Public Hearing at this time. There being no public comment, the Public Hearing was closed.

MOTION: Motion was made by Vice Mayor Reynolds to approve the item. Motion was seconded by Councilman Ryneerson.

VOTE: A roll call vote was taken. Reynolds: Aye; Ryneerson: Aye; Thomas: Aye; Massucco: Aye; Van Duzer: Aye. Motion passed by unanimous vote, 5-0.

CASE NUMBER: FMB-SSA-04-04 Request to change the future land use designation from Mixed Residential to Recreation. The subject property is located at 216 Connecticut Street, a vacant lot owned by the Town of Fort Myers Beach. The property is 0.42 acres.

Ms. Segal-George read the case title. She explained that this is also removing development rights from the property and characterizing it as recreational. The proposed amendment will remove Objective 10-H of the Comp Plan applies. She stated that there are no plans to put anything on this property other than its use for overflow parking for the Mound House, which it has been used for in the past, and perhaps several benches as allowed for a neighborhood park. The request is consistent with the Comp Plan including Policy 4-C-10.

The meeting was opened for Public Hearing at this time. There being no public comment, the Public Hearing was closed.

MOTION: Motion was made by Councilman Van Duzer and seconded by Councilman Ryneerson to approve the requested amendment.

DISCUSSION: Vice Mayor Reynolds asked Mr. Roosa why it was necessary to make changes from

residential to recreation without stating the specific purpose for the change. Mr. Roosa replied that this is not required of either private property owners, or the Town. Mr. Van Duzer pointed out that in order to do anything else with the property a Comp Plan amendment process would be required. Mr. Reynolds pointed out that there are a number of uses permitted under the "park" designation, which was the reason for his question.

VOTE: A roll call vote was taken. Van Duzer: Aye; Rynearson: Aye; Thomas: Aye; Reynolds: Aye; Massucco: Aye. Motion was approved by unanimous vote, 5-0.

REQUEST INITIATED BY THE PUBLIC:

CASE NUMBER: FMB-SSA-04-02 Request to change the future land use designation from Low Density to Boulevard. The subject property is located at 111 Bahia Via Drive, and is 4,850 +/- square feet.

Ms. Segal-George read the case title. She called attention to the fact that the LPA has recommended approval of this case; however, the Staff recommendation was denial.

The applicant, Carrie Hill, one of the property owners on Bahia Via Drive, came forward in the absence of her husband, who had been addressing the LPA and Council at previous meetings. She explained that the property had been zoned C-1 when they purchased it and subsequently changed when the Town adopted its Comprehensive Plan. They are seeking to restore commercial zoning. With respect to the Staff Report, she explained that they are not asking for 4 to 6 dwelling units per acre. There is one house on the property at this time which is their residence, and they do not intend to change anything, but to restore the commercial zoning at the time of purchase because their right to sell or combine the property with the Shell Station has been compromised. She described the condition of the property, which was a vacant lot, at the time they purchased it and the improvements they have made. She also acknowledged that any future commercial use would require a zoning change. Ms. Hill noted that the LPA had done a thorough study and had recommended approval. She asked for the opportunity to respond to any Council comments on the case.

Ms. Segal-George summarized the Staff Report, copies of which the Council members had received and which she said were addressed by the applicant in her remarks. Staff's position on this and the following case is that a change in the Comprehensive Plan should only be accomplished in conjunction with a change in zoning request because without knowing the intended use there is no opportunity to put conditions on a particular development. She further stated that the request on its own does not serve any public interest under the existing conditions. Mr. Van Duzer asked for clarification of Ms. Segal-George's remarks versus the Staff Report, which she provided. Any change from the current use as a residence would have to come back for rezoning as a Planned Development.

The meeting was opened for Public Hearing at this time. There being no public comment, the Public Hearing was closed.

Ms. Hill again came forward and called attention to Ms. Segal-George's and the Staff Report's remarks that the property cannot stand on its own as a commercial property due to its size, so even if it were to be combined with the Shell Station, the majority of the property would become buffer rather than developed property. She reiterated that she had no plans to make any changes at this time, but intends to continue to use it as her private residence.

MOTION: Motion was made by Mr. Van Duzer to honor the request of the applicant to amend the Town Comprehensive Plan Future Land Use Map to change the designation from Low Density to Boulevard. Motion was seconded by Mr. Massucco.

DISCUSSION: Vice Mayor Reynolds said he has studied the situation and does not believe the request would be beneficial to the neighborhood. Mr. Rynearson agreed that approval would extend potential commercial use into the neighborhood which he does not believe is appropriate. Mr. Van Duzer observed that if the property were to be purchased by a commercial user, a significantly increased buffer would be required between commercial and adjacent residential properties. He expressed the opinion that in adopting the Future Land Use Map, the Town in several instances violated private property rights. He feels that this is one of those instances. He does not agree that it would injure the surrounding neighborhood.

VOTE: A roll call vote was taken. Van Duzer: Aye; Rynearson: No; Thomas: No; Reynolds: No; Massucco: Aye. Motion failed by a vote of 3 to 2.

CASE NUMBER: FMB-SSA-04-01 Request to change the future land use map designation from Mixed Residential to Pedestrian Commercial. The subject property is located at 821 Estero Blvd., 831 Estero Blvd., 319 Lagoon St., 823 Lagoon St., 831 Lagoon St., 839/841 Lagoon St., 843 Lagoon St., 846/848 Lagoon St., 849 Lagoon St., 855 Lagoon St., and 859 Lagoon St.

Request to change the future land use map designation from Recreation to Pedestrian

Commercial. The subject property is located at 815 Estero Blvd., The subject parcels total 2.85 +/- acres.

Ms. Segal-George read the case title. Ms. Massucco announced that he had filed the necessary papers to abstain from voting on this case.

Mike Roeder, Director of Planning at Knott Consoer, came forward representing the owners of the 13 subject properties. He recalled explaining the background at the first Public Hearing 2 weeks ago and briefly summarized for context. He described the location as approximately 2.85 acres just across from Lynn Hall Park on Estero Blvd. and Lagoon St. He explained the changes to the "inner circle" and "outer circle" when the land use map was adopted, recalling that several property owners had appeared at the hearings and objected because the properties had been zoned commercial since 1962. It was explained to them that because of the Comp Plan adopted in 1999 it was no longer possible to have conventional commercial zoning in that area, and that Planned Development zoning would apply. A small-scale Plan amendment would be required, which they have applied for. Mr. Roeder expressed the opinion that at the time the Comp Plan was adopted, Staff apparently felt that residential zoning was appropriate for these parcels at that time, but with the rezoning of the CPD on the corner and the intense activity in the Times Square area he believes that no longer applies. He pointed out that every property owner in the area has signed the authorization and is in agreement. Graphic exhibits were presented to illustrate the existing uses in the surrounding area, including the Town's water tower where he understands it is planned to construct an administrative building. He suggested that an appropriate use for the parcels would be Office Commercial, citing the other existing and potential uses. He acknowledged that the property owners would have to come back for additional rezoning hearings, noting that there is an RPD hearing pending nearby. He discussed the different types of zoning, stating that the applicants would agree to splitting the request as the LPA had suggested. He went over some issues raised at the last hearing, including the Staff Report's concerns about compatibility. He pointed out that all the land owners are participating in the request and agree with the direction. Addressing the Staff's concern that this may be premature, he described the current zoning as a "quirk" and pointed out that these properties are located across from Lynn Hall Park and next to Times Square. He disagreed that it would be fair to consider properties further down Estero for change prior to these, particularly since they were zoned C-1 since 1962. The public interest test in Policy 4-C-10 was referenced with respect to the property owners' desire to become associated with Times Square. He said the properties had been misclassified due to changing circumstances and referred to the 7-11 as a blatant intrusion into the residential area, suggesting that the properties would be brought into compliance with the Town's own Comp Plan by approval of this request. He disagreed with the Staff position that the landowners should have been aware that the Comp Plan was changing the designation, saying that he does not believe any of the owners understood the ramifications of the Comp Plan and zoning map adoption. He recalled that when the owners came before Council last February objecting to the change from C-1, they were encouraged to seek relief via the land use amendment procedures. He introduced Tom Hart, a land use attorney from his office to address the legal issues, and reserved the right to return to answer questions and address any issues that arise.

Mr. Hart referred to a principal in Florida law, the Burt-Harris Act, regarding government taking property usage rights from an owner. He recalled several actions over the years that he said caused a reduction in value of the properties in question. He said the clients have attempted to work with the Town, and without this amendment there will be uses that are no longer permitted under the Comprehensive Plan.

Ms. Segal-George summarized the detailed Staff Report that had been presented at the first hearing. She pointed out that there is only one property owner who has purchased since the early decisions affecting these properties since incorporation. Staff is recommending denial. Mr. Roosa declined to address the Burt-Harris issue.

The meeting was opened for Public Hearing at this time. There being no public comment, the Public Hearing was closed.

Mr. Roeder again came forward and responded to Ms. Segal-George's comments.

Vice Mayor Reynolds observed that the C-1 zoning had been changed before the purchase of the properties. Mr. Roeder responded that in December 1997 the emergency ordinance was adopted saying that C-1 zoning could not be used without rezoning to CPD. He said it was not accurate to state that everybody knew what was going on, pointing out that there was much misinformation circulating throughout the Island. Mr. Reynolds referred to 2 properties on Estero Blvd., and Mr. Roeder pointed to his illustrations to indicate which properties had been changed, and to what. Ms. Segal-George explained the Council's reasoning at the time that resulted in restriction of C-1 zoning. There was discussion about the timing of the purchases. She pointed out that all of the property owners have the right to rezone to CPD, which allows them considerable options. She also stated that the Town could help the property owners with some of the impacts from commercial intrusion that had been described. Mr. Reynolds asked whether this should be brought back as a single request, and Mr. Roeder recalled some confusion at the LPA about this at which time some of the members felt the request could not be split. For this reason, he had written a letter to Dan Folke saying the applicants would agree to such a split if preferred. He emphasized that the property owners had not understood the ramifications at the time the Comp Plan was adopted.

MOTION: Motion was made by Councilman Van Duzer that 4 of the properties be allowed to amend their designation from Mixed Residential to Pedestrian Commercial (Properties 1, 2, 3 and 4 of the Property Owners List, also called the "Inner Circle.") 2 of these properties front on Estero Blvd. and 2 front on Lagoon St. The other property, presently zoned Recreation, is not included in the motion. He feels that this was something forced on the property owners that they have never been happy with, and that property rights should be restored. Motion was seconded by Mayor Thomas.

DISCUSSION: Councilman Rynearson expressed concern that by approving the request Council would be "signing a blank check." He would prefer to have a specific Planned Development request to consider. Councilman Van Duzer pointed out that all property owners had agreed to it, which influences his decision. Vice Mayor Reynolds agreed with Councilman Rynearson that extending into a mixed residential area and approving a non-specific request would be inappropriate. He said he has heard objections from surrounding neighbors. Mayor Thomas did not recall receiving any letters in opposition and said he supports the request.

VOTE: A roll call vote was taken. Van Duzer: Aye; Reynolds: No; Thomas: Aye; Rynearson: No. With Councilman Massucco abstaining, there was a 2-2 tie. Mr. Roosa explained that an affirmative vote is needed for the motion to pass; a tie is interpreted as a failure. The motion therefore failed.

Mr. Rynearson explained that if the applicants were to come back with a specific use he would be more inclined to give favorable consideration. Mr. Roeder replied that with 13 individual property owners it would be difficult to return with a master plan. He reiterated that approval would not have given final approval for any intense potential use without further zoning hearings. He agreed to take the Council's suggestion to his clients.

G. PUBLIC HEARING (Continued to November 8, 2004) Peter & Susan Lisich in ref. to ABACO Beach Villas located at 131 Estero Blvd., Request to rezone from Commercial Planned Development to Residential Planned Development:

The item has been continued to November 8, 2004.

H. NEWTON PARK REQUEST:

Mr. Gucciardo explained that this request gives authority to move ahead with some of the projects that Council has already approved for the Newton Property. The funding comes from the TDC, so this request is to allow Staff to bid out the 3 phases and contract with the lowest bidder to begin work on the site. Public Services Director Matt Feeney is on hand to answer questions.

MOTION: Motion was made by Councilman Rynearson and seconded by Councilman Van Duzer to approve the request.

DISCUSSION: Vice Mayor Reynolds recalled attending the last meeting of the Newton Park Committee. He said he had not been aware that Councilman Van Duzer was on that committee. There had been only 3 people at the meeting, at which Mr. Feeney gave a report. He said he had learned elsewhere that the storage rooms which will be demolished were used for many years as rental apartments. There are plans to move the Newton Home to Bowditch Park, probably by means of a barge. He understands that the grant will pay for the move, and the County will then be responsible for the structure, to be used as a theater. Mr. Reynolds said he is upset about taking the home off the site and destroying it. It was pointed out by Councilman Rynearson that the moving of the home is not part of what Council is being asked to approve this evening, and that there will be opportunity to discuss disposition of the structure in the future. Mr. Reynolds suggested that reconsideration be given about moving the house. It was verified that the motion pertained to Phases 1, 2, & 3, but not 4.

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

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Massucco advised that he had attended an Eagle Ceremony on Saturday for a local youth, Chris DeRosier, who attained the highest Scouting designation. Part of his project for attaining the Eagle designation was to build a playground, and the young man and his friends obtained contributions of lumber and materials, including \$7,000.00 worth of lumber from Home Depot. He described the ceremony at Chapel By the Sea as very moving. He said he wished the Town could provide some form of recognition to show appreciation. There was agreement that Staff would look into some form of plaque or citation.

Vice Mayor Reynolds spoke about the millage, recalling that the Mayor had reminded him of 2 reductions in the past, one 4 years ago and another last year. He discussed the amounts of the reduction and again

suggested reduction of the millage due to the increase in the tax base.

Mayor Thomas replied to the Vice Mayor regarding millage and advised that the County will be removing gas tax revenue from the Town, possibly resulting in a budget crisis and wait until the budget comes before Council.

VIII. TOWN MANAGER'S ITEMS:

Mr. Gucciardo reported receiving an anxious phone call and E-mail from the Town's colleagues at the MPO this afternoon realizing that they had not sufficiently publicized a meeting scheduled for tomorrow. He explained that the long-range "20-30" plan was being addressed, and that as part of the process they are developing a vision statement as well as a series of goals and objectives for the "20-30" plan. There is a first draft of both documents, and there will be a meeting tomorrow from 7:00 P.M. to 8:30 P.M. at the Best Western Island Gateway on Summerlin Road to accommodate residents of FMB, Sanibel and surrounding area. Public is invited to give input or comment.

IX. TOWN ATTORNEY'S ITEMS: No items.

X. PUBLIC COMMENT: None.

XI. ADJOURNMENT: Meeting was adjourned at 9:42 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary