FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 30, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Regular Meeting of June 30, 2003 was opened by Mayor Daniel Hughes on Monday, June 30, 2003, at 3:00 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, Bill Spikowski and Jerry Murphy.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY DR. PHILIP MAKARI, CHAPEL BY THE SEA

The invocation was given by the Dr. Philip Makari.

IV. PUBLIC COMMENT

John Richard came forward to discuss the outdoor display of merchandise. In reviewing the display of outdoor merchandise the staff has interpreted if you have a raised porch you may place out as much merchandise as you like. This is dangerous to the retail market and will increase the look of a flea market. He feels the staff needs direction on this matter. The vending carts need to be reviewed. Will they be business for the building they are in front of or are they separate business for people running them. If they are for the building, these should go inside at night. This is very dangerous for the retail environment as these carts pop up here and there. Possibly this matter should go back before the Advisory Board and LPA to provide additional information.

Bill Freeman also came forward to speak on the outdoor display of merchandise. This does not effect him personally. He is concerned about the appearance this gives the entire area with the tremendous improvements which have been made on Old San Carlos. He is looking for further enforcement. The raised porch does not regulate how much merchandise is placed out. The vending carts will limit merchandise to a certain amount. He personally likes the window type shopping (Mango Bay). He favors no display of outdoor merchandise.

V. CONSENT AGENDA

A. Approval of Times Square MSBU for 2002-2003

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the Times Square MSBU for 2002-2003.

VOTE: **Motion passes unanimously.**

VI. ADMINISTRATIVE AGENDA

A. Public Hearings

1. VAR2003-00023 Raymon Alvarez waterbody setback. A request for a variance in the RC (Residential Conservation) zoning district from LDC Table 34-3 from the required 25 foot waterbody setback from Ostego Bay to allow a waterbody setback of 16.5 feet to allow a deck to be built. The subject property is located at 381 Palermo Circle.

Mayor Hughes began by asking for ex parte communications. Council member Van Duzer completed a notice of voting conflict and will abstain from voting on this matter. No other ex parte communications were heard.

Beverly Grady came forward to represent Ray and Patricia Alvarez. This is a request for a very minor variance to extend from an existing screened porch. This is a variance from the waterbody setback for an addition to the screen porch, which is less than 150 square feet. The Alvarez's also own the lot adjacent to the property where the addition to both the screened porch and home will be. The Alvarez's are proposing to expand their home including a swimming pool. The pool deck and expansion to the home are in compliance. The seawall changed in its location and moved closer to the property line. There is full staff recommendation of support and the applicant agrees with the staff conditions. A unanimous recommendation was also received from the LPA for support with very detailed findings in the resolution. Public support has been received and they would request the approval of the Town Council.

Jerry Murphy on behalf of staff came forward to address the Town Council. Staff is in concurrence with the presentation of the applicant. The conditions have been incorporated into the findings and conclusions. He will be happy to take any questions.

Mayor Hughes questioned condition two and commented that it is a good condition. He wondered if this is something which should be included in the Land Development Code and then would not to need to be included in every variance. Jerry Murphy replied that he will further look into this.

Mayor Hughes asked if anyone from the audience wished to address the Council on this matter.

Robert Beasley from 390 Palermo Circle came forward. He asked the Council to vote in favor of the variance. He and his families homes surround Mr. Alvarez and this does not affect them whatsoever. They are in favor of the variance.

Mayor Hughes closed the public hearing.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson to approve VAR2003-00023 with the findings and conclusions as noted along with conditions one and two.

VOTE: **Motion passes 4 to 1. Council member Bill Van Duzer abstaining.**

2. DCI2003-00016 Thomas F. Kolar in ref. to Lighthouse Island Resort. A request to rezone from CPD (Commercial Planned Development) to a new CPD in order to add restaurant space of 4,300 square feet to the schedule of uses and to revise the Master Concept Plan. The subject property is located at 1051 5th Avenue.

Mayor Hughes began by asking for ex parte communications. Council member Van Duzer and Council member Rynearson have had several discussions with Mr. Kolar and Mr. Rockwell.

Beverly Grady came forward to represent Thomas Kolar with regard to the Lighthouse Island Resort. Tom Kolar distributed an architectural elevation of the proposed restaurant. The Lighthouse Island Resort was approved by this Town Council to be rezoned from C-1 to CPD 2/14/00. Before the Council is an amendment. One phase has already been constructed. It is designed pedestrian commercial, which is the most intensive category. A request for a simple amendment is provided. In this request the office is being reduced by 2,056 square feet. The retail is being reduced to 5,000, which is a reduction of 306 square feet. There is an addition of a restaurant of 4,300 square feet. The resort units have been reduced by 1,654 square feet. The request has been found consistent by the staff and with the LPA. The applicant has worked very closely with the staff as directed by the LPA since the LPA hearing. Beverly indicated they have either performed or are in compliance with all conditions. Condition 7 was further discussed, which provides the final design of the building within the planned development and must be approved by the Town Manager prior to the approval of permits. The elevations have been provided today. The applicant requested approval today and the drawings would then be attached to the resolution. There is staff approval and the applicant agrees with the staff conditions. The LPA has recommended approval. This is

consistent with the Comprehensive Plan and the Land Development Code. The applicant requests the approval of the Town Council.

Tom Kolar explained the elevations before the Town Council is the elevations on Fifth Ave. The café is on the corner of Fifth Ave. and the Matanzas Pass Bridge.

Jerry Murphy came forward. He began discussing the exhibits. The condition states it will in compliance with the elevations that are approved by the Town Council. Two elevations of a multisided project are being seen. Staff is unsure what the other elevations will look like and it is not clear what the elevations of each phase will look like. The Land Development Code will require any construction to be in compliance with the commercial architectural standards of the Town. He questioned against a condition that would give any type of relief from this. Some of the conditions need to be rewritten because the applicant has complied with conditions 1, 2 and 3. Staff suggested an additional condition to have the project built out by the end of the year in 2020. This project was originally approved with a 20-year project horizon. Staff would like to add language to condition 4 to read "which includes the caretaker." This will make it clear the caretaker will be staying in one of the 72 units. If Council decides to make the change to condition 7 the staff recommends the council strike out "and any applicable" and have the language read "which are in substantial compliance with the Town of Fort Myers Beach Comprehensive Plan, Land Development Code, and all other applicable regulations."

Mayor Hughes questioned the additional elevations? Jerry Murphy added there are more than two sides to the building. Staff has a concern with the additional elevations not provided. Beverly Grady indicated the applicant can respond to this concern.

Jerry Murphy discussed condition 10 and would like to change the fourth line to from "to do" to "to with." Condition 11 should read "prior to any development approvals" rather than approval of a development order. Condition 13 (end of first line) strike through Lee County and insert Fort Myers Beach. Condition 14 should be unnecessary because the Master Concept Plan has been amended to address these conditions. Condition 15 and 16 would carry forward. Staff has questions with the four pages in the Master Concept Plan. One is being seen today, but staff would like to be sure it is a four-page package showing all phasing. Staff also would like the applicant to correctly identify phase four and phase five.

Jerry moved on to discuss the deviations. Deviation 5 indicates downtown district relief and should be changed to CR. Staff has no issue with deviation 9. The current floor-area-ratio regulations include parking which is on the ground floor of a building. Under building parking is included in the floor-area calculations. This project contains 66,852 square feet of commercial and residential uses not counting parking. The actual FAR is less than one. The CR district allows 1.2, but when you bring in the parking their property would go above the 1.2. An additional deviation is needed and supported by staff. The findings and conclusions in the staff report are slightly different from those presented to the Council and the staff supports these due to them being the new findings and conclusions in the Land Development Code. He would be happy to answer any questions.

Dan Folke provided a few comments on condition 7. He does not see an issue with the condition as presented by the applicant. He is unclear as to what they are trying to accomplish. This is basically the same condition as staff's and in either scenario the plans will come back to the Town Hall and will be reviewed for consistency. He further commented that he has no issue with the elevation, but it has not been seen before so he cannot tell if this is consistent with the commercial design standards for the restaurant.

Beverly Grady responded to condition 7. She indicated Third St. is the only one missing and is to be a mirror of what has been presented for Fifth Ave. Timing is a concern due to the FEMA funds. She does feel approval can be achieved today based on this information.

Dan Folke replied that Lee County will not issue a permit with plans stamped approved by the Town of Fort Myers Beach. The plans will still need to come to Town Hall for review. The plans can be reviewed by Town Hall in an expedient manner.

Council member Van Duzer is not comfortable allowing someone to move past the design approval. An agreement to move it forward in a rapid type manner should be acceptable.

Bob Rockwell came forward and explained a FEMA grant is in process and they have tried to extend it past September 28th. FEMA will not grant the extension. If this project is not 30% completed, Mr. Kolar will lose his money. Six weeks ago when he appeared before the Town Council, he was told within several days he would receive the resolution for Shipwreck. This process took five weeks. He cannot wait five weeks to move forward with this project. He does realize staff is busy and this is the reason he is trying to streamline the process. If it is possible to review it this week and give approval this would be great.

Council member Van Duzer asked if the plans are complete? Bob Rockwell replied the plans are

complete and are in the building department, which does include the elevations.

Dan Folke added that when Lee County approves plans for Fort Myers Beach they want to see a stamp approved by the Town of Fort Myers Beach. He is the one who stamps these plans. It is not a problem for him to review the plans and find them in compliance.

Council member Rynearson questioned if the finished plans are received today could they be stamped and completed by Wednesday? Mayor Hughes did not want to put staff under this type of time constraint. Dan Folke added if plans are provided he will review right away.

Council member Thomas questioned what has been the delay with the Town staff reviewing the plans? Bob Rockwell replied the delay was that the drawings were received on Thursday from the architect/engineer and these were then submitted to the building department. He has a set for the Town of Fort Myers Beach. He is working under a time constraint. He is looking to expedite this matter.

Beverly Grady addressed phases four and five. The final plan, which states 5, 6 and 7 will be made phase five. This will be re-labeled on the Master Concept Plan.

Mayor Hughes asked if anyone wished to address the Council. None were heard.

Mayor Hughes suggested the resolution as presented be adopted. After the third whereas, he provided additional language and changes. He suggested a new list of conditions and deviations be attached to the resolution.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Bill Van Duzer to approve the resolution with the changes as indicated. The new list of conditions and deviations should be added to the resolution.

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

Council member Bill Van Duzer asked for cooperation from the Town staff, so Mr. Kolar does not lose his FEMA grant. Dan Folke understands and will comply.

3. Receipt of Budget Message and Public Hearing to set tentative millage: In past years the Town's millage rate has been set at 1.0400.

Mayor Hughes indicated the Town Council must accept the draft budget. Public hearings will be held in September. A tentative millage must be set and a roll back could take place at a later hearing. If the millage is increased, the property owners must be notified by mail.

Deputy Town Manager Gucciardo explained a draft budget is delivered by July 1st with the expectation the Council will give input through the summer months. At the end of the summer the Council will have fewer modifications for consideration of a formal adoption.

Mayor Hughes added that a great job has been completed by the staff. He asked all council members to take a careful look at the numbers over the next few weeks. The current millage rate is 1.0400, which is being proposed in the draft budget.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to forward the budget with the current millage rate.

VOTE: **Motion passes unanimously.**

Deputy Town Manager Gucciardo expressed that additional information was received today from the property appraisers office. Based on this information, his estimate for the roll back rate would be 0.8593 if they went with a roll back rate. He has been unable to confirm this with the property appraisers office.

Mayor Hughes asked if anyone wished to address the Council pertaining to the discussion on the millage rate? None were heard. The public hearing was closed.

B. Mound House Electrical Bids

Theresa Schober provided a memo which highlights where they are to date on the electrical. On October 15, she came before the Council and the Council approved the contracting of Anchor Engineering for mechanical and electrical engineering services at the Mound House. After she initially consulted with

Anchor, they recommended contracting an architect to assist which was approved by Town Council on February 10. Since this time, Bob Sanford and Tony Farrell (architects) have visited the Mound House to measure and have met with Anchor Engineering to design and discuss the electrical/mechanical specifications. A volunteer crew has been helping to remove some of the 1950's surface coverings in the house to reveal the 1920's building materials, which allows them to determine exactly where the new electrical will be going into. They have invested 91 hours with six people. She had a meeting recently to discuss room specific uses to minimize electricity to those rooms that will have house style exhibits. One important aspect involves handicap accessible restrooms and where ultimately they will move office and laboratory facilities. To date they have been using the 1980's caretaker suite as the women's restroom, lab and office space. A restroom in the central stairwell added in the 1950's was used as the men's restroom. Due to increased attendance two facilities are required. The upstairs restrooms are not functional and recently there was a substantial leak in the piping in the central stairwell area, which has been capped. Presently, there is limited restroom use.

CELCAB has considered permanent restroom facilities as a high priority. This was last discussed on June 16th. Two options were discussed at the last CELCAB meeting. One is to have a separate stand along building. The second option was to modify or adaptively reuse the 1920's garage. CELCAB approved the consideration of both options depending on which was deemed most feasible. She has discussed cost and with the architect. She and Corbett feel the garage space makes the most sense. This will deal the restrooms and will include office and laboratory space. The architects are recommending this option, because this prevents from adding another visual element on site and new regulations would not need to be dealt with. The Anchor Engineering contract does include electrical upgrading of the service to the garage, which is how these two issues are combined.

CELCAB asked the Directors to look for funding sources over the summer. Two they have identified is the Tourist Development Council, which does have some emergency funds available and the FOLDS Foundation, which is a local foundation that support capital improvement projects. This deadline is tomorrow. She anticipates the electrical specifications by Anchor should be completed in July. They are requesting following the completion of the specifications the Town Council will approve them to continue with the project over the summer by going to bid and accepting the lowest compatible bid based on the electrical specifications. In conjunction with the upgrade they would like to see Town Council approval to pursue funding to adaptively reuse the existing space for restrooms with an anticipated later phase of construction that would use the remainder of the space for laboratory and office. This project would effectively take place in the next budget cycle.

Vice Mayor Cain clarified that both options were discussed at CELCAB. The entire committee could not make a decision and the bottom line was cost. It was decided the Town Council should make the final decision.

Council member Rynearson would like Damon to make the final decision on who gets the job because he is better qualified.

Town Manager Segal-George clarified that Theresa has a deadline with the FOLDS Foundation money, which is tomorrow. A location must be specified in order to apply for the grant. If grant money is not received there is not money budgeted for the restrooms.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to allow the Directors of the Mound House continue with the electrical upgrade and have reviewed by either Town Manager Segal-George or Damon Grant. Seek funding for the restroom facilities to be built in the back of the garage.

VOTE: **Motion passes unanimously.**

C. Gas Tax Allocation Agreement

Deputy Town Manager Gucciardo reported at the last meeting a proposed settlement agreement was present in the form of an interlocal between the Town and County. At that meeting, the Town Council expressed some concerns and difficulty with some of the conditions. Since staff shared some of the concerns the agreement was not entered into that evening and Council directed staff to arrange a joint meeting between the Town Council and Board of County Commissioners. With the help of the Town

Manager they were able to get with County staff the next day with regard to the meeting. The first response of the County was that this meeting would be difficult due to the lack of availability of the Town Council and the County Commissioners. They also indicated it is not the preference of the County Commissioners to enter into those types of negotiations. Town staff proceeded to explain the issue of Town Council. The two issues addressed were the percentage of allocation of gas tax dollars as opposed to supplemental dollars and the timing of the agreement. County staff came back to the Town staff within a few days to try to rectify these issues. The Town staff does feel the County made a good faith effort at addressing the two main concerns. He has a revised interlocal agreement, which addresses those concerns. This will factor in for the five-year period not only base population but a percentage 5/12 of the seasonal population. The result is to increase the gas tax allocation from .97% to 1.27%. The net effect is to change the dollars for $223,000.00 up to $292,000.00 per year. This will drop the percentage which is considered to be supplemental funding with the conditions attached. There will be more unconditional use of dollars and less conditional use of dollars. The County did agree to extend the term of the agreement from two years to five years. Hopefully, during this time period a mutually agreed upon long term contract can be entered into between the Town and the County. Due to these two significant changes staff felt it appropriate to come back before to the Town Council for consideration.

Mayor Hughes commended Deputy Town Manager Gucciardo and Town Manager Segal-George. The serious concerns were conveyed back to the County staff and hopefully this will get filtered down through to the Commissioners. He feels this to be a considerable improvement over what was before the Town Council last week.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to approve and authorize execution of the revised Interlocal Agreement for the distribution of local option gas taxes between Lee County and the Town of Fort Myers Beach.

Discussion: Council member Van Duzer is pleased with the extension to five years. He complimented the staff and thanked the County for working with the Town staff.

Council member Thomas added the supplemental funding is no guarantee by any means. He complimented staff for a great job and agreed this is a much better offer than before. Down the road they may not receive the $353,000.00.

Deputy Town Manager Gucciardo added that the supplemental dollars are conditional somewhat. The projects must be related to capacity and transportation issues. Chris Swenson is comfortable with the definition of capacity and would include drainage projects. Some concerns do still exist with the supplemental funds, but the County staff has been very sensitive to the concerns of the Town and very responsive about those concerns. Town staff feels positive and does not feel the sensitivity will diminish.

VOTE: **Motion passes unanimously.**

D. Resurfacing of Farmers Market and Loading areas

Damon Grant provided a memo and site plan of the Farmer's Market area under the bridge. There have been several requests from the Alliance, Farmer's Market vendors and surrounding property owners concerning the poor condition of the Farmer's Market area under the bridge. There have been several issues which addressed the concern of the lease with the state and drainage. He did speak with the state and an engineer and does feel both these issues have been addressed. Staff is requesting to move forward to collect quotes. Staff would like the approval of the Town Council to move forward with the lowest bidder with a not to exceed figure of $20,000.00. This will also allow the expansion to Third Street for a truck pull off.

Mayor Hughes commented on pervious paving. Damon did originally look into the pervious pavement. The pervious payment is not much more expensive than the regular asphalt. You do not want to go less than three inches thick with the pervious asphalt due to it not having any form. The cost would be doubled for the area for pervious, because of the different between three inches and the one and half inches

required for regular pavement.

Mayor Hughes would like the specifications and designs be such that the runoff of storm water will not be any greater or of a more negative effect to the water quality in the bay than presently exists.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to approve the request of the Town staff to obtain bids and select the low bidder to resurface the Farmer's Market and Loading Area with a not to exceed figure of $20,000.00. The specifications and design will be such that the runoff of storm water will not be any greater or of a more negative effect to the water quality.

VOTE: **Motion passes unanimously.**

E. Contract to purchase Pink Shell Cottages

Dan Folke indicated a contract is included in the Council packets written by the Town Attorney based on some conditions he worked out with Tom Doyle of Flint and Doyle. Last year, the Council was brought a proposal to reserve two of the Pink Shell cottage being moved off the island. Two cottages were picked by Gloria Sajgo and approved by the Historic Preservation Subcommittee. A purchase price of $15,000.00 for each unit has been established, which includes moving it back onto the site. A deposit and storage fee is being requested. The Town would have eighteen months from the date of this agreement to find a location and move the cottages. If the cottages are not purchased, the deposit is refundable, but the rental fee of $200.00 would not be. A signed contract has been received from Flint and Doyle.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to authorize the execution of the contract as submitted.

VOTE: **Motion passes unanimously.**

F. Update on Outdoor Display Regulations

Dan Folke expressed that on March 3, 2003 some new rules were approved. Some are specific to the downtown zoning district and other apply to the entire island. Enforcement has begun. Outdoor display can be achieved two ways in the downtown district. One is on a vending cart, which does include criteria and the second is on a raised porch. He is not recommending any changes to the rules, but some amendments may be needed early next year pertaining to the code.

Dan expressed that the raised porch needs to be better defined. A wooden deck elevated with some sort of railing connected would create the visual buffer needed. What can be done within this raised porch? The code is silent on this issue. Staff cannot define how much can be put or how it is displayed. The only limitation is that nothing is being allowed on the building itself or on the door. A second issue involves the type of merchandise and specifically beach floats or toys. A future amendment may want to address this item. These floats or toys would presently be allowed only on the raised porch or on the vending cart.

Dan discussed a letter from Tim Englin who has four vending carts on Old San Carlos. He intends to apply for a variance to allow the four carts. The current rule limits to two carts and the carts must be brought in when the business is closed. He has agreed to have only two carts operating, but all four are still outside. Staff recommends that Mr. Englin be given 30 days to apply for a variance. If this is completed, he would be allowed to operate two carts and keep them outside until a final decision is made. If the variance is denied, he would need to remove two of the carts and bring the other two inside.

Howard Freidin, 2245 McGregor Blvd, Fort Myers, came forward. He represents Mr. Englin. Mr. Englin is out of town and asked him to attend. Mr. Englin would like to come to agreement with the Town and move forward in a positive manner. He commented that his carts are in compliance but he is unable to get them inside. Mr. Freidin asked the Council to allow him to proceed to come to an agreeable situation. He does believe the kiosk's are more attractive than the raised deck for the display of his merchandise.

Mayor Hughes does not believe the variance is the appropriate way to address this matter. This matter would be better addressed through an amendment to the Land Development Code. Staff should consider some alternative language and have this matter referred to the LPA in September. Numerous issues exist and he is not prepared to answer them today.

Council member Van Duzer feels this matter must be sent back to staff. If an individual has a kiosk built to withstand weather and can be locked up it should be allowed outside, if it cannot fit through the door. If it cannot stand up to those conditions, it should be brought in. He does feel the number of kiosk units should be tied to the amount of frontage a store has. He also does not feel there should be a kiosk unit rented out for another person to use. He further referred to Capone's and asked if the raised deck with the railing could be used for display of merchandise?

Dan Folke replied that the zoning limits the use of the outdoor seating. He will double check, but does believe this outdoor area is limited to outdoor seating for a restaurant.

Council member Van Duzer would hate to see extremely large decks being built on Old San Carlos, because he does not feel this was the vision of the area. He is unsure how to handle this matter.

Mayor Hughes feels a general provision of the Land Development Code should address this matter and not be addressed on an individual basis.

Council member Thomas added that the Town of Fort Myers Beach has a lot of money invested on Old San Carlos. The Town and citizens are very proud. The vending carts, raised decks and display of floats only cheapens the area. He is strongly against the vending carts being left out at night. The raised decks will multiply and make the beautiful Old San Carlos look like a flea market. Over one million dollars has been invested within this road and it should be kept nice.

Council member Rynearson agrees. He does not sympathize with Mr. Englin who knew the Council was in the process of making an ordinance. The carts either need to be brought in or be done away with until a final decision is made.

Vice Mayor Cain feel a couple issues are trying to be dealt with. She does feel it is important this matter goes back to the LPA.

Mayor Hughes reviewed all Council members agree this matter must go back before the LPA.

Dan Folke reviewed staff will draft language as to the limitation of the size of the decks, limiting the amount of area for merchandise, alternatives to the size of the cart, number of carts tying in with the frontage or property size and the types of merchandise. Staff needs direction for the interim period on how to deal with the situation.

MOTION: Made by Council member Bill Van Duzer and seconded by Mayor Daniel Hughes to allow two vending carts with regard to the matter involving Tim Englin until the Land Development Code has been reviewed and a final decision is made. The other two carts which have been shut down must be moved immediately. In the event of a Tropical storm the two carts presently being utilized must be removed.

Discussion: Council member Thomas added that this is the worst time of the year for leaving carts out on Old San Carlos due to hurricane season.

Council member Rynearson indicated there is an ordinance in place and he feels they should abide by it until it is changed. This ordinance states the carts must go in at night and if it will not they must go away until the change is made.

Attorney Dick Roosa added that it is not unusual there is a property owner whose property is in violation of a Town ordinance. What normally occurs is either the property is brought into compliance of they apply for a variance. During the time they are applying for a variance, traditionally the Town has allowed the violation to occur. In this instance there are four units with two units being used and this would constitute a hardship on the part of the owner whether it is through a variance or a modification of the ordinance. He suggested the two empty units be removed or secured off island in a safe place. The two units being used could be allowed outside during the nights until such time the Council has resolved the issue. This will allow the owner to not be penalized for violating an ordinance that may be amended to allow him to have them.

Council member Thomas indicated by allowing these carts to be allowed overnight, which is a violation of the ordinance, this means this gentleman is not playing on a level playing field with the remainder of the businesses in this area.

He strongly objects to them being allowed to stay.

Attorney Dick Roosa agrees but indicated this process is done routinely in variance cases. The owner is asking for a presentation of his case until this matter is settled.

Council member Rynearson indicated the carts were in violation from day one. The owner knew the ordinance was in the works, but still proceeded to purchase four. He does not see a need for additional leverage.

Dan Folke feels the anticipated rules that were adopted were available. He is unsure if this owner was aware of the rules to be adopted.

Mayor Hughes questioned if the vending carts are limited to the downtown district? Dan Folke replied this is correct and they are only permitted in the downtown district.

Vice Mayor Cain added she has seen a cart in another area and this is why it needs to be readdressed by the LPA.

MOTION: **Motion passes 3 to 2. Council member Thomas and Council member Rynearson dissenting.**

G. Request for payment for 4th of July Fireworks

Town Manager Segal-George expressed this was discussed at the last meeting. A situation occurred where this was paid in advance in the past. Stricture regulations are in place than last year. It is her understanding the Fireworks Committee has offered to give documentation after the event, but would not be available in advance of the event to make this payment. The money is needed because the fireworks must be paid for on Friday night.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve the issuance of a check for $9,500.00 with $500.00 being also being paid and held for cleanup.

Discussion: Council member Van Duzer indicated Mr. Semmer has handled the fireworks in the past and always been fair and honest.

Council member Thomas questioned if this is the normal procedure to pay in advance? Mayor Hughes indicated this event has been paid in advance in the past, but is not the normal procedure.

Council member Thomas raised the issue of open containers. Town Manager Segal-George further commented that this has not been requested, but is needed for the deputies. Damon would like the Town Council to approve 4th of July for the service bars in the extension of premises for the merchants and the open container as a standard each year. Town Manager Segal-George asked that this be approved for the area as approved in the past which is just Times Square.

VOTE: **Motion passes unanimously.**

Discussion about the extension on premises and container were discussed. It was determined open containers were all that was needed.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to authorize open containers on 4th of July, which is limited to the Times Square area.

VOTE: Motion passes unanimously.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Thomas - Asked that Dan Folke write another letter to Exxon with regard to sprucing their property. A second request should be noted. He is very concerned about the appearance of this property.

Would like to know the status of the easements for Seafarer's? Dan Folke replied the title work has been reviewed by the Attorney authorized. The title work was found to be sufficient and agreeable. He believes they have been executed and should be in the recording process. The only permit issued was to do an emergency roof repair.

Commented on the letter written by the Town Council to Commissioner Ray Judah on the congestion mitigation project. It is very interesting the force behind this is a citizen, Mr. Frank Schilling. He would have hoped Chris Swenson would have initiated this and is being paid well. He questioned who will attend this meeting from the Council? Mayor Hughes indicated a meeting has not been established nor do they know if it will take place. Council member Thomas suggested an alternate to Council member Rynearson, if he cannot attend. Council member Van Duzer volunteered to attend. Mayor Hughes expressed some concern. He does not feel Mr. Swenson or Mr. Schilling should choose who should go to the meeting.

Town Manager Segal-George added she would leave this decision to the Mayor, should a meeting be scheduled.

Council member Thomas wished all Council members a very nice summer.

Council member Rynearson - Wished everyone a happy summer.

Council member Van Duzer - Commented they will be losing a very superb employee and would like a proper send off to Julia Campbell. Julia will go leaving to obtain her Masters degree.

He will begin his Leadership Lee County program. He wished everyone a good vacation, but keep working.

Vice Mayor Cain - A certificate of appreciation was received from the Eagle Scout who has been working very hard at replacing Playworks. Playworks is looking beautiful. Additional help is still needed.

She referred to the calendar and indicated for September 11th they are working on a Red, White and Blue concert. National Estuaries Day is Saturday, September 27 and should be noted. The Great Calusa Blueway Paddle Trail opening will be happening from the Mound House on September 27 from 10:00 a.m. to 2:00 p.m..

Everyone have a great summer.

Mayor Daniel Hughes - Commented the he was surprised to hear that Julia is leaving. She will be very difficult to replace. He wished her well and wished everyone a safe summer.

VIII. TOWN MANAGER'S ITEMS

None.

IX. TOWN ATTORNEY'S ITEMS

None.

X. PUBLIC COMMENT

Mr. Freidin came forward to address the number of carts. It was not until 2003 that there was a limitation as to the number of carts.

John Richard came forward and asked if carts were allowed before prior to this amendment? Mayor Hughes replied "no."

Mayor Hughes explained to John Richard this matter is being referred back to the LPA.

Evelyn May requested that the Town put two signs up indicating personal fireworks will not be allowed on the beach. Also, a sign indicating open container is allowed, but in the Times Square area only.

XI. ADJOURNMENT

The meeting was adjourned at 5:50 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.