**FORT MYERS BEACH**
**TOWN COUNCIL MEETING**
**DECEMBER 15, 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 15, 2003 at 6:30 P.M. by Vice Mayor Terry Cain.

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

**Excused absence from the meeting:** Mayor Dan Hughes.

**Staff present at the meeting:** Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Director of Public Services Matt Feeney, Community Development Director Dan Folke, Planning Consultant Bill Spikowski, Town Attorney Richard Roosa.

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

**III. INVOCATION:**
The invocation was given by the Rev. Lorraine Gill.

**IV. PUBLIC COMMENT:**
Anita Cereceda came forward and referred to a memo she had sent concerning the Times Square fireworks requesting the money be advanced for this purpose.

Ms. Cereceda also addressed the subject of the curfew which she said has been discussed at length by the Times Square Alliance. She felt that a majority of the group were in favor and had met with Lee County Sheriff Rod Shoap to discuss this matter. Captain Greiner and several deputies also attended this meeting. She said that a substantial number of people believe that a curfew would be a significant tool for the Sheriff's department to handle problems in the evening hours. She asked for favorable consideration of a curfew by the Council and asked that this be referred to the LPA as well as the Times Square Advisory Committee. Steve Strauss, a major proponent, and other business owners in the Times Square area should also be asked for input.

Jeorg Wiebe of 1113 Estero Boulevard came forward to address the subject of the noise ordinance. He referred to problems that have been reported in the newspapers and asked for consideration, pointing out that Times Square is part of the entertainment district on the Island. He asked that the Times Square Advisory Board be included in input, and that the Overlay District be considered differently from the rest of the Island.

Murray Yax, Beach House Hotel came forward regarding the noise ordinance. He stated that the Times Square area is more than an entertainment district because it includes housing units. He described personal experiences wherein he was unable to carry on conversations with others in his home and/or theirs, and when his guests have been unable to sleep due to the noise level. He feels that inasmuch as housing has been approved in that area, the noise ordinance should remain as it is, and should be enforced.

There being no further public comment, Vice Mayor Cain closed the Public Comment portion of the meeting at this time.

**V. CONSENT AGENDA:**

**A. FINANCIALS FOR MONTH OF OCTOBER**

**B. PEDESTRIAN CROSS WALK NEAR MADERA**

**C. WCIND SUB-GRANT FUNDING AGREEMENT FOR MATANZAS HARBOR MOORING FIELD**

**MOTION:** Motion was made by Councilman Howard Rynearson to approve the Consent Agenda, seconded by Councilman Bill Van Duzer.

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

**VI. ADMINISTRATIVE AGENDA:**

**A. DISCUSSION OF POSSIBLE TEEN CURFEW BY CAPTAIN GRINER:**

Captain Griner of the Lee County Sheriff's Office was introduced to address both this agenda item and Item VI.D, Seasonal Noise Ordinance Concerns.

With respect to the curfew issue, Captain Griner pointed out that there are laws in place with reference to loitering, prowling, disorderly conduct, drinking, and driving during certain hours. The danger with a curfew lies in enforcement with respect to tourists. He recalled that Lee County had a curfew law many years ago which was thrown out in court, and said that if the Town adopts one there will likely be legal challenges. He said this does not mean the Sheriff's Department is opposed to a curfew, but said the Sheriff's Department does not need the Town to impose a curfew because there are applicable County and State laws in place which can be enforced. He also suggested more signage about skateboarding and the like. If a curfew is enacted, he said it will be used as a tool, but pointed out that curfew violations by juveniles require much more of a deputy's time than a regular arrest.

Regarding the noise ordinance, Captain Griner is opposed to raising the noise levels. Times Square is still a family area, and when the noise can be heard in the street it encourages teenagers and young adults to gather outside in the street, which leads to fighting and other problems. He referred to ordinances in effect throughout Lee County and stressed that no business is being targeted in enforcing the existing ordinance. Citations are issued when there are complaints and a business is found to be in violation, and when officers notice a crowd that has been attracted by the loud music, they take appropriate action.

Councilman Rynearson asked if there have been noise level problems outside of the one area in question, and Captain Griner replied that there have been no repetitive problems.

Councilman Van Duzer said he has had discussions with Mr. Wiebe about numerous citations at the Shamrock, and asked Captain Griner if the problem was just with the one area. Captain Griner was not sure how many violations the Shamrock has had, and Deputy Matt Powell explained that deputies had been sent to investigate several business in that area and in so doing discovered that the Shamrock was in violation. Historically there have been problems at Anthony's and the Red Coconut which have been alleviated. They have had problems with fights at Times Square which he said were due to the congregation and loitering in that area due to the music which attracts the younger people. It was also pointed out that noise readings are not taken in an enclosed room, but at the adjacent property line or across the street. At Seafarer's and other locations, ambient traffic noise such as loud mufflers and loud car stereos also becomes an issue.

Councilman Rynearson asked whether it would help if some of these businesses were to close their doors so as to keep the sound inside, and Captain Griner said that it would.

Councilman Van Duzer asked that the Staff Report on this issue be given at this time.

Director of Public Services Matt Feeney came forward to present the Staff Report on Item VI.D., Seasonal Noise Ordinance Concern. He had been asked by Council to prepare some short-term and long-term potential solutions to concerns that Mr. Wiebe had voiced, and these are contained in this report. The first short-term solution considered was an all-out ordinance ban as suggested at the previous Council meeting. This is not being recommended because it could have an adverse effect. In discussions with Mr. Wiebe, another short-term solution would be banning the noise restrictions between the hours of 10:00 A.M. to 10:00 P.M. in the Downtown Zoning District. The noise ordinance currently reflects the receiver's property line, so this would mean anyone inside the District would be able to generate unlimited noise during those hours, but if anyone in a residential area outside the district were affected, the business generating the noise would still be cited. This is not being recommended either, because there are residences within the Downtown area. Raising the decibel limits was considered as a final short-term alternative. Mr. Feeney felt that Staff does not have the technical expertise to make recommendations without seeking the advice of a certified professional. As a short-term conclusion, he recommends that any business affected by enforcement of the ordinance seek professional advice concerning noise abatement measures.

As a long-term solution, Mr. Feeney is recommending the Town investigate hiring a sound consultant to examine background noise to see if there is a more accurate way of identifying violations with modern technology.

Councilman Van Duzer complimented Mr. Feeney on his report and said he would have several recommendations at the appropriate time.

Vice Mayor Cain opened discussion on these two items in their order on the agenda. The teen curfew is the first issue.

Councilman Van Duzer recommended that in the best interests of the Island residents the opposing viewpoints of Sheriff's Department personnel and the Times Square business owners should be addressed by having these two groups meet and open a dialogue. He also felt that any action taken by Council should apply to the entire Town and not just the Times Square area. Vice Mayor Cain verified that Councilman Van Duzer was recommending discussions by the LPA and the Times Square Alliance, and he also wanted to include the Sheriff's Office. Councilman Rynearson wanted Public Safety included also. Councilman Rynearson and Councilman Bill Thomas also agreed. Vice Mayor Cain complimented the Sheriff's personnel for their handling of the teens in Times Square.

Councilman Van Duzer referred to conversations with Mr. Wiebe concerning the Seasonal Noise Ordinance in which Mr. Wiebe felt the ordinance was too restrictive. Mr. Van Duzer described a personal experience in which he was unable to carry on a conversation at his table in a restaurant due to the sound level from another area, which has discouraged him from patronizing that area. He feels that Council does not have the expertise to review the situation, but that the Town should not have to pay for the services of a professional. He suggested the merchants should be strongly urged to obtain their own professionals and come up with a solution. He pointed out that Matanzas Inn has already done this to everyone's satisfaction.

Councilman Thomas does not believe the decibel level of the noise ordinance should be raised, nor does he feel the Town should be responsible for the expense of a professional sound consultant. He agrees that the businesses should hire their own consultants and absorb the fees in order to comply with the ordinance.

Councilman Rynearson agreed that the ordinance should remain the same, and the burden of compliance should be on the business owner. He also thanked the Sheriff's personnel for their work.

It was determined that no motion was necessary on either of these items.

**B. DISCUSSION OF SEPARATION OF OFFSHORE POWER BOAT RACES AND AIR SHOW:**

Deputy Town Manager John Gucciardo referred to a memo he had prepared updating Council on the Offshore Power Boat Races. At the November 17th meeting this was discussed by

Council, and the organization's presence at tonight's meeting is the result. Representatives of the Air Show are also present in case there are any questions.

Dean Claussen of the Offshore Power Boat Races referred to Mr. Gucciardo's memo and a letter from the Fort Myers Beach Air Show which he felt were self-explanatory. Councilman Van Duzer asked Mr. Claussen for an explanation of the split of these events and expressed disappointment with what he views as the declining level of quality of the boat races. He is therefore concerned that a separation of the two events by a period of months will be detrimental. Mr. Claussen explained the internal workings of the APBA and the expense involved in working with the group that would bring more boats to the race. He is on the APBA Board this year.

Mr. Van Duzer asked how the APBA races at Marathon, which are held twice a year, are funded. Mr. Claussen replied that they get their funds from the City of Marathon and TDC, to which Mr. Van Duzer replied he had been told otherwise and that the money comes from the businesses. Mr. Claussen said that at Marathon funding comes from a combination of these sources. Mr. Van Duzer suggested that he and Mr. Claussen meet privately to discuss improving the boat races.

Councilman Rynearson expressed the opinion that there should be no changes in the funding this year.

Vice Mayor Cain verified that the Air Show will be October 16th and 17th.

Councilman Van Duzer pointed out that $10,000.00 was approved by Council for both the Boat Races and the Air Show.

Councilman Thomas recalled that last year $10,000.00 was approved for the Boat Races and the Air Show. This year they asked for $20,000.00 and Council approved only $10,000.00 after discussion. If these events are to be split, he is of the opinion that the total funding by the Town for the two events should be no more than $10,000.00. He does not feel that more money should be approved in view of the decline of the event.

Deputy Town Manager John Gucciardo pointed out that there is no request for funding by the Air Show component at this point. They will be in the next budget cycle because that event takes place in October 2004.

Several Council members recalled that $10,000.00 had been approved for both the Boat Races and Air Show, and apparently these funds will now be used for only one of these two components. Councilman Rynearson felt that since the budget has been approved, no changes should be made at this time.

**C. REQUEST FOR ADVANCEMENT OF FUNDS FOR NEW YEARS FIREWORKS:**

Vice Mayor Cain reported that the Times Square Alliance has requested a release of funds for the New Year's Eve fireworks display.

**MOTION:** Councilman Van Duzer made a motion to release funds in the amount of $7,000.00 to purchase the fireworks for the New Year's celebration. Motion was seconded by Coucilman Rynearson.

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

**D. SEASONAL NOISE ORDINANCE CONCERNS:**

See above.

**E. REZONING AND SMALL SCALE COMPREHENSIVE PLAN AMENDMENT OF TOWN PROPERTY:**

Vice Mayor Cain explained that there are four parcels needing to be rezoned.

Community Development Director Dan Folke summarized Staff's recommended rezoning requests and explained that even though these parcels are Town property, regular zoning procedures, which he described, will be followed:

1. 451 Connecticut Street, the Mound House, which is currently zoned RS, Residential Single Family, and the use as a cultural facility would require either as a Planned Development or

a Community Facility District with a special exception. He feels the former is appropriate because of the uniqueness of the property. Mr. Folke has made a presentation at CELCAB about the process, and the Director, Theresa Schober, would like to present a Master Concept Plan in January.

2. Property at 815 Lagoon Street which was purchased with the water utility. The water storage tank is currently on this property, and there has been discussion about using this property for a service building. It is currently zoned IN, which is Institutional, and a special exception is needed for the proposed use.

Mr. Folke said that these two parcels should be given priority. The remainder should be acted upon during the next year.

3. Property recently purchased at 216 Connecticut Street, which is vacant. Mr. Folke recommends the future Land Use Map be changed, which would be an amendment to the Comprehensive Plan, currently in Mixed Residential and should be changed to the Recreation Land Use category. Rezoning from RC, Residential Conservation to CF, Community Facility, which would be appropriate for a small neighborhood park.

4. The Newton Property, which requires a change in the land use to Recreation from Mixed Residential, which is a small scale amendment. Mr. Folke would like to do two other small scale amendments in conjunction with these.

Staff is asking for a confirmation and authorization to move forward with these application.

**MOTION:** Motion was made by Councilman Rynearson and seconded by Councilman Thomas to authorize Staff to proceed on the above recommendations.

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

Vice Mayor Cain noted that the Town is receiving no special treatment as concerns these properties.

Councilman Van Duzer pointed out that the fees will amount to approximately $10,000.00 including 10-15 hours by the consultant to prepare the Master Concept Plan. He feels that Staff should approach Lee County for relief, and Mr. Folke suggested negotiating this as part of the Interlocal Agreement.

**F. FINAL PUBLIC HEARING OF ORDINANCE 03-12 AMENDING LAND DEVELOPMENT CODE, CHAPTER 2:**

Vice Mayor Cain read the subject ordinance and opened the meeting for public comment. There being no public comment, the Public Hearing on this item was closed.

**MOTION:** Motion was made by Councilman Rynearson and seconded by Councilman Van Duzer to approve the item.

**VOTE:** Roll call vote was taken. Motion was unanimously approved.

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

Vice Mayor Cain read the subject amendment and opened the meeting for Public Hearing. There being no public comment, the Public Hearing was closed.

**MOTION:** Motion was made by Councilman Rynearson and seconded by Councilman Van Duzer.

**VOTE:** Roll call vote was taken. Motion was unanimously approved.

**H. 1ST PUBLIC HEARING OF CHAPTER 10 OF THE LAND DEVELOPMENT CODE:**

Vice Mayor Cain read the subject Ordinance Number 0-4 and opened the meeting for Public Hearing.

Planning Consultant Bill Spikowski came forward and stated that adoption of this Chapter will be a major milestone in that it completes the entire new Land Development Code for the Town. He summarized its background and history and the scope and applicability. He observed that there has been little public participation during the process which included LPA involvement. Mr. Spikowski asked the Council for comments and questions prior to the final Public Hearing, which is scheduled for January 5th.

Councilman Rynearson complimented Mr. Spikowski on his work and asked that in addition to new construction with downspout and gutter, renovation be added as well. Mr. Spikowski agreed and will investigation the appropriate location to include this provision. He is also working on an improved zoning map which will be easier to understand and less unwieldy.

There being no public comment, Vice Mayor Cain closed the Public Hearing and announced that the Final Public Hearing on Chapter 10 will be held on January 5, 2004 at 6:30 P.M. Ms. Cain also complimented Mr. Spikoski on his efforts and thanked him for his presentation.

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

**Councilman Bill Thomas** asked that the Town Manager or Deputy Town Manager give a report for the record on the Town's efforts in cleaning up the seaweed on the beaches. There have been many complaints, and he felt this was an appropriate time to address the situation.

Town Manager Segal-George asked Public Works Director Damon Grant, who is in charge of this, to report. Mr. Grant reported that clean-up efforts have been started this date, and that three tractors are raking the seaweed into piles in a similar manner to the County's past Red Tide cleanup efforts, except that to minimize the heavy equipment on the beach efforts are being made to rake the material into piles near the beach accesses. Florida Recycling Services will come and collect the accumulations and dispose of it. Ms. Segal-George observed that this is a problem along approximately two miles of the beach, and not the entire length of the beach. Councilman Rynearson pointed out that TDC money is available for this cleanup, and applications are being made. Ms. Segal-George also explained that this was an unusual effort requiring coordination with various agencies and heavy equipment that is not normally available. Mr. Grant added that contact had been made prior to beginning with TDC and Lee County Parks and Recreation. He explained that Town funding is funneled through the County, but that next year the Town may have its own emergency funding separate from the other municipalities. Vice Mayor Cain observed that a great deal of Staff effort has been put forth over several days and that every effort was made to be environmentally sensitive. She complimented Staff on their efforts.

Councilman Thomas extended holiday wishes to the Council and looked forward to a productive next year.

**Councilman Howard Rynearson** also wished everyone happy holidays.

**Councilman Bill Van Duzer** likewise extended holiday wishes to everyone. He called attention to the clock, but said everyone still misses Mayor Dan Hughes.

**Vice Mayor Terry Cain** and other Council members extended get-well wishes to Mayor Hughes.

Ms. Cain reported she has been in constant contact with Staff concerning the conditions on the beach which will be an ongoing topic.

She extended holiday greetings to everyone.

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

**Town Manager Marsha Segal-George** reported that tomorrow evening at 6:00 P.M. there will be a workshop to show interested people the draft that Dan Folke has prepared on the outdoor display of merchandise. This workshop is being held prior to taking the item to the LPA. Notices have been sent to the affected merchants and interested parties are invited.

Tomorrow the LPA will have their holiday lunch and talk about historic preservation grants.

On Wednesday the Newton Subcommittee meets in the morning, and the Harbor Committee in the evening. Times Square meets Friday, so this will be a busy committee week prior to Christmas.

**IX. TOWN ATTORNEY'S ITEMS:**

**Town Attorney Richard Roosa** advised that Mr. Tribble and Mr. Boudin have filed an action against the Town of Fort Myers Beach, and he asked for authorization to represent the Town. This is a petition for a writ of certiorari. He has not received the complaint portion, but he has received an order to show cause. Ms. Segal-George explained that this concerns the deck case that was recently heard, and she believes the action was filed by the neighbors.

**MOTION:** Motion was made by Councilman Rynearson and seconded by Councilman Van Duzer to authorize Town Attorney Richard Roosa to represent the Town of Fort Myers Beach in the above referenced action.

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

Concerning the Charter, a Charter Review Committee is in process of being established. As the Charter reads now, there is ambiguity concerning when newly elected candidates take office. The language needs clarification. The alternative would be for Council to adopt an ordinance clarifying this issue; Mr. Roosa does not recommend this latter action in view of the Charter Review Committee's imminent establishment. It was determined in response to a question by Councilman Van Duzer that the Charter Review Committee will not meet and make their recommendations prior to the elections; however, it was felt that there was no need to make any changes prior to formation of the Charter Review Committee.

With respect to UTELCO litigation, a private meeting with Town Council has been requested on Monday, January 26, 2004. Mr. Roosa recommends that such closed meeting take place at 2:00 P.M. just prior to the Council meeting, which begins at 3:00 P.M. There being no objection, Mr. Roosa will schedule the meeting.

**X. PUBLIC COMMENT:** None.

**XI. ADJOURNMENT:** Meeting was adjourned by Vice Mayor Cain at 8:46 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary