FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 5, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Regular Meeting of May 5, 2003 was opened by Mayor Daniel Hughes on Monday, May 5, 2003, at 6:30 p.m..

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

Excused absence from meeting: Bill Van Duzer - Council member

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 DEACON SCOOP KIESEL, CHURCH OF THE ASCENSION

The invocation was given by the Deacon Scoop Kiesel.

IV. PUBLIC COMMENT

Elaine Jett, 5791 Estero Blvd., FMB, came forward. She is present today to ask for the Council's assistance with regard to the application of the conformation of residential setback regulations. Her property lies on the corner of Estero and Aberdeen. She had hoped to build a swimming pool in her rather large backyard for the beach. It would be necessary for her to jackhammer up an existing patio according to the two permits she has recently sought and been rejected. She has made two applications and the second application was rejected exclusively on the setback regulations that affect a corner property secondary street as the code currently exists since adoption in March. She is hopeful the Council this evening could pass a curative ordinance to remedy this Scrivener's error to the extent it would affect a very small number of people who have drawn up plans for pools or other efforts.

Steve Myers from Lee Tran came forward. He resides at 6035 Idlewild Rd., Ft. Myers. He is the Director of Lee Tran. He is addressing Agenda item V - E, which is the sign ordinance public hearing. He provided a handout with background information for the Council. This issue has been in the works for about the past year with the Town staff. Solutions have been sought, but none mutually acceptable. Lee Tran was in a bankruptcy preceding with the advertising contractor. Benches were in disrepair all over the county. Lee Tran accepted the responsibility for the disrepair and repaired them on the beach and in other areas. A bench back was created, which is a Lee Tran ad. Many other items have been developed to try to upgrade the bench program. The recommendation made by the LPA to prohibit bench signs is unfavorable and he hopes the Council will reconsider. A fairly large economic impact to Lee Tran (approx. $42,500 per year) would be lost in revenue should this ordinance be adopted. He has presented some options and hopes they can continue to work toward a solution.

Clay Case, 235 Tropical Shores Way, FMB, came forward. He is present to address some of the setback changes made on March 3, which may have been made in error. He and his clients have acquired properties since this time based on the knowledge of the setbacks. Architects have been hired, surveys completed, engineers, design firms and drawings have been completed. As they approached for permitting last week with Lee County they were told these were a mistake and will not be honored. This could create a very compromising position for many people. He hopes the Council will honor these up to a set point and give everyone notice to allow business decisions to be made.

Carolyn Caney, 315 Mango St., FMB, came forward. She is a property owner on the beach and owns a lot on Miramar Street. She was happy when the setbacks were voted in on March 3. She made plans based on the information given. She also confirmed this with Lee County. She has gone to the

expense of having architectural plans drawn up in order to build a home on this property. She works for a builder and has several clients who have made very large financial commitments based on the information given on March 3 with regard to street and side setbacks. She was upset last week to be informed that these setbacks are no longer in effect. She is asking for Council to make some type of exception for these types of decisions made during the time period from March 3 up until such a time the setbacks are reverted back. She is unsure which setbacks are presently in effect. Existing contracts are in place and she would like to see the granting of an exception in these cases.

V. CONSENT AGENDA

A. Approval of April 14 and April 21, 2003 minutes
B. Proclamation - Boating Safety
C. Proclamation - Elder Law Month
D. Proclamation - Civility Month
E. March Financials

Mayor Hughes pulled item B - Proclamation on Boating Safety from the Consent Agenda.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to approve the Consent Agenda.

Mayor Hughes read a portion of the Proclamation for boating safety. He asked the members of the San Carlos Power Boat Squadron to come forward. The members thanked the Town Council.

VOTE: Motion passes unanimously.

(Council member Rynearson requested Administrative Agenda Item H be moved to top for discussion prior to the start of the discussion. All Council members were in agreement)

VI. ADMINISTRATIVE AGENDA

A. Canal Project Update by Hans Wilson

Hans Wilson came forward and expressed the Waterway Evaluation Methodology put together was in response to the Marine Resources Task Force. The goal was to address the waterway infrastructure. A methodology for the Town has been created to prioritize canal dredging projects. This method is fair and equitable and brings into focus other improvements the Town has made relative to storm water management improvements on the upland with the roadway systems. This emphasizes the need for strong long community support.

Vice Mayor Cain explained Hans Wilson gave a great presentation at the MRTF meeting. This is an excellent document, which explains step by step the prioritization process. The workshop devised would be the next step to see the position of those people on the canals to be part of the process.

Hans added a public workshop was held and a lot of input was received. This report reflects the response of the workshop and the questionnaire. Public input was included as much as possible.

Council member Rynearson added that the public should know up front the Town does not have the money to fund the canals at this point. Hans replied that he has not indicated this will move forward. The next step will be to find out how strongly the individual canal communities want to pursue a project. If the Town has no funding, but the communities are willing to pay the cost then the Town can act as the permitting agent and share some of the administrative costs.

Mayor Hughes commented that the cost cannot be determined until the total number of canals for the project is determined. Who are the permitting entities?

Hans replied to do a maintenance dredging project that would be within a privately owned canal system you would need to go through the state and federal government. State legislature exempts' maintenance dredging of canals to minus 5 feet mean low tide. There is some fairly low cost permitting associated with certain types of projects.

Mayor Hughes questioned how to determine who owns the land in the canal? Hans replied title work needs to be completed. The platted subdivisions need to be reviewed to determine if the metes and bounds of the plats exclude a canal to be used as a drainage easement. Each individual would need to give

up some form of an easement across their submerged land in order to facilitate a dredging project.

Vice Mayor Cain indicated that MRTF supported the next step to see the support from specific canal communities.

Council member Thomas would like to see the canals prioritized. The ones in the worst condition should be considered first. Both Vice Mayor Cain and Hans Wilson expressed that community support will determine the canals.

B. Public Hearing: Resolution 03-13 - Amending 2001-2002 Budget

Mayor Hughes began by reading the ordinance.

Deputy Town Manager Gucciardo expressed the memo created by himself and Janeen put the reason for the resolution in context. As a result of the audit process, the Town became aware of three line items in the original 2001/2002 budget they had overspent on some of those items. The three categories for overspending were administrative expenses, service-cost center and the LPA. The intent was to try and identify the particular subcategories where there was spending in excess of their estimates. It is important to note the total line item was offset by less spending in other subcategories. The resolution before the Town Council only reflects the overspending. The overall budget finished up with higher contingencies in reserve than they had estimated, even though there was overspending. The net effect was a positive.

Mayor Hughes questioned if anyone from the public wished to address the Council on this matter? No one came forward. Public hearing was closed.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson to adopt Resolution 03-13 amending the operating budget for the fiscal year 2001/2002.

VOTE: **Motion passes unanimously.**

C. Discussion and acceptance of 2001-2002 Audit

Deputy Town Manager Gucciardo explained the audit results are before the Town Council for both the Town budget and the utility.

Marty Retavin with Schultz Chaipel & Co. came forward. The Town is required by Florida Statutes and the Town Charter for an annual audit. This has been completed. Under the rules they are required to report on the financial statements, compliance with laws, rules and regulations, contracts and grants and also internal control over financial reporting. These reports are all included in the Town's financial statements. A management letter is required and the management response to the management letter is also included. The financial statements are from the Town of Fort Myers Beach and do not belong to the auditors. Their responsibility is to render their opinion. An unqualified opinion has been provided, which is the highest level of reporting. The firm reported no material weaknesses in the Town's internal control over financial reporting.

Mayor Hughes asked for questions pertaining to the audit of the financial statements of the Town, report or management letter?

Vice Mayor Cain thanked Schultz and Chaipel for being their auditors. This is not her expertise, but looks forward to reviewing the reports. The reports are very well done and quite clear to a person who is unfamiliar with accounting. She thanked staff, specifically Janeen, for the work she puts into this.

Council member Thomas referred to page 5 for the financial statements for the Town of Fort Myers Beach. The intergovernmental budget was $2,862,000.00 (two million eight hundred sixty-two thousand dollars) and was actually $869,000.00. This was a deficit of $1,993,000.00 (one million nine-hundred ninety-three). He questioned this and it was explained the funds from the Newton Property came in at a later date.

Deputy Town Manager Gucciardo further explained in the original estimated budget for this fiscal year they anticipated getting in 2.8 million dollars and took in only $800,000.00, which created a deficit of $1.9 million and change. In reality they anticipated $2.1 million for the Newton purchase, which came in for the next fiscal year. Excess revenue was received for about $100,000.00 - $110,000.00.

Council member Thomas questioned the two Times Square property owners with deficits over $1500.00. Have these been paid? Town Manager Segal-George replied they have been paid.

Council member Thomas questioned if there is a policy for the future when people do not pay on time? Town Manager Segal-George indicated if they do not pay their property has a lien placed on it. She

does not believe a penalty is in place.

Discussion took place to the recommendation made by the auditors with regard to the policy which should be in place. The policy was enacted after this recommendation was made. Town Manager Segal-George added that none are presently in default and since this time the policy in effect seems to be working.

Marty spoke of the utility report, which is smaller due to the need for less reports. Their opinion again is unqualified. The one item of concern was for the Town subsidizing the utility to cover operations and the debit service requirement. The impact on the operation to staff is another consideration, which is not an operating cost of the utility but is a consumption of the resources from the Town level. The reporting coming in from the contractor was not adequate or sufficient and this is a contributing factor to the time being spent by Town personnel on the operations.

Council member Thomas is concerned with the extra hours Town staff is putting in toward the utility for work which should be done by the contractor. Deputy Town Manager Gucciardo added that the Town is not billing for their time.

D. Public Hearing: Ordinance 03-05 - Parking Enforcement

Mayor Hughes began by reading the ordinance.

Attorney Dick Roosa indicated he distributed a revised page 10 of the ordinance. This will add a 12th ordinance (Bicycle Safety Ordinance), which would be enforced by the Ordinance Enforcement Specialist.

Mayor Hughes questioned if anyone wished to address the Council on this matter? No one came forward. The public hearing was closed.

Mayor Hughes questioned the difference between stop, standing or parking a vehicle and standing or parking a vehicle? Attorney Dick Roosa replied the stop, stand or park a vehicle is on specified geographic areas. Stand or park is within 10 feet or driveways, fire hydrant or crosswalk. To park a vehicle pertains to unloading of merchandise. These are for different uses.

Mayor Hughes questioned the stopping of vehicles at bus stops or taxi stops within the business districts. He feels this should be broadened to cover the entire area for bus stops along Estero Blvd.. Attorney Dick Roosa replied the language will be modified and a deletion of “in any business district” will be made.

Town Manager Segal-George does not feel they should refer to taxi stands when there are none on the beach. She feels by adding this language people will look for them.

Town Manager Segal-George further added by passing this ordinance as written now it gives the ability to write the tickets, but not the ability to write them for anything other than $500.00. Attorney Dick Roosa would need to establish another ordinance to include all of the fines. She questioned if this is continued to the next meeting could a provision be inserted to make a $32.00 fine.

Attorney Dick Roosa feels a provision could be added when an Ordinance Enforcement Specialist issued a citation only. If the Sheriff is included, the ordinance would need to be changed.

Town Manager Segal-George does want the Sheriff to be included. Attorney Roosa added one ordinance could be developed to include all. Town Manager Segal-George would like all municipal tickets to be $32.00, otherwise, they would need to check other areas and do comparisons. The purpose is to get behavior in line.

Attorney Roosa reviewed and reported a blanket provision could be made in this ordinance for the fees. This could be continued until the next meeting. Town Manager Segal-George would like the Council to continue this case.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to continue Public Hearing 03-05 (Parking Enforcement) until May 19, 2003 at 3:00 p.m..

VOTE: **No vote was taken.**

E. Public Hearing: Ordinance 03-06- Amending Sign Ordinance

Deputy Town Manager Gucciardo began by reading the ordinance. Mayor Hughes announced this is the first public hearing on this matter. Another will be held on May 19, 2003.

Dan Folke further explained some further changes are being proposed. The first item pertains to

the definition section, which refers to the ground sign and monument sign. The ground sign regulates the height of the sign and how far off of the ground it can be. A monument sign needs to be wider than it is tall. These have been combined and a sentence added that permitted ground signs must be monument signs as defined in this chapter. The maximum 8-foot sign language has been removed and replaced with "the maximum height will be determined by the size of the sign." The next item is in regard to bench signs. The LPA has recommended that bench signs be added to the list of prohibited signs. The one exception is for bench signs sponsored by charitable organizations and who were in place prior to the date of adoption. These signs would be recognized as lawful nonconforming signs and would maintain this status as long as they are kept in a safe, attractive manner. He is proposing all other bench signs would need to be removed within one year of the date of adoption. An existing lease could be honored. The third matter deals with A-frame or sandwich signs. The current rule allows sandwich signs in the downtown zoning district. Three options were provided. The LPA has recommended the sandwich signs be allowed on all commercial properties on Estero.

Mayor Hughes opened this matter up for public hearing. No one came forward at this time.

Mayor Hughes commented on definitions. He questioned why bench signs were not defined? He noted the definition of portable sign could be incorporated with the sandwich sign. Town Manager Segal-George explained that the sandwich sign has a size. Many of these definitions were adopted from Lee County. Portable signs as defined in this ordinance are banned from the island. Dan Folke added the solution will be to remove the language "other types of portable signs" from the definition of sandwich signs. Town Manager Segal-George agreed with this change.

Vice Mayor Cain questioned if offsite signs will still be considered by variance? Dan Folke gave an example of an offsite sign for the Fish House in Santini Plaza, which was allowed. The offsite signage came up due to the A-frame signs. He recommends any offsite signs with the exception of the three noted be allowed by variance only.

Mayor Hughes has issues with sandwich signs that are also offsite signs. The intention of the sandwich sign was for pedestrian traffic and not to accommodate those people coming from a distance.

Council member Rynearson questioned Steve Myers, Lee Tran, if they would consider moving the advertising from the benches to the Trolley's? Steve Myers replied the vehicle advertising is more expensive and limited in space. Lee Tran finds that one method of revenue generation will be exchanged for an existing method. This is an option not in their best interest and will eliminate advertising revenue. Steve will give this as additional consideration as an Option 4.

Council member Thomas commented on Lee Tran and Bonita Springs. 26 benches were replaced by the County and the County did not approach Bonita Springs to offset any of this revenue. It seems as if they are asking Fort Myers Beach to offset this revenue. He questioned if this is a double standard? Steve Myers replied when Bonita incorporated they did request and the County did agree to remove the advertising signs. He did not know the revenue generated. This was not a high traffic volume location. A separate agreement was made with a private advertiser that guaranteed the County revenue whether or not they sold bench space. A different situation existed financially.

Council member Thomas commented the bench signs are kept up nicer than last year, but are not of a good material and are peeling. He commented that under 1/3 of the benches he passed were full of trash. Their proposal is to have a cement base with attractive bench with a trash receptacle ($700.00). He feels the advertising staff for the County should put a greater effort to move advertising on the Trolley's. The cost for the Trolley advertising should be lowered and this would increase revenues.

Steve Myers commented by the next Council meeting they can provide a calculation of whether this would in fact replace the bench advertising revenue, if it could be sold.

The next public hearing will be held May 19, 2003 at 3:00 p.m..

F. LDC Chapter 34- Confirmation of residential setback regulations

Dan Folke has talked with both parties who spoke earlier at Public Comment. He is unsure how many properties exist with this situation. After the Council meeting on April 21st, he forwarded this information to Pam Houck to put them on notice to correct the Scrivener's error. He addressed the issue raised by Elaine Jett and commented that the previous code had a section which allowed a reduced setback for a corner lot on a secondary street. This section was removed from the code because the new reduced setbacks were to be made. With the change made, the Town would need to come back and add in the section pertaining to corner lots or a variance at this time would need to be sought.

Dan further addressed the case on Miramar. The setbacks for the RC district are increasing by 2 ½

feet. He referred to tables as provided to Council. Proposed for a nonconforming lot you would use the setbacks of the RC district (5 feet) because they have been put back to the Lee County rule which is 10% of the lot width or 5 feet. The minimum lot width for RC is 45 feet and if you have a 50-foot lot which is more than 4,000 square foot and deeper than 80 it is conforming and the 71/2 foot setback would apply. The rule as distributed on March 3 was a 5-foot setback. This homeowner moved forward with plans and submitted based on the 5-foot setback.

Mayor Hughes questioned if an exception can be made for these situations as noted above? Did they all apply for building permits based on the draft of the ordinance with the setback provisions? Dan replied that some have applied for permits and others have had plans drawn at a considerable expense since the March 3, 2003 meeting.

Council member Rynearson questioned if relief can be given to those who prove work had been completed during the time period from adoption to the change? Attorney Dick Roosa replied if they can identify the class. They must have expended funds to establish an estoppel argument.

Town Manager Segal-George feels if the Council is willing to give this authority to Town staff she and Dan can handle this matter.

Vice Mayor Cain commented if the County ordinance they will revert back to is more strict? Town Manager Segal-George replied in some cases they are more strict. Dan added that all setbacks are increasing by 1/2 foot with the exception of RS waterfront lots. All street setbacks are increasing by at least 5 feet from what is distributed after March 3.

The Town Council provided direction to the Town Manager to deal with each case individually, if property owners had expended funds and had building plans drafted or permitting issues based on the new ordinance.

G. Open Container waiver for Times Square and Old San Carlos

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to waive open alcoholic beverage container ordinance for the Beauty Pageant and the Sundown Times Square Party held in conjunction with the offshore boat racing on May 15, 2003 and May 17, 2003.

VOTE: **Motion passes unanimously.**

H. Request for funding for July 4th Fireworks from Semmer Electric

Shirley Semmer from the Fireworks Team came forward along with Joanne Semmer. Every year they come forward and ask for assistance and support in the fireworks. The expense report is provided at the request of Council member Rynearson. The Sheriff's Dept. and beach clean up are projected. She expressed there is a deficit of $12,900.00. They are appearing before the Town Council five weeks earlier than normal. Unsold pages for ads still exist and they expect the deficit to drop to $9,850.00. Once again, they are asking for the $12,500 not to exceed figure. In the past, they do not use this entire figure. The golf tournament and kid's fishing tournament flyers are available and have been provided.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to approve the not to exceed figure of $12,500.00 for the July 4th Fireworks for the Fireworks Team.

VOTE: **Motion passes unanimously.**

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Howard Rynearson - Commented on the memo pertaining to bicycles for the three deputies and three bicycles. He does not feel three bikes are needed, because they will not all be on duty at the same time. He would like to give the Town Manager direction to move forward and get pricing information for the bikes. No Council members opposed this request.

Do not forget to attend the Air Show and Boat Show. Also, he thanked all staff members for their great work on the Film Festival.

Vice Mayor Terry Cain - Spent sometime in the Back Bay with Heather Stafford. Heather's office and the Town are trying to move forward with the removal of derelict vessels. Some people on the bay front are concerned with how things are looking.

She provided an update on the Eagle Scout. He will be at Playworks on May 10th and May 11th. He will also attend on May 17th and May 18th. He has all the equipment he needs, but needs additional people to volunteer. He also needs donations of food to provide those assisting. She is proud of his efforts.

Had a great time at the Film Festival. Great films and people were on the beach. They had a wonderful time at Claude's cottage. She thanked staff who worked endlessly.

Mayor Hughes - Seconded the comments made by others on the Film Festival. **(Comments were missing between the transition between Tape 1 and Tape 2)** He hopes to see everyone at the Upcoming Events on the beach.

VIII. TOWN MANAGER'S ITEMS

None.

IX. TOWN ATTORNEY'S ITEMS

Attorney Dick Roosa commented at the last meeting the authorization was given from the Council to defend for the lawsuit with UTELCO. He has filed a Motion to Dismiss. At the same time, in a letter to the attorney representing UTELCO, it was asked if a meeting would be favorable. A reply was made that they would be happy to meet with a possible formula for settlement. They see no need to file an amended complaint at this time. He contacted the attorney for Wilson Miller to set up a meeting as soon as possible. He feels this will be productive for both parties. A great deal of effort has been made from the plaintiff to win support from the public. This is a legal issue and the Town has always been willing to meet its legal obligations and has met each one of its legal obligations. Any comments to be made should be that the Town will pay its legal obligations.

X. PUBLIC COMMENT

Don Harris came forward to address the flickering yellow light and asked if it can be left as flickering. People are pushing the button and leaving the light. Try to get some yellow lines to slow people down. There is no need to run the red light during the off season. The traffic light at the bottom of the bridge is the biggest hazard in the summertime. The alternating light has worked perfectly.

XI. ADJOURNMENT

The meeting was adjourned at 8:42 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.