FORT MYERS BEACH
TOWN COUNCIL MEETING
MARCH 17, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Regular Meeting of March 17, 2003 was opened by Mayor Daniel Hughes on Monday, March 17, 2003, at 6:30 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, Jerry Murphy and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REV. JEANNE DAVIS, PASTOR BEACH UNITED METHODIST CHURCH

The invocation was given by the Reverend Jeanne Davis.

IV. PUBLIC COMMENT

Bob Ross, 2131 Davis Blvd., Ft. Myers, came forward. He is with UTELCO and came to comment on the Old San Carlos construction project. UTELCO was placed to perform the work on the Old San Carlos. The project was difficult due to the original design. UTELCO was told to move forward by the Town representatives and complete within the original time frame. This project was completed during this time. He is glad the Town residents and visitors of the Town are enjoying the facilities. He feels that the Town should pay the contractor for the work. The short pays on the draws throughout the project and draws #9 and #10 are severely past due in their opinion. After months and many attempts they met with the engineer and representatives of the Town on Thursday, March 6. UTELCO was assured at this meeting a payment amount would be received no later than Tuesday, March 11. The Town asked for an estimate of the final billing, which was provided in the amount of $1,265,000.00. A settlement amount of $877,000.00 was provided with a deadline of Thursday, March 13. Another deadline came and went with no payment. Lack of payment has caused some undue hardships with subcontractors, vendors and financial institutions. They have declined several jobs, which have adversely affected their future operations. The company has had to lay off approximately 35 employees to this point, which affects local families. UTELCO is requesting the Town Council to address the payment immediately before he must tell the remaining 30+ employees they will no longer have a job. For the past 2 years UTELCO has served this Town to the best they could 7 days a week both night and day. Engineers were changed mid-stream and it seems UTELCO is paying the penalty.

Mayor Hughes understands there have been difficulties with the engineering on this job. Staff has had meetings and correspondence.

Attorney Dick Roosa added to the best of his knowledge and belief all of the bills, which were authorized by the engineer have been paid.

Mayor Hughes indicated this will need to be worked out with staff. If this continues to become a problem, it can become an agenda item.

Attorney Dick Roosa does not believe this matter should be before the Council. He indicated there are contractual provisions which must be exhausted.

Council member Van Duzer requested the Town Manager give an update during her comments.

Tom Babcock, 5130 Williams Drive, FMB, came forward. He commented on the short term rental registry implementation. Taxpayers should not have to subsidize the cost to maintain a registry on

exempted short term rentals in the residential family district. Those who benefit should absorb the cost to continue renting weekly, because it is an application to run a business in a residential area. The cost to the Town for the screening of applications, completing home inspections and instituting a code of conduct is likely to be in the neighborhood of $80,000.00 for the first year. Therefore, the estimated cost for the initial application should be $1,000.00 per property. In subsequent years, the cost to maintain the registry should be covered by those property owners who gain the most from their exemption to allow weekly rentals. Those properties collecting the most rental revenue would pay the highest amount. Inflation and rental revenue will cover increased costs to the Town. If the revenue decreases, the amount collected will decrease. This seems like a fair way to cover the added burden to the Town.

V. CONSENT AGENDA

A. Proclamation - National Tartan Day

Mayor Hughes read that April 6, 2003 will have a special significance for all Americans and especially those of Scottish decent. This proclamation honors the major role the Scottish Americans played in founding the nation. This proclamation recognizes monumental achievements and invaluable contributions made by Scottish Americans. This commends the hundreds of organizations representing hundreds of thousands of Scottish Americans residing in every state that honors Scottish heritage. The Town of Fort Myers Beach designates April 6, 2003 as Tartan Day in the Town of Fort Myers Beach, Florida. Jim and Mary Ellen Riemann were present to accept the proclamation.

Jim said Thank you from all of the Scotts from around the world. He feels today on St. Patrick's Day is an appropriate day for this proclamation. He hopes in the future Tartan Day will be celebrated in the same way the Irish do for St. Patrick's Day. On April 6 they will be celebrating at the Cape Coral Yacht Club. A five piece spectacular band will be coming from Canada. This will be for the benefit of Hope Hospice. He left brochures for anyone who is interested. (Applause was given)

VI. ADMINISTRATIVE AGENDA

A. Public Hearing

Case Number DCI2002-00057 - A request by Vanton, U.S. Inc., in ref. to Cap Plaza, to amend the Cap Plaza Commercial Planned Development (CPD) to add 784 square feet of commercial floor area for a total of 6,526 square feet. The subject property is located at 121 Lenell Road.

Gary Muller came forward who is representing the applicant Vanton, U.S., Inc. He is present to request an amendment to the CPD zoning approval for Cap Plaza to allow an additional 784 square feet of commercial floor area. This property was originally re-zoned to commercial planned developed back in 1992. The site has been previously developed with 5, 742 square feet of building area and 30 parking spaces. The existing building is leased to 8 tenants, including a restaurant. The requested zoning amendment would allow the existing the floor area to be increased to a maximum total of 6,526 square feet. This would be accomplished with the construction of a new building located between the existing parking lot and lake located in the northeast corner of the site. The proposed building will be utilized by an existing tenant who operates a Quick Pack and Ship business. He pointed out the proposed Master Concept Plan. A one story building is being proposed (14 feet x 56 feet long). The building will be constructed at grade to promote the pedestrian access to the building. The applicant is also requesting two deviations from the Land Development Code. The first deviation is to reduce the required number of parking spaces from 34 to 31. This request is consistent with the existing parking deviation, which also allowed a reduction of 3 parking spaces. The property has always had plenty of parking due to the restaurant only being open and busy during a time when the remainder of the businesses are closed. The second deviation is to allow the new building to be located 8 feet from the existing lake. The staff and LPA have recommended approval. He will be happy to answer any specific questions.

Jerry Murphy on behalf of Town staff came forward. Staff has reviewed the applicants request and recommends approval. Staff has suggested a number of conditions, which were adopted by the LPA. In addition, the LPA added condition #10. Staff agreed to this condition at the LPA's hearing. He drew Council's attention to condition #3. Staff has worked with the applicant since the hearing before the LPA. Staff modified the condition to require a type B buffer. This would be in accordance with a landscape plan to be submitted at the time of the Local Development Order for this project amendment.

Mayor Hughes questioned the difference between a D buffer and B buffer? Jerry Murphy replied a D buffer is a more intense buffer. The applicant has difficulty with exposure to the building presently and the

D buffer would screen their entire commercial area from the road. The applicant is looking for additional exposure. He has a copy of the drafted landscape plan to show Council what will be seen on Lenell Road.

Mayor Hughes asked how they control the deviation for parking. Would this be controlled by signage? Jerry replied this can be controlled by signage. The square footage for the restaurant cannot be increased (condition #4). The applicant will have internal flexibility with how the parking is used. 10 are required for the restaurant. During the daytime the restaurant is not open.

Mayor Hughes referred to the schedule of uses and indicated some listed are very unlikely. His opinion is that this is not appropriate for a place of worship. Jerry replied that staff did limit the schedule of uses with the applicant. A place of worship could be classified as too intense due to the amount of parking required. Staff did not see the place of worship as problematic, whether it is likely or not.

Council member Thomas referred to the deviation with regard to the screening of the dumpster's. Where will the dumpster's be located? Jerry replied they will be located at the rear of the property. Town Manager Segal-George added the dumpster's are currently present now.

Mayor Hughes asked if anyone wished to address the Council on this matter. None were heard. Mayor Hughes closed the public hearing.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to adopt the resolution to permit the change in the CPD to include the recommendation of the LPA to screen the dumpster's. The new landscape plan (B) to be included as one of the conditions.

Discussion: Mayor Hughes commented that the findings differ significantly from the LPA.

Attorney Dick Roosa replied that these are based on the new land use regulations.

Mayor Hughes pointed out some corrections to the resolution. Attorney Dick Roosa will comply. This resolution will be corrected and presented to the Town Council for approval at the next meeting.

VOTE: **Motion passes unanimously.**

B. Request to re-hear Hahn variance

Mayor Hughes indicated that this request is to re-hear VAR2002-0042 - The Daniel Hahn Swimming Pool. This request is for a variance to allow a proposed swimming pool and deck at the existing residence. The property is located at 50 Gulf Beach Road.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to deny the request for reconsideration.

VOTE: **Motion passes unanimously.**

C. Introduction of Bicycle Safety Ordinance

Mayor Hughes announced that this is an introduction of an ordinance. Attorney Dick Roosa indicated this will require only one public hearing.

Town Manager Segal-George indicated the public hearing can be set for April 7, 2003 at 6:30 p.m..

Vice Mayor Terry Cain would like to have this read by Dan Moser, who is the County's bike path expert. She felt his input was necessary.

Council member Rynearson did communicate with Captain Griner and Matt Powell. They were very happy with this Bicycle Safety Ordinance.

D. Direction Bonita Park Plan

Deputy Town Manager Gucciardo expressed an internal memo is included in Council's packet to Council member Van Duzer and the Town Manager based on conversations he had since the last time this matter was discussed with the Town Council. A few meetings have taken place with individuals from Bonita

and with Lee County representatives. He commented that matters may have changed since the presentation presented by Council member Wagner. Before this Council takes a position on the park, due to the changes, he felt it may be appropriate to review with Council to take a position this evening or send the matter back to the Bonita Council to see their position. He commented that he has heard the price for the proposed construction has gone up and the scale of the project may be modified. Also, some issues exist if it is appropriate to have a park adjacent to another park, which is presently under utilized by the opinion of some.

Council member Van Duzer supports the position of the Deputy Town Manager. He feels there is some reluctance whether the Town Council of Fort Myers Beach should be involved in the process. He feels they must determine if the Bonita Spring Council is behind this project. He would like to see this happen rapidly.

Council member Rynearson feels a consensus of the board should take place. Does the Council want to move forward and give the idea they may be interested or just hold off at this point?

Vice Mayor Cain feels they should wait and try to get additional information on the project.

Deputy Town Manager Gucciardo feels information can be fashioned and relayed to the Bonita Council fairly quickly. He understands the position of the Town Council and will not show a positive or negative approach.

E. Consideration to purchase property at 216 Connecticut Street

Mayor Hughes began by indicating there is a request for refund of impact fees in connection with a proposed contract for the sale and purchase of the property at 216 Connecticut Street.

Town Manager Segal-George explained this matter is in regard to the vacant lot on Connecticut Street. The Town has been involved with this property as a possible place for overflow parking. She had asked the owner to be present at today's meeting. A price for this lot has been established for quite a bit of time. An appraisal came in at substantially higher than the price. This has not been an issue of price. The owner has come forward with some other issues that have delayed him from signing the contract. One issue is the impact fee question. Staff feels based on the Town's rules they cannot refund the owner the impact fee because they were not paid to him. Also, the owner has spoken to his lawyer and they request the Town should make a statement to condemn the property or take it through eminent domain, because there are some tax benefits to him. She expressed that this was never a subject of discussion with regard to this property. She relayed to the owner these two issues made obstacles toward the signing of the contract and would need to be brought forward to the Town Council for direction.

Dan Folke expressed the impact fees were paid by a previous owner. Rules in the code allow the Council to refund, but based on what has been provided he does not feel the owner qualifies for a refund.

Mayor Hughes agrees with staff. He sees no possible legal basis to refund impact fees to someone other than the person who paid them, unless there was an assignment of right. All Council members were in agreement.

Mayor Hughes mentioned the issue of eminent domain. He indicated the Council has never proceeded under eminent domain. The Council has always attempted to acquire property voluntarily by negotiations with the property owners. He does not know why the Council would be inclined to move forward with this matter.

Attorney Dick Roosa added that the Town would be walking on dangerous ground. The only purpose to take the property by eminent domain would be to give a tax advantage to the seller, which is not a basis for eminent domain. He suggests the Town Council not make this statement.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to reject the request for eminent domain and refund of the impact fees by the owner at the property located at 216 Connecticut. It is not the intention of the Town of Fort Myers Beach to take this property by eminent domain.

VOTE: **Motion passes unanimously.**

F. Short Term Rental Registry Implementation

Town Manager Segal-George explained when Chapter 34 was passed the provisions for Short Term rentals triggered a short time line for staff to put together a program to allow people to submit documentation to register. Also, a very short time exists for staff to take this information and certify

properties to be on a registry. August 1, 2003 would be the deadline for completion of this registry. She met with Dan Folke and Dave Crabtree to come up with a way to get this program implemented within the time frame set. Information was received with a six month staffing plan to get this implemented. Lee County has been very cooperative. Additional code enforcement was given along with a temporary clerical temp position for six months. She has been unable to get with the Fire Chief with regard to the random fire inspections. She provided an estimated number. The total estimated for the project is $56,487.00 for six months. The most intense portion will be the development of the registry. She felt by July they will have a better idea of cost for the remaining year. It is expensive and very time consuming. Staff is unsure of the amount of applicants. Names and numbers have been taken until they are up in running by April 1st. A fee must be set and she does not have a recommendation at this time. The Town Council should determine if the total inspection process and registry process should be paid by those who are on the registry or short term rentals are an important component to the future of the island and will make it better for all on the island and the cost should be shared by everyone. She does feel the fee should be set for one year. An initial fee and a renewal fee should be set. No recommendation toward a renewal fee can be made at this time.

Mayor Hughes dealt with the first issue for the authorization to request to purchase the services.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to move forward with the plan as presented to implement the registry.

VOTE: **Motion passes unanimously.**

Vice Mayor Cain asked for a rough estimate of those who have called in? Town Manager Segal-George replied approximately 25 to 30 people.

Vice Mayor Cain clarified that this fee would include any cost incurred by inspections? Town Manager Segal-George replied this is an inclusive fee.

Mayor Hughes questioned when the year will start? Town Manager Segal-George replied after consultation with Dan Folke the year will run from June to June.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to fill the blank in Section II of the resolution and set the initial fee of $500.00 for the year beginning May 31, 2003 to May 31, 2004. This fee will be reviewed before the renewal in June 2004.

Discussion: Council member Bill Thomas feels the first year's amount should be set higher. There should be approximately 89 individuals coming forward. The amount is unknown at this time. He would rather see the registry be set at $1,000.00 for the first year.

Council member Van Duzer gave consideration to this amount and did feel this was excessive. He does not want to make the fee too high and steer people away or keep others from registering. He would like to see this work for everyone. This fee could be reduced by 50% next year. The Town Council agreed when it was passed they would allow individuals to register even if they had not properly handled other tax issues. He does not feel the Council should be the judge and jury on this matter.

Council member Thomas commented for those who did not pay the taxes this will be policed. This information can be reported to Tallahassee and the appropriate authorities, so the back taxes and interest can be paid. Many will get on the registry at a lower rate to just rent for several weeks. If the rate is set higher, you will get more legitimate renters.

Mayor Hughes pointed out the code of conduct is not limited to those on the registry. The code of conduct is island wide and is part of the cost. He does not believe the people on the registry should have to pay 100% of the cost of this program.

Council member Rynearson agrees. He heard many times if the registry is passed it will be good for the entire community.

Vice Mayor Cain is concerned with next year. She would rather see the fee lowered than increased.

Council member Thomas commented if he opens a business he does not expect the community to chip in and help open and operate the business. He agrees everyone should pay toward education.

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

G. Community Development Block Grant 03-04 Project Options

Deputy Town Manager Gucciardo reported the program has been instituted for this current year. There are dollars now in the pipeline for the two areas as identified as areas of interest. These areas include the housing rehab component and the public service component. The County plans these projects one year in advance. They are asking the Town to identify the projects for the upcoming fiscal year 2003-2004. He will identify the same programs, unless Council has additional direction. A public hearing could be held on April 7th. He would like a consensus if Council is satisfied with the two components identified and whether or not this is the intent for next year pending the outcome of the public hearing.

All Council members agreed and a consensus was received.

IX. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Terry Cain - Attended the Smart Growth water and environmental quality element meeting on Friday. She would like to know the feeling from those within the community with regard to the desalinization of water. Many water problems exist and she feels the community should be aware. She would rather give up a few things instead of desalinization. This will come up in the news soon. She felt this community did an outstanding job with the Commissioners with the alternating lights. She would like input on conservation vs. desalinization.

Mayor Daniel Hughes - Reported the Town had a wonderful Shrimp Festival Parade and St. Patrick's Day parade.

Council member Bill Van Duzer - Received many complaints that the alternating light is irregular. He would like to have a consensus from Council. The light needs to be on before 10:00 a.m. and leave it past 10:00 p.m. until after season.

X. TOWN MANAGER'S ITEMS

Town Manager Marsha Segal-George - Updated the Council on the Laguna Shores drainage project. This is still in engineering. The design is not complete. As soon as the design is complete, a meeting will be scheduled with the Homeowners group. Damon has been having conversations with the Homeowners Association at Laguna Shores to set up a time for a meeting.

She reported a date and time has been set for the public planning session on Newton Beach. This will be held on April 2nd at 7:00 p.m. at Town Hall. The Town's consultant will be present to get peoples ideas and input.

On April 15th at 4:00 p.m., Chris Swenson will have a public meeting with regard to transportation issues on Fort Myers Beach.

Referred to the information received on gas tax. A lot of work went into this memorandum. She does feel it is a very comprehensive memorandum with regard to the Town's position on gas tax.

She provided an update on Old San Carlos. She indicated there have been a lot of meetings with regard to the payment issues on Old San Carlos. The Town has been in existence for 7 years and has always paid their bills more than timely. She believes in this case the Town has paid its obligations with regard to Old San Carlos in a timely manner, and as they were billed appropriately. This is a complicated process. She believes UTELCO has been fairly paid for the work they have submitted and demonstrated they have completed. There are still outstanding issues with regard to some work that has not been

correctly quantified and a punch list which is not currently complete. This was a very difficult project and many problems existed. Problems existed with both the engineer and contractor. She felt the Town did all they could to be fair to the contractor, due to the fact there were issues with design. She does feel that UTELCO owes the Town more than it has been determined the Town owns UTELCO.

It was determined no further discussion would take place on this matter. Mayor Hughes commented those who would like additional information can arrange a meeting with Town staff.

XI. TOWN ATTORNEY'S ITEMS

Town Attorney Dick Roosa referred to a Complaint and Petition. He needs authorization to respond to the Cheryl Martin and Bobby Myers vs. the Town of Fort Myers Beach.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Rynearson to authorize Attorney Dick Roosa to represent the Town in these proceedings and take whatever action is required to represent the interest of the Town.

VOTE: **Motion passes unanimously.**

Attorney Dick Roosa referred to the hearing examiner. A legal opinion has been written by the County attorney's office, which holds that the current arrangement with the hearing examiner violates the law. The Town will no longer have the current setup with the hearing examiner. This is also true with the City of Bonita Springs. He feels the Town must get involved in this issue. He would like authorization to represent the Town and preserve their interlocal agreement with the County, so they can continue to have the services of the hearing examiner. In his opinion, it is legally valid and authorized.

MOTION: Made by Council member Howard Rynearson and seconded by Mayor Daniel Hughes to authorize Attorney Dick Roosa to represent the Town of Fort Myers Beach with regard to the matter concerning the hearing examiner.

VOTE: **Motion passes unanimously.**

XII. PUBLIC COMMENT

Rev. Tafel, 8065 Lagoon Rd., came forward. He thanked Council for himself and others with regard to the public comment at the beginning and end of the meetings. It is appreciated and he hopes it will continue.

XIII. ADJOURNMENT

The meeting was adjourned at 8:00 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.