

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 6, 2003
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER:

The regular meeting of the Fort Myers Beach Town Council was called to order by Mayor Daniel L. Hughes on Monday, October 6, 2003 at 6:30 P.M.

Members present at the meeting: Vice Mayor Terry Cain, Councilman Bill Van Duzer, Councilman Bill Thomas, and Councilman Howard Rynearson.

Excused absence from the meeting: None.

Staff Present at the meeting: Town Manager Marsha Segal-George, Town Attorney Richard Roosa, Community Development Coordinator Dan Folke

II. PLEDGE OF ALLEGIANCE:

All present assembled and recited the Pledge of Allegiance.

III. INVOCATION BY DEACON CHARLES (SCOOP) KIESEL, ASCENSION CATHOLIC CHURCH:

The invocation was given by Deacon Kiesel.

IV. PUBLIC COMMENT:

Mayor Hughes noted that there were a number of people present from the parasailing industry and also a number concerning the ancillary use of parking lots to wit the temporary welcome wagons. He hoped these people were not here on a misunderstanding. He explained that at the time of introduction to the ordinance there is no hearing; this is merely a reading of the ordinance and a time is then set for a hearing. There will be no hearings on those issues this evening. Mayor Hughes expressed concern that it may not be convenient for some of those present to return at a later date. At Mayor Hughes' question, Town Manager Segal-George replied that they both require two public hearings, so the hearings will be at the next two meetings, October 20 and November 3, 2003. But as long as they are here and wish to address the Council during the Public Comment section of tonight's meeting, he proceeded to call the names of those who wished to speak.

Richard Ramadan of 16429 Edgemont Drive, Fort Myers came forward to address the Council on the parasailing issue. He thinks this new ordinance is somewhat unfair and unjust. He feels that the 2,000 foot provision needs quite a bit of discussion, and stated that the primary concerns in the parasailing industry are the penalties associated with it. He doesn't think there is a business in the State of Florida incurs such harsh and sharp penalties for violation of an ordinance. He feels that they are trying to put them out of business for violating this ordinance. If a captain were to violate the ordinance by coming inside the 2,000 foot limit and then quit that day, the business would be under a month's suspension, which he did not feel was fair. With respect to the 2,000 feet, he feels that everyone in the parasailing industry, approximately 5 to 7 licenses he believes, should have been invited to participate in the initial committee meetings to give input prior to coming to Council.

Mayor Hughes thanked Mr. Ramadan and again explained that the council has not yet acted on this ordinance. The recommendation has come through the Marine Resources Committee, and public hearings will be held on the issue before a vote is taken by the Council.

Sharon Faircloth of 11711 Isle of Palms Drive, Fort Myers Beach, came forward from Estero Island Parasail. She will not be present at the October 20, 2003 meeting. The co-owner, Chris Weber, is present also. She addressed Council on the parasailing ordinance. She said that at first reading she had no problems with it and the change to 2,000 feet would not be a great hardship. When she first saw the penalties, her thought was that if the rules weren't violated, there was no need for concern about penalties. However, after hearing from several other people in the industry and giving it some more thought, she believes the penalty provisions need more work. If all the penalty is put on the business owner, a competitor could potentially bribe a captain to put someone out of business, or a disgruntled captain could deliberately cause a business to shut down. She doesn't feel the penalties are worded properly. She suggested wording to the effect that if a captain chooses to break the ordinance, the captain should be penalized first. Perhaps for a first violation the captain should be penalized, and then for a second violation, and captain and the business. She is aware that the Coast Guard has jurisdiction, and the captains have to be very careful so as to not jeopardize their licenses through the Coast Guard. It seems that the ordinance that is in place right now has recently been enforced, and that problems that were occurring have been solved at this time because of the enforcement efforts.

Robert Ramadan of 12140 Siesta Drive, Fort Myers Beach came forward to say that it has been two years since there has been an accident and feels that the existing ordinance is sufficient. He feels that the proposed ordinance is too strict.

D. J. Petrocelli of the Fort Myers Beach Chamber of Commerce came forward to say that they were notified to attend this meeting because the issue of the welcome station would be addressed. After reading the ordinance they feel as follows: They would like to recommend that the Chamber be allowed to keep its welcome station on the Beach from the dates of February 1, 2004 through May 31, 2004 and from November 1, 2004 through December 31, 2004. This eliminates hurricane season so it won't have to be moved in the event of a warning. He asked the date of the next meeting and was told it would be October 20, 2003. He was told that this and the November 3, 2003 meetings will be the public hearings on this issue, and he stated his intention to return at those times to address the Council on this matter.

Kathleen Cameron was invited to come forward or to wait for the public hearing. She asked Mayor Hughes for advice, and he suggested she wait for the public hearings and see what the petitioner has to say.

Patrick Ranali of 4530 Match Pointe Lane, Fort Myers came forward on the parasailing ordinance issue and said he felt the change to the ordinance was not necessary and will return for public hearings.

Bob Simon elected to wait for public hearings on the weekly rental issue.

Tom Cameron elected to wait for public hearings on the weekly rental issue.

Bernie and Diane Lierow elected to wait for public hearings on the weekly rental issue.

Bill Steinke, owner of the parasailing operation at Junkanoo's, 3040 Estero Boulevard, stated that one item that has not been brought up is that regardless of the distance established, the people on the boat must be able to measure that as well as people on shore can. He has heard talk of use of range finders being placed on shore and used by law enforcement personnel having the opportunity to determine the distance of a boat offshore. None of their boats have devices on board their boats to measure distance offshore. Unless there are buoys in the water to indicate distance they will not be able to measure this distance; the present buoys indicate 500 feet and he feels this should be considered in view of the penalties being proposed.

Pete Gottschalk, owner of a parasailing business, said that he had heard that the Town's jurisdiction ended at 1,000 feet and asked if this were correct. Mayor Hughes stated that it is, and that this issue will have to be addressed. He was concerned about the fines and said that if there were three occurrences the operation would basically be put out of business. The first offense is 30 days, and if something were to happen during Spring break and someone was issued a fine and suspended for 30 days, that business would lose a significant amount of revenue for the year. He feels that the ordinance financially affects a large number of people and thought that there should be more opportunity for input. Mayor Hughes again told him that there would be such opportunity at the public hearings.

Hearing no further public comment, Mayor Hughes requested Town Attorney Richard Roosa to give a legal opinion prior to the October 20, 2003 meeting on the extraterritorial jurisdiction of the Town beyond the 1,000 foot limit. Apart from the logistical and practical issue raised by Mr. Steinke is also the question of jurisdiction, because the ordinance as proposed has a 2,000 foot limitation and the corporate boundaries of the Town of Fort Myers Beach are 1,000 feet from shore. In his past experience the only time an arrest can be made by a municipality outside of their jurisdiction is under the hot pursuit doctrine. If the violation occurred within the limits and authorities were giving chase an arrest could take place outside the boundary.

V. CONSENT AGENDA:

A. MINUTES: Approval of September 8, 2003 and September 22, 2003 Minutes

COMMENT: Mayor Hughes wished to pull the minutes of September 22, 2003.

MOTION: Motion was made by Councilman Rynearson and seconded by Councilman Thomas to approve Items A, B and C of the Consent Agenda with the exception of the September 22, 2003 minutes.

VOTE: Motion passed by unanimous vote.

With regard to the September 22, 2003 minutes, there are two Page 12s and no Page 16. Although he has some other corrections, which he will give to Staff, approval of these minutes will be deferred until the next meeting.

B. PROCLAMATIONS – DON'T WAIT VACCINATE MONTH OF OCTOBER 2003

Mayor Hughes introduced Alice Mack, who is an R.N. and a B.S.N. with the Immunization Program of the Lee County Flu and Pneumonia Coalition. Mayor Hughes read the proclamation:

Whereas every area of our nation is touched by the fifth leading cause of death in our nation, influenza and pneumonia, and

Whereas the flu affects young and old, and

Whereas support of people in neighborhoods in partnership with the Lee County Flu and Pneumonia Coalition is the most effective way to reduce the numbers of people affected by these illnesses, and our continued commitment to vaccinate is part of a (inaudible) to protect our family and the people of Lee County from illness and flu and pneumonia, and

Whereas and Lee County Flu and Pneumonia Coalition is recognized by the Florida State Department of Health charged with the responsibility of organizing prevention vaccination and education in Greater Lee County,

Now therefore be it resolved by the Town Council of the Town of Fort Myers Beach that we hereby proclaim the month of October 2003 as "Don't Wait Vaccinate" and encourage all of the citizens of this community to roll up their sleeves with our Mayor and get the vaccine for a flu-free Lee County.

MOTION: Motion was made by Councilman Rynearson and seconded by Vice Mayor Cain to approve the above proclamation.

Mayor Hughes said that he has been receiving the vaccine for fifteen years and has never had the flu. He received his vaccination from Ms. Mack and presented her with the proclamation.

RED RIBBON WEEK – FOR A DRUG FREE SW FLORIDA

This agenda item was not addressed.

C. FINANCIALS FOR THE MONTH OF AUGUST

This agenda item was not addressed.

D. PRESENTATION – RAY MURPHY

Ray Murphy came forward as the President of the Friends of Lovers Key groups, which is the citizens' support organization for Lovers Key State Park, and he also introduced the Park Manager, Mr. Paul Rice. As a result of being partially follically challenged, he must wear wide brimmed hats to keep the sun from his head. He had recently been in the company of Mayor Hughes, who admired the hat that he was wearing that day. This happened to be the Florida Park Service hat that is worn during work projects at Lovers Key. After conferring with Mr. Rice, it was decided that the Mayor of Fort Myers Beach should have a hat from Lovers Key State Park, not because he needs it but because they would like him to have it. On behalf of the Friends of Lovers Key State Park and Park Manager Rice and his staff, Mr. Murphy thanked Mayor Hughes for his continued support of Lovers Key State Park and his dedication to Estero Bay and all things environmental surrounding Fort Myers Beach and he than presented Mayor Hughes with the hat. Mayor Hughes expressed his thanks to Mr. Murphy and Mr. Rice and also thanked them on behalf of the residents of Fort Myers Beach for their work at Lovers Key.

VI. ADMINISTRATIVE AGENDA

A. REQUEST FOR OFF-SHORE RACE REPRESENTATIVE TO ADDRESS COUNCIL:

Dean Claussen came forward and stated that two weeks ago the off-shore race representatives had come before Council requesting approval of \$20,000.00 in the Special Events funding, and they received \$10,000.00. He wanted to state that last year they brought in a little over 1,500 room nights which were recorded with TDC for this event, which he believes would be over 2,000 including the smaller locations that do not submit reports. The attendance at the race and air show last year brought roughly 2,400 more cars on the island each of the two days for Offshore Weekend than the previous weekends, which are the holiday weekends of Mother's Day and Memorial Day. The Offshore, according to TDC, is the largest event in Lee County. With respect to other races in Florida, he said that City of Deerfield gives their race about \$150,000.00. Sarasota gives about \$25,000.00. He could give other examples and also said that some locations don't give anything. He asked that this be taken into consideration with respect to their request for \$20,000.00

Mayor Hughes stated that the figures were approved at the last meeting's public hearing on the budget and asked for a procedural ruling from Town Attorney Roosa. There was a specific amount approved for the Offshore Races, which was \$10,000.00. There was also a specific amount approved for the category into which the Offshore Races fall. Without prejudging what the council might decide, is there any room within that category for the Council to change specific figures if it so chooses? Mr. Roosa said that at this point after adoption of the budget, the budget that is formally adopted consists of about six main categories, and that there is flexibility within those categories. Council would not be precluded from adjusting the amounts that you recommended that night as time goes on depending on how requests come in. So at this point, again without prejudging what the inclination of the Council might be, there would be flexibility for adjustment of the figures that were spoken about on the night the budget was adopted. Mayor Hughes then asked Mr. Roosa for a procedural ruling on whether, under Robert's Rules of Order, a motion to reconsider would be required to adjust the figure. He was told by Mr. Roosa that no motion would be required, because the Council would not be amending the budget itself but merely transferring a sum within a category. Mayor Hughes asked the Council members what their pleasure would be.

Councilman Rynearson said he would have to agree with Mr. Claussen that they bring in many visitors and an undetermined amount of business to the Town. TDC considers this one of their major events. Mr. Rynearson said that this event brings in more money to the Town than all the other events that were funded and he believes they should be given all the help they request.

MOTION: Councilman Rynearson made a motion that the Offshore Race organization be given \$20,000.00, seconded by Mayor Hughes for purpose of discussion.

DISCUSSION:

Councilman Van Duzer said he was taking a difficult position. He has enjoyed the Offshore Boat Races for many years and believes it does bring many people to the Island. However, in his opinion he has seen it go downhill in the last number of years. It used to be a big event that spanned all of Lee County in that some of the events took place in the City of Fort Myers, and he is disturbed by the decline that he has seen in this event over the last 2 or 3 years. He also understands that they met their budget last year when they were given \$10,000.00. He believes that before the Town puts more money into the event, there should be evidence of some kind of move to bring the event back to where it was before. He realizes that the air show is a new event but is concerned that the boat race has declined. He also said that all the events he tried to support out of the Town budget are of benefit to the citizens of this Island, and he is not sure that this one does. He understands that it brings a lot of people to the Island and supports businesses, but has heard from many of the citizens on the Island that they wish it would go away. He will not support the idea of giving any more money to the event.

Councilman Thomas stated that the offshore races are identified with the Town of Fort Myers Beach. He was familiar with them even before moving to the Island. But he is deeply concerned about increasing a budget item 100 per cent as requested. He doesn't think that is a sound business decision for the Town of Fort Myers Beach. He does not want to see the Offshore Races go away, but he thinks we should continue what has been given in the past. He is not in favor of the requested increase.

Vice Mayor Cain said that she does enjoy the races and so does her family. However, she agrees with Councilman Van Duzer and Councilman Thomas not to increase the budget over what had previously been given for this event.

Mayor Hughes stated that he had seconded the motion for purposes of discussion but that he is in favor of the motion. He does not wish to question Councilman Van Duzer, but has not personally had any negative input from anyone in the community about this event. He went on to say that \$10,000.00 is one tenth of one per cent of the total Town budget of \$10 million, and that if as Councilman Van Duzer says the event has declined, perhaps a shot in the arm is what is needed. He believes this will be returned to the community greatly in terms of revenue and is the biggest event held on the Island every year. He supports the motion.

Councilman Rynearson said he hadn't intended to bring up the other events, but pointed out that the money going to several events had been doubled. He personally has served on the Offshore committee and is aware of the amount of effort and that many businesses don't support them. He is of the opinion that if the Town does not support them, it will lose them, and he certainly doesn't want to lose the Offshore Races.

VOTE: The motion failed on a vote of 2 to 3, Councilman Rynearson and Mayor Hughes voting in favor, and Vice Mayor Cain, Councilman Thomas and Councilman Van Duzer voting against the motion.

B. INTRODUCTION OF THE ORDINANCE ON PARA-SAILING (MRTF RECOMMENDATIONS)

Mayor Hughes restated that this is the introduction and that all that is done at this time is to read the caption of the ordinance and set it for a hearing. Those who spoke on that were assured that the Council members would keep in mind what had been said by them earlier in the event they were not able to attend the public hearings, and that their comments would be retained and taken into consideration at that time. This is an ordinance amending the Fort Myers Beach Land Development Code, Chapter 27, Personal Watercraft and Parasailing, Section 2750, Regulations and Locations for Parasail Activities and providing the effective date. The only changes in the ordinance, which Mayor Hughes verified with Vice Mayor Cain, deal with the very last section -- Subsection H, the 2,000 feet, and Subsection K on boundaries. Mayor Hughes verified with Town Manager Segal-George that this will be set for public hearing on October 20, 2003 and November 3, 2003. Ms. Segal-George pointed out that the October 20, 2003 meeting starts at 3:00 P.M. but that this item will be scheduled after 6:30 P.M. Mayor Hughes verified that at both meetings the public hearing on this item will be after 6:30 P.M.

C. REPORT ON PRE-EXISTING WEEKLY RENTAL REGISTRY

There will be hearings on these individually, but Community Development Coordinator Dan Folke was asked by Mayor Hughes to give a report on the memo from Mr. Folke dated September 29, 2003. There are two items on the agenda concerning weekly rentals. The first is the weekly rental registry. Mr. Folke explained that in March 2003 when there was a change regarding weekly rental rules in the RS Single Family (inaduble) District, property owners had an opportunity to register and to grandfather in their rentals. The criteria was set in Chapter 34. He is presenting tonight the list of approved applicants, properties which have applied and qualified. They received 73 applications. 68 were approved, 4 were denied and appeals will be heard after this item, and one was withdrawn. The owners who are now on the registry can continue weekly rentals as long as they renew it every year, show evidence of paying sales tax and bed tax. This evidence will have to be supplied every year. The owners who are not on the registry that are in the RS District can, according to the rule, rent to one family per month. Things went very smoothly considering at the outset the number of applications that would be received was unknown. Steve Crabtree did a lot of good work for the Town on this, inspecting every property to verify the units that were there and a Code of Conduct, which was one of the things required by the ordinance. Also, in some cases they did not have contact information which is a local telephone number that is supposed to be available 24 hours a day. The property owner's name and contact information has been compiled and is now available to the public so that anyone can obtain that information in the event there is a problem. This has been put in order by street so it will be easy to find individual properties that are in the registry. He complimented those who worked on this project.

D. PUBLIC HEARINGS – APPEAL OF DENIAL TO REGISTER A PROPERTY AS A PRE-EXISTING WEEKLY RENTAL AS PERMITTED BY LDC 34-2392:

Mayor Hughes thanked Mr. Folke for his report and stated that there are four hearings. He asked Mr. Roosa whether these were quasi-judicial and was told that this is correct. He verified with Mr. Roosa that it was proper to seek whether there are any ex parte communications on each of these. It was Mayor Hughes' recommendation to Council that these be handled on an individual basis. He will ask Mr. Folke to give a background at the beginning of the reasons for their denial and then each applicant will be called on with no time limit on each applicant or their representatives, if any. Then this will be open to the public, and the public will be limited to the three-minute rule on each of the hearings. His only question as to how the Council wants to proceed was whether to hear all four applicants and vote at the end, or to vote on each one individually.

Councilman Van Duzer said that he would like to handle them individually. Vice Mayor Cain agreed. Mayor Hughes said that this is how they will be handled.

1. STR0070, Ercole Gaglio & Emanulele Gaglio, 156 Hercules Drive: Mr. Dan Folke, Town of Fort Myers Community Development Coordinator was sworn in. Mayor Hughes verified that no Council member has had any ex parte communications regarding this matter. Mr. Folke called the Council's attention to the packets which they had been furnished with a summary paragraph on each case and which he said also contained copies of the rules from Chapter 34 on the short-term rental registry which was the basis for determining whether an applicant qualified or not. Also attached were the directions attached to the application after the section of the Land Development Code. It was attempted to make it very clear up front prior to application what would be required in order to get on the registry. This particular property at 156 Hercules Drive is a single family home with a lawful accessory apartment. It was purchased by the current owner in May 2002. The owner has given an explanation that basically after they purchased the property it was their intent to rent it on a weekly basis but that they needed to remodel the property first. They had a six-month lease on the upper unit until about the end of 2002 while they were working on the lower unit. When the six-month lease was up on the upper unit, they remodeled that one and then proceeded to have weekly rentals during 2003. It was not rented during 2002. Section 34-2392A of the Land Use Development Code clearly states that an owner

had to provide evidence that it was rented on a weekly basis during Calendar Year 2002. This was the basis for the denial.

Charles Phoenix, an attorney representing the Gaglios, came forward and presented some exhibits to the Council members. He said that the facts stated are fairly accurate. His clients did purchase the property in 2002. He said it was in sound condition but was substantially outdated and in need of cosmetic updates, which they proceeded to do. There was a pre-existing rental in occupancy which they formalized into a lease, and those tenants stayed in place until the end of November 2002. Meanwhile, they had moved down from Michigan and taken up permanent residency intending to live in the lower unit. So when they came down they remodeled substantially the lower unit and when Mr. Crabtree inspected it on several occasions he thought it quite remarkable. After the upstairs occupants had left his clients moved to the upstairs unit and began to remodel that one with the intent of providing weekly rentals. When they purchased the property in May 2002 they had no knowledge of the intention to prohibit short term or weekly rentals. In any event, they did proceed to do what they did, which was purchase furniture and furnishings and all the items they deemed proper, and proceeded to enter negotiations with a local management company that is well known on the island. He stated that they had tried to do everything above board and in a manner that would respect the community. He said that they relied on the potential income that they were to receive when they purchased the property. They are retired and intended to rely partially on this rental income. Unfortunately, they had not rented it during 2002, and the ordinance as adopted was retroactive to the first of the year which essentially precluded any evidence of subsequent rental. As a result, the application was put together forthrightly, and although they are not able to meet the items that would have resulted in automatic approval of their application, they did cite in the application 34-2392D which provides for equitable relief and considerations in situations such as this, where there is reliance and someone who made a good faith effort to do the right things all along but was unable to meet the letter of the law that had been retroactively applied. He feels that their purchase of furniture, furnishings and pots and pans showed their intention and also called attention to Exhibit C which shows the nature of the leases shows that these were short-term tenancies designed to end before the season began, and Exhibit B which shows that they did enter into discussions early in the year with the Hussey Vacation Rentals and subsequently signed an application to have them perform services. Unfortunately, the law had already been passed. On behalf of his clients he asked consideration of the fact that they did make a good faith effort, they did an exemplary job of renovating the unit, they are members of the Hercules community, and good residents well known on the street. They respectfully request overturn of the administrative decision under equitable relief and a vote of the Council to recognize their effort and their intention, and the objective manifestations of that intention, approving their application and allowing them to be good residents and good landlords at the same time in this Town. He asked for questions.

Mayor Hughes had a technical question regarding Exhibit C shows as the landlord "Susie's Fort Myers Beach I LLC" and was told that his clients own this Limited Liability Corporation which is intended for liability protection and did a master lease to Susie's Fort Myers Beach I LLC and then turned around and made Susie's Fort Myers Beach I LLC the landlord. Title is held in their personal names, but for all intents and purposes his clients are Susie's Fort Myers Beach I LLC. This is a common practice in rental properties. Mayor Hughes asked when they registered with the State of Florida. Mr. Phoenix replied that because of this proceeding registration is a moot point, but they are ready and able to register upon approval of their request. If the request is denied they felt that there was no point in registering. Mr. Phoenix again referred to Mr. Crabtree's inspections and felt that he could corroborate that an exception job had been done on the property and went over and above what needed to be done.

Mayor Hughes admitted the exhibits into the record. Vice Mayor Cain inquired whether it is known whether the previous owner of the property had rented it. Mr. Phoenix replied in the affirmative, stating that his clients took the property subject to a month-to-month rental of the one unit. Ms. Cain rephrased her question and Mr. Phoenix replied that he did not know for sure, but given the previous condition of the property, he highly doubted that it had been used as a weekly rental.

The meeting was now opened for public hearing. Those who were present before on this subject were invited to address the Council either individually or if there is something relative to all of the cases.

Kevin Mulhern, one of the owners of Hussey Vacation Accommodations came forward and stated that he can attest to Mr. Phoenix's statements concerning the substantial amount of work done on the property. He described it as having been a "pit," and said the present owners did a tremendous amount of work to the structure. He wanted to go on record that it has been a very positive influence in the neighborhood. It had been an eyesore and a problem structure, and because of their intent to rent that property and their need for the rents, they did a substantial remodel and spent a good bit of money and time to do that. Because of the retroactive nature of how this was instituted, it has caught some people in the middle of those time frames who were not able to have rentals during that period. He said it is a substantial improvement for the Town now to have that structure in its present condition.

Kathleen Cameron, 200 Curlew, Fort Myers Beach came forward and asked if each individual property is to be voted on and was told that this was what Council had preferred to do. She had a statement relative to all of them which she wanted to read and was told to do so at this time. She read the following statement on behalf of Tom Babcock: "I understand the following has been sent to Council but I am reading this for the benefit of the townspeople. Since I am unable to attend the October 6 Council Meeting, I would like to provide input on the appeals being requested for inclusion on the Registry of Pre-existing (missed portion due to change to Side B of tape) ... record provided by Dan Folke three properties, 156 Hercules, 8030 Lagoon, and 8080 Lagoon all applied before the cutoff date, so I have to assume that their applications were denied for one of the following reasons: (1) Failure to pass safety inspections, (2) discovery of code violations, or (3) inability to prove the property was legally rented in 2002. In my opinion if the owner was denied because of reasons (1) or (2), they have successfully corrected the problems, then they should be allowed to be on the Registry. However, the owners' appeal should be denied unless they can adequately provide proof to refute reason (3). All three properties were purchased in 2002. So legal rentals should be considered if it can be demonstrated by either the current owner or the previous owner. However, as in the case of 8080 Lagoon, the previous owner was homesteaded in 2002. They could not have legally rented the property, and the current owner would have to provide proof that they rented in 2002. Proof of rental would likely have to be provided for the previous owner of 8030 Lagoon since the property transfer date was 12/23/02. 156 Hercules also appears to be a special case, since it is listed as a multifamily. It is my understanding that for it to be legal rental in an area zoned residential single family, the owner would have to occupy one unit and be present when the other units are being rented. If this criteria is not met, then this application should be denied. As to the application for 139 Curlew, this should be denied because the application was not received by the cutoff date. If a rental agent was being used, there should be no excuse for failure to apply. Furthermore, the property could not have been legally rented in 2002. This property has been owned by the applicant since 1997 and was homesteaded in 2002. A rental cannot be legally homesteaded. Besides receiving inappropriate tax breaks which impact Fort Myers Beach budgeted funds, chances are that no tourist or income tax was paid on the rental property. Thank you for your consideration. Tom Babcock."

Applicant's Attorney challenged the statement as hearsay. Mayor Hughes advised Mr. Phoenix that the Council does not strictly adhere to the rules of evidence in these hearings but that he feels that the Council is fully aware that portions of what was read do not apply to his clients' particular parcel, and they do have a copy which has been presented that distinguishes the different properties.

Mayor Hughes noted Mr. Phoenix's concern regarding cross examination of a witness but pointed out that Ms. Cameron was present to read a statement that had been prepared by someone else.

Tom Cameron, a resident of Curlew Street, Fort Myers Beach came forward to say that the short term rental rules were effective in March 2003. The registration was required by June of 2003, a three-month leeway. If not done on time by the owner, there is negligence and the Town of Fort Myers Beach should not be responsible whatever the reason. When anyone starts a business it requires an investment. That is their gamble. Ignorance of the law is no excuse.

Specifically, a property on his street with which he is very familiar was a homesteaded property, and it is his understanding that homesteaded property can't be operated as a business. Therefore the request for inclusion in the short-term rental is a moot point according to these examples.

Mayor Hughes addressed Mr. Phoenix and stated that the Council understands that Mr. Cameron's remarks do not apply to his clients' property and will be taken into consideration as pertains to the property on Curlew, and that Mr. Phoenix's client did not commit any violation addressed in these remarks.

Mayor Hughes pointed out to the Council that a problem was created when the decision was made to address each property individually, and cautioned them to keep the various remarks sorted out in their minds as pertains to each of the cases.

Bob Simon, a resident of Sunview Boulevard came forward to say that the land use plan adopted by Council is very specific regarding short term rentals. The section is very clear regarding the requirements, and adherence to rules and regulations regarding rental permits. All units that qualify for permits had the same opportunity to comply by June 1, 2003 therefore he recommends that the appeals be denied.

Diane Lierow came forward and stated that she and her husband Bernie Lierow, who is a member of the Board of Directors for Laguna Shores Subdivision, came forward because they received a notice to property owners within 500 feet of one of the properties in question, 8030 Lagoon Street. Mayor Hughes pointed out that this is not the case being heard at the present time but allowed her to continue her remarks. She said that they moved into the neighborhood with the understanding from the neighbors and their real estate agent that there were no weekly rentals in that area of the subdivision. She said that if 8080 Lagoon were homesteaded she doesn't see how they can represent it as a weekly rental, and that 8030 she knows the house was vacant and for sale for at least two months of the year 2002. So she doesn't believe it was rented on a weekly basis. She suggested that perhaps the Council should check to see if these properties were indeed homesteaded because they can't have it both ways but it seems that this is their intention. Mayor Hughes stated that Staff has checked and this is the case with one of the properties.

Mayor Hughes asked Mr. Phoenix if he had any further comments, and Mr. Phoenix pointed out that all of the above statements with one exception were not relevant to this particular case before the Council at this time. The one comment that seemed to make allegations with respect to his client and the property in question seems also at the same time to concede that the situation as pertains to his client is a very legitimate one, namely, that the owner should be living from the property which has indeed been the case. He feels that there have been no real objections from anyone heard here this evening. He hopes the Council unanimously agrees that his client has done everything appropriate and put themselves at some financial risk only to better themselves and their community and have done so. However, without that additional income they are somewhat jeopardized, and that is what the nature of equitable relief is for. Every once in awhile there is an unusual situation that does not exactly fit the law, and he hopes Council will recognize that fact in this case.

Harold Gressman of 120 Seahorse Lane, Fort Myers Beach came forward. Regarding 8030 Lagoon Street and 8080 Lagoon Street, he pointed out that both addresses were incorrect in that there is no "Lagoon Street" in Laguna Shores and that this should read, "Lagoon Road" in both instances. Mayor Hughes stated that this was duly noted and closed the public hearing.

MOTION: Motion was made by Councilman Van Duzer that STR0070, the Gaglio residence on Hercules Drive, be denied short-term rental. Seconded by Councilman Thomas.

DISCUSSION: Vice Mayor Cain asked for discussion because the property was a lawful apartment prior to the present owners' purchase and was registered as a duplex. The owner is going to reside there, and it was registered on time so it is passed for three reasons; the only reason they could not prove it was legally rented in 2002 was because they were refurbishing it. She therefore does not understand the reason for denial of this request.

Councilman Van Duzer stated that his reason for recommending denial was that their attorney Mr. Phoenix even commented himself that although they did not have control of the

property that it was their understanding that it was not rented on a weekly basis during 2002 or prior to their purchase of the property.

Mayor Hughes asked for clarification, and Mr. Van Duzer explained that their attorney had said that in 2002 it was not rented or prior to their purchase of the property it was not rented on a weekly basis with the idea that we did the restriction in those areas on the short-term rental was to stop the increase in short-term rentals in those areas. If we go against this and turn this over and allow it, we will have to allow all of them.

Councilman Rynearson has seen no proof that they have rented it, and this is one of the criteria, that they must furnish proof that they had rented it in 2002.

Councilman Thomas agrees with Councilman Van Duzer, that this property was not rented on a weekly basis the previous year. Just because someone is improving their property does not make them automatically qualify for something that is not in the Land Development Code. The Staff has already recommended denial. Mr. Phoenix was quoting Code Enforcement Officer Crabtree as saying if he saw the place today he would change his mind, and Councilman Thomas believes this is hearsay and cannot be admitted as evidence. He cannot approve the request.

(Inaudible) Mayor Hughes again stated that the Council does not strictly follow the rules of evidence. He said Council gets a lot of hearsay and will take it for what it is worth. Mayor Hughes then asked Mr. Phoenix to step to the microphone if he wanted to address Council further.

Mr. Phoenix returned to the microphone and said that while he respects the statements that have been made, he wants Council to understand that his administrative burden is to go through the criteria set forth on 34-2392B and go through that list, and if it doesn't match letter for letter with that, he must deny it. It is not his opinion to deny it, he must do so under the law. However, what we are talking about is 34-2392D which is why we are here stating specifically, "The Town Council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite non-compliance." We have come here squarely and admitted our non-compliance but have shown objective reasons why they did not comply, but the intent was always to comply and substantially improve a structure. It seems manifestly unfair to sit up here and further an administrative position. His administrative duty is to deny because the criteria were not met; you have the opportunity to be good Town fathers, to recognize that you have a new citizen who has invested a lot in the community, to embrace that person and say, "Thank you for what you have done. It does not meet the strict criteria, and our administrative persons have denied you for that, but here as our Town fathers we recognize your great contributions." Because to not do that means you are discouraging people from going over and above the letter of the law that they are required to do. Mr. Phoenix said he admonishes Council for taking that position.

Councilman Van Duzer said that he had heard enough, and Mr. Phoenix was excused by Mayor Hughes. Mr. Van Duzer said he now wanted to reflect on what had been said, because he takes exception to what Mr. Phoenix said to Council as an attorney. He said Council had made a decision months ago to try to control the spread of short-term rentals throughout our Island and try to protect the neighborhoods that were established for single-family residential neighborhoods. We made a determination on this Board to protect that, and that is all we are doing here. We are trying to protect that neighborhood, and we have to make the decision whether these people should be allowed to have a short-term rental in that neighborhood that is not allowed by ordinance. If we are going to allow everybody to do it, then let's throw the ordinance away and allow everybody to have their short-term rentals. Arduous weeks and months went into attempting to do something that was considered appropriate for all the citizens of the Island. Because they came and made an investment in this property, to allow them to have a short-term rental when it wasn't rented that way before, they say it wasn't rented that way before, and we have a rule against that. It's that easy. If they had rented it on a short-term basis and had made application late he would be considerate of that, but that is not what has happened here. He feels that we must uphold the decision that was made for the betterment of our community.

Mayor Hughes stated that he does not disagree with what Councilman Van Duzer has said, but at the same time when the decision was made Council also adopted the section cited, which is the right to appeal and to consider equitable consideration. This is why we are having an

appeal. If it is all based on failure to comply, then this hearing serves no function. These cases are being heard is to determine whether there are any equitable considerations with the understanding that they did not comply with the ordinance. The Town Council was the one that adopted this "out." The decision is up to the Council, but it is not simply a question of denying it because they didn't comply. That is not what the ordinance says. They have a right to this hearing, they have a right to present evidence, to show that for some reason under equitable doctrine, which is really just another way of saying fairness, they have the right to appeal.

Councilman Thomas asked Mayor Hughes to call the question. It was then stated by Mr. Roosa that the resolution has a provision for making findings. The first finding has to do with whether or not the application was submitted to the Town Manager timely, and the second finding has to do with whether or not there was evidence to establish that it was qualified to pre-existing non-conforming use. The resolution should be modified appropriately. Mayor Hughes asked Councilman Van Duzer to modify his resolution with respect to the two findings. Mr. Van Duzer said that it was filed on a timely basis but with respect to use none of these items relate to his finding because it included evidence that it was not rented on a weekly basis. "...it did not include evidence of lawful pre-existing weekly rentals" is the portion in question. Strike "was not" in 1 and strike "included" in 2.

Mayor Hughes stated that this is a very difficult situation. He said that with such a complex ordinance as this, perhaps if more thought had been given such situations could have been covered, but this is one that falls through the cracks. He thinks it is unfortunate, but by grandfathering in these uses in perpetuity an enormous impact has been created on our ruling here this evening.

VOTE: Motion carried by 3 to 2 vote denying the appeal. Hughes and Cain dissented.

2. STR0071, Michael A. Miklaus, 8030 Lagoon Street:

Mr. Folke stated that this is similar to the first case in that it was denied on the basis that the property was not rented on a weekly basis during Calendar Year 2002. The property was purchased by the current owner on December 23, 2002. Along with their application they did provide a contract they entered into with Hussey Vacation Accommodations on December 27, 2002 for short-term rentals. Although it was not rented in 2002, it was not leased until some time in 2003. He believes the prior owner occupied the property, so there were no rentals during 2002. They have registered with the State of Florida for the appropriate taxes. Again, denial was on the basis of no short-term rentals during 2002.

Kevin Mulhern, one of the owners of Hussey Vacation Accommodations, came forward. He is speaking on behalf of Michael A. Miklaus, because Mr. Miklaus resides in California. The application for this property was submitted on time. The property had not been homesteaded by this particular owner. His full intent in buying this property was to use it himself occasionally (he comes into this area for a baseball tournament every Fall) and to rent it out to support his mortgage. The contract was actually written on November 19, 2002 and the property closed on December 23, 2002. They entered into a contract with Mr. Miklaus on December 27, 2002 and unfortunately because his full intent was to completely remodel, it was not available for rent until mid to late February. All new furnishings, floorings, paint, trimming of landscaping, and substantial improvements were cited. When he entered into this contract he had no idea, nor did any of us, what the Council's decision was going to be in March. When the ordinance was adopted with the provision that it become retroactive, a kind of "Bermuda Triangle" was created wherein a few people have made business decisions based on what was happening at the time. In this case it was virtually impossible to rent this property during 2002. If a tenant had been placed in occupancy immediately after closing, they would have had 4 or 5 days' rental in 2002 and may have qualified. However, in this particular case that was not possible. It was not in a rentable condition when he took title to the property on December 23rd. Mr. Mulhern requested reconsideration of the decision to deny and that this application be approved as a short-term rental.

There were no ex parte communications in connection with this matter.

The meeting was opened for Public Hearing at this time.

Bernie Lierow came forward and stated that he is on the Board of Directors of Laguna Shores and stated that he lives within 500 feet of the house. Regarding the remodeling, he never saw any debris during walks with his wife around the neighborhood. They moved into this area with their three children because Laguna Shores was a quiet area of the beach. With a weekly rental there area often college students and noise.

M. Charles Golden of 210 Redfish Road came forward. He said that Redfish Road is in the Laguna Shores neighborhood. He happened to have known the prior owners of 8030 personally for years and said that they never rented weekly.

Mayor Hughes closed Public Hearings at this time and advised counsel that a resolution had also been prepared on this matter.

MOTION: Motion was made by Councilman Van Duzer that the request be denied for the same reason as the prior case; the application did not include evidence of lawful pre-existing weekly rentals. Mayor Hughes said that the motion was that the administrative decision be affirmed, which is the same thing. Motion was seconded by Councilman Thomas.

DISCUSSION:

Mayor Hughes addressed an unidentified Council member and stated that while he voted against the first motion, it is obvious that the majority of Council is of the same thinking on this one. If we deny the first one he can't (inaudible) because he thinks there are equitable considerations here. He thinks there has to be consistency here as well. It was pointed out to Mayor Hughes that he had not been speaking into the microphone.

Vice Mayor Cain said that she voted differently on the first one because she has different reasons for her vote on each of the cases. She felt that the previous one was listed as multi-family and that was the reason for her vote on that case. This one is not listed multi-family, so she agrees with the motion.

Councilman Van Duzer said this has become so emotional with him that he is reluctant to hear the words "Short-term rental" ever again after going through this months ago. It was pointed out that now Council has to live with their decision, and Vice Mayor Cain said that it was a good thing. Mr. Van Duzer said he is happy to do that because he still thinks it is the proper decision.

At the request of a citizen who wanted to address the Council, Mayor Hughes asked if there was objection by the Council to re-opening Public Hearing. Hearing none, the meeting was re-opened for Public Hearing.

Mr. Mulhern came forward and stated that he feels that this is the exact situation that was designed into this ordinance to give the opportunity to reassess and re-analyze these issues. As he mentioned earlier, there is no possible way that when this gentleman signed this contract on November 19, 2002 intending to buy this property and use it for whatever purpose he intended, that he could have known that in March 2003 Council's decision would be to stop short-term rentals. Furthermore, he feels that by making this decision and also making it retroactive, Council has created the problem. There is not a substantial number of people requesting this. All of their units are professionally managed. The company has been in business for 25 years, and if they do have complaints, they are handled very quickly. They do not allow Spring Breakers in our houses. Even if a family member makes the reservations falsely, his firm does not release the keys to them if they are under the age of 27 years. He feels that this is the reason this has been built into the ordinance and requested the Council to reconsider situations like this.

Councilman Thomas said that Laguna Shores is a quiet, residential area and the people want it to stay that way. Mayor Hughes pointed out that the ordinance does not have to be defended at this hearing; the purpose is to determine whether there is any equitable justification.

Councilman Van Duzer asked Mayor Hughes to call the question.

VOTE: Motion passed 4-1. Mayor Hughes dissented.

Mayor Hughes stated that he thought this was a case in which equitable considerations did apply, and that he thought the Council had made a mistake when they adopted the ordinance and made it retroactive to January 1 and made it impossible for people to comply.

3. STR0072, Nicolas R. Spitzer, 8080 Lagoon Street:

Mayor Hughes asked whether there were any ex parte communications on this case. There were none.

Mr. Folke stated in response to the earlier comment regarding "Street" versus "Road" that the addresses had been taken from the Property Appraiser which are not always consistent. This case is different from the earlier two in that one of the rules in Section 34-2392B was that applications had to be received by the Town on June 1, 2002. Because that was a Sunday, it was extended to June 2, 2003, which was a Monday. The application for 8080 Lagoon Road was received on June 9, 2003 which was after the deadline. The applicant had been advised that it would have to be denied on that basis, but if they wanted to proceed to have the application reviewed they could appeal the decision. The applicant has provided some explanation. Apparently they were confused as to when the deadline was. The Town did not do any direct mailings specific to this issue. He thinks that it would have been difficult to include every property owner in the Fort Myers Beach area, but it was put in the Beach Access Newsletter for Spring 2003. There was a briefing about the requirements to register which was mailed out in April 2003 and the deadline was in June. The owner of this property purchased it in September 2002 and did provide evidence with their application that it was rented on a weekly basis in November 2002. They provided a signed contract and a confirmation letter that they had sent out to a property owner. So the basis of the denial is simply that it was received after the deadline.

Mayor Hughes asked whether anyone was in attendance representing Nicolas Spitzer, and Town Manager Segal-George said she believed Kim Spitzer was present.

Kim Spitzer came forward concerning 8080 Lagoon Road. She admitted that she applied late. She said she called on the last day to apply and was told by Katie Demar in the Town office that she should have received the newsletter that came out in April referred to by Mr. Folke. She said she did not receive that letter and does not reside here, so she is not sure how she was supposed to know that this ordinance had been passed. However, she did read an article in the Fort Myers *Observer* while here and inferred from that article that there would be an office set up for the application process, so she assumed, she now realizes incorrectly, that she would be notified as a property owner and could make application. She had a conversation on that day also with Mr. Roosa, and while he was quick to note that he could not give any legal advice regarding this, there was a problem with notification of property owners and that she should probably still send in the application. She also has an e-mail from someone else who she asked concerning receipt of the newsletter referenced by Mr. Folke, and they had not received that letter either. She was told that you get the letter based on the property tax rolls, and thought there might be an error because they closed on the house September 12th, and she was told by Tax Assessor's staff that the beginning of September is when the updated addresses are mailed to whoever sends the newsletter. The person from whom she received the e-mail bought their property in August 2001 and they did not receive the newsletter either. She apologized for the late submission. She also said that she realizes there are some angry people present opposed to the weekly rentals, and it is not their intention to rent it to the public but only to people they personally know. They live in Wisconsin where it is cold, so there are a lot of people who want to come here. After purchasing the home and remodeling it, they do not want anyone in there who is going to destroy it.

Chuck Golden came forward again with reference to 8080 Lagoon Road to say that he has known the previous owner for years, and to his knowledge it has never been rented weekly.

Mayor Hughes asked Mr. Folke to confirm that they have evidence of short term rental in 2002 and Mr. Folke said that evidence had been provided of a one-week rental November 23 to November 30, 2002.

Tom Cameron came forward to say that they have evidence of that property being homesteaded and wanted to clarify that because of the closing date, it was apparently the previous owner who had held the homestead. Mr. Folke replied that they had checked into this and knew that it was the previous owner who had claimed homestead. However, he pointed out that whether or not the property was homesteaded was not one of the reasons for denial. However, he learned from the Property Appraiser that a homesteaded property cannot be rented without loss of the homestead exemption. If the Property Appraiser finds out that the property is rented, they will take away the homestead exemption and any Save Our Homes adjustments that

have been made in previous years, so there could be serious impact on the valuation of the property. Mayor Hughes also pointed out that the homestead question is not an issue in this case, but denial was based on a late file. Public Hearing was closed at this time.

MOTION: Councilman Van Duzer said he has felt all along that if someone filed late but had made an effort to get it done properly that should be a consideration. He stated that the applicant has submitted evidence to his satisfaction that such effort was made, and also evidence that there was a short-term rental during 2002 which met the rules that were established..

Motion was made by Councilman Van Duzer that the administrative decision be reversed and this be approved for short-term rental. Seconded by Mayor Hughes.

DISCUSSION:

Councilman Rynearson asked Mr. Roosa whether he had received the call as described by Ms. Spitzer, and he replied in the affirmative. Mr. Roosa said he has no direct recollection of the conversation, but he believes he did tell the applicant to file anyway, because that is the advice any attorney would give to anybody, even though it is late.

Councilman Rynearson said he understands Councilman Van Duzer's position, and in some ways he agrees. But he feels that approving this property would not be fair to all those present who did not file because they missed the deadline. He feels that the rules have been set and Council must abide by them.

Mayor Hughes asked Mr. Folke to repeat a specific conversation they had regarding late submission. Mr. Folke said that they told people who wanted to file after the deadline that their applications would be denied because there was no alternative. They were told that there was an opportunity to appeal it before Town Council with no guarantee that it would be approved. Everyone he talked to was told that if they wanted to appeal it, they had to file the application. Staff would need additional direction after tonight if some that were late are approved.

Mayor Hughes agrees with Mr. Van Duzer and feels that this is a case of equitable consideration. There was no direct notice to the property owner, who lives in Wisconsin. When she found out, according to her testimony, she acted expeditiously. He has trouble distinguishing this from the person who started renting a week later, but that case has already been disposed of.

Councilman Van Duzer said that they need to establish a cutoff date. He has tried to consider each case on an individual basis and on the merits of the information that has been offered to Council. They have agreed to pay the price to bring it into compliance because they wouldn't get the money back if denied. Vice Mayor Cain pointed out that everyone else had paid also. Mr. Rynearson pointed out that when the date was set, he recalls a statement to the effect that if they haven't filed by that date, then it's over. He feels Council should live by that. In fairness to the whole community the rules must be applied. Mayor Hughes disagreed and said that the Council appears to be disregarding equitable considerations. Councilman Rynearson said that this was not his intent, he was stating his own opinion.

VOTE: Motion failed to carry by a vote of 2 to 3.

MOTION: Councilman Rynearson made a motion to adopt the resolution with the understanding that (1) they filed late, and there is no equitable consideration. Seconded by Councilman Thomas.

DISCUSSION: Mayor Hughes explained to the property owner the difference between the first and second motion.

VOTE: Motion carried by a vote of 3-2, Mayor Hughes and Councilman Van Duzer dissenting.

4. STR0073, Nancy Smith, 139 Curlew Street

Mr. Van Duzer stated that he had an ex parte communication in the form of a phone call from a resident of Curlew Street asking him to deny this application. Councilman Thomas (?)

also had a phone call. The name of the caller was not disclosed; it was stated that it was not the applicant.

Mr. Folke gave a brief summary of the case and said that it had been denied because the application was received after June 1, 2003. The application was received on August 7, 2003. Mr. Folke included in the background materials a letter from the property owner explaining why the application was late. They were under the impression that their rental agent had taken care of the matter. There was also a letter that had been placed in Council members' mail boxes from Jessica Titus pertaining to the property that had been dispatched over late in the afternoon. As part of the application there is documentation of rental of the property during 2002. One of the rental periods was for 46 days from October 15, 2002 to November 30, 2002. That would not be considered a weekly rental and is permitted under today's rules. The second time period was for 14 days during 2003. If this is going to be considered it was noted that there was no documentation of short term rental during 2002. So in this case the applicant failed to meet both criteria.

Ms. Nancy Smith came forward to say that she was not aware that the two weeks was not considered a weekly rental. She thought that anything under a month was considered short-term rental and asked that this be explained to her. Mr. Folke said there was no documentation of such short term rental in 2002. Ms. Smith had not understood that it had to be in 2002 to have it grandfathered in. Ms. Smith had been in Ohio and had seen all the information in the newspaper in March about registration but did not know at that time what the procedure would be. She was leaving April 1st so she called her rental agent at Lahaina Realty, Jessica Titus, asking what she needed to do to be registered for a short-term rental. She was told by Ms. Titus not to worry, she had her tax ID and was all set up. In the meantime, because Ms. Smith was going to be gone over the Summer, she had called the rental department of her company, which unknown to Ms. Smith she was in the process of selling at the time, and told them to place her property on inactive status for the summer. She had done this all along; however, the new people did away with her whole tax ID entirely, and she assumes this is why she never heard from them and why she received no notification about the short-term rental process as she had requested. In the middle of summer she found out she was not registered. Her intention was to register and to follow the rules because her apartment is legal, she made sure Dave Crabtree saw it, she renovated the whole house and has been a very good neighbor. If there have been any complaints filed she is not aware of them. She has lived there; it was my neighborhood. She has redone the yard, has a metal roof, none of the bathrooms were functional; she has done everything she could to improve the neighborhood. In addition, there is a short-term rental to the East of her; there is a short-term rental across the canal from her; she has never had any trouble with short-term rental. She knows the ordinance has been passed and is not open for discussion, but she knows of other absentee landlords who rent annually whose properties are "the pits." She feels she has done everything she could and would have applied had she known, even calling her Realtor to find out how to apply and being told, "You're registered." Mayor Hughes stated that she had received some very bad advice. Ms. Smith agreed. Mayor Hughes asked if she had ever rented the property on a short-term weekly basis, and she said that she had. He asked whether this had been in 2002, and she replied, "Apparently not." Mayor Hughes asked about prior to 2002 and she said only to her friends. She replied that this is not used as a business and Mayor Hughes asked in that case how important it was to her to be registered as a short-term rental. She replied that it was very important because of her rights as a citizen who did everything to comply with the rules. She did get bad advice, but she made an effort. Mayor Hughes said that the records show that Ms. Smith had had a homestead exemption and asked her to comment on this. She said she had called Lee County and thought that this had nothing to do with the matter. Mayor Hughes said this depended on how long she had owned the property. She said she had owned it since 1997. Mayor Hughes said then it is relevant. She said she called Lee County because she received an anonymous letter stating that she was in jeopardy of losing her homestead exemption because of the rentals. So she called Lee County directly and told them it was her home; she lived there, and also had a legal apartment. She was told that it was not a problem.

Mr. Roosa was asked to address the question of a home that is a permanent residence with an apartment that is being rented in that building, and whether the homeowner is entitled to

homestead exemption. Mr. Roosa replied that it is his understanding that it is allocated. The property owner gets a partial homestead. This happens more often when there are tenants in common in a property and one tenant lives in the property and the other does not, they get half a homestead.

Pat Beckner of Curlew Street came forward and said she had been a neighbor of Ms. Smith for several years. She lost her husband in 2001 and has had to make a lot of decisions since then. She had trouble selling her house and had to go home and attend to legal matters this Summer. She was not aware and did not know who got letters about the short-term rental requirements. If so many people did not get letters she wondered where they went. She said that she is in favor of short term rentals and against the ordinance. She has had a short-term rental next door to her that she had enjoyed for almost nine years having taken care of the house, cleaning it for them, and has met many nice people. Ms. Smith has been active in the Neighborhood Watch program and is a very good neighbor. Her rentals have not been a problem to anyone on the street. She does not rent that often but needed the rental income after her husband died. She expressed the opinion that Council perhaps had not taken into consideration the ramifications of this ordinance on those who need the income. Mayor Hughes asked if Ms. Beckner had any personal knowledge of when Ms. Smith had rented her property on a weekly basis in the past, and she replied that she did not know when she had rented it. She is aware of what is happening because she takes care of many of the houses on the street and has keys to many of the properties within 100 feet. She and her husband both took care of properties. Ms. Smith had tenants come from Ohio but Mr. Beckner does not know how long they stayed; she met some of them but not all.

Kevin Mulhearn came forward and stated that short-term rentals are regulated under Hotel and Restaurant, and to qualify to be a short-term rental it doesn't matter if you rent the property for a week, it has to be offered to the public as a short-term rental. When the licensing fee is paid, it doesn't matter whether it is a 46-day rental, it is still considered a short-term rental.

Kim Spitzer came forward to say that this is a similar situation to hers in that the property owner lives elsewhere and was not given any notification. The ordinances are passed and owners are trying to do the right thing. How many other people out there don't even know that this ordinance has been passed?

Mayor Hughes closed the Public Hearing at this time.

Mr. Roosa was asked by Mayor Hughes what happens when no-one makes a motion. He said you sit and wait, and Mayor Hughes asked how long. Mr. Roosa replied that the issue has to be resolved; it must be voted on one way or the other. Mayor Hughes again asked what happens if no motion is made, and Mr. Roosa suggested adjournment for a break and return to take up the issue. Councilman Rynearson said he would like to uphold Staff in that there is no proof of weekly rental in 2002. Mr. Folke replied that there was a 46-day rental in 2002 which is still permitted without being on the registry.

MOTION: Motion was made by Councilman Rynearson to affirm Staff in that the application was not submitted by June 1, 2003 and did not give evidence of a lawful weekly rental. Seconded by Councilman Van Duzer.

DISCUSSION: None

VOTE: Motion passed by unanimous vote.

Mayor Hughes raised a question concerning refunding the money to the applicants who were denied. Town Manager Segal-George replied that they were told that this was not an issue that had been addressed by Council and that she was awaiting direction on this from Council.

MOTION: Councilman Van Duzer moved that the \$500.00 fees be refunded to the applicants who were denied their appeals. Seconded by (several Council members spoke simultaneously.)

COMMENT: None

VOTE: Motion passed by unanimous vote.

E. INTRODUCTION OF ORDINANCE 03-11, AMENDING CHAPTER 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, SECTION 34-3048. ANCILLARY TEMPORARY USES IN PARKING LOTS; ADOPTING A NEW SECTION 34-3051. TEMPORARY WELCOME STATIONS:

Mayor Hughes read the title of the ordinance and verified with Town Manager Segal-George that this matter will be set for Public Hearing on October 20, 2003 and November 3, 2003, at or after 6:30 P.M. on both dates.

F. PRESENTATION OF SCOPE OF SERVICES AND PROFESSIONAL SERVICES AGREEMENT BY TBE GROUP, INC. FOR HIDDEN PATH PROJECT

Mr. Folke directed Council's attention to a memo to the professional scope of services agreement prepared by TBE Group last Wednesday. Gary Colecchio, who is here tonight, presented this to CRAB at their meeting, and they did unanimously recommend that Council approve this scope of services in terms of a contract with TBE involving the planning and preliminary design for the Hidden Path project. This has been talked about before and is a proposed trail off of Estero Boulevard.

Mr. Gary Colecchio, Southwest Regional Manager for TBE Group, introduced himself and recalled that the last time he appeared before Council was in February 2003. Since then they have been working diligently with Staff to prepare not only a scope of services, but also an action plan. TBE was cast with taking a concept that appeared in the Town's Comprehensive Plan that amounted to a line on paper and about 100 words, to develop a methodology of actual planning and design to arrive at a point where the path can be walked upon. This is what he has in the rather lengthy document he is presenting today. He asked whether Council wanted him to go over the entire document or answer questions.

Mayor Hughes asked for a rough timetable. Mr. Colecchio referred back to the schedule developed for their proposal. The 1.5 mile "core section" area that they are doing consists of about a 14-month design, approval and construction period. This includes getting funding for the project also. Mayor Hughes also asked whether TBE would be subcontracting any of the work under this contract. They will be subcontracting the survey if necessary. During the data collection they hope that there will be enough information on right-of-ways available from either the City or the County that it will not be necessary. However, if it is found that some is wanting, they will be subcontracting this out. This will probably be mostly in design, and this particular aspect of their services is pretty much pre-design, so they feel that they will be able to do the work as presented to Council with in-house staff.

Councilman Van Duzer asked for clarification on whether the expense under discussion was just for the planning stage; was that planning stage for the entire Hidden Path project? Mr. Colecchio replied that this had been discussed at length with Staff, and even though it was their recommendation that the entire length of Estero Island be looked at, Staff felt that taking on a project all-encompassing like that would bog down the process, and perhaps delay completion of the core project. So they conceded that they would address simply the 1.5 mile portion. There was an economy of scale that could have been achieved by going through exactly what you see here as far as their public information meetings as part of their due-diligence work. They could have had an economy of looking at the entire system for a minimal expense in both time and fees, but because we wanted to move quickly we were convinced to shorten the scope to the core project.

Councilman Rynearson stated that opinion that he is not sure that all the people are going to go along with the Hidden Path, and it is a big concern to him that this amount of money is spent before this is known. Mr. Colecchio said that this has been addressed. In both their cover letter they describe the anticipated importance of public input, and in the scope of services they actually describe the methodology that they plan to use not only for public information but to develop a public buy-in or consensus. They have broken out the tasks by man-hour to show the amount of effort they intend to expend to get the public behind the project. The way we approach this is by doing something called a zero per cent public information meeting. This will engage the

public very early on in design to include them as part of the decision making process. The Town would be their client, but the ultimate customer is the residents. He asked whether anyone has sat through a DoT PD&E presentation, and one Council member said they had. Mr. Colecchio explained that this is a Project Development & Environmental study, DoT typically has town meetings where they engage the public in the design process. This is exactly what TBE intends to do here. He described how there would be several stations set up and the public would have an opportunity to look at each component of design and comment on it. The first one would be a visioning station; the second would be a station showing the benefits and goals; the third would be a constraints and existing conditions station; and the last one would be where the public could actually go and draw lines on the paper showing where they have concerns. All that information is taken back and this is how they start their design. He stated that obtaining public support is absolutely critical to the project, and without such support the project will go nowhere. This has been structured so that during different parts of their analysis there is the opportunity to go and no-go the project. If it looks like there will be so much opposition they will come to Staff and so report, and the project should be shelved until a time when conditions are more favorable. They are not going through an academic exercise to sell Council a plan that will sit on the shelf. This will be a plan that will be able to proceed through to construction.

Mayor Hughes recalled the situation with the Estero Boulevard project which unfortunately has been approved by the public but has not been funded.

Councilman Rynearson asked whether the contract will stop when public opposition becomes evident to the extent that the project would not be feasible to go forward, and Mr. Colecchio stated that the contract could absolutely be terminated under those circumstances. They would be paid for services rendered up to that date with reasonable notice.

Mr. Colecchio addressed the funding issue and said that he believes one of the reasons TBE was selected because they have certified grant writers on staff. In engineering they consider a triangle of politics, money and technical specifications. The technical specifications are very easy. The difficulty lies in developing political consensus and the funding. Funding is a very heavy component of their professional services and is added into their manpower. Last year they got over \$10 million in grants for very similar projects. They can thoroughly explore ways of funding the project in non-traditional ways, including Federal sources.

Vice Mayor Cain wanted to make sure regarding the \$44,935.00, the 5 deliverables in Section S of 30, Attachment C. Mr. Colecchio stated that Attachment C is the services that will follow the pre-design planning services. They felt it was premature to give a hard cost in construction fees without knowing the alignment or whether the project will be feasible at all. For instance, if there is a right of way constraint, the Hidden Path at this particular path might be a painted piece of the existing roadway. Without knowing what the actual physical demands are it is very difficult to develop consulting fees. He would like this to be considered a budget figure. Based on what is known now, if we were to build a conventional path through the typical alignment, this is pretty much the figure they would anticipate, but the reality is that it will probably change once the pre-design phase is complete.

MOTION: Vice Mayor Cain made a motion to accept CRAB's recommendation to accept TBE's Hidden Path planning and design services and authorize execution of an agreement with TBE subject to review by Town Counsel Roosa. Seconded by Councilman Rynearson.

COMMENT:

Councilman Van Duzer said that when TBE was selected they liked the presentation but had no idea what they were talking about. Mr. Van Duzer would like the people of Fort Myers Beach to know that we are talking about a planning phase, and that is all it is, for \$44,935.00, and this is only for 1 mile and a half of the Hidden Path project. He finds it difficult to believe that we are going to allocate that much money for something like this. He almost thinks that this ought to be put out in the press and let the people on the Island digest this before making such a decision. He thinks it is a lot of money for the services being proposed. He has heard that there are many people so adamantly opposed that they intend to file suit if it impacts their properties.

Mayor Hughes asked if the opponents can be identified so they can meet with TBE?

Councilman Rynearson did not feel it would be fair to reveal their names. When they are ready to talk with the consultant, they will.

Councilman Van Duzer said that numerous people in Shell Mound and Donora and Nature View are very concerned about how this will happen and are opposed to it without seeing a design.

Mr. Folke said that Staff has been working on this for approximately a year to find a consultant to take it to the next step. CRAB had determined the way to approach the project was to try to build the initial core part of the Hidden Path to show what it will look like. There were people who came to CRAB and voiced opposition concern, but the difficulty is that we don't know what it will be at this time. We don't know where it is going, what it will look like, how wide it is going to be, but basically CRAB and Staff have taken it as far as they can. We are at the level where public meetings are appropriate, which is the first step of this phase. Perhaps after the first public meeting there will be so much opposition that it is decided not to take it any further. Mr. Folke does not feel that the Town is equipped to hold such a public meeting without outside help. That would be the first part of this contract, and as Mr. Colecchio stated, at this time it could be decided whether to proceed or not. He feels this next step is needed to get public input, and he believes what is proposed by TBE is the proper way to go. Mayor Hughes reiterated that public comment is optimum at the earliest possible point, and Mr. Folke agreed. This is what has been built into TBE's proposal.

Councilman Rynearson said we need these answers because the public will ask why this kind of money is being spent. He wanted assurance that there will be public forum for input and that if they don't want it, the plan stops immediately and the fee stops immediately. Mr. Colecchio replied that this is their understanding also, and he believes their scope of services reflects that. The first element is a kickoff with the advisory committee and Staff, some due diligence and data collection, and the very next element is their zero percent meeting which is the first go/no-go decision point.

VOTE: Motion was passed by unanimous vote.

Mayor Hughes congratulated Mr. Colecchio and asked that he proceed as quickly as possible in getting this under way. Mr. Colecchio expressed his pleasure and appreciation.

G. APPOINTMENT TO LEE COUNTY HUMAN SERVICES COUNCIL:

Town Manager Segal-George stated that when this came up the last time at the Council meeting he had received this information and it would be copied to the Council. Basically, there are three options: (1) One of the Council members might like to serve on this Council; (2) Rachel Lambert of her Staff has offered to serve on the Council on the Town Council's behalf; and (3) it could be advertised to determine if there is someone in the community who would like to do it. Mayor Hughes asked concerning Option (2) whether the time spent by one of her employees would have a negative impact. Ms. Segal-George said she did not think so; Ms. Lambert would like to do this and she believes she would be a good representative of the Council on this committee.

MOTION: Vice Mayor Cain made a motion that Rachel Lambert be nominated for appointment to the Lee County Human Services Council. Seconded by Councilman Thomas.

DISCUSSION: Mayor Hughes stated that he agrees with the Council members making the motion in that Ms. Lambert will be an excellent person to serve on behalf of the Town.

VOTE: Motion passed by unanimous vote.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Rynearson observed that TDC has changed the motto from "Lee Island Coast" to "The Beaches of Fort Myers and Sanibel." Most of the response has been positive. If the Council would like to have the staff come out and put on a presentation they would be more than willing to do that. Town Manager Segal-George said that she is already trying to book that.

Mayor Hughes noted that they had given a presentation about two years ago. Ms. Segal-George believes that they are trying to set them up for November.

Vice Mayor Cain handed out an e-mail from Nancy McPhee and from Angie Ferguson that has been passed around and suggested it be placed on a future agenda. Lee County is sponsoring a triathlon that would happen at Bowditch Point in July. They requested certain things from the Town as far as use of Bowditch Point for the swim. They would need the road for the bike and the run. She talked with John Naylor last week and does not know what the condition of the north end of Estero will be like in July which is a consideration. They requested that the Town support this event if we can.

Monofilament Madness will be October 19th this year. Several Council members have already set up their positions, and we will be at Mid Island Beach Marina and Fish Tale Marina. They have the use of some kayaks and expect a good day like National Estuaries Day. It will be from first safe light until 12:00 noon followed by a barbecue luncheon at Fish Tale.

The water issue has been in the papers lately. The issue seems to go away when the rain stops, but the issue never really goes away. She called attention to the freshwater dumping and the color of the water in the Gulf. She does not believe the Board of County Commissioners has taken a stand yet and did not know if Council would like to give them a little support regarding the lawsuits on freshwater dumping. Councilman Van Duzer said we were going to join in that lawsuit.

(Inaudible) ...an intent to sue, they haven't done it yet. (Inaudible) Town Manager Segal-George asked if Vice Mayor Cain would like a resolution for the next Council meeting. Mayor Hughes said he thinks we should definitely support them in the form of a resolution whether we join the suit as an intervenor, thereby incurring additional legal expense. They will be adequately represented. He thinks we should at the minimum give them a resolution of support. Vice Mayor Cain agrees. She has attended some meetings this week and knows there are things being done but feels more immediate action is needed, not every two or three years. It will ruin the tourist industry and the value of their homes. It is very disturbing to see more freshwater in the Gulf every day. Mayor Hughes directed Town Manager Segal-George to prepare a resolution.

Mayor Hughes said there was an invitation from the School Board to attend a luncheon of the Lee County Legislative Delegation on Friday and asked whether any Council members planned to attend. Vice Mayor Cain said she thought she would go, and Councilman Van Duzer said he would try to go subject to a prior engagement at 10:00 A.M. that morning. He feels that Town representation at that luncheon is important. Mayor Hughes has a Horizon Council meeting that morning but will also try to attend. This is Friday, October 10, 2003 at 12:30 A.M. Vice Mayor Cain thought she had it on the wrong day.

The Sheriff of Lee County is going to host the Florida Police Accreditation Coalition State Conference at Diamond Head from the 6th through the 10th of this week. This is a large group coming for the first time to Fort Myers Beach for their annual meeting. 225 people have totally booked Diamond Head Resort and four other properties. Mayor Hughes is going to welcome them on Thursday and Council members were invited to attend.

Mayor Hughes has also been asked to appear before the Board of Directors of the Chamber of Commerce on the 15th and wanted to ask them to give positive support about some of the positive things being done in the community.

VIII. TOWN MANAGER'S ITEMS

Ms. Segal-George had no items to report.

IX. TOWN ATTORNEY'S ITEMS

Mr. Roosa had nothing to report.

X. PUBLIC COMMENT
None.

XI. ADJOURNMENT Mayor Hughes adjourned the meeting at 9:35 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary