

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
JUNE 30, 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 Wednesday, June 30, 2004 at 9:00 A.M. by Mayor Bill Thomas.

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

**Excused absence from the meeting:** None.

**Staff present at the meeting:** Town Manager Marsha Segal-George, Director of Public Services Matt Feeney, Town Attorney Richard Roosa, Wes Morrison of Lee County Zoning, Jerry Murphy of Lee County Zoning, Bill Spikowski, Planning Consultant to the Town, Deputy Town Manager John Gucciardo.

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

**III. PUBLIC COMMENT:** None.

**IV. ADMINISTRATIVE AGENDA:**

**A. HISTORIC PRESERVATION GRANT AWARDS – GLORIA SAJGO:**

Gloria Sajgo, Planner with Lee County Planning Division who has been working with the LPA/Historical Subcommittee came forward. She advised that the historic preservation grant applications have been reviewed by the Subcommittee and also by the LPA with recommendations for funding. She observed that Council had previously allocated \$40,000.00 for a Historic Preservation Grant Assistance Program and explained how the program works. The program was publicized, and 5 proposals were received, one of which was withdrawn. She described the 4 recommended for funding: (1) St. Raphael's Episcopal Church, which has already been designated under the Town's preservation ordinance, for replacement of the roof, new sidewalks, handicap access and interior and exterior painting – cost is \$59,000.00 and Staff's recommended grant funding is \$20,000.00; (2) cottage at 3127 Estero Blvd. – no funding recommended; (3) 1412 Harbor Court, insufficient information – no funding recommended but applicant encouraged to resubmit; (4) 251 Pearl St., a cottage that has not yet been designated but would qualify for designation, but the cottage is lower than surrounding buildings and the cost to elevate it would be \$41,000.00 – Staff is recommending \$20,000.00 in grant assistance.

Mr. Massucco obtained clarification from Ms. Sajgo that any work done under this program must be reviewed from the standpoint of whether it furthers the goal of historic preservation. She further explained that the applicant must obtain the permits and document that the work was properly done prior to obtaining reimbursement.

Vice Mayor Reynolds voiced concerns that anyone on the Island with a home over 50 years old could apply for funds to raise the home. Ms. Sajgo explained that the home must first qualify for designation under the Historic Preservation ordinance, which is not automatic. She explained some of the criteria that are considered. Mr. Reynolds asked what percentage of older homes would be considered candidates for improvement. Ms. Sajgo provided further details of how the program works, explaining that 200 flyers were sent out and only 6 replies were received.

**MOTION:** Motion was made by Councilman Van Duzer to approve the awards, pointing out that one of the requirements is for applicants to obtain historic designation status prior to the funds being released. Motion was seconded by Councilman Rynearson.

**VOTE:** Motion was passed by unanimous vote.

**B. BUCCANEER LAGOON ACCESS UPDATE – REPRESENTATIVE FROM BUCCANEER LAGOON:**

Matt Feeney came forward to provide an update on the project. The Town has put in an application to the DEP to dredge the mouth of Buccaneer Lagoon. After a lengthy review process, the DEP advised that there were serious concerns with the middle route alignment due to the requirement to dredge a significant portion of

seagrass in an area that had not previously been dredged. Town Staff, architect Hans Wilson, a representative from Laguna Shores and the DEP staff met on May 25<sup>th</sup>. The clear message from that meeting was that the DEP could not support the middle route because there was no history of previous dredging, and because of the impact to the seagrass. They indicated that if the Town were to modify its application with an alternate Southern route, approval would likely be recommended. Accordingly, Staff is asking that Council approve such an amended application even though it might involve dredging some more material and some additional services by Mr. Wilson.

Mr. Puplis from Laguna Shores came forward and explained further details of what had been discussed at the above referenced meeting. He said they are agreeing with the above recommendation in order to expedite proceeding with the work. He complimented Mr. Feeney on his participation at the meeting and thanked him for his efforts.

Mr. Massucco requested clarification of some routes shown on the handout, which Mr. Puplis provided. Ms. Segal-George pointed out that the Southern route would also help Marina Towers.

**MOTION:** Motion was made by Councilman Rynearson to accept the recommendation of Staff and DEP for the Southern route; seconded by Mr. Massucco.

**VOTE:** Motion passed by unanimous vote.

**C. PUBLIC HEARINGS:**

**1. VAR2003-00077 – DENISE LOOMIS GARAGE VARIANCE. Request for a variance from Table 34-3 of the Town of Fort Myers Beach LDC that requires a 7.5 foot setback from a side property line non-waterfront. The variance request is for a ten inch reduction in the side yard setback. Property is located at 185 Jefferson St. (Between Estero Blvd. and Shell Mound.)**

Mayor Thomas read the case and asked the applicant to come forward.

Denise Loomis came forward and was sworn. She explained the history of the accessory structure in question, the slab of which was poured in 1977 prior to their purchase of the home in 1997. She described the structure, the use she and her husband have made of it, and some alterations that they had made. After being cited for code violations, they obtained bids from architects and engineers to have plans drawn for the purpose of obtaining permits, as well as a survey of the property. She said they remained in contact with Code Enforcement throughout the process and were able to apply for their permit in November 2003, but shortly thereafter were notified that they did not meet the setbacks and would be required to apply for a variance. She recalled paying the \$700.00 application fee in December 2003, in addition to a \$285.00 fine and given until September 1<sup>st</sup> to obtain a permit or remove the structure, or pay \$25.00 per day. She observed that it is now June 30<sup>th</sup> and the time required to obtain plans and receive a permit would likely exceed the September 1<sup>st</sup> date. She expressed disagreement with the County's suggestions for compliance and referred to letters from neighbors approving of the work they have done. She suggested that individual circumstances should be considered in reviewing requests for variances.

Mayor Thomas asked whether any Council members had had any ex parte communication. Vice Mayor Reynolds advised that he had met with the applicant yesterday and examined the premises.

Wes Morrison of Lee County Zoning came forward representing the Town and was sworn. He stated that the applicant was very accurate with her relation of what has happened to the property. However, Staff does not believe the applicant has met the criteria set forth in the Town's Code with respect to granting a variance for a side yard setback. They do not feel that she has proven that there is an extraordinary circumstance that precludes complying with the setbacks with regard to this property. Staff recommends denial.

Mr. Reynolds stated that from his observations and the applicant's descriptions it appears to him that there would be a hardship if the application were denied. He also pointed out that the slab is within 6.8 feet of the required 7 foot setback, and the neighbor has indicated absolutely no problem with this. He recalled that there used to be leniency in the Code with the County. Mr. Morrison noted that Council can find a hardship if so desired, but Staff did not feel that 10 inches is a hardship.

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 the request for a variance and deem that there are exceptional and extraordinary conditions and circumstances that are not the fault of the property owner, using the LPA resolution with the correction of mention that the house was built in 1927; this should be corrected to read 1972. Motion was seconded by Councilman Rynearson.

**DISCUSSION:** Councilman Massucco complimented Mrs. Loomis for her willingness to go through the process, pointing out that Staff's function is to guard against variance violations.

**VOTE:** Motion passed by unanimous vote.

**2. DCI2003-00034 – ECOVENTURE CAROUSEL, LTD. IN REF. TO CAROUSEL RPD. Request to rezone 0.73 acres from Residential Multifamily (RM) and 0.96 acres from Commercial Resort (CR) to Residential Planned Development (RPD) to develop 16 multiple-family dwelling units in one multiple-story building with a deviation from the Land Development Code (“LDC”) pre-disaster buildback provision to allow 16 dwelling units and 83,103 +/- square feet of interior space and a deviation from the LDC building height limitations to allow building height not to exceed four (4) stories over one (1) story of parking not to exceed 55 feet above base flood elevation. Property located at 6230 Estero Blvd., (From San Carlos Blvd., turn onto Estero Blvd. head South for approx. 3 ½ miles on West (Gulf) side.)**

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 owner and his representatives and the attorney on site; Mr. Reynolds and Mr. Rynearson reported the same.

Beverly Grady of the law firm Roetzel Andress et al came forward representing the applicant. She described the request and the parcels involved, citing density and intensity and the pre-disaster buildback provisions in the Comp Plan. She introduced Ed Oelschlager, owner of Ecoventure, and pointed out his credentials as a builder and developer and expressing the opinion that the proposed building would be an asset to the Town. She also introduced consultant Bob Hall, an architect; George Schwartz, an engineer with expertise in traffic; Robert Mulhere with R WA Engineering, who she requested be recognized as an expert in land use planning; and landscape architect Robert Hoyt. She requested that each be recognized as an expert in their field. She explained that this process began in February 2003 and application to rezone these properties to RPD was filed in April 2003. The request at that time was for 24 units, 6 stories over parking. She noted that the Town requires much more detail, such as architectural plans, for its applications than other areas. The LPA heard the first application in January 2004 at which time the LPA provided direction that inasmuch as they liked what they saw, they wanted to give the applicant opportunity to continue and revise the application. Revised and reduced application that they believed met the vision and direction issued by the LPA was filed in April 2004, reducing the intensity by 1/3, from 24 to 16 dwelling units, with 6 units in one building and the other 12 a conversion from the 28 guest units; 4 units are allowed as a matter of right on the vacant parcel. The height was also reduced to 4 stories over parking, which they understood the LPA would support. She called attention to the December Staff Report, and provided copies of the concluding pages of that report which refers to surrounding building height. She said they had relied on these statements in revising the application and expressed surprise at the negative tone of the current Staff Report. She also addressed the issue of density/intensity, pointing out that the Comp Plan makes no reference to square footage with respect to intensity and entering previous cases decided unanimously by Council into the record as precedent. Conversion of guest units to dwelling units was also referenced. She asked for the opportunity to return after conclusion of the experts' presentations to rebut any public or Staff comments.

Robert Hall came forward and sworn. He introduced himself as a member of a Tampa architectural firm and presented his and his firm's credentials. They have been associated with Mr. Oelschlager for most of the 15 years he has been a developer in Florida, with projects in Lee and Collier Counties. He presented several exhibits illustrating the background of the case. He pointed out that the original design was for 32 units, with reductions made after discussions with Staff. Mr. Hall illustrated what could be built by right with no requirement for Council approval, noting that such a building would not be marketable. He further used exhibits to illustrate and describe the proposed project. The application is for 4 units per acre, which he said was very low density and intensity. Dune restoration, public beach access, and a trolley stop were also cited as part of the applicant's proposal. He emphasized that this application incorporates what they were given to understand by the LPA and Staff that they could support.

George Schwartz with David Plummer & Associates came forward to address the traffic issue. He explained that the project would reduce the traffic 40 per cent in the morning, 38 per cent in the afternoon and 47 per cent on a daily basis, based on restoration of the existing 28-unit hotel. He provided further statistics concerning the traffic impact, observing that residents of the dwelling units are not expected to make the same number or type of trips as hotel guests.

Bob Mulhere with the consulting firm of RWA Inc. came forward and provided his background and credentials as a land use planner. He said they strongly feel that there is nothing inconsistent with their proposal in terms of what is provided for in the Comp Plan. He pointed out that the current building is smaller with respect to the size of the site than other similar structures constructed around the same time, and expressed the opinion that would be more appropriate to consider buildbacks on a case-by-case basis rather than to arbitrarily limit buildback square footage to what is existing on the site. He said he believes this is why the Plan allows for deviations as long as the proposed usage does not exceed existing density/intensity, and expressed the opinion that it had been demonstrated that the traffic as well as sewer and water uses would be decreased in both intensity and density by converting 28 units to 16. The conversion factor has been reduced from .7 to .43 as a

result of the direction they received from Staff and at the first LPA hearing in January. He added that he believed that the LPA had vocalized strong support for the project at both hearings. He felt that there was still support at the last LPA meeting, but concern as cited by Staff that the proposed development represented an increase in intensity and/or density as measured by square footage. He submitted the opinion that square footage is an appropriate measurement for commercial development, but not residential. With respect to building height, he presented an exhibit to illustrate the surrounding properties. He also referred to the FAR in the Plan, which would allow an 88,000 square foot building to be built by right, whereas their proposal is for 83,102 square feet and lower than their previous proposal of 87,000. He also referred to parking, pointing out that the requirement to include first story parking in the FAR computations raises the square footage cited above. By eliminating the 20,000 square feet of under-building parking, the square footage would be +/- 63,000. He pointed out that the square footage by right on the Carousel parcel and the vacant parcel would be approximately 60,000 and also noted that many locales do not include parking in the FAR because they want to encourage under-building parking rather than surface parking.

Robert Hoyt came forward as the landscape architect and described the proposed project's landscaping, including dune restoration.

Mr. Mulhere referred to some letters, including one from Sunset Condominium, regarding dune restoration and pointed out that this is a requirement of the Code. He said he understands that adjacent properties are concerned that the vegetation might spread onto their properties, expressing the opinion that this was the intent of the Code, but that if desired, this portion of the proposal could be changed accordingly.

The Staff Report was presented by Jerry Murphy, who introduced the report into the record with one change on Page 2 of 11 under "Recommended Findings & Conclusions, Special Exception." That Special Exception request has been deleted from the application, so the remainder of that portion should be stricken. He noted that the property is not 4 acres; the overall site is 4 acres, but the portion that can be used to calculate development density is approximately 1.69 acres; the majority of the 4 acres is beyond the CCCL which is no longer allowed to count toward density. He said if vacant, the land area density limitations would be 6 dwelling units per acre, or a total of 10 units for the developable portion of the property. He noted that height is not the major issue, referencing his previous Staff Reports which he said he continues to uphold. If no other deviations were being requested, then Staff could support 5 stories, but applicant is requesting more under a buildback policy. He referred to the Key West case and said that applying the same criteria would allow 11 units instead of 10, but not 16. The existing guest units total approximately 15,000 square feet, and the proposal asks for 83,000. He stated that Staff does not agree with applicant's remark that the Town's policies are unfair, but suggested that if Council agrees that the policy is unfair, the policy should be changed rather than granting deviations to the LDC.

Mayor Thomas asked about Mr. Murphy's statement that height is not an issue, which Mr. Murphy explained.

Mr. Van Duzer verified that the proposed public amenities could be taken into consideration. Mr. Van Duzer also referenced a statement made by Mr. Murphy in a previous case that if Council believes a project would benefit the Town, they had the latitude to approve it; Mr. Murphy said he would offer that statement in this case also. Mr. Van Duzer also verified that in development of Staff Reports, a conservative approach is taken with the most stringent guidelines presented. Mr. Van Duzer questioned whether the LDC requires that deviations must be approved by Council, and Mr. Murphy explained that this is the case, adding that the Comp Plan is intentionally a very conservative document with respect to development on Fort Myers Beach, and the LDC is often more conservative in implementing the Plan. He noted that all buildbacks are required to go through the Public Hearing process as a Planned Development, in which process Council is able to grant deviations. He further explained the process, calling attention to specific portions of the LDC. He expressed the opinion that for an applicant to request not only what they are entitled to under the buildback provisions of the Code but also adding more is inappropriate. Mr. Van Duzer pointed out the benefits of decreasing the intensity of use on the site with respect to traffic mitigation and utility use. He verified with Mr. Murphy that Council has the discretion to approve deviations with control. It was pointed out that in the event this request is approved and applicant wishes to build back the 28 units, they would still be required to come before Council and seek approval of a Planned Development rather than having the ability to do so by right. They would potentially have the right to build 10 dwelling units within the FAR of 1.2, and on the vacant parcel they have the right to build 4 dwelling units. In response to a question by Mr. Van Duzer, Mr. Murphy estimated that 35,000 square feet, or 25,000 square feet excluding parking would be allowable. FAR and setback requirements were also referenced.

Vice Mayor Reynolds expressed appreciation to Mr. Murphy for his familiarity with the Comp Plan and LDC and his ability to interpret these regulations. He recalled his visit to the property and described what he observed in terms of size and condition of the units. He made reference to the traffic situation during Season and said that while this is a good proposal and a good project, he does not agree that it will help the public.

Mr. Massucco expressed concern with the applicant's statements that Staff and the LPA had indicated that 5 stories would be acceptable. Mr. Murphy replied that this was an opinion, and he explained the intent of those remarks. He expressed the opinion that the applicant misunderstood the statement and suggested that there

should have been more discussions. He said that the problem had never been the height only, but also density and intensity. Mr. Massucco also commented on the dictionary definition of the word "deviation." Mr. Roosa added that he does not feel it is inappropriate for the Staff or the LPA to offer opinions and suggestions to applicants, pointing out that Staff works for the Town, and such remarks should never be interpreted as a binding commitment on the part of the Town.

Mayor Thomas verified the main reasons for Staff recommendation of denial with Mr. Murphy. He added that the Town is trying to avoid the "jungle atmosphere" that exists on the East Coast, and not lose the small-town atmosphere. He expressed surprise that an applicant would come before Council with such a great increase in size. He cited phone calls he had received from the public expressing concern that the Town's original reason for incorporation with respect to building height, density and intensity should be upheld.

Mr. Van Duzer pointed out that there is a specific definition of "deviation" in the Code that differs from the dictionary definition.

The meeting was opened for Public Hearing at this time.

Judy Haataja of 400 Bayland Road came forward and expressed the opinion that there were benefits with the proposed development that might be overlooked, one of which is traffic. Other benefits were FEMA issues and the opportunity to have a beach easement on the South end of the Island. She emphasized that the Carousel could remain as it is and be sold as condo hotel units, in which case any opportunity to ever elevate the building would be eliminated. She also pointed out that building 4 more units on the vacant property would increase the total to 32 units. She saw this as an opportunity to reduce traffic and the number of potential units on the property, with the addition of a beach easement, and said she could not understand the opposition from the public.

Ms. Grady returned for rebuttal and called attention to a report submitted by the traffic engineer, which she submitted for the record, as well as Mr. Schwartz's resume as exhibits. She referenced the provision for deviations in the Code, which she read. She recalled discussions by Council at the time of adoption of the Town's Code regarding the replacement square footage limitation. She presented a portion of the minutes of that discussion from March 2002 and also a verbatim transcript of a portion of those minutes, from which she read an interpretation and recommendation by Bill Spikowski. She expressed the opinion that Staff Reports are too conservative and do not present both sides. The traffic engineer's report was explained by Ms. Grady in detail. She also pointed out that the Comp Plan allows an increase in square footage as long as there is no increase in density or intensity. She emphasized that the Staff Report only addressed square footage and did not take traffic into consideration at all.

Mr. Murphy stated that Staff clearly disagrees with the applicant that traffic will be reduced by eliminating hotel rooms and replacing them with dwelling units. He stated that the traffic reduction is not statistical, but potential. He pointed out that this is a tourist destination, and that people who cannot stay on the Island will not be pedestrians on the Island but will bring their cars and generate traffic.

Ms. Grady pointed out that the expert traffic report had been available to Staff for approximately 2 months and expressed the opinion that Mr. Murphy's comments should have been raised following the traffic engineer's presentation, and also that there was no mention of traffic in the Staff Report. She said the traffic report should have been reviewed by Lee County DoT, that there must be a TIS with every development order and zoning request, and that there was no professional present today on behalf of the Town with respect to traffic.

Mr. Massucco observed that each of the proposed units includes a 2-car garage, with a potential of 32 cars, and he asked how that would affect the trip generation figures. Mr. Schwartz acknowledged that there could be more than one vehicle per unit, but that hotel units generate more traffic because they visit other attractions and restaurants in the area, which residents have less tendency to do. Mr. Massucco explained personal observations with respect to cars at condo units in his residential area and disagreed that condo units would generate fewer trips. Mr. Schwartz explained that his figures were obtained from the Institute of Transportation Engineers from studies throughout the country which are accepted worldwide.

Judy Haataja again came forward and noted that the proposed units would be likely to have a 3-month rental period which would differ from a motel. She expressed the opinion that this would not be a transient condominium such as others on the Island are. She said that this is an opportunity for Council to be proactive with respect to traffic mitigation. Mr. Massucco called attention to the recent formation of the Traffic Mitigation Agency, of which Ms. Haataja was aware. She again stressed that this was an opportunity for improvement which could be permanently lost.

Tom Merrill came forward as a resident and noted that there appeared to be an assumption that the proposed units would never be rented. He also agreed with Councilman Massucco that traffic standards compiled from elsewhere in the country might not be applicable to the unique situation of Fort Myers Beach. He added that, as Mayor Thomas pointed out, the Town was incorporated as a result of a desire to control height and density of the buildings, stressing the need to adhere to the Comp Plan.

Mr. Murphy clarified that the applicant has included rental for periods of one week or longer in their schedule of uses.

Herb Atkin came forward and observed that his children's great-grandmother lives on the South end of the

Island and would have liked to see a park, as proposed in the Buccaneer case heard on the 28<sup>th</sup>, or an easement as this applicant offered. He said he had heard the concern expressed about a "domino effect" if these cases were approved, and pointed out that each case must come before Council for approval.

There being no further public comment, Public Hearing was closed at this time.

**MOTION:** Motion was made by Councilman Van Duzer to approve Resolution Number 4-22 as submitted with some corrections: Reference to "164 dwelling units" should be changed to 16; addition of a condition that square footage be reduced to "a reasonable amount" from 83,000 sq. ft.; and a condition that the units could not be rented for a period of less than 30 days. Motion was seconded by Councilman Ryneerson.

**DISCUSSION:** Mr. Van Duzer said he again feels that Council has an opportunity to serve the people of the Island through the generous effort of the applicant to reduce density and intensity at this site. He expressed the belief that there is every good, as he expressed during the earlier case, by allowing this project to go forward and also believes it benefits every resident of the Island. He can see no disadvantage at all in the project. With respect to comments about departing from the Comp Plan and LDC, he disagrees that approval of this action would violate the Code.

Mr. Ryneerson complimented the principals, both Staff and applicant, on their presentations. He said he had not been convinced that density and intensity are being increased. He also recalled last Monday's meeting and observed that with the 30-day minimum condition proposed in the motion the traffic flow would be lowered. He also disagreed that approval will go against anything the Town has adopted.

Mayor Thomas referred to Staff's position and expressed the opinion that there were more negative impacts contained in this request than the one on Monday. He felt that Staff explained thoroughly why it should be disapproved, pointing out that the LPA had concurred after lengthy deliberation. He said that this would be going in the wrong direction for Fort Myers Beach.

**VOTE:** Motion failed by a vote of 3-2: Councilmen Van Duzer and Ryneerson voted in favor; Mayor Thomas, Vice Mayor Reynolds, and Councilman Massucco voted against.

**MOTION:** Motion to deny the applicant was made by Councilman Massucco and seconded by Vice Mayor Reynolds.

**VOTE:** Motion passed by a vote of 3-2: Mayor Thomas, Vice Mayor Reynolds, and Councilman Massucco voted in favor of the motion; Councilmen Van Duzer and Ryneerson voted against.

A short recess was taken at this time.

#### **D. FINAL PUBLIC HEARING OF ORDINANCE 04-09 TO AMEND CHAPTER 6 OF THE LDC, FLOOD PLAIN REGULATIONS:**

Mr. Roosa read the title of the ordinance. Bill Spikowski, Planning Consultant to the Town, came forward and explained that this is the final Public Hearing on this ordinance; the first Public Hearing was on June 21<sup>st</sup> as a result of which he issued a memo dated June 23<sup>rd</sup> which includes 2 suggested changes: (1) Valuations of private appraisals, which by consensus was agreed should be 35 per cent rather than 20 per cent as per the draft ordinance; (2) on the second page a change in the definition should be "in any 1-year period" to be consistent with the rest of the flood plain ordinance. He recalled that there was additional public comment and discussion by Council at the first Public Hearing, but no additional suggested changes.

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

**MOTION:** Motion was made by Councilman Ryneerson to move the item with the changes as proposed; seconded by Vice Mayor Reynolds.

**VOTE:** A roll call vote was taken. Councilman Ryneerson: Aye; Vice Mayor Reynolds: Aye; Councilman Van Duzer: Aye; Mayor Thomas: Aye; Councilman Massucco: Aye. Motion passed by unanimous vote.

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

Mr. Roosa read the title of this ordinance. Bill Spikowski explained that this is the Final Public Hearing on this ordinance which affects only the Downtown Zoning District. He recalled that at the First Public Hearing on June 21<sup>st</sup> there was considerable discussion and possible changes, and in preparation he submitted another

memo dated June 23<sup>rd</sup> that includes language to carry out Council's suggestions from that meeting, which he enumerated. Mr. Rynearson cautioned that this must be made very plain, and that no food be allowed on public property, with existing restaurants grandfathered in. Mr. Spikowski suggested some specific language for this purpose, except for grandfathering existing uses. He had some concerns about whether this would require re-advertising and suggested that this could either be continued in its entirety until Fall, or voted upon with the exception of the grandfather clause, which would then be addressed in the Fall.

Mr. Van Duzer suggested that there should be a consensus to move forward, and it was decided to do this following public comment.

The meeting was opened for Public Hearing at this time.

Herb Atkin came forward and recalled that at the time he purchased the toy store and turned it into a coffee shop he had the right to have 2 vending carts on private property. He is not contesting any of the Town's plans for public property, but with respect to private property he is very concerned with the permitting procedures under consideration. He said this would give the Town the opportunity to choose the merchandise he decides to sell. Mr. Atkin read from specific portions of the draft ordinance. He requested putting off a decision until Fall to give other business owners the opportunity for input. He referred to campaign literature which promised less government and listening to the community, with an overwhelming emphasis on less government involvement. He considers the proposed regulation an erosion of private property rights and said that if he has to fight for his rights on a daily basis he will go out of business.

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

Mr. Rynearson agreed that there should be a consensus. Mr. Reynolds said he agrees with the comments made by Mr. Spikowski and referred to conditions in Times Square. Mayor Thomas observed that he was open for suggestions. Mr. Van Duzer said he has reversed his opinion and agrees with restriction of outdoor displays and tables in Old San Carlos, but Times Square is unique and he feels there should be fewer restrictions. Mr. Massucco agreed that more input from the merchants would be appropriate, and Ms. Segal-George pointed out that there had been a series of 3 or 4 workshops on the subject with all merchants invited and a number who attended. She also called attention to the fact that the Times Square Committee, where it would have been discussed, has not had a quorum for the last three months. She pointed out that there has always been an unofficial policy of restricting outdoor displays to the type of merchandise sold inside, so as not to allow one merchant an unfair disadvantage. She used the example of food products versus clothing outside. She also emphasized that under previous Lee County regulations there were more stringent restrictions on any outdoor displays whatsoever. She advised that it would not require any revision of a menu in the case of food products. She said there has never been discussion of removing existing outdoor tables or prohibiting new ones, so if this is contemplated, it is the only issue that had not been discussed with the merchants. Mr. Rynearson explained that he had no intention to remove existing tables. He also recalled sitting on the Council when Mr. Atkin's restaurant was approved and did not recall any discussion of outdoor carts. He observed that the intent is to prevent an undesirable atmosphere and clutter, and is ready to move forward on the ordinance today.

**MOTION:** Motion was made by Councilman Rynearson to approve this ordinance with the conditions that there be no outdoor merchandise on public property on Old San Carlos, and there will be no more restaurants allowed to create outside dining that does not already exist. Motion was seconded by Vice Mayor Reynolds.

**DISCUSSION:** Councilman Van Duzer said he could not support the motion because while he agrees with the Old San Carlos provision, he does not agree with removing opportunities in Times Square, citing turnover of businesses in that area. Vice Mayor Reynolds stated that he had no intention to restrict any tables in Times Square, and Mr. Rynearson pointed out that the issue could always be revisited, but at this point he wished to stay with his motion.

Motion was clarified by Mr. Spikowski to include Change 1B, Change 2, and further changes with respect to his memo which he cited. He also referred to Table 34 in the ordinance which would require revision if the motion passes. Ms. Segal-George further clarified the motion with respect to prohibiting new outdoor tables. Mr. Rynearson explained the reasoning behind his motion and pointed out that if it doesn't work the ordinance can be revisited. Mr. Reynolds said he could not support the motion in that event, because he had not understood this provision. Ms. Segal-George made a suggestion that new tables could be requested which Mr. Reynolds agreed with, and Mr. Spikowski also had some suggestions. Mr. Rynearson agreed as motioner.

**DISCUSSION:** Mr. Massucco reiterated his earlier remark that this was a very complex subject and would be hesitant to vote on anything until he could see a final draft that could be examined in detail.

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

**F. MATANZAS HARBOR MOORING FIELD OPERATIONS AGREEMENT:**

**MOTION:** Motion was made by Mr. Rynearson and seconded by Mr. Reynolds to approve this agreement.

**VOTE:** Motion was passed by unanimous vote.

**G. MATANZAS HARBOR MOORING FIELD PUMP OUT BOAT:**

**MOTION:** Motion was made by Mr. Rynearson to approve the item not to exceed \$47,250.00; seconded by Mr. Reynolds.

**VOTE:** Motion was passed by unanimous vote.

**H. PERMANENT LIVE-ABOARD LOTTERY:**

It was established that inasmuch as there were only 8 applicants, there was no lottery for the 10 slots.

**I. AUTHORIZATION TO AWARD PROFESSIONAL SERVICES FOR MPO STUDY:**

**MOTION:** Motion was made by Mr. Rynearson to approve the item; seconded by Mr. Reynolds.

**DISCUSSION:** Ms. Segal-George pointed out that in this authorization, the Mayor needs to be authorized to sign the agreement from FDoT and as part of the MPO there are 2 additional tasks, one the engineering to open Center St., and the other the Civic Association's alternative. Motioner and seconder accepted this.

**VOTE:** Motion was passed by unanimous vote.

**J. FOURTH OF JULY REQUEST FOR FUNDING:**

**MOTION:** Motion to approve this item was made by Mr. Rynearson and seconded by Mr. Reynolds.

**VOTE:** Motion was passed by unanimous vote.

**K. REQUEST FOR OPEN CONTAINER FOR JULY 4<sup>TH</sup>:**

**MOTION:** Motion to approve this item was made by Mr. Rynearson and seconded by Mr. Van Duzer.

**VOTE:** Motion was passed by unanimous vote.

**L. DRAFT BUDGET AND TENTATIVE MILLAGE RATE:**

**MOTION:** Motion was made by Mr. Rynearson to set the tentative millage rate at 1.000; seconded by Mr. Reynolds.

**VOTE:** Motion was passed by unanimous vote.

**V. COUNCIL MEMBER ITEMS AND REPORTS:**

**Mayor Thomas** called attention to a newspaper article of today and said he was very disappointed in the coverage, and that he was referring to the article because he and 2 of his fellow Council members were mentioned therein by name. He said he would always defend his fellow council members, and referred to the article and its author as "drivel." He read portions of the article, which referred to a land use case of June 28<sup>th</sup>. He asked why the LPA had not been cited and said he found the article very offensive. He wished everyone a good Summer.

**Councilman Massucco** agreed and said it was very unprofessional that did no justice to the efforts to represent the Town.

**Councilman Rynearson** wished everyone a good Summer break.

**Vice Mayor Reynolds** agreed with Mayor Thomas' remarks and said he thought the campaign was over. He remarked that it was inappropriate to single out certain Council members and say a terrible thing had been done.

He suggested that the Town Manager attempt to hold back the workload to a 2 ½ to 3 hour meeting at 9:00 or 10:00 A.M., and if there is a backlog, he would prefer another meeting rather than one 4 or 5 hour meeting. He said he prefers to do business during the day, acknowledging that periodic evening meetings are required by law.

He apologized to Councilman Van Duzer for an unintentional oversight.

**Councilman Van Duzer** wished everyone a good Summer break.

**VI. TOWN MANAGER'S ITEMS:** Mr. Gucciardo asked for clarification of adoption of Mr. Feeney's memo on the live-aboards; it is Staff's understanding that the live-aboards have been limited to those 8 rather than the original 10. This was the understanding; it was observed that the time had expired for others to apply.

**VII. TOWN ATTORNEY'S ITEMS:** Mr. Roosa recalled that in 2000 property owners Herbert and Nancy Wilker of 9299 Butterworth Road, Ohio who own 21540 Indian Bayou Drive on FMB had a nuisance accumulation and were found guilty by Code Enforcement, with a lien of \$15.00 per day imposed. He advised that the lien is now at \$20,000.00 and the nuisance has not been corrected. There was another code enforcement case involving the same property; if at the time of that case this cannot be resolved he asked for authority to foreclose on the lien and asked for direction.

**MOTION:** Motion was made by Mr. Rynearson and seconded by Mr. Thomas to give Mr. Roosa the authority to foreclose on this lien.

**DISCUSSION:** In response to a question, Mr. Roosa said he believes the property is now occupied, but it is not homesteaded.

**VOTE:** Motion was passed by unanimous vote.

**VIII. PUBLIC COMMENT:**

Anita Cereceda apologized for not being in attendance for the Outdoor Display item because of illness; she saw the proceedings on TV and got dressed to come down even though the decision has been made. She agreed with Mr. Massucco and Mr. Reynolds that this is a very complex issue and expressed the opinion that what has been done makes one business far more valuable than others. She provided some figures to illustrate her point and referred to specific properties. She said that what had been done creates opportunity for only one type of business and asked that the decision be reconsidered.

Herb Atkin again thanked Council for their service and their time. He said that he has sat in on several meetings and appreciates what they go through. He also said he hoped to be there in the Fall and asked that any Council member who has problems with anything he does in Times Square would come directly to him, as he wants to form a close working relationship with Council. He referred to a street performer who was asked to leave and has not returned.

**IX. ADJOURNMENT:** Meeting was adjourned at 12:37 P.M.

Respectfully submitted,

Patricia L. Middlekauff  
Transcribing Secretary