FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 3, 2002
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Regular Meeting of June 3, 2002 was opened by Mayor Daniel Hughes on Monday, June 3, 2002, at 6:30 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 and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY FATHER ROBERT MURPHY

The invocation was given by Father Robert Murphy.

IV. PUBLIC COMMENT ON AGENDA ITEMS

Eve Haverfield came forward as Director of Turtle Time. The Council will be revisiting the beach raking time element of LDC - Chapter 14. She indicated that they do not have a problem with beach businesses setting up their chairs at 8:00 a.m.. They do have problems with the beach being groomed before they have had time to survey the area. She will be in the audience to answer any questions by the Council.

V. CONSENT AGENDA

A. PROCLAMATION: Chamber of Commerce Week
B. APPROVAL OF MINUTES: May 6, 2002
C. REVIEW OF FINANCIAL REPORTS: April 2002
D. REVIEW OF OFFSHORE POWER BOAT RACES MEMO

Council member Rynearson pulled Item D.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to approve Items A, B, and C of the Consent Agenda.

VOTE: **Motion passes unanimously.**

Mayor Hughes announced that the Council has just approved a Proclamation for Chamber of Commerce Week. He asked Scott Gregory and D.J. Petruccelli to come forward. He proceeded to read the Proclamation.

Council member Rynearson asked for Julia to come forward and explain her memo regarding the Power Boat Races. He feels this needs to be discussed.

Julia Campbell came forward and expressed that she handles special events for the Town. Staff was burdened with the Fort Myers Beach Offshore Power Boat special event application. 21 days advanced notice is required in order to have to a special event permit. Despite several phone calls they did not actually receive the permit until May 7th. The event took place on May 16th to May 19th. Discussion with the Town Manager and Deputy Town Manager expressed concerns with not only the paperwork and permit, but safety issues. Staff was required to do extra on the part of the applicant for missing and incorrect information on the application. She personally received complaints regarding behavior during the parade. The other area of concern was regarding mobile vending. The memo is an outline and reminder of the type of things to be considered for next year.

Council member Van Duzer feels that the Council should be unanimous in a decision to send a letter to the head of the group for the Off Shore Power Boat races to express the concerns from the Town of Fort Myers Beach. He suggests that they have a committee, in the very near future, to discuss the problems and solve them before race time next year.

Council member Rynearson agrees with Council member Van Duzer. He suggests that a reminder be sent at race time next year that this will be not be tolerated.

Mayor Hughes will send a letter to the head of the organization and include a copy of the memo from Julia Campbell.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to approve Consent Agenda Item D.

VOTE: **Motion passes unanimously.**

VI. ADMINISTRATIVE AGENDA

A. Introduction of Ordinance 02-04: Land Development Code, Chapter 34

Bill Spikowski, Planning Consultant for the Town, came forward. He expressed that this is the second of four meetings where this ordinance will be discussed. The first public hearing was before the Local Planning Agency on May 21st. The LPA unanimously recommended approval for each of the portions of the ordinance. Formal public hearings are set for June 17th and June 24th.

There are three portions of this ordinance and they are all part of Chapter 34, The Land Development Code. The first section is Exhibit A, which is building relocation standards for the moving of homes. Under the new version the Town would gain authority over suitability determinations regarding the location. The second part of the ordinance, which is Exhibit B is the Commercial Design Standards. Currently there are architectural design guidelines that apply only in the core area overlay district. These have been in place since 1996. It is very difficult to enforce. The new Commercial Design Standards take the same concepts and make them into much more objective standards. These will no longer be guidelines, but mandatory standards. These would be within the ordinance and not just adopted by resolution.

He added that frequently discussions have taken place on how to enforce this type of regulation. The Council had asked him to look into an Architectural Review Board some time ago. He had asked Council to hold off on this decision until the standards are developed. The current standards are quite objective and very specific. He indicated that these standards are so objective that they can be reviewed administratively, and he is recommending that this be tried. The way it is written up there will be two kinds of review of these decisions. In the case where the Town Manager determines for a property that is already properly zoned that the standards are not met by a particular design this decision would be appealed to the Local Planning Agency. He suggests that the LPA be given final authority on this type of situation.

He does not feel there will be many of these kinds of appeals. If the Council decides after trying this for awhile it should be done differently, it can be changed. The standards are very similar to the ones reviewed by Council for the Snug Harbor case.

Bill went on to the last part of the ordinance - Exhibit C, which is the drug paraphernalia ordinance. This was going to be a stand alone ordinance, but because it arguably regulates land use it was decided to adopt this as part of the Land Development Code and make it legally defensible. This ordinance takes the same definition of drug paraphernalia that is in the state law. This will allow enforcement by the normal code enforcement procedure.

Council member Rynearson would like to see the final appeal come to the Town Council for commercial and house moving.

Mayor Hughes asked for an optional clause. Bill Spikowski replied that he can draft the wording and have this language available for consideration at the next hearing.

Council member Van Duzer commented if the LPA is the appeal procedure for the decision made by the Town Manager he pointed out that she is the attorney for the LPA. He feels that this may make it a difficult issue. He is unsure if this will create a burden.

Council member Thomas commented if someone is requesting a variance on the Commercial Design Standards he would like the appeal to come to the Council. He does not see any reason why this should go to the LPA. Both Mayor Hughes and Bill Spikowski replied that on a variance it will already come to Council. The only matter that would go to the LPA and stop there would be the appeal of an administrative decision as to whether the standards are met. Council member Thomas would also like to see the appeal come to the Council.

Vice Mayor Cain likes the idea of letting the LPA try this for awhile. If it is a variance, the Council will still get the final say.

Council member Van Duzer commented that he does not want the Town Manager to have this job. He feels this should be taken off her shoulders. He wants an Architectural Review Committee to handle this matter and would like it to be established with four of five members of the community that have some expertise in this field.

Town Manager Segal-George explained that she has had to make these types of decisions for the past six years without any standards. By approving this the standards will be set. It makes it very easy for her to review and determine whether someone is obeying the rules or not obeying the rules. She agrees with Bill Spikowski and does not feel that there will be many appeals.

Council member Van Duzer feels the Town Manager has more important issues to deal with. Town Manager Segal-George replied that Dan Folke will be the designee handling this for her.

Council member Rynearson feels they need an Architectural Review Board with the qualified people to make the decisions.

Mayor Hughes is unsure if the need for an Architectural Review Board is really required with the standards having been set. He commented on the Architectural Review Board in Illinois. This board did not have the type of standards which have been set by the Town of Fort Myers Beach. This board was the first in the state of Illinois and was immediately attacked as being unconstitutional. Only general guidelines were set.

Council member Van Duzer commented on the house moving and added that he felt it will become an impossibility to move homes on the island. Bill Spikowski replied that this is not the way he sees this at all. He does not see this as a way to stop house moves and was not intended this way. It is an extra set of review with standards.

Town Manager Segal-George expressed that two moves have already been done under these rules, even though they have not been approved.

Council member Van Duzer commented on the vinyl siding. Bill Spikowski replied that vinyl siding will not be allowed on a commercial building, unless a person came in to get a variance or deviation. Vinyl siding is not as durable and will not hold up as well. He indicated

this was intentional. Council member Van Duzer feels the vinyl siding can look a lot nicer than some of the alternatives. If it is installed properly, it can meet the wind load requirements. He feels that this should be added in.

Council member Van Duzer has some concerns with the windows. Bill Spikowski will look into this matter.

Mayor Hughes read the ordinance. The first public hearing will be set for June 17, 2002 and the second will be on June 24, 2002.

B. Introduction of Ordinance 02-05: Harbor

Town Manager Segal-George announced that the changes in this ordinance were required from DEP.

Michael Poff came forward from Coastal Engineering. DEP reviewed the existing ordinance in place that was passed by Council back in 2000. Some inconsistencies in the documents existed. He added that this document is the Town's ordinance with changes to make it consistent with the Harbor Management Plan. He explained that DEP wanted to see an enforcement clause, which grants authority to the Harbor Master to enforce the plans and the permits. Some minor changes in definitions were corrected. The duties of the Harbor Master were explained more specifically. He would be happy to answer any questions from Council.

Mayor Hughes expressed some concerns regarding a lease? Town Manager Segal-George replied that the Town thought they would be getting a management agreement. As they have gone through the process DEP no longer feels it is appropriate to receive a management agreement, but instead will provide a submerged land lease. Ultimately, this is what the Town will get to allow the operation of the harborage. Mayor Hughes went on to read the ordinance. This ordinance will go to hearing on June 17, 2002 and June 24, 2002.

C. Introduction of Ordinance 02-06: Times Square MSBU

Mayor Hughes began by reading the ordinance. This was discussed by the Town Manager at an earlier meeting of the Town Council. The board agreed to add to the duties of this committee. The additional duties would involve a calendar of events and capital improvements for the MSBU area.

This public hearing will be held on June 17, 2002.

D. Times Square and Old San Carlos Improvement Alliance funding request

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to accept the report as offered to Council by Anita Cereceda for the Times Square and Old San Carlos Improvement Alliance and request a final report on conclusion of these projects.

Discussion: Council member Thomas would like to discuss the Back to School funding. He questioned who this is aimed at?

Anita Cereceda replied that this project is aimed at the elementary school. This project is designed to work in coordination with Bay Oaks to provide a family day for local children to have something fun to do and celebrate the beginning of the school year. It is not designed to bring in children from other areas.

Council member Rynearson commented that the Town should fund New Years Eve, Fourth of July and have a cap of three other events. A cap of $1500.00 to $2000.00 for each event should also be established.

Anita Cereceda added that she was looking for direction from the Council as to how many events they would like to fund. She questioned if it is the wish of the Council that they do not host any more events than this or do they have a dollar amount in mind to not exceed?

Council member Rynearson does not want to break the bank. He would like to have funds available for other parts of the island.

Town Manager Segal-George expressed that there is $15,275.00 in the fund. If the Council would like to fund the remainder of the events from this fund it can be done. As of October 1 there will be additional funds.

VOTE: **Motion passes unanimously.**

Mayor Hughes began discussion regarding the funding. He feels it should be funded out of the Times Square TIF. He is delighted there are funds available to fund these events.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Bill Van Duzer to fund this out of the available funds in the Times Square TIF.

Discussion: Anita Cereceda commented that there is a committee in place which is charged with making recommendations of this very nature to Council. Now that the calendar of events is included in their scope of duties the Council could direct the Advisory Council to make some number recommendation to Council. This will allow the Times Square Alliance the ability to know what to deal with.

Council member Thomas is disappointed in the report from the Sheriff's office. He believes the Times Square people and the island should emphasize equal tourism. Possibly there could be some TDC money to promote Fort Myers Beach for equal tourism.

Anita Cereceda added that only one event took place during the Spring Break time period. The Times Square merchants had nothing to do with the negative report from the Sheriff's Department.

Council member Thomas has visited the Times Square area quite often and he does not care for what he is seeing. He feels they are attracting the wrong type of clientele.

VOTE: **Motion passes unanimously.**

Mayor Hughes suggested that the Times Square Advisory Committee make a recommendation on the calendar of events and budget. Town Manager Segal-George replied that this was going to be done.

E. Mound House electric bid award

Mayor Hughes indicated that the Council has received a memo from Damon Grant. Three bids have been received.

Damon Grant expressed that three bids were received at the request of Director Harris

and CELCAB. The main difference would be the service panel for inside the home. Shamrock proposed to re-manufacture the existing panel in lieu of providing a new one. Mr. McClain is present this evening to answer questions. He is not only just an electrical contractor, but an electrical engineer.

Mr. McClain came forward and explained he was given a tour of the whole facility. When he removed the cover off of the existing panel, he expressed that what is there is from the late 40's or early 50's. He explained that the old panel is solid copper and a new panel will be made of aluminum. The interior of this panel is in excellent shape. He feels they would be making a historical mistake by taking this out. Anything new they would like to add should come from the new panel at the backside of the house.

Council member Van Duzer asked if there is more than one electric service coming into the house? Mr. McClain replied that there is one 200-amp service on the back of the building. The old panel inside is sub-fed from the new service on the back. This is typically how you upgrade a home.

Council member Van Duzer questioned the smoke detectors? Mr. McClain explained because this is a historical site he is unsure if the installation of smoke detectors would be required. The house is not inhabited. This is a valuable piece of history. He suggests that smoke detectors be installed and hooked up to the alarm. He explained that the alarm company can sell a smoke detector to hook up to the system. This will immediately send a signal to the Fire Department on the beach. This will protect the investment. Mayor Hughes questioned the GFI outlets? Mr. McClain explained that these will need to be put only where needed. These stick out like a sore thumb and are not historical.

Council member Van Duzer is not happy with the proposal. If the Council decides the historical significance of this panel is most import he feels that this needs to be addressed. The rest of the property is being operated off of a newer panel. He does not see all of the work in this proposal as opposed to the others presented.

Mr. McClain replied that there is a considerable amount of work. He may have not described it completely. There are a lot of circuits to be traced. He has estimated a three-man crew for almost a month. Council member Thomas asked the cost to replace the panel? Mr. McClain replied $1100.00.

Council member Thomas asked the cost of the smoke detectors? Mr. McClain replied the battery operated would be about $20.00. A couple hundred dollars would be the cost for an a/c due to a circuit needing to be run.

Council member Rynearson feels an electrical remodel will need to be brought up to code through Lee County. Mr. McClain replied that this is not habitable. Some leeway should be granted.

Vice Mayor Cain asked if he had worked on other historical homes? Mr. McClain replied the Edison Home and the Burroughs Home.

Mr. McClain expressed that he had told the Director they would try to take the knob and tube out of the attic and make a display out of it. He is in possession of a lot of old porcelain sockets and light switches that were installed in the teens or 20's. The display could be built and donated for no cost. He wanted to try and save as much as possible and not disturb the home.

Council member Van Duzer has concerns that there are three bids and they are all bidding on different things. Mr. McClain's bid is the least expensive. He is uncomfortable about awarding the contract when there are three bids on different items.

Mayor Hughes has the same concerns as Council member Van Duzer.

Town Manager Segal-George explained that all three bidders had the same specs. Shamrock bid it differently by providing another alternative.

Council member Rynearson feels all three bids should be thrown out and the criteria should be amended.

Attorney Dick Roosa feels the intent was to bring the Mound House into compliance with the electrical code. Three alternatives exist. The one that concerns Council is the least expensive, because it emphasizes the historical aspect of the home. This probably will not meet the requirements of a residence under the current electrical code. Some modifications to the building codes need to apply to historical sites. If this is an acceptable bid and will bring things up to code these are then competitive bids.

Town Manager Segal-George asked if this is a question of fairness. The Council agreed. She will go back to the other bidders and give them the opportunity to rebid.

Council member Van Duzer feels CELCAB needs to be asked if they are interested in keeping the panel for historical significance. If CELCAB decides this is the direction they would like to take the Shamrock bid should be accepted. He would like to get with Mr. McClain to clear up some questions.

Council member Rynearson agrees with Mr. Roosa. Lee County should come out to tell them what can or cannot be done. This can then be set up as a criteria and rebid this. It will then be fair to everyone. Mr. McClain added that he would be willing to walk thru the house with Lee County. If Lee County requires the smoke detectors, he will put them in at no cost to the Town. If the County requires the panel to be replaced, he will also replace it without cost to the Town.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to hold the proposals and direct Damon Grant to contact the electrical department in Lee County to arrange for a meeting on site to determine if the work included in this proposal meets code.

Discussion: Mayor Hughes asked what will happen if this proposal is satisfactory with Lee County? Council member Van Duzer feels it will then be up to this Council to decide if they would like to award the contract.

Damon Grant commented with Mr. McClain adding the smoke detectors and new panel to his existing bid this makes his proposal in line with the two other bids.

Mayor Hughes and Council member Van Duzer do not agree.

VOTE: **Motion passes unanimously.**

F. Interlocal agreement for Public School Planning

Dan Folke expressed that the State of Florida/Department of Community Affairs has taken the lead to try and do some interlocal agreements to help out school planning. This is for technical assistance. He provided some background information for Council. He also provided the agreement, which was forwarded from DCA. A series of meetings between the Department of Community Affairs, Lee County, School Districts and the jurisdictions took place. This commits the Town to appointing some representatives to serve on some committees that will look at ways to improve planning. The other obligation will be reporting information to the School District. He feels a lot of what is being asked for they are already doing.

Mayor Hughes expressed some concerns regarding the conditions.

Attorney Dick Roosa replied that these conditions when reviewed by the staff and if they apply would then be identified and once identified Council would be given consideration to the issues.

Dan Folke added that it does not call for a change in the Land Development Code.

Mayor Hughes feels that this agreement does impose some things that are presently not being done. If staff does not believe this is a problem he will accept this.

Dan Folke indicated that he is confident this will not cause a burden on Town staff. He feels it will be covered in the interlocal. He pointed out Section 11, which indicates if this turns out to be something that really impacts them there is a way out. They can withdraw participation in this agreement by giving written notice.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to adopt this interlocal agreement for Public School Planning.

VOTE: **Motion passes unanimously.**

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Thomas - Friday, May 24th he attended the San Carlos Island Community meeting. He was sent with a petition he intends to give to Chris Swenson who is doing the traffic study. The petition is 98 pages with approximately 2,000 signatures strongly against tolls. He understands other petitions are circling the island. The people are making their voice heard early before the study comes in. **Council member Van Duzer -** Went to an MPO meeting, which dealt with long term funding for mass transit on May 29th. It was a very interesting meeting. More will be heard on this matter. He continues to work on the Short Term Rentals Subcommittee of the LPA and attended a meeting on May 22nd. They are doing a lot of hard work to take back to the LPA, which will come back to Council. He applauded Damon Grant for his hard work and efforts regarding some calls he received on some right-of-way problems. He is looking forward to participating in the Beach Leadership Program. He mentioned that he will be receiving his last treatment and he thanked everyone for their kindness and generosity.

Vice Mayor Cain - Received some good phone calls regarding Old San Carlos. She welcomed the new staff member Trudy. Will not be able to make her meeting this week for the Charlotte Harbor National Estuary Program, but they have micro grants available to any person or group for $250.00. It will be easy to get funding if anyone has a need. She received a call about the Harbor Plan and derelict boats. She was happy to see Michael Popff here this evening and hopefully they are getting closer.

Mayor Hughes - Attended a meeting of the Horizon Council on Friday. This was a regional meeting of the industrial development committees of the five county area. Was a very good affair. Industrial development is not a major issue in their community, but is a major issue in the county. Roxie Smith attended this with Mayor Hughes. He will not be present for the Beach Leadership Program starting on Saturday due to being out of town.

VIII. TOWN MANAGER ITEMS

Town Manager Marsha Segal-George - Asked for a change to the Land Development Code - Section 14-6C4A. She would like the Council to direct Attorney Dick Roosa to amend this section of the Land Development Code to change the time for raking from 8:00 a.m. to 9:00 a.m.. This request comes from the Marine Resources Task Force.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to change Section 14-6C4A in the Land Development Code to read the time for raking to be 9:00 a.m.

VOTE: Motion passes unanimously.

Town Manager Segal-George went on to add that the Board of County Commissioners had their management and planning meeting today. She had seen the agenda in advance. One of the items on the agenda was gas tax (cities). She watched this and taped it. It was a discussion regarding gas tax for the Town of Fort Myers Beach. A presentation was made and this was very similar to what happened two years ago. The County is not receiving enough gas tax and is looking for ways to receive more. It was indicated that they are hoping to have all of the cities agree to the formula used on Bonita Springs. The only city they do not have an agreement with is Fort Myers Beach. She indicated that the Town may be fighting the gas tax battle again. She will try to get the position paper and try to find out if this will be in this budget cycle or in the future. She will keep the Council posted on this matter.

Deputy Town Manager John Gucciardo - Expressed that he did receive the letter from the property appraiser, which they receive on an annual basis with the preliminary numbers. A quick review indicates a close to 15% increase in property values. An increase of about $237 million on the beach. This will bring them in line with Bonita and Estero.

Also, he did receive a copy of the County's proposed rate increase for the water and sewer utilities. Public Hearings will be held at the County level in July and September. A copy of the rate proposal was sent to Burton and Associates after discussion with Attorney Dick Roosa. He has asked Burton and Associates to get back with him with a not to exceed figure on what it will take to review this and give an analysis from the Town's prospective. It will then be brought back to the Town for approval or they will be hired on for analysis.

IX. TOWN ATTORNEY ITEMS

None.

X. PUBLIC COMMENT

Eve Haverfield thanked the Council for helping her help the sea turtles. Turtle Time prides itself in working with the businesses on Fort Myers Beach.

XI. ADJOURNMENT

The meeting was adjourned at 9:06 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