

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FEBRUARY 11, 2002
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Land Use Hearing of February 11, 2002 was opened by Mayor Daniel Hughes on Monday, February 11, 2002, 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.

Guest: Carol Cunningham

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

IV. PUBLIC HEARING: KATHY SCHALLER DECK VARIANCE. Variances in the TFC-2 district (Residential Two-Family Conservation) to allow the following reduction in setbacks to bring a replaced stairway and porch into compliance. The subject property is located at 199 Dakota.

Mayor Hughes read that this is Case Number 2001-45. A Kathy Schaller deck variance. Seeking a reduction of setbacks for the side yard, rear yard and the street.

Kathy Schaller came forward and indicated that this is her 3rd or 4th meeting. She hopes to get this resolved and get the deck up to code.

Pam Houck, Director of Zoning for Lee County, came forward. She indicated that before Council is a request for three variances. If approved, it will bring the existing duplex and deck into compliance. Two hearings were before the LPA. During the first LPA hearing a deck was discovered and she recommended that it be brought into compliance. She expressed that the framed shed is actually a deck that provides the access. This shed existed prior to the applicants purchase of the property. This was added as the third variance and went back to the LPA for a second hearing. The LPA recommended approval of all three variances with a condition that it is limited to the attached site plan. The variances are the result of a code violation. The applicant did put up the deck and stairs that are located closest to Palmetto Street without the benefit of permit. When they applied for permit this is when the variance request occurred. The property is a narrow 45-foot wide x 125-foot deep corner lot. The duplex was constructed around 1974. There are no records left of the permits, and they are not able to determine what was originally permitted. She feels certain that the main part of the duplex was constructed along with the stairs with some deck encroaching into the front and rear setback. She has recommended approval of all three variances based on the fact they are dealing with a very narrow lot. The applicant did not increase the setbacks. She feels that both decks provide

a reasonable ingress and egress to the structure. She does feel that there are unusual circumstances that are inherit in the existing structure. The duplex is not inconsistent with other duplexes. Many other duplexes encroach into the setbacks in this neighborhood.

Mayor Hughes is not clear on the shed. He asked for further explanation. Pam Houck replied that this is called a shed on the survey. Under the deck contains slats that are used for storage. This is not fully enclosed.

Mayor Hughes commented that before the stairs and deck were replaced there were existing encroachments. What were they? Pam Houck replied that it did not increase the setbacks. They maintained the existing setback line and widened the deck slightly out toward the road.

Mayor Hughes has discussed this matter with Dave Crabtree. He was informed that the property owner initially sought a permit and was turned down, because it did not meet the setbacks. They went ahead and did this work without a permit and were then sited. The contractor did not have a license to do this work. They or a prior owner converted this duplex into a triplex and were sited for this, which is pending. The deck issue is pending before a hearing officer. He is troubled because they were turned down for a permit and went ahead and did the work knowing that this was in violation. He asked for Pam Houck's position if the owner would have come in properly and sought a variance without a permit, if the work was not done, would she feel they were entitled to a variance? Pam Houck replied that her position would not have changed. She feels that this in reasonable use.

Mayor Hughes asked Council for any ex parte communications? Council member Thomas spoke with Mr. Schaller on Saturday. No other Council members had any additional communication.

Mayor Hughes asked if anyone from the public wished to address the Council. No one came forward. The public hearing was closed.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to adopt the resolution contained in Council's package with the necessary modifications and subject to the staff Condition One.

Discussion: Mayor Hughes added that these property owners acquired this property only recently. The violations existed prior to their acquisition. The property is vastly improved over the condition it was in under prior ownership. The improvements create an enhancement to the neighborhood.

VOTE: Motion passes unanimously.

V. DISCUSSION OF OLD SAN CARLOS ASSESSMENT

Town Manager Marsha Segal-George indicated that Carol Cunningham is present and has been before the Council one other time with regards to assessments on Old San Carlos. These have been revised and she has a couple of other alternatives to present today. The revisions have to do with the plaza and percentages of how this breaks out. She had a meeting with some of the property owners and they went over the final plans. The project is out to bid. They are on the same time line for this project starting on April 15. She is not asking Council for a decision today. She needs enough direction so Attorney Dick Roosa can proceed to prepare the ordinance of assessment. The public hearings will begin to get scheduled.

Carol Cunningham came forward and pointed out a change. She referred to transitional areas for \$43,800.00. She misinterpreted the transitional areas from the information that was sent to her for the cost estimates. She felt that these were included with the plaza, but they are

not. The transitional areas are the areas between the public improvements that transition onto private properties. They decided to leave this cost in. It does not affect the proportion of the percentages and distributions among the options. The cost for transitional areas will be dropped out of the total project cost at the end.

Carol went on to indicate that throughout they have followed Chapter 170, which specifically identifies the method they are using as an appropriate method for allocating cost of the assessments. This is proration according to the front footage of special benefited properties. This is the methodology used. The options for apportionment of costs have been somewhat revised based on some of the information provided during the previous review. She referred to Option A-1 and indicated that this was recommended as an appropriate distribution. This has the property owner paying 20%, DRA paying 30% of the total project for a total of 50% with the Town paying the remaining 50%. She pointed out that the total project cost does not include the cost of the parking meters. The meters should be paid for by the Town, because the Town will be able to recover the cost through parking meter revenues.

She ran another version of this option, which is Option A-2. She commented that this is the 20%, 30% and 50% with plaza alternative 2. Option B was an option that the Council was interested in seeing numbers on. Option B has the property owners paying for all new items. Option B-1 is all new including plaza alternative 1. Option B-2 is the property owners paying for all new including plaza alternative 2. Option B-3 is property owners paying for all new, except for the plaza. She ran two more options beyond these. It could be argued that the plaza has a more wide spread benefit than strictly to the property owners, so she felt it wise to run two other options. Option B-4 is property owners paying for all new items including 20% of the cost of the plaza alternative 1. Option B-5 has the property owners paying for all new items including 50% of plaza alternative 1. She based these on plaza alternative 1, because it was her understanding that this was the preferred plaza design.

Carol went on to review the tables with Council. She passed out the additional table including Option B-4 and B-5. She indicated that Council will need to give some thought to not only what the property owners share should be, but how the Council sees the split of the remainder to be done, if they choose an alternative other than alternative A.

Mayor Hughes asked the Town Manager how much money they have in the DRA? Town Manager Segal-George replied a little under 2 million. She indicated if you look at the area and all the projects that are needed there is no way to make the 2 million spread over all the projects. The attempt is to preserve and make it as equitable as possible, so that there are dollars left to do Crescent, First, Second, Third and sidewalks on bayside down to the Lani Kai. These are the basic parts of the improvements still yet to come.

Council member Van Duzer asked for the property owners view? Carol Cunningham replied that originally the concept was to follow the model that the Town has used in the past doing a 50/50 split. In this case the beneficiaries share would be split 20% property owners with 30% of this supplemented by DRA funds. During the Council meeting in November there was some concern that they should look at a different basis for establishing cost. This is where they decided to have the property owners pay for all new. This comes out to 23% of the total project cost, but if you add in the plaza this jumps it up to 33%.

Carol went on to discuss payment options. These are the same as presented before. The intent is to provide flexibility for the property owners, but maintain a short time frame for repayment so that the administrative costs are not huge. Option 1 allows for up front lump sum payment and provides a discount. Option 2 allows for payments made in 5 annual installments at a fixed interest rate to be determined. Option 3 is a deferred payment, which is intended to accommodate people who currently do not have any plans to redevelopment their property. Payment can be deferred for a maximum of 5 years or until sale, refinance or issuance of a C of C for a new development, whichever comes first. This would include accumulating interest at the same rate as Option 2.

She indicated that they are looking for guidance on the options Council feels for allocating costs are the most appropriate and should be further specified. She is also looking for direction if Council feels that they should continue to include plaza alternative 2 in the cost options or are they convinced to use plaza alternative 1. This will help cut down on the variations. Carol would like some feedback on the payment options.

Mayor Hughes understands that there will not be special assessment bonds issued and they will fund this with a loan from the CRA. Therefore, if all of the property owners elected Option 1 this would not have any adverse effect on the remaining CRA funds. If they paid it in annual installments the Town would receive the money back over a 5-year period. The payment options that the property owners elect will have an effect on the availability of the CRA funds. In most cases he feels that Option 2 will be exercised. He feels that all three options are good to have.

Council member Van Duzer commented again on the meeting with the property owners. This information has been brought forward to these owners. He is sure that they want to pay the minimum amount? Town Manager Segal-George replied that this is fair.

Town Manager Segal-George asked if everyone was in agreement with plaza alternative 1?

Terry Cain felt that this was already decided. All Council members agreed on alternative 1.

Town Manager Segal-George questioned the split and how it should be divided? Mayor Hughes mentioned the other projects that are in the works. It is difficult to determine the funds that would be available for other projects at this point. Town Manager Segal-George replied that DRA/CRA could borrow from the Town's road dollars to be paid back if they get into this type of situation. None of the other projects have been costed out.

Council member Van Duzer feels that the fair way is to go with (B-5) all the new with 50% of the plaza addition. He feels that this would be fair to the merchants.

Council member Rynearson agrees with this 100%. He is agreement with B-5.

Council member Van Duzer made a correction and changed to them paying 20% of the plaza cost (B-4). This will change the opinion of Council member Rynearson.

Council member Thomas supports B-5. He does feel that they should pay 50% of the plaza.

Town Manager Segal-George clarified with Town Attorney Roosa that they do not need to pick one and can have a couple alternatives under the ordinance. After the hearings are held and input is given Council could then make a selection. She explained that they can carry B-4 and B-5 as seen on Table 3. The split between the Town and CRA can also have both alternatives carried over.

Mayor Hughes reviewed that the Town Manager has indicated that Council does not have to make a decision today, if they are willing to eliminate all other options except for B-4 and B-5. The allocation between property owners can be kept open for decision at the hearing. The allocation between the Town and DRA can also be kept open for decision at hearing.

Town Manager Segal-George expressed that she was not going to schedule another meeting with the property owners until the bids come in. The assessments must be put into place as they enter into the project. A public hearing will be held and the property owners will have ample time to speak to Council with their opinions.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Rynearson to direct the Town Attorney to prepare a draft ordinance and to set for public hearing with apportionment of costs Options B-4 & B-5. Also, to include the alternatives as to the Town/DRA split as shown on Table 3 and Table 3 alternative.

Town Manager Segal-George expressed that the plan is for the Council to award the bids on Old San Carlos on March 18. They could come in with this ordinance in advance of this.

VOTE: Motion passes unanimously.

VI. APPROVAL OF MOUND HOUSE REPAIR WORK BIDS: ROOFERS AND ARBORISTS

Mayor Hughes announced that they have two memos from Rebecca Harris, Director of CELCAB. One is on roofing and the other is for the arborists.

Council member Ryneerson commented that he felt at that Workshop they discussed patching the roof. These bids are for 30-year roofs. He feels that they need to look for patching until they decide what to do with the roof.

Vice Mayor Cain remembers a short-term roof.

Council member Van Duzer felt the conversation was to look at the total roof.

Mayor Hughes felt the discussion was to fix the hole in the roof.

Town Manager Segal-George commented that it is her understanding they would like gutters. She was told that until the roof is re-done you couldn't get gutters.

Rebecca Harris commented that if they are looking at it in a historical sense there has never been a metal roof on the Mound House. This would probably never be an option.

Council member Ryneerson does not want to spend \$8,000.00 and then 1 year later decide this is not what they want.

Rebecca Harris brought to Council's attention that there was a late addition to the package. This is from Holland Roofers. He provided the low bid at \$6,800.00 with the flat roof included it would be \$7,900.00. Holland is the low and Advanced is the high.

Vice Mayor Cain pointed out the two bids including leaks. This impressed her.

Council member Van Duzer and Council member Ryneerson indicated that they were both familiar with Campbell and Holland.

Council member Van Duzer has a problem with the bid from Holland. It does not give all the information. He found problems with almost all the bids. He is concerned with the type of metal they are using and this is not specified.

Council member Ryneerson feels if they are going to narrow down to the two bids they should do a spec sheet. They will then know exactly what they are going to get.

Attorney Dick Roosa indicated that they would need to reject all bids. Council can then be more specific in the specifications.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Ryneerson to move forward with the low bid (Holland Roofing) with the request that they will specify the type of metal, shingles and any other concerns. Also, incorporating the flat roof.

Discussion: Council member Van Duzer explained to the Town Manager the type of metal and shingles he felt would be appropriate.

Rebecca Harris indicated that Campbell did not provide a separate bid for the flat roof. This is also an issue.

Mayor Hughes has concerns if the bid should change. Town Manager Segal-George expressed that if the bid comes in higher it will need to come back to Council, unless they stay below the second low bid they will move forward.

Attorney Dick Roosa indicated that the bid must stay the same. If it changes the bid will come back to Council. If the bidder can establish that his product is equal to or better than an asphalt 30-year roof it should be approved.

VOTE: Motion passes unanimously.

Rebecca Harris addressed the second memo on the arborists dealing with the very large trees on the property. ETI was the low bid at \$5,336.44, Namco was second at \$5,740.00 and Arbor Services came in at \$7,000.00. She was very impressed with ETI. They are willing to climb the two trees in the front instead of bringing heavy equipment in. Roger Clark recommended ETI and Arbor Services as qualified and certified arborists. He also recommended Namco in the past.

Vice Mayor Cain was concerned about climbing the trees with spikes on? Rebecca Harris replied that ropes will only be used.

Council member Van Duzer questioned if all bids include the same units? Rebecca Harris walked with all three on the property. ETI is providing the most work for the least amount of money. She feels real confident with ETI.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to award the contract to ETI for the work needed on the trees at the Mound House.

VOTE: Motion passes unanimously.

VII. PUBLIC COMMENT

Anita Cereceda came forward. She is present to address several business owners whose businesses were being discussed during the taxing unit. She asked if the Times Square Advisory Committee is going to advise Council on this taxing issue? She urges them to do so. An effort to rally residents behind this project to show that there is incredible public benefit to the improvement of this blighted area will happen. She indicated that they are looking toward small businesses to fulfill the dream of a Main Street. They need to be careful with the amount assessed. This amount could break a small business in the transition.

Council member Van Duzer asked Anita if she was indicating that this is being considered by the front foot and it ought to be considered by the square foot? Anita Cereceda replied that this is what she is saying, but she is unsure if this is a good idea. She asked them to look at the whole picture.

Attorney Dick Roosa commented that there is a difference between maintenance and capital. In this instance there is a substantial capital investment. This does benefit the owners. He feels that they are comparing apples and oranges.

Mayor Hughes has handled a lot of special assessments in his career. When they dealt with capital improvements normally the assessments were for roads, sewer, etc. This was always done on a front footage. At the time of the hearing the property owner had the right to come in and establish the public benefit. Some portion of the 100% was allocated as public benefit. The balance was charged against the property owner on a front footage basis. This is the traditional way.

****Vice Mayor Cain announced the Blue and Gold Cub Scout Birthday Party this Friday night at Chapel By the Sea. Date and time is February 15 at 7:00 p.m. They expressed a desire for Council members to attend. Come and enjoy the potluck.**

VIII. ADJOURNMENT

The meeting was adjourned at 10:50 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