

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MARCH 3, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Regular Meeting of March 3, 2003 was opened by Mayor Daniel Hughes on Monday, March 3, 2003, at 3:03 p.m..

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

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 and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REV. DICK TAFEL, PASTOR NEW CHURCH OF SWFL

The invocation was given by Rev. Dick Tafel.

IV. PUBLIC COMMENT

None.

V. CONSENT AGENDA

A. Proclamation - Brain Awareness Month

B. Approval of January 13 (revised), February 3 and February 10, 2003 minutes

C. Review of January 2003 Financials

D. Thank You letters to Federal delegation relative to funding for Beach Restoration Project

E. Contract for implementation of the "Public Service" component of the CDBG Program

Mayor Hughes pulled Consent Agenda item A.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve consent agenda items B, C, D and E.

Mayor Hughes read the Proclamation for the Brain Awareness Week from March 10 to March 16, 2003. The goal of the Pilot Club of Fort Myers Beach is to help people affected by brain related disorders through worthwhile programs within the community. The Pilot Club will conduct weekly activities during the month of March to support this endeavor. The Town of Fort Myers Beach and the Town Council congratulated the Pilot Club on their contributions to the community. The Town of Fort Myers Beach and Town Council declare the month of March 2003 as Brain Awareness Month.

Nancy Mulholland, President, came forward. On behalf of the Pilot of Club, she thanked the Town Council for their support of many projects.

(No motion was made to approve Consent Agenda item A.)

VI. ADMINISTRATIVE AGENDA

A. Final Public Hearing - Amending the Finance Ordinance 03-02

Mayor Hughes began by reading the ordinance. He asked for public comment on this matter.

None was heard.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry

Cain to approve the amendment to Finance Ordinance 03-02.

Discussion: Council member Van Duzer indicated this revision will allow for quicker action on projects. This will not diminish the control over the projects. He feels this is a tremendous step forward.

VOTE: Council member Howard Ryneerson, aye - Mayor Daniel Hughes, aye - Vice Mayor Terry Cain, aye - Council member Bill Van Duzer, aye and Council member Bill Van Duzer, aye. Motion passes unanimously.

B. Award of Maintenance contract for Beach Accesses.

Damon Grant expressed originally ten proposals were received by the Town. The updated memo indicates the lowest proposals received. Bid #4 on page 2 did withdraw, which will reduce the number to nine. He indicated an error for Bob Gaydos should be adjusted to read \$73,730.00 instead of \$93,570.00. Other factors for consideration should include experience on the job, available staffing with daily man hours and also the equipment to be used. He reviewed the County utilized four county workers and a supervisor toward the maintenance of the beach accesses. The County attempted to accomplish all maintenance cleaning and trash pickups before the majority of visitors came to the beach and began using the accesses. Bob Gaydos would like to perform the duties himself with the help of others when he is unable and would be a one man operation. Lawler's Maintenance and other bidders have put forth a staff of 3 to 4 members along with certain equipment necessary to complete the job most effectively. Staff recommended Lawler Maintenance who is the second lowest bid for this job. This recommendation was based on the extra equipment, experience and overall staffing needed to complete the task as well as or better than the County.

Mayor Hughes questioned the Town Attorney if any problems exist without selecting the lowest bidder? Attorney Dick Roosa replied the Town Council should always consider the lowest bidder assuming the service to be performed will be equivalent. In this situation there is great disparity between the number of people involved and the type of equipment. This would justify not accepting the low bid.

MOTION: Made by Council member Howard Ryneerson and seconded by Council member Bill Van Duzer to accept staff's recommendation to select Lawler's Maintenance at \$110,000.00.

Discussion: Council member Van Duzer is terribly concerned the Town will pay 50% more to get the job done than the low bid. He questioned if these concerns had been discussed with Mr. Gaydos?

Damon Grant replied he has spoken to Mr. Gaydos and expressed the staff's recommendation along with the reasoning. Damon contacted the County for their input on the intentions of Mr. Gaydos. The County supported the Town's decision and felt that it would be difficult for one person to maintain.

Council member Van Duzer questioned the County's budget for this project? Damon replied \$165,000.00. Damon expressed if Council is not comfortable making a decision today an amendment can be prepared. This amendment could indicate a certain number of workers must be available to complete this project. It could go out for rebid and come back for the March 17th meeting.

Vice Mayor Cain questioned the time each day the County would be completed with the beach accesses? Damon replied by 10:00 a.m. and sometimes earlier.

Council member Ryneerson is concerned that Bob Gaydos may be able to complete the task. He does understand the reasoning behind staff's recommendation.

VOTE: Motion passes unanimously.

C. Preliminary discussion and setting of interview dates for the Professional Service Proposals for the Pedestrian Refuge Project

Damon Grant indicated three professional service proposals have been received. This would allow the median strip or pedestrian refuge in front of Seafarer's. He spoke with each of the consultants and was able to set up a tentative interview time for March 10, 2003 between 9:00 a.m. and 11:00 a.m..

Mayor Hughes asked the Council members for any objections to the interview date and times. Council member Van Duzer would like the packets as soon as possible. No other objections were heard.

Council member Rynearson indicated they cannot go any farther until the easements are established.

D. Selection of Newton Beach Park Consultant

Dan Folke provided a memo. Part of the requirements with Florida Communities Trust is to submit a management plan of the property. Staff is also recommending a public workshop to hear ideas from the community. The end result would be a master plan of the site. Three proposals were received. The low bid was from Louis Scruggs for \$4,000.00 with a maximum of 60 hours with \$65.00 per hour after the initial 60 hours. All bids include the community workshop. The second bid from Earth Balance from Sarasota is for \$13,500.00 and the final bid was David M. Jones for \$24,000.00. References were checked for Louis Scruggs and he works for the Department of Environmental Protection in Tallahassee as a Park Planner. He has extensive experience with DEP in park planning and has also prepared a number of management plans for FCT. He has worked with Leon County and Indian River County. Both were satisfied with his work. Staff is recommending the low bid.

Mayor Hughes questioned the time frame this will take Louis Scruggs? Dan Folke replied he based the \$4,000.00 on his estimated time of 40 to 60 hours for completion. Dan provided each bidder the application submitted to FCT to show the commitment by the Town. He based this time frame around his experience in other communities. Dan suggested setting a not to exceed price.

Mayor Hughes suggested any hours over the 60 could come back before the Council for approval. Attorney Dick Roosa added periodic progress reports could be supplied.

MOTION: Made by Council member Bill Thomas and seconded by Vice Mayor Terry Cain to accept Louis Scrubbs as the low bidder for \$4,000.00. Beyond the 60 hours at an hourly rate of \$65.00 must be approved by the staff.

VOTE: Motion passes unanimously.

E. Suggested contribution to national League of Cities (NCL) Legal Defense Fund

Mayor Hughes began by indicating a letter from the Executive Director for Voluntary Contribution has been received. Every community should submit 5% of their annual dues. The annual dues are \$880.00 and 5% is \$44.00.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the contribution amount in the amount of \$44.00 (5%).

VOTE: Motion passes unanimously.

Council member Van Duzer commented that he attended the Florida League of Cities meeting. He indicated these individuals are very sharp and he feels this is a good organization to be involved in.

Mayor Hughes indicated the Council is ahead of schedule. He suggested covering agenda items IX, X, XI and XII prior to the break at 6:30 p.m..

6:30 P.M.

VII. PUBLIC COMMENT ON AMENDING LAND DEVELOPMENT CODE- CHAPTER 34

Mayor Hughes reviewed some rules of civility. He expressed that everyone should abide by these rules. There is a three minute time limit. He hopes to avoid repetition. He asked everyone to put this issue

into perspective. At the end of the day some will be pleased and others disappointed. It is difficult when a Town is so split on an issue. This is one of the most controversial issues since Publix, which also split this Town. The wounds have healed and he has received no negative comments about this rezoning. Keep this in perspective. Regardless of the outcome this Town will survive and continue to thrive as it has since incorporation. All who speak will feel their position is correct. Please respect the opposing arguments. The Town Council must make decisions based on the community as a whole. He concluded with a quote from the Sandpaper "When the decision comes down whether to your liking or not make up your mind ahead of time to let it go for now and move on with the business at hand."

Attorney Dick Roosa began by reading the ordinance. Mayor Hughes opened the public hearing.

Charles Mann representing Flamingo Holiday Homes came forward. Flamingo Holiday Homes owns ten rental properties within the Town. At least three are in the RS-1 district. Written comments were recently submitted to the Town emphasizing lack of factual data which does not support the fact that short term rentals are the primary source of the nuisance violations. Recently, they spoke with Dave Crabtree. It was his understanding the opinion of code enforcement for noise violations and nuisance activities were evenly distributed across short term rentals, longer term rentals and properties who are owner occupied. There is no support to single out short term rentals. Recently there were some requests for code enforcement to work toward the issue of garbage being left out. After several weeks of stronger enforcement measures the problems with garbage were dramatically reduced. The solution to the problem would be to utilize the provisions of option 3 or 6. If these measures are adopted, it will avoid over regulating. He respectfully requests that Council adopt either option 3 or 6 as recommended by the Chamber of Commerce.

Charles Mann is also present representing Frederick Puzak from 7810 Estero Blvd.. The proposed Chapter 34 eliminates a provision which affects his property. This provision goes toward the manner in which lot width is calculated. His client purchased this property with the intent to split it in two at a future date for his children. The street setback is in question. If this was split in two, he would not meet the 75-foot lot width requirement. However, if you measured at the midpoint as provided in the current section, it would meet the requirement. He feels this issue is an oversight. They would like to see the existing provision come in, but the concern of last minute business is accepted. If the new Chapter 34 is adopted, he asked for the addition from the existing code. If this language is not addressed, at this time, they would like to see it addressed at the upcoming amendment to Chapter 34.

Beverly Grady with Roetzel and Andress came forward. She addressed the Village District for the Red Coconut. She indicated they are very close to what has been prepared by staff. Tremendous faith and trust have been established that the proposed code will permit the Red Coconut to continue as it exists until the owners make a decision to redevelop, and that the redevelopment alternative will be workable. Council is being requested to choose the option to the view corridor. The definition of substantial damage has been reviewed and they are willing to accept the Town's draft version. Hurricane warning information is appropriate and should be added to the appropriate section of the code. They also request and support item 19 in Bill Spikowski's memo dated 2/24/03. This is an important issue for anyone who has a PD to have this opportunity. Additional changes to the code have taken place and she feels these matters should be considered.

Mayor Hughes expressed there is much confusion about the proposed amendments to Chapter 34 and the Town's existing rules with regard to substantial damage. Flood plane regulations and rules regarding substantial damage to structures located below base flood elevation are not in Chapter 34, but in Chapter 6 of the Land Development Code. The 50% rule vs. the 25% is not relevant this evening unless you are referring to the Village Zoning area, which is Red Coconut and Gulf View.

Jack Slot from 2840 Winkler Ave., Ft. Myers, came forward. He represents the Realtor Association of Greater Fort Myers and the Beach. This organization consists of over 2,600 active Realtor members. He discussed the short term rentals and indicated if the proposed language was enacted such a measure would have a detrimental impact on the local economy, property owners and a negative impact on the vital tourism industry. He referred to a letter put in Council's package in December. The Association recognizes the efforts of the Town Council's appointed Short Term Rental Task Force and their proposed ordinance, which is option 3. The Realtor Association would support option 3. He thanked the Council for the opportunity to become part of the process. He feels it has been handled very professionally. This Association requests that favorable consideration to option 3 as suggested by the Task Force and the additional option 6 suggested by this Association be considered.

Carleton Ryffel, 100 Estero, FMB, came forward. He has been a beach resident since 1988 and a

planning consultant for 30 years. He has done roughly 20 or 30 cases on the island. He is representing himself as a resident property owner. He discussed the pre-disaster build back provision. The intent of this provision is to allow people who have properties that do not meet flood standards and other codes today to remove the building and reconstruct it to meet the flood standards and more modern development of the property. He feels this is very positive. The way the regulations are written are disincentives. He feels density is favorable, but does not agree with the language that you can only build back to the same square footage. This is a disincentive to upgrading the island. Intensity is a term applied to commercial land uses and not residential. The measure in residential is density or number of units. He strongly urges Council to take the reference to intensity out. He referred to the specific sections for removal found on page 213.

Rosanna Rielly from 235 Mango St., FMB, came forward. She indicated they have several multi-family properties on Mango Street. She realizes they will not be affected by the short term rentals, but changes in the future can take place. She purchased two run down homes, which housed long term rentals. Short term or long term the property owner should have the decision for the length of rental time. This should not be changed.

Attorney Dick Roosa explained the problem with option 3 is the leniency. Once it is established if you were to make it more stringent at a later date the Burt Harris would be triggered. If made too loose or lenient, the Town would be committed for a long period of time.

Bill Hannong, from 1901 Estero Blvd., FMB, came forward. He owns the Fort Myers Beach Tattoo Studio and is the President of the Florida Professional Tattoo Guild. He referred to Section 34-3066 and asked Council to accept the first sentence and strike the remainder of the paragraph. He indicated this language does not apply to his industry of tattooing. He asked for the adoption of option 3 and strike the word expanded from this language. He would like to feel as a businessman that the Town of Fort Myers Beach would encourage the growth of himself and his business. He has been in business for the past 12 years and would like to continue to be an asset to the beach. He thanked the Council for their time and courtesy, which has been extended this last week on such short notice.

Jane Plummer, 340 Fairweather Lane, FMB, came forward. She is a Realtor. She is in support of option 6. A meeting took place at the Chamber of Commerce. An option of licensing of short term rentals in the quiet area as opposed to grandfathering was discussed. This would solve all problems brought out as issues. This was recently brought up as an idea and she supports this matter.

Tom Cameron, 200 Curlew Street, came forward. He supports the Neighbor for Neighborhoods group recommendation. He feels the grandfathering clause should be as follows. The short term rental rights of the property should cease when title is transferred to new owners. There should be a 2 to 5-year definite end to the rental ability. This benefit would get the Town out of the licensing and policing business.

Jane Harris from 189 Curlew Street, FMB, was not present. She did fill out a card indicating she is opposed to short term rentals.

Lloyd Smith, 199 Curlew St, FMB, was not present. He did fill out a card indicating he is against short term rentals in quiet residential neighborhoods.

Fred Reihardt, 209 Curlew, FMB, was not present. He filled out a card against short term rentals.

Joan Huyett, 198 Curlew, FMB, was not present. She completed a card against short term rentals in single family neighborhoods.

Mary Smith, 199 Curlew St., FMB, was not present. She completed a card indicating she is against short term rentals in quiet residential neighborhoods.

Maria Eigerman, 5 Glenview Manor Dr., FMB, came forward. She is present on behalf of Neighbors for Neighborhoods. She presented six recommendations based on the use of the evaluation matrix. 1. What should be the minimum rental period for transient dwellings in the RS zone? Answer: One month. A month achieves the highest consistency with the Comp Plan, increased profits for owners of rental property and a boost to local lodging business. 2. What should be the minimum rental period for transient dwellings in non-RS zones? Answer: 7 days. 3. Should transient dwellings be licensed by the Town? Answer: While it is not easy for the Town to take on new administrative burdens all neighborhoods on Estero Island desire protection from poorly regulated unsafe short term rentals. They believe the Short Term Rentals Task Force made this decision correctly. A Town license should be required for every transient dwelling on the island renting for one month or less. 4. Should there be exemptions for existing legal weekly rentals in the RS zone? Answer: Their analysis says "no." The key legal issue is whether anyone ever had the right to rent for less than six months in the single family residential zone. Both sides can and probably will be argued in court. Council faces a watershed decision. It can support the Comp Plan. and terminate all weekly rentals in RS or it can hedge by allowing exemptions recognizing there is no

way to distinguish between legitimate retirees and commercial speculators. 5. What should be the effective date of the ordinance? They suggest January 1, 1999. 6. When should short term rentals exemptions in the RS zone expire? They like the LPA approach, which would be irrevocably on the date the property title changes. She offered each Council member a copy of their text.

Carol Schardt, 21650 Madera Rd., FMB, came forward. She has been at this property for 11 years and does not rent her home. She lives in a residential home. She discussed timing with the Town Council. The economy is in a recession and will probably get worse. Terrorist attacks could happen at any time. Florida is a tourist state and will be more impacted by contracting economy. Florida needs a vibrant economy for tourism and timing is everything. Fort Myers Beach has had short term rentals for over 50 years. The waiting of two years will not harm anyone. However, passing Chapter 34 now may do irreparable economic harm to their citizens along with taxes and economy. She urged the Council to wait. The Council should turn their efforts to other issues, such as protecting the water system and solving the traffic issue. This will do more to enhance their quality of life on Fort Myers Beach than implementing Chapter 34.

George Whistler, 21630 Madera Rd., came forward. He has been on the island for 25 years. He feels by segregating off part of the island and calling it a quiet zone will only discriminate against property owners. He has been researching some of the civil rights laws and he feels the Town could be involved in civil right lawsuits. He does not rent his property, but he feels the person he sells to should have the right to rent the property on a short term basis anytime in the future. He feels they should be fair to everyone. A decision should not be made this evening. He provided some handouts for Council. A petition of 310 signatures in favor of short term rentals has been obtained.

Gayle Luchsinger, 6979 Winkler Rd., Ft. Myers, came forward. He was asked to read a letter from John Penning from 133 Andre Mar. John Penning is a property owner on Fort Myers Beach and has owned property on and off since 1959. As most people do, they rented a home and spent time exploring until a decision was made to purchase. There were not many long term rental houses on the beach during those days. Like their family others had discovered Fort Myers Beach. His memories of the beach in the early years include all of the rental homes and cottages his family stayed in. From the 1950's until the present there have always been those residents who feel since they are now here they no longer want tourists or snowbirds here also. Property owners of Fort Myers Beach should remember how they came here for the first time. Family and friends should also have the same opportunities. Life in the hotels is not the same as staying in one of the homes within the neighborhood. Leave the short term rentals alone, because they do have a purpose.

Angie Parker, Chairman of the FMB Chamber of Commerce, came forward. Her address is 14012 Shimmering Lake Ct., Fort Myers. She prepared a short statement which was provided to Council. The issue of short term rentals has divided the Town into many different directions. The Chamber has spent much time talking to business members, residents and council members. The Chamber expressed their position on many occasions based on the legislative policies, which were adopted September 4, 2002 by the board of directors. The Greater Fort Myers Beach area Chamber of Commerce supports the rental of private homes. Any recommended increase in the minimum time would adversely affect the private property rights and economy of Fort Myers Beach. The Chamber of Commerce respectfully requests that one of the two proposed options are selected, which are options 3 & 6. If Option 2 were considered the Chamber strongly recommends and encourages a registration period to allow the homeowners their protection of their personal property rights. The Chamber appreciates the time the Town Council has given to this matter and values their relationship with the Town.

Ann Alsop, 8102 Lake San Carlos Circle, Fort Myers. She lived on Fort Myers Beach for over 20 years at 400 Washington Ct.. She would still like to go back to option 6 with no restrictions. She was a member of the Task Force and indicated option 3 is part of her agenda. She expressed the newspaper indicates the tourists are not taking long vacations. The average stay is only 7 days. Please take into consideration the people who own land and not just those who vote.

Judy Haataja, 400 Bayland Rd., FMB, came forward. She is a Realtor and has lived on the island since 1960. She referred to John Penning's letter and felt it was great. She prefers option 6.

Jim Williams from 107 Gulf Island Dr., came forward. He represents the Gulf Island Manor Association of 58 people. He distributed a copy of a simple approach. This group is concerned with the quality of life on Fort Myers Beach. They would like to remain a single family residence designation. They request zoning for 3900, 3950, 3970 and 4000 Estero Blvd. to remain single family residential. These lots are in the Gulf Manor subdivision, which is a deed subdivision that is legally recorded with Lee County. The

Town Council's attention to the request is appreciated.

Jim Steele, 5 Pepita St., FMB, came forward. He is in the proposed quiet zone. He purchased his home in 1997 and has been a resident for over 2 years. In his neighborhood there are a variety of different types of rentals. He has never heard of any complaints or noise. He loves it down here. Trash and noise sounds like an enforcement and landlord issue. He does not feel it would be reasonable to restrict the use of 1,300 family residences because of a few problems with landlords and code enforcement. He is opposed to any restrictions on short term rentals.

R.J. Ward, 1312 Colonial Blvd. #31, Fort Myers, came forward. He is with Spectrum Engineering and he represents Fishtail Marina. Fishtail Marina is currently zoned CPD and has had this designation working on the master concept plan for the last decade and one half. An opportunity now exists to go into the Santini District. He was asked late this afternoon to come down and request Fishtail Marina be included in the Santini District and switch over from CPD with one provision. The provision is that the present CPD allows for open storage and is used for boats and trailers. The proposed language will allow for open storage only in a CPD. This will prevent them from going into the Santini District. He read a letter to the Town Council. He expressed that Bill Spikowski has done a great job working together to develop acceptable language.

Peter Lisich, 131 Estero Blvd., came forward. He referred to page 79 - Section 34.639 Building Heights. The height is the vertical distance between the base flood elevation as established by the maps. The State of Florida sets the required building elevation. This type of wording causes confusion during the zoning and/or permitting process, because you do not know the required elevation until permits are pulled. The County has dealt with this issue for many years. The County began using wording that the height will be measured above the required elevation or regulated required elevation. He suggests that Bill Spikowski modify the language to make clear what the height of the building will ultimately be, which must be based on the regulated required elevation.

Peter Lisich continued onto discuss the pre-disaster build back. He views this section as very important. He is proposing the removal of language on page 213 and pointed this out to the Town Council. He understands in residential land use the density is measured as number of units. Square footage is a very unusual reference to measuring residential density. Square footage is a very changing trend in taste and needs. He feels the Town should not go back to square footage that was built for different reasons.

Robert Simon, 13 Sunview Blvd., FMB, came forward. In the past he has addressed the Council as a member of Neighbors for Neighborhoods, and a full time resident who lives in a low density single family neighborhood. Tonight he is present as a member of the Beach United Methodist Church. The church is concerned about the possible declining membership and support. Any decline in either will impact this community. He read a letter sent to Council from Mr. Max Reeves, Chairman of the Administrative Council of the Beach United Methodist Church. The letter expressed a desire for option 2.

James Bagley, 207 Driftwood, FMB, came forward. This property is located in the effected area. He feels that he will lose a great deal of investment value by an act of government. Whenever the government acts to restrict trade there are more losses than winners. Those who believe that government can protect them from bad neighbors will be seriously disappointed. He does not see a plan to come up with funding to offset litigation, in his opinion, that will occur here. He does not envy the Council for the decision which must be made here today.

Emma Kolpek, 345 Mango #606, FMB, came forward. Her home is not in the proposed area being discussed for short term rentals. Fort Myers Beach has grown much over the past 7 years. Some good and some not so good. The adoption of Chapter 34 will provide the Town Council a tool to use for future growth of Fort Myers Beach. This is a very well thought out plan. She hopes the Town Council adopts the code in its entirety.

Gary Muller, 1482 Argyle Drive, Fort Myers, came forward. He is a local planning consultant representing West Coast Quality Homes. His client is in the process of purchasing property to develop single family home sites in the proposed commercial boulevard zoning district. He proposes the minimum lot sizes and setbacks of the RC zoning district be incorporated for residential uses in the CB district, and the build to lines only apply to commercial uses. This is consistent with the supplemental language that is being proposed by Bill Spikowski under Section 34-703C at the top of Page 2 of the March 3 memo to the Town Council.

Kevin Mulhearn, 2450 Estero Blvd., FMB, came forward. He does not live on the island, but spends many hours working on the island. He and his wife also own 7 parcels on the island. He strongly opposes this ban. This is a code enforcement issue. He referred to two situations in which the Council voted

unfavorably (Neptune Inn and Swimming Pool).

Mayor Hughes indicated the implication made by Mr. Mulhearn was that the Town Council denied the swimming pool. This was not denied and was approved.

David Upton, 298 Ohio Ave., FMB, came forward. He came down to Florida 18 years ago from Michigan. For the past 15 years, his father along with brothers and sisters have come here for Thanksgiving. He supports option 6. If all rentals are concentrated in one area there could be a potential for problems down the road. This is a behavioral problem that can be dealt with, with proper policing vs. a change in zoning.

Lorraine Albino-Hinkley, 135 Delmar Ave., FMB, came forward. Asked if the 50% to 25% has been voted on? Mayor Hughes indicated that this is not relevant to what is being considered this evening. Lorraine asked if another hearing will be held? Mayor Hughes replied that this was adopted February of last year. He suggested a meeting with Deputy Manager John Gucciardo. There are some definite benefits to the property owners.

Dan Graviss, 283 Carolina Ave., FMB, came forward. He feels this issue should be placed on a ballot for vote by the residents.

Pete Eissler, 5386 Palmetto St., FMB, came forward. He is building a new home on the lot next door at 5380. He is concerned with freedom and the direction they are headed. He thanked Council member Van Duzer for his kind words in support of his situation. He is opposed to Article 34. He wonders why someone feels they have the right to question the size of the homes to be built on the island. He questions the thinking going on, on this island!

Ed Oelschlaeger, Owner of the Carousel Inn, came forward. He just acquired the Inn in late January. He is the President of ECO, which is a luxury condominium development firm. He has been developing a luxury product in Florida for over 30 years. He has serious concerns with the provisions in the proposed Chapter 34. This will negatively impact the investment of capital to the community. He appreciated the time this Council and the Planners have put in place. Based on his experience this will not accomplish the goals as is presently proposed. He asked Council to give some thought and be sure the goals are being accomplished. He is referring to the pre-disaster build back and height.

Tom Babcock, 5130 Williams Dr., FMB, came forward. He addressed the article from today's NewsPress. This article regarding tourism refers to the current business environment and not zoning. Many of the problems may actually be the result of too many lodging units. He feels poor economies really point out why the need a diverse community. The problem is not more rental units, but more long term vacationers or permanent residents. The Town Council is shaping the future of this island. If there are not restrictions on rentals in the residential areas, they will then become an all rental island. The sense of community will be lost. He thanked Council for all their hard work and wished the Council good luck.

(Mayor Hughes announced a 5-minute break)

Andrew Smith, 16857 Windcrest Dr., Fort Myers, came forward. He is a local henna tattoo artist. He understands that he must be located within an indoor facility or underneath a canopy. Requiring a henna artist to be enclosed is not favorable. This is a sticky, messy activity and should be handled outdoors. He feels it will be detrimental to his business to be indoors.

Mike, 1028 5th Street, FMB, came forward. He is the owner of Body Sensation. He commented that his store is only approximately 900 square feet. His business places items outdoors for sale and he supports this position. He questioned if it will be legal to place items outdoors? His business counts on the outdoor sale of merchandise to cover the high rent and expenses.

Brian Anderson, owner of West Coast Surf Shop, came forward. He lives off of the island, but owns this business on the island. He is a member of the Times Square Advisory Board. He spoke on the issue of outdoor display of merchandise. He feels this will impact many of the small businesses directly. The Advisory Board did not make a recommendation to the Town Council on limitation of merchandise on private property. A number of members were concerned that this matter came up under Article 34 very quickly. Implementation in a quick manner would cause much hardship to some of the small businesses. He does not feel that the henna tattooing and hair braider's fall under the tattoo parlor restrictions. More time needs to be made for study and the Advisory Board should also make a recommendation to Town Council. He asked Council to hold off on a decision on this matter.

Evelyn May, 163 Old San Carlos Blvd., FMB, came forward. She is associated with So. Seas Trader. She is also on the Times Square Advisory Committee. This committee did table this item, because they felt private property was not to be affected and the public property was to be discussed. She agrees

with Brian Anderson. It should go back to the Times Square Advisory Board for further discussion and a recommendation to Town Council.

Mayor Hughes closed the public hearing.

VIII. FINAL PUBLIC HEARING - AMENDING LAND DEVELOPMENT CODE - CHAPTER 34

Mayor Hughes began by following the procedure as set forth in Bill Spikowski's memo. The first group were changes that are fairly routine. These items are numbered as items 1 thru 15. This section will be treated in the same manner as the consent agenda. The second group does include alternate language that will need to be addressed item by item. He complemented Bill Spikowski on his work preparing this information for Chapter 34.

Mayor Hughes began addressing each item one by one for the first section. He questioned the definition for parking lot. He is troubled with the procedure for keeping track of the leased or assigned parking. He felt that a provision for a recorded agreement should be established.

Bill Spikowski replied the way the new code is written these particular types of parking lots will require a special exception or CPD zoning in most cases. When these come before Council, the Council will have the ability to restrict this parcel to parking only for the business in question. He indicated this should be handled appropriately, but it may become more difficult on Old San Carlos or Times Square. These are the only areas where a business can survive without onsite parking. This language is not as restrictive as other communities and he feels it will work right for Fort Myers Beach.

The issue was discussed as raised by Mr. Williams from the Gulf Island Manor Association. Mayor Hughes reviewed there are four properties they wish to remain single family. The map indicates these properties are proposed as residential conservation.

Bill Spikowski replied the reason these lots are designated differently is due to them being gulf front parcels, which are across the street from the rest of the subdivision. In the Comprehensive Plan there is a difference in how the lots are designated. Council has the ability to designate land in mixed residential to the single family district. He would be uncomfortable going ahead with a change without hearing from the property owners. The residential conservation zone has a little more flexibility on building types and will allow smaller lots. The setbacks are more lenient.

Vice Mayor Cain questioned the next step to satisfy these residents. Bill Spikowski replied that the Town has the ability to initiate a zoning change on any property within the Town. This matter will then come before the Town Council as a zoning case. The other option would be to reconsider all the gulf front lots as a Comprehensive Plan amendment.

Council member Van Duzer commented that he had spoken to Mr. Williams earlier who indicated he had permission from the four property owners in question. Bill Spikowski felt that Mr. Williams represented only the Association, which may have included these four parcels.

Council member Van Duzer commented on some additional parcels who are requesting changes. Mayor Hughes indicated Mike Roeder was present earlier and informed him a discussion had taken place with Bill Spikowski. The plan of going through a small scale Comprehensive Plan amendment is acceptable. Council member Van Duzer took exception to these comments. He has spoken to these individuals today who have indicated they would like changes made and will accept the process of an amendment, if the matter cannot be addressed this evening.

Council member Rynearson questioned if advertising must take place? Bill Spikowski replied that the public is on notice of the proposed changes. Some changes can be made and others require changes to the Comprehensive Plan. Mayor Hughes would not be comfortable making changes without written notice from the property owners.

Attorney Dick Roosa commented the applicant should be the property owner. Also, the changes must be made within the Comprehensive Plan and should include a less intense use.

MOTION: Made by Council member Bill Thomas to keep 3900, 3950, 3970 and 4000 Estero Blvd. as single family residential lots.

VOTE: Motion fails due to lack of second.

Mayor Hughes reviewed the remainder of the first section. Discussion took place regarding Fishtail Marina. Bill Spikowski indicated he spoke to the Marina one week ago and they have decided to go into the Santini District. He feels this is a good change and fits in better with the Town's plan.

Vice Mayor Cain pointed out an exception has been addressed by Fishtail Maria. Mayor Hughes moved to page 72 and indicated the change is “except as a marine accessory use.”

Bill Spikowski does not have any concerns with this language. He is confident the open storage is already allowed in the zone.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Ryneerson that Fishtail Marina is incorporated in the Santini Zoning District with the exception in D-8 after the storage open to include the following (except marine use).

Discussion: Council member Van Duzer questioned if the designation on the map will be changed?

Bill Spikowski replied the map will be changed to show the entire Fishtail Marina in the Santini District. The CPD will be invalid at the end of the day.

VOTE: **Motion passes unanimously.**

MOTION: Made by Council member Bill Van Duzer and seconded by Mayor Daniel Hughes to allow the property located at 111 Bahia Via to be re-zoned from RC to CB and be shown on the map.

Discussion: Council member Bill Van Duzer commented that this property directly adjoins the Texaco station and was zoned C-1. Through the process of the Comp. Plan it was changed to RC. The owner feels he has lost the value of his property. He feels this is a reasonable request and this is the time to address the concern.

Town Manager Segal-George questioned if this matter requires a Comp. Plan change? Bill Spikowski replied the request to CB would not be consistent with the Comprehensive Plan and the Town Council would need to follow up quickly with a Comp. Plan amendment or this could be deemed invalid. He indicated the Comp. Plan amendment should be made first.

Mayor Hughes would be uncomfortable making a map change in anticipation of a Comp. Plan amendment.

Motion withdrawn by Council member Van Duzer and Mayor Daniel Hughes.

Mayor Hughes continued and asked for clarification regarding conversions of hotel/motel to dwelling units. Bill Spikowski replied the previous code as written discusses the pre-disaster build back process to rebuild a hotel with a hotel or residential with residential. A number of requests have come in to convert from a hotel to residential, and the code did not state that you could or could not proceed in this manner. This language clarifies these changes can be made with the same limitations on size and square footage.

Council member Van Duzer commented there is no allowance made for a larger space, such as motel room or living room, etc. Density should be related only to the number of heartbeats that occupy a space and not to the square foot area. Intensity should relate to the square foot area of a commercial usage and only a commercial usage.

Bill Spikowski went onto explain that the Comprehensive Plan has the language of not increasing density or intensity. The manner in which the code is written all pre-disaster build backs must come before the Town Council as a planned development zoning. Through this process you are more or less entitled to build back the same number of square footage. Many applicants will come before Council with a deviation from the rule. He does not believe the language is as burdensome as some have suggested.

Mayor Hughes moved to group 2, which are changes that require discussion. Council member Thomas suggested handling each matter in numerical order.

Mayor Hughes addressed number 16, which is the floor area ratio (FAR). Bill Spikowski indicated

this is the language as requested by Council member Van Duzer at the last meeting. This would substitute in the RS and RC zoning, the elimination of floor area ratio for these two districts only. It would replace a more conventional measure of intensity, which would be a percentage of the lot covered by a building with regard to how many stories the building is tall. This would not count driveways, sidewalks, swimming pools or swimming pool cages.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to accept the new language as prepared by Bill Spikowski with regard to floor area ratio within item number 16.

Discussion: Vice Mayor Cain reviewed the changes being made for clarification.

Council member Van Duzer feels if this language is passed they should go back to the old setback requirements of 25 feet. This has worked well for many years and will serve the Town better at this time. He would like to see the removal of the residential design standards at this time for further discussion at a later date.

Vice Mayor Cain expressed that she is not trying to dictate how anyone's home should look with residential design standards. She is concerned where the Town is headed. If you would like a larger home, you should get a larger lot. This is an issue being considered in all areas. She feels a scale must be established. She feels the floor area ratio is the only situation that will help their Town.

VOTE: **Motion passes 3 to 2. Vice Mayor Terry Cain and Council member Bill Thomas dissenting.**

Mayor Hughes moved to the outdoor sales in the downtown zoning district. Bill Spikowski added that this topic has been discussed many times. The language in the box located on page 10 was not recommended by the LPA.

Dan Folke expressed that the new regulations with regard to outdoor display of merchandise will allow the continuation of the henna tattoos and hair wraps outside. There will be some new guideline, if adopted, which will regulate the outdoor sales or merchandise. Options would include a mobile cart, henna tattoo and hair wrapping can take place on a raised porch with an appropriate table setting to be determined.

Town Manager Segal-George indicated this went to the Times Square Committee. Some merchants did attend the LPA meeting with regard to these proposed regulations.

Dan Folke explained these rules, if adopted, will no longer allow the racks of clothing displayed out in front of buildings. Some flexibility can be established.

Town Manager Segal-George added that the LPA discussed these matters more than once. The Times Square Advisory Board chose to table the matter with regard to displays on private property. They were against displays on public property. She feels these regulations are very important to clean up the area and make it look more orderly.

Vice Mayor Cain quoted "vending rights are available only to the owner of the private property that it immediately abuts the sidewalk or pedestrian plaza." She asked if this meant it cannot be sublet? Bill Spikowski replied that this language does not state this. If the Town Council would like to include this language it should be indicated. This language states even if you follow the rules you still have to obtain a permit from the Town. The Town permits have additional restrictions.

Bill Spikowski indicated the entire Section of B needs to be reworded. Mayor Hughes suggested "vending rights are available only to the owner or the primary lessee and not to a third party that does not lease the abutting property." All council members were in agreement with this change.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to accept the outdoor sales in the downtown zoning district with the rewording of Section 2 on public property (Section B) with vending rights available to the owner of his lessee that immediately abuts the sidewalk of the pedestrian plaza. Option E to also be included.

VOTE: Motion passes 4 to 1. Council member Howard Ryneerson dissenting.

Mayor Hughes moved to item 18, which is the Village Zoning District. A letter and presentation was made earlier this evening by Beverly Grady. All items were resolved, except for one issue.

Bill Spikowski indicated Beverly Grady expressed option 2 as the preferable option. Section 3 presents a problem, because the language being proposed for a change is in Chapter 6 of the code and is not advertised this evening. He did indicate they will be looking at revisions to Chapter 6 this fall and could be considered at that time.

Discussion of the watch and warning language was addressed. Mayor Hughes favors the memo which indicates the hurricane watch should remain. A hurricane warning means that hurricane conditions are expected within 24 hours. Vice Mayor Cain feels they must be consistent with what is heard on the radio.

Bill Spikowski indicated this is the County's language. This language states that it shall be tied down within 48 hours of the issuance of a watch. If the word warning was added, the storm would have come and gone before this has any meaning.

Deputy Town Manager Gucciardo expressed he is not familiar with the language on page 107. He understands at the issuance of a watch people in general should begin taking precautions. People in low lying areas or with more vulnerable properties should begin their preparation that much further in advance. Once a warning has been issue it is almost too late to do anything with the properties. He suggests the language for the Town be as consistent with the County.

MOTION: Made by Mayor Daniel Hughes and seconded by Vice Mayor Terry Cain to accept the memo as prepared by Bill Spikowski.

VOTE: Motion passes 3 to 2. Council member Bill Van Duzer and Council member Howard Ryneerson dissenting.

Bill Spikowski raised the issue of F and G pertaining to the Village District. These are two different alternatives. He is suggesting F. Beverly Grady confirmed that item F is acceptable.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Ryneerson to accept Item F.

VOTE: Motion passes unanimously.

Bill Spikowski addressed item number 19. This is the language requested by Beverly Grady on behalf of John Richard. This will allow an applicant who is not granted administrative approval to amend the plan development to appeal directly to the Town Council. This would create a new process and be handled the same as any other administrative appeal. Because this would affect land use, all the surrounding land owners would be notified. This would be a single hearing before the Town Council.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Ryneerson to accept the language to create the new administrative appeal process.

Discussion: Mayor Hughes will support this motion. He feels this is an expeditious way to handle minor amendments.

VOTE: Motion passes unanimously.

Mayor Hughes addressed the armature radio towers. Two options exist.

MOTION: Made by Council member Howard Ryneerson and seconded by Council member Bill Thomas to choose Option Two for 50 feet. **Motion amended:** Made by Council member Howard Ryneerson and seconded by Council member Bill

Thomas to delete the language “wherever possible.”

Discussion: Mayor Hughes raised the issue if an antenna is legal non-conforming should additional language be created? No responses were heard on this matter.

VOTE: **Motion passes unanimously.**

Mayor Hughes moved to the section pertaining to the outdoor display of merchandise. Bill Spikowski added that the potential new language is in Subsection 6 in Option 2.

Council member Howard Rynearson would like to change the numbers from 3 and 8 to 5 and 12. Bird baths would be short at three feet.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to adjust the height to 4 feet and width to 8 feet.

VOTE: **Motion passes unanimously.**

The next topic up for discussion is short term rentals. Mayor Hughes announced there is an addition of Option 7 as presented by Jane Plummer.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to begin with the adoption of Option 2/Variation A to include the variations and changes with the exception of Section 34-2393. An addition of Town notification within 30 days for the 24-hour contact. She added an annual application fee from January 1 to December 31. Failure to receive a license or complete renewal would make an individual in violation.

Discussion: Vice Mayor Cain would like the issue of code of conduct discussed and addressed separately.

Council member Thomas commented the LPA voted 5 to 4 for this option. He understood it would have been a 6 to 3 vote, if the property is transferred to an heir. He feels this language should be included. It was pointed out to Council member Thomas this language is already included (D-2). Additional discussion took place between Bill Spikowski and Mayor Hughes. Mayor Hughes feels this language needs additional clarification.

Attorney Dick Roosa feels the intention is that the transfer which occurs by operation of law because of the death is an exception. Any subsequent transfer would not be accepted. Bill Spikowski agreed further clarification is needed and would be discussed during the next break.

Council member Bill Van Duzer cannot support the motion. He would like to change the date from October 22, 2002 to March 3, 2003. He would like to see the word continuous deleted. He does not like the word “continuous” because the homes are not rented every week. He feels the right to rent should run with the land and not the present owner. Additional language should be added to the registration section to include the acceptance of signed rental contracts for income tax returns and delete the wording in B-6. Replace with “beginning on June 1, 2004 and every year thereafter renewal applications are due for all registered weekly rental units. The rental applications should be the same as the original application, except it must show proof for the payment of taxes. He would like to adopt the code of conduct for these specific rentals.

MOTION: **(Amended)** Made by Council member Bill Van Duzer to accept Option 2. Remove the word “continuous” from all places within the option. Adopt Variation B with the

date established as March 3, 2003. Change the date in the registry where applicable to March 3, 2003. Adopt Variation C, which states the right runs with the land. Add B-5-D signed rental contracts or income returns can be used as proof of rental. Add a new B-6, which states as of June 1, 2004 and every year thereafter the renewal applications must show taxes have been paid. Adopt the code of conduct for short term rentals only in the single family residential area.

VOTE: Amended Motion fails due to lack of second.

Discussion: **(Continued)** Vice Mayor Cain agrees with Council member Van Duzer on some items, but not all. She agrees with Variation B with today's date. She cannot support Variation C. She agrees with the new B-6. She is not in support of supplying the code of conduct for just this residential area. She is unsure about the removal of the word "continuous." She is concerned by removing this word will change the meaning of some of the sentences.

Council member Thomas could accept some of the changes by Council member Van Duzer. He supports Variation A to make this meaningful. He suggested a compromise date of January 1, 2003.

Mayor Hughes expressed that he will not vote on this motion. He and his family did rent homes on this island when they first began coming to Fort Myers Beach. Presently, he owns a home in the quiet zone, which was unaffected by the market values due to discussion on the short term rental issue. The adoption of this ordinance does not take away property rights, but does diminish them. This is not an unlawful deprivation of property rights. There is no data to support that short term rentals are worse than long term rentals or full time owners. He has discussed this with the police department and no increase in enforcement has existed. He expressed that while the Comp. Plan was being developed, the short term rentals were not discussed. The testimony with regard to economics has gone both directions. Ridiculous numbers have been quoted. He has a concern on the discrimination issue. He indicated if an adoption is made the Council must look very closely at the amortization provisions as to the proliferation. Neighbors for Neighborhoods have done an excellent job and handled themselves very professionally. He is not prepared to conclude that a short term rental prohibition in the quiet zone is in the best interest of the Town at this time. He believes that the benefits it would have on the attempt to maintain the quiet zone and to mitigate the proliferation do not overcome or out weight the severe economic consequences it would have on the properties affected, as well as the administrative burden it would place on the Town.

Vice Mayor Cain always goes back to the Comprehensive Plan when a tough decision needs to be made. The Comp. Plan indicates they must protect the residential neighborhoods. She feels a decision needs to be made now.

Council member Van Duzer addressed additional areas within the Comp. Plan, which address the protection of residential neighborhoods.

Council member Thomas expressed they are at the tipping point. If they go any higher, the properties will begin to devalue. They must maintain a quality of life and save the very fiber of this community along with the institutions within the community. If the residential areas are replaced by commercial areas what will happen to the churches, schools, little league programs, etc.? He strongly supports Option 2.

Council member Ryneanson does agree. He feels the neighborhoods are being

overrun. He was looking to compromise, but feels he is unable to support the direction the Council is heading. He would like to incorporate a few changes and address additional items as needed in the future.

MOTION: **(AMENDED)** Made by Vice Mayor Terry Cain and seconded by Council member Bill Van Duzer to adjust the date to January 1, 2003. The word "continuous" to be removed. Accept Variation C. Accept the signed rental contracts and income tax forms. Documentation must be given by June 1, 2004 showing taxes are paid.

Discussion: Bill Spikowski added that in order to accomplish the changes he referred to page 190, Item 5 -a, b, and c. He feels the wording should be adjusted to state "may include" and strike "must include."

Council member Van Duzer replied "may include" is his intention for language for the first year only.

Bill Spikowski questioned if the word "continuous" is out, should it be replaced with a period. Council member Van Duzer replied that the owner must show proof the home was rented within the 12-month period prior to the adoption of this ordinance. This was agreed upon by Vice Mayor Cain, Council member Van Duzer and Council member Thomas.

Mayor Hughes questioned the fee? Attorney Dick Roosa added the fee could be established at a later public hearing. Mayor Hughes suggested the language "annual fee to be established from time to time by the Town Council." Attorney Dick Roosa agreed with this language.

MOTION: **Motion passes 3 to 2. Mayor Daniel Hughes and Council member Howard Rynearson dissenting.**

Discussion turned to the topic of Code of Conduct. Council member Van Duzer indicated a tremendous cost is involved. He will support only making this in effect to those within the quiet zone. He would like to see everyone come into compliance.

Mayor Hughes feels this is discriminatory.

Bill Spikowski replied the manner in which the language is written indicates the only ones who have to register are in the single family zoning district. The code would apply island wide up to one month rentals. How can it be enforced? Only through normal code enforcement procedures. He feels most will comply, because they are not unreasonable standards.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Van Duzer that the code of conduct for short term rentals would apply to all weekly rentals up to one month.

Discussion: Vice Mayor Cain feels this matter will need to be addressed in the future.

Mayor Hughes feels the code of conduct should apply to all short term rentals island wide. He is concerned about enforcement if everyone is not registered.

Bill Spikowski feels that registration should apply to those in Option 2. Code could apply to everyone with no administrative cost. This could be addressed at a later time, if necessary.

VOTE: **Motion passes unanimously.**

Mayor Hughes thanked everyone for their time and efforts on this matter. Some excellent presentations were made.

Bill Spikowski moved to the topic of tattoo studios and body piercing salons.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to adopt the memo by Bill Spikowski referring to Option 3. He would like the removal of the word "expanded." In the event an existing business suffers a fire or other natural disaster it can be moved within 1000 feet of the current location.

VOTE: **Motion passes unanimously.**

Mayor Hughes referred to the interim zoning map. This topic was addressed earlier in the meeting.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to adopt the interim zoning map with the changes made earlier during this meeting.

VOTE: **Motion passes unanimously.**

Bill Spikowski addressed item 25. He indicated he never contemplated an individual would convert an existing business into single family lots in the CB zone. There are no standards for this matter.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to adopt item 25 - CB Zoning District.

VOTE: **Motion passes unanimously.**

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to adopt Item 26 - Appeals and Administrative Decision as written.

Discussion: Bill Spikowski explained that the commercial design standards administration is delegated to the Town Manager. An unhappy applicant with a decision can appeal to the Town Council. This provision would allow the Town Council to appeal any matters within 30 days. He feels this may be a trial period and Council may determine it is not necessary.

VOTE: **Motion passes unanimously.**

Mayor Hughes moved to page 204. He indicated there is a reference to establishments. This would refer to an establishment as defined in Section 3067, which is another body piercing salon or tattoo studio. The language must read "as defined in Section 34-3067".

Bill Spikowski added that the name must be changed or the reference should be added. This issue has been confusing too many.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Rynearson to add language to refer back to the previous section, which defines the language.

VOTE: **Motion passes unanimously.**

Mayor Hughes referred to the Mobile Welcome Station.

Bill Spikowski added that this is not covered under the code. The proposed language would state it can be approved through a temporary use permit, which would be limited to 30 days during any six-month period.

Dan Folke expressed to handle the immediate situation would be for a time period of 60 to 90 days to get through season. He recommends that this matter go back before the LPA for consideration. He feels it is difficult to make a recommendation on a matter until it has been discussed thoroughly.

Town Manager Segal-George added the station will need to be removed until there are some code changes.

Vice Mayor Cain is concerned with hurricane season and would like to be assured it will be removed and not become a missel. She will support the 90 days.

Some discussion took place with regard to services being paid for at the mobile unit. These issues need further consideration. Dan Folke suggested putting the Chamber on notice they cannot be selling the service of distributing the brochures, because this is inconsistent with mobile vending.

MOTION: Made by Council member Howard Ryneerson and seconded by Council member Bill Van Duzer to adopt the change as set forth in paragraph 27 of the memo and to change the time limit section to comply with 90 days.

VOTE: **Motion passes unanimously.**

Council member Ryneerson referred to the parking garages (page 96) in the downtown zoning district.

MOTION: Made by Council member Howard Ryneerson and seconded by Council member Bill Thomas to delete the rectangular figure, which represents a parking garage on the map for Seafarer's.

Discussion: Dan Folke expressed that the three locations for the parking garages would need to be approved as part of a planned development. These are not pre-approved locations. He feels this provides flexibility for the future.

Bill Spikowski added that the three diagrams indicate this is the area the Old San Carlos study determined would be appropriate locations for parking garages.

Council member Thomas expressed his reason for being a second to the motion is due to Mr. Wiebe stating twice there would be no parking garage.

Mayor Hughes agrees with Dan Folke.

Vice Mayor Cain feels it should be left in for the future. Another design plan may be favorable in the future.

MOTION: **Motion fails 2 to 3. Council member Bill Van Duzer, Mayor Daniel Hughes and Vice Mayor Cain dissenting.**

Council member Ryneerson mentioned residential design. Council member Van Duzer would like to pull this item out and address further before adoption.

MOTION: Made by Council member Howard Ryneerson and seconded by Council member Bill Van Duzer to pull and/or delete Division 8 regarding residential design standards from Chapter 34. This will be further discussed with the Local Planning Agency.

VOTE: **Motion passes unanimously.**

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Ryneerson to adopt Chapter 34 with the changes and amendments as discussed this evening.

VOTE: (Role Call) Mayor Daniel Hughes - aye, Vice Mayor Terry Cain - aye, Council member Bill Van Duzer - aye, Council member Bill Thomas - aye and Council member Howard Ryneerson - aye. Motion passes unanimously.

IX. COUNCIL MEMBER ITEMS AND REPORTS

Mayor Daniel Hughes - Indicated a letter was received from Bill Young, Congressman, showing his support for the Army Core of Engineering for Lee County. 3 million dollars were allocated in the fiscal year 2003.

Deputy Town Manager Gucciardo expressed they are looking toward 4.5 million dollars in the 2004 budget. The funding in a federal budget for construction allows the Army Core of Engineers to proceed with the drafting of a project cooperation agreement. This is the equivalent of a contract with the Federal government for construction funds in the future. The hope is that the PCA will be finalized over the next months and will give the County the comfort it needs to go ahead and bid the project out and move toward construction. If the project cooperation agreement is drafted and signed by May or June 2003 this will allow a contractor to be on board by early fall. The recommendation would be to not start the project in peak tourist season, but begin around April 2004. He feels that staff would concur with this decision. The intent is to see how the project progresses this summer.

Mayor Hughes feels this project should get underway with these funds.

Mayor Hughes expressed Florida Gulf Coast University has announced their marine lab will go into Rookery Bay. He hopes this will put the Lovers Key/Black Island issue to rest.

Vice Mayor Terry Cain - She will be the representative for the Town at the Lee County Smart Growth Workshop with regard to water and environmental quality on March 14, 2003. She will carry any questions or comments forward.

April 18th the Cub Scouts/ Boy Scouts will have their 3rd annual Pinewood Derby. Times are to be announced, but are normally between 5:00 p.m. and 7:00 p.m.. She has discussed this with Anita Cereceda with regard to being setup in the Times Square area during this time. She asked for special permission from the Town.

Town Manager Segal-George did not feel special permission was necessary. This has always been allowed.

Vice Mayor Cain indicated at the next Marine Resources Task Force meeting (March 12) a review of the applications for the John Mulholland Stewardship award will be completed.

Council member Bill Van Duzer - The Shrimp Festival Parade will be held on March 15th. He has attended numerous meetings with regard to Short Term Rentals and Land Development Code. The alternating light should be up and running tomorrow without any lane changes. Had a great time at the Pilot Club auction. He hopes tonight's decisions are made on a unanimous basis. This will allow Council to move forward on the issues at hand.

Council member Bill Thomas - Does not agree with Council member Van Duzer with regard to unanimous votes on Short Term Rental issues. If he does not agree, he will not vote to make it unanimous. He has noticed the improvements on Fort Myers Beach both public and private. He commented on Hooters and expressed that this is a private enterprise working together with the Town. He also noticed a multibillion company called Exxon who has one of the most unattractive gas stations on the island. He would like to see more community effort with regard to beautification. Cement corner to corner with vast runoffs is not ideal for the ecology of the community. He is looking for support from the Town to encourage some beautification. He feels this is an eyesore.

Town Manager Segal-George replied that Gini Ross had them remove many unattractive signs. She expressed that some items sold inside, which qualified under the drug paraphernalia ordinance were removed. She is unsure if additional changes with regard to the cement can be made.

Dan Folke added that it is difficult to improve landscaping without the company coming in for a permit. He suggested the adoption of minimum landscaping requirements and make them retroactive.

Council member Thomas suggested the Town present a formal letter to encourage beautification? Town Manager Segal-George replied that the Town can pay them a visit suggesting additional beautification.

Dan Folke feels as the properties redevelop you may see additional upgrades to surrounding properties.

Council member Howard Rynearson - Expressed that he visited Old San Carlos. This area is working. People are sitting on the benches and walking up and down and in/out of businesses. He took off his hat to staff, Damon and Bob Rockwell who put this project together. He expressed his appreciation.

X. TOWN MANAGER ITEMS

Town Manager Segal-George explained that Council has been kept up to date on the issues

pertaining to drug paraphernalia. The findings were successful with the hearing officer. According to Dave Crabtree there is no drug paraphernalia on the island. She felt this is quite an accomplishment. The Sheriff's office and Lee County is looking toward what has been done. Pending the appeal of the decision the property owner has removed all drug paraphernalia from his store. It is very unique and unusual for a community to find a way to complete a task that nobody has been able to do.

All Council members were copies on a series of e-mails with regard to the language for permits with DEP on the Harbor Plan. An attorney in Tallahassee has been retained to work with Attorney Dick Roosa to develop some better language in the permit. She felt he has been very successful with the language he has obtained. She is looking for direction from Council to see if this language is sufficient to move forward. If DEP will accept the language, a permit can be issued.

MOTION: Made by Mayor Daniel Hughes and seconded by Vice Mayor Terry Cain to accept the language as proposed by the special counsel.

Discussion: Town Manager Segal-George reviewed the proposal new language. This language reads "Use of the current vessel is discontinued, however, the documented individual may replace the current vessel with a vessel that will result in a net environmental improvement without affecting the live aboard use." A second provision is being suggested, which states that "The determination of whether a vessel would result in a net environmental improvement shall be made by the Town in writing. This determination shall be provided to the department for review." She added that in most circumstances if an individual has a grand fathered use and wants to obtain a new vessel they will be able to move forward with this new provision.

VOTE: **Motion passes unanimously.**

Town Manager Segal-George hopes that this language will start this project up and running again. She reviewed some procedure. All who spoke at the last public hearing (Chapter 34) were organized and provided to Council for informational purposes. The new system for notification of time limits during public comment were explained and shown to all present.

Council member Van Duzer questioned the Deputy Town Manager about a letter received with regard to a strong protest against the water rates.

Deputy Town Manager Gucciardo plans to address the resident who wrote this letter. Sewer rates are only passed along from the County. He feels there is a slight misunderstanding with regard to the water rates. He will explain in letter form and copy to the Council members.

XI. TOWN ATTORNEY'S ITEMS
None.

XII. PUBLIC COMMENT

Bob Simon from Sunview Blvd. came forward. A water main break at the end of his street took place. This was repaired reasonably quickly. The repair of the street took about 4 to 5 days. The black top repair where Sunview meets Albatross is terrible and a bad repair. Town Manager Segal-George will make note of this item.

Darin Smith, 739 Estero Blvd., came forward. He has spoken with Howard on the news rack clutter. Many of the boxes are empty, knocked over and an eyesore for the Town. He searched further on the topic and passed out literature to the Town Council for their review. He found a company called City Solutions. He expressed their services and explained a budget could be created the Town could work with to get this problem rectified.

(Meeting was adjourned at 4:20 p.m.. The above two public comment speakers were prior to the start of the 6:30 p.m. portion of the meeting.)

XIII. ADJOURNMENT

The meeting was adjourned at 11:52 p.m..

Respectfully Submitted,

Shannon Miller
Transcribing Secretary

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.