

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 28, 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 28, 2004 at 9:00 A.M. by Mayor Bill Thomas.

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

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George; Nettie Richardson, Senior Planner with the Lee County Department of Commercial Development, Division of Zoning; Jerry Murphy of Lee County Zoning; Public Works Director Damon Grant

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

III. INVOCATION: The invocation was given by the Rev. Robert Stuckey, First Baptist Church, Fort Myers Beach.

IV. PUBLIC COMMENT: None.

V. CONSENT AGENDA:

A. INTERLOCAL AGREEMENT WITH LEE COUNTY FOR ANIMAL SERVICES:

MOTION: Motion was made by Councilman Rynearson and seconded by Councilman Van Duzer to approve the Interlocal agreement with Lee County for Animal Services.

VOTE: Motion was approved by unanimous vote.

VI. ADMINISTRATIVE AGENDA:

A. TRAFFIC MITIGATION:

1. TRAFFIC MITIGATION AGENCY UPDATE:

Mayor Thomas expressed appreciation for the efforts of this group. Tom Myers, Chair of the Traffic Mitigation Agency, came forward to give the report. He emphasized that the group is an Agency, not a committee. He referred to copies of the report which had been provided, and proceeded to read portions of the report. Issues addressed were the video camera project, the additional trolleys and promotion of the trolley program, the Next Bus system, and refurbishment of the trolleys. He advised that the group has approved the modified Trailblazing Sign Package. The Civic Association recommendation will be given a temporary test using Crescent Street. Council is being asked to approve \$20,000.00 for this test and \$20,000.00 for the attendant engineering package, part of which will also be directed to pursuing a Federal grant of up to \$500,000.00. Mr. Myers reported that Lee County Commissioner Ray Judah attended a meeting of the group and was asked for financial and technical support for 2005. He stated that the financial support being requested from Lee County amounts to \$1 million, and a copy of the formal presentation is available to Council. Mr. Myers described Commissioner Judah as "clearly enthusiastic" regarding the rationale for this request, and that he stated that they were right on track. Mr. Judah requested a formal letter from the Town so that he could present the case for this request at the Lee County budget meetings which start June 28th. The Traffic Mitigation Agency is being represented at that meeting. A letter prepared by the Town Manager was FAXed to Commissioner Judah on June 25th. In summary, Mr. Myers said there has been good progress and good support from CRSPE (Chris Swenson), the Town Manager, the Fire Chief, Police Captain, Lee DoT, the public, and the TMA members. He thanked the Council for giving the group the opportunity to serve the Town.

2. REQUEST APPROVAL OF MODIFIED TRAILBLAZING SIGN PACKAGE:

Ms. Segal-George advised that the previous package has been reviewed by the TMA, which made some recommendations covered in a memo, with the recommendation for Council to approve the package with

those changes.

MOTION: Motion was made by Councilman Ryneerson and seconded by Councilman Van Duzer to approve the modified Trail Blazing Sign Package.

VOTE: Motion was approved by unanimous vote.

Vice Mayor Reynolds said he did not hear a call for discussion prior to the vote. He asked for the opportunity to present some important information, but declined to accept the opportunity to speak as a special exception.

B. PUBLIC HEARINGS:

1. REZ2003-00023 & SEZ2004-00012 – FORT MYERS BEACH DISTRICT LIBRARY

ADDITIONAL PARKING. Request to rezone from Residential Multifamily (RM) and Commercial Boulevard (CB) to Institutional (IN) with a Special Exception for a cultural facility (library) per Table 34-1 of the Fort Myers Beach Land Development Code, to permit expansion of the Fort Myers Beach Library parking lot. Property located at 2709 Estero Blvd. at intersection of School Street.

Mayor Thomas read the case and asked for public comment.

The applicant, Leroy Hommerding, Director of the Fort Myers Beach Public Library, came forward and was sworn. He explained that the Library is in dire need of additional parking and has been so since 1991 when the building was expanded from one story to two. Two years ago the land became available and was purchased by the Library for that purpose. He described the types of events that would benefit from additional parking and the current situation.

The Staff Report was given by Nettie Richardson, Senior Planner with the Lee County Department of Commercial Development, Division of Zoning. She explained the two parts of the request and the location of the property. Ms. Richardson recalled that the case was brought before the Historic Preservation Board due to some historic issues with respect to the commercial buildings on the site which are proposed for demolition, and that this Board deemed there was insufficient evidence to designate the properties as a historic resource. She noted that the requested zoning will permit conversion of the property to a parking lot, and the requested changes are consistent with the uses defined in IN zoning district and also consistent with the Comprehensive Plan, pertinent portions of which she referenced. She also referred to the surrounding properties, finding that the proposed use is consistent with what is existing. She noted that buffering will be required. Applicant has been required to apply for a Limited Development Order, which they have done. Staff is recommending approval. There is one condition to the Special Exception, which is that the parking lot shall be in compliance with the site plan prepared by Piper Engineering, Inc. dated stamped received December 23, 2003 by the permit counter, attached as Attachment D of the Staff Report.

Mayor Thomas asked whether there had been any ex parte communications. Mr. Van Duzer said he has had conversations with Mr. Hommerding and Ms. Richardson.

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 to approve Resolution 4-20 with the finding that the request complies with the FMB Comp Plan and Chapter 34 of the LDC and all other Town ordinances; motion was seconded by Vice Mayor Reynolds.

VOTE: Motion was carried by unanimous vote.

It was pointed out that the LPA and Staff had recommended a condition, and it was verified that this was included in the motion.

2. DCI2003-00079 – BUCCANEER FT. MYERS BEACH, LLC IN REF. TO SUNCOAST TIDE.

Request to rezone 1.1 +/- acres currently zoned Commercial Resort (CR) to Residential Planned Development (RPD) under the pre-disaster buildback policy and transfer density and intensity from several parcels to another. Property located at 4864 Estero Blvd. (From San Carlos Blvd. turn South onto Estero Blvd., Subject parcel is located on Estero Blvd.)

Mayor Thomas read the case and asked whether there had been any ex parte communications. Mr. Van Duzer advised that he has met with the property owner and the property owner's attorney; Mr. Reynolds said that he has spoken with the Attorney, Ms. Beverly Grady, and Mr. David Meyers, the owner; Mr. Ryneerson said he has met with the same people as previously discussed; Mr. Massucco advised that he visited the property but met with no-one.

Beverly Grady came forward representing the applicant, Buccaneer Fort Myers Beach, LLC and explained that the purpose of the rezoning request is for a 16-unit multifamily in a single building to be called Suncoast

Tides. As part of the request, all of the development rights on 5335, 5350 and 5354 Estero Blvd. are requested to be transferred to the Suncoast Tides parcel which currently has the Buccaneer on it. She described the "sending parcel" with respect to the Code and advised that the 3 parcels, .58 acre, referred to as Azure Tides, together with easement for pedestrian access to the beach, are being voluntarily offered to the Town to comply with the Comp Plan. She referred to the current density and intensity of 29 units, 27 guest units and 2 apartments which could be replaced if destroyed by storm, plus the 14 Azure Tides units. Approval would result in reduction to 16 dwelling units.

She introduced Rick McCormick, a licensed architect and an expert in planning and codes who has appeared before the LPA and Council many times previously. Mr. McCormick came forward and identified himself as President of R. J. McCormick Architects, Inc. Ms. Grady verified that he had prepared the report presented at the LPA hearings and provided to Council today, which Ms. Grady said was an evaluation of the existing properties and the application. She referenced the Master Concept Plan and a number of exhibits prepared by Mr. McCormick. Ms. Grady also introduced a representative of Metro Transportation, which prepared the Traffic Impact Statement for the application; (she asked that Council recognize the team members as experts in their respective fields) Mr. Greg Desario, a landscape architect with David Jones & Associates; David Meyers, the owner; and John White, a real estate attorney who will discuss the Azure Tides property and its easement. She respectfully submitted that the application is consistent with the Town Comp Plan, and that the Staff Report should have stated that Council can find this application consistent. She cited the 3 issues that must be addressed to Council's satisfaction: (1) the transfer policy; (2) the height policy; and (3) the intensity/density issue under the pre-disaster buildback. She described the existing structures and how the proposed structure is intended to comply with the CCCL and FEMA regulations. Ms. Grady explained that with respect to the transfer issue, the property would be delivered to the Town with the structures demolished and the site graded, providing a decrease in density and additional open space and opportunity for passive uses. She pointed out that as required, the parcels are in close proximity, referencing LPA resolutions and exhibits, as well as Council resolutions. She also noted several potential uses for the "sending" parcel that would have potential public benefit. With respect to building height, 4 stories over 1 story of parking are being requested on the Buccaneer property. She pointed out that if the existing 3-story Buccaneer structure were destroyed, under the Comp Plan 3 stories over 1 would be allowed as a post-disaster buildback. The surrounding properties were described and illustrated by visual exhibits. Ms. Grady referred to density/intensity as the biggest issue in the Staff Report and pointed out that the LDC allows conversion of hotel/motel to dwelling units, referring to the pre-disaster buildback policy and stressing that there is no reference to square footage in the Comp Plan. She referred to 2 cases previously heard by the Town which contained this issue and entered these cases into the record as exhibits. She also made reference to the total square footage being requested versus what would be allowable under the buildback, emphasizing the overall reduction in number of units. She pointed out that there is no formula for conversion of guest units to dwelling units. She described the requested deviations, explaining that one could be eliminated if Council desired.

Mr. McCormick presented the elevation exhibits and described the architectural style and components of the proposed building.

Ted _____ of Metro Transportation group commented on the traffic implications. He compared the trip generation units of the existing usage with the proposal by use of charts and reported that a decrease in trip generation is anticipated.

Greg Desario, a registered landscape architect with the firm of David M. Jones, Jr. and Associates in Fort Myers, presented the landscape plan with the use of exhibits. He cited portions of the LDC with respect to dune restoration with which he said the application complies.

John White, a Naples attorney, came forward and advised that his office had prepared the title work with respect to the "sending" parcel which is intended to be given to the Town. He said this parcel has a private easement that connects the offshore properties to the beach, and assuming that the City would intend to tear down the existing buildings on the site for use as a park, he has issued an opinion of title that this easement should be available to provide access to the beach, assuming that there are limitations with respect to overburdening the private easement. He expressed willingness to work with the Town attorney to explore these limitations. He said there are 14 parking spaces associated with the existing 14 units, and as long as there are limitations such as parking meters, the use would not be characterized as overburdened.

Ms. Grady summarized the application and concluded the applicant's presentation, reserving the right to respond to any comments from the public and the Staff Report.

Jerry Murphy came forward on behalf of Staff and was sworn. He said this was his first appearance before Town Council since the elections and provided his credentials and background, asking that he be accepted as an expert on behalf of Staff and the Town. He agreed with Ms. Grady that the largest issue was intensity and guest units vs. dwelling units. With regard to the transfer, Staff does not agree that the properties are in close proximity and have not been convinced that it is in the Town's best interest to allow this transfer, particularly because one over-density property is being taken as it exists and that density is being transferred to another over-density property to allow for a larger project. He said that Staff's interpretation of the LDC and the direction from

Council and the LPA in the past is that larger projects are not necessarily better projects. He recalled that overbuilding as allowed by Lee County in the past was what led to incorporation. Therefore, transfer of density from a parcel 1/3 of a mile away is not considered appropriate. However, he pointed out that if Council believes that this is the type of project that the Town needs and wants, and that it is in the best interest of the Town, Council, unlike Staff, has the discretionary power to approve it. He introduced his Staff Report into the record as sworn testimony.

Councilman Van Duzer observed that Mr. Murphy will soon be a member of the Fort Myers Beach Town Staff and welcomed him.

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

Anita Cereceda came forward and was sworn. She advised that she was present as Chair of the LPA and recalled that at the last meeting it had been decided unanimously that at each Public Hearing either she or another LPA member would appear before Council to make a presentation regarding their deliberations, as John Mulholland had done when he was Chair of the LPA. She said the motion was unanimous for denial after far-reaching deliberation. With respect to transfer of density, she said there was little discussion, but there had been sincere issues regarding height among some of the members. She described the issue of density/intensity and redevelopment on the Island as being of major significance in this as well as other cases, and one that will be further investigated in the upcoming review of the LDC. She said they acknowledged and agreed with the applicant that this was a reduction in density and intensity, but there was no way to get from "A" to "B" because there is no contemplation in the Plan for conversion from commercial to residential units, although there is great contemplation on how to do the reverse. She said there was much discussion about the future redevelopment of the Town with respect to this case, and expressed appreciation for the lengths to which the applicant went to review the application and scale down their presentation. There was no doubt that the reduction in density from 43 to 16 was significant, and the traffic presentation was also significant to the LPA, but conversion of commercial units to dwelling units placed the LPA in a quandary, and the decision was to recommend denial. She added that the LPA will be looking with interest at Council's discussion of this issue for future guidance in their deliberations.

Herb Atkin came forward as a Beach resident and a business owner to say that he is in favor of the applicant's development.

Ms. Grady again came forward in rebuttal to explain that the Town is facing a choice with respect to conversion of hotel units to dwelling units, again referencing previous cases and the Code and Comp Plan. She cited reduction in traffic and utility usage as benefits to the Town. Dave Meyers then came forward and explained the rationale for redevelopment when taking over the Buccaneer, pointing out that square footage has never been an issue elsewhere in the country in their experience. He recalled numerous conversations with Mr. Murphy and with Pam Houck, stating that their original plan was for 6 stories and 30 units. Mr. Meyers also recalled that Mr. Murphy had provided the Key West case as the ratio for a reverse transfer, pointing out that they overcomplied with this ratio. He said he was surprised by the tone of the Staff Report inasmuch as he was given a different impression at their last meeting.

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

Councilman Rynearson was recognized that observed that this was a difficult decision. He felt that there are many benefits to the Town in that the number of units would be reduced from 43 to 16, and the Town would acquire additional green space. He expressed the opinion that this project would be very beneficial to the Town, and added that by disapproving the project there will be 43 units with 43 cars, with an average of 4 trips per day, or 172 cars a day. By agreeing to 16 units, even if each unit had 2 cars, making 32 cars, the condo trips are at most twice a day, equaling 64 cars per day, a decrease of 108 cars daily from Estero Blvd. He pointed out that the Town is making every effort to reduce traffic on Estero Blvd. and that if every development would decrease traffic in this way it would be a great benefit. He also referred to dune creation and landscaping on Estero Blvd. which are part of the applicant's proposal and the green space from the Azure Tides parcel as additional benefits to the Town.

MOTION: Motion was made by Mr. Rynearson to accept transfer of units from Azure Tides to the Buccaneer and agree to the applicant's proposed development with the conditions and deviations that have been put forth. Mr. Van Duzer seconded the motion for discussion.

DISCUSSION: Mr. Van Duzer reported that he had spent a great deal of time reviewing the Comprehensive Land Use Plan and the Land Development Code because there have been discussions relating to violations of these regulations. He stated that he is also very much in favor of this project and expressed the opinion that it does not in any way violate the Comp Plan or the LDC, adding that there are elements in portions which he cited that would support approval. He also pointed out that the new structure would be totally behind the CCCL and above flood plane, which would be an advantage. A designated trolley stop has been offered by the applicant, which he pointed out as another definite advantage. He referred to 8 existing living units which he referred to as "heartbeats" and stressed that the number would be considerably reduced in the new structure. He expressed the opinion that intensity should never be tied to square footage, stating his interpretation that intensity

relates to the infrastructure, such as water, sewer, electrical and garbage requirements as well as road transportation. He also noted that the proposed landscaping would be beneficial. Financially, by removing the motel and allowing the new structures the revenues from the tax structure will be improved. He also pointed out that the applicant is willing to remove the structures from the Azure Tides and give that property to the municipality for use as a community park or other public usage. He said that he sees no disadvantage to this project but only advantages, and in no way believes it should be denied. He requested the opportunity to discuss other issues that may be considered.

Vice Mayor Reynolds commented on Mr. Murphy's expertise with respect to the Staff position. He said he would not be at liberty to reject the Staff Report, while empathizing with the applicant's representatives' statements. He recalled voting against transfer of units at LaPlaya and said he has not changed his position and that the same principle applies. Mr. Reynolds said that this would not be in accordance with the Comp Plan and expressed appreciation for the LPA deliberations and Ms. Cereceda's presentation with respect to upholding the LDC and Comp Plan. He said his only concern is with creating a situation that will not be good for Fort Myers Beach and that the County was very clear.

Councilman Massucco remarked that he believes the issue of density transfer is dangerous ground. He said that the Comp Plan and the LDC are the only 2 documents that stand between the people and the overdevelopment of the Island and agreed with Mr. Murphy that no more such transfers should be allowed. He expressed confidence in the Comp Plan and the LDC and said that until and unless they are changed he cannot in good conscience go against those documents and the people of the Island.

Mayor Thomas complimented Staff on their time and effort and said he must agree with their conclusion. He chose not to speak in detail on the reasons why this application should not be approved, stating that the LPA put much time and thought into the case and found against the project. In view of Staff and LPA disapproving of the application, and the philosophy underlying the reasons for the Town's incorporation, he expressed concern that approval of such a project would create a "snowball effect" resulting in loss of the small-town ambience that the Town desires to retain.

Mr. Van Duzer expressed disappointment that the decision appears to have been made before the presentations were offered. He referenced Chapter 4 of the Comp Plan with respect to density transfers and expressed the opinion that the proposed transfer would be in the public interest. He also referenced the condition of height in the same chapter and noted that additional height could be allowed if the existing parcel is surrounded by tall buildings which would make the height restriction unfair, and said that this provision applies in this case. With respect to codes, in Chapter 34 building heights are also addressed and related to in the buildback clause, which includes the surrounding structure rule. He pointed out that density transfers are included in the LDC and there would be no violation by recommending approval. He observed that Mr. Murphy made a very short presentation and did not go into the basis for his recommendation, which included items that Mr. Van Duzer wished to question. He stated that Mr. Murphy had advised Council that if it was considered in the Town's best interest, they can vote to approve this request. Mr. Van Duzer complimented the applicant on what they have offered to do for the residents of Fort Myers Beach by cutting both the density and intensity on this site, and said he thinks it is a shame that it not be approved.

Councilman Rynearson said he agreed that disapproval would be sad because this is a good project. He pointed out that moving the density to the Buccaneer and creating green space at the former Azure Tides site would be beneficial. He expressed dismay at what he called "the terrible thing we are doing here" and asked for reconsideration.

Mayor Thomas replied that in view of the Staff Report and the LPA he felt it was time to stop the compromises and end overbuilding with all the problems that it creates.

VOTE: Motion failed on a vote of 3-2. Those voting against the motion were Mayor Thomas, Vice Mayor Reynolds and Councilman Massucco; Councilman Van Duzer and Councilman Rynearson voted in favor of the motion.

Councilman Massucco requested the opportunity to make a comment. Mr. Roosa pointed out that a resolution has been defeated and the proper next step would be a motion on a resolution to deny the application.

MOTION: Motion was made by Mayor Thomas for a resolution to deny the application. Mr. Van Duzer pointed out that the resolution already exists and all that is needed is a motion for denial. Mr. Roosa provided clarification. Motion was seconded by Mr. Massucco.

VOTE: Motion carried on a vote of 3-2. Those voting for the motion were Mr. Thomas, Mr. Reynolds and Mr. Massucco; Mr. Van Duzer and Mr. Rynearson voted against the motion.

Councilman Massucco objected to the usage of the words "travesty" and "terrible" as used by other Council members and expressed the opinion that they were inappropriate at these proceedings.

Councilman Van Duzer said he would stand by his use of the word "travesty" which he said he meant to refer to the decision having been made prior to the public hearing and the applicant's presentation. Mayor Thomas took issue with Mr. Van Duzer's assumption that some members had already made up their minds.

Vice Mayor Reynolds expressed the opinion that everyone had come together to do their very best for the benefit of the Town of Fort Myers Beach. He said he resented any implication otherwise.

Ms. Segal-George advised that the applicant for Casa Bahia was present and suggested that if Council were ready the case could be heard prior to the lunch break. There was agreement to do this.

3. DCI2003-00087 JKJ DEVELOPERS IN REF. TO CASA BAHIA. Request to rezone 0.2 acres from Residential Conservation (RC) to Residential Planned Development (RPD) to construct four (4) multiple-family dwelling units as pre-disaster buildback with deviations from setback and driveway width requirements. Property located at 855 Lagoon St.

Mayor Thomas read the case and verified that all parties were present. He asked for ex parte communications, and Councilman Massucco advised he had visited the property but did not talk to anyone; Vice Mayor Reynolds also had visited the property but spoken with no one; the remaining Council members advised that they had had no conversations with anyone involved.

Mr. Massucco clarified his reply by saying that he had encountered the manager at the mailbox, and she had given him permission to go in and look around, but that was the extent of their conversation.

The applicant's representative, Mike Roeder, came forward and was sworn. He described the request and referenced the previous zoning which was RM-2 until last February when the new zoning map was adopted and is now RC. The request is to rezone from RC to RPD to allow rebuilding of the existing 4 units. He advised that there had been much Staff review and compromise on the case, stating the reduction in square footage by the applicant following Staff review and the prior LPA hearings. They disagreed with Staff opinion that there should be no increase in interior square footage, but the client revised the plan accordingly. Mr. Roeder stated that the plan to be considered which was reworked by Architect Tim Stone is actually a slight reduction in the square footage from what is existing. The applicants are JKJ Development, which is not a large company but consists of two brothers and a business partner who are the owners and who intend to occupy 3 of the 4 units when rebuilt. He referred to the need for deviations on setbacks which he said the architect would explain in detail. He also referred to the second LPA hearing at which the issue of density was raised and submitted a letter from their surveyor, explaining that the actual square footage of the parcel that had been determined by survey does support 4 units. He reserved the right to return to respond to comments and introduced Mr. Stone.

Mr. Stone, the architect of record for the project, came forward representing Archimetrics, Inc. which represents the applicant, and explained the details of the plan. He recalled the history of the project beginning in late 2000 when he was first contacted by his client. Using visual exhibits, he described the existing and proposed buildings, pointing out that the shape of the parcel is irregular and explained the reasons for requesting deviations. He described the project as a model of what can be done for a pre-disaster buildback in that it has no increase in density, no increase in intensity, no change in use from the original 4 units, less than the minimum height, it has an architecturally acceptable character, and from what they have been told it is acceptable to the adjoining property owners. He also reserved the right to respond to Staff and other comments.

John Giles, one of the 3 principals of JKJ Development, came forward and described the history of how he and the others came to Fort Myers Beach, where 2 of them are now residents. He further described their plans to occupy the units.

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

Jerry Murphy came forward again on behalf of Staff and made several corrections to the Staff Report before entering it into the record. He said that Staff's original position was based on a square footage figure that was since determined to be larger because the lot extends into the lagoon. Based on the original assumption, only 3 units would be allowed; however, under the larger acreage and the way Lee County determined property back then, 4 units are legal. He proceeded to read the applicable changes to the Staff Report. He then entered the Staff Report into the record and complimented the applicant on how they have worked with Staff through the review process. He said the only challenge now is the legality of the existing 4 units, and Staff has looked at the applicant's research and has done its own research. The applicant has found no evidence that the existing 4 units are illegal, and has clarified the density issue in that regard. Staff has been unable to confirm the legality of the units because building permits were not kept by Lee County for that period of time. Taking a conservative approach, Staff recommends denial. However, he said that this case appears to be a project that Council may want to approve, and with that in mind, Staff has offered conditions in the event of approval.

Vice Mayor Reynolds verified the square footage of the property, and Mr. Murphy explained that at the time the structure was built in 1972, Lee County would have allowed the inclusion of square footage extending into the lagoon. Mr. Murphy replied to another question by Mr. Reynolds that it is his understanding that there are 5 units in the building currently, but the square footage of the 5th unit is not included in what is being requested.

Mr. Murphy also verified that the footprint of the new building would be no larger than the existing square footage that is within the project. He explained that the original request was similar to the previous case in that additional square footage was being requested, and Staff had taken a position that the Code allows up to what was existing, so the applicant has reduced their request accordingly. Mr. Reynolds pointed out that the proposed structure will be very close to the seawall, asking if this is a trend, and Mr. Murphy explained that this is one of the requested deviations. It is his understanding that the deck will be 5.5 feet from the seawall, and the initial request was for fewer feet. He said that Staff has no problem with this setback in view of the irregular dimensions of the lot and would not recommend denial of that deviation. Mr. Reynolds explained his concern that adjoining properties might eventually be blocked off by allowing deviation from the seawall setback. He recalled an earlier case several years ago and cautioned Mr. Murphy to take water views into consideration in future cases. Mr. Murphy explained that from his visit to the site, none of the adjacent properties will have their view blocked, and one of the adjacent older buildings is actually closer to the seawall than would currently be allowed.

The meeting was opened for Public Hearing at this time.

Anita Cereceda came forward to reflect the LPA's consideration of the case. For the record, she advised that she had received a cell phone call and that she had misrepresented the LPA's vote on the previous case; there were 2 dissenting votes on the motion for denial. Jessie Titus and Jane Plummer had voted in favor of the application. On this case, the vote was to approve the applicant's request, with one dissenting vote by Mr. McCarthy. Many of the issues raised today were also raised by the LPA, with the ultimate motion to approve with Staff's recommendations for conditions.

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

Mr. Roeder again came forward and referred to the Staff concern about legality of the units, pointing out that conclusive evidence is not available in the form of County records. All of their evidence suggests that the 4th unit was built in 1973, and taxes have been paid since that time on 4 units. He suggested that requiring proof of legality would put an impossible burden of proof on the applicant, which would be unfair. He pointed out that building permits will not be available on anything built on the Island prior to the mid-1980s. He also referred to the FAR which he said would support 2 units of over 10,000 square feet, much larger than the building being proposed.

Mr. Stone was asked by Mr. Roeder to come forward and address the setback issue, which he proceeded to do. He emphasized that they have had an extremely good working relationship with Staff. He also referenced the ability to prove the legality of 4 units. With respect to the setbacks, he pointed to an exhibit and described the yard conditions. Mr. Stone emphasized that the property immediately to the South is considerably forward of the applicant's proposal. Mr. Stone advised that he also represents 2 other property owners in the area, neither of whom take exception to the applicant's request for rear yard deviation.

Mr. Reynolds verified the air conditioned interior square footage and the exterior square footage, including the deck, with Mr. Roeder. The new structure will be 2,674 square feet in aggregate, roughly 700 square feet per unit. The current units are 674 square feet. Mr. Roeder explained that he had measured the building and its existing units in late 2000.

Mr. Murphy called attention to Exhibit B of the Staff Report which includes square footage. Mr. Roeder explained that the first application included an increase for a total of 3,090 square feet which was not approved by the LPA, so the applicant revised the project downward with 2,674 square feet.

Mr. Roosa pointed out an error in Resolution 4-21 which says the LPA recommended denial by Council; he said that the second page of the actual resolution approval with conditions was recommended by the LPA. It was further explained that the condition of building a bus stop on Town land was deleted. There was further discussion about this condition, and also Condition #8. Mr. Reynolds advised that he still had some questions on several points, which Mr. Murphy explained. Condition #4 was eliminated by the LPA, and Mr. Murphy provided language to modify Condition #8.

MOTION: Motion was made by Vice Mayor Reynolds to approve the request with the above changes; motion was seconded by Mr. Massucco.

DISCUSSION: Mr. Van Duzer requested verified with Mr. Murphy that in the Staff Report he is recommending denial, and Mr. Murphy explained that he anticipated the case could go either way and therefore included alternative conditions. He added that his position was stronger under the belief that the 4 units could not have been legally constructed, but he now understands that the lot is larger than his initial number and no longer is a factor in his recommendation for denial. He said he is taking a conservative approach in his recommendation, referencing the LDC and Code.

Mr. Reynolds called attention to the fact that no traffic impact studies had been done, and Mr. Murphy explained that this condition is put in all Staff Reports to alert the applicants that this must be done when they submit for a Development Order.

VOTE: Motion was passed by unanimous vote.

It was decided not to take a lunch break.

C. AUTHORIZATION FOR THE AWARD OF THE LAGUNA SHORES DRAINAGE PROJECT:

Public Works Director Damon Grant presented the background for this capital improvement project which had been scheduled for this year and explained that the permitting phase had taken longer than anticipated. Staff is asking for authorization to advertise and award to the lowest and most responsive bidder while Council is on Summer break.

MOTION: Motion was made by Councilman Ryneerson and seconded by Councilman Van Duzer to issue the above authorization.

VOTE: Motion was approved by unanimous vote.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

MAYOR THOMAS advised that he had attended the Coast Guard Changing of the Guard ceremony recently and found it a very impressive ceremony.

VICE MAYOR REYNOLDS commented on the Traffic Committee and advised that he had attended every meeting so far. At last Friday's meeting he summarized a "red flag" that went up concerning the hire of an additional Staff member to handle the work. It was his understanding that with the assistance of consultants, such as Lee DoT's John Davis and the Lee Tran representative, as well as the local fire chief, the work would be done in-house with existing personnel, and he expressed dismay that the Town Manager came forth with a new contract with Chris Swenson. This is a \$25,000.00 with no specified time and will be working with the Traffic Committee during the Summer. He recalled that someone from Town Staff had been requested to serve in that capacity. He suggested that with no disrespect to Mr. Swenson, it is not appropriate to issue a new contract to someone who submitted a plan that was not accepted. He made reference to the respective groups who are represented on the Traffic Committee and the plans for trial projects over the Summer. He asked Ms. Segal-George where this is going. She explained that not being an engineer, she is unable to provide the group with the technical expertise and information that are required for the test, so she needs to obtain a professional for this purpose, and Mr. Swenson is very valuable in that he has the contacts and is very familiar with the Town's efforts. The Agency decided not to wait until another consultant could be located, and expressed the approval to go ahead with Mr. Swenson. It was pointed out that Mr. Davis is leaving. Mr. Reynolds asked whether expertise from other individuals could not be used; and Ms. Segal-George explained that while these individuals will help, they do not substitute for someone who will work for the Town and be accountable to the Town. Mr. Reynolds followed up with another question about the duration of the relationship of Mr. Swenson with the committee, and Ms. Segal-George advised that inasmuch as this is a temporary committee, she does not view the relationship as permanent. Mr. Reynolds asked that this be placed on the June 30th agenda at which he anticipates participation by Traffic Mitigation Agency personnel. It was pointed out that this would be the last agenda and that it is already full, and Mayor Thomas conceded that no more than 10 minutes could be allowed. There was discussion about this having already been approved, and Mr. Reynolds said he was concerned that the group is going in a different direction than originally anticipated. Mayor Thomas asked whether Council feels the Traffic Mitigation Agency needs to come forward again at the next meeting, and there was consensus to leave it off the agenda. Mr. Massucco verified with Mr. Reynolds that his concern was the longevity of the contract, and Mr. Reynolds replied that he felt that this was hiring another person, when it was his understanding that traffic mitigation would be undertaken with existing Staff. There was further explanation about the contract with Mr. Swenson and how the figures, which are estimates, had been arrived at. Ms. Segal-George reiterated that an engineer is required. Mr. Reynolds advised that he simply wished to bring this matter to Council's attention.

Mr. Reynolds read a statement which he entered into the record concerning Newton Park, the Newton Residence, and the possibility of moving the structure to Bowditch Park for use as a theater. He said he is not in agreement with moving the residence off the property and has discussed this with the Town Manager, and is requesting Council to direct efforts to relocate the property to be discontinued. Mayor Thomas advised that there are no immediate plans to do anything with this structure, and since Wednesday's agenda is full, this will be delayed until Fall. He said that the critical issue is Traffic Mitigation, and other issues can be addressed in the Fall.

VIII. TOWN MANAGER'S ITEMS: None.

IX. TOWN ATTORNEY'S ITEMS: Mr. Roosa advised that in the event the Town is served with a complaint during July or August, he requires authority to represent the Town.

MOTION: Motion was made by Mayor Thomas and seconded by _____ to provide Mr. Roosa with the requested authority.

VOTE: Motion was approved by unanimous vote.

X. PUBLIC COMMENT:

Frank Schilling came forward and thanked Council for their support on the Traffic Mitigation Committee. He called attention to the report provided by Tom Myers and the approval request for the funding which the committee is making. He also referred to the balance of the Civic Association recommendations which will be reviewed at a future date. He expressed the hope that if future small amounts of money are required they can be authorized by the Town Manager so that the committee can proceed with its work without delay.

Anita Cereceda came forward and referred to her letter that she sent to the paper with respect to the Traffic Mitigation Agency. She said it was in very poor form to form an agency that has no parameters, no scope of work, no term of office, and no public notice for other people in the community to apply. She said that this in no way is intended to demean the efforts of individuals who she mentioned who are serving on this group but that when taxpayer money is being spent and asked Council to explain to the public where the dollars are coming from and what projects would be shorted because of the traffic emergency. She further expressed concern about giving this committee authority to make requests of the County Commission and take other unilateral steps. She expressed the opinion that Council owes it to the public to clearly define the responsibilities of the Traffic Mitigation group, what its expenses will be, and where that money will come from that has already been allocated. She said that drainage was her #1 concern.

XI. ADJOURNMENT: Meeting was adjourned at 12:17 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary

ADDENDUM
To Minutes

Town Council Meeting June 28, 2004

VI Administrative Agenda

1. Traffic Mitigation Agency update

During the report from the Traffic Mitigation Agency, Chairman Tom Myers stated: "We are asking Fort Myers Beach Council to approve \$20,000.00 for this test and \$20,000.00 for the attendant engineering package. "

Chairman Myers ended his report. The Mayor proceeded to part 2 of this item, the request for approval of modified trailblazing sign package. Town Manager Marsha Segal-George stated: " Basically what we've done is we've given you the package you had before and then the Traffic Mitigation Agency reviewed it and made some suggestions and you see that in the memo covering it . So their recommendation is for the council to approve this with those recommendations. "

Councilman Rynearson stated: "Move the motion, Mr. Chairman. Or move the items"

Councilman Van Duzer seconded. The Mayor asked for any questions? The vote passes 5-0 all in favor.

Respectfully submitted:

Michelle Mayher
Executive Assistant