FORT MYERS BEACH
TOWN COUNCIL MEETING
JANUARY 14, 2002
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Land Use Hearing of January 14, 2002 was opened by Mayor Daniel Hughes on Monday, January 14, 2001, at 9:00 a.m.

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Howard Rynearson - Council member, Bill Van Duzer - Council member, Bill Thomas - Council member

Excused absence from meeting: None

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Damon Grant, Dick Roosa (Town Attorney), Dan Folke, Bill Spikowski and Pam Houck.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

IV. PUBLIC HEARING: Darin Smith in ref. to White Cap RPD. Case number DCI2001-00029. A request to rezone from Single Family Residential (RS-1) and Multiple Family Residential (RM-2) to Residential Planned Development (RPD) to permit a maximum of 10 multiple family dwelling units, not to exceed 25 feet in height above base flood elevation, on 0.613 total acres of land. This property is located at 4701 and 4731 Estero Boulevard and 4631 & 4633 Estero Boulevard.

Beverly Grady came forward and expressed the she is present to request a rezoning from RS-1 and Multiple Family (RM-2) to RPD. Darin Smith is present to answer any questions. The designation in the Comprehensive Plan is mixed residential. The property is surrounded by mixed residential. This is a request for 10 units. A master concept plan has been developed and has received a staff recommendation of support along with an LPA recommendation of support. The surrounding neighbors are also in support. This plan is consistent in implementing the Town's plan and will be an asset. She indicated that the staff has recommended approval and they are in agreement with the staff conditions as to the deviations listed on page 3 of 9. Number 4 has been withdrawn and staff has recommended approval of 2 & 3. She expressed that they are in agreement with the staff's condition regarding the entrance gate.

Gary Muller, Planner for the proposed project, came forward and briefly explained the proposed Master Concept Plan. The plan shows two separate buildings. One is a four-unit condo and one is a six-unit condo. The buildings will be setback 25 feet from the Estero Blvd. right-of-way, 19 feet from the rear property line and the side yard setbacks will vary from a minimum of 10 feet to a maximum of 18 feet. The two buildings are separated by a 40-foot courtyard, which will contain a pool area with a spa and a slide with a waterfall feature. The other recreational amenity being proposed in a shuffleboard court. Both of the proposed buildings will be two stories over parking. Each building will have 9 parking spaces including one handicap space under each building. In addition they are proposing four parking spaces out front. He discussed the electronically controlled entrance gates across the parking lot areas. The four unit building will have two units on both first and second floors. The six unit building will have

four units on the first floor and two units above it.

They originally requested four deviations. The fourth deviation has been withdrawn. He discussed the first deviation and commented that they cannot provide 660 feet, which is required for the connection separations. They requested originally a deviation to go to an 8-foot connection separation. This 8 feet was from an existing beach access on the opposite side of Estero Blvd. After the LPA hearing they did meet with staff to discuss the concern of the stacking provided with the entrance gates. They have agreed to eliminate the two entrances and provide one centrally located entrance. This gives more room for stacking and increases the intersection separations.

The next two deviations deal with the buffer requirements. Deviation 2 is a deviation requesting a 10-foot buffer along the western property line and a 5-foot buffer with a fence along the northern property line. The third deviation normally requires a 15-foot vegetative buffer along Estero Blvd. and they are requesting to reduce this down to 5 feet to allow the access to the parking areas. In exchange for the reduced buffer width they would greatly increase the plantings along Estero Blvd.

Greg DiSario, Landscape Architect, came forward to discuss the proposed landscaping for the project. He began along Estero Blvd. and walked his way quickly along the site. He discussed the various types of plantings that will be used. There is no buffer required between multi-family units on the southern part of the north property line and the eastern. They will continue the same type of buffer to provide symmetry with the site and to enhance the landscaping. The proposed plantings as currently shown on the plan do exceed the minimum requirements of code. A lot of the native plant material has been used and will function real well on the site.

Pam Houck, Zoning Director with Lee County, came forward and expressed that the applicant has adequately described the project. She reviewed the Comp Plan issues and the recommended conditions of approval. She indicated that this would be the first pre-disaster build back for a residential development that the Town has had since the adoption of the Comprehensive Plan. The applicant is proposing to build back the existing nine residential units that are located on the property and add one unit for a vacant lot. Staff has recommended approval. The applicant has proposed a schedule of uses, indicating the development of the project with the multi-family buildings. Also, the site development regulations have been included. The site development regulation eliminated the need for deviation 4. The applicant has requested four deviations that they have already reviewed. She reviewed her six conditions.

The project is located in the mixed residential land use category. She believes that it is consistent with the land uses allowed in this category, and with the land uses existing around the development. She also feels that it is consistent with the design policies of the Comprehensive Plan and the pedestrian orientation. She did have a concern with the drainage. She did review this with the Town's engineer and they believe that Chapter 10 will adequately address this projects issues on drainage at time of local development order. She has recommended approval.

Mayor Hughes went down the list of conditions. No questions were asked on condition one. He questioned the sales office for condition two. He asked if this would be temporary until the units were sold out? Pam Houck replied that this is her understanding and this is what the code allows. Mayor Hughes feels that it should be stated it is temporary. Pam Houck will include this language.

Mayor Hughes questioned the Town's approval of architectural elevations for condition 4. He likes this wording, but questioned who the "Town" is referring too? Pam Houck replied the Town Manager or her designee.

Beverly Grady pointed out that their neighbors are Ocean Harbor and they did appear at the LPA in favor of this project. She added that they would be pleased for the language to be included for condition 4 regarding that they should be substantially in compliance with the rendering that has been submitted. They are planning to move forward based on the elevations submitted to the LPA, staff and Town Council. They are here to answer any questions, and they feel that they have established consistency and implementation with the additional landscaping on the implementation of the design criteria for this area. This project would be a real asset to this area of Estero Blvd. and to this neighborhood.

Mayor Hughes asked the Council members if any ex parte communications have been had

regarding this public hearing. Council member Thomas spoke with some of the neighbors. The neighbors were very favorable. Council member Van Duzer had a brief conversation with Mr. Smith many months ago.

Mayor Hughes asked if any members of the public wished to address the Council. No one came forward.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Bill Van Duzer to adopt the resolution as submitted by staff with the provision that the application is approved subject to the following conditions: All of the conditions set forth on the staff recommendation on pages 2 & 3 of their report with the provision 2(a) the uses under real estate office be modified to be temporary and not to exceed two years, and for sole use of selling the units on site, Condition 4 should include the phrase "in substantial compliance with the rendering submitted", the second #5 becomes #6 and condition #7 be added that the staff recommendation on the supplemental memo of Pam Houck dated January 7, 2002 regarding the entrance gates and condition #8 be added to state that prior to issuance of the development order the applicant submit a revised Master Concept Plan in accordance with the resolution of approval containing and modifying the drawings and conditions accordingly, and also submit a revised code compliance landscape plan to conform to the approval. Deviation B (1) a deviation should be allowed on the connection separation between access points, so that there is a minimum center line distance of 47 feet, deviation 2 & 3 to be approved and deviation 4 is withdrawn.

VOTE: **Motion passes unanimously.**

Mayor Hughes asked Attorney Dick Roosa to submit back to the Town Council the form of the resolution to review.

V. PUBLIC HEARING: Ordinance 02-02- Cable Ordinance

Mayor Hughes read the ordinance and expressed that this would be the final hearing.

Attorney Dick Roosa commented that this ordinance is the same as the original ordinance that was distributed to Council, except as modified by underlines and the striking out of words or phrases. These changes were made after consulting with Comcast and his finding that their concerns were legitimate and modifications were appropriate. He recommends that they adopt the ordinance with the changes.

Mayor Hughes asked if anyone from the public wishes to address the Council.

Maureen Cestari, Director of Government Relations for Comcast, came forward and indicated that Comcast is in agreement with what has been outlined with the exception of those items that have been addressed in the resolution.

Vice Mayor Cain went to page 16 - under section 10 insurance, and questioned why this information was marked through? Attorney Dick Roosa replied that this is addressed by statute.

Mayor Hughes asked about the access? Maureen replied that they are dedicating a channel for use of the City at anytime they wish to put on a full channel. In the meantime they are working with staff to do a live feed of the City Council meetings from the chamber and interrupt the Lee County channel until Fort Myers Beach would like to put on a full time channel. There are terms in the agreement that does address this access channel.

Mayor Hughes asked who pays for the cost of these channels and the equipment? Attorney Dick Roosa replied that the Town will pay the cost of this. Maureen replied that she is working with the City to try and get the cost down as low as possible.

Deputy Town Manager John Gucciardo commented that it was his understanding that on the County level that Comcast and the other cable provider absorbed the cost at the County level for both re-broadcast and live transmissions. Maureen would be glad to go back to the General Manager and discuss

this. She is not committed to address this now, because it is something that is presently being looked into.

Mayor Hughes commented to Maureen that he would certainly like them to consider this. Attorney Dick Roosa replied that this is a universal franchise and applies to any applicant for the Town of Fort Myers Beach. When you get into the specifics of the franchise this would be the resolution that comes second.

Mayor Hughes questioned the provision for the above matter and wanted to know which section this would be included in. He feels that they need an index. Attorney Dick Roosa replied that he does not feel that they have the authority to impose this as a requirement.

Town Manager Segal-George does not agree. It has been her understanding from the beginning that the government is part of cables putting on public access and creating the public access component. This access will be provided not at the cost of the Town for government to be able to transmit their meetings. She believes that this is done for the School Board and County. She indicated that this cost would be handled in the franchise agreement and would not be at the cost of the Town.

Maureen replied that Comcast had sent out their engineer out to take a look at the situation. Originally, this would be put on the Lee County channel tape delayed and tied in later on. An engineering evaluation was done after the Town put their equipment in. It has been determined that this will need to be done through fiber. She does understand the Council's position on this.

Mayor Hughes indicated that the ordinance has the requirement on access channels and facilities.

Mayor Hughes asked Mr. Roosa to be sure that this includes a basic cable television service to each and every Town government building. He asked that this be modified accordingly.

Council member Thomas still has concerns regarding who will pay the cost and what are the costs? Mayor Hughes replied that the basic cable service would be free. The franchisee will be supplying basic cable service.

Town Manager Segal-George commented that it was her understanding that they would not only pay the cost of transmission, but would also have some participation as to the cost of the equipment.

Mayor Hughes asked if anyone wished to address the Council. No one came forward.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to adopt Ordinance 02-02 with the various modifications that have been discussed.

Discussion: Council member Van Duzer questioned page 10 regarding the franchise renewal amount, which went from $10,000 to $2,500.00. Attorney Dick Roosa replied that these are County charges for a countywide franchise. The total revenue paid by a cable company is set by Federal law. The charges are included in as part of the revenue for a renewal. The amount being charged was not portioned correctly in terms to the cost of the renewal to the Town.

VOTE: Role Call Vote: Council member Howard Rynearson, aye - Mayor Daniel Hughes, aye- Vice Mayor Terry Cain, aye - Council member Bill Van Duzer, aye and Council member Bill Thomas, aye. Motion passes unanimously.

VI. CONTINUED DISCUSSION OF THE CABLE FRANCHISE AGREEMENT RESOLUTION

Attorney Dick Roosa expressed that Council was supplied with a resolution this morning. This resolution is the same as the one in their packet, except for the name of the company. He indicated that page 2 A - authorizes Comcast to have a franchise completely under the terms and conditions of the ordinance that was just adopted. Page 2 B - is their response to his request for modification. The provisions were eliminated. He submitted this to Council, because it was submitted to him by Comcast. His recommendation is that Council uses pages A, which is the original resolution. Comcast has 30 days to accept this and during this acceptance period they would be allowed to come back with modifications

and make appropriate changes that would meet the Town's needs.

Town Manager Segal-George commented that in season they have 44,000 residents and this makes them bigger than Bonita Springs. She asked that in the resolution the franchisee would be pay for the cost of transmission and that they participate in the cost of the equipment. She commented that equipment cost to date is approximately $18,000.00.

Attorney Dick Roosa commented that he would not like to see this continued. He has difficulty reaching Comcast. The only way to get them to respond would be to adopt a resolution and send it to them. This will force them to respond or their franchise will expire.

Town Manager Segal-George gave her recommendation. She feels that Comcast should pay the cost of transmission for the Town, so that they can live broadcast Council meetings. They pay all of the cost of the equipment that allows Council to do these broadcasts.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to include in the resolution that Comcast pay for the cost of transmission and pay for the cost of the equipment that allows Council to do these broadcasts and include the wording of the terms of franchises included on page A without the modifications.

Discussion: Maureen questioned Town Manager Segal-George as to the equipment she was referring to. Town Manager Segal-George explained that it would be all the equipment purchased by the Town in order to do the tape delay or live broadcast. Janeen would have the exact figures as to how much was spent.

Maureen discussed section 3 and expressed that she gave some modifications to the exception list. There were other issues other than the access channels. Town Manager Segal-George replied that information received on Friday was too late for these packages. Comcast will have 30 days to reply and this will be brought back before Council.

Mayor Hughes commented that this being a resolution and not an ordinance it will not be necessary to hold a public hearing. Council will simply act on the modifications and adopt a new resolution within 30 days.

VOTE: Motion passes unanimously.

VII. REQUEST TO SOLICIT BIDS FOR THE RE-CONSTRUCTION OF OLD SAN CARLOS

Richard Woodruff with Wilson Miller came forward. He expressed that Matt Horton the Landscape Architect was also present.

He indicated that are very pleased to bring before Council a very complete set of documents. He passed around a bid specifications form. They are now ready to take this project to bid. Also, upstairs is the roll of plans, which shows all the details that go along with the project. They are here this morning to ask Council for authorization to take this project to bid.

Over the past several months staff and Wilson Miller have worked with the utility companies to try and finalize their cost and approach. The most difficult thing to do in construction is re-construction. They are very pleased to have received good cooperation from the utilities. The base project is 1 million $700,000.00. The next page shows the transitional areas of $43,800.00. He referred to Plaza Alternative 1 at $166,700.00 and Plaza Alternative 2 at $84,900.00. He took a moment to show Council what is involved in each of these numbers.

Much discussion was held on the transitional areas, which was never a cost to be borne by the Town. This is an attempt to get the best price for the property owners.

Mayor Hughes asked how they guarantee reimbursement? Richard Woodruff replied that the contractors or bidders will show what they will do on each of the six transition zones. They will establish the paperwork, but will be directly contracted with the property owner.

Richard Woodruff went on to discuss that if Council authorized them to go to bid today there will be a pre-bid conference on February 7, 2002 at Town Hall at 10:00 a.m. After it is approved Wilson Miller will use the normal contacts through the bidding services, and will notify vendors that this project is coming forward. Bids will be received on March 6, 2002 at 3:00 p.m. The longer the bidders have to prepare the better the price will be. When they submit the bids on March 6 they must give a 5% bid bond. Once the bids are submitted and they are opened they would be prohibited from withdrawing. They must stay in the bidding for 60 days. Once the bid has been issued there will be a requirement for a 100% performance bond. The document contains construction time, which will consist of calendar days and not construction days. It is the intent to begin construction April 15 or 16. The document will be changed to read 180 days to substantial completion. The project would then be completed by Thanksgiving. He discussed the damage clause for not completing. The damage clause must have a realistic number. They have calculated a figure of $685.00 per day that they do not complete the project. No incentives exist.

Mayor Hughes asked for the effect due to the lack of having an incentive clause while having a damage clause? What effect will this have on the basic bidding in terms of the total cost? Richard Woodruff replied that he does not feel this will have any impact. The contractor will make his money by good coordination.

Town Manager Segal-George commented that this is very complicated project. She feels that the time frame is reasonable. She would be very reluctant to try and get anyone to do it faster. She feels that they should leave it as is.

Vice Mayor Terry Cain and Council member Thomas both feel that getting someone to work faster could cause them to not produce quality work. Council member Thomas commented on the time line and feels that it is scheduled to be completed during the slow time. He agrees with $685.00 per day if it is not completed. This will be a good incentive to have it completed. He likes the way it was presented with the penalty at the end and no incentive.

Matt Horton came forward and discussed the plaza with a fountain and architectural structure for shade. This is what is shown under Plaza Alternate 1. Plaza Alternate 2 would include turf in this area. It is not their recommended option.

He went on to point out a boardwalk area that could continue on down underneath the bridge. This would provide a good opportunity for the public. He pointed out a structure that would provide a shady area for people to sit and enjoy the fountain. It would also provide an area for the utilities to be concealed.

Town Manager Segal-George discussed that by the time Council receives the bids an assessment plan will be in place. This will delineate who pays what. In approximately February Carol Cunningham would be coming back with assessments incorporating the new costs.

Richard Woodruff feels that Council needs to decide whether they would like a fountain and gazebo.

Matt Horton discussed that one of the things designed into the fountain is the ability to expand. It has been designed to accommodate some type of sculptural feature. More lights and bubbler's can be added.

Mayor Hughes questioned if they can add to a special assessment something of esthetics vs. a functional item? Town Manager Segal-George replied that there is an esthetic portion to this project. A lot money is going into functional items. She would discuss with Carol this feature at the end of the street and find the fairest way to treat this with regards to the assessment. They would come back before Council with some assessment options.

Mr. Kusak expressed that he felt Council should go for the bigger package. It can always be changed at a later time. He feels that they need something to draw the eye to this area.

Mayor Hughes asked how many would be in favor of alternative one? Council member Thomas would be in favor of alternative one. He feels that this would be a pleasure for the residents and tourists. He feels that it would help the business owners and would rather go first class than coach.

Council member Rynearson, Council member Van Duzer, Vice Mayor Cain and Mayor Hughes

all agree with alternative one. They will proceed with the bidding and incorporating Plaza Alternative one into the bid documents.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson to authorize Wilson Miller to proceed and take this entire project as identified in the documentation to bid. Also, to include the damage clause and Plaza Alternative One along with the transitional areas.

Discussion: Council member Van Duzer is questioning the financial issues. He has had a lot of people questioning the 2 million used on Old San Carlos. They feel it should have been used on Estero Blvd. He needs understanding and dialogue.

Town Manager Segal-George replied that this was a settlement that the Town entered into with the County. There was a list of projects that came out of the Old San Carlos - Times Square Master Plan, a list of projects that were eligible for the 2 million. The Old San Carlos project was one of them. The whole 2 million will not be totally used for this project. There is a piece of this project that will come for the Town's CIP and a piece from assessments to the property owners.

Mayor Hughes pointed out that of the various funding sources no money is coming out the general fund.

Council member Thomas thanked Wilson Miller for their presentation. It is a quality project and always a pleasure to work with them.

VOTE: **Motion passes unanimously.**

VIII. PUBLIC COMMENT

None.

**** At this point in the meeting Mayor Hughes asked for Council member comments:**

Council member Bill Van Duzer - Assured everyone that he would try and stay up with this project and keep everyone informed. He is looking forward to it.

The Mayor did a glorious job regarding the State of Our Town.

Council member Bill Thomas - He commented that there would be an Alzheimer walk-a-thon on January 26 from bridge to bridge. It was asked if the Mayor and Council would like to do this walk.

IX. ADJOURNMENT

The meeting was adjourned at 11:32 a.m.

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary