FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 19, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Regular Meeting of May 19, 2003 was opened by Mayor Daniel Hughes on Monday, May 19, 2003, at 3:00 p.m..

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Bill Van Duzer - Council member, Howard Rynearson - 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, Bill Spikowski, Jerry Murphy and Tony Palermo.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REVEREND RICHARD PALMER, PASTOR ST. RAPHAEL'S EPISCOPAL CHURCH

No invocation was given for this meeting.

IV. PUBLIC COMMENT

None.

V. CONSENT AGENDA

A. Review of April Financials

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to approve the Consent Agenda.

VOTE: **Motion passes unanimously.**

VI. ADMINISTRATIVE AGENDA

A. Final Public Hearing: Ordinance 03-06: Amending Sign Ordinance

Mayor Hughes began by reading the Ordinance. A public hearing was held on May 5, 2003. This is the second and final public hearing on this matter, if not continued.

Deputy Town Manager Gucciardo reviewed the memos before the Town Council. Council member Thomas has been leading this process through and desired to move away from the recommendation of the LPA. The LPA's recommendation was for an outright prohibition on ads on benches, except for built in turn over time and an exclusion for the charitable organization (Kiwanis Club). Steve Myers from Lee Tran made a presentation and handed out options for the Council to consider with regard to the bench ads. Lee Tran feels a prohibition on the advertising on the benches will result in a corresponding loss of revenue for Lee Tran. Since the last Council meeting he has met directly with Steve and discussions took place with a modification of the first option. The first option would allow for a continuance of the advertising on the benches, but with some fairly dramatic changes. The most significant change would be the partnering of Lee Tran with the Town with the installation of the new style metal mesh benches. This would allow for placement of the benches on concrete pads together with trash receptacles. Steve is present to discuss the types of ads that would be placed and looked after by Lee Tran. Lee Tran representatives have expressed

a willingness to work with the Town. Hopefully, this can be resolved today or could be continued into June.

Steve Myers, Director of Lee Tran, came forward. He reviewed the economic impact and feels this will be in the neighborhood of $42,500.00 in the next fiscal year. The options presented are still valid options to be considered. He hopes the Council will consider the viable set of additional answers and issues as discussed by the staff. He urged the Council to reconsider the ordinance as written and allow the Lee Tran signs to continue as permitted signs rather than excluded from the ordinance.

Mayor Hughes referred to Exhibit A (subparagraph D) and if significant revenue is generated from the $48,000.00 gross revenue for the fiscal year 2004 Lee Tran will consider service enhancements at no extra cost. Is there any way to change the "will" to a "shall?" Steve replied this is the original way it was written by John, but he asked for the changes so Lee Tran would not be locked into any specifics. He commented the maximum potential, unless rates are raised significantly, would be $62,000.00 to $68,000.00 if all benches were sold every month. This would enable them to start free trolley's earlier, run them later or run an additional one for part of the season. Lee Tran is willing to look toward this matter as revenues develop.

Mayor Hughes commented on the language referring to "able to fund". He asked for further clarification. Steve replied Lee Tran is aware of the number of hours for service which is budgeted. Each year he goes through a budget cycle and pulls heavily on general fund revenues to help supplement the Federal and State revenues. In the past, there have been questions of whether the County would be able to fund the existing level of service. If the service must be cut countywide, they would not exempt the Town from being looked at as a potential place to cut service. The productivity of this route on the beach is the best within their system. He feels it is unlikely the Town of Fort Myers Beach would fall to this list.

Dan Folke reviewed the three significant proposed changes to the code. The first is in regards to bench signs. The current draft has bench signs listed as a prohibited sign, which came as a recommendation of the LPA. If the Council decides to go against this recommendation and keep the signs as permitted, the change to be made would be to delete Item I from the prohibited sign section and reinstate the bench sign definition as a permitted sign. He would add the additional language that bench signs may only be placed at public transit stops and within public beach accesses. The way the code is presently written a bench sign could be on any property and serve as an additional identification sign.

Discussion took place with regard to the location of the Kiwanis signs presently. Council member Van Duzer felt that these signs were located in other areas besides the public transit areas and beach accesses.

Dan Folke added the existing bench signs could be allowed at their current locations.

Council member Van Duzer feels further clarification should take place with regard to bench signs on private property. Those he has spoken to feel these benches should stay and not be removed.

Ginny Ross, Town of Fort Myers Beach Sign Specialist, came forward. The signs on private property are not regulated presently by the sign ordinance. If the benches are allowed on private property in front of any business, it is like a second identification sign. A bench sign is a large sign. Dan Folke suggested some additional language "bench signs internal to a development and not visible from public right of way are permitted."

Mayor Hughes opened the public hearing to discussion on the bench signs. No one came forward.

Council member Thomas commented on the trolley bench signs he has worked on since July 31, 2002. The idea of the restriction of advertisements on the bench signs was for the beautification of the barrier islands that continue from Hickory Blvd. up to Estero Blvd.. Hickory Blvd. has already removed 26 benches without any negative comments from Lee Tran. Since the previous meetings he had the opportunity to speak to the gentleman from Sarasota who informed him that Sarasota eliminated their bench sign advertisements in the western area. He supports the Kiwanis grandfathering in of their bench signs at a count of 40. He also has documentation showing the $617,000.00 they have contributed back to the community. He does not favor the late response now provided by Lee Tran. He has suggested placing advertisements on the moving trolley's, which is a much more visible form of advertising. He felt that a schedule of trolley times should be placed in the newspapers, motels and Chamber, which should help to increase the revenue and amount of riders.

Mayor Hughes added the trolley is full during the season. He felt the schedule of times has been distributed, but due to the traffic difficulties it makes it impossible to maintain the ½ hour schedule.

Council member Van Duzer commented if the bus benches are eliminated it will cost the Town additional funding out of their general revenue to continue the bus service. If Exhibit A is selected, Lee Tran would be willing to split the cost, but would like signage on those benches. There is a need for the benches

within the Town. The removal of the signage will be costly and he does not feel this will be logical for the community.

Council member Rynearson suggested the reduction of the signs as a possible solution? Steve Myers feels the benches offered have probably a smaller sign already due to the style of the bench and the way the sign is set on the bench. They do not want to reduce the sign so small it will prevent them from obtaining revenue. This matter can be discussed.

Deputy Town Manager Gucciardo added there would be an automatic reduction in the size of the copy area for the sign with the new benches as proposed by Lee Tran.

Vice Mayor Cain questioned if the Kiwanis benches were owned or leased? Council member Thomas replied they own the benches. Vice Mayor Cain addressed the issue of maintenance. Council member Thomas replied the Kiwanis are responsible for the maintenance of the benches. If they are not kept up, they would be notified directly. No problems have been experienced in the past with this group.

Vice Mayor Cain would love to see no advertising on Estero Blvd. on the benches, but she feels the benches should be upgraded and the 50% assistance is too good to pass up.

Council member Thomas expressed the cost of a new bench is $700.00. His proposal is for a concrete slab, attractive bench and trash receptacle. Already in this current year's budget is $12,500.00 and with the same amount budgeted for next year this will almost cover the entire cost of all benches. He has additional concerns with the partnership with the County.

Vice Mayor Cain is concerned with the lost revenue by the County and the dollars that will need to be spent by the Town to keep the present trolley system in place.

Council member Thomas replied this is only an assumption. Bonita was not told they would lose their trolley system. He is tired of Fort Myers Beach being the dumping ground.

Mayor Hughes feels the position of Council member Thomas is inconsistent. He does not see how they can rationalize the grandfathering of the 40 signs for the Kiwanis when these do not enhance the beauty of the Town. The new benches will be more attractive and the 50% contribution will be beneficial.

Council member Rynearson questioned if the Kiwanis would be willing to upgrade to the same type bench as being proposed? Paul Abraham came forward. He is a Kiwanis member and has been with the benches for over 25 years. The Kiwanis has been talking about the upgrading. He commented the benches are their lifeline to the store. They have tried to keep the backs brand new and the benches have all been repaired.

Council member Rynearson suggested adding language to the ordinance to state the Kiwanis would agree to update their benches to match the others in place as they are replaced. Paul Abrahams replied they would be willing as long as it is financially feasible without taking it away from the community.

Mayor Hughes questioned how the placement of the benches began? Paul Abrahams replied they were placed in the easements(beach accesses) in the beginning. He felt presently there are 16 up and down Estero with 11 on the beach accesses. The Kiwanis has always maintained approximately 28 to 40 benches.

Council member Thomas added he does not view the Kiwanis signs as being attractive. He does firmly believe a charity that does as much for the beach should not be punished. This is his reason for grandfathering the benches.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to grandfather no more than 40 Kiwanis benches as they presently exist with an understanding there will be a cooperative effort in the future to replace those benches with the design and style of the Town. Option #1 to be included as presented, which indicated that Lee Tran will continue to maintain the benches and bus stop signs. The trash removal will be handled by the Town. The County will assist the Town with 50% of the cost for the new benches with discussions about signage on the benches which has not been completely addressed. **Motion amended:** Made by Mayor Daniel Hughes and seconded by Vice Mayor Terry Cain to limit the permitted bench signs to trolley stops and within public beach accesses.

Discussion: Vice Mayor Terry Cain questioned if the bench signs can be placed in transit areas and beach access areas, and if in a development would they be placed within a development and out of site of the public right of way.

Council member Van Duzer feels if the bench is on private property it should be out of the Town's jurisdiction.

Dan Folke discussed the ordinance adopted originally would allow a bench sign anywhere on private property. The Town saw this as a loop hole to get a second identification sign. Staff recommended the bench signs be limited to transit stops and beach accesses.

Council member Bill Van Duzer and Council member Rynearson do not want to add the language limiting the bench signs to transit areas and beach accesses. Council member Thomas is very disappointed in the direction this Town Council is heading by endorsing bench signs. He feels this "cheapens" the area.

Mayor Hughes is concerned with the proliferation of signs. This is the purpose of his motion to amend.

VOTE: **Motion to amend passes 4 to 1. Council member Thomas dissenting.**

Discussion: Council member Thomas expressed that advertisements on bench and resort areas do not go together.

VOTE: **Motion passes 4 to 1. Council member Thomas dissenting.**

The discussion moved to the second proposed change to sandwich signs. Dan Folke reviewed the current rule on sandwich signs allows sandwich signs or A-frame signs in the downtown zoning district. He feels if the proper perimeters are set these signs can be completed in an attractive manner. For a multiple occupancy complex with less than 10 occupants it would be limited to two sandwich signs. A complex with more than 10 occupants would be allowed up to three sandwich signs. The signs must be professional made and maintained in an attractive manner. These signs cannot be out on the sidewalk interfering with pedestrian traffic. The signs must be on private property, but if the building is built to the property line they would be allowed onto the sidewalk. The second portion deals with the pre-existing off premises sign and the idea to grandfathering in some of the existing sandwich signs that are also offsite signs. Option #1 would be to keep the rule the same, which is the downtown district only. Option #2 would allow the downtown district and all commercial properties along Estero Blvd.. Option #3 would be to eliminate sandwich signs all together.

Mayor Hughes questioned the individual concessionaires who operate on the beach at a location off of Estero Blvd.? Ginny Ross replied the signs for the jetski's are written into their own jetski ordinance. Parasailing would also be included. She does believe the jetski ordinance allows them a sign on Estero Blvd..

Town Manager Segal-George added there are special rules in Beach and Dune and special rules with regard to Jetski/Parasail for signage.

Dan Folke added further with regard to Jetski/Parasail for anyone who is licensed they are allowed through identification signs with limitations and one portable sandwich sign displayed at its land-based site during regular business hours.

Mayor Hughes asked if anyone wished to address the Council on the issue of sandwich/A-frame signs? No one came forward.

Council member Thomas expressed many of the business owners who would address this item are still at work. Council member Van Duzer feels this is an important matter and time should have been allotted to attend this hearing.

Mayor Hughes commented the sign placement on a sidewalk is an obstruction? Dan Folke replied on Old San Carlos where there is 15 foot sidewalk, a 2-foot sandwich sign would not be an obstruction.

Council member Van Duzer has concerns with the 4-foot or 5-foot sidewalks. These sandwich signs will provide an obstruction to the pedestrians trying to pass thru these walkways. He does feel this will be a nightmare to enforce.

Dan Folke expressed that Ginny Ross and Dave Crabtree routinely move sandwich signs off of

sidewalks. This does require constant attention.

Mayor Hughes commented that sandwich signs could be eliminated on Estero Blvd. where the sidewalk is too small. Dan Folke added that the new property development regulations require buildings in the Town's downtown district to be at zero to five. If a person builds at zero, their right for the sandwich sign is taken away. Mayor Hughes added if the building is built out to the sidewalk why is a sandwich sign needed?

Council member Rynearson suggested a hanging sign for those who are built out to the property line. Dan Folke agreed that some type of other sign could be substituted for the sandwich signs in these areas.

MOTION: Made by Council member Howard Rynearson to adopt Option #3. The unique situations can come forward at no charge to try to find a way to get appropriate signage.

Vice Mayor Cain asked for additional clarification on the motion. Mayor Hughes questioned if the special circumstances would be handled by variance. Attorney Dick Roosa added this could be handled by special permit. Special guidelines would need to be established.

VOTE: **Motion fails due to lack of second.**

MOTION: Made by Council member Bill Van Duzer and seconded by Mayor Daniel Hughes to adopt Option #2. To include (B) which is pre-existing off premises. **Motion amended:** Made by Mayor Daniel Hughes and seconded by Council member Bill Thomas to include a sunset provision for two years.

Discussion: Additional discussions took place with regard to the placement of signage in areas such as Key Estero, Seafarer's, etc.. Mayor Hughes feels that tenants signed leases at properties knowing they had no frontage on Estero. At the time the lease was signed the sandwich signs were not allowed. He commented that now they are coming forward to ask for relief with the sandwich signs, because signage has become an issue and he is not in favor of allowing the signs for this reason. He is not opposed to trying to help out the businesses.

Council member Van Duzer feels if this option is selected it should be known this will be strictly enforced.

Mayor Hughes is concerned about the additional proliferation of sandwich signs. He does not like the sandwich signs, but does not want to hurt businesses either. If sandwich signs are approved and all bases are not covered and banning takes place at a later time will a Bert Harris situation take place?

Attorney Dick Roosa added you always have the risk when a property right is taken away to be subject to a Bert Harris claim.

Mayor Hughes suggested a sunset provision to be in effect for three years. At the end of three years the Town Council can choose to eliminate the signs. Attorney Dick Roosa and Town Manager Segal-George replied that this could be done.

Council member Van Duzer feels the sandwich signs on Estero for businesses are reasonable due to the slow-moving traffic. When people start businesses they do not give the proper consideration to signage and he does not want to be injurious to those businesses. He is not opposed to nice looking, appropriate sandwich signs.

Council member Thomas does not like sandwich signs all up and down Fort Myers Beach. Sidewalks are for pedestrians. Sandwich signs are supposed to be used

for people walking and not driving. This is the reason he cannot support this motion.

VOTE: **Amendment to the Motion passes 4 to 1. Council member Van Duzer dissenting.**

VOTE: **Motion fails.**

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to allow sandwich signs in the downtown zoning district where enough sidewalk area is present. Also, To include (B) which is pre-existing off premises. To include the 2-year sunset provision.

Discussion: Council member Bill Thomas asked for a clarification of the definition on the downtown zoning district? Dan Folke replied it is within the outer perimeter as shown on Figure 34-6 of the zoning (Zoning Map).

Mayor Hughes questioned if the sandwich signs are improperly placed and several warnings have taken place can the signs be confiscated by the Town? Attorney Dick Roosa replied a sign which is improperly placed (such as in a handicapped space or right of way) could be confiscated. This would depend on the circumstances involved.

Ginny Ross addressed offsite signs for the A-frame and asked if permission is being given for everyone to set them out in the right of away? Town Manager Segal-George replied that exceptions are in place for three only (Seagrape, Heavenly Biscuit and the Anchor Inn).

Mayor Hughes feels this matter should be continued to review a revised ordinance at the next meeting. Attorney Dick Roosa suggested continuing the public hearing.

VOTE: **Motion passes 3 to 2. Council member Van Duzer and Council member Rynearson dissenting.**

Further discussion about the format of the next meeting was discussed. Attorney Dick Roosa feels significant changes have been made and the delay for one more hearing could be justified.

MOTION: Made by Council member Bill Van Duzer and seconded by Mayor Daniel Hughes to continue this hearing until June 2, 2003 at 6:30 p.m..

Mayor Hughes asked if anyone wished to address the Council on the proposed amendment to the sign ordinance? None were heard.

Attorney Rick Roosa felt the language for bench signs should prohibit all bench signs except for charitable organizations and Lee Tran. These are the only bench signs to be allowed. Mayor Hughes added the location must be limited.

VOTE: **Motion passes unanimously.**

B. Request for purchase of bicycles for Sheriff's Office Use

Deputy Town Manager Gucciardo indicated discussions have taken place with the Sheriff's office, Council member Rynearson and himself with regard to additional equipment being requested. This is being created by the removal of the substation at Lynn Hall and the allocation of three additional officers. Two written quotes are within the Council's packet and a third has been received, so they will be in compliance with the finance ordinance. Staff relied on conversations with Lt. Matt Powell with regard to the preference of the deputies. The recommendation from Council member Rynearson at the last meeting was to purchase two bicycles, which would be completely outfitted at a cost of approximately $2,800.00.

Wade who is a new office patrolling the beach came forward. He asked for clarification if two bicycles were suggested for purchase? Town Manager Segal-George replied this was correct. He indicated they originally asked for three bicycles. Take home vehicles were provided for each officer along with three hitches, so each bicycle could be set up for each individual officer. Their schedules will be set up where only one will be working and equipment will need to be shuffled back and forth.

Council member Van Duzer looked for clarification with regard to the number of deputies assigned to the beach? Wade replied that the Sheriff's office staffs the beach with two zoned deputies per shift (2 on days and 2 on nights). In addition, the beach received three community police officers when the substation was removed to supplement the removal of the station and to assist the other zoned deputies. Some days there will be five deputies and other days there will be two officers. Attorney Dick Roosa added when a piece of equipment is assigned to a particular person this makes them responsible for the maintenance and care. When you share equipment, the problem of everyone expecting the other to maintain becomes an issue. You get a longer use out of your equipment when it is assigned to one officer.

MOTION: Made by Council member Bill Thomas and seconded by Council member Howard Rynearson to furnish the Sheriff's office with the three bikes requested and preferred.

Discussion: Council member Rynearson questioned if there will some Town decals on the bicycles. Deputy Town Manager Gucciardo replied that decals will be added to the bicycles. The Sheriff's office is also looking into this identification being added onto the uniforms themselves. There may be jurisdictional issues with the uniforms. The three new deputies have been very proactive in terms of going out to the businesses and residents and identifying themselves and expressing their roles on the beach. He feels a great job is being displayed.

VOTE: **Motion passes unanimously.**

C. Public Hearing: Ordinance 03-05 Parking Enforcement

Attorney Dick Roosa began by reading the ordinance. Parking on Estero was discussed. The Mayor felt some changes needed to be made that were not included. Attorney Dick Roosa added that Estero is within the limits of the Town of Fort Myers Beach and the language as written applies unless there is an exception.

Mayor Hughes opened this matter for public hearing? None was heard. The public hearing was closed.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to adopt Ordinance 03-05 Parking Enforcement.

Discussion: Council member Van Duzer questioned if discussion will take place with regard to special passes for residents? Town Manager Segal-George replied this topic will be addressed at the June 2, 2003 Council meeting.

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

D. Introduction to Ordinance 03-07 Amendment to public Safety Task Force

Mayor Hughes announced this is an introduction. Town Manager Segal-George expressed this will be set for hearing on June 2, 2003 at 6:30 p.m.. This will change only that the Public Safety Task Force will not have to meet each month.

Mayor Hughes brought forward a modification to the language. Attorney Dick Roosa will comply.

E. Change Order Request: Bayland Road (Holiday Shores)

Damon Grant explained that Holiday Shores refers to Publix, MidIsland Beach Marina and the Bayland area. This drainage project required two easements. These easements on the southern side of

the property would have within them a drainage conveyance as well as a fence or some buffering between the residential area of Holiday Shores, MidIsland Marina and Publix. This is the reason this project has lingered. It has taken some time to execute the easements for Publix and the Marina. The shadowbox fence was not acceptable for the Marina's easement and DO. They would have needed to go to a more substantial wall. The attempt was to find a wall comparable in price to the shadowbox fence. The anchoring system was another issue. The system designed was prior to the new hurricane wind ratings. The new wind ratings require a much more substantial anchoring system for the Publix wall and the MidIsland Beach Marina wall as well. He put together an outline of the change order. The not to exceed figure is for $35,000.00, which is just for the upgraded anchoring system for the Publix fence as well as the improvements and changes between MidIsland Marina and Holiday Shores. Ron Eddenfield had asked that several drainage structures be added. He does feel his not to exceed figure may need to be increased to approximately $43,000.00.

Ron Eddenfield came forward.

(Mayor Hughes announced that due to a prior commitment Council member Rynearson has left the meeting.)

Ron continued and expressed that the Bayland project was a result of construction from Publix. The water was no longer able to run off of the developed residential area and store in the boat yard. Some provisions were made to accommodate the flow, but were quite inadequate. In order to make this project happen it was necessary to negotiate easements with Publix from Estero Blvd. back about 500 feet and with MidIsland Marina for another 350 feet up to the bay. The change in the hurricane rating caused some redesign. The system designed is much more substantial than the initial design. MidIsland Marina is receiving a concrete fence due to security issues. The cost is considerably more for this type of fence. Additional change orders for the Bayland area came in and are combined within this total.

Mayor Hughes questioned why the Town has to pay for the upgraded fence for security purposes for MidIsland Marina? Damon replied that there was always a wooden 8-foot fence. This fence was in bad need of repair. The fence was being broken down by residents who traveled through to the Publix area. Ron added there were concerns the shadowbox proposed would not be adequate to stop people from removing the fence to get through. He was concerned this would leave the Town open to some liability. The better fence would better serve the Town and the neighborhood in the long run.

Vice Mayor Cain asked for clarification on the added drainage. Ron replied at the intersection of Dolphin and Bayland was initially the end of the project. When it was reviewed out in the field, it was determined for a little extra the ditch could be piped and connected to another drainage pipe. An additional box inlet was added and this was a much safer circumstance. This was a health and safety issue.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to authorize and approve a change order for Holiday Shores drainage project in the not to exceed amount of $43,000.00.

VOTE: **Motion passes unanimously.**

Damon reported this project has been at a stand still until this was resolved with the Town Council. The fence should take approximately one week and another two weeks for drainage. The completion should take place in 4 to 6 weeks.

(Mayor Hughes announced the Town Council will take a 5-minute break)

F. Land Use Public Hearings:

1. CASE NUMBER: VAR2003-00004. Michael McGuigan in ref. to 247 Palermo Circle.
Variance in the RC-Residential Conservation zoning district to allow an addition of a 5-foot front deck to a single-family residence with a 4.5 foot side setback on the south side rather than the required minimum 7.5 foot side setback for a waterfront lot per Table 34-3 "Dimensional Regulations in Conventional Zoning Districts" of the Fort Myers Beach Land Development Code, and a 17.2 foot street setback rather than the required minimum 25 foot street setback per Table 34-3 of the Fort Myers Beach Land Development Code. The subject property is located at 247

Palermo Circle.

Robert Kenner came forward to represent Mike McGuigan for their property at 247 Palermo Circle. He understands that certain variances are granted due to reasonable minimal requests and outstanding opposition. He feels they meet both criteria extremely well. They are requesting a very small section on the front deck of their home. The request is for 30 inches to build a symmetrical deck on the home. The house was built non-conforming 40 years ago. The Palermo neighborhood is unique for the beach. Almost the entire neighborhood is non-conforming. He provided pictures of his home. The 30 inches being requested will only enhance the home. There is no opposition against this project. A mailer was sent to over 150 immediate neighbors with no opposition. Dozens of neighbors have come by to offer support and express how beautiful the home looks. Many neighbors are requesting the same type of work. Other variances were approved for a greater request. He expressed the last meeting resulted in a 4 to 3 vote. The decision was very close. The four who opposed this matter indicated they wrote the variance and needed to stand by them. Robert felt variances were granted on reasonable minimal requests. He hopes the Town Council will side with this matter.

Council member Van Duzer needed further clarification on the location being requested. Robert Kenner pointed this out and provided additional information.

Vice Mayor Cain pointed out five feet is being asked for in the request and under Attachment B it states six feet? Robert Kenner replied this was addressed at the last meeting. Five feet is the amount being requested.

Robert reported that he and his partner have been investing in businesses on this beach for over a decade. All the money put into these homes come from local businesses. This is his first variance and he did feel this was a very minimal request.

Tony Palermo from staff came forward. Staff received this information on January 15th when the zoning was RS-1. On March 3, the zoning changed to RC with different setbacks. The LPA made its recommendation on April 8th with a 4 to 3 vote. One side indicated they should stay with the regulations as they are because this case does not meet the five criteria for the variance. The opposite side saying this does not harm the neighbors, so the variance should be granted. Staff recommends approving this setback, even though under the revised site plan he was approved using the regulations as they existed for a brief moment. Staff recommends approval of the front setback, but recommends denial on the side setback for the request to 4.5 feet. The applicant should meet the current regulations which are 7.5 feet. The is a case complicated by a change in regulations.

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

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve the request for a variance from the side setback from 7.5 to 4.5.

Mayor Hughes asked for ex parte communications. None were expressed by the Council member present.

Discussion: Council member Van Duzer feels this is a minimal request. There are exceptional circumstances, because the home was built to those property setbacks. He agrees without this change it would be less appealing.

Vice Mayor Cain expressed if the floor area would have been approved, this would have been a situation that would have been allowed.

Mayor Hughes agrees with the motion. The findings and conclusions along with staff recommendations are correct.

VOTE: **Motion passes unanimously.**

2. CASE NUMBER: VAR2002-00048. Steve Tancos in ref. to Lanai Enclosure. Variance from the Residential Conservation (RC) zoning district dimensional requirements (LDC Table 34-3) for a non-conforming residential lot to reduce the rear setback from 20 feet to 15 feet and to reduce the waterbody setback from 25 feet to 20 feet. The subject property is located at 330 Jefferson Court. Jerry Murphy came forward to indicate Mr. Tancos was present earlier in the meeting. He does

have a disability which limits him to sitting for periods of no longer than three hours. Due to this disability he was required to leave.

Council member Van Duzer commented he has been to the property a few times and never saw a variance sign posted on the property. Jerry Murphy replied the sign was posted and the affidavit received.

Mayor Hughes asked for ex parte communications? None were heard from any Council members present.

Mayor Hughes reported the applicant's application will stand as his presentation. Jerry Murphy will briefly summarize his presentation. Staff and the applicant are in agreement on this application. Mr. Tancos is asking to enclose an existing lanai. The main portion of the house does not conform with either the rear setback or the waterbody setback. The lanai is an extension of the already enclosed space. He described photographs provided to the Town Council for review. To staff this seemed a reasonable request to allow this gentleman to enclose what he has that is already non-conforming. Staff recommends approval.

Mayor Hughes indicated this matter was unanimously approved by the LPA.

Mayor Hughes questioned if anyone from the audience wished to address the Council on this matter? None were heard. The public hearing was closed.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve this variance as requested by staff to include the conditions which were a part of the LPA recommendation.

Discussion: Council member Van Duzer added that this lanai is not adding to the inconsistency with the setback.

VOTE: **Motion passes unanimously.**

3. Request to Amend Bay Beach Settlement Agreement - Request to add sales office as a permitted use on Parcel 8.

Dan Folke expressed the Mr. Chris Clausen is present to summarize the request. Dan reviewed that Bay Beach development has its own zoning district called Bay Beach. The allotted uses are outlined in the stipulated settlement agreement. The request is to put a temporary sales center on Parcel 8. An existing temporary sales center is on Parcel 10. The settlement agreement clearly limits the use of Parcel 8 to recreational uses. This is the reason this request to amend the settlement agreement is required. A site plan was provided to the Town Council. A revised site plan has been received. The intention is to remove the existing sales center on Parcel 10. Parcel 10 is approved for development of multifamily structures. The development order has been applied for, for Parcel 10. Also, the sales center is dated and needs to be replaced, so they would like to remove it from Parcel 10 and open a new sales center on Parcel 8. One of the conditions recommended would be to have the existing sales center on Parcel 10 removed. An exhibit was passed to Council to show where the proposed sales center would be located. This is proposed to be a 2,100 square foot sales center and would be located where there are some existing trees and back on a portion of the putting green. A representative of the golf course agrees with this situation and was looking to redo the putting green and relocate it more to the north. The required parking for the use is quite minimal, which is a total of five spaces. They can provide for this with the existing parking lot. The remainder of the existing parking will remain intact, so shared parking will exist. A landscape plan has been provided with nice trees and a double row hedge. Approval has been recommended of this amendment to the settlement agreement with the four recommended conditions.

Dan further clarified the recommended conditions. Condition one limits the sales center to 2,160 square feet and staff would like to change this to read "the sales center may not exceed 2,600 square feet and must be developed in substantial compliance with the approved master site and utility plan." This gives some additional flexibility. The 15-foot setback to the putting green will be kept intact and the 20-foot setback to Parcel 17 to the south and the setback from the street, which will be maintained. Condition two should contain a date of 4/17/03, which is the landscape plan submitted on Friday. Condition three limits the use to the sale of units within the Bay Beach development. The office would be approved until February 1, 2011 or until the final certificate of occupancy for the final Waterside Building has been issued, whichever occurs first. The sales office and access ramps will be removed within 30 days of February 1, 2011 or

issuance of the final certificate of occupancy. The site will be restored.

Mayor Hughes commented on the site being restored. He feels it should be more specific. Dan Folke replied it should be restored to the surrounding condition.

Council member Van Duzer suggested added language that it will be restored to a recreational area only. Mayor Hughes feels this language would be helpful. Dan will comply with this change.

Dan went on to state that the fourth condition deals with the existing sales center on Parcel 10. When the certificate of occupancy for the new temporary sales office is issued, the existing sales office on Parcel 10 will close and be removed within 30 days. If the amendment is approved, the Council should authorize staff to have this amendment drafted and the Mayor can review and sign the settlement agreement with these conditions for the amendment.

Chris Clausen came forward and addressed the 50x70 description was leased for the sales trailers. A provision within the lease agreement, which allows shared parking of the existing facilities is included.

Mayor Hughes feels some additional thought needs to be given to the 50x70. If he were Mr. Clausen, he would like to see an amendment to the lease.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Bill Thomas to approve the stipulated settlement agreement with the correct exhibit to show the area subject to the amendment. To include the four conditions as indicated in the staff recommendation and within the additional comments made by Dan Folke.

Discussion: Council member Thomas commented with the settlement agreement is a recreation area. The proposal is to put a 2,600 square foot building in this recreation area. He feels this deters from being a recreation area. This is not part of the settlement agreement. He disagrees with the 8 year allowance period and giving up a negotiated recreation area for a building.

Council member Van Duzer expressed they are only trying to cooperate with the build out effort. This is only a temporary structure. When the project is complete this building must go.

Vice Mayor Cain questioned the date of 4/17/03 for Condition two. Dan Folke added that the seal date of May 15, 2003 would be a better date. Vice Mayor Cain is uncomfortable. She knows that they worked long and hard on this settlement agreement. She is concerned because this was not part of the original agreement and 2001 is a lengthy time. If this goes through, it will revert back to the recreational uses immediately. The approved landscaped plan would be incorporated immediately with the building? Dan Folke replied that the landscape plan will be submitted along with the limited review development order.

Vice Mayor Cain questioned why this must be placed in a recreational area? Mr. Clausen replied this is just a temporary use. If completed within one year, it will be removed immediately. There is no other place to put this unit.

Mayor Hughes questioned where the date 2011 came from? Mr. Clausen replied the negotiations for the land lease for this location tried to forecast the length of time it would take to sell out the buildings. It normally takes about 1 ½ years to sell out the buildings. A few years were added for unforseen situations. The sell out should happen within the next four years. He would like the protection of the additional years.

VOTE: **Motion passes 3 to 1. Council member Thomas dissenting.**

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Bill Van Duzer - Sent memos to the Council members with regard to the Leadership Lee County. He needs approval to participate in this program.

MOTION: Made by Vice Mayor Terry Cain and seconded by Mayor Daniel Hughes to provide the necessary approval for Council member Bill Van Duzer to attend the Leadership Lee County program.

Discussion: Vice Mayor Cain feels this is a very beneficial program. She is a graduate of the program. It is a good program.

VOTE: **Motion passes unanimously.**

Council member Van Duzer discussed the alternating light. This is on the state list, which means this could move forward. He has had some brief conversations with the Town Manager who has the Deputy Town Manager working toward these efforts.

Deputy Town Manager Gucciardo replied this should be brought forward at the next meeting.

Council member Van Duzer discussed the bridge to go from the Coconut area to the Carl Johnson park. He was told this cannot happen. He has had numerous discussions with environmentalists about this bridge. He also spoke with DOT to see how this could be considered. This is a simple process, which includes asking the MPO and Florida Department of Transportation to add on the long range agenda for future consideration. Heather Stafford expressed a concern about the runoff from the bridge going into the aquatic preserve. Engineers have indicated there would be no runoff into the aquatic preserve. This Council should give consideration of asking the MPO to put this on the long range plan. He would like this Council to discuss this matter further. A study needs to move forward. He added in the near future Summerlin Road will be widened and extended and be made to handle more traffic to go where? Sanibel or Fort Myers Beach! The traffic problem must be shared by the entire county. He is terribly concerned about the near future.

Town Manager Segal-George replied the long range plan of the MPO is that there is no relief for the next 50 years for either Fort Myers Beach or Sanibel. A letter could be sent to the MPO, but she is unsure if a request like this has ever been made.

Mayor Hughes suggested the Town staff work with Council member Van Duzer to draft a letter. This letter should be included in the next Council meeting packet for review of this Town Council.

The refuge island is on hold. He would like to officially put this matter on hold and have a rebid or until such a time they are further into the traffic mitigation study. He personally feels there is more consideration being given to a pedestrian overpass or multiple pedestrian overpasses. He would hate to see the spending of a refuge island, which is doomed to fail.

Vice Mayor Cain does not agree.

Town Manager Segal-George reported that herself and Damon Grant met with Bill Spikowski and Chris Swenson. The project was reviewed and modifications needed to take place. Other options do exist and expense was a concern. Damon was planning to come back to the Council in June to ask for an allowance to re-advertise on the project. The scope the project has changed significantly.

Damon discussed that the elimination of the traffic light along with drainage was major considerations of the discussions.

Mayor Hughes personally feels they should continue to move ahead on any and all options. A decision should be made within the near future.

Council member Van Duzer agrees with this direction.

Council member Bill Thomas - On May 8, he attended the Southwest Florida League of Cities meeting. On May 15th, he attended the Southwest Florida Regional Council meeting.

A traffic study has been moving forward. A report before the Council was made by Chris Swenson. This approach seemed to concentrate on the ideas of tolls. He read a letter from the Florida Department of Transportation. He requested from the Town Manager a copy of the letter Mr. Chris Swenson wrote to the Florida Department of Transportation for this interpretation. This study by Chris Swenson is nothing but a "Pig and a Poke." He feels this study has moved in a slow or aimless way. He commented on petitions and felt anybody wanting one in the future should go directly to the Town Manager for direction. Because of the desire of many of the residents of Fort Myers Beach along with the letter from the Department of Transportation a motion was made.

MOTION: Made by Council member Bill Thomas and seconded by Mayor Daniel Hughes to direct the Town of Fort Myers Beach attorney prepare an ordinance to amend the

Charter that grants to the voters of Fort Myers Beach the right to vote for or against tolls or tolling in any form on any road within the Town limits or upon any bridge or structure adjacent to Fort Myers Beach. The Town of Fort Myers Beach attorney should take all necessary action to assure the foregoing ordinance and charter amendments meet all regulatory legal and election requirements. Such an ordinance should be placed on the earliest available election ballots for voting for the Fort Myers Beach voters.

Discussion: Council member Van Duzer understands much work went into this process. He is unsure if it was handled properly or improperly. He feels that any discussion of tolls or petitions against tolls are very premature. He will not make a decision until all information has been offered.

Vice Mayor Cain expressed that she wanted this to be the tremendous study, which would be referred back to many times. She feels many of the items will be implemented after their time serving on the Council. The trams are very interesting. Much information is contained within this document. She does not feel they are at the point of the motion as presented by Council member Thomas.

Mayor Hughes asked for a copy of the petition. He has never seen this document. He agrees this motion is premature. If there seems to be a majority of the Council in favor of the tolls an ordinance or resolution could be adopted that could be contingent upon the referendum.

Council member Thomas added there were many contradictions to this gentleman's efforts to get this petition done correctly. He was prepared to have it reviewed by downtown and was told it did not need to be brought downtown. Council member Van Duzer complimented Mr. Massucco for his tremendous amount of effort he put into this document. This document has achieved the desired purpose. He further commented he takes exception to the gentleman who writes in the newspaper and tell people how he will vote on an issue. This happens often.

Mayor Hughes seconded this comment as made by Council member Van Duzer. There is a gentleman on the south end of the island who repeatedly quotes information that has not been said. The Mayor has not expressed an ultimate opinion on tolls. He receives letters and calls all because of malice by one individual. He is tired of this matter and feels this causes ill will in the community.

VOTE: **Motion fail on a vote of 1 to 3. Mayor Hughes, Council member Van Duzer and Vice Mayor Cain dissenting.**

MOTION: Made by Council member Bill Thomas and seconded by Mayor Daniel Hughes to request the Council to consider any motion or ordinance imposing tolls cannot be adopted without a referendum on the ballot. **Motion amended:** Made by Mayor Daniel Hughes and seconded by Council member Bill Thomas to table this motion until the next Council meeting. **Motion amended:** Made by Council member Bill Thomas and seconded by Mayor Daniel Hughes that any ordinance imposing tolls cannot become effective until approved at a referendum.

Discussion: Vice Mayor Cain feel it is too soon to make a decision.

Council member Thomas added when issues come up in most Towns the people come out to discuss the issues. He does not feel the issues are discussed. When the elections took place one year ago, the four candidates came out with speech after speech with no tolls, including Council member Van Duzer.

Council member Van Duzer replied that Council member Thomas is a Town Council person who is supposed to consider all the issues before making up his mind. This has not been done. Council member Thomas added he is out of order.

Mayor Hughes cannot support the motion. A council member is not present and a motion of this magnitude and of this serious nature should not be adopted without his presence.

VOTE: **Motion to table fails on a 2 to 2 split. Council member Van Duzer and Vice Mayor Cain dissenting.**

Attorney Dick Roosa discussed the language contained in the motion. Mayor Hughes suggested additional language for modification.

VOTE: **Motion fails 1 to 3. Mayor Hughes, Council member Van Duzer and Vice Mayor Terry Cain dissenting.**

Council member Thomas is unhappy with the work of Chris Swenson.

MOTION: Made by Council member Bill Thomas to terminate the contract of Chris Swenson.

VOTE: **Motion fails for lack of second.**

Mayor Hughes - Referred to a memo from Scott Gilbertson to Ray Judah, which is a follow up of a letter from the Mayor to Ray Judah asking for help in working with the Town for participation in the transportation study to address congestion problems. He specifically did not refer to tolls on the request of the County. The memo acknowledges the request to have their staff work with Town staff.

Deputy Town Manager Gucciardo indicated some discussions have taken place with regard to the gas tax. The next meeting is set for Thursday morning.

Mayor Hughes enjoyed the parade, air show and boat races. He felt this was a great weekend for the Town.

VIII. TOWN MANAGER'S ITEMS

Town Manager Marsha Segal-George - She would like to begin the last meeting on June 30, 2003 at 3:00 p.m..

She reported further that the Directors of the Mound House are trying to submit a state historic grant. The deadline is May 31st. This is the large category grant, which is trying to be submitted for the swimming pool. Three quotes have been requested and it is being asked of Council to award to the lowest of three solicited with the understanding it would be under $15,000.00. She feels they have an excellent chance at receiving this grant and it is an excellent project.

Damon Grant reported on behalf of the Mound House to request Town Council support for specific structural engineering services to facilitate obtaining grant funds to convert the existing cracked swimming pool into a walk-in shell mound archeological exhibit. The intention is to receive the studies in order to include them as part of the grant application.

Council member Van Duzer questioned how they are doing on the projected expenses for Mound House for the year? Deputy Town Manager Gucciardo replied he is unsure. He does understand there is money in the budget for capital and operations.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to authorize the Directors of the Mound House to proceed in hiring an Engineering firm at the lowest cost not to exceed $15,000.00. The final decision will be made by Town Manager Marsha Segal-George.

VOTE: **Motion passes unanimously.**

IX. TOWN ATTORNEY'S ITEMS

None.

X. PUBLIC COMMENT

Frank Schilling came forward and addressed the issue of tolls. He discussed the April meeting at which time CRSPE came forward to present their report. Chris Swenson reported directly this is about tolls. Tolls are the only thing that will work and the rest is tweaking. He set the stage for this position. The public has only reacted. He does believe Mr. Swenson has changed his mind. The heart of the matter is will the tolls work. This has not been addressed. He presented a detailed analysis. The results were distributed to each Council members with the request these be put to the test. This analysis clearly shows that tolls will not work in terms of traffic mitigation. He would like the Council to authorize him to take his analysis to Lee DOT and ask for an audit to see if the information is correct or not.

MOTION: Made by Council member Bill Thomas and seconded by Council member Bill Van Duzer to allow Frank Schilling to take his analysis and provide it to Lee DOT for validation. **Motion amended:** Made by Council member Bill Thomas and seconded by Council member Bill Van Duzer to require Frank Schilling to have a joint meeting with Chris Swenson at Lee DOT.

Discussion: Council member Van Duzer has discussed this matter with Mr. Schilling. His demand is that he and Chris Swenson go to Lee DOT for a joint meeting. Mr. Shilling would welcome this request.

VOTE: **Motion passes unanimously.**

Don Massucco came forward as a member of Fort Myers Beach and a voter along with being the Chairman of the Fort Myers Beach tolling referendum committee. He thanked Council member Van Duzer for his kind words. He commented the package was delivered to Town Hall one week ago and was unsure why the Mayor had not seen it for review. Bad information was received from Town Hall. They were not informed a visit to the Elections Office needed to take place. He feels the word “binding” should follow referendum.

Mayor Hughes added the language as presented did make this binding. If an ordinance was ever adopted that ordinance would be conditioned upon approval by the voters at a referendum.

Don Massucco indicated there is an October 10th submission date for any petition. This can be delayed all summer. Mayor Hughes and the Town Attorney indicated another petition would not be necessary. He added they were mislead and the proper information was not provided.

Council member Van Duzer indicated if the Council should decide to consider tolls for the residents of the island all council members are in agreement with the referendum.

Mayor Hughes added there is a charter provision that specifically deals with referendums. He indicated Mr. Massucco has accomplished what he attempted to bring forward.

Jerry Mitchell came forward to support Mr. Van Duzer. Chris Swenson never stated there would be tolls. This is only a study. Who is held accountable for the override on Times Square? He would like this answered in writing. Mayor Hughes replied that it has not been determined there is an override and the Town does not agree that there is.

Jeannette Massucco, Treasurer of the Political Action Committee, came forward. She attended the meetings with Chris Swenson. She is hearing all tolls and the handwriting is on the wall. She feels this Council is taking the misinformation too lightly. Town Hall was responsible for submitting to the Elections Office. She indicated that Town Council is in favor of tolls.

Mayor Hughes replied this is another example of people making decisions on matters before the decisions are officially made.

XI. ADJOURNMENT

The meeting was adjourned. No time was given.

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.