

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
DECEMBER 8, 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, December 8, 2003 at 3:00 P.M. by Mayor Dan Hughes.

**Members present at the meeting:** Mayor Dan Hughes, Vice Mayor Terry Cain, Councilman Bill Thomas, Councilman Howard Ryneerson, 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, Community Development Director Dan Folke, Lee County Division of Zoning Representative John Hagan, Town Attorney Richard Roosa, Planning Consultant Bill Spikowski.

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

**III. INVOCATION BY REV. JEANNE DAVIS, BEACH UNITED METHODIST CHURCH:**  
The invocation was given by Rev. Davis.

**IV. PUBLIC COMMENT:** None.

**V. CONSENT AGENDA**

**A. APPROVAL OF MINUTES, NOVEMBER 10, NOVEMBER 17, AND TOWN HALL, NOVEMBER 19, 2003:** Mayor Hughes withdrew the minutes of November 19, 2003 for a correction.

**MOTION:** Motion was made by Councilman Howard Ryneerson to approve the balance of the consent agenda as submitted. Motion was seconded by Councilman Bill Van Duzer.

**VOTE:** The motion was passed by unanimous vote.

**Minutes of November 19, 2003:** On the first page there is reference to John Parker which should be Dan Parker as a member of the Committee. On Page 4 in the third paragraph, reference to the "toe ring feasibility study" should read "toll ring." Councilman Van Duzer pointed out that this was in several places.

**MOTION:** Motion was made by Councilman Ryneerson and seconded by Vice Mayor Cain to approve the minutes of November 19, 2003 with the above corrections.

**VOTE:** The motion was passed by unanimous vote.

**B. CONTRACT RENEWAL FOR BILL SPIKOWSKI, PLANNING CONSULTANT:**

**C. CONTRACT AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AUDREY INGLIS – TREASURES OF THE SEA:**

**D. REQUEST APPROVAL OF CONTRACT FOR NEW ACCOUNTING SOFTWARE:**

**VI. ADMINISTRATIVE AGENDA**

**A. PUBLIC HEARINGS**

**1. PROPERTY LOCATED AT 170 BAYVIEW AVE., FORT MYERS BEACH. REQUEST FOR A VARIANCE IN THE RS – RESIDENTIAL SINGLE FAMILY ZONING DISTRICT:**

Mayor Hughes introduced Variance Case No. 2003-40 from applicants Wayne and Tammy McMullen for a variance in a single family residential zoning district from a 25-foot setback to a 17.5 foot setback. It was verified that there have been no ex parte communications in connection with this matter.

Wayne and Tammy McMullan came forward and explained their problem with the condition of the existing deck on the house. The deck was falling apart and separating from the home. They had hired a local general contractor who filed to obtain permits for them; however, there was a delay in obtaining the permits, and in the meantime, tree roots near the house were causing further separation of the deck and its supporting posts. They said that Dave Crabtree, who at the time was involved in Code Enforcement, was aware that this was a dangerous deck. Because of the deteriorated condition of the deck and the potential for injury and liability the McMullens felt that an emergency existed and authorized construction of a new deck before the permitting process had been completed. During the permitting process it was discovered that the setback was non-conforming. Mr. McMullan described the location and orientation of the deck and their plans to expand their living space and garage space in the next year, which was the reason for locating the new deck where they did. Other suggestions which they received from the zoning department are not practical. They have owned the home for about two years and have worked diligently to improve it from its former deteriorated condition. They met with Community Development Director Dan Folke and Mr. Crabtree and discussed the zoning several months ago. Mr. Folke told him the setback was going to be changed back to 20 feet, and they were relying on this information. Mr. McMullan stressed that they went ahead with the work because they felt there was no choice in that the deck was in dangerous condition. The deck has been up for over a year and he has heard no complaints from the neighbors; in fact, he has received compliments on the work they have done on the house.

Tammy McMullan explained that in view of their plans to add on to the house in the future, other suggested locations for the deck would not be appropriate. Their intention is to improve their house.

Mayor Hughes asked the McMullens to introduce a photograph of the house, which was admitted into the record. In reply to Mayor Hughes' questions, the McMullens replied that they acquired the house in September 2001, and that the work was done last November. Mayor Hughes then verified that they had owned and occupied the home about 12 or 13 months with the reportedly dangerous condition before building the new deck. Mr. McMullan explained that they did not move into the house until about six months after purchasing it because of its rundown condition. The condition of the deck was continually worsening because of large tree roots which were pushing the deck posts out of position. Attempts to reattach the existing deck to the house were unsuccessful because the roots had pushed the posts so far out of position. The McMullens made it a priority to renovate the interior of the house and move in because their financial circumstances were such that they could not continue living elsewhere and paying both rent and a mortgage payment.

Councilman Thomas verified that the new deck was installed in 2002 and asked why they did not obtain a permit. Mr. McMullan replied that they had every intention of complying with the applicable permitting requirements, but that there had been a delay in permitting. He deferred this question to his general contractor for explanation.

Councilman Thomas referred to a petition which had been submitted and inquired whether all the signers were on the same street as the McMullens. Mr. McMullan replied that they are.

Councilman Rynearson asked how long after determining the dangerous condition of the deck they applied for a permit. Mr. McMullan deferred this question to his general contractor.

John Owen of 128 Bayview Avenue came forward and described his home's location with respect to the applicant's. He spoke in support of the variance and asked that it be carefully considered. He said he had initiated the petition, which he said represents 75 per cent of the households on Bayview Avenue. Some owners are not in residence and could not be contacted. He said there is strong support in favor of the applicants and that the neighbors appreciate the work being done by the McMullens.

Ed Barry of 134 Bayview, the next door neighbor of the applicant, came forward. He had spoken at the November 4, 2003 hearing of the LPA and wanted to disagree with Staff recommendations for denial of the variance at that time. He said that there were 17 neighbors supporting the variance. He referred to Page 4 of the minutes of the November 4 meeting in which the applicants were not notified until the morning of the hearing that the variance would not be granted, which he felt put them in an untenable position. Mr. McMullan took exception to a remark made by Mr. Hank Zuba in that meeting which referred to punishment, which he considered inappropriate.

Fred Thomas, another neighbor (no relation to Councilman Thomas) said he and other neighbors approve of the renovations made by the McMullens and considered them good neighbors. He also recommended approval of the variance.

Frank Lavelle, the general contractor for the McMullens, came forward and explained that he went ahead with the work while the permits were in progress with the County permitting office. The permits were not granted, for which he paid a fine. He admitted it was not the right thing to do, but said he used his own discretion in what he considered an emergency. He presented drawings which had been prepared by a State licensed engineer and said that appropriate applications had been made. Mayor Hughes pointed out that failure to obtain the permits and the issue of punishment are separate issues; the issue before Council is the setback.

Councilman Rynearson expressed the opinion that timing was an issue and inquired how long after the permit application Mr. Lavelle commenced work on the new deck. Mr. Lavelle replied that it had been about three weeks.

Wayne McMullan again addressed the issue of the setback and asked when the setback would be changed back to 20 feet as Mr. Folke had told him, because the structure in question is at 18 feet and it might be possible to move the steps back two feet. The deck has been constructed to hurricane standards and is not easily removed or repositioned.

Mayor Hughes asked for the Staff presentation at this time. John Hagan with the Lee County Division of Zoning came forward and introduced his Staff Report dated October 16, 2003 as analysis of the situation. Staff has recommended denial based on the findings and conclusions that the applicant did not meet the five criteria for approval of a variance. He described the position of the house on the lot and other recommendations for location of the deck. Mayor Hughes asked Mr. Hagan to explain why the applicant was not notified of the Staff Report recommendations sooner. Mr. Hagan was unable to determine why notification was delayed.

Mr. McMullan was given opportunity by Mayor Hughes for rebuttal. Mr. McMullan said that the timing of the notification had not been discussed at the LPA. Concerning Mr. Hughes' remarks about a three-foot deck, Mr. McMullan explained how such a deck and stairs would have to be positioned, resulting in a 40-foot expanse of deck across the front of the house with the stairs going down the side of the garage to the back yard. He considers this impractical and unattractive.

Mayor Hughes asked Mr. Folke to explain the reference to a 20 foot setback being adopted. Mr. Folke noted that the applicants had been cited in April, which was after adoption of the new Chapter 34. Originally it was contemplated to change the setback to 20 feet instead of the current 25 feet, but these changes were never approved. He recalled that any reference to 20 feet was part of general conversation about porches and design standards.

Mr. Hagan clarified his report by verifying that the notification issue did not come up at the LPA hearing. Councilman Thomas expressed concern with the short notification and felt that Government has responsibility to timely notify the applicant. Mr. Hagan was not able to determine when the report had been mailed. Mayor Hughes said that he did not consider the timeliness of the notice as a fatal defect inasmuch as the LPA decision was not final. It was pointed out that there had been five weeks between the LPA decision and this final hearing.

Councilman Van Duzer addressed a question to Mr. McMullan regarding the photograph and the survey of August 2001. Mr. McMullan showed the Councilman the location of the deck on the photograph.

Mayor Hughes closed the Public Hearing on this application at this time. Mayor Hughes observed that although this is an unfortunate situation, he feels the McMullens acted imprudently and/or proceeded on bad advice. Considering their elaborate plans to enlarge the house, he feels that they should have investigated zoning requirements prior to purchase. While the neighbors have eloquently spoken in support of the applicant and the variance, and the variance would not be injurious to the neighborhood in light of the testimony of those neighbors, there are other criteria for approval of a variance which have not been addressed. There is therefore no statutory basis for granting the variance.

Councilman Van Duzer added that according to the survey which Mr. McMullan explained to him, the original deck, which was four feet wide, was already in violation of the setback. However, he does not support approval because only one of the five conditions has been met.

Vice Mayor Cain expressed the view that there are exceptional and extraordinary conditions in that the front setback is 27.8, so in order to comply with the 25 foot setback there are only 2.8 feet available for any structure on the front of the house. They were not responsible for the placement of this house on the lot. Ms. Cain has been familiar with this house and knew of the condition of the previous porch. There has never been a front entry to this house. She also finds that it is not injurious to the neighborhood. There was discussion about this being a general problem with many older houses on Fort Myers Beach, and Mayor Hughes expressed the opinion that if this is a general problem, then the remedy is not granting variances but to change the setback, which had previously been considered by Council and rejected in favor of retaining the 25 foot setback.

Councilman Thomas pointed out that the procedure allows for consideration of individual cases such as this one.

**MOTION:** Motion was made by Councilman Rynearson to support the Staff recommendation to deny the variance. Mayor Hughes seconded the motion.

**VOTE:** Motion to deny was carried by a vote of 3 – 2. Councilman Thomas and Vice Mayor Cain cast the dissenting votes.

## **2. PROPERTY LOCATED AT 1397 ESTERO BLVD., FORT MYERS BEACH. SPECIAL EXEMPTION FOR A COMMERCIAL PARKING LOT:**

Mayor Hughes introduced Special Exemption Case Number SEZ 2003-28, applicant Norm Primeau, owner of Norm's Beach Parking. Mayor Hughes verified that there had been no ex parte communications by any of the Council members with respect to this case.

Beverly Grady came forward representing Norm Primeau and addressed the matter of the requested Special Exemption. This is the most intense category in the Downtown district. Staff has recommended approval, finding that each of the five criteria for special exception have been met. The applicant is requesting a permanent use as recommended in the Staff Report. The parcel has been reviewed previously in 1993 and again in 1999 and approved by Council for parking. The parcel is being reviewed again in 2003. Staff and LPA recommend approval as consistent with the Comprehensive Plan. Ms. Grady cited the ongoing need for parking in the Downtown area. She referred to the LPA's decision on this application and requested a 36-inch fence in lieu of a four-foot fence and also referred to a landscape plan. The fence at Diamond Head was referenced as a prototype, and Ms. Grady replied that this was in the plan.

Mr. Greg Desario, a registered landscape architect, came forward to explain that the updated buffer plan incorporates what was requested by the LPA. He described the placement of

the fence and vegetation. This will eliminate the foot traffic that destroyed previous vegetation barriers.

Councilman Van Duzer had a question regarding ingress and egress, which was explained by Ms. Grady. She said there would be no changes to the currently existing access.

Councilman Thomas had a question regarding vegetation which was explained as existing canopy. Mr. Desario explained that there will be a continuous buffer of vegetation which will include some of the existing trees and shrubs.

Mayor Hughes admitted into the record a document, Norm's Beach Parking/David Jones Associates, Landscape Plan with General Buffer Notes dated October 30, 2003, Revised as of 11/12, Sheet 01, which Mr. Desario said had been submitted at the LPA hearing. This document bears a County receipt date stamp of December 3<sup>rd</sup>.

John Hagan introduced his Staff Report dated October 23, 2003 recommending approval. Based on findings and conclusions for a variance, they feel the parking lot would be beneficial. With respect to the request to make this a permanent approval, Staff took a conservative approach and imposed a condition that it be limited to a maximum of five years; however, this was included to give the Town such option if desired. Mr. Hagan also recommends that the proposed landscaping be included as a condition in the event of approval.

Mayor Hughes verified that the LPA recommended a permanent usage approval in lieu of five years, and Mr. Hagan replied that he would agree with this. There was discussion regarding the height of the fence; the LPA recommended a four-foot fence, and the applicant is proposing a 36-inch fence instead. Mr. Hagan suggested that the applicant consider a 48-inch fence to be more consistent with the LPA recommendation. Councilman Rynearson raised the question of visibility. Mr. Desario addressed the fence issue and recalled that the fence at Diamond Head had been recommended by the LPA as a prototype, and when this fence was measured it was determined to be 36 inches. His understanding is that the fence was a requirement in order to allow the landscaping to mature sufficiently to discourage foot traffic.

Vice Mayor Cain explained that she was concerned with the aesthetics of the fence. Mr. Hagan confirmed that the fence at Diamond Head had been part of the discussion.

There being no further public comment, Mayor Hughes closed the public hearing at this time.

**MOTION:** Councilman Van Duzer made a motion to approve Resolution 3-40 as submitted, including permanent approval, with the date of Condition 2 changed from 10/30/03 to revised as of 11/12/03 and Item 5 changed to a 36-inch fence. Councilman Thomas seconded the motion. Mayor Hughes also wanted to add "as shown on the aforesaid landscape plan" to Item 5. This was agreed upon.

**DISCUSSION:** Councilman Van Duzer requested clarification that the fence to be installed is to be the same as the one at Diamond Head. It was determined that the subject fence will be similar, since there are distinctive architectural elements at Diamond Head that would not be appropriate for use at this property. The drawing as submitted will prevail.

**VOTE:** The motion was approved by unanimous vote.

Mayor Hughes pointed out to Staff that in the resolution by the LPA on the first case, it is stamped with County stamp Variance 2003-30, which should be -40. John Hagan will make a note and see that this is corrected.

**B. TRAFFIC MITIGATION STUDY – SHORT TERM SOLUTIONS ONLY:**

Mayor Hughes introduced Chris Swenson, President of CRSPE Inc., the consultant hired by the Town to conduct the traffic study, and asked him to provide background and introduction of this item.

Mr. Swenson called attention to the executive overview containing his firm's short term recommendations and also referred to an additional final recommendation not in the current package which is to observe the changes in traffic and finalize the next steps to be taken. His advice was to follow this step and to take the rest of the document as framework to determine

incremental steps to be taken. He pointed out that they were able to provide some services that were not within the original Scope of Services, such as the second survey which was completed in March, and that by being under budget they are able to incorporate the public involvement process as the Town Manager outlined within the current budget and also within the spirit and intent of the FHWA Grant.

With respect to specific recommendations, he referred to a memo dated November 17<sup>th</sup> which he had sent to Town Manager Marcia Segal-George. He is recommending the Town go forward with all of the recommendations contained in that memo; however, each of the recommendations will stand alone. He outlined these recommendations which he ranked in order of priority:

1. Improve the trailblazing signage to on-island parking in the northern portion of the island as well as directing traffic off the island. Trailblazing is an engineering term referring to directional signage. In his opinion existing signage is inadequate.

2. Improve trailblazing signage leading to the Summerlin Square park-and-ride lot. He said the existing signage is too small and not easily read by motorists. He referred to a survey question that addressed trolley usage and said replies indicated higher usage would result.

3. Incorporate the next bus system in a limited way to see how it works. He suggests putting next bus on the park-and-ride trolleys serving between Summerlin Square and Bowditch Point and setting up next-bus stops with signs informing people when the next trolley would arrive at each point, and also Lynn Hall Park, and moving the trolley stop at the Sand Dollar into Lynn Hall Park to improve the visibility of the stop. Preliminary contacts with Lee Tran appear to indicate that this would be approved.

4. Put one additional trolley into service for eight hours each day during the peak season, or annually, depending on funding, which would likely be paid for by the Town. The County might also be approached for funding. The top two issues from the survey that would result in increased trolley usage were riders knowing that they would have to wait no more than fifteen minutes, and knowing when the next trolley would arrive. Financial questions such as free parking and free trolley rides did not factor into the top 50 per cent of reasons for riding the trolley, and far below these top two issues. He expressed the thought that perhaps the public is not primarily cost sensitive and that perhaps the trolley fare could be raised slightly to offset other costs. He also recommended a change in fare structure such as payment arriving onto the island but not when leaving.

5. Allowing left turns from San Carlos Boulevard into a combined parking facility had originally been investigated. At the time the report was completed negotiations were under way, but at this time the property owners have decided against such alteration, so this option is no longer available. The alternative plan would be to re-open Center Street, which is currently Town right of way. This tends to direct people to the majority of existing beach parking, and also into Lynn Hall Park and up into Bowditch, and attracts people more readily to the north end of the island. This also provides opportunity for the aforementioned trailblazing signage, and also keeps traffic out of the immediate vicinity of Times Square. Visitors to the beach would be directed onto and off of the island by way of Third, Crescent and Third Streets without ever impacting Estero Boulevard.

6. Close the northbound left turn lane at Fifth and Estero which is causing significant traffic congestion. Mr. Swenson expressed the opinion that this and Item 7 should be implemented together.

7. Eliminate the existing pedestrian signal and replace it with traffic signals at Fifth and Estero and at Crescent and Estero. This signal permits pedestrian crossings but has no benefit to vehicular traffic. By relocating the signals there would be pedestrian crossings in the immediate vicinity of the intersection and gaps in vehicular traffic to facilitate pedestrian traffic. At this point they are not recommending a pedestrian overpass. This would be expensive, and it might be difficult to encourage its use. Barricades were not considered appropriate as a means of enforcement for a number of reasons, including emergency vehicle access.

Mayor Hughes asked whether Item 6 could be implemented on a seasonal basis, and Mr. Swenson replied that this is definitely possible. Mayor Hughes expressed the opinion that this would alleviate the Fire Department's concerns.

Councilman Van Duzer asked how soon next-bus could be done, and Mr. Swenson said he believes it could be installed within 90 days if approval were given at tonight's meeting. Mr. Van Duzer also asked if this could be coordinated with the trolleys and if the proposed cost included outfitting trolleys, and Mr. Swenson replied that the trolleys are about \$2,500.00 apiece and there are five trolleys in the budget. This allows for breakdown and maintenance as the same trolleys will not be running every day. The bulk of the cost is for software development and for stops. He said it is very simple to put a GPS system into a trolley. Mr. Van Duzer asked about the traffic flow in the event Center Street is closed, and Mayor Hughes and Mr. Swenson verified what is proposed.

Vice Mayor Cain asked whether the County has expressed any interest in the next-bus system, and Mr. Swenson said there have been talks with Steve Myers and that they would be very interested in proceeding; funding is the issue. Mr. Swenson pointed out that they were specifically instructed to leave all financing options open, so these were not addressed in the report. Mayor Hughes said that he feels it is very important to work with the County on all of these issues, and that there will be State involvement as well. He feels that specific proposals submitted to the County will be favorably received. Town Manager Segal-George explained that there is possible funding available through the County's gas tax revenues, and she described the procedure for obtaining such funds. Vice Mayor Cain asked for clarification with respect to two items that had not been included in the above recommendations, and this was explained by Mayor Hughes and Mr. Swenson.

Mayor Hughes said that he has been anticipating arriving at this point for some time, and that he believes the residents expect the Council to take some action, if only short term solutions. Since none of these recommendations would be permanent and could be implemented without significant cost, he said he is delighted that concrete proposals are available to act upon.

Councilman Thomas thanked Mr. Swenson for his report and expressed appreciation that a one-page summary of recommended items has been submitted. He verified that the above recommendations could be approved at this meeting without public involvement. Mr. Swenson pointed out that there has been extensive public involvement already. Mr. Thomas observed that many of these recommendations appear to be directed toward bringing more people to the island and that many of the traffic problems are seasonal. His concern is that none of the improvements appear directed specifically toward getting permanent residents off the island, which is a community concern. Mr. Swenson respectfully disagreed that none of the suggestions would affect egress off the island and pointed to several items that he feels will relieve congestion in both directions. By encouraging people to use the trolley there will be fewer cars on the island for residents to compete with in both directions. Mr. Thomas also respectfully disagreed with the surveys taken by the consultant. Mr. Swenson advised that their surveys can be individually validated, and anyone who wishes to do so is welcome to physically inspect and count them. He also pointed out that since these were return postage surveys, the actual number can be verified through Postal Service records. He described how the surveys were reviewed by different governmental entities and also explained that although overall the survey respondents' anonymity has been observed, the individual surveys can be examined and the respondents contacted. Mr. Swenson cited his professional obligation to act only upon scientifically based surveys. Mr. Thomas clarified his remarks in that he did not intend to cast aspersions on Mr. Swenson's professionalism or accuse him of anything unethical, but did not agree with his surveys in view of numerous other surveys that had produced different results. Councilman Thomas asked when the entire study would come forward, and Mr. Swenson replied that this would depend to some extent on Council's wishes in the matter. While there is a framework that does not include funding, and his firm was instructed to leave those issues open. Funding will be determined by what is selected for implementation.

Councilman Thomas addressed the issue of a third bridge and expressed the desire to see this issue eliminated permanently as a possibility. Mayor Hughes pointed out that the issues being addressed at this meeting are short term solutions and that no inference in tonight's decisions that a third bridge is being approved or disapproved. Mr. Thomas expressed the desire to go further than what had been placed on this meeting's agenda. Town Manager Segal-George referred to her previous memo and explained how the agenda had been established. Councilman Rynearson recalled that it was his understanding that short-term solutions would be

addressed separately and that there would be public participation in addressing other parts of the report. Vice Mayor Cain expressed concern that immediate action should be taken on the items before Council on this agenda.

Councilman Van Duzer observed that departing from the agenda to include additional issues would be out of context with what had been agreed upon as a course of action, and that more long-term considerations of the traffic mitigation study would be considered at a later date. He would like to see the first six items implemented immediately but had concerns about the seventh item.

**MOTION:** Councilman Rynearson made a motion to adopt all seven recommendations inasmuch as there will be time to obtain documentation to address any concerns on the seventh item. Motion was seconded by Councilman Van Duzer.

**DISCUSSION:** There was discussion concerning the order of priority of implementation and whether the priorities in Mr. Swenson's report should followed. It was pointed out that some items might be accomplished more quickly regardless of their order of ranking. Mr. Swenson agreed that taking items in order might restrict implementation. Mr. Van Duzer agreed.

Councilman Thomas addressed Item 4, addition of another trolley at \$193,000.00. Councilman Van Duzer stated this figure as \$63,600.00. It was pointed out that there was a choice between those two figures. Mayor Hughes said he preferred examining this on the basis of peak season. Mr. Thomas agreed with this. This was acceptable to those making and seconding the motion. It was also agreed by all concerned that closing the left lane should be limited to peak season as well. Mayor Hughes and Councilman Van Duzer anticipated that other detail issues will come up when implementation is coordinated with other governmental entities.

**VOTE:** The motion was approved by unanimous vote.

At this time Councilman Rynearson brought up the question of burying utilities from Diamond Head to Connecticut and asked for the Council's approval to continue talks with the County in view of the favorable climate. This would include widening the sidewalks on both sides in those areas which would permit three lanes including two tram lanes.

He also asked that Councilman Van Duzer request that at the next MPO meeting an item be placed on the agenda concerning consideration of failure of Estero Boulevard which would prioritize attention to this issue. He referred to a recent Channel 2 news story which identified McGregor Boulevard and Estero Boulevard as the top two failing roads in Lee County. He felt that doing so would result in funding from the County.

Mayor Hughes referred to a recent memo from Deputy Town Manager John Gucciardo which addressed this issue and advised that it might not be possible to bury utilities for a number of reasons. Vice Mayor Cain recalled that the failure of Estero Boulevard referred to a small portion and not the entire road. Mr. Rynearson replied that he is recommending continued communication on these issues with professional input from Mr. Swenson. There was general agreement with these proposals.

**C. UPDATE ON ALTERNATING LIGHT:**

Mayor Hughes referred to a memo from Deputy Town Manager Gucciardo and asked Mr. Gucciardo to give details. He reported that Lee DoT has indicated that the process is moving forward and the permitting is almost completed, and installation of the temporary system should be completed within two weeks at the latest. FDoT is still contemplating operation only from February 1<sup>st</sup>. However, John Davis of Lee DoT reports that FDoT is open to discussion, and he suggests that something be sent from the Town in writing requesting additional periods of operation. A draft letter for the Mayor's signature has been submitted. Councilman Van Duzer requested a grammatical correction in the first line.

**MOTION:** Motion was made by Councilman Van Duzer and seconded by Councilman Rynearson to send the letter to the Florida Department of Transportation to get the alternating light project advanced during the peak holiday traffic hours.

**VOTE:** Motion was approved by unanimous vote.

Due to the fact that the meeting was ahead of schedule, **Council Member Items and Reports** were moved ahead at this time prior to the dinner break.

**Councilman Rynearson** suggested that in the overlay of Downtown there be a fund created to compensate for additional required parking places as the buildings are remodeled or replaced. Town Manager Segal-George explained the parking situation in that area. She recommended implementation of a cost factor per parking place which would be applied to each business as they come forward with requests for multi-story or enlarged buildings which would require more parking spaces. The business would then pay this amount into a fund which the Town would use for future parking solutions. She observed that this would require amendment to the Land Development Code. Town Attorney Roosa was asked for his opinion, and he was in favor of this suggestion. He referred to methods that engineers might use for arriving at such a formula to establish realistic value. These revenues would have to go into a specific, restricted fund. There were no objections to having Staff pursue this issue.

Councilman Rynearson asked Ms. Segal-George to have Walter Klages to give Council a presentation, perhaps in January. He had given a presentation at the last TDC meeting on the Euro and the European market which Mr. Rynearson found impressive and felt it would be beneficial to the Council as well. There were no objections to this request.

**Councilman Thomas** observed that it was good to have open communications and dialog and that the traffic portion of the agenda was accomplished early.

On the 18<sup>th</sup> he had the opportunity to go on the express to Key West and was pleased with the ship and the ride. He observed that Fort Myers Beach has accomplished what Fort Myers was unable to complete.

On the 20<sup>th</sup> Mr. Thomas attended the Southwest Regional Council Meeting, following which the 30<sup>th</sup> anniversary luncheon was held.

Last night he attended the Seaside Jazz Festival put on by the Island Art Foundation.

**Councilman Van Duzer** also attended the Regional Economic Outlook Conference a week ago and found it very interesting. Economists from all over the world attended and reported on the economic outlook.

He has now graduated from Leadership Lee County and found the four months of intense participation very valuable and beneficial. He thanked the Council for allowing this participation.

He had an enjoyable holiday with family in Atlanta and North Carolina and left just in time to miss the snow.

**Vice Mayor Cain** regretted missing the Jazz Festival but was on a family outing.

**Mayor Hughes** referred to the November 19<sup>th</sup> Town Hall Meeting, which was very satisfactory.

The entire Council was represented at the Economic Outlook Conference.

Last Wednesday at Diamond Head Mayor Hughes welcomed the convention of the Independent Softball Association, which is nationwide plus Canadian. There were 300 rooms on the island and were predicted to have spent approximately \$200,000.00 during their stay. This is the second time the community has been host to that convention which was co-sponsored by the Sports Authority arm of the TDC.

On that same evening the Island Arts Foundation had a reception at which Gene Walker, who also played at the Jazz Festival, entertained. Mayor Hughes attended the Jazz Festival but had to leave early. At Mayor Hughes' request, Mr. Walker is going to appear before Council at 6:45 and a proclamation will be presented to him. He is a professor at Ohio State University.

**Town Manager's Items** were also advanced to this portion of the agenda.

**Deputy Town Manager John Gucciardo** reported that for the benefit of Council and any residents of the Bay Beach area, information had just been received that the construction at Bay Beach will result in about two to three hours' disruption in the water service tomorrow morning. The water flow must be diverted while new piping is installed. This is not a safety or emergency issue and will not result in a boil water notice. Councilman Thomas inquired whether this involved the septic system, and Mr. Gucciardo replied that he had not received information to that effect.

It was now 5:40 P.M., and since the remainder of the agenda could not be addressed until after 6:30 as advertised, Mayor Hughes obtained consensus from the Council to hear public comment at this time.

Mr. Phil Mansuco came forward to express his appreciation to the Council for taking action on the traffic issue.

Mr. Dan Parker came forward to address the traffic issue. He referred to the fire station locations, and as an experienced law enforcement and fire professional he wished to go on record as stating that flex stakes are not a barrier for emergency vehicles as they can be driven over with no damage to the vehicle. Mayor Hughes replied that this is understood.

Mr. Bill McCarthy came forward to respond to the update of the Town Hall Meeting. He felt the meeting was positive and well handled. He had a question with line of sight problems at the intersection and asked whether the interference was coming from private property. Mayor Hughes pointed out that the format for public comment is for the public to make statements, not ask questions. He further advised that this issue came up at the Town Hall meeting and is being examined. Ms. Segal-George explained that surveys are being made intersection by intersection for action by the County, private property owners, and/or the Town where appropriate.

**BREAK FOR DINNER AT 6:00 TO 6:45 P.M.**

Mayor Hughes reconvened the meeting at 6:45 P.M. and observed that there were fewer members of the public in attendance following the dinner break. Mayor Hughes introduced Mr. Donald Talleck, his daughter-in-law's father, who is the Executive Vice President of fourteen newspapers in the Chicago area.

Mayor Hughes was in receipt of a request from Angela Amos to address the Council on Holiday Shores fence; however, Ms. Amos was not in attendance. Councilman Van Duzer pointed out that she may have understood that public comment would be heard later in the meeting as it usually is.

Mayor Hughes acknowledged Mr. Carl Conley, who is not only editor and publisher of the *Sand Paper*, a local newspaper, but also founder of the Island Arts Foundation. He was invited to address the Council concerning the Jazz Festival and the Foundation. Mr. Conley thanked the Council for being supportive of the Island Arts Foundation. As an expression of appreciation, Mr. Conley presented to the Town a certificate of charter membership in the Island Arts Foundation. Mayor Hughes thanked Mr. Conley and accepted the certificate on behalf of the Town. Mr. Conley introduced Gene Walker, who is not only a musician but also was for eleven years an artist in residence and instructor of jazz at Ohio State University and also held two Ohio Arts Council fellowships.

Mr. Walker came forward to address the Council and stated that he has enjoyed his experience on Fort Myers Beach, and that he feels like an ambassador for jazz, America's contribution to the world of music and art. He said that everyone here had been very receptive. Jazz is only about 100 years old and is part of contemporary culture. Mayor Hughes read a proclamation which he then presented to Mr. Walker.

Angela Amos came forward at this time to speak on the matter of a fence that had been torn down about a year ago at the Holiday Shores Subdivision to make room for a drainage

swale. In the removal of the wooden fence, the chain link fence on her property was ripped out and left open, allowing her dogs to escape. She had not been notified of the destruction of the fence and was left to discover the damage and recover the dogs on her own. The fence was eventually repaired with the help of Councilman Van Duzer; however three established clumps of fifteen foot tall Areca palms were uprooted from her property with a promise from the contractor to replant them. This was not done, and the plants lay in the adjacent parking lot and died. There is now a gap in her landscaping. She referred to delays in completing the project and conversations with Public Works Director Damon Grant concerning these delays. Ms. Amos cited the Town's zoning regulations for Fernando's Restaurant and urged Council to see to the completion of this project. Mayor Hughes agreed to follow up on this issue.

**D. 1<sup>ST</sup> PUBLIC HEARING OF ORDINANCE 03-12 AMENDING LAND DEVELOPMENT CODE, CHAPTER 2:**

Mayor Hughes read the proposed ordinance and explained that this is the result of an Attorney General ruling which provides that the Town can no longer utilize the County's Hearing Examiner by interlocal agreement, which had been the case since incorporation. This ruling also specifies that the Town must hire its own Special Master. The first reading of this ordinance has been held at the last Council meeting, and this is the first Public Hearing.

There being no public comment, Mayor Hughes closed the Public Hearing on this item and announced that the second and final Public Hearing would be at the next Council meeting on December 15<sup>th</sup>.

Town Manager Segal-George inquired whether Mayor Hughes had spoken with Mr. Grant regarding Section 2-430 wherein broader language is required, which she explained, and also references to employees of Lee County which need to include employees of Fort Myers Beach as well. Central Parking and Beach Patrol will be involved. Mayor Hughes agreed that this correction will be addressed and continued the item until the next Public Hearing.

**E. PUBLIC HEARING AMENDING THE COMPREHENSIVE PLAN: UPDATE OF CAPITAL IMPROVEMENT ELEMENT:**

Mayor Hughes advised that this issue was introduced at the November 17<sup>th</sup> meeting and that this is the first Public Hearing. Bill Spikowski reported that this will be the first of two; the second is next Monday night, December 11<sup>th</sup>, and it concerns inclusion of last year's capital improvements program into the Comprehensive Plan. There are no policy decisions, the amendment is strictly procedural.

There being no public comment, Mayor Hughes closed the Public Hearing on this item and announced that this matter will also be continued until December 15<sup>th</sup> for second and final Public Hearing.

**F. INTRODUCTION OF CHAPTER 10 OF THE LAND DEVELOPMENT CODE:**

Mr. Spikowski explained that this was the final chapter replacing the code that had been inherited from Lee County upon incorporation. There are many technical requirements in this chapter dealing with actual property development. At the public hearings public input will be taken, and Council will also have the opportunity to address any concerns and questions they may have.

Town Attorney Roosa read the caption of the ordinance as required.

Mayor Hughes announced that Public Hearings on this issue will be held on December 15, 2003 and January 5, 2004.

**VII. COUNCIL MEMBER ITEMS AND REPORTS:** See above.

**VIII. TOWN MANAGER'S ITEMS:** See above.

**IX. TOWN ATTORNEY'S ITEMS:** None.

**X. PUBLIC COMMENT:** See above.

**XI. ADJOURNMENT:** The meeting was adjourned at 7:07 P.M.

Respectfully submitted,

Patricia L. Middlekauff  
Transcribing Secretary