

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MARCH 18, 2002
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Regular Meeting of March 18, 2002 was opened by Mayor Daniel Hughes on Monday, March 18, 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 PHILIP MAKARI. CHAPEL BY THE SEA

Reverend Philip Makari gave the invocation.

IV. PUBLIC COMMENT

None.

V. WORKSHOP: Seafarer's Plaza CPD (3:00 p.m. - 4:00 p.m.)

Mayor Hughes announced that at the last Council meeting of March 4, 2002 the applicant, through his Counsel, requested that this matter be continued. The Council agreed to set up a Workshop and the actual hearing will be held April 15, 2002.

Mr. Joerg Wiebe, President of Seafarer's 1997 and 2000 Inc., came forward. He prepared a packet of information for Council. He expressed that he had spoken to 4 of the 5 Council members over the last 4 or 5 days. He feels that everyone knows where he is coming from. He discussed the cover sheet and indicated that the left side is for the Town and right side is for Seafarer's. He explained that the Town will receive the ability to improve Estero Blvd. to ease the traffic, the Town will receive an easement of 5 feet along Estero Blvd. and the willingness to allow the Town to use the gazebo and elevator. Also, the Town will receive a 7-foot easement along Crescent Street to allow a 10-foot sidewalk along Crescent. Seafarer's will build a 10-foot wide sidewalk along Fifth Ave. with on street parking belonging to the Town. Seafarer's will reduce the tattoo and body piercing establishments to one only. Seafarer's will create a new downtown core that will create its own dynamics. Additional roads will exist to divide the traffic to and from the bridge and give the ability to ease traffic in this crucial area. The old shabby buildings will be replaced by tastefully designed new buildings. Building E to

be built first with the remaining done in phases. No parking garage will be built. An upscale incident free establishment will be created. The most crucial area of Fort Myers Beach will be created and the eyesore of Old Helmerich Plaza will be eliminated. A traffic and impact low hotel in the core area will be built. Seafarer's will share all real traffic and parking data with the Town for the next 3 years. At least an \$800,000.00 impact fee income will be received through this development. More jobs will be created for the island.

Mr. Wiebe went on to discuss what Seafarer's will receive in return. Seafarer's obtained an approval of Phase I, II and III. No extra variances for parking will be required for Phases I, II or III as long as the old method of calculation is used. Phase III is only required if Phase IV is built. Phase IV requires a new multiplier of 4 per thousand instead of 33% in the parking requirement. The olive trees should be saved. Cabasca's is willing to give up the required easement areas in front of its establishment for exchange to have the same amount of tables or seats on the sidewalk. This will enhance the areas for several reasons. Seafarer's will receive a 10-foot sidewalk along the front of the building of Estero Blvd.

Mr. Wiebe went on to discuss that the vision of the Town is written down in the Comprehensive Land Use Plan. He explained that the Town is not looking to have a downtown like Fort Myers with extensive parking. He expressed that Fort Myers has many businesses that do not thrive and Fort Myers Beach has just the opposite. He feels that they need to have a balance. He expressed that a hotel is the smallest traffic impact creator possible. He discussed the parking lot, which he has been working at lately. This lot has only been filled once this year. Last year it was completely filled around the Easter holidays. This is the only time period the lot is at its greatest capacity. He asked the Council to agree to approve the plan before them under one condition. The one condition refers to the building of Phase IV. He will demonstrate through the parking data acquired with the parking system being installed the amount of vehicles coming in and out and the time period they are present. He will prove that the parking problem is only present while dealing with beach parkers between 11:30 a.m. and 3:00 p.m. on Friday, Saturday and Sundays. If he can demonstrate that he does not need additional parking the Council will agree to a variance for parking. If he does need the parking he will have to find it somewhere else.

Beverly Grady came forward to represent the zoning request to the CPD. She expressed that this land is designated pedestrian commercial. She felt that it was appropriate to revisit the Town's vision and plan. The request before Council is for retail, restaurant, hotel and office. The property is zoned for commercial C-1 (CPD). These uses are all approved and the uses being requested are approved. These uses are consistent with the Town plan. The plan with the elimination of the parking garage is consistent with the Old San Carlos and Crescent Master Plan. The intensity is acceptable. The hotel units have never been an issue with Staff. What are the issues now? The parking garage is gone. She expressed that there is adequate parking for Phases I, II and III. The applicant is willing to record and provide to the Town the parking information, and is willing to accept a condition for Phases IV and Phase V. Helmerich Plaza is a blighted area and the efforts which have been made meet this request. She expressed that they would like to work with Council on any questions or conditions.

Bill Spikowski, Planning consultant for the Town, came forward. He explained that Staff has attempted to come up with a mid-range proposal for consideration. He expressed that the building along Estero will be limited to two stories, which is exactly what he is proposing to them for the new Land Development Code. He explained that there will be several access points to Estero Blvd. that would be eliminated. Each of these are a friction point on this most delicate

part of Estero Blvd. The only entrance remaining would be located where the McDonald's driveway is today. A median will be built to restrict left hand turns. The reason the median cannot be completed without this project is because they do not have enough right-of-way. He discussed the issue regarding parking. He explained that the proposal allows for monitoring of the parking. The amount of parking being provided is less than what he recommends is adopted for the Land Development Code. How will the Town be protected? Because this project would be phased and the sections of the project that will require the greatest use will be built in the first phases. This will give them a chance along with the computerized parking system to measure the performance of those businesses in this exact location in a multi-use location. They may discover over the next few years the new lower parking ratios in the Land Development Code are too high. If they are Mr. Wiebe will come before Council to have the parking deviation modified. It would be great if he could build the rest of the project without additional parking. He explained that they do not want more parking than what is actually needed.

Bill Spikowski went on to discuss the details that would be worked out between now and April 15th, if Council likes the general concept. The surface parking lot goes up the sidewalk on Fifth with no buffering. This looks bad and is undesirable. Buffering needs to be added. He discussed the olive trees and explained that Mr. Wiebe would expand his sidewalk easement donation. This would allow him to keep the trees and put a couple of tables in between them out on the sidewalk. This is unusual, but is not negative. More details need to be addressed. More investigation needs to be completed regarding the design of the sidewalk and pedestrian refuge island. He believes this can be accomplished. A number of other revisions to the Development Agreement would need to be completed. The parking garage is out and will need to be eliminated. He discussed the controversy surrounding the nightclub, which has also been eliminated. This area will still serve as a restaurant (51% or more food consumption) with a small dance floor. They must be sure that this will not come back to being the nightclub open until 4:00 a.m. in an area that is not 100% residential.

Council member Rynearson questioned if the information before them today is approved would Mr. Wiebe have to come back before Council with Phase IV? Bill Spikowski replied that Phase IV would be approved provided that he provides more parking than what is shown on the plan. He will need to provide some offsite parking, reduce the scale of the buildings or come back to Council to have the parking deviation modified to build with fewer spaces than what are required under today's code.

Dan Folke, Town staff, came forward. He explained if the outcome of today's Workshop indicates that Council would like to see the applicant move forward with some of these ideas he will work out some of the fine details between now and the next hearing some of the items discussed by Bill Spikowski.

Mayor Hughes asked for clarification between a 4 COP and 4 COP-SRX? Dan replied that the 4 COP would allow a license for a bar or restaurant. The SRX is just for a restaurant. Mr. Wiebe came forward and explained that the SRX license requires 2,500 square feet of minimum restaurant space, 150 seats and 51% food sales. This license does not cost any money and you will receive if your establishment meets these requirements.

Dan Folke went on to review some of the conditions that would be established and modifications that would be made. He expressed that Staff would need direction from Council regarding the tattoo and body-piercing establishment. The last proposal had it not as an allowed use. The applicant would like to keep one. If Council would like to consider this some conditions could be made regarding the location and exterior impacts.

Vice Mayor Terry Cain commented that she sees a lot of good. She likes the buffering along Fifth Ave. She is happy with keeping the olive trees. She likes the wider sidewalks. She feels with the conditions mentioned by Dan Folke they will have more input. She feels comfortable with this and is excited about the three-year information on the parking. She indicated that this should be an eye opener. Mike Ciccarone came forward and mentioned which decisions he believes should be made today or outlined. He discussed the change allowing a greater mix of drinks to food (35%). He is unsure how this would be legally enforced, unless a provision is provided to allow for the right to audit the books or provide a certified financial statement at the end of the year. He feels that this needs to be built in. It is not clear to him if the methodology for the parking calculations has been determined. Any concerns regarding this matter should be given some direction. He mentioned that they did not want a lot of surface parking and did not want the parking garage. He asked what they would like to see along Fifth Ave? He feels a visual look needs to be determined. He suggested that these issues need direction to staff. The Agreement will be written to accommodate the agreement of the parties in the end.

Council member Van Duzer commented that this plan offers good benefits to the citizens of the Town. The sidewalks will be beneficial and the use of the gazebo with elevator. He feels with the use of conversations today the Staff should be asked to work with Mr. Wiebe closely to come back with a Master Concept Plan including today's conversation.

Council member Thomas sees a lot of good on the plans. Mr. Wiebe has made a lot of concession to the Town that the Town really needs. He sees it coming close to the finalization of an agreement. He mentioned that Phase III is only to be built, if Phase IV is approved. He does not agree with the concept of those people coming to the hotel and parking for their entire stay. Phase IV and Phase III go together. Parking must be resolved.

Council member Rynearson feels that this is a good plan, but feels there are too many hotel rooms. 65 units are too many. He would also like to get some definition on what the old Helmerich Plaza will be used for.

Mr. Wiebe came forward and addressed the issue of the Helmerich Plaza. He replied that this will be a full-fledged restaurant operating as such, but will allow entertainment in different directions. He would like to see many age groups involved. This will be a multi-purpose building. The neighborhood will not have to worry. He will take every effort to maintain peace and quiet.

Vice Mayor Cain likes the idea of the parking study. Everything being discussed is in the future. This allows time to see how the parking does evolve.

Council member Rynearson feels that there will be a lot of walking traffic. He does not feel that these hotel units will create that much traffic.

Council member Van Duzer feels that the location of this area is favorable for a density increase. He feels that this will be logical. Those who want to leave the island will be able to jump on the bridge and exit the island without adding to the traffic issues.

Council member Thomas feels that the density at this particular area affects the whole island. The people who live on the south and north end must pass by Seafarer's Mall going off the north end.

Mayor Hughes commented that Vice Mayor Cain and Council Van Duzer seem to be in favor of accepting the Master Plan as it is presented. All Council members have made very positive comments. Council member Thomas has concerns regarding the parking and the recalculation. He has a different view as to the way the proposed hotel will impact traffic. Council

member Rynearson has a concern about the number of hotel rooms and concerns about the continued uses in the variety store. Mayor Hughes expressed that his position is essentially closest to Vice Mayor Cain. He asked staff to come up with some alternatives for the buffer along Fifth. He would also like staff to work with the applicant regarding the percentage of food consumption.

Some discussion was held between Council and Mr. Wiebe regarding his intent for food sales. Town Manager Segal-George replied that under the Town's regulations to be a restaurant you must sell 51% food. If you do not sell that much food you are not a restaurant but a bar.

Dan Folke went on to explain that Mr. Wiebe has an approved restaurant on the third floor. He can have a COP with a restaurant. No matter what kind of license he has he is only able to do a restaurant with the current zoning and a COP. He must have the appropriate license, which allows him to serve liquor in a restaurant. He is suggesting that the condition be re-written to state that this will approved for a bar, but he will have 35% food with a menu available.

Town Manager Segal-George reviewed the deliverables to Council for April 15th. There will be a zoning resolution, (2) revised Master Concept Plans and a developer's agreement.

Mayor Hughes thanked the applicant and staff for a good presentation. He concluded the Workshop.

VI. CONSENT AGENDA

A. Review of Financial Reports: January 2002

B. Proclamation: Fishing Tournament

C. Approval of Minutes: March 4, 2002

Mayor Hughes began by reading the Proclamation.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to accept the Proclamation: Fishing Tournament, which is Item B on the Consent Agenda.

VOTE: **Motion passes unanimously.**

Mayor Hughes asked for the Proclamation to be accepted. The creator accepted this proclamation and thanked everyone. He has never been honored in this way. He expressed that this is a second year event. They are looking forward to making this a much bigger tournament in the future. The whole City of Fort Myers Beach is involved. He looks forward to seeing everyone there.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to approve Consent Agenda Items A & C.

VOTE: **Motion passes unanimously.**

VII. ADMINISTRATIVE AGENDA

A. Discussion of Nextbus

Chris Swenson from CRSPE came forward. The Nextbus is a technology using a combination of global positioning, Internet, along with wireless data transfer. This gives those who are standing at the Trolley the ability to know in real time when the Trolley will arrive. He expressed that they have met with Lee Tran, Nextbus and Navtrack. The first step was to take a look and be sure that the costs were in line. He pointed out the capital costs and annual operating costs. He explained that the capital costs come to \$295,000.00 and operating cost are \$28,400.00 net. The gross annual operating cost would be about \$44,000.00. Last time they were present a cost figure was presented in the amount of \$100,000.00 per year for 5 years. If the Nextbus equipment is leased the capital cost would come out to about \$102,00.00. The costs are in line with where they felt they would be.

Next the likely revenues were reviewed. Some problems existed, because no one has ever done this. The actual software is being developed and should be ready in about June. Some reasonable assumptions were made; transit advertising was reviewed and were able to come up with a range of potential revenues. The ranges were from a low annual return to the Town of about \$15,000.00 to a high annual return of approximately \$50,000.00. This would put the net annual cost somewhere between \$50,000.00 and \$80,000.00. There is a very good probability of grant monies being available for the capital costs.

Chris mentioned that various options exist. Option one would be to go forward with Nextbus without consideration to the cost. This is not the course he suggests that they take. He suggests that the consultant for the larger study pursue the grants and additional advertising. A more firm dollar figure can then be brought back to Council for consideration.

Mayor Hughes clarified that it would be acceptable to include this in the upcoming study? Chris Swenson replied absolutely. This would be a transit enhancement.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to move the idea of Nextbus into the larger study and look into the potentiality of grants.

Discussion: Council member Van Duzer asked if this is the conclusion of the study for Nextbus? Chris Swenson replied that this is correct.

Council member Van Duzer commented that he just received the information of Nextbus and would like more time to review.

Chris Swenson commented that there is nothing in the report that a verbal synopsis has not already been provided on.

Town Manger Segal-George explained if concerns exist she will be bringing forward the whole package on the big study on April 1st. It is something that can be modified on April 1st.

Motion withdrawn by Council member Howard Rynearson and Vice Mayor Terry Cain.

It was decided that this issue will be addressed at the next Council Meeting of April 1st, 2002.

B. Bid Award: Hyde Park/Mid Island

Dan Folke came forward. He explained that a memo has been provided to Council, which summarizes the three bids that were received on the Hyde Park/Mid Island Drive storm water retrofit project. The bids were received on March 13, 2002. Cougar Contracting Specialties came in at \$295,000.00. J.P. Murphy Incorporated came in at \$252,982.00. UTELCO was the low bid coming in at \$194,625.07. He discussed the letter from Bill Morris who was also a reviewer of the bids. Both Dan Folke and Bill Morris feel the bid should be awarded to UTELCO. Bill Morris indicated in his letter that he felt UTELCO should be asked to provide the payment and performance bonds. He is also recommending that a budget contingency of 15% be added to the construction budget for changes due to unknown or unforeseen conditions.

Council member Thomas questioned if UTELCO is accepted today, and the references do not come in acceptable by April 1st where does this leave them? Do they change the bid? Dan Folke replied that they would be sure all these items were taken care of before they entered into the contract.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to accept UTELCO as the low bid for Hyde Park/Mid Island Drive storm water retrofit project subject to a positive review of their insurance bonding and background.

Discussion: Mayor Hughes questioned if there are problems with UTELCO's background would they be able to go back out to bid or must they go to the sole remaining? A huge differential in price exists?

Town Manager Segal-George replied that they can always go back out to bid.

VOTE: Motion passes unanimously.

C. Bid Award: Old San Carlos Project

Town Manager Segal-George reviewed the information in Council's packet.

Richard Woodruff from Wilson Miller came forward. He explained that Adolfo Gonzalez, who is the engineer on this project, is also present. He explained that bids have been received and the bid tallies are shown on the document dated March 18, 2002. Wilson Miller has evaluated the bids opened on March 6, 2002 and offers the following for consideration. The Four bidders were Westco, UTELCO, Ajax Paving and Cougar Contracting. Two were non-responsive. The original opinion of probable cost from Wilson Miller would be a base bid of 1 million - 650 thousand and change. An alternate bid for the plaza was for \$95 thousand and change. A total opinion of cost would be \$1, 745, 207.30. This does not reflect the entire cost of the project. Some items could be purchased outside of the project to save additional costs. The bids came in with Westco bidding \$1,374,401.72. They are the low bid on project. UTELCO is

second, Ajax is third and Cougar has the high bid. He indicated that they are pleased to note that the opinion of probable cost was covered by three of the bidders. He commented that they feel confident their forecasting of cost was reasonable. The corrected base bid reflects changes in contract line items, quantities described in addendum one and does not materially effect each bidders overall price proposal in the ranking of the bids. He explained that Wilson Miller conducted a reference check on Westco including a check of certain sub-contractors. An evaluation of each bid was performed. The result of the reference checks and bid evaluation are included. He indicated that the attached memo should be sufficient for the Town to determine if Westco's past project experience is comparable to the Old San Carlos Streetscape Project with respect to complexity and similarity. Wilson Miller would need to perform a similar reference check and evaluation of the other bidders, if the Town does not select Westco Inc.

Richard Woodruff went on to give Council a clear understanding of what they are allowed to proceed with. He explained that the owner reserves the right to reject any or all bids. They can also reject a bid or any bidder if they believe it would not be in the best interest of the project to make an award to this bidder. He pointed this out because they are not required to award the contract to the low bidder. Price, experience, sub-contractors, complexity and similarity are all legitimate criteria. Town Attorney Dick Roosa agreed with the criteria.

Richard went on to discuss the performance of Westco. Wilson Miller did ask for references. He explained that Council must determine if the projects of Westco meet the specifications mentioned earlier. Wilson Miller found that the references came back favorable. He explained that Wilson Miller had worked with them on College Parkway and would not have as favorable of a recommendation. He expressed that they are questioning if their past performance is on projects as complicated as Old San Carlos. He explained that he has spoken with the Town Manager almost daily since the bids have come in. She continues to ask if Wilson Miller has found that Westco has done work as complex as this project? Richard replied that they have performed work that contains almost or all disciplines as contained here. Those projects were not similar in his opinion. He is reminding Council that they have several criteria to award the bid. He expressed that Wilson Miller and Town Manager Segal-George do not recommend the low bidder because their track record does not show that they have performed jobs as complex and as similar as this project.

Town Manager Segal-George indicated that she is asking Council to reject the low bid. They have been unable to document that Westco has done projects of the same complexity and similarity of the above referenced project. She asked Council for permission to check the references from the second low bid received from UTELCO. If the references are acceptable they can bring the contract to the April 1st meeting for possible award by Council. She expressed that herself, Deputy Town Manager Gucciardo, Damon Grant and Dan Folke all believe that Council should reject the low bid. She expressed that they are not trying indicate that Westco is not a good contracting firm. They have concerns regarding the complexity. This is a very complicated job. Every major utility line for the island comes thru Old San Carlos.

Richard Woodruff expressed that they are not asking Council to award the bid to anyone today. They are just asking Council to reject the low bid and provide the authorization to move to the second bid to evaluate their qualifications.

Council member Van Duzer asked how long it would take to do the study of the second bidder? Richard Woodruff replied that this information could be provided at the next Council Meeting.

Council member Thomas would like to see this come back to Council after further study

with UTELCO. He would like to see a study of the percentage of subcontractors used.

Council member Rynearson asked if UTELCO will have a general contractor onsite? Town Manager Segal-George replied that they will have someone present. Richard Woodruff indicated that this is true of any bid awarded. This is a requirement.

Mayor Hughes feels that they are being inconsistent with what was just done with Morris -Depew. He does not see what is accomplished by deferring to April 1st.

Council member Rynearson asked if they defer until April 1st will this hold the project up? Mayor Hughes replied that it may. Town Manager Segal-George did not feel it would. Richard Woodruff indicated that it may delay it up to two weeks.

Council member Van Duzer does not want to delay this project one day. He questioned why they did not receive the information prior to today? Richard Woodruff replied that as of 11:30 a.m. - Noon today they were still checking and verifying references. He takes full blame for the delay of information to Council.

MOTION: Made by Mayor Daniel Hughes and seconded by to a.) reject the low bid from Westco, Inc. b.) Award the bid to UTELCO, Inc. in the amount of \$1,456,370.75 subject to Wilson Miller conducting a reference check to include sub-contractors. Wilson Miller and staff to be satisfied with the results.

Discussion: Council member Thomas feels that the complexity of this issue should be studied before they vote on it. He can support the first part of the motion, but cannot support the second.

Council member Van Duzer supports this motion because it extremely important to get this project moving now. He feels that they must go ahead. If the references are negative they must come back to Council on April 1st.

Town Manager Segal-George expressed that UTELCO has listed a number of road projects. They have not inquired any further into this.

Richard Woodruff replied that if any questions exist with UTELCO and the reference check they will move on to the next bidder, etc. Mayor Hughes agreed that this would be acceptable.

VOTE: **Motion passes unanimously.**

6:00 p.m. - 6:30 p.m. Dinner Break (Agenda Items E, F, H and a portion of Council Member Items and reports were discussed prior to the 6:00 p.m. Dinner Break)

Mayor Hughes allowed Richard McConville from Westco address to Council prior to Public Comment. He is the President of Westco Builders, Inc.. He indicated that they were somewhat concerned about the process they witnessed for the Old San Carlos bid selection. The advertisement for bids clearly states that each bid must be accompanied by a cashiers check or bid bond. He expressed that the second low bidder at the bid opening did not have a bid bond in

their package. He is unsure why the consultant would attempt to disguise this fact in the bid tally presented to Council. No security was provided and evaluating their bid is improper.

He expressed that Westco had remodeled the airport without losing one passenger or aircraft. Shop owners, utilities and a variety of issues took place on this project. He feels that the wrong questions had been asked. They gave Wilson Miller what they thought were the most appropriate credentials. He indicated that they have strong recommendations. He expressed that they are fully capable of performing the work and are prepared to complete the project.

Mayor Hughes expressed to Richard McConville that the only information the Council had before them was the recommendation of the Consultant and Town Manager to reject their bid. It is unfortunate that his comments could not be heard before a decision was made.

Mayor Hughes questioned the information raised by Mr. McConville regarding the lack of bid bond for UTELCO? Town Manager is not comfortable answering this question. She is unsure of the answer and explained this to Mr. McConville in the hall.

Mayor Hughes questioned if Mr. McConville is correct where does this leave them? Attorney Dick Roosa replied it leaves them with third place. If they are not a qualified bid they must go on to the next bid.

Council member Bill Thomas feels that Wilson Miller came in unprepared and gave information at the last minute. He feels that they should reconsider the motion made earlier.

MOTION: Made by Council member Bill Thomas and seconded by Mayor Daniel Hughes to reconsider.

Discussion: Deputy Town Manager Gucciardo explained if Council is comfortable with the second choice being qualified, and if it is determined they are not automatically disqualified Council will not need to go any further. If this is not the case Council has the opportunity to look at all three.

Council member Rynearson feels that the consultant should re-check the first bidder.

Council member Van Duzer feels that they have made their decision. If no flaws are present with the second bidder they should move forward with the decision made.

Council member Thomas feels that they acted too fast and stands by his motion.

Vice Mayor Cain pointed out that Westco primarily does supervision, administrative, management and subcontracts. She commented that it is her opinion they were looking to have someone on the job to oversee it and be sure it gets completed correctly and on time.

VOTE: **Motion fails 3 to 2. Council member Rynearson, Council member Van Duzer and Vice Mayor Terry Cain dissenting.**

D. PUBLIC HEARING: Resolution 02-13: Old San Carlos Assessments

Mayor Hughes began by reading the resolution. He opened the public hearing and asked if anyone wished to address Council.

Tim Anglin came forward to address Council. He thanked Council for coming down to see his problem with a particular parcel on Old San Carlos Blvd.. He is not questioning the methodology. He feels that the Winds parcel is a unique situation. He asked Council to keep an open mind in how they deal with irregular parcels. He feels that there should be a little bit of bending to see how this will fit into the overlay.

Anita Cereceda came forward from the Times Square/Old San Carlos Improvement Alliance. She came forward to express that everyone is very enthusiastic with the project going forward. She would like to know the reasoning behind the division of the Town's responsibility vs. the merchant's responsibility. She would also like them to consider the public benefit. The \$95,000.00 plaza is a solely public activity. The plaza should be looked at as a separate payment in the overall contract.

Carol Cunningham began by discussing the division. Originally an option existed where the property owners were paying about 20%, DRA paying 30% and the Town paying 50%. At that time it was the agreement of Council to tie the property owners assessment to the portions of the project that most clearly triggers their benefit. A good way to allocate would be to have the property owners pay for the new items. The Town and DRA would pick up the cost of the replacement items and infrastructure. The plaza is being created not only as a public benefit, but is being seen by the designers as the key element to draw people down the street. A focal point needed to exist. The properties the length of the street would also benefit from the improvements.

Carol commented on the irregular shaped parcel. The methodology chosen is specifically recommended in Chapter 170, which is designed for this type of public improvement and benefit. The method used most successfully is a proration according to front footage. Many of the properties are irregular and it is impossible to establish a consistent parcel size to use as the equivalent. Her opinion is that the proration according to front footage is the only fair way. To make any exception would require a lot of thought and diligent findings on the part of the Council.

Vice Mayor Cain pointed out this piece of property has an incline problem.

Town Manager Segal-George replied that when you attempt to fix roads and property owners have grade separation problems it is their responsibility to meet the road. This is typically how this type of project would be handled. Bill Spikowski and Wilson Miller worked with the property owners on both sides of the street to come up with ways to deal with grade separation problems. She explained that Tim Anglin had not received the kind of response he was suppose to receive from Wilson Miller. She found this out two weeks ago and asked them to get into contact with him. They still have not and have been too involved with the bid situation. She will make sure that they do. This is a different issue than the assessment issue.

Bill Van Duzer commented that the front footage in this instance is not fair due to the square footage of the site. If they went back and took all the properties by the square footage would it be a terrible undertaking? Carol Cunningham replied that it would be very difficult.

Council member Thomas commented that any projects completed by government usually go by frontage.

Mayor Hughes indicated that this decision cannot be made this evening and must go to

public hearing. He clarified if they were adopting this resolution and setting it for public hearing? Attorney Dick Roosa replied that this is exactly what they were deciding.

Attorney Dick Roosa commented on assessments. The real measure of an assessment is that it may not be greater than the increase in value to the property. He explained that they have made provisions for equitable and fair distribution by reducing the total cost and allocating only a portion of the cost. The unusually shaped parcels lose their argument because the Town is picking up a portion of the cost.

Council member Bill Van Duzer questioned that the projected project cost was \$1,958,000.00 and is this going to be adjusted accordingly when the assessments are complete? Mayor Hughes replied that the contract worked on earlier is not 100% of the cost. Lighting, benches, etc. was pulled out of the original bid to be purchased by the Town directly. Carol cannot tell the exact cost of the project at this time. Mayor Hughes replied to Council member Van Duzer if the total cost is less than the cost upon which the initial assessment was based there would be a reduction in the assessment.

Vice Mayor Cain questioned Option 1. She asked for clarification on the new items? Carol Cunningham replied that all new items include signing and marking, irrigation and landscape. Plus a portion of the plaza.

Mayor Hughes explained that Option 1 indicates the property owner will pay for all new items including 20% of the plaza alternative. The Town and DRA will pay for all replacement items and parking meters.

Town Manager Segal-George questioned the split between the Town and DRA. This was an issue which also required a decision.

Carol Cunningham replied that there were two items she was asked to focus on. One was the two options for the cost that would be paid by the property owners. This would be for all new items with 20% of the plaza or all new items with 50% of the plaza. It can be decided between these two. A second decision needs to be made regarding which proportion of the remainder the Town pays and the DRA pays. This can be split 50/50 or the original split recommended was 62.5% and 37.5%.

Mayor Hughes commented the 20% and 50% should be looked at first (**Tape 2 stopped recording at this point**)

(**Tape 3 began here**) John Richard came forward to address the assessment issue. He feels that the Town has hired a very good consultant and they have come up with a very fair scenario. In his opinion he does not feel that a triangular piece of property on three frontage streets should get preferential treatment.

Mayor Hughes closed the public hearing.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to proceed with Option 1 - Property owners pay 20% of the plaza alternative.

Discussion: Council member Bill Thomas favors Option 2 - 50% for property owners. This will benefit all property owners from Times Square to the inter coastal. He feels that the property owners will benefit the most.

Council member Rynearson supports Option 2. He feels that this will draw tourists and draw the public down through these stores.

Vice Mayor Cain supports Option 1. She feels that property owners there will be putting a lot in to the street. This will be a public area for people to come and sit around and enjoy the view.

Council member Bill Van Duzer feels Option 1 is fair. The plaza at the end of the street will benefit anyone who walks up and down the street or any people who participate in the Town. He believes this is a fair share.

Council member Bill Thomas commented that the citizen taxpayer on Fort Myers Beach will get use of this beautiful plaza. Money will be spent in Times Square and along Old San Carlos. He believes the businesses in this Town with this plaza will benefit more than the 50% that they are being asked to pay.

Mayor Hughes indicated that Council is not voting on the division between the Town and DRA. In either event the property owners are paying for all new items.

VOTE: Motion passes 3 to 2. Council member Howard Rynearson and Council member Bill Thomas dissenting.

Mayor Hughes mentioned the allocation between the Town and the DRA. He asked the Town Manager to give the alternatives. Town Manager Segal-George replied that this is an internal issue and she does not need this for the assessments.

Mayor Hughes expressed that the DRA funds came from the property owners in Times Square. Deputy Town Manager Gucciardo explained a large amount of the funds are from the County in the DRA. The taxpayers outside of Times Square do not contribute any money to the DRA. Council member Rynearson indicated that there are stipulations where this money can be spent.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to adopt the resolution as it is presented to Council.

VOTE: Motion passes unanimously.

E. PUBLIC HEARING: Community Development Block Grant

Deputy Town Manager Gucciardo expressed that he will meet with County staff on Friday to review the list of options, under the affordable housing umbrella, to be looked at. He is asking for more information on the programs for better energy efficiency, code enforcement and funds to renovate rental properties. The intent is to bring back more specificity for the next public hearing.

Mayor Hughes announced that this is a continuation of the Public Hearing for the Community Development Block Grant Program. A final hearing will be held on April 1st, 2002.

He asked if anyone in the audience wished to address Council on this matter? None was heard. Public hearing was closed.

F. Discussion and acceptance of audit services proposal for 2001/2002 fiscal year

Deputy Town Manager Gucciardo expressed that at the last meeting the proposal was given to Council with regard to the ongoing audit services for the Water Utility. He explained that this information is the ongoing audit services for the Town in general. This proposal comes from the same company that has been the auditor since the Town's inception. Janeen has been dealing with auditors and has indicated a great deal of comfort. Good communication exists and she feels as if she is learning from them. The process is getting more complicated each year due to the growth of the Town.

MOTION: Made by Council member Bill Thomas and seconded by Council member Howard Rynearson to accept the proposal for Schultz Chaipel & Co for the 2001/2002 fiscal year.

VOTE: Motion passes unanimously.

G. Laguna Shores: Lagoon Access

Hans Wilson is present on behalf of Laguna Shores and the Town of Fort Myers Beach. Before Council is a proposal he has drafted, which takes the project beyond the completion of a feasibility study. This will allow them to proceed with executing applications for permits and getting to the point of having a buildable project. He has met with the association board. The three options were reviewed as contained within the report. The board has elected to go with the option recommended by his firm. This would be the lowest cost and is the historic channel through the shoal area from Big Carlos Pass to Buccaneer Lagoon. He and the association discussed some various components regarding funding. However, the consensus reached would be to have an executable project in hand. This is located in the Estero Bay aquatic preserve. He indicated that this would establish a permanent navigation route from Big Carlos Pass to Laguna Shores. This is a challenge. He can list a number of benefits for the project. Mayor Hughes expressed that this looks as if it will be a fixed price contract. He went on to read that the contract indicates the fee will vary depending on the extensiveness of the regulatory agencies. This language concerns him. He indicated that the Town really does not know what the amount of the contract is. Attorney Dick Roosa replied that it is correct

Hans Wilson explained that there are a tremendous amount of unknowns. He tries to get actual figures as much as possible. He has no objection to coming back to Council for a change order if his totals exceed the proposal.

Mayor Hughes asked for the definition of a miscellaneous expense? Hans Wilson gave an example of a request to travel to the east coast to confer with an association doing exactly the same type of project. This would be through the request of the association.

Lou Marrone, President of Laguna Shores Association, came forward. He hopes that Council will adopt this, so they may move forward with the legal aspects. Laguna Shores will not be Laguna Shores if they lose the navigational rights. Two people have sold their homes, because they had large boats and did not feel the dredging would ever be completed. Property values are an important aspect. The water quality is continuing to worsen. Habitat is present, which they support. This location is unique. Laguna Shores feels the information provided by

Hans Wilson will benefit the land values for all of Fort Myers Beach.

Lou Marrone went on to express that Laguna Shores realizes they will have to share in the cost of the dredging and other costs. This will be several years before it becomes a reality. This report needs to be approved, so they will know their direction.

Town Manager Segal-George replied that Laguna Shores is trying to determine if this is permissible. The Town would be pursuing the permit. Laguna Shores is asking the Town to pay 100% of the engineering costs.

Council member Van Duzer asked how they would address the costs of the project? Lou Marrone replied they would try to raise enough money, particularly from the owners on the canal that would most directly benefit from this project.

Town Manager Segal-George expressed when they embarked down the path with Marina Towers, Carlos Point and Laguna Shores the Town Council said they would pay the engineering. It would be up to each of the effected landowners to pay for the actual construction work. This is how it has worked for Marina Towers and Carlos Point. The Laguna Shores project is more difficult.

MOTION: Made by Council member Bill Thomas and seconded by Council member Howard Rynearson that the Town will approve and accept the proposal as submitted, subject to being incorporated into a contract.

VOTE: Motion passes unanimously.

H. Committee Member Appointments: Community Resource Advisory Board

MOTION: Made by Council member Bill Thomas and seconded by Vice Mayor Terry Cain to increase the number of the Community Resource Advisory Board to 10 members and accept both applicants, which will be effective upon adoption of an amended ordinance.

VOTE: Motion passes unanimously.

VIII. COUNCIL MEMBERS ITEMS AND REPORTS

Council member Bill Van Duzer - Asked about the ball game on Wednesday night? Deputy Town Manager Gucciardo indicated that you can show up at the ballpark at the ticket window by the Will Call Booth.

Council member Van Duzer commented that he went to the Historical Society Workshop (March 5) where they are working on a brochure.

He went to the bid opening for Old San Carlos on March 6 at 3:00 p.m..

Attended the Short Term Rental Task Force Meeting on March 6.

Attended the Chamber Board Meeting on March 6. He spoke about the Town staff and Council. They were very responsive and nice.

Attended the ribbon cutting for the festival on March 9th.

Was a guest speaker at the Rotary Club on March 14. Transportation and traffic problems were discussed along with the new lights on Buttonwood.

Attended the Chamber luncheon on March 4 and read the Proclamation for Fran Myers.

Attended the Volunteer Dinner on March 13th.

Vice Mayor Terry Cain - Attended a ribbon cutting for the Winker Road extension.

She thanked staff for an outstanding job at the Volunteer Dinner. It was great. She had a great time.

She has been in touch with one of the owners of the Kelly Higgins property. The option for the Realtor expires on March 30. She will keep in close contact with the owner and would like to move forward with the property appraisal.

Town Manager Segal-George explained that she understands the owner has an appraisal. If the Town could see this they may be able to piggyback on this appraisal. This would be easier than starting at the beginning.

Vice Mayor Cain would be willing to ask to see this appraisal to get things moving more quickly.

Council member Bill Thomas - Represented the Town at the concert at Santini Plaza.

He participated in the Shrimp Parade. This was a huge success and everyone should be congratulated.

He attended the Florida League of Cities Meeting in downtown Fort Myers.

Council member Howard Rynearson - Would like to bring back Burandt's request.

When he withdrew his motion last week he was under the impression Bobby Stewart would be working something out with him. He understands that this is not the case.

MOTION: Made by Council member Howard Rynearson and seconded by Mayor Daniel Hughes to reconsider the denial and set a hearing for the Burandt case.

Discussion: Vice Mayor Cain played phone tag with Mr. Burandt. She does not feel that she would ever agree to no sprinkling.

Council member Van Duzer finds it difficult to vote in favor until he knows the options. Everyone else in his position has had to do sprinkling and he is trying to get out of sprinkling all together.

Town Manager Segal-George expressed that she had a conversation with Bobby Stewart last week. Bobby Stewart spoke with Mr. Burandt and his architect after the hearing. Other alternatives exist, but could be costly. Mr. Burandt and his architect feel that there are no good alternatives available to pursue.

Mayor Hughes would support this motion, because he was under the impression when this request was denied there were other alternatives to Mr. Burandt.

VOTE: **Motion passes 4 to 1. Council member Bill Van Duzer dissenting.**

Council member Rynearson went on to state that he would like to pull out of Chapter 34 all the verbiage on house moving and the Architectural Review Board. Enact Smith and Clearwater.

Town Manager Segal-George explained that some regulations with regard to house moves are not very comprehensive. Very limited ability exists to deal with this situation. They must bring them up to code with regards to FEMA, but do not have to bring them into compliance with the new building codes and hurricane standards being brought forward. These issues have come up a lot within the last few years. If someone pursues a historic designation this property would not have to comply with the same rules and regulations. Bill Spikowski is working on some limited language, but is not in place as of yet. Would Council like to see some regulations with regards to these kinds of issues? If so, should they move ahead of the rest of Chapter 34? Do they want them moving fast enough to cover some of the present situations? This is where the Smith vs. Clearwater comes in. (At this point it was decided to break for the 6:00 p.m. Dinner Break)

Town Manager Segal-George commented that they are at a point of determining whether the moving of houses and the Architectural Review Board gets moved before Chapter 34. These are two separate issues. The Architectural Review Board can move separately ahead. The larger issue is the regulation with regard to the house moves. A couple is ready to move. She explained if they proceed with the Smith vs. Clearwater path the Town would be putting people on notice. Regulations will be promulgated as quickly as possible.

Attorney Dick Roosa replied that the LPA needs to move quickly on the house moving.

Town Manager Segal-George indicated if you move a house right now on Fort Myers Beach you would not have to meet the same regulations that you would if you built a house on Fort Myers Beach. Council member Van Duzer replied that this is correct.

Attorney Dick Roosa expressed that Council needs to ask the LPA to expedite the house moving portion of Chapter 34.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to request the LPA to expedite the review and recommendation on the house moving. Town Attorney Dick Roosa is directed to prepare a Smith vs. Clearwater resolution regarding this issue.

VOTE: **Motion passes unanimously.**

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to take the Architectural Review Board out of Chapter 34 and move it ahead.

VOTE: **Motion passes unanimously.**

Mayor Daniel Hughes - Reported at the March 11, 2002 meeting the Deputy Manager asked Council to add an agenda item to request the Lee County Department of Transportation to extend the experiment. A letter was drafted and sent out that same day. He was notified this has been accepted. This is good news. Council member Van Duzer noted that this will be held over until April 7th.

Went to the CRAB meeting from the direction of Council. It was a good meeting.

All Council members went to the Florida League with the exception of Council member Bill Van Duzer who went to the Chamber.

Gave a speech to the Women's Council of Realtors. He was on the agenda with Commission Albion and Mayor Humphrey. He spoke in regards to the positive effects the Town

of Fort Myers Beach has had as a result of the adoption of the property maintenance code.

The Volunteer Dinner was very well attended. He feels that all had a good time.

IX. TOWN MANAGER'S ITEMS

Deputy Town Manager Gucciardo - He explained that the Fire District came in to get a development order to put the building on that piece of property. When the Council granted this approval it was done with certain conditions. Some of these conditions were brought forward by the Fire District. In particular they brought forward the idea of putting in a buffering fence between themselves and the neighbors. As they went into construction the cost and logistics of putting up this fence were going to be beyond the original thoughts. They came to the Town to ask if this condition could be administratively changed. No process exists to undo conditions in a development order already granted. The Fire District came forward with the idea of going through the process of asking for an amendment to the development order. They would build to the new standard they were looking for without the fence with different vegetation. Once this came to Council, and if the change was not granted they would go back and build to the original order with their own money. The neighbors signed off that they did not have any problem with the new design. He has been hearing that the Town is charging or forcing the Fire Department to spend extra money. These were conditions brought forward by the Fire District and they decided to make the changes. The Fire District was not charged.

Council member Van Duzer discussed a billing from Rob Fowler. Deputy Town Manager Gucciardo expressed that he would like to see this document. Council member Van Duzer will provide.

Town Manager Segal-George replied that from the beginning the Town moved everything along quickly for them to build this structure. They were never charged for any of this work. She explained that the Town is happy to help them get their project going. The Town always helped anyway they could.

X. TOWN ATTORNEY'S ITEMS

None.

XI. PUBLIC COMMENT

Raymond J. Thomas from 190 Aberdeen came forward. He discussed problems with the double traffic lights. He explained that on Sunday at 1:00 p.m. they waited for 1 hour 45 minutes to get to one particular spot.

Robert French commented on the cars from the right lane swinging into the second lane where they did not belong. He feels that the people who engineered the changing lights should have divided the two lanes with poles. A patrol officer needs to be down at the end to determine which line will continue to move onto the bridge. Nothing will ever correct the problem until they experiment with making three lanes over the bridge. The right lane going to the north end of the island, second lane to the south end and third lane is northbound. If you do not want the traffic close the bridge completely.

Mayor Hughes indicated that three lanes has been discussed. The Fire Department opposes this, because they must have a lane to get through without having the total width of the bridge being used up by traffic.

XII. ADJOURNMENT

The meeting was adjourned at 8:32 p.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