

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 4, 2002
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Regular Meeting of February 4, 2002 was opened by Mayor Daniel Hughes on Monday, February 4, 2002, at 3:00 p.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. INVOCATION BY REVEREND JEANNE DAVIS, Beach United Methodist Church

The invocation was given by Reverend Jeanne Davis

IV. PUBLIC COMMENT ON AGENDA ITEMS

None.

V. CONSENT AGENDA

A. REVIEW OF FINANCIAL REPORTS: December 2001

B. APPROVAL OF MINUTES: January 7, 2002, January 14, 200 and January 17, 2002

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve the Consent Agenda and Minutes with a correction to the minutes.

Discussion: Council member Bill Thomas questioned page 2 of 3 of the Financial Report. He asked why the Insurance Liability was so far out of line from the amount budgeted?

Deputy Town Manager Gucciardo replied that the last column (approx. \$5300.00) would represent the amount if you took the entire estimated premium and divided by 12 to get the monthly premium and then multiply by 3. The bill comes in semi-annually. They are paid in advance. It balances out at the end of the year.

Council Member Bill Van Duzer commented that the total assets of the Town are over 10 million dollars. He feels that this is very neat and exciting.

Corrections and changes to the minutes of 1/7/2002:

1. Council member Bill Van Duzer - Page 6 - Second to motion to be changed to read Council member Bill Van Duzer.

VOTE: Motion passes unanimously.

VI. ADMINISTRATIVE AGENDA

A. DISCUSSION AND ACCEPTANCE OF 2000-2001 AUDIT

Marty Redovan with Shultz Chaipel & Co. came forward. Page 1 & 2 and pages 27 & 28 are the required reports to issue on the Financial Statements. Pages 1 & 2 are the accountant's opinion on the Town's Financial Statements. This is an unqualified opinion. This is the highest they can issue and what the Town expects to see. On page 27 & 28 are the reports that they are required to issue under government auditing standards. No material issues of non-compliance with rules/regulations, contracts and grants existed. On the internal control they stated that there were no reportable conditions that were considered material weaknesses and he referred to a management letter, later in the document, that contains housekeeping type items. In the reports they are unqualified or claim reports and this is what the Council expects to see or would hope to see.

He asked Council to look at page 3, which is the combined balance sheet. He discussed the acquisition of the Utility System. With this being a separate entity they are required to include this is the Town's Financial Statement. This is a requirement of governmental accounting standards.

He indicated that the Town has grown and as of September 30, 2001 the Town is sitting at 14 million in total assets. He indicated that back in 1997 the unreserved fund balance was 2 ½ times less than the present. For the general fund he indicated that they have 3.2 million in unreserved/ undesignated funds. In 1997 this was around 1.2 million. The special revenue column indicates 6 million dollars unreserved/undesignated and this is 10 times more than they had 7 years ago. The complexity of the Town has grown.

He reviewed page 25 and discussed the special revenue funds. Each one of the funds has its own set of accounts and this is very difficult. They are managed and budgeted separately. He indicated that there are designated funds and some are earmarked as such. This demonstrates and shows the growth over the last several years.

The financial statements contain several notes. They are significantly similar to prior years. Specific notes that relate to the Utility are appropriately blended in.

Page 29 is the management letter. Within the management letter there are a number of items that need to be discussed based on the rules of the auditor general. This is not the best reading, but does address each and every point that needs to be addressed and have Council and management aware of these points. The only comments referred to is payroll and this is due to the growth of the Town and the growth of the Town's activity. The other comment dealt with fixes assets and is also a growth issue. Finally, the last comment is the development of calculations for the MSBU and garbage collections. This is a record keeping issue and the job has been completed.

Mayor Hughes discussed page 5 with the increase in revenue. He indicated that they did receive the 2 million dollar settlement from the CRA, which was not in the budget. When this is taken out they still have revenue of 3.9 million. He discussed the issue raised in the management letter. The files that were in the Projects Mangers home have been dealt with by staff and he feels this is an issue that has been resolved. He went on to the fixed assets and commented that he is fairly satisfied with the response. He indicated that Deputy Town Manager Gucciardo expressed that a semi-annual audit or other basis could be investigated. Mayor Hughes does not feel that this is necessary. No other Council members replied that they

wished to see anything other than the annual audit. The employee issues were discussed. Marty Redovan commented that due to the change in Council it is their responsibility to bring these comments forward. These comments are raised each year. He asked if the Council felt that the staff's response the management letter is adequate or should any issues be addressed?

Council member Ryneerson indicated that hourly rates are presently kept informally. What would the suggestion be? To go to a time sheet? Marty Redovan replied that a time sheet could be kept and an employee should be on record with a formal document submitted for sick, personal or vacation time. As more employees are added it gets more difficult to keep track of.

Council member Ryneerson feels that this should be considered. They are ultimately responsible for how the money is spent. He trusts staff completely, but feels that they should consider this.

Council member Thomas indicated that he ran a large office and chose not to use the time sheets unless he found abuse. He felt that time sheets would be detrimental to his positive atmosphere in his business. He does not feel that there has been any abuse and does not feel this is necessary.

Vice Mayor Cain feels the same as Council member Thomas. She indicated if the staff saw the hours they were actually working it would scare them and her. She does not feel any abuse has taken place. She also feels that it might be detrimental. Possibly, it should be considered if the staff should grow any larger.

Council member Van Duzer feels that this should be left to the Town Manager. He knows that staff works more than the 40 hour work week. In the future, if abuse exists, they could discuss this item. Mayor Hughes questioned the comp time for staff at Council meetings. He indicated that each staff member keeps their own record of comp time accrued. He is unsure why they cannot submit this information to the Office Manager and have it kept in a folder for review.

Deputy Town Manager Gucciardo replied that the comment from the auditor indicates that employees receive comp time for the many hours they work at Council meetings. The understanding of all employees would be the meetings beyond the normal workday. Each employee entitled to comp time would make note of the hours and report them to the Office Manager and act accordingly. They are responsible of turning this record into the Office Manager to be compensated.

Town Manager Segal-George commented that she has been with the Town for 7 years. From the very beginning they have operated differently than other governments and differently from other governments that Marty has been auditing. She indicated that they are a small office and try to keep things informal; this has worked. They have never had an issue. She does not want them to spend time filing out time sheets and reports. This takes the employees away from doing other more important work.

Mayor Hughes has concerns with the written policy. Council member Ryneerson agrees that they should look at it and make policy for staff to follow. Mayor Hughes would like to stop looking at this matter each year in the annual management report.

Marty Redovan expressed that if Council is comfortable with this issue it can be removed. He brought this to the attention of the new Council members. Comp time is being used and accrued. The Town has personnel rules and regulations and should be amended to include the policy for comp time.

Council member Van Duzer would like to move forward. He is comfortable with the informal way this is being handled. He recommends that they approve the present system and move on. He indicated that they have a very low key and hard working staff.

Vice Mayor Terry Cain feels the same as Council member Thomas. She agrees and would like to move on. She feels that it is very important to have trust with the people that work

in the office.

Mayor Hughes is upset that the trust issue keeps getting raised. He is not questioning anyone's trust or integrity. He is responding to an accountant that indicates year after year there should be a written policy and they do not have one. He feels that they should have a policy. The policy can include what is now being done.

Staff is willing to draft a policy and give to Council for review.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Rynearson to have staff provide to Council, within a reasonable amount of time, their policy regarding comp time.

VOTE: Motion passes unanimously.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to accept the audit of the Town of Fort Myers Beach.

VOTE: Motion passes unanimously.

****Adjourn as Town Council and reconvene as Fort Myers Beach Public Works Services, Inc. Board of Directors****

1. DISCUSSION AND ACCEPTANCE OF 2000-2001 AUDIT

Marty Redovan indicated that page 1 is the accountant's opinion on the Financial Statements for the Town of Fort Myers Beach Public Works Services, Inc. This is an unqualified opinion. He expressed that this entity was incorporated in April of 2001. The acquisition was not finalized until approximately August 2001. Operations have only been in effect for 1 ½ to 2 months. The customer billings were not received until October/November 2001. Minimum activity took place with the County still doing the billings. He expressed that page 3 shows the relationship between the revenues earned and bulk water costs. The primary reason for the operating loss is due to the fees that needed to be paid up-front to get the utility started. Hopefully, as they go forward they will see the true nature of operations. Page 4 is the statement of cash flows.

MOTION: Made by Council member Bill Thomas and seconded by Council member Howard Rynearson to accept the audit of the Fort Myers Beach Public Works Services, Inc.

VOTE: Motion passes unanimously.

Marty Redovan, Deputy Town Manager John Gucciardo and the Town Council all thanked Janeen for her hard work and efforts that she puts into preparing these audits. They become increasingly more difficult each year. She is very much appreciated.

****Adjourn as Fort Myers Beach Public Works Services, Inc. Board of Directors and recess as Fort Myers Beach Town Council****

B. RESOLUTION OF LIENS FOR TIMES SQUARE MSBU MAINTENANCE

Damon Grant expressed that he has a change in his memo for the delinquent Times Square MSBU maintenance accounts. Five are listed and he is adding The Barking Shark for \$395.66. At the January 7 meeting the time was extended to January 31. These merchants did not make the MSBU maintenance payments and are officially delinquent. They have been

forwarded to Attorney Dick Roosa for maintenance MSBU lien.

Mayor Hughes asked if there should be a distinction between maintenance and garbage? He suggested that this wording be added. Attorney Dick Roosa indicated that this was not required, but could be added. Town Manager Segal-George suggested using TSM (Times Square Maintenance) and TSG (Times Square Garbage).

Damon Grant explained to Mayor Hughes that the business owners were assessed and did not pay. The property owners were then notified and told of the situation. They then had until the 31st of January. The property owner or merchant could have paid the bill. Neither the property owner nor merchants have paid.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the revised Resolution of Liens for Times Square MSBU Maintenance.

VOTE: Motion passes unanimously.

C. LIST OF DELINQUENT TIMES SQUARE GARBAGE MSBU MERCHANTS

Damon Grant expressed that several of the garbage accounts in Times Square under the MSBU assessments have not paid and are currently delinquent. He has a list of merchants that are 2 to 3 months delinquent. Possibly Council would like to consider a similar lien as was done for the maintenance.

Council member Van Duzer asked for the total figure for the delinquent accounts? Damon Grant gave a rough estimate of \$3,000 to \$4,000.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to notify those currently delinquent and if they have not cleared this account by March 1, 2002 they will instruct the Town Attorney to go through the same action as was done for the maintenance agreements.

Discussion: Attorney Dick Roosa has concerns about the billing. Have the bills been sent to the property owners or just to the businesses? Damon Grant replied that this was just sent to the businesses.

Town Manager Segal-George indicated that they need to go through the process of sending to the property owners.

Council member Thomas feels that in the future it is the Council's responsibility to create more incentives to pay the bill. Possibly there should be additional interest for a penalty.

Mayor Hughes agrees that there should be some penalty if not paid on time.

Town Manager Segal-George expressed that this will be discussed with the Times Square Advisory Board and will be brought back again before Council.

VOTE: Motion passes unanimously.

D. DISCUSSION OF CROSSWALK IMPROVEMENTS

Deputy Town Manager Gucciardo indicated that this item is brought back before Council for possible re-consideration. This was brought before Council back during the first week of

October. At that time they received a presentation from John Davis and one of the vendors that had been working with Lee DOT. This would be a lighted crosswalk system that is pedestrian activated and would hopefully get the attention of drivers. At that time the estimates from John Davis lead him to believe that the financial contribution of the Town would be limited to as low as \$5,000 up to \$15,000. John Davis has indicated that the expected contribution from the Town would be close to \$22,000.

The second issue has to do with location of the lighted crosswalks. The County had originally come forward with a proposal to put one experimental location on the island. At that time the Council expressed that they would like to go with two locations for the experiment. One being located at the Red Coconut and the other further South near Charlie Brown's. A third location exists and deals with the moving of a crosswalk at the Lani Kai from its present location to a location at the center of their property. The Lani Kai has indicated that they would be willing to make some financial contribution to the Town if this location would be considered as one of the experimental lighted crosswalk locations. Would Council like to move one of the two locations or add a third location? These two issues mix together and they are looking for direction from the Council.

Council member Ryneerson understood that the original discussion was for one location being paid for by the County. A second location would need to have a contribution from the Town. Deputy Town Manager Gucciardo agreed that this was his understanding.

Council member Ryneerson indicated that they should go back to the original test of one and let them pay for it to see if it is going to work before the Town pays out a lot of money. If it works then they will go forward.

Deputy Town Manager Gucciardo feels that John Davis has a different understanding. He feels that John has indicated in his memos that the Town would contribute the cost of equipment, which is approximately \$10,000 to \$11,000 per location. The County would be responsible for installation and maintenance. He does not have a problem with addressing this issue with John Davis.

Council member Ryneerson suggested if this is the case they should consider using the Lani Kai as the test site. This way the owner, The Town and the County all pay a part. He cannot see spending a lot of money until they are sure if it is going to work.

Vice Mayor Cain likes the idea of the Lani Kai offering funding. She would like to approach the Red Coconut to see if there is an interest in cost sharing. She is not real happy with the Town paying for it since it is a County road. She asked if this goes beyond experimental what will the County charge for putting more in? She would like to see three experiments, if others are willing to contribute.

Mayor Hughes sees the need for more than one location. If you have two many locations it is no longer a test.

Council member Thomas liked Council member Ryneerson suggestion regarding the Lani Kai. He also feels that they maybe able to get others to contribute. He feels that they have a very dangerous situation down at Santini Plaza. He feels that this is an accident waiting to happen. He could go with as many as four if others are willing to contribute.

Council member Ryneerson asked how long this test would be run? Deputy Town Manager Gucciardo indicated that there are no perimeters. They would receive feedback from the public and determine if this would be a short or long-term experiment.

Discussion was held regarding the stamped effect of the crosswalks. Mayor Hughes questioned if this could be completed after the crosswalks were installed. Deputy Town Manager Gucciardo expressed that he felt it could be, but was not positive. He also mentioned that the Public Safety Task Force liked the idea of pavement stamping. They did not want to recommend this to the Town Council because they felt that if this was to be completed it needed to be done throughout and to all crosswalks in order to not cause confusion.

Council member Ryneerson would like Deputy Town Manager Gucciardo to go back to

John Davis and hold him to what was originally stated. He stated that they would put one in for a trial at their cost. If this means leaving it at the Red Coconut for the test this is OK. If he does not get approval from John Davis then they could go to Lani Kai and share the cost.

Vice Mayor Cain feels that half should come from the County and 1/4 from both the Town and property owner.

Deputy Town Manager Gucciardo expressed that he is clear on his direction. Depending on the reaction from the County they may end up with one location at the County's total expense or a combination of three locations at some shared expense.

E. COASTAL ENGINEERING CONTRACT: Harbor Plan

Town Manager Segal-George indicated that this is a simple matter. This is just a change order to the contract of Coastal Engineering contract for additional work that needs to be done. This will take them to the actual construction. She explained that it appears they will be getting out of permitting that they have been in for over 2 ½ years. A permit or notice of intent to issue a permit will be received and this will allow them to go to the granting agencies to obtain the dollars needed to do the actual work in the harborage area. They will also be submitting a grant for a mobile pump out boat. A contract will be coming to the Council with Salty Sam's Marina. They were the only marina answering the request to participate with the Town to provide upland facilities. It is the first positive movement in a long time. The request is for \$14, 200.00. As they apply for grant money from the Waterways Advisory Committee they will be asking for additional money for Coastal Engineering. The dollars being requested are dollars out of the Town's pocket. The packet contains a brief description of the plan, the milestones and the preliminary opinion on the cost of the project. This amount has gone down significantly since a different direction was taken to contract with a private sector to provide upland facilities, and be the harbormaster. She indicated that this was reviewed by the Marina Resources Task Force who have unanimously recommended that the Council proceed with this.

Michael Poff came forward from Coastal Engineering and indicated that he is present to answer questions.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson to approve the contract dated January 12, 2002 for Coastal Engineering.

VOTE: Motion passes unanimously.

6:30 P.M.

F. PUBLIC HEARING: Seafarer's rezoning and developer's agreement

Mayor Hughes began by reading Case #DCI2000-47 in reference to Seafarer's Plaza. He asked if any of the Council members had ex parte communications. Council member Van Duzer had a conversation with Joerg Wiebe and John Richard along with many telephone calls. Vice Mayor Cain has had phone calls and a meeting with Joerg Wiebe. Council member Thomas has spoken to many citizens of the Beach on phone and in person. Council member Rynearson had a short conversation with Mr. Wiebe. Mayor Hughes spoke with Mr. Wiebe, had several conversations with Bill Spikowski and several phone calls from citizens.

Mayor Hughes explained the procedure for this hearing. He commented that there are two aspects to the zoning of this matter. One is the actual rezoning, which is a change in the zoning classification into a CPD which incorporates other commercial properties into one large CPD. The other is a development agreement. A great deal of time and effort has gone into this development agreement with Council and the petitioners Council. If the zoning were granted this would implement and supplement the zoning. If the zoning is not granted the development

agreement is irrelevant. He initiated the public hearing aspect on zoning only. If the Town Council should approve all or a portion of the proposed zoning he indicated that they will go to the second stage of this hearing that will contain the development agreement itself.

Mayor Hughes went on to review this case. This matter was initially commenced last Spring. Hearings were held before the LPA and the Town Council. He expressed that they were not satisfied with what was presented and Mr. Wiebe was asked to go back to the drawing board to work with staff and consultants. It then went back to the LPA this Fall and the LPA held public hearings. The changes were to add the McDonald's property to the development and the proposal of a nightclub and dance hall. The nightclub and dance hall has been eliminated. The reductions in the development include dropping the residential units in the hotel room other than those allowed by the Comprehensive Plan. The building along Crescent has been lowered from three stories to two stories. The perpendicular building would be removed with the floor space relocated to a larger building up to the Estero Blvd. sidewalk. The additional drive thru lanes have been eliminated and all left-hand turns to and from Estero Blvd. The applicant has agreed to donate sidewalk easements along Estero Blvd. The major negative issues and most concerning issues to the public are the nightclub/dance hall (which has now been eliminated) and the placement of the parking garage facing the Sky Bridge.

He commented that on November 20 and November 27 the Local Planning Agency deliberated at great length on these issues and held public hearings. Most of the debate centered around the dance hall and the outdoor entertainment in the restaurants. The vote was 5 to 3 in favor of a motion recommending approval of the CPD zoning with the staff conditions and denying the nightclub/dance hall. Explicit limits would be set for the outdoor entertainment. It came to the Town Council on December 10 with a recommendation of approval. At that time the Council went over this and made some further changes in the conditions. Council also directed staff and Counsel to continue working on a hopefully mutually acceptable development agreement. The matter was continued for further hearing until today.

Joerg Wiebe came forward as President of Seafarer's 1997 and 2000, Inc. The situation of the beach is different than it was 5 years ago. A Town was incorporated for several reasons. The Comprehensive Plan was created and is not carried out at this time. His development used the existing Comp Plan as a guideline. A parking issue exists. Seafarer's today is much different than it was when he first purchased. The positive comments out perform the negative comments. His vision is to do something that will enhance the Town of Fort Myers Beach, which includes the tourists as well as the residents. The Town was formed by tourists. He does not want to build ugly buildings. He passed out building elevations for the public to view. The plans were reviewed to further explain his plan to the public. He indicated that the intent is to create a downtown core, which will be three times as big and exciting as they presently have. The impact fees are exceeding one million dollars. The tax he is paying today on both properties are in the vicinity of \$40,000 to \$50,000. This is an income stream for the Town. This is the way to help solve the traffic issue. Most of the impact fees he is paying is for traffic impact. He expressed that they will be creating more jobs in an economy that is not as good as it was one year ago. This should be considered. Traffic is a major issue in town. With this development they will be taking away all left turns in and out of Estero. This is a big improvement. Times Square is a safe place to be. Helmerich Plaza is presently not a safe place, but this plan will allow the safety. He expressed that he was forced and is willing to sign a developers agreement, which is a very complicated document. The document forces him to do many things very precise. He does not have a lot of leeway to do things the way he wants too. He feels that this project is going in the right direction and is within the vision of the Town. He would like to see the project complete.

Council member Thomas asked if the parking garage will be open to the public? Mr. Wiebe that it would.

Council member Thomas referred to the property tax and indicated that the Town of Fort

Myers only receives 5% of this tax. Mr. Wiebe replied that he understood this.

Robert Pritt from Roetzel and Anders came forward in place of Beverly Grady. He expressed that the Mayor summed up the background very well. Many hearings have taken place and most people are familiar with this. He will take the opportunity to speak after the public has spoken.

Mayor Hughes mentioned the development agreement and stated that he understood a mutually acceptable agreement exists? Mr. Pritt replied that they have a mutually acceptable agreement or it is very close. An agreement in principle exists. Mr. Wiebe replied that an agreement exists. Some final last minute details are taking place, but are not a big deal.

Dan Folke, Town staff of Fort Myers Beach, came forward. Two primary documents were used as a guide in this rezoning. One is the Old San Carlos/Crescent Street Master Plan. This was adopted by the Town. The second would be the Town's Comprehensive Land Use Plan. The first hearing was in the Spring of 2001 in front of the Local Planning Agency and was a recommendation of denial by both staff and LPA. This was then forwarded to Town Council. Council wanted this project to have some further work over the Summer to see if improvements could be made. After the Summer a very different plan came forward. The applicant made a lot of improvements that staff had requested. One of the major issues from the first two hearings was the parking garage. Staff was asked to move forward, because the parking garage could not be relocated due to present land agreements. Staff moved forward, but the issue has not been resolved regarding its consistency with the Old San Carlos/Crescent Street Master Plan. In November it went back to the LPA. Staff was still recommending denial due to Phase I showing a very large nightclub. Staff also wanted to see a little work on the mixture of the uses, which has a direct impact on the parking requirements. This is the primary reason for the size-parking garage that is required for this project. The LPA wanted to see some possible conditions of approval. These were prepared and brought back to the LPA the next week, and was forwarded to the Town Council with a recommendation of approval. He remembers a 5 to 3 vote to recommend approval with these conditions. The last hearing was held on December 10. He did present the conditions to Council. Council had a motion at the last meeting with direction to change some specific conditions. He has updated the conditions and are dated February 4, 2002. Every change made from the last meeting has been highlighted and in bold print. The last outstanding issue is the parking garage, which is not consistent with the Master Plan. Why is a garage of this size really required? This is due to the mixture of the uses.

He went on to explain the lengthy discussion about different policies in the Comprehensive Plan in the staff report. The way the conditions of approval stand today the Council can make the finding that this request is consistent with the Comprehensive Plan. It is located in the pedestrian commercial land use category. The final floor-area-ratio is higher than what was originally anticipated, but is within what is allowed by the Comprehensive Plan. The hotel density issue is a serious concern to the public. The Comprehensive Plan does allow for a maximum multiplier of 3, and this is exactly what the applicant has asked for. This does not have to be approved for a maximum multiplier of 3. If it is going to be allowed anywhere this would be the appropriate area. The recommended conditions of approval can be found consistent with the Comprehensive Plan. It is also more than what was anticipated in the Old San Carlos/Crescent Street Master Plan. Specifically, the parking garage. It is very heavy on restaurant and retail use, which has a large parking requirement.

Dan reviewed the conditions of approval. He discussed condition 5. He explained that the dance hall/night club is denied. However, a type 3 restaurant may be developed in the existing Helmerich Plaza building with no more than 720 square feet dedicated as a use for the dance floor. Condition 7 has had an addition of any live entertainment is limited to 11:00 p.m. The final condition 12 was added and states that prior to issuance of a local development order for any portion of Phases II thru V the applicant will submit a sign package for the entire Seafarer's Plaza development. Staff will work with the applicant to develop a sign package. He

clarified the deviations. Condition 10 and 11 deal with Phase I and the parking control gates. This issue has been resolved and a safe design with a turning radius has been established. He would be happy to answer any questions.

Mayor Hughes questioned the provision for the removal of the tattoo and piercing parlors. Dan Folke replied that Mr. Wiebe asked for an extension to April 30, 2003 until the end of season.

Dan Folke explained Phase I. This would be essentially all of the existing buildings on the subject property. The main change to Phase I would be the installation of the control gates and some realignment of some of the entrances. This phase would not allow for the construction of any new buildings. The parking spaces in front of Dusseldorf's would be removed.

Council member Thomas stated that the present zoning for Seafarer's Mall would not allow a 364-parking garage. Is this correct? Dan Folke replied that this is correct. He stated that now on Fort Myers Beach you cannot build a parking garage without it being approved as part of a planned development. No zoning district allows parking garages.

Council member Thomas stated that the 65-unit hotel would not be allowed to be built? Dan Folke replied that the land development code only allows a 1 to 1 multiplier. The only way to change the multiplier is to rezone as a planned development. Presently, this would be only 22 hotel units.

Vice Mayor Cain asked what his uses would be if there were no approvals of the garage or motel? Dan Folke replied that as of now they have two zoning categories. He cannot change the building footprints without amending his planned development. The uses would consist of multiple family buildings with 22 dwelling units. The Seafarer's Mall is zoned commercial C-1 and the only thing that regulates him with this property is that he must meet setbacks and parking.

Mayor Hughes asked Dan to comment on the sidewalk easements. Dan Folke replied that if the zoning is approved the development agreement states that the easements along the front of property along Estero are to be put in for wider sidewalks. The property owner has agreed to grant these easements. In addition the property owner is going to put in sidewalks along Crescent Street and on Fifth Avenue as well. This is one of the benefits that will come out of the developer's agreement. He feels that this would be a significant part of the developer's agreement, if they choose to rezone it. This will benefit everyone in the Town.

Mayor Hughes opened the meeting to public comment.

Christopher Riley from 180 Primo Drive came forward. He made two points. He and his wife are opposed to the Seafarer's project. This will increase foot traffic and vehicular traffic at the stop light area. He expressed that the Council is considering giving away zoning changes to allow this unpopular project. Please do not do it.

Lorrie Wolf from 231 Egret Street came forward. She is present this evening speaking on behalf of the Fort Myers Beach Civic Association. Since there are no sitting Council people who were involved in the incorporation effort the Civic Association would like to remind Council of the reasons they fought to be a Town. It was formed to prevent Lee County from allowing developers to run over the island with bulldozers. The Comprehensive Plan was written to direct the Council, and not to allow variances every time a developer wants to build something bigger and taller. The taxpayers are paying \$665,000.00 for another traffic study. This action is not only inconsistent, but is ludicrous. This development request goes against the reason the Town incorporated.

Michael Short from 470 Madison Ct. came forward. He urges the Town Council to deny the application for the wholesale redevelopment of Seafarer's Plaza. It will be very bad for the Town for the following reasons: 1. Traffic. 2. Pedestrian traffic would increase at the crosswalk by Seafarer's. 3. No justification for this development in this particular place. He indicated that they do not have a need for more hotels. The same is true of office space. This project does

not comply with the existing Comprehensive Plan or Land Development Code. The requested zoning is incompatible with the existing or planned uses in the surrounding area. This development is not needed.

Don Massucco from 4265 Bay Beach Lane came forward. He is a long time resident of Fort Myers Beach. He questioned Council if there is any part of the application before them tonight that advances the theme of a "family oriented island"? He does not believe so. There is a look of concern and frustration from the residents of this island. The track record of the Town Council regarding building and expansion on the island, in the years following incorporation, is not one to be applauded. They do not need anymore hotel rooms, parking garages, bars or dance halls alike. The Comp Plan is the guide. He mentioned the recent appointments to the LPA and stated that there are no less than 5 real estate oriented people who make up the majority of the members of this agency. He indicated that they are constantly being challenged to protect the island against ridiculous and destructive proposals. He is present to demand that Council deny by unanimous vote the latest attack on their precious island.

Dr. Jeanne Bradley from 100 Estero came forward. She first came to Fort Myers Beach 35 years ago. She has been a property owner for 25 years. She loves this place. When Fort Myers Beach was incorporated she applauded the decision that the Town would be making decisions rather than Lee County. At the time of incorporation rules regarding zoning were made to avoid density. Destiny and density are almost alike, but are very different. A request for rezoning is before them to change the density and will open the floodgates. To many people believe that this is wrong. There is a traffic problem. More parking spaces and hotel rooms in the proposed area will only add to the traffic problem. This the most congested site on the beach. Please keep the zoning regulations as they are at present.

Charles Ramsey from 100 Estero Blvd. came forward. Wasn't this Town incorporated so that the beach people could make decisions for their island? He feels that the answer is yes. Why not poll them for their opinion. He indicated that Mr. Wiebe has done a marvelous job at developing a plan. He feels that it should be placed somewhere on this island and not in the plaza. Is it wise to have a commercial center for this island at the greatest congestion point on the beach? As a taxpayer he does not see any advantage to his family, and he does not feel that the current change in zoning is necessary.

Frank Juliano who lives at 8402 Estero Blvd came forward. He and his wife are opposed to any changes in the zoning. He read an article in the observer by Bruce Carroll. He wrote on January 22 and expressed in his article what is being said by most of the residents. Council has total disregard to the impact that this will have in the most congested area of the Town. What is the benefit to the residents in this community? He feels that it is a disservice to the community, if the Council votes in favor of this.

James Williams from 107 Gulf Island Drive came forward. He is not against change, but is against this particular proposal. A traffic problem exists. He feels that the traffic studies should be complete to determine what is really best for the people of this island. They request that Council say no to this rezoning.

Donald Moore who lives at 5445 Avenida Pescadora came forward. He and his wife have lived on the beach for 29 years. They have seen a wealth of growth, but not a wealth of ideas to solve problems in sensitive areas. Traffic can only become more impacted with a development such as Seafarer's during peak season. This island will become a more frustrating place to live with more and more development that will surely follow, if this project is passed. When is enough?

Joe Grant from 32 Crescent Street came forward. He is right in the middle of the madness. It is bittersweet. Since Mr. Wiebe has taken over he has really upgraded the property and taken an interest in Helmerich. This mans plan is refreshing and he has shown only professionalism. He and his wife live in this area. They are going to have a parking problem, so why not have it concentrated in one place? He is willing to give up some of parking

to accommodate the public. He feels that they should go forward with this project.

Pat DeVincent from 160 Bahia Via came forward. He indicated that he wrote a letter to Council on September 23, 2001. He expressed that the voters of Estero Island chose incorporation because they wanted a local Town Council who would do the will of the citizens of the community. The Town is saddled with a Town Attorney who does not represent the citizens of the community. He seeks to represent the interest in the Town Manager. (Mayor Hughes objected to the comments being made against the staff. He asked Mr. DeVincent to stick to the Seafarer's rezoning issues only) He indicated that in the charter there is a provision for a referendum for changes to the charter. These people should be entitled to a referendum for the changes being made in the charter for this development project.

Mayor Hughes indicated that there is no provision in the Town charter that is involved in this hearing today.

Anthony Taddeo who lives at 8402 Estero Blvd. came forward. He indicated that they have been here for over 14 years. Two of the major problems since they have been down are over development and traffic. This time of the year it is very difficult to get to the north end of the island. He does not feel that they can consider any development that will add to congestion and traffic to the most traffic prone portion of the island. This parking garage will attract more cars on the island and will not solve the situation. He and his wife are against this developers plan and wish that the Town Council will vote it down.

Tom Merrill from Indian Bayou came forward. He expressed that it has been said a few times and is worth saying again that the Town was formed because they wanted better representation and control over their destiny. Of most concern was congestion and density resulting from new development. Council needs to safeguard the community from over expansion. The current zoning allows many uses. This property was purchased with the full knowledge of the existing restrictions. This owner wants more property rights than he has now. The effect could be detrimental to all the rest of the residents and their property rights. The Comprehensive Plan was written to serve as a guide. Changing the zoning on this parcel to allow increased density is not in compliance with the original intent of this Town's Comprehensive Plan. The Comprehensive Plan was developed to not have any more density to this particular area of Town as well as the whole island. There is no clear reason to change the policy and no proof that the Town will be better. More congestion, density and intensity will exist.

Emma Kolpek from 345 Mango #606 came forward. The majority of the people here this evening are in favor of not changing the zoning. They do not want increased density and increased traffic.

Doris Grant from 320 Crescent Street came forward. She announced that she is a member of the Civic Association and she did not agree to anything stated by Lorrie Wolf said earlier. She is a resident, property owner and a landlord. They have lived in the Crescent Street area for 14 years. Mr. Wiebe has taken Seafarer's and Helmerich and turned it around. She indicated that the guests staying at the Lighthouse do not drive in and out. She indicated that they do need good hotels on the beach. More upscale people need to be brought in. She feels that Council should allow for the rezoning. Let him build something that they can all be proud of.

Gertraud Short from 470 Madison Court came forward. She hopes that repeated applications and modifications will not give this a sort of inevitability, so that the Council will feel if they do not approve the application they will not hear the end of it. She thinks that this application should be rejected, because it is bad for their island. They do not need more retail or hotel rooms. The development is bad because it will make bad traffic even worse. The parking garage will attract extra cars onto the island. This is the worse place on the island for this project to be placed. It would be most unwise to allow a huge development, which will make significant impact on the traffic at this time. The traffic study may conclude that it is

unwise to encourage more cars onto the island by providing extra parking. Once the parking garage is built it will be too late. She asks the Town Council to not allow something that will make the traffic worse.

Harry Gottlieb from 50 Aberdeen Ave. came forward. He reminded them that nothing could be done about Diamondhead, because it was a County matter. He indicated that this is Council's opportunity to take an action that would mitigate against unnecessary increases in density and traffic. He feels that the Civic Association has a right to act through its Board of Directors without taking a poll of its members. He read from the staff's own findings and conclusions. Approval of the request will increase the burden upon the existing transportation or planned infrastructure facilities, and the site will not be served by streets with a capacity to carry traffic generated by the development.

George Repetti from 8402 Estero Blvd. came forward. He met with Chris Swenson and has been a critic ever since. Chris Swenson's opinion in October was that the garage was a crazy idea. This will attract more cars to the island. His proposal was to put a garage off the island. To change the zoning would be crazy.

Carl Bradley from 100 Estero #535 came forward. He and his wife came to Fort Myers Beach 34 years ago. He indicated that this project is all about revenue for Mr. Wiebe. He suggests that it should be for quality of life. This is why most of the people who are in the audience and on the island are here. Please vote "no".

Robert (Bob) Haller from 100 Estero Blvd. #635 came forward. He and his wife have owned various properties. He expressed that this Town Council has been saddled with the original mistake of building the Seafarer's. He complimented Mr. Wiebe. He questioned that in order to get the applicant's request completed it would require an amendment of the Master Plan? Mayor Hughes replied "no". Dan Folke responded that the difference between the Comprehensive Plan and the Old San Carlos/Crescent Street Master Plan is that the Comprehensive Plan is adopted by the Town and is State law. Every rezoning that the Town Council approves must be found consistent with the Comprehensive Plan. The Master Plan is not law. It is something that was developed, endorsed and adopted by the Council as a guideline for how the redevelopment of an area should go. It has set standards and a lot of those standards will become incorporated into the Land Development Code. Mr. Haller feels that people should be able to rely on what is in the books. He is asking Council to consider this.

Tom Cameron from 200 Curlew Street came forward. He has seen the elevations and heard that the dance hall/nightclub was eliminated. He asked what will happen to this floor space? Will this be another restaurant? Dan Folke replied that it could be utilized by any of the approved uses. Tom Cameron expressed that the Council are elected officials. He urged them to listen to their constituents.

Anita Cereceda is a 30 year resident and business owner for the last 20 years. This Town did not incorporate just simply to say "no". She referred to a gentleman who commented at a past public hearing. He indicated if the Council members want to have families and young people in this community in the future you must provide resources for them to thrive. The majority of the plan submitted by Mr. Wiebe could be constructed without him ever appearing before Council. The incorporation did give the ability to create the future. She does not have a problem with the need for a redevelopment to occur in this district. They must have the courage to create it. Some parts of the project fit and some do not. In 10 years what do they want this area to look like and what resources are they willing to put into place now to allow this area to redevelop into.

Bernice Tegner from 5511 Avenida Pescadora came forward. She has a problem with the logic involved in rezoning to allow more growth. She felt that they incorporated to help control growth and to do the best for the residents of this island. She does not feel that they need another hotel in the area with the most density. The residents do deserve some thought to what their needs are as well as the business needs.

George Whistler from 21630 Madera Rd. came forward. He has been here since 1978 and has seen a lot happen with the traffic. He does not feel that adding to the density is something they should be doing. He feels that this should not happen anywhere on the island. Do not change any rules or zoning. They should address the problem of traffic first. He handed out suggestions to Council. Do not add anymore density.

Mayor Hughes feels that it is appropriate for the Chairman of the LPA to come forward and summarize the position of the LPA on this matter. Chairman Roxie Smith came forward and expressed that this was before the LPA.. The LPA recommended approval of the project 5 to 3. The three negative votes were not negative to the project, but because they objected to the nightclub being removed from the application. This was studied and discussed for about 2 ½ to 3 hours. On the fourth hearing they felt that it would be good for the island.

Paul Schnayberger from 2560 Estero Blvd. came forward. He has given the Council a copy of his statement. He commented that they appear to be setting precedence every time something is changed. He read his written statement. He feels that they need to think hard of the decision.

Don Moringiello who lives at 512 Randy Lane came forward. He has heard people discuss irresponsible growth. He is unsure of this definition. He offered his opinion. Irresponsible growth is growth that does not have the infrastructure to support the growth. All must be in place prior to approving new growth. He believes that it would be irresponsible for the Town to knowingly add to the traffic burden by accepting a zoning change. He urges Council to vote "no".

Mr. Wiebe came forward and indicated that he did understand the feelings of most of the people. The changes to the Comprehensive Land Use Plan are not as high as they think. The multiplier is allowed for consideration and is recommended for this area. He was encouraged by Council members to pursue the plan of a parking garage. The best location for a parking garage is at the entrance and exit to the island. People are coming, will park and use their feet while they are here. Fort Myers Beach is a tourist oriented Town. They can only survive with a good balance between tourism and residential housing. He does not feel that they have what they need to offer the younger generation. He commented on the Helmerich Plaza. People stopped going because it became run down. They have tried to make it better and appealing so people will go there. He discussed the control gates and feels that this will keep children out and make it a safe place. He mentioned that he will not gain anything by giving up the 5 feet on Estero Blvd.

Mr. Pritt pointed out the three standards. The City Council has a serious obligation and job to be performing. Not all development is bad. People who put their time, effort and money really spruce up and take away the tired look. They ask that Council consider this very carefully.

**** Mayor Hughes announced a 5 minute break****

Mayor Hughes announced that the public hearing has been closed. Deliberations will be held by Council. The Deliberations will be held on the zoning issue itself.

MOTION: Made by Council member Bill Thomas and seconded by Council member Rynearson to deny the applicants request for rezoning from C-1 and CPD to CPD for Seafarer's Mall and Helmerich Plaza.

Discussion: Mayor Hughes has problems with this motion, because it does eliminate Phases I, II and III. He has not heard any public opposition to these phases. There would be no density increase on I, II and III. This does not give

an opportunity to clean up the blighted areas and get the sidewalk easements etc. Mayor Hughes clarified for the public the different phases. He is recommending that they vote on Phases I, II and III. If this passes they will vote on Phase IV and V.

Council member Thomas commented that people come to Times Square because of the smaller buildings. This is what makes it work. Not all is as good as it appears. He discussed the exotic tattoo parlors. A 65 unit hotel would increase density. A six level parking garage will take away from the quaint looking community. This will have 364 parking spots. This could bring a potential of 728 pedestrians. Times Square not only has issues with traffic, but issues with pedestrians crossing the road. He mentioned the traffic studies and does not feel that the conclusion will be to put parking garages on the island. Many reasons exist for turning this project down. This will increase traffic in the most congested area. This is not compatible with the existing uses in the surrounding area. He feels that this will lower the quality of life for all the residents and businesses on this wonderful island. Council has the opportunity to respond to the public, citizens and those who elected and put them where they are today. He is against this project.

Council member Ryneerson withdrew his second to the motion.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Bill Van Duzer to consider, only conceptually, to get the opinion on Phases I, II and III.

MOTION: Made by Council member Howard Ryneerson and seconded by Vice Mayor Terry Cain to revise the above motion to withdraw hotel/motel, nightclub, pool and billiard, recreational facility and Commercial Group I out of the usage for the development. Motion revised by Council member Ryneerson and seconded by Vice Mayor Terry Cain to put back in hotel/motel with no multiplier and Commercial Group I.

Discussion: Council member Van Duzer cannot support the motion. If you restrict Mr. Wiebe to Phase I, II and III he will not be able to do anything more than the availability of the parking.

Vice Mayor Cain has problems with the multi-family. She feels that this would create more traffic.

Council member Van Duzer has feelings for both sides. He indicated that they have a much lower density than Naples, Miami etc. The traffic and density is not something they have control over. The density problem comes from the other side of the bridge. Fort Myers Beach would not have a traffic nor density problem if it wasn't for the people of Lehigh Acres, North Fort Myers, Tice, Cape Coral and other Lee County areas. Fort Myers Beach cannot be isolated. He discussed the problems that should have existed with Eckerd's, Publix and the Movie Theatre, but did not happen. He ran and got elected because he believes in private property rights. He does not feel that there is any problem on Fort Myers Beach that cannot be solved or handled, if done together. He feels

Mr. Wiebe has done good things. The traffic is not going to get better. He would like them to be responsive, giving and considerate of their needs.

Vice Mayor Cain does not want to see this die. She feels that this area needs improving. She would like to see the hotel units left in. She was excited about the developer's agreement. This would eliminate some of the businesses down there.

Mayor Hughes expressed that Council does take into consideration what is said by the residents. They do take special consideration to neighbors. The rest of the island is prospering while this area is deteriorating. He feels that they would be very remiss if this is not addressed. He feels that this can be addressed without a significant negative impact on density.

Council member Van Duzer would like to leave the hotel/motel in. If Mr. Wiebe can find a proper way to use existing or available parking to put some hotel units in he has the right to be able to use his property to the best advantage.

Dan Folke made a recommendation. If Council does move to approve Phases I, II and III they will need to go back and make some changes to the plan. If the applicant will accept the motion they will look more specifically at what he would like to do in this space.

VOTE: This vote is for the amendment to the motion only. **Motion passes unanimously.**

VOTE: This vote is for the principal motion to approve Phases I, II and III as amended. **Motion passes 4 to 1. Council member Thomas dissenting.**

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to deny Phases IV and V.

Discussion: Council member Rynearson feels that this is too much for this corner.

Council member Van Duzer does not like the sound of the motion. He feels they should do away with the parking garage, but do what you can with the property.

Council member Rynearson withdrew his vote. He has been told by the Town Attorney that this is a dead issue and not necessary.

MOTION: Made by Council member Bill Thomas and seconded by to deny Phases IV and V. **Motion fails due to lack of second.**

Mayor Hughes asked Mr. Ciccarone to come forward. Mr. Ciccarone indicated that they would now be dealing with the development agreement portion of the meeting. Under the statute they must have two hearings. Final action could be taken this evening. He reviewed that they have approved Phases I thru III and will not be addressing Phases IV and V. He indicated that changes were being made up until the last minute this evening. He reviewed the

changes with Council. He indicated that the applicant was questioning if this should be taken up at the next continuation of the zoning hearing, if in fact one will be held. Council member Van Duzer feels that this should be done. Some revisions will need to be made. Mr. Ciccarone indicated that they can continue this hearing to a time and date certain. Otherwise, the meeting will need to be re-noticed. He reviewed that the agreement was originally made to provide protection that the public would be able to use the parking garage. By removing Phases IV and V it will shorten the agreement by quite a bit. He went on to review the benefits of the developer's agreement. If Council will take this up at another time they would come back with a completely cleaned up agreement that has been reviewed by the applicant. It will not need to be revisited in detail at the continuance.

Mayor Hughes commended Mr. Ciccarone and Bill Spikowski for their efforts.

Mr. Ciccarone recommends this agreement. He feels that the Town is very well protected.

Attorney Dick Roosa mentioned that a parking garage is listed under the schedule of uses. He would rather have a vote on this particular matter. He needs to know if they are going to take it out.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to eliminate the parking garage.

VOTE: Motion passes unanimously.

Mr. Ciccarone indicated that the recommendation is to continue both the zoning case and this hearing to March 4, 2002 at 6:30 p.m.. Council will be presented with final, ready to approve zoning resolutions and a development agreement along with a revised Master Concept Plan.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Cain to continue this matter until March 4, 2002 at 6:30 p.m.

VOTE: Motion passes unanimously.

Mr. Wiebe came forward because he did not understand where he stood. He wanted the Council to vote on Phases IV and V.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to deny Phases IV and V.

VOTE: Motion passes unanimously.

Mr. Ciccarone commented that Council would need to direct the applicant and staff to go back and deal with the area that was formally going to be used for the parking garage and hotel, and include this in a revised Master Concept Plan or as a separate phase.

G. FINAL PUBLIC HEARING: Ordinance 02-01 Land Development Code Chapters 1,2,6,14,22 and 26

Mayor Hughes announced that a lot of time and effort has gone into these provisions. They are very important to the Town of Fort Myers Beach. He indicated that they are gradually adopting a Land Development Code that replaces the Lee County Land Development Code. A previous public hearing was held and this is the final hearing.

Attorney Dick Roosa read the ordinance.

Mayor Hughes is unhappy with the length of the ordinance. He feels that it can be shortened to accomplish the requirements, and be easier to understand. Attorney Dick Roosa replied that the legislature of the State of Florida deals with the same problem. Mayor Hughes indicated that this is a different statute. The statute he is referring to refers to municipal ordinances and not State law. Attorney Roosa explained that the case law states if you identify each section it is legal notice.

Bill Spikowski came forward and expressed that this is the second public hearing. The first was held on January 7, 2002. The drafts of the individual exhibits are the same as discussed on January 7, 2002. The only other addition to the body of the ordinance is that it now reflects the appeal of appendix J, which he mentioned at the last meeting.

He referred to the memo dated January 25, 2002. Six items need to be reviewed before a motion is made. He indicated that there are several people who wish to speak on Chapter 14. He felt it be best to go to public hearing.

Mayor Hughes opened up the public hearing and called Sharon Faircloth forward.

Sharon Faircloth from 11711 Isle of Palms Drive came forward. She referred to page 5 of 32. She indicated that the sea turtle monitors do not get to her end of the island until 9:00 a.m. They have two businesses on the north end of the island. They need one hour prior to the opening at 9:00 a.m. to get their equipment out. If they are required to wait until after the monitoring it will cause them to be 1 hour behind for opening up their business. Rentals go from 9:00 a.m. to 5:00 p.m. She asked that an amendment be made to include that no equipment be set out prior to 8:00 a.m. or until after the sea turtle monitoring has taken place. This will allow them to get there business up and running on time. She discussed that beach raking cannot take place until 9:00 a.m. She indicated that most families with small children are already out on the beach at this time. She feels that raking should begin at 8:00 a.m.

Bill Perry came forward. He mentioned page 4 of 32 under beach furniture and equipment. He indicated that in this particular area they are trying to protect dune vegetation. He expressed that the State had a program in place and they are adopting it. It is being done because the State will no longer issue beach-raking permits. He discussed the 10-foot distance that needs to be kept and the rope system which would need to be in place to get closer than the 10 feet. He is asking that the language be put in Section D. He went to Section 14-6 - page 6 of 32. He indicated that the 10 foot buffer should stay around the turtle nests. He is asking for the rope system to be included here also. The property owner would pay to have this rope system installed. He touched on the 9:00 a.m. set-up time. At the south end they do not have a problem, because there are plenty of volunteers for the monitoring of the turtle nests. At the north end of the island the turtle monitor cannot find many volunteers. By the time she gets up there they have already set-up and this has created a problem. She has asked for 9:00 a.m. This is not fair to those who must set-up and be ready for 9:00 a.m. He feels that 8:00 a.m. is a fair and reasonable time.

John Naylor came forward to discuss the Dune ordinance. He indicated that they had worked for over 1-½ years to make sure that they fine-tuned many of these rules and regulations. He does not feel that anyone has a problem with Chapter 14. The original ordinance made great reference to the DEP regulations and was easy to reference. He is concerned about items that might not be included (Ex. bringing a utility vehicle onto the beach). He wants to be sure that they do not lose anything in the transition.

Bill Spikowski commented that it is a possibility DEP will be getting back into the business of permitting. He feels that the Town should go along with their plans. He is not confident that this will take place. He feels strongly that they should proceed and adopt this. If the situation changes it can be amended.

Bill Spikowski discussed the picking up of trash on the beach. He referred to page 6 - Section 14.7 and mentioned the list of various types of vehicles that are allowed on the beach.

The last item states "Town approved service vehicles". This does not say Town owned service vehicles. The Town could approve the use of the type of vehicle John Naylor is speaking of. This approval could take place with a letter and he feels that this language would allow the Town to do this. He does not feel that they need any extra wording.

He discussed that in Chapter 14 in several places there are certain things during sea turtle season you cannot do until the morning monitor gets done. He indicated that 9:00 a.m. was used throughout the ordinance for the bringing out of equipment on the beach. The time can be discussed. He does not feel comfortable recommending something different to Council.

Vice Mayor Cain understands the concerns of the business people. She wishes that the volunteers could begin at both ends of the island.

Mayor Hughes does not have a problem with moving it to 8:00 a.m. He feels that it should be consistent. He asked for any objections from Council. It was decided that it will be changed from 9:00 a.m. to 8:00 a.m.

Bill Spikowski moved to the discussion of the staking of the 10-foot area. He indicated that getting rid of the rule will limit the natural growth of dunes. He asked if they would want to do this? This is the reason for the 10 foot. Bill Spikowski does not object to the rope system, but the idea of the rope being right up to it concerns him.

Council member Rynearson agrees with Bill. If you do not control it, it will get away from you. If you put the rope up 10 foot away it will creep to the rope. He does not feel that they should keep moving the rope. He thinks that they should set a line of demarcation and leave it at that.

Vice Mayor Cain likes both sides. This is only something they can suggest. If this is going to be an owner implemented item they are not telling them they must do it.

Bill Perry came forward and commented that possibly setting up the rope systems landward to seaward direction. His concern is the growing vegetation parallel to the beach. He wants to use it to keep vegetation in check that would end up taking over the beach. He feels that they need to think of a balance of the recreational beach.

Sharon Faircloth came forward and wanted to discuss the north end of the island. She referred to page 4 of 32. She referred to a spring high tide and indicated that since Gabrielle they have lost a lot of beach. If you must put your chairs 10 feet out on a spring high tide you will be pretty much in the water. If the rope system was in place it makes it really easy to see where you can go and where you should stay away from.

Bill Spikowski indicated that the question is if they will let the dunes expand naturally or not? This is a policy question that balances recreation and environment. Mayor Hughes replied that he is sympathetic to their concerns, but in his opinion it is inconsistent to the policy.

John Naylor commented that the question is do they define where the people should go or do you give them free reign to go wherever they would like. The rope system enables them to define the area and keep it raked. It does cut down on the dune growth, but the people will get to the water and sand. The long-term solution would be to let it grow and put up a wooden walkover. This will be costly to do at each property. It is not an easy solution.

Council member Van Duzer feels that this should be left as is. No other Council members objected. Mayor Hughes commented that this could be looked at again in the future, if necessary.

Bill Spikowski began reviewing each chapter. Chapter 1 & 2 had no changes and no comments were made.

Chapter 6 is the flood plain changes. He referred to page 10 of 12 and discussed the amount of space you would be allowed to enclose below an elevated house. The LPA recommended Option 4. All Council members were in agreement with Option 4. In Chapter 6 - page 10 he has written new language to include having a single opening up to 36 inches or (2) windowless openings. All Council members were in agreement with the new language.

Chapter 14 contains several issues. The first is a new issue not discussed at the last

meeting. The existing definition of dune and dune vegetation are circular. The new version does not change the intention, but causes the definition to not be circular. Page 3 deals with landward of any seawall language, and moving personal watercraft or beach furniture back away from the beach at night in the case where the beach is very narrow. Language was added to the Jetski Ordinance and the same language is being added here. All Council members were in agreement to leave the language as is.

Bill Spikowski went on to indicate that nothing new has come up in Chapter 22. The only issue on Chapter 26 that was discussed before pertained to the non-conforming boathouse. The question is whether the proposed nearly 2 years left should be made shorter or longer? Mayor Hughes does not want to extend the time. All Council members were in agreement.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to adopt the complete revisions of Chapters 1, 2, 6, 14, 22 and 26 of Ordinance 02-01 Land Development Code with the changes as discussed this evening.

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.**

H. PUBLIC HEARING: Community Development Block Grant

Mayor Hughes opened the public hearing on the Community Development Block Grant. No one wished to address the Council on this matter. The public hearing was closed.

Mayor Hughes likes the 4 options chosen. Deputy Town Manager Gucciardo indicated that they will have another series of public hearings and he will take the opportunity to talk to Council individually. He will also get with Bill Spikowski and fine tune the list for the next meeting.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Bill Thomas - Wednesday, January 9 he spoke at the Chamber of Commerce Board of Directors meeting. On Saturday, January 12 he worked with the Pilot Club - adopt a shore and cleaned up some of the beach. On Thursday, January 24 he attended Governor Bush's address and luncheon. On Saturday, January 26 he participated with the Pilot Club and went on an extended walk on the beach for the benefit of Alzheimer's disease. 31 people participated and he congratulated everyone. On Friday, February 1 he attended the beginning of the Archeological survey at the Mound House meeting at 3:00 p.m. On Sunday, February 3 the New England Patriots won the SuperBowl.

Council member Howard Rynearson - Talked to the News-Press/USA Today and the Observer. They were very much in favor of getting uniform boxes. He indicated a price is on the front per 6 per unit with five locations. John from the News-Press suggested the locations. More or less can be done. He asked if the Council was interested? This would clean up the old boxes.

Town Manager Segal-George replied that most boxes are located on County right-of-way. They would need to have the permission of the County to place them in their right-of-way. The LPA looked at this a couple of years ago. The LPA did back out of this, but she cannot remember why.

Council member Van Duzer asked who pays for these? Council member Rynearson indicated that they would charge a fee to each newspaper.

Mayor Hughes likes the idea. It has been discussed before. He commended Council

member Rynearson on his work.

Town Manager Segal-George indicated that there would be legal issues. One is the County's right-of-way and also the charging of fees in the County's right-of-way.

Vice Mayor Cain feels it is a good idea, but does not see how this will solve the problem. Council member Rynearson replied that the ordinance will have to take care of the other small boxes.

Council member Thomas commented that Council member Rynearson should be commended for his hard work. He does not want to see the Town Council going into the newspaper distribution business. He is not opposed if someone else pays.

Council member Van Duzer would like Council member Rynearson to go back to the newspapers to see if they would pay for them. Council member Rynearson stated that it was suggested to him that they would pay approximately \$1500.00 per unit per year. He believes that they are looking to pay for the upkeep of the box.

Mayor Hughes indicated that all Council members have interest and see other issues that need to be addressed. Council member Rynearson should work with staff to see what action needs to be taken by Council to move this ahead. He should continue his negotiations with the newspapers.

Council member Bill Van Duzer - Spent a lot of time on the telephone. Also attended the governor's visit and enjoyed it. Drove a stake down at the Mound House. Went away over the weekend and enjoyed reading through his booklet. He is prepared and ready for the next meeting. He hopes that he has the opportunity to express his opinion later on today. He has enjoyed being here today.

Vice Mayor Cain - Went back to see David who is instructing the John Mulholland Stewardship Award. She took pictures and will bring them in for an update. She felt that they had a great CELCAB workshop and she understands things are moving along well at the Mound House. She is happy about this. Enjoyed having lunch with everyone at the Broadway Palm for the Horizon Council. It was fun and informative. She was coming on the beach while the Pilot Club was walking for Alzheimer's. She was amazed how far along the people had walked. She expressed that the Pilot Club was happy with the amount of money they raised. The archeology ground brushing was a great event. She met someone on one of the tour buses that stayed at Black Island. The person is 91 years old. Enjoyed his visit here. They are using the Town's public transportation and love the Trolley.

Mayor Daniel Hughes - Mentioned the tour buses. A long time friend from Illinois is here staying at the Outrigger. They are here for a whole month and are having a great time. The other Council members have mentioned the lunch for Governor Bush and archeological survey commencement ceremony. He commended Fran Myers who acted as the MC of this event. It was a very good program and had a good turnout. All Council members were there. The Horizon Council was mentioned. He and Council member Rynearson attended the Children's Day Celebration on the steps of the old County building. It was a wonderful program. Discussed the letter from the Estero Bay Improvement Association. This letter was asking for the Council to assume responsibility for Bay Beach storm water management system. This will require careful thought and analysis. This could be discussed at the retreat.

**** Mayor Hughes adjourned the meeting at 5:25 p.m. Meeting will reconvene at 6:30 p.m.****

VIII. TOWN MANAGER'S ITEMS

Town Manager Segal-George - None.

Deputy Town Manager Gucciardo - Expressed that Council should have been copied on an e-mail and letter from Commissioner Bob Jayne's office with regard to the workshop that Council has asked for with the Board of County Commissioners regarding the Beach

Restoration Project. Tomorrow this will be brought up to the other commissioners for approval to go ahead with the workshop. He indicated that Mike Sole who is the new head of the agency at the State level is very open to the idea of using the State dedicated funds as a source to front the Federal money. This would go along way to solve the financial issues being presently faced. These conversations are very positive and he will also be invited to the workshop.

The second item is regarding the water service and some work needing to be done leading from Estero Blvd. to the new Fire District Administration Building. The extent of the work would require shutting off water service to some of the residents. This would affect residents between Tropical Shores Way and Bay Mar. This work would be timed to happen in the middle of night. The water service would be interrupted from about midnight to 4:00 a.m. He and Ed Moran decided to use the Emergency Notification System/Reverse 911 System to let the residents know that they will be experiencing a water outage. This would be a good time to experiment with the system. He is happy to report that the system worked great. Two experiments were done and they were able to get great coverage. They will work with the vendor to see why they did not receive a 100% result. They would like to fine tune to receive better results in the future.

Council member Rynearson commented that the message was very good. It was very explanatory and feels that this is a great thing. He feels that everyone did a great job with this.

IX. TOWN ATTORNEY'S ITEMS

Attorney Dick Roosa - Indicated that the County Attorney's office has set up a day long seminar this Friday for local attorneys on parliamentary procedure. He felt that this would be a worthwhile program for him to go to.

X. PUBLIC COMMENT

None.

XI. ADJOURNMENT

The meeting was adjourned at 12:25 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