FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 10, 2003
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Land Use Hearing of February 10, 2003 was opened by Mayor Daniel Hughes on Monday, February 10, 2003, at 9:00 a.m..

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Howard Rynearson - Council member, Bill Van Duzer - Council member and Council member Bill Thomas.

Excused absence from meeting: None.

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Damon Grant, Attorney Dick Roosa, Dan Folke, Bill Spikowski, Pam Houck and Tony Palermo.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

Al Valhorn, 6895 Estero Blvd., came forward to speak with regard to the alternating lights. He reiterated his remarks and concerns as expressed to all council members individually. He appreciates the request to share the expense to put in the light on a temporary basis. The problem with the light is not just a Fort Myers Beach problem, but ends with the beach. He cannot stress strongly enough the importance of the momentum built in the years this item has been considered. He feels they owe the public who is expecting this light and has been looking forward to it. It is imperative the light is working for this season. He feels this Council should do everything possible to see this light is put in. Road rage will be minimized by this light and this is worth whatever the daily cost may be. He again urged the Council to move favorably and positively on this matter. He will attend the Commissioners meeting tomorrow morning when this topic is once again revisited.

IV. ADMINISTRATIVE AGENDA

A. Public Hearing: Daniel W. Hahn Swimming Pool. Case Number VAR2002-00042. A request for a variance in the RM-2 Zoning District to allow a proposed swimming pool and deck in front of an existing residence to be located 10 feet from street right-of-way where accessory structures must meet the minimum required 25 foot street setback per LDC Section 34-715, 34-1174(b) and 34-2191. The property is located at 50 Gulf Beach Road.

Matt Uhle came forward to represent Mr. and Mrs. Hahn. His clients are present to answer any questions of Council. He was not present at the LPA hearing. Mr. Hahn was not represented at the hearing, because he felt due to the minimal nature of the request and the staff recommendation of approval he did not need professional representation. He has heard the tape from the LPA meeting and will be making comments based on this hearing.

He began by discussing the nature of the property itself. The property is roughly 8,600 square feet and is zoned RM-2, and is in the Boulevard Land Use Category. The property contains a structure with three units (2 upstairs and 1 downstairs). The Hahn's live in one of the upstairs units and the others are used or rented out separately. The survey shows that the lot is irregular in shape. He pointed out the survey and indicated if you scale from the setback from Gulf Beach Road to the front of the building the minimum LDC setback is 25 feet, and the bottom line indicates the building was pushed back 25 feet further than it needed to be under the Land Development Code. As a result the property has a very small backyard. Two mature trees in the backyard make this area impossible for a pool. He discussed the motel and according to the testimony there are 14 units. The motel is configured in a U-shape. There is parking on Gulf Beach Road. The middle of the U contains a pool, which is buffered to some extent from Gulf Beach

Road by fence and vegetation. Some and possibly all of the units open up onto the swimming pool. There is about 5 ½ feet between his clients property line and the structure. The testimony from the LPA indicated this is a "Senior Motel" and all clientele are senior citizens who go to bed early. The pool which is used has limited hours. He pointed out that none of these issues are regulated by the Town of Fort Myers Beach and are subject to change at any point in time should the management or ownership of the motel change. To the south of the subject property is a triplex with a hedge, which goes most the way along the property line. To the south is a beach access. To the west of the property is Gulf Beach Road. He commented on the large condominium which is a very intense use. The condominium also has back out parking into the street. To the east of the property is another large condominium. He noted the staff report indicates this area is a tourist/ commercial area. He feels this is a fair characteristic of the area. A point of confusion at the LPA hearing was a reference in the staff report to request for a variance to permit the pool to be 10 feet from the road. There is no such request. The pool is 25 feet from the road. Staff has recommended approval of the application with proposed conditions.

Matt went on to discuss that the LPA hearing was interesting. He commented that a motion was made to approve the variance with the staff recommendations and some changes. This motion failed with a vote of 5 to 3 with one abstention. There were no follow up motions. The first variance criterion paraphrased is that you must prove there are extraordinary circumstances inherent in the land. Staff found these extraordinary circumstances. This home was not built at the 25-foot setback line. If it had been there would have been a large enough backyard to build the pool. This is an extraordinary circumstance inherent in the land. His client has improved the appearance of the property, which was agreed upon by many including the neighbors. Unreasonable burden as a result of the application of the regulation in question must be proven along with this being the minimum variance to address this matter. He commented that both of these standards have been met. The unreasonable burden is that a pool cannot be put on this property without the variance. This is the minimum variance because there is no room in the back for a pool. There were some initial concerns about the esthetic qualities of having a pool in front of your home. The neighboring motel has a pool in the front, which is visible by the street. His client has agreed to buffer which will limit the visibility of his pool. Visual incompatibility is not a problem in this area. Parking is another concern. The site plan provided clearly indicates there is enough parking being provided and is consistent with parking provided at the other developments in the area. Staff recommended approval with a stacking approach. He indicated his client could go either way. There is plenty of room for parking. The largest issue pertains to potential noise created by people using the pool and impacts to people staying at the motel. It is not normal for residential uses to be denied as incompatible with existing commercial uses. He pointed out that his client and wife live on the premises. They have no incentive to allow wild pool parties at 11:00 p.m. or 12:00 a.m.. Comments were made that his client may sell the property and the new owner may present a problem. It is equally true the motel owner could sell the motel and it could become something other than a "Senior Motel." His client has agreed to setback 10 feet from the property line, which is the LDC standard. The Council does have the ability, if necessary, to limit the hours of operation at the pool. He does not recommend this due to no other residential pool presently being regulated in this manner. He indicated that this would not be a recurring circumstance, so he and the staff agree the regulations do not need to be amended to address this. The facts of the case strongly support the request. The application meets all the criteria for a variance. He asked for Council to do so.

Council member Thomas visited the property. He is concerned about the parking. He questioned if the driveway will go next to the mailboxes? Matt Uhle replied it depends on which configuration is chosen.

Tony Palermo, Senior Planner with Lee County Community Development, came forward. The case before Council today was heard by the LPA on January 14, 2003. The applicant purchased the property in September of 2000 and subsequently tried to pull a permit for a swimming pool. This permit was denied due to Land Development Code not allowing swimming pools in the front yard. The applicant sought a variance and sought to meet the criteria for a variance to put a swimming pool in the front yard. Staff recommended approval with a number of conditions. During the LPA meeting there was discussion regarding limiting the hours. Staff agrees that the five criteria for a variance were met. The backyard is the wrong place for a swimming pool on this property. The applicant did not create this situation on his own. He acquired the property in 2000 and did not construct this property. The variance is the only means to provide a reasonable accessory structure. Staff did not feel that the swimming pool violated the health, safety and public welfare of the area and was indeed compatible. This is a unique situation and does not require the Land Development Code to be changed. The LPA has heard this case. A motion was made to approve the staff recommendation and this motion failed.

Mayor Hughes is troubled by the exceptional extraordinary conditions and that these were not the actions of the applicant. The placement of the home results in the necessity of having a pool to be placed in the front yard? Tony Palermo replied there are four arguments he would make. The first is location which is quite near the beach, the surrounding properties, the small size of the lot compared to normal residential family lots and the nature of the backyard.

Council member Van Duzer referred to page 2 of 6 for staff recommendations. Every one of the three conditions includes a pool cage. The owner has specifically stated he has no intention of a pool cage. This information is incorrect. Tony Palermo replied that the owner has the right to build a pool cage, but chooses not too.

Council member Van Duzer pointed out recommendation two, which states that staff recommends denial of the applicant's variance requested for reduction in the 25-foot setback. All information he is looking at refers to a 25-foot setback. Tony Palermo explained when the applicant first came in for the variance the application was simple and the site plan submitted showed the pool within 10 feet of the street. This variance was denied. After further communication with the application it was not their intent to put the pool this close to the road. The issue of being close to the road is not an issue. The pool would be set back 25 feet.

Council member Van Duzer indicated the staff recommends a denial because the applicants variance request is for a reduction in the 25-foot setback. The request before the Council is for the 25-foot setback. The information he is reading is not relevant to the case before Council. He feels the proper information needs to be before Council, if the cases are to be considered properly. He also commented on the rear of the property. The utilities for the adjoining structure go down the backyard. He is unsure if there was enough room in the backyard for the pool that it could be accomplished due to the location of these utility lines. Tony Palermo replied the issue before the Council is simply the use of the swimming pool in the front yard and whether this is or is not appropriate and if the criteria are met.

Mayor Hughes commented that recommendation two is not an issue and should be eliminated. The sole issue will be approval of the variance for a pool in the front yard.

Mayor Hughes questioned a potential buffer on the property to the south along the property line. Was this an issue? Tony Palermo replied this was not an issue.

Mayor Hughes questioned the Council members for ex parte communications on this matter. Council member Rynearson has talked with the owner. Council member Van Duzer has had discussions with neighbors. Council member Thomas, Vice Mayor Cain and Mayor Hughes have had none.

Mayor Hughes opened the public hearing.

Beverly Grady came forward to represent Cheryl Martin and Bobby Myers, who are the owners of the Gulf Echo Motel. She indicated they are opposed to the variance and do not believe this meets the criteria. The LPA was also opposed to the variance. She indicated there is a lack of information being provided to the Town Council. There is a current violation of additional space below base flood being enclosed and a deck added without a permit. Dave Crabtree was unable to retrieve the county records to determine the status. The site plan which was filed since the LPA requires a variance. This site plan does not show an existing staircase and parking was not issued before the LPA. She showed pictures to the Town Council. In addition she showed two pictures taken by Sue, Manager of the Gulf Echo.

Beverly referred to the most recent site plan, which was submitted after the LPA hearing. She indicated they do not agree this lot is irregular. She questioned where the closest bedrooms are in proximity to the pool on the site plan? The bedrooms closest to the proposed pool are the motels. She has shown a picture of these areas. The main concern is the pool location to where people will sleep. The revised site plan was not seen by the LPA. Another issue raised was that this property was built as a two-unit duplex. The initial structure was built in 1978. A copy of the regulations in effect at that time were filed. She indicated at this time the only type of structure permitted was a duplex. In 1980 a building permit existed which stated there were just two units. This permit was to just add a bathroom downstairs and have an enclosed area. The Town's position was to just have two units and any third unit must be removed. She discussed that the site plan requires a variance because code indicates you cannot have stacked parking where there are three units. A pool is an accessory use and no one has a right to a pool. This lot has reasonable use or more than reasonable use. The backyard mature trees are located at the end of the lot. There is an ability to place a swimming pool in the backyard area. She questioned if Dave Crabtree will be around to answer noise complaints at 1:00 a.m. should they arise from the swimming pool? Any variance goes with the land. She introduced Cheryl Martin, who is the owner of the motel.

Cheryl Martin came forward. She and her sister are co-owners. They are both very much opposed

to the variance as requested by the Hahn's. They feel the pool is very detrimental to their property. This pool will be only 10 feet from the property plan. The main entrance to the pool will be at their end by their sleeping rooms. This pool will be located very close to their personal balcony. No control of the operation of the pool will be established. She indicated their motel is a small motel with 14 units. Their guests want undisturbed privacy. They do restrict the hours of their pool to accommodate the guests. The parking is inadequate. She hopes all Council members have gone to view the site. The front area is not as large as indicated. They have tried to be good neighbors. She expressed the Hahn's extended their deck. This deck blocks their view to the gulf. The intent is to not be bad neighbors, but they are concerned about what is being constructed without permits. She provided a site plan to Council prepared by her showing a nicely configured pool in the backyard. She expressed that a concern of a future owner is very important for consideration of this matter.

Mayor Hughes asked when Cheryl Martin acquired the property? She replied in January 2001.

Beverly Grady discussed the Town's amended zoning verification letter. This was sent out and she did speak with Dan on this issue. Staff was also notified and she spoke with Tony Palermo Friday afternoon. As soon as this was discovered, it was sent to Lee County and the Town. She filed a copy of the correspondence. This includes a copy of the Lee County zoning regulations in effect in 1978. Separate is the letter from the Town Manager August 2, 1999 to the predecessor of the home advising him of an illegally built third unit, which did not exist in 1978. The Town and Lee County both have this correspondence.

Sue James, Manager of the Gulf Echo motel, came forward. She has been there since 1995. She did take the pictures shown to Council earlier. The motel is very restricted in noise and the pool hours are restricted. The two rooms closest to the proposed pool are the most requested because they are the quietest and furthest from Estero Blvd.. The pool opens at 9:00 a.m. and closes at sunset.

Mayor Hughes pointed out the survey which shows the pool as being beyond the costal construction control line. He asked for the consequence? Council member Van Duzer commented that a local and state permit will need to be acquired. Tony Palermo added if the pool is seaward of the coastal construction control line it will trigger this permitting process.

Mayor Hughes discussed a recent case in Bonita Springs with regard to a person who built a swimming pool a foot or two over the coastal construction control line. These people were asked to remove the pool.

Council member Van Duzer added that this would be landward of the 78 line, but seaward of the 91 line.

Pam Houck added the information before Council will have a pool seaward of the new line and landward of the old line. It will only require County and DEP permitting. This variance will have no effect on this permitting process.

Mayor Hughes raised the issue of an illegal non-conforming third unit use. He also mentioned the stacked parking violates a section of the Land Development Code. If the site plan is approved, it will require an additional variance? Pam Houck replied that she does not believe this to be true. She addressed the accessory apartment. She feels this should be handled through a code violation for a final determination. This should not effect the location of the pool. The section referred to by Ms. Grady with regard to parking came into effect after the development of this property. This property exists today with a non-conforming parking lot. The parking lot can be reconfigured as long as it does not increase the nonconformity. Staff does believe that the proposed configuration is a safer plan than what presently exists.

Mayor Hughes asked what the rear setback line would be in the backyard? Pam Houck replied five feet.

Matt Uhle feels the parking issue has been addressed by staff. Two alternative ways for parking have been suggested. The alleged code violation was not before the LPA. He agrees with Ms. Houck. The proper forum to address this issue is a code enforcement hearing. His clients advised him they have not been cited on any matter. Whether this is a duplex or triplex does not have a bearing on the variance request. None of these arguments, in their opinion, have any relevance to this particular request. He presented his case based on existing evidence. His client has taken photographs of the backyard of their property. He feels this may be helpful in establishing whether a pool could or could not be built. These photographs were taken by his client the end of October last year. He concluded that the complaining party is a motel owner. This is a commercial use. They are trying to argue that a residential use cannot have a pool, but they can. This is not reasonable. If the Council decides to approve this request and feels hours of operation for the pool are necessary this is the ability of the Town Council. He and his clients do not feel the restriction on pool hours are necessary. It is unreasonable to expect a residential pool to be restricted when

the commercial pool is not.

Beverly Grady commented on an issue raised by Mayor Hughes. She responded by indicating that the motel is lawfully constructed and grandfathered in with the setbacks because of the date of its construction. Tony Palermo replied that the statement made by Beverly Grady is correct.

Council member Thomas added that conflicting testimony with regard to the pool in the backyard has been received. He would like to know who is correct? Council member Rynearson commented if utilities are located in the backyard this would limit the pool.

Council member Van Duzer replied access to the backyard would make it difficult to add a pool. There is a major electric line down the back of this property which feeds the adjoining property. He feels this would make it very difficult to place the pool. He feels a rare situation is occurring. The person who originally built this building is present in the audience. He did indicate that he had no knowledge Steve built this home. His information came from Mrs. Reckwerdt. He has had no ex parte communications.

Steven Roberts came forward. He indicated he will answer any questions of Council. He indicated he drove the most easterly piling through the utility line. The line was only placed to clear the piling. This line was not replaced in the easement or in an orderly fashion. This is the way it was left in 1978. This line is running in an angle that is unrecorded. Electronics would be required to find it. This line is not located where it belongs.

Mayor Hughes asked Mr. Roberts, as a General Contractor, if a swimming pool could be constructed in the rear yard the size of the pool as set forth in a proposed site plan? Steve Roberts has not seen the exact dimensions of the swimming pool. He knows that there is a little over 20 feet in back of the house to the lot line. You can build a 15-foot wide pool in this space. He felt the electrical lines could be moved and modify the existing trees to place a pool in the backyard. An arrangement would need to be made by one side or the other to get into the backyard.

Matt Uhle expressed that he has been in the business for 20 years. He has attended many hearings. He has never seen the builder coming up to be cross examined. He has nothing to say in response to this other than this is very unusual.

Jane Plummer came forward. She expressed that she did sit on the LPA when this matter was discussed. The issue with putting the pool in the backyard would require additional variances. The only variance before the Council presently is one to place the pool in the front yard. She pointed out the main issue is normally to have fewer variances. She does not understand the opposition.

Mayor Hughes responded that he has reviewed the site plan and is unaware of any additional variances that would be needed for the backyard.

Mayor Hughes closed the public hearing.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the variance. There are exceptional circumstances which are necessary for this approval. He agrees with the recommendations of staff on page 2 of 6. The conditions should include the removal of the pool cage throughout (#4) and language that the required number of parking spaces must be provided on site (#5). Condition 3 to add the vegetative buffer on the north side of the property from the front buffer to the building line.

Discussion: Mayor Hughes questioned why the pool cage should be removed. He felt it may be wanted by the owners in the future.

Council member Van Duzer replied that the applicant has specifically requested there be no pool cage. The addition of a pool cage would incur a tremendous amount of additional structure on this property. He feels with proper buffering it will still be seen. He does feel with a proper buffer the pool without the cage will be pleasing to everyone.

Additional discussion took place with regard to the pool cage. Tony Palermo suggested a fourth condition stating “no pool cage.”

Council member Rynearson asked for clarification on the removal of the pool cage.

Council member Van Duzer replied it is due to the visual esthetics of this site. It is not being asked for so he does not feel it should be included.

Vice Mayor Cain referred to both site plans dated 12/2/02 and 1/30/03. She questioned if the seven parcels on the 12/02/02 plan are on the right-of-way or on the property? Pam Houck replied they are on the property.

Council member Van Duzer feels the back out parking should be allowed. He suggested four parallel parking spots to the road with a few spaces still in the driveway. This would keep people from backing out into the road. There may not be room for a commercial vegetation buffer on the roadside, but it would allow better usage of the property. This would be easier on the neighborhood. He is not in favor of stacking six cars in the driveway. It is not the Council's job to figure the easy version. He commented that he does travel by these properties frequently. He commented on the air-conditioning units and garbage pails located on the property in the area the neighbors are claiming to be the quiet area. He takes exception that the neighbors are trying to keep this area quiet and do not want any noise coming from the pool. The Council does have the ability to restrict the hours of use of this pool, if approved.

Council member Thomas would like to see the parking on site. He is not in favor of parallel parking. Council member Van Duzer added that his proposal would be on their property not on the right-of-way.

Council member Rynearson suggested two conditions. One for stacked parking and also the conditions as suggested by Council member Van Duzer.

Dan Folke indicated there is a question presently with regard to the number of units. He suggested the language be used "the required number of parking spaces must be provided on site." He added that this is the rule in the Land Development Code.

Vice Mayor Cain discussed the vegetative buffer on Gulf Beach Road. She questioned if the north side was added. She would like this added to condition 3. Council member Van Duzer agrees.

VOTE: **Motion passes 4 to 1. Mayor Daniel Hughes dissenting.**

B. Request to re-hear: Jeanne Sanders Addition. Case Number VAR2002-00014. Variance in the Multiple-Family Residential district for additions to an existing single-family residence. The subject property is located at 5266 Estero Blvd.

Mayor Hughes announced that this is a request for a rehearing. The issue before the Town Council is to determine whether or not to have another hearing.

Mayor Hughes asked for ex parte communications. Council member Thomas and Rynearson have had none. Council member Van Duzer has abstained as he did in the original variance hearing.

Steven Roberts came forward as agent for Jeanne Sanders. He would like to have this case reheard. He indicated there was a question of proper means of access and egress of record. Exhibit "A" has been provided, which shows there is access and also title insurance on the lot.

Attorney Dick Roosa added the decision as to whether or not this matter is set for rehearing should be based upon the record provided. No testimony should be given.

Vice Mayor Cain returned to the room and was asked for any ex parte communications? She replied none. Mayor Hughes also indicated he had no ex parte communications.

Mayor Hughes stated he was quoted in the rationale for requesting a rehearing by indicating he was uncomfortable with the situation and did not feel it would be appropriate for Town Council to grant a variance if the lot is land locked. He has not clearly studied all documents to convince himself it is not. He

does feel this was a significant issue, but was not the controlling issue. This was not the sole basis for his vote. He personally feels they should be given an opportunity for a rehearing.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to re-hear Case Number VAR2002-00014 - Jeanne Sanders Addition. This matter was set for rehearing on April 14, 2003.

Discussion: Dan Folke indicated a memo from Kirk Crane was provided. Staff did recommend there be a rehearing. There was new evidence provided that had not been considered. A date needs to be set.

Mayor Hughes does not feel this should go before the LPA. He would rather see this go directly before the Council. All other council member were in agreement.

VOTE: Motion passes 4 to 1. Council member Bill Van Duzer abstaining.

C. Update on Mound House electrical and request to hire Bob Sanford

Theresa Schober, Director of the Mound House, came forward. On October 21, 2002, the Town Council approved the hiring of Anchor Engineering Consultants to develop specifications for the Mound House. She provided a list of the items Anchor Engineering will be addressing. Anchor Engineering visited the house on December 30, 2002 for the first time after they were contracted and then again on January 14, 2003. CELCAB had entered into discussion with regard to the preparation of a full preservation plan. At the time of the CELCAB meeting the group was divided on whether to go for the full electrical due to the historical nature which must be preserved while the electrical is being updated. A little bit of confusion existed. She mentioned to Anchor Engineering the existing circuitry must be done in a way that maintains as much of the historical elements as possible. Two of their key concerns were the ability to identify these materials and the lack of sufficient space between the first and second floors for duct work. Their typical approach would be drop ceilings on the first story. This cannot be done if the goal is to preserve as much of the Mound House as possible. Anchor Engineering had asked to consult with their Historic Preservation Architect. Anchor Engineering assumed this type of firm was on board. CELCAB had desired to have this firm in place, but has not accomplished it at this time. The historic structures report completed in 2000 does not include detailed specifics on spaces between design elements or the exact materials used. She spoke to Bob Sanford on some of these issues. Her reasoning was due to Bob coming in to inspect the Mound House in October and gave a full presentation to CELCAB. He noted that an architectural company doing the historical preservation subcontracts to the electrical engineer. She has brought forward an update for Council. Her recommendation is to have the measured drawings completed now and the electrical engineer can work togther to design a system, which will keep all options open together in the future, and maintain as many historical elements to the building as possible.

Council member Van Duzer clarified this step must be taken first. If this step is taken there is a possibility grants can be secured for other projects? Would this include electrical and air conditioning, etc.? Theresa replied if the group decides on a major or minor restoration project the main money source would be received from a special category grant from the state. These grants require a $50,000.00 cash match. The grants can be up to a few hundred thousand dollars. Any upgrades to the project can go against the cost share. This demonstrates to the state they are interested in moving forward on the structure. This would not be deducted from the $50,000.00 cash match.

Mayor Hughes questioned if there is a condition of the grant there must be a finding by someone this is in fact a historical structure which meets some certain criteria? Theresa replied Bob Sanford indicated in order for the seeking of special category funds to restore the structure a preservation plan must be in place. All in his proposal must be accomplished and a full direction oriented before applying for a restoration fund. The home does not need to be on the historical register.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to approve Phase one of the proposed $3,750.00. If additional consultation is needed not to exceed $700.00 to facilitate the electrical engineering service contract as soon as possible. Subject to the Town Attorney reviewing the letter agreement and incorporating any provisions he feels appropriate.

Discussion: Vice Mayor Cain feels they will be very satisfied with Mr. Sanford. She was present when he presented to CELCAB. There are very few people locally who do what he does. She feels they are very lucky someone is so close and has the time to give to the Mound House.

Council member Van Duzer will support the motion. He questioned if Phase three should also be completed. He feels the first and third should be completed in order to go through with the electric.

Theresa indicated she had clarified this information with Bob Sanford and the electrical engineers. Bob Sanford indicated the structural analysis was typically completed by a structural engineer. This will determine how far you can go with restoration. The comprehensive condition assessment is different from architectural drawings that include spaces between walls or floors that help design circuitry. Bob Sanford indicated this is not something the electrical engineers would need at this time.

VOTE: Motion passes unanimously.

D. Appointment of voting member and alternate to the County's "Intelligent Transportation Systems" Working Group

Deputy Town Manager Gucciardo expressed a fairly self-explanatory memo is included within the Council's packets. An invitation was received by Lee County DOT to participate in a working group. This meeting was several weeks ago. Several topics they plan to discuss have a great deal to do with the direction the Town may be going in with regard to transportation issues. He is recommending it may be worthwhile for the Town to participate in this ongoing process. The recommendation is for an appointment of a voting member and an alternate member. The recommendation would be Council members as opposed to staff.

Mayor Hughes concurs with the staff recommendation. A consensus was received from all Council members.

Council member Howard Rynearson would be interested as the voting member. Council member Van Duzer would be willing to serve as the alternate.

MOTION: Made by Mayor Daniel Hughes and seconded by Vice Mayor Terry Cain to appoint Council member Howard Rynearson as the voting representative and Council member Bill Van Duzer as the alternate to the "Intelligent Transportation Systems" Working Group.

VOTE: Motion passes unanimously.

E. Memo and resolution regarding beach restoration project funding

Mayor Hughes indicated a proposed resolution has been prepared by staff.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the proposed resolution regarding beach restoration project funding.

Discussion: Deputy Town Manager Gucciardo explained that several years back the state legislature decided part of the documentary stamps attached to the recording of instruments would be set aside for beach renourishment projects. The fund is up to $30 million per year. There is a balance of approximately $100 million in this fund. Due to state budget issues this year it was decided to reduce this amount and make the working groups responsible for their own administrative costs. The net result is $15 million for this year.

VOTE: Motion passes unanimously.

F. Further discussion on Town's financial participation in the Temporary Alternating Light Project

Town Manager Segal-George expressed since the Council's vote last week and the subsequent conversation by the Board of County Commissioners the Town staff has been in contact with Lee County staff. Among the staff a decision or direction has been reached to work cooperatively on a number of issues. This will include the alternating light for this year and next, gas tax, pedestrian refuges and the various transportation initiatives to come forward from Chris Swenson in April. These items will be discussed at a staff level with Lee County to include Jim Lavender and Scott Gilbertson. This information can be brought back to the Council as it is gained. The staff recommendation is that the Council agrees to split the portion of the expense for the lights and to re-stripe the lane the County Commission has asked for. This decision can then be delivered to the Board of County Commissioners at their meeting tomorrow. She expressed the dollar amount is not to exceed $23,000.00. The Council shall decide who will deliver this message to the Board of County Commissioners.

MOTION: Made by Council member Bill Thomas and seconded by Council member Bill Van Duzer to support the staff recommendation to fund up to $23,000.00 toward the alternating light project.

VOTE: **Motion passes unanimously.**

Mayor Hughes commented on his personal stand point. Approval of this expenditure shall in no way be deemed to establish a precedence for expending Town funds in the future either on this specific project or in general on road way or other projects outside of their jurisdictional limits.

MOTION: Made by Council member Howard Rynearson to appoint Council member Bill Van Duzer as the representative to go forward and deliver this message to the Board of County Commissioners tomorrow.

Discussion: Council member Van Duzer feels the motion made at the last meeting was made with good honest feelings and understandings. This is an important issue that must be handled. It must move forward. He would like to see this happen. During the upcoming year they will have the opportunity to work with County officials and staff to strive for a little easier transition this next year. He commented on e-mails and calls received with only one negative response.

Vice Mayor Cain reiterated much of what was stated by Council member Van Duzer. She hopes that the June agenda will contain more dialog on this matter and it will be picked up again in August. Hopefully, this will be in place in a timely manner for next year. She received more than 50 e-mails and phone calls with only one negative. She thanked those who call in and send e-mails.

Council member Thomas received many calls on this matter. He indicated he does not want the irate people coming to the beach. He firmly believes that it is he who is strong that can admit he may be wrong. He feels the Council made a wrong decision the prior week.

Mayor Hughes is very concerned with the Town expending their taxpayers dollars to remedy what he believes is a County wide problem. He is very concerned about a precedence being established.

VOTE: **The above motion did not receive a second nor was it voted on.**

(The meeting was adjourned at 11:30 for a 10-minute break and will reconvene at 11:40 a.m.)

F. Interviews and selection of Hidden Path Project Consultant

1. David M. Jones Jr. & Associates, Inc.

Mayor Hughes reviewed recommendations from CRAB have been made and the top two candidates are present today for interviews.

David Jones came forward. He indicated he is present with his team who would be working on this project. Greg, who handed out the packets is his Vice President and who would be the project coordinator and administrator. Mosen is the Planning Consultant and Traffic Consultant. John from TKW Engineering will be providing any type of engineering surveying component that would be needed for the project. He commended CRAB who is a very cordial and a knowledgeable group of people. He thanked them for their vote of confidence.

David Jones expressed he has been doing business in Fort Myers and on the beach for more than 20 years. He indicated they know people living in the area they will be working with on this project. He feels this will help to understand the issues. This path will be located within a neighborhood and will make some unique problems and opportunities. The key to the project is to have 100% support from the neighborhoods. The first phase as selected by staff is perfect. This does tie some key elements in the center of the island together and will help with its success. The history of the project is interesting because it was born with the Town.

Mosen came forward and explained the idea of the Hidden Path came up simultaneously in five groups who were working as part of a design of the workshop. The intent is to try and convert as many auto trips to bike trips as possible. There is a tremendous potential for capturing local trips by using the Hidden Path. The vision is that folks who live in the neighborhoods can bike or walk to the pool or library. An immediate benefit will be the relief of pressure from the traffic load on Estero Blvd.. To accomplish this matter the neighborhood must be immediately involved. A number of public workshops are envisioned with full participation of the local folks.

John from TKW Consulting Engineers came forward. He referred to data collection and analysis. The property and right-of-way information should be received mainly from existing plat maps and surveys. Some limited surveying may be needed. The preliminary corridor study will involve looking toward alternatives within the corridor to see where the path may go. Problem areas would be identified. Following this the assessment report would be the next step.

Greg from Dave Jones and Associates came forward who would be the project manager. The approach will be summarized in a preliminary assessment report. Several ways of the goals of the path can be achieved. The assessment report is the working document. They will come back to the citizens and the Town Council to work toward a single corridor plan for development. Throughout the meetings and data collection all will be refined into a schematic design to be approved through the citizens as well as Council members. Some of the primary objectives have been outlined, which the firm feels are necessary to see this project become successful. These were developed without input from citizens or Council and they do anticipate changes. Without community support the project cannot be successful. They will work toward minimizing the neighborhood impacts and conflicts.

Mosen explained one of the main objectives of this facility will be to tie destination points from Mango to Connecticut. A tremendous potential is available for converting auto trips to foot and bike traffic. There is a tremendous potential for other amenities depending on the desires of the neighborhoods. This firm has been through this process with other communities. All details are considered. The environmental impact has been minimized. Their focus is on developing a plan with nature.

Greg expressed that landscaping will be a feature they intend to utilize for both beautification and privacy of the residences along the way.

John indicated there are concerns with traffic speed. Speed humps will be considered along with possibly more stop signs. Many issues do exist to control traffic speed. Pedestrian crossings will be enhanced to make them safe. Colored pavement may be used or pavers are an option.

Greg indicated the construction dollars must be used wisely. Much of these dollars will be used to deal with safety issues and addressing concerns of the citizens. The funding for this project could exceed the rationale of the path.

Mosen discussed some the similarities between Pine Island and St. James City. These provide a wealth of knowledge that can be used toward the development of the Hidden Path on Fort Myers Beach. He discussed the safety aspect and indicated that acceptance of the community with large numbers utilizing the path will increase the safety aspect of the project.

David Jones in closing expressed that his firm has had the privilege of participating in many parks with public involvement. He feels this will be critical to this project. It must be a practical project. This will

be a low volume trail to provide intercity connection for those who live here or who are visiting. The residents must be comfortable and feel safe. He does not feel it is appropriate to place a strip through the middle of the Town. This should blend in with the neighborhood, but be still be noticeable. Tasteful and identifiable monuments will be critical. Grants are available for these types of projects. His firm will work with the Town to try to pay for this project. He feels some of the strips in front of properties may come as donations. If the owners participate and become involved it is possible to convince them to spend the money to make the project work better.

Council member Van Duzer asked how much this will cost? David Jones expressed that a scope of cost has not been negotiated with staff. Attorney Roosa added in competitive negotiation you select the firm and then negotiate the cost. They are prohibited from giving the cost.

Council member Van Duzer questioned if the section from Connecticut to Mango is the only being considered? Dan Folke replied CRAB has looked at different segments and decided it was better to do one initial segment. The number one-ranked segment was from Connecticut to Mango.

Council member Van Duzer felt the entire project should be considered at one time.

Council member Rynearson has concerns about doing one section. If further support is not received, one section will only be completed.

David Jones replied that these types of projects are built on success. He does feel the ability to be successful in phase one is going to be critical to subsequent phases. Any piece will be a success and will contribute to the community.

2. TBE Group, Inc.

Steve Howarth, Director of TBE's civil development and environment management programs, came forward. He expressed today's presentation is an abbreviated version of the presentation provided to CRAB. A very interactive discussion took place. TBE Group received the number one ranking from this group and hopes to gain the same level of support from Council. He introduced Gary who would be the project manager. Gib Williams is present and is a registered landscape architect and will lead the planning effort. Randy is not present, but will lead the design effort. A core team of individuals will be provided.

Steve added that TBE Group is the largest engineering and planning firm headquartered on the gulf coast of Florida. They have more than 250 associates in Florida. Their local Bonita Springs office would manage this project. Their firm specializes in municipal services. The firm has worked with many beach communities such as this. Many awards have been received for both trails and park systems. What makes this project unique is that it travels through a number of different land use areas. Many different components exist.

Gary, project manager, came forward. TBE will guide the Town from concept through construction, which will include the planning process. Public involvement will be highly critical to the success. He pointed out the organizational chart. Leslie is their certified grant specialist, who is dedicated to obtaining grants for projects. Any contingency which may arise can be handled in house. A design and construction schedule was designed for CRAB and this was reviewed with Council. They do anticipate a 14-month period of design and construction. He indicated they must be fairly far into the design process in order to approach the different agencies with funding available. The entire project was considered as a whole. There are more funding opportunities if the project is looked at in total.

Gib Williams came forward. Advanced planning and communication are important items to begin the process to develop a master plan for implementation. Part of this process will include program development, public involvement and citizens concerns and suggestions. Once the information is gathered and the program is in place the trail plan can be created. Public involvement will contain public workshops. Once the Town's and public's input has been gathered, the planning document can be created. This will show the route of the trail and identify a theme which will carry on through. TBE is a core team and is the right size team to get this project complete. He indicated they have all the resources to handle any type of issue which may be encountered. They have done this type of project in the past, so new learning curves should not be experienced. A local office is available. The firm knows how to obtain the grants needed for this project. The planning process will need to address property acquisition in some areas. Donation of land from private citizens can be obtained along with the dedication of easements. TBE has an in house property acquisition team. Estero island has many important historically and environmental areas. These need to be considered when designing the trail. Commercial and retail areas will be included. This will provide opportunities for the local businesses to get involved and provide an easement area for access. Buffering, additional landscaping, signage and lightening will be required to make this a safe an acceptable way to get through the community. The intent is to make the trail a safe and comfortable for both vehicular

use and pedestrian use.

Steve Howarth in closing indicated TBE is a municipal beach specialist. Their communities are beach communities. They have in depth programming and public support processes. The meeting with CRAB was very interactive and he feels this would be the same with Council. The awards received will back up the work they have completed. A cost-effective focus is established. A single source for the project is provided by TBE. They are fully prepared to meet the Town's schedule. Services from concept through construction can be received. This is a very exciting project and they appreciate the opportunity to present. They look forward to working with Council on this project.

Vice Mayor Cain questioned if TBE was hired would their fee include concept through construction? Steve Howarth replied that generally projects of this nature are done in phases. A planning document first will allow for public involvement. This will provide a greater idea of what will be designed. It is nearly impossible to give a proposal to go all the way through construction. The firm favors the option of creating a planning document, which establishes a common theme and links for the trail. This overall document could be used to obtain grants. The Town will benefit if it is received in stages.

Council member Van Duzer commented that he feels this should be planned entirely, so it can be tied all together. Steve Howarth replied that the request for qualifications was open ended and options exist as to how this project will be pursued.

Mayor Hughes commented that this will be a difficult decision. Both presentations were excellent with much time and effort involved.

Council member Rynearson was impressed by both firms. He was impressed by TBE's ability of receiving grants. He feels a professional in house is important.

Council member Thomas feels TBE showed a lot of previous experience handling this type of project in beach communities. Their presentation was very complete.

Council member Van Duzer felt TBE made a better presentation about their abilities to handle this project.

Vice Mayor Cain believes TBE displayed a stronger presentation. She is anxious to see this program go forward. Many options were presented.

Council member Rynearson questioned if a firm is selected can they be asked to provide two proposals with one as part of the Hidden Path and a concept plan as a whole? Dan Folke replied the Council can direct them for the services wanted.

Mayor Hughes expressed that they must be careful with the design of the path. Many options were discussed such as crosswalks and drainage. These issues are being handled by the Town separately. He does not want to lose sight of the scope of the project.

Mayor Hughes feels both firms are outstanding. He personally has had some prior involvement with some of the personnel at David Jones in his former capacity at the TAC. David Jones has done much work in the Town and is extremely familiar with the area.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to select TBE Group, Inc. as the Hidden Path Consultant.

Discussion: Council member Van Duzer had concerns with this process from this point forward.

Attorney Dick Roosa replied the procedure after the selection involves the negotiation of the contract. If a contract cannot be negotiated, you would then go to the second firm. Negotiation takes place at the staff level, but the final decision will be made by the Council.

VOTE: **Motion passes 4 to 1. Mayor Daniel Hughes dissenting.**

G. Building Demolition Bid Approval pursuant to Code Enforcement Order #2003-035

Attorney Dick Roosa clarified the structure was cited by the code enforcement officer for being in violation of town code. There was a hearing before the hearing examiner. One issue had to do with the ability of repairing the structure. The damage would cost more than 50% of the value of the building to repair. This meant the building would need to be rebuilt to code. The general testimony added that it would more beneficial to build a new building. The code enforcement officer required them to demolish the

building. The attorney and owner solicited bids for the purpose of demolishing the building. They could not negotiate any dollars with the insurance company for payment or authority for demolition. The insurance company has taken the position it can be repaired. The Town's position is that it must be demolished. The bids in Council's packet were given to the owner of the property.

Mayor Hughes is pleased the Town is moving forward with this matter. He complimented those who attended the hearing.

MOTION: Made by Council member Bill Thomas and seconded by Council member Howard Rynearson to accept the bid as presented by Bob Rockwell for $12,930.00. **Motion amended:** Made by Council member Bill Thomas and seconded by Council member Howard Rynearson that the standard bidding procedure is being waived and the bids are being accepted as submitted to the owner.

Discussion: Council member Van Duzer feels the motion should include "if the owner does not destroy the structure by the February 13, 2003-date the Town staff has authorization to award the contract to the low bidder."

Attorney Roosa added the 30 days were set because this is the amount of appeal time. He referred to a letter dated February 3 from the owners attorney. This letter indicates the Town should move forward with demolition, so the property owner will not receive any additional fines. He knows the owner has no intention of removing the building. This is due to the dispute with the insurance company. He added that the motion should include the waiving of the ordinance bidding procedure.

VOTE: Motion passes unanimously.

V. COUNCIL MEMBER ITEMS AND REPORTS

Council member Van Duzer - Had conversations from those at Bay Beach with regard to the final phase. A temporary sales trailer was wanted on parcel 8. Discussion has taken place, if this is in fact legal. He suggested their Counsel contact the Town's Attorney or Town Manager. He would like to recommend that staff be allowed to look into the request by Stardial/ Bay Beach to review the agreement to see if the sales trailer can be located or if an amendment could be done. He asked for the support of the Council.

Mayor Hughes has no objections and no other objections were heard from Council members.

Dan Folke added an amendment to the settlement agreement would need to be made. This would come back before Council for approval.

Vice Mayor Terry Cain - Requested before the next Chapter 34 meeting the Council members go to review some of the homes as provided on a handout. She suggested a few of the old streets be reviewed after these homes are looked at. She would like Council to see what they are now vs. what the beach was. The Council should consider what they could be. She feels this vision is being lost.

Council member Rynearson - Mentioned that Gloria Tate asked if the Town Council would get onboard with the coalition they have formed for the docks. Possibly, one council member could attend.

Council member Van Duzer does not feel it is necessary they attend the meeting. The Town Council has supported their position.

Mayor Hughes feels they should advise the Council well advance of the meeting and any available council members could attend.

Mayor Hughes - He is repeating his State of the Town speech before the Chamber on Thursday.

VI. PUBLIC COMMENT

None.

VII. ADJOURNMENT

The meeting was adjourned at 1:15 p.m..

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary