FORT MYERS BEACH
TOWN COUNCIL MEETING
November 17, 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 on Monday, November 17, 2003 at 6:30 P.M. by Mayor Daniel Hughes.

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

Excused absence from the meeting: None

Staff present at the meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Service Delivery Director Damon Grant

II. PLEDGE OF ALLEGIANCE: All those present assembled and recited the Pledge of Allegiance.

III. INVOCATION: The invocation was given by Rev. Robert Stuckey of First Baptist Church.

IV. PUBLIC COMMENT:

Bill Freeman of 340 Old San Carlos, who owns the Smoking Oyster Restaurant, came forward to address the Council on parking. He referred to several unfavorable newspaper articles concerning the parking meters on Old San Carlos. He believes that enforcement between 9:00 A.M. and 5:00 P.M. is sufficient to achieve the intended purpose of stopping all-day beach parking. He feels that $32.00 is excessive and suggested this fine be lowered to $16.00. He felt that giving Central Parking a percentage of the total revenue encourages them to enforce too vigorously. He described incidents he has personally witnessed that he feels are hostile to Island visitors.

Mayor Hughes pointed out that both the amount of the fine and the hours of parking were recommended to Town Council by the Times Square Advisory Board, which is composed of the merchants at Times Square and Old San Carlos. He also explained that this is Administrative Agenda Item E and will be open for further discussion at that time.

Vincent Romano of 1113 Estero Boulevard, owner of Chiggies, on the second floor of the Seafarers Mall, came forward to speak about the noise ordinance. He said that where he is located, in the Times Square area, there are no residential areas that would potentially be affected by the noise level. Using a decibel meter, he determined the decibel level during recitation of the Pledge of Allegiance was 72. He feels that the limitations on music should be re-evaluated. He also thanked everyone with whom he dealt at Town Hall for their assistance during the opening of his business October 1, 2003.

W. P. Kerr of 4481 Bay Beach Lane came forward to comment about the parking meters on the beach, not the downtown area. For the past ten years he has habitually parked on Aberdeen because he prefers to swim at that area of the beach. He finds it unacceptable that in the past two years property taxes have increased 50 per cent, yet residents are required to pay for parking at the beach or incur fines. He believes there should be a parking pass for residents and property owners alike.

Mayor Hughes advised that this matter will also be addressed on the Administrative Agenda, and that what Mr. Kerr is recommending has also been recommended to Council by Staff.

Joerg Wiebe of 113 Estero Boulevard, owner of Seafarer's, came forward to ask that Council review the noise ordinance. He has contacted the nearby hotels and has determined that they have no problem with the sound level of their entertainment due to the fact that their guests are also clientele. He asked for suspension of enforcement until a revised ordinance can be drafted and approved. He is suggesting daytime levels of 25 decibels above ambient noise, and after 10:00 P.M., 15 decibels above ambient noise. He feels it is unfair to be ticketed for exceeding 72 decibels when the traffic exceeds 80 decibels.

Don Grundtisch of 4421 Bay Beach Lane, #653 came forward and introduced himself as Past President and long-time Board member at Hibiscus Point on Bay Beach. He indicated the same concerns as Mr. Kerr regarding parking at beach accesses and objects to the parking fees. There are 184 units in his condominium, and he feels that the owners are contributing to revenue by paying taxes but have no vote or voice in decisions that affect them.

Mayor Hughes pointed out that by addressing Council, Mr. Grundtisch does indeed have a voice, and that this matter will be addressed later in the meeting.

Troy Mesich of 1113 Estero Boulevard, Dusseldorf's on the Beach, came forward and said that he has been with the establishment the eleven or twelve years that they have been open. To his knowledge they have never been cited for noise. He purchased the decibel meter so as to prevent an infraction, and has taken readings of both traffic and wind noise, both of which exceed 70 decibels. He does not feel the ordinance is fair and would like to see emergency suspension of enforcement of the ordinance pending further review.

John Lallo came forward to speak about the parking meters and resident permits. He mentioned permits for part-time residents and also for employees, and stated that he would be willing to pay $50.00 apiece for permits for his employees. He also objects to the parking meters on Old San Carlos and has also observed aggressive incidents involving Central Parking employees. He also recommends lowering the parking fine and changing the hours of enforcement.

Jerry Mitchell of Lagoon Road, Fort Myers Beach, "The Bug Man," came forward and pointed out that the speakers who are objecting to parking at this meeting were not in attendance at the meeting where the parking issues were approved. He was in favor of tolls. He expressed the opinion that the elected Council members who are responsible for the management of the Town of Fort Myers Beach are in fact not the ones making the decisions. He also referred to the line item in the budget of approximately $1 million for administrative fees. Mayor Hughes replied that this figure is incorrect.

V. CONSENT AGENDA:

MOTION: Councilman Van Duzer made a motion for approval of Items A, B, C and D. Motion was seconded by Vice Mayor Cain. Councilman Thomas requested to withdraw Item D.

VOTE: Motion passed by unanimous vote.

A. APPROVAL OF MINUTES: November 3, 2003

B. FINANCIALS FOR THE MONTH OF SEPTEMBER

C. REQUEST APPROVAL FOR RENEWAL OF AMENDED CDBG MEMORANDUM OF UNDERSTANDING FOR HOUSING REHAB AND PUBLIC SERVICE CONTRACT

D. RESOLUTION RELATIVE TO ALTERNATING LIGHT PROJECT:

Councilman Thomas stated that that a potential problem was known over a year ago and he wanted the public to be aware why approval is taking so long. He asked Deputy Town Manager John Gucciardo to comment on this. Mr. Gucciardo explained that last spring Council had recommended installation of the alternating light at Buttonwood on a permanent basis. Staff had been attempting to encourage Lee DoT to do this for about a year at that time. He pointed out that this is outside the Town jurisdiction, Lee DoT and Florida DoT were asked for consideration of two alternatives: Installing the alternating light on a permanent basis, which would require installation of some new equipment such as poles and software; or another temporary installation if a permanent installation could not be accomplished for this year. It has taken from last May until the present time to secure an agreement which will result in another temporary installation for this year. The agreement before Council tonight calls for the Town to expend approximately $120,000.00 for the permanent installation because the County was not willing to pay for this. This would be reimbursed by the State in Fiscal Year 2004-05. When approved, this agreement will now go to State DoT which will allow for ordering of parts, obtaining a contractor, and moving forward with the permanent installation. It is unlikely that permanent installation can be accomplished during this Season. John Davis of County DoT estimates temporary installation within about three or four weeks. One problem is that FDoT still requires assurance that the system can be used on holiday weekends beyond the time period from February until Easter. Funding for the temporary installation is still a problem, and the Town has budgeted for this expense in the event it is necessary.

Councilman Thomas expressed the hope that installation could be accomplished prior to Season, since otherwise valuable time will be lost but the expense will be the same. Councilman Van Duzer explained that originally the State had agreed to do this in FY 2006. He feels that every effort has been made to accomplish this in a timely manner and that both Lee County DoT and FDoT have been very cooperative in attempting to move this forward of 2006. Mayor Hughes expressed appreciation that this issue had been brought up for the public's information and assured that the matter will be diligently pursued.

Mayor Hughes called for a motion to approve the resolution authorizing him to enter into an agreement with the Florida Department of Transportation for this local agency agreement, alternately called the Traffic Operation Improvement Agreement dealing with the alternating lights.

MOTION: Motion was made by Councilman Rynearson and seconded by Vice Mayor Cain as above.

VOTE: Motion was unanimously adopted. The resolution is approved.

VI. ADMINISTRATIVE AGENDA:

A. PRESENTATION BY D. T. MINICH OF THE TOURIST DEVELOPMENT COUNCIL:

Mayor Hughes welcomed Mr. Minich. He spoke about the revised identification from "Lee Island Coast" to "The Beaches of Fort Myers and Sanibel." He described the planned advertising campaign and the markets that will be targeted in this country and abroad. He said it has been extremely well received by the trade, the media and the consumers in terms of recognition. Group studies and focus groups were used, and the slogan that was adopted had worked best with 87 per cent name recognition with core customers in the domestic market. He explained the marketing philosophy and reported that the new advertising campaign will begin running next month. Some of the TV and print ads were shown to the Council. 220,000 visitors guides which will be distributed next year feature a cover photo shot near the Outrigger on Fort Myers Beach. This is now 115 pages with 30 pages of advertising. Mayor Hughes expressed his appreciation to Mr. Minich and the TDC. Vice Mayor Cain also expressed appreciation for the familiarization tours being given the hotel industry. Mr. Minich said that they plan to expand the customer

service workshops. Councilman Rynearson also thanked Mr. Minich for attending and making this presentation. Mr. Minich distributed T-shirts with the new slogan to the Council members.

B. INTRODUCTION OF ORDINANCE 03-12 AMENDING LAND DEVELOPMENT CODE, CHAPTER 2:

Mayor Hughes explained that in accordance with an attorney general opinion, the Town can no longer utilize the services of the County's hearing examiner. The Town must create its own and hire a Special Master. Mayor Hughes read the amendment and stated that this is the introduction and that there will be public hearings on this ordinance on December 8 which is a 3:00 P.M. meeting and on December 15, 2003 at 6:30 P.M. This will be advertised.

C. INTRODUCTION OF ORDINANCE AMENDING THE COMPREHENSIVE PLAN:

Town Manager Segal-George explained that this is perfunctory and is done every year with regard to the CIP. Mayor Hughes referred to a memorandum from Bill Spikowski and read the proposed amendment. He stated that this is the introduction of this amendment and that the public hearings will be advertised and will be held on the same dates and times as Item VI.B. above.

D. DISCUSSION OF FUTURE AMENDMENTS TO THE COMPREHENSIVE PLAN AND EAR PROCESS (STATE MANDATED EVALUATION AND APPRAISAL OF THE TOWN'S COMPREHENSIVE PLAN):

Mr. Spikowski, Planning Consultant to the Town, stated that the previous item is to finish up the current year's amendments to the Plan, and that this item is asking for input on any amendments desired during next year's cycle. The only one that is mandatory is the capital improvements program which must be done every year by law. Any privately initiated amendments must be submitted by the December 31st deadline. Amendments desired by the Council should be submitted at this meeting, or by the end of the year. Also in the memo is an appraisal report, which is a five-year update of the Comprehensive Plan that must be initiated in the next year; no action is being requested on this at the current meeting, but the LPA has discussed this and will take charge. Mayor Hughes asked whether this were in fact a seven-year update, and Mr. Spikowski said that it was supposed to be seven years, but that the State wanted the Town to be on the same cycle as the other cities within the County so that all are being done at the same time. Hereafter, this will be a seven-year cycle. The process, beginning with identification of the major issues, must be begun early next year.

Councilman Van Duzer referred to the transportation issue following the traffic mitigation study, and the storm water management element and the utilities element, which he feels should be addressed at the present time. Mr. Spikowski said that these could be included for preliminary purposes and the list adjusted at a later date. Mayor Hughes agreed with Mr. Van Duzer's suggestions and also added financing on Estero Boulevard and permeable paving should be added. There were no recommendations to delete any of the items in Mr. Spikowski's memo. Mr. Spikowski pointed out that there are several more meetings before the end of the year prior to next year's amendment cycle and if Council prefers to include some issues in the actual amendment cycle, these issues just need to be voted on before the final meeting of the year. These items would then be heard along with capital improvement amendments in March and April. Mayor Hughes observed that this will be a major project.

E. DISCUSSION OF PARKING METERS:

Service Delivery Director Damon Grant was asked by Mayor Hughes to summarize the Staff recommendation as set forth in his memo and distinguish it from the earlier Staff position on this matter. Mr. Grant said that in response to his inquiry, Central Parking had advised that the Town does not receive a higher percentage of complaints about parking enforcement than any other area. Mr. Grant referred to the TSAC meeting in October at which time that Committee focused on reducing the hours from 9:00 P.M. to 7:00 P.M. and also reducing the fine amount from $32.00 to $16.00. They also wanted to increase the time limit that the individual had to pay the fine, and to reduce parking under the bridge from $2.00 to $1.00. They wanted to extend parking passes to Fort Myers Beach property owners, residents or registered voters. They also

considered financial impacts of these revisions, and it was determined that there would be a $38,000.00 loss at the end of the year. He referred to Staff's second memo dated November 10, 2003 containing recommendations that followed the TSAC deliberations, except that the fine be reduced from $32.00 to $25.00 instead of $16.00, and that there would be five working days to pay, resulting in a solvency of $15,892.00 annual revenue. Staff recommends no further revisions until after the one-year anniversary of Central Parking System, which has only been in effect six months. Mayor Hughes wanted clarification whether the parking pass revisions recommended by Staff applied to beach accesses as well as under the bridge. Mr. Grant said that Staff recommends continuing current procedure regarding residents, but also including property owners on the beach with one pass per property owner.

MOTION: Motion was made by Councilman Van Duzer that Staff recommendation be accepted with the hours of operation from 9:00 A.M. to 6:00 P.M., the fine reduction to $25.00, the $1.00 per hour parking fee under the bridge, and that all property owners would be allowed to obtain parking passes for a fee of $10.00 annually. Motion was seconded by Vice Mayor Cain.

DISCUSSION: Councilman Rynearson said he prefers that the parking meters under the bridge remain at $2.00 because there had been no objections brought forward to the $2.00 fee. He does not feel the Town should compete with commercial parking lots by lowering the fee.

Mayor Hughes observed that Mr. Lallor's wife is a member of the TSAC, which made the original recommendations.

Councilman Thomas agreed with Mayor Hughes that the recommendations originated from the TSAC. While he did not agree with the original recommendations, he expressed concern about the proposed revisions coming forward from TSAC and feels there should be more input from other areas of the community. Also, the second proposal results in a loss if the recommendations are followed, and Mr. Thomas does not feel that the taxpayers should have to subsidize the parking for the Times Square area. There were also complaints about enforcement, and he feels that Central Parking is doing their job. He referred to a letter in the *News-Press* Mailbag from a family who had parked at Pizza Hut and spent the day on the beach, complaining that their car had been towed.

Mayor Hughes observed that he also knows of a complaint from someone whose car was towed from private property, and that the Town ordinance properly does not deal with such incidents, which are trespassing. He agrees with Councilman Thomas and pointed out that the revisions being considered at this meeting are not from TSAC, but from Staff.

Councilman Rynearson recalled a previous discussion concerning off-Island visitors and expressed the opinion that since residents will now be able to obtain permits, the fee should remain at $2.00 under the bridge. He suggested the motion be changed to reflect this, and Councilman Van Duzer said he did not wish to amend the motion.

Mayor Hughes summarized the motion, at which time Town Manager Segal-George pointed out that the hours end at 7:00 P.M. at the beach accesses. There was discussion about the different times.

VOTE: Motion was approved by a vote of 3 – 2, with Councilman Thomas and Councilman Rynearson dissenting.

F. CONGESTION PRICING STUDY – WHERE DO WE GO FROM HERE?

Mayor Hughes referred to a memo from Town Manager Segal-George, who then referred to a *News-Press* article by Lee Melsek which she feels is unfair and undeserved. She wrote this memo in an attempt to build community consensus. Reference was made to portions of the memo which were not included in the article. Groups had been invited to participate and make recommendations about traffic and congestion. Ms. Segal-George offered to provide the memo to anyone who would like to have it. She considers this a personal attack and is extremely upset.

Mayor Hughes read a response which he had written and FAXed to the *News-Press* at their request.

Councilman Thomas stated that he appreciates all of the work done by Staff and has not and will not attack the Town Manager. He referred to a grant for a toe ring study. He pointed to

editorials from the *News-Press* which he does not believe were written by this same reporter. He referred to the study concerning tolls which generated a great deal of press and controversy, and also to a cartoon by Doug McGregor to stress his point that other reporters than Mr. Melsek had written unfavorable items about Fort Myers Beach.

Mayor Hughes said that positive information seldom appears the *News-Press* and cited several examples.

Councilman Van Duzer said he was also the subject of an unfavorable and incorrect article by Mr. Melsek on the topic of another bridge and that he feels that positive and factual information in the press is too infrequent.

Vice Mayor Cain said that she felt this was a good memo. She recalled how application was made some years ago for a Federal grant to study traffic congestion. The grant was approved and resulted in an all-inclusive study which has just been completed and made available today. Over time, tolls became the public focus to the exclusion of the fourteen other alternatives in the study. She feels the public should expect no less of Council than an all-inclusive study, and because of the population growth in Lee County she foresees traffic issues into the future. She complimented Staff on their work in securing this grant.

Councilman Rynearson said that throughout the study public perception has been that decisions have already been made, which is not the case. He feels that Ms. Segal-George has done her job well and asked that the Council be given time to read and digest what is in the study before jumping to conclusions.

Councilman Thomas recalled that the consultant, Mr. Swenson, had held study groups which were unsuccessful because the participants were opposed to what he was presenting. He expressed the opinion that many of the ideas are impractical here. He referred to Mr. Mansuco and his petition and to lengthy workshops that were held.

Mayor Hughes pointed out that it is unlikely that any of the positive items on this meeting's agenda, wherein Council is clearly responding to input and requests from Town citizens, will ever be the subject of articles in the press.

Mr. Van Duzer returned to the subject of the memorandum and said he would like to move forward with the ideas contained therein. Mayor Hughes said that a motion was not required at this time, and that Staff was directed to proceed accordingly. Community input is a definite goal, but past experience has been that in workshops focus has been exclusively on one aspect only.

VII. COUNCIL MEMBER ITEMS AND REPORTS:

Mayor Hughes referred to a letter from Al Van Horn describing a personal situation. He has been a loyal volunteer and served in many capacities, and because of his situation he is resigning from the Technical Advisory Committee. Mayor Hughes directed Staff to advertise to fill this vacancy.

Mayor Hughes is looking forward to an Arts and Crafts Show on November 28th and 29th sponsored by the Alliance.

There is a Southwest Florida Regional Planning Commission luncheon on the 20th. All Council members and Mayor Hughes plan to attend.

There is a Mound House event, Descendant's Day, next Sunday at 11:00 A.M.

Our first Town Hall Meeting will be held Wednesday, November 19th, at 5:00 P.M. and will be an open forum.

A letter was received from the owner of Top Of the Mast again raising the question of a curfew. He asked when this had last been addressed, and what had been the position of the Public Safety Task Force and the Deputy Sheriff on this subject. Staff replied that it had either been last year or the year before, and after discussions with the Sheriff's Office the determination was that this could be another law enforcement tool, they were not recommending or advocating curfews. Beyond the constitutional issues there are also logistical issues in enforcing curfews in terms of manpower, dealing with juveniles and so forth. Public Safety took no further action. Mayor Hughes asked if any other Council members wished to revisit this issue. Vice Mayor Cain was not in favor of further action. Councilman Rynearson said he would like to have Captain Greiner come before Council and give his opinion on the subject. Mayor Hughes agreed and

asked that Captain Greiner be invited to address Council on this issue. Staff will do so and have this item placed on a Council agenda in December.

Councilman Rynearson announced that tomorrow evening at 5:30 P.M. the Red Tide seminar will be held. The Town, TDC and Chamber of Commerce are the sponsors of this important meeting. The location is Town Hall Chambers.

Councilman Thomas said that he is seated on the Southwest Regional Council and that there is a big anniversary meeting on the 20th. He said it was good that so many are attending. The red tide issue was addressed by the Council.

He addressed the subject of parking meters at the beach accesses. He cited cleanups in which Vice Mayor Cain and the Pilot Club have been involved, but that in daily walks he and his wife are continually picking up trash. He would like to see the Code Enforcement officers start enforcing Town ordinances and ticketing individuals for violations to set an example.

Councilman Van Duzer called attention to the boat races and would like this item placed on a future agenda.

He also asked that the noise ordinance be placed on a future agenda in light of some information offered from Staff. He also asked that Council consider easing the restriction in the Times Square area only for the Season. He is not recommending a moratorium.

Vice Mayor Cain advised that the Boy Scouts are collecting food for the holidays for the underprivileged. Bags are being left for donations and will be collected Saturday morning. The Scouts are active on the Beach.

Today in Bartow the Charlotte Harbor National Estuaries Program Policy Committee unanimously voted to help start the Pelican Land Trust for Fort Myers Beach. Their staff will assist with the 501(c)(3) paperwork so that grant applications can be made and potentially acquire environmentally sensitive land on Fort Myers Beach and elsewhere.

VIII. TOWN MANAGER'S ITEMS:

Ms. Segal-George referred to the Council's request for a presentation from Lee County DoT regarding the overpass. Jim Lavendar, the Director of Public Works for Lee County, advised that the County Commissioners had directed him to hold a workshop in the Town area early in December. He asked if this would be sufficient for the Council, and if the Council would consider attending the workshop so they would not have to make two presentations in December. She said that if more than one Council member would like to attend this workshop, a public notice could be issued. There was general assent among the members, and Mayor Hughes said it was likely that all would attend. Ms. Segal-George would verify the date and location and advise the Council. Mayor Hughes inquired whether this indicates no finalization by the County, and Ms. Segal-George replied it is her understanding that nothing is happening in December. They have issued the bonds and awarded the engineering contract for the overpass, so no significant action needs to be taken by the County until after completion of the design. Deputy Town Manager John Gucciardo said he heard at a Chamber of Commerce luncheon that the workshop will be on December 3rd at the Presbyterian Church on Bass Road at 5:00 to 7:00 P.M. This is being done for the purpose of issuing correct information and for input for design mitigation. Mayor Hughes directed Ms. Segal-George to see that Lenore James is contacted and advised that this will not be on a future Council agenda but incorporated into this workshop.

She thanked the Council for their support at this meeting.

IX. TOWN ATTORNEY'S ITEMS: Mayor Hughes advised that Bob Burandt, the law partner of Town Attorney Richard Roosa, was attending tonight's meeting instead of Mr. Roosa, who is on a trip to Italy. There was no report by Counsel.

X. PUBLIC COMMENT:

Don Mansuco came forward and said that he had never heard mention of a referendum prior to the initiation of his petition. Mayor Hughes agreed that Mr. Mansuco had initiated the

referendum concept but that the term was included in the Town Charter. Mayor Hughes further said that as a result of the petition, Council agrees that if at some future date an ordinance is proposed that includes tolls, that portion of the ordinance will be subject to approval by voters at a referendum.

Dolores Yost came forward to tell Ms. Segal-George that her efforts are appreciated by the people of the Island.

Jerry Mitchell, “The Bug Man” came forward to congratulate Vice Mayor Cain on her comments about traffic control.

Mayor Hughes thanked those who attended and commended those in attendance who stayed after their items of interest were disposed of. He believes that those who came forward are now aware that Council does respond to input from the public.

XI. ADJOURNMENT: The meeting was adjourned by Mayor Hughes at 8:47 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary