

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 21, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Regular Meeting of April 21, 2003 was opened by Mayor Daniel Hughes on Monday, April 21, 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 and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REVEREND TOM SNAPP, PASTOR ST. PETER LUTHERAN CHURCH

The invocation was given by the Reverend Tom Snapp.

IV. PUBLIC COMMENT

Darlene Hartley who owns a condo at Harbor Pointe came forward. Since January she has been volunteering at the Mound House. She is present to let the Council know from the position of a volunteer she was quite surprised by the quality of learning exposed to by the two people from the University that will be considered this evening. In addition, there have been many activities at the Mound House. She came to this island as a visitor for many years. They own a condo now, but began by renting at the Pink Shell. She has been here for 38 years and has seen many changes. She sees the Mound House as a wonderful extension or addition. She would love to see this process continue.

Cindy Messtiss, 18243 Deep Passage Lane, FMB came forward. She has been a long time resident full time. She became aware of the Mound House recently and began doing volunteer work in March. She is very excited with all they have been exposed too. Much has been learned. She has worked in the lab, participated in organizational items and completed some screenings. The enthusiasm of Theresa and Corbett is very contagious. This is a real asset to the beach. She feels this is a wonderful program.

Scott Vancello who is a resident of Fort Myers, but works at Bay Oaks Recreation Center came forward. He grew up on the beach and is present on behalf of Vicki Massey. He supports the Mound House. Theresa and Corbett have been very cooperative with the coordination of Bay Oaks. He feels they will get what they pay for. This is a great opportunity for the beach youth with regard to education.

V. CONSENT AGENDA

A. Approval of April 7, 2003 minutes

B. Friends of Lovers Key Proclamation

C. Resolution opposing Senate Bill 1450 & House Bill 1307

D. Approval of the Town's financial support for the MPO for 2003/2004

E. Reappointment of Coastal Advisory Council members

Mayor Hughes pulled item B - Friends of Lovers Key Proclamation from the Consent Agenda.

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

Cain to approve Consent Agenda items A, C, D and E.

VOTE: Motion passes unanimously.

Mayor Hughes announced that Ray Murphy is present who has been involved with the folks at Friends of Lovers Key. He is President of this organization. Paul Rice, the Park Manager, is also present. Mayor Hughes read that the Town of Fort Myers Beach recognizes the immense environmental and economic benefits of Florida State Parks to the states local community by designating May 2003 as Florida State Parks month. They encouraged all citizens to enjoy, protect and support Florida's beautiful and diverse state parks in May 2003 and years to come, so future generations of Floridians and visitors may also enjoy and learn about Florida's unique, natural and cultural heritage through these priceless areas.

Thanks was given to the Town Council. (Applause was given)

Ray Murphy came forward. On behalf of Park Manager Paul Rice and the Friends of Lovers Key he expressed their thanks for this proclamation. Lovers Key State Park is a barrier island park made up of four separate islands encompassing 1,616 acres with 800 being land based. They have 2 ½ miles of very natural beaches. The fishing opportunities in the park are unlike any others in the area. They have a new 5-mile Black Island Trail. An outdoor classroom is present and is used by local schools, Universities and Youth groups. The park has quite an impact on the area. The visitation has increased dramatically. The boat ramp is one of the most used in the County. He encouraged the Town and its people to come down and use the new trail. The future plans include a side park to offer a playground, volleyball, restrooms and larger picnic shelters. (Applause was given)

Paul Rice thanked the Town on behalf of the Florida Park Service and Lover's Key as the Manager. He thanked the Town Council for their support over the years. He applauded the Council for their effort to support any green space. An Appreciation Day will be held on May 17 and he invited all to attend. Thanks for your support. (Applause was given)

Council member Van Duzer commented on the MPO. He expressed the CAC, TAC and MPO are valuable assets to them. The most current issue was the support received from the MPO with regard to the alternating light to the Town of Fort Myers Beach.

VI. ADMINISTRATIVE AGENDA

A. Update on 2003 Film Festival

Julia Campbell passed out the program guide for the Fort Myers Beach Film Festival, which they are very proud of. It has an outline of events, synopsis of movies and some of the stars that will be attending. She invited all to attend. She also invited the Town Council to the opening ceremony, which will take place on Thursday, April 24th. This begins at 2:00 p.m. and two film makers will be on hand at the Beach Theater. Three free films will be held on the beach. She indicated the Film Festival will involve some big name stars along with up and coming stars. She hopes all will attend.

Vice Mayor Terry Cain and Council member Van Duzer commented on the beautiful programs. Council member Thomas congratulated the staff of Fort Myers Beach. Another great job has been completed.

Mayor Hughes indicated a tremendous itinerary has been planned and he looks forward to attending. He hopes this will be well attended by the community.

Council member Rynearson commented also on a great job.

B. Request for Waiver of Open Container for Film Festival Concert: Times Square area

Julia Campbell provided an updated ordinance, which is the amended ordinance which includes the no glass containers for alcoholic beverages. She is currently requesting a waiver of an open container for the Times Square area. On Saturday evening, A Concert Under the Stars will be held at 7:30 p.m. to 1:00 a.m.. She was hoping the Times Square merchants could get involved and requests an open container as requested last year.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to approve the waiver of open container request by the Town.

VOTE: Motion passes unanimously.

C. Introduction of Amendment to Sign Ordinance

Town Manager Segal-George announced this is an introduction. Mayor Hughes read the amendment.

Town Manager Segal-George indicated this ordinance requires two public hearing dates. The dates have been set for May 5, 2003 at 6:30 p.m. and May 19, 2003 at 3:00 p.m..

D. Introduction of Ordinance Enforcement Authorization

Mayor Hughes announced this is also an introduction to an ordinance. This only requires one public hearing. He read the ordinance.

Town Manager Segal-George announced the public hearing date will be May 5, 2003 at 6:30 p.m..

Council member Rynearson questioned if it is legal to ticket on Estero Blvd. and can this be contained within the ordinance? Attorney Dick Roosa replied that Estero Blvd. is within the limits of the Town of Fort Myers Beach, so any ordinance violation can be ticketed.

Town Manager Segal-George added that there is no ordinance on the books that would deal with Estero Blvd. with regard to delivery trucks or issues on Estero. There is nothing to enforce, so a separate ordinance will need to be prepared.

Council member Rynearson asked the Town Attorney to prepare the appropriate ordinance. The purpose of the ordinance would be for delivery trucks parking in the center lane of Estero Blvd., on the sidewalks, in the street or anywhere they would be tying up traffic.

Mayor Hughes recapped; the Town Attorney will prepare a separate ordinance to be brought back before the Town Council.

E. Mound House Contract

Memos' have been received from Theresa Schober. Theresa indicated the Mound House Directorship contract expires on May 31, 2003. At the previous CELCAB meeting (March 24) the issue of CELCAB wanting herself and Corbett to remain as the Directors through the CRM Program at the FGCU was considered. A vote of 8 to 1 was received to renegotiate a contract with FGCU to continue with the current Directorship and increase the dollar value of the contract to a not to exceed amount of \$45,000.00. The one vote was an abstention from Irv Winsboro, who felt since he is an employee of FGCU he should not vote on this issue. As Directors of the Mound House they feel they have had unprecedented success in terms of public education, publicity for the Mound House facility and volunteer support. Many more people have attended the Mound House due to increased hours of operation. A living archeology lab has been operated. 43 volunteers participate at the Mound House. Other new programming ideas are being brought forward. They are seeking to collaborate with a local community organization to run a fashion show in the Fall. On site training is being provided to the volunteers of the Mound House, but also to a number of other organizations throughout Lee County. A volunteer training exchange program has been developed, which has brought close to 160 people to the site this season. Relationships have been developed with other facilities to expand on training. Many newspaper articles have been run since mid-December along with a logo contest currently in process. Many presentations to community groups have been given. Tentatively events have been scheduled throughout the summer with the Bay Oaks summer camp program.

Theresa indicated the Mound House is more than programming. She and Corbett have worked to get things going at the Mound House. Programming takes time and the internship and volunteer programs have helped with this process. A long term strategy for the house needs to be established. There is no complete preservation plan and no period of time decided upon for the house to be restored too. These are longer term issues. Currently, they are working with the electricity, plumbing, exhibit planning and kayak landing. She hopes that they will be able to lead CELCAB through these longer term issues.

When she and Corbett took on this project, they felt they could make a difference at the Mound House. They do feel they have started something and some good momentum is going. They would like to continue in this capacity. The Directors felt the rate of compensation at the Mound House was not appropriate to the position and is not comparable to what they make as CRM program directors at FGCU. This idea of wage rate for \$25.00 per hour was brought to CELCAB. The Directors have offered to cut their hours in the summertime to either 30 hours per week at a contract rate of \$45,000.00 or 20 hours at a contract rate of \$42,000.00. CELCAB voted 8 to 1 that the hourly rate is acceptable and should not exceed \$45,000.00. She brings forward two issues pertaining to the continuance of the Directorship of the Mound House and the renegotiation of a contract to allow them to stay.

Council member Thomas feels Theresa and Corbett are an asset to the Town. He feels they are fortunate to have them. The enthusiasm to the Town and volunteers excelled what he expected when they were hired last year. He only has compliments to say about the wonderful job they have done this past

year. He would support a salary not to exceed \$45,000.00.

Town Manager Segal-George indicated Theresa and Corbett are doing a wonderful job. Progress is taking place. She and Theresa meet monthly to discuss various issues. She could not be happier with regard to the present situation. She expressed the salary indicated is reasonable under the circumstances.

Mayor Hughes questioned if there is preference between the \$42,000.00 proposal vs. \$45,000.00? Town Manager Segal-George replied the increased hours in the summer would be valuable with regard to number of projects they are working toward. Three separate grant projects are in the works. Her preference is 30 hours.

Vice Mayor Cain added the 30 hours extra would be very valuable due to the ongoing grant programs and programs which involve Bay Oaks for this summer.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to approve the increase in an annual contract to \$45,000.00. The hours per week (September thru May) will be 40 per week with 30 hours per week during the other months.

VOTE: Motion passes unanimously.

Mayor Hughes announced the contract will be executed to implement the extension of their services for another year. He would like the Council to view the contract at the appropriate time.

F. Charging for Services at the Mound House

Theresa reported at the last CELCAB meeting on March 24 with a vote of 8 to 1 the issue pertaining to charging for services was discussed. Also, they discussed charging for admission to the Mound House. CELCAB was not ready to make a decision with regard to charging admission. Certain programming is not receiving the support from donations. The Mound House is developing a net loss. The intent is not for the Mound House to become a commercial adventure. They do believe there are some services and camps in other areas that charge fees, and these become devalued if the Mound House does not charge. Also, the residents on the island are paying through tax dollars for programs the visitors are using. She does feel there should be another way to determine who is paying for these programs.

Mayor Hughes commented on the procedure for charging at the Mound House? Attorney Dick Roosa indicated a resolution would be prepared. Town Manager Segal-George questioned if a subsequent resolution is needed. Discussion of charges took place. A schedule of fees could not be established, because specialized events take place and the cost will be based solely on the event.

Attorney Dick Roosa added guidelines must be established. An alternative is when the Mound House is ready to charge a fee it can be presented to the Council for approval. He feels this should be in writing in case it is challenged.

Council member Van Duzer feels the Mound House should have the ability to institute fees for the programs run by the Mound House. These fees should be established by the staff of the Mound House vs. coming to the Town Council.

Vice Mayor Cain suggested a motion to have the Mound House set fees comparable with Lee County's fees, such as the Calusa Nature Center? Attorney Dick Roosa replied this would be OK. The fee that is determined should be sent to the Town Hall in advance of the project. There must be some accountability and a file.

Mayor Hughes questioned the procedure for this evening to expedite this process with the least Council involvement for the future? Attorney Dick Roosa indicated the Town Council can authorize the Mound House to charge fees and those fees to be charged at a community rate and be submitted to the Town prior to the imposing of the fee.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to accept the concept fees will be charged at the Mound House. Fees will be charged at the community rate and a schedule of the fees must be provided to the Town prior to the program and approved by the Town Manager.

VOTE: Motion passes unanimously.

G. Old San Carlos Assessments: interest payment waiver requests: WINDS;SOB

Damon Grant indicated the Town staff has recently received two request waivers from the Old San Carlos interest. The adjacent property owners along Old San Carlos were assessed based on frontal footage. Southwest Florida Management (150 Old San Carlos) and Smokin Oyster Bar (340 Old San Carlos) have both for different reasons asked for waiver requests for the interest. The property owners were given three months of an interest free period to pay assessments. Southwest Florida Management has withdrawn their request since the completion of this memo.

Damon spoke of the Smokin Oyster Bar. At the time staff originally distributed the assessment methodology and available payment options from the resolution they went by the property appraiser's list. The label came up Investment Brothers, who was the correct owner at the time of the resolution. The address popped up from two previous property owners. The assessment notice and payment options went to a prior owner. Smokin Oyster Bar (Investment Brothers) did not receive their notice and are asking for a waiver from the interest. Staff is recommending approval of this waiver in the amount of \$1,001.84. Should this be approved the Smokin Oyster should be given three months to pay.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to waive the interest fee of \$1,001.84, if the assessment is paid within 30 days from today.

Discussion: Mayor Hughes is in favor of the motion. He indicated these people were aware due to involvement in the hearings.

VOTE: **Motion passes unanimously.**

Mayor Hughes recommended a formal notice be given to the owner immediately.

H. Set hearing date for request to vacate platted canal right of way

Mayor Hughes indicated staff is recommending June 2, 2003 at 6:30 p.m. as the hearing date.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to set the hearing on this matter for June 2, 2003 at 6:30 p.m..

VOTE: **Motion passes unanimously.**

I. Discussion of Chapter 34 setback regulations

Town Manager Segal-George announced at the last meeting the Council directed her to ask Bill Spikowski to prepare a memorandum that would compare or contrast the setbacks prior to the adoption of the new Chapter 34. Bill Spikowski has prepared this memo and is present for discussion.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to immediately change back to the prior setback requirements with the adjustment to the new RS/RC/RM zoning designations they have, so that all front setbacks will be 25-feet and all side setbacks (water or non-water) are 7 ½ or 5 feet, as listed. The rear setbacks to remain at 20- feet. This was an error in the manner it was published after it was voted on by the Town Council. **(Motion amended)** Made by Mayor Daniel Hughes to have an exception pertaining to side setbacks on waterfront lots. The waterfront lots to keep the 10-foot and 20-foot provision on multi-family.

Discussion: Mayor Hughes reviewed the motion for clarification.

Attorney Roosa indicated there are two possibilities. The original motion as made was consistent with what Council member Van Duzer is stating. If this is so, the published ordinance was just a scrivener's error and can be corrected. If the Council will state this was the intent a correction will be made in the ordinance. The ordinance would have been published in error. If this is not the case, an amendment to the ordinance must take place.

Vice Mayor Cain raised the issue of a past discussion on porches. Council member Van Duzer replied he has consistently stated the Town has a system that works using the existing setbacks and existing height restrictions. When he compared these to the floor-area-ratio anything built in the last number of years fit within the floor-area-ratio proposed as presented. Why was this needed? He felt it more simple and easier to go back to the existing setbacks that the Town had and used on a regular basis. Residential design standards were discussed and this is where the idea of porches not encroaching if the setbacks were changed. They wanted them to come closer to the road. He wanted to readdress the residential design standards at a later date. This topic was dropped and he felt it was understood by removing the floor-area-ratio they would go back to the standard setbacks from the past. He commented he felt that the floor-area-ratio was attacking private property rights. Two other Council members at the last meeting agreed they felt this was the original motion.

Mayor Hughes agreed to the rationale for eliminating the FAR that setbacks provided adequate standards. This is not the same as accepting all of the old setback requirements. He has always been in favor of the increased side yard setback. He was in favor of the larger setbacks on all, particularly the 25-foot front yard setback.

Attorney Dick Roosa needed clarification on the motion. Council member Van Duzer stated that it was his intention at the time of the motion they were going back to the old original setbacks used previously.

Council member Thomas concurred with Council member Van Duzer. His interpretation was that he wanted the old setbacks.

Vice Mayor Cain is unsure if a motion is needed based on the information provided. Attorney Roosa added that the motion is to correct the published ordinance.

VOTE: (Amended) Motion fails due to lack of second.

VOTE: Motion passes unanimously.

Council member Van Duzer feels the Council is now back to the point they were suppose to be. He felt a motion should now be brought forward on the side setbacks for waterfront lots, if it is the desire of the Town Council.

Bill Spikowski is not clear on which zoning district this motion applies to and what the new rules will be. He questioned if this pertained to the residential zoning districts of RS/RC/RM? Council member Van Duzer replied this is correct.

Bill Spikowski reviewed for all three zoning districts the front setback would be 25, which was the previous rule under Lee County. All three for the rear setbacks would be 20. What about the side setbacks? The RS-2 zoning districts were also questioned.

Council member Van Duzer would like the RS-2 limited area up around Matanzas be designated the same as before.

Bill Spikowski added that the non-conforming section is different in the old code than new.

Council member Van Duzer reviewed the multifamily buildings before that were 20-foot should stay 20-foot.

Due to much conversation taking place with regard to zoning categories and various setbacks, Bill Spikowski determined he would like to write up this correction and have it available for review at the next meeting.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Terry Cain - She hopes all Council members reviewed the Waterway Evaluation Methodology from Hans Wilson. This is an excellent report, which pertains to the canal project. A letter was received from Chris DeRosa with regard to him being a local Eagle Scout. He must come up with a project to get the next award. He has chosen to refurbish Playworks. She is familiar with him and is a great kid. He would like to work on this project May 10 and May 11 from 8:00 a.m. to 6:00 p.m.. He is looking for volunteers with hammers and nails. He is also looking for donations of food to feed those who volunteer.

VIII. TOWN MANAGER'S ITEMS

Town Manager Segal-George - One item addressed in the adoption of Chapter 34 is the Chamber Wagon. A 90-day permit was authorized in this chapter. During this time the LPA was to work on regulations to deal with this particular issue. The LPA is working on it, but is unable to complete this task within the 90-days. She is asking the Council to allow this permit to continue until such a time this regulation comes in front of the Council. She is hopeful this will come before the Council in June. She is trying to keep them from removing the Wagon off of the island.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Ryneerson to extend the permit for an indefinite period of time until the wording can be developed by the LPA.

VOTE: **Motion passes unanimously.**

Direction was given to Deputy Town Manager Gucciardo to move forward on the ordinances pertaining to the PSTF as indicated by memo.

IX. TOWN ATTORNEY'S ITEMS

Attorney Dick Roosa needs authorization from the Town Council with regard to UTELCO vs. The Town of Fort Myers Beach to defend this action.

MOTION: Made by Council member Howard Ryneerson and seconded by Council member Bill Thomas to provide authorization to the Town Attorney to represent the Town of Fort Myers Beach with regard to the case relating to UTELCO.

VOTE: **Motion passes unanimously.**

X. PUBLIC COMMENT

Mr. Mitchell came forward to discuss the issue of the Mound House. He would like to see how much the City of Fort Myers Beach has put into the Mound House and what is the bottom line received. Mayor Hughes suggested he make an appointment with the Directors at the Mound House. He defended the Council members at the toll meeting because most of them left the meeting.

XI. ADJOURNMENT

The meeting was adjourned at 8:18 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.