FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 17, 2002
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Regular Meeting of June 17, 2002 was opened by Mayor Daniel Hughes on Monday, June 17, 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 and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REVEREND BOB STUCKEY, First Baptist Church of FMB

The invocation was given by Reverend Bob Stuckey.

IV. PUBLIC COMMENT

John Richard came forward to request that the Town Council direct staff to look into bike/skateboard/rollerblade park for the youths of the island. He has a 15-year-old son and he realizes this is needed on the island.

V. CONSENT AGENDA

A. Review of Financial Reports: May 2002
B. Approval of Minutes: May 20, 2002
C. Request for funding for Fourth of July Fireworks
D. Interlocal Agreement - Hurricane Shelter Deficit

Council member Van Duzer pulled Item C for discussion.

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

VOTE: **Motion passes unanimously.**

Council member Van Duzer pulled the request for funding for the Fourth of July Fireworks for several reasons. He asked that the Semmer's come forward for their presentation on this item.

Shirley Semmer came forward to represent the Fort Myers Beach Fireworks Committee. She distributed a handout to the Town Council. The budget sheet to date shows the estimated expenses remaining. There is a $20,000.00 fireworks show this year. The balance remaining is $10,000.00, which is always paid after the fireworks. She expressed that there is a positive figure in the account of $5,400.00 leaving a deficit of $5,300.00. The request for $10,000.00 is being requested this evening and when the final accounting is in they will send a request of the balance needed. More funds were raised this year, so they do not anticipate needing as much support from the Town Council.

Council member Van Duzer commented on the nice ad for the Town of Fort Myers Beach. They are the primary sponsors and he feels this should be known.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve Consent Agenda Item C changing the amount not to exceed

$10,000.00.

VOTE: **Motion passes unanimously.**

Council member Van Duzer asked what time these fireworks would begin this year? Bill Semmer replied 9:15 p.m..

VI. ADMINISTRATIVE AGENDA

A. PUBLIC HEARING: Lenell Road assessments

Mayor Hughes announced that there is a resolution of the Town declaring special assessments for the Lenell Road sidewalk project. A handout was provided to the Town Council showing the estimated assessment cost.

Damon Grant reported that the sidewalk was constructed, three benches were supplemented along with landscaping. The awarded engineering costs were $6,000.00 and some additional costs were incurred in the amount $426.66. The awarded construction contractors cost was $49, 815.37 and an addition of this amount was for $236.79. The cost of the benches was $1,101.00 and the cost for installation was $220.00. The project grand total is $57,799.78. The Town of Fort Myers Beach would be responsible for (50%) $28,899.89. The EBIA Association is responsible for (25%) $14,449.95. The property owners would be left with $14,449.95. This amount is broken down between the owners and results in an assessment of $47.23 for the one time assessment.

Town Manager Segal-George indicated that some questions arose a few days ago regarding some additional property (ex. docks, boat slips, etc.). It was decided rather than re-noticing each property owner of the additional charge it would less expensive if the Town of Fort Myers Beach covers the $500.00.

Mayor Hughes asked if anyone from the public wished to address the Council. None was heard and the public hearing was closed.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve adoption of the resolution as presented.

Discussion: Council member Van Duzer commented on a letter received from Carol Vandenberg with regard to opposition of this assessment. He questioned if this is the only time a sidewalk has been completed on a Town road? Town Manager Segal-George and Mayor Hughes replied that this is correct.

Mayor Hughes expressed that this is the first time the Town has put a sidewalk in on a public road in this community from the request and for the benefit of the property owners.

VOTE: **Motion passes unanimously.**

B. PUBLIC HEARING: Old San Carlos assessments

Mayor Hughes began by reading the resolution.

Carol Cunningham came forward and explained that the Town has provided an estimate of the final project cost. The original assessment methodology was calculated against the opinion of probable cost. The estimated final cost of the project is higher than the opinion of probable cost reflected. The original project cost was $1,958,859.00 with the property owners share being $500,640.00 or $238.74 per frontage foot. This translates to approximately 25.56% of the total project cost. When the estimate of final project cost was received at $2,695,733.00 the property owners share becomes $656,498.93, which translates to $313.07 per frontage foot. The speed table was not included in the original opinion of probable cost and is not included in the property owners share. The cost of this item can be allocated between the DRA and Town according to the methodology of choice. The parking meters are a Town cost, because the Town will be able to recover the cost through meter revenues. The Council has not made a decision as to how the split will be made between the Town and DRA. She gave two examples of how this split may take place.

Town Manager Segal-George explained that the intent was to keep the same integrity with regard to the items the Council determined were appropriate for the property owners to share in.

Carol went on to address 150 Old San Carlos and 200 Old San Carlos. Following the last meeting

there was a considerable amount of discussion on these properties. She attempted to think of ways to equalize the amount of frontage that was being assessed among 150 Old San Carlos (Town's right-of-way) and the next property. She tried two different methodologies to make adjusts without penalizing or reducing the integrity of the basic methodology. She explained both methods to the Council. Carol prefers method one, because it does not change the cost per frontage foot, but just adds in the Town's right-of-way and equalizes it among everyone.

Attorney Dick Roosa explained that today's hearing gives the opportunity for complaints to be heard and equalization of assessments.

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

Doug Spearinsmith came forward. He indicated that this budget is 37% more than the original estimate. He would like an explanation as to why the budget changed so much? Town Manager Segal-George replied that when you added the contractors bid with the items that needed to be ordered separately this is a good part of the increase. The fee that went to FPL for the under grounding is part of the increase. Once they began working on the road items arose that no one was aware of. She hopes that the project will be completed with the dollars presented today. If they must ask for additional dollars, another public hearing will be held to amend the assessment roll.

Mayor Hughes closed the public hearing.

Town Manager Segal-George pointed out if it is the desire of the Town Council to move forward with the 50/50 split between the DRA it has been worked out internally on how this would be completed.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to adopt the resolution, striking payment option 3 (deferred payment) and approving alternate II. The assessment will begin at the adoption of the resolution.

Discussion: Mayor Hughes announced that 150 and 200 Old San Carlos must be addressed. Town Manager Segal-George replied that she does not feel there is a challenge on this matter. Section V does need to be addressed.

Town Manager Segal-George was looking for direction as to when this assessment will take effect? Attorney Dick Roosa replied that the manner in which the resolution is set up would have payment become due upon adoption of the resolution. The three months would be now.

Council member Thomas commented that the property owners are concerned about the frontage. He indicated that this is a very large increase for the property owners and the government body.

Attorney Dick Roosa added that it is not unusual in an assessment program when paid without bonding to be paid up front when there is not interest in the total cost. He feels that it is justifiable to collect the funds during the progress of construction.

Mayor Hughes does not object to receiving the money as soon as possible. He has concerns if the assessment amount is changed.

Town Manager Segal-George feels this must be brought forward to the property owners to advise them of the assessment being considered. This is their best guess as to what the opinion of final cost is.

Town Manager Segal-George went on to discuss the deferred payment option. She questioned if anyone could choose this option? Attorney Roosa replied that anyone could. She has concerns because they will not be getting an assessment bond and will need to carry the assessments.

Attorney Roosa agrees with the concerns of the Town Manager. He also indicated if someone makes no payment you cannot take any action to enforce this lien until

5 years. He suggested a payment option 3 and Mayor Hughes agrees.

Mayor Hughes discussed option 2 and questioned if it should stay that a person has the right to prepay at any time. Attorney Roosa replied that this is automatically included. If there is a sale of the property, the new purchaser has the option of assuming the assessment (cash sale) or will have to pay it off if there is a new mortgage.

Town Manager Segal-George asked the dates this annual payment will run from? Attorney Dick Roosa replied that it would be from June 2002 until June 2003.

VOTE: Motion passes unanimously.

C. Presentation by CRSPE, Inc.

Chris Swenson came forward and indicated a topic of discussion would be the survey. As part of the survey they generated over 50,000 pieces of data. The survey results are an aggregate report. The survey data has been entered and a total of responses have been generated. Once they are further along into the study they will want to get additional data. A question was put in regarding the alternating light at Prescott. He made it clear that they did not make engineering review of this item and has left this up to Lee County. This is strictly to get the public's opinion. Approximately 50% of the responses received stated that the alternating signal greatly improved the situation on the road leaving Fort Myers Beach, 30% felt that it was an improvement, 10% did not respond and the final 10% stated the lights did not improve the traffic situation. Only 25% of the survey respondents were residents of Fort Myers Beach. He touched on the percentage of thru trips. These were trips that did not begin or end on Fort Myers Beach or San Carlos Island. During the peak week of peak season only about 4% of the trips were not stopping either place. The bulk of the trips came from southern Lee County. A significant number came from the central Fort Myers area as well as a significant number from Cape Coral.

Council member Thomas stated that the reason they have traffic is due to people sightseeing from one end to the other. He is not surprised by these results and feels the number could be even lower. He has always felt that the traffic is due to the overbuilding on the beach. He commented that the survey indicates when traffic is the heaviest it is the adults (50+ and over) creating the traffic. The traffic is not caused by people sightseeing and using this as a shortcut.

Vice Mayor Cain commented on the number or passengers per vehicle. She feels a large workforce leaves the island to go to work and then returns to the beach in the evening. This seems to be a combination of everyone. She did not realize there were as many residents living on this island and traveling off as often as she does.

Council member Thomas added that many residents participate in activities off of the island such as volunteering and playing golf. He feels many of the residents go off the island and this adds greatly to the traffic.

Town Manager Segal-George raised a question regarding the age group that will take the time to stop to fill out a survey. People like herself are busy and do not have time to stop. Is this taken into consideration with regard to the ones who will not stop to fill out a survey? Chris Swenson replied that this is one of the items that will be considered. In general it is more likely that the older retirees will return the surveys.

Chris Swenson went on to indicate that having this survey information will allow them to see which alternatives look the best. Over the summer, CRSPE, Inc. will be working to develop various alternatives to some of the Town's traffic problems. By the end of this year they will have developed a series of stand alone reports discussing each of the potential options. Each suggestion will receive a different level of treatment. Next season the process will begin to get the public opinion as to which option will be the way to go.

Chris went on to discuss that Council member Van Duzer attended a meeting of various government officials and he was also present at this meeting. He explained that the consideration is to develop an independent transit authority or regional authority to fund transit in Lee County. The County is taking out funds from its general funds to take care of deficits for LeeTran. This is a very important issue to Fort Myers Beach. The Trolley service runs at an operating deficit and LeeTran is picking up this amount. The beach trolley service is very well received, but may be in jeopardy for the future. The Town Manager

and Council member Van Duzer are staying on top of these issues.

Chris thanked the Council and expressed that he looked forward to seeing them after the summer break.

D. Update on Elections

Attorney Dick Roosa commented that it is very clear the Supervisor of Elections and the Secretary of State take the position that the statute prohibits the election in office of mail away ballots. He feels that there is good reason why mail ballots on off year elections would best represent the general population. He felt the Council could work through the League of Cities to try and get input and see if other municipalities are having this same problem. If it is strictly a Lee County issue not too much can be done to solve the issue.

Town Manager Segal-George questioned if they had a charter election to amend the charter to allow for mail in ballots would they be able to handle this the way Marco is pursuing this? Attorney Dick Roosa replied that the Secretary of State states this must be a legislative act. The original charter was an act of the legislature. The legislature itself, which passed the law, would have to amend the law.

Town Manager Segal-George added that mail in ballots are less expensive and have proven to be more effective with regard to voter turnouts.

Council member Van Duzer suggested going to the Florida League of Cities to try and get support. Elections must be held in the spring. He feels this must be vigorously pursued to try to come up with a solution.

Mayor Hughes would like to keep this as an open and pending item.

E. Newton Property Update

Town Manager Segal-George provided this information to Council two weeks ago to show the increase in the appraisal. The Mayor would like to continue this item until next Monday.

Mayor Hughes would like to work with negotiations over the next week. The Erickson's are willing to discuss this situation further.

Town Manager Segal-George expressed that a very good meeting was held with the County representatives. They are willing to cooperate if the Town is able to acquire the property, and would be willing to enter into a joint planning effort with the Town. She expressed that they would be interested in developing this into a passive park with a limited amount of parking spaces.

F. Motion from CELCAB to purchase Connecticut Street lot

Town Manager Segal-George reported that this item is a unanimously passed motion from CELCAB. This is a property on Connecticut Street, which is the last vacant lot. This property is used when additional parking is needed for the Mound House. The owner wants $200,000.00 for the lot. She expressed to him that the Town could only pay the appraised price. If the Council would like to move forward with this item, she would need to bring an appraisal and contract for purchase to the Council after break. She expressed that in the last budget there was $100,000.00 for land acquisition. Additional funds have been placed into the budget for the upcoming year.

Council member Van Duzer commented that the property is zoned residential. What would be the Town's intended use? Town Manager Segal-George replied that they will want to use it for parking for Mound House events. Also, have a pocket park type of open space concept thru the Comprehensive Plan. She expressed that this would need to be re-zoned. The neighbors have been very positive with the use for this property.

Vice Mayor Cain commented that she is a member of CELCAB and a lot of the members did not want this property black topped and concreted to make it look like a parking lot. The property has some good mature trees and they would like to keep them there. The grass could be left down and still be used for parking. A few benches could be placed around to make it a community park. There are not many events presently at the Mound House and this would leave it open for the community to use.

Dan Folke added that in the new land development code alternative parking surfaces are being encouraged.

Council member Thomas hopes that the public does not become aware of this big lot and use it for off beach parking. Town Manager Segal-George feels this issue can be dealt with and will not be allowed.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Van Duzer

to proceed with appraisals and negotiations for the property on 216 Connecticut Street.

VOTE: **Motion passes unanimously.**

6:30 p.m.

G. Dedication of John Mulholland Stewardship Award Tree

Vice Mayor Terry Cain explained that a get together took place on Earth Day for the commemoration of Mayor John Mulholland for his dedication to environmental stewardship. John was a boater, the creator of the Marine Resources Task Force and an active member in the back bay. In his honor the Marine Resources Task Force created a tree. The artist designed and made this tree. This tree recognizes the people of the community for their environmental stewardship. She explained how the procedure will work for nominations. This can be awarded to a private citizen or business and will give back to the community some of the things that John believed in.

Vice Mayor Cain read from the tree. (Applause was given)

H. Letters of commendations to Sheriff's Office staff for Spring Break coverage

Mayor Hughes announced that Captain Kery Griner, Captain Ken Erne, Chief Durling, Sgt. Joe Poppalardo and Sgt. Robert Forest are present this evening. He asked both of the Sergeants to come forward and read the letter of appreciation, which came from the Town Council and staff from the Town of Fort Myers Beach. (Applause was given)

Mayor Hughes asked Captain Ken Erne to come forward and presented him with a plaque. He wished him good luck, health and happiness in his retirement. (Applause was given)

Council member Rynearson commented that he worked very closely with Captain Erne. He appreciates everything done by him and thanked him for a great job. (Applause was given)

I. FIRST PUBLIC HEARING: Ordinance 02-04: Land Development Code, Chapter 34

Mayor Hughes began by reading the ordinance.

Bill Spikowski came forward and announced that this evening is the first of two public hearings. The final public hearing will be on June 24, 2002. The Local Planning Agency had their hearing back in May and found this ordinance consistent with the Comprehensive Plan and recommended it to the Town Council. At the last meeting the Council raised three questions. Bill Spikowski took this time to provide answers to these issues. The first had to do with the design review decisions, which under this ordinance would be made by the Town Manager or her designee. Any appeals to these decisions would be heard by the LPA whose decision would then be final. Several were uncomfortable with this and wanted to become involved in this process. He suggested in his June 7th memo three alternatives to the original draft. He recommends #3. His recommendation applies to both the moving of homes and the commercial design standards.

Two other issues were regarding the commercial design standards. One related to vinyl siding. The current draft would not allow vinyl siding on commercial buildings, but would continue to be allowed on residential buildings. He went on to explain in the memo the durability and problems with vinyl siding. He suggests that it be kept the same way, but he drafted one other alternative. His suggestion is that it be allowed only on commercial buildings that would not be on the principle facade. The last question relates to the windows on commercial buildings. He suggests four alternatives and indicated that #1 is the same as written. This is his recommendation to Council. This would be an extra expense on wood construction by requiring thicker framing.

Bill Spikowski indicated that he has had no other communications from the public on any specific suggestions. He will be happy to respond to any heard today.

Mayor Hughes asked if anyone from the public wished to address the Council. None were heard. Public hearing was closed.

Council member Van Duzer commented that vinyl siding is a finish and is not a structural part of the building. His personal opinion is that it is a very durable surface. Most vinyl sidings meet the wind load tests that are required. He referred to the Lighthouse Island Resort. He feels this is a very beautiful structure. He would like to see this as an option.

Council member Van Duzer went on to discuss the other item referring to the setback required. He feels that alternative #2 is reasonable and can be used in all cases. He also commented on the commercial design standard and would like to see a committee set up rather than it going thru the Town Manager and

staff. He feels that it would be better served to have a committee made up with five people.

Mayor Hughes raised the question regarding the vinyl siding and if there is a reason why it could not be included? Bill Spikowski replied that this is up to the Council. He does not feel this is an appropriately durable finish for commercial buildings.

Mayor Hughes asked for a consensus from the other Council members. Vice Mayor Cain does not believe that it is a good siding for a commercial building. She would like to see them come forward with a special variance to have the vinyl siding. Council member Rynearson agrees with Mr. Spikowski. He feels they should keep with stucco and woods in the core area. Mayor Hughes does not have a problem with vinyl. Council member Thomas goes along with the requirements of Bill Spikowski.

Council member Thomas commented on the appeal process for design review decisions made by the Town Manager. He feels these items should come directly to the Town Council, which is an elected body and not the LPA who is an appointed body. He supports the recommendation of Bill Spikowski for #3. He moved to the wood frame construction and supports Bill Spikowski's recommendation to leave the proposed standards are currently written. He supports #1 along with Mr. Spikowski.

Council member Rynearson commented on the design review and feels that this should come to the Town Council. He went on to the discussion of the windows. He asked Bill Spikowski if they go with the option of the two-inch inset will this give the shadow he is looking for? Bill replied not as much, but it is a reasonable compromise and he is satisfied.

Vice Mayor Cain agrees with #3 regarding the appeals process. She feels #2 regarding the setback of the wood construction is a good compromise.

Bill Spikowski has received direction from the Town Council and will bring forward some additional language at the next meeting.

Mayor Hughes commented on the appeals process. He is also in agreement with #3 and explained his difference in views than was originally discussed.

The next public hearing will be held on June 24, 2002 at 6:30 p.m..

J. FIRST PUBLIC HEARING: Ordinance 02-05: Harbor Ordinance

Town Manager Segal-George began by reading the ordinance. This is the first of two public hearings. The second public hearing will be held on June 24, 2002 at 6:30 p.m.. The Council has previously adopted this ordinance. The changes that are involved this evening are the changes the Department of Environmental Protection has asked them to place into the ordinance in order to receive the permit the Town has been waiting for, for the past 2 ½ years.

Mayor Hughes asked for public comment.

David Richardson came forward and expressed that he has lived in the back bay for approximately 12 years. He feels that where this is headed is good, but he feels too much money is being spent. A lot of facilities are presently here. Rather than using an outside vendor there are presently showers and a small facility could be built. He commented that the Town will have problems in the future with Salty Sam's. His experience in other areas is that the residents will use the majority of the 80 moorings versus storing their boat at a marina. He loves Fort Myers Beach and would like to see it not be exclusive to travelers. He is willing to take anyone for a ride in the area to see how things work before the money is spent.

Town Manager Segal-George commented as part of the permitting the Town needed to provide upland facilities. At first the Town was going to build some facilities in a rather difficult place and many requirements existed. Two marinas had come forward and indicated that they would like to enter into an agreement with the Town. A letter was then sent to all marinas both on Fort Myers Beach and San Carlos island to see if there was any additional interest. The only business interested was Salty Sam's. An agreement must be made with Salty Sam's, but it is not a requirement that a person must use them exclusively. The budget is presently being worked on. It appears that grant money will be received to cover the expense for installation of the mooring facilities and purchase of the pump out boat. The rules that Salty Sam's will be enforcing in the mooring field will be those of the Town. A committee will be formed and will make recommendations to Council with regard to rates and policies in this area. The rates will be created only to reimburse the Town for cost and there is no attempt to make any money off of these fees.

Mayor Hughes questioned how enforcement will be handled? Town Manager Segal-George replied that the Town will be controlling the bottom land and will give authority to have the Sheriff's deputies come and enforce the eviction.

Mayor Hughes closed the public hearing. Tonight was the first hearing and this will be continued to June 24, 2002 at 6:30 p.m..

K. FINAL PUBLIC HEARING: Ordinance 02-06: Times Square MSBU

Mayor Hughes began by reading the ordinance. He asked if anyone wished to address the Council. None was heard and the public hearing was closed.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to adopt Ordinance 02-06 with the addition of the language regarding the budget.

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

L. FIRST PUBLIC HEARING: Comprehensive Plan Amendment Application 2002-1-TEXT. Annual updating of the five-year schedule of capital improvements (Table 11-7, page 11-22).

Bill Spikowski indicated that each of the three Public Hearings for the Comprehensive Plan Amendments will need to have separate public input and a motion will need to be made on each. Action this evening is to transmit any or all of the proposed amendments for state or regional review. He commented that effective last week the Governor signed a law, which changes the review procedure. He is unsure how long this will take to come back, but probably 60 to 90 days. The first amendment is very simple and has no policy matter. This simply amends the Comprehensive Plan to reflect decisions made in the budget process last year. The LPA had their public hearing on April 16th and unanimously endorsed the recommendation in his memo to Council.

Mayor Hughes asked if anyone wished to address the Council. None was heard. The public hearing was closed.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson to transmit the amendment as proposed in the memo to the state agencies for state and regional review.

VOTE: **Motion passes unanimously.**

M. FIRST PUBLIC HEARING: Comprehensive Plan Amendment 2002-2-TEXT. Reconsider plan amendment 2000-2-TEXT, which has tightened the plan's Chapter 15 provisions guaranteeing perpetual development rights on most substandard platted lots.

Bill Spikowski announced that this is the most controversial of the three amendments. Two separate hearings were held before the Local Planning Agency and they determined more alternatives needed to be formulated. The issue is if the Town Council wants to change the amendment made two years ago, which tightened the restrictions that had originally guaranteed perpetual development rights on most substandard lots. He indicated that option 8 was formulated by the LPA and is their recommendation to the Town Council. This passed by a vote of 6 to 1. Jane Plummer dissented because she felt it should be less restrictive instead of more restrictive. Both option 7 and 8 would soften the action taken in the year 2000. Option 7 would only allow this rule to be softened for people who own two full lots - standard lots that are on a public street. Option 7 is also more restrictive by indicating that anyone who would want to take advantage of the restriction would have to move or remove the home across the two lots by November 2004, and build a home or homes within 2 years. Option 8 is similar, but allows a person an extra year to move or remove a house. It is also different that no time limit would exist for the building of an additional home and would allow the sale of the adjoining lot. He recommends leaving it as is or going ahead with option 7. He is concerned that option 8 is too lenient.

Mayor Hughes asked if anyone wished to address the Council.

Bill Burdett has lived on Fort Myers Beach on and off since the late 1060's. He currently lives on the mainland, but has been maintaining property on Fort Myers Beach. He is looking forward to building on this land when he retires. His lot was platted in the 1920's. In the 1960's it was zoned duplex. In the 1980's the land use plan took the duplex possibility away. To totally remove his building opportunity would be unfair. He asked the Council to consider his situation and what is fair to the remainder of the citizens.

Town Manager Segal-George indicated that this does not apply to his property, because he does not have a structure on either of his lots. She explained that if he has a substandard lot he would need to pay the $135.00 and obtain a minimum use determination and then he can build.

Diane Easterbrook came forward. She passed out a handout to the Town Council. She is present this evening with her husband, because their right to utilize each of their platted lots was taken quietly away from them two years ago. They are here this evening to have the Town Council return to them their property rights that were taken. Their lots are substandard, but they do not feel this terminology is appropriate. Many lovely homes directly across from their lots have been built on 50 foot lots. Their neighbors have all expressed support for the return of their property rights. Please return their rights in full with no time limits or other tedious impediments. Please adopt Option 1. It is the right thing to do.

Brian Cross came forward and explained that he had attended the LPA meeting when the different options were reviewed. The Town of Fort Myers Beach has done an incredible job over the past 5 years. He asked the Council to stand fast on what has already been done. He supports option 7, if a change must be made. This will allow him to maintain his property rights.

Ted Like from Tropical Shores Way came forward. He is in support of the Easterbrook's and believes a few other property owners on the island will be in the same situation. Many have moved here as part of a life dream and did invest with future plans. He is in favor of the growth of the quality of the island, but is not in favor of removing the basic rights of the citizens.

David Easterbrook came forward. He feels and injustice has been done to probably 90 some people who are not aware of what has been done to their property rights. He has only one piece of property and would like his land given back. The entire plan was not thought out. People need to have their rights back.

Mayor Hughes closed the public hearing.

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Rynearson to make no change in the current law.

Discussion: Council member Thomas asked if no change is made does the applicant of the land have a chance to come forward? Bill Spikowski replied that the language as written is clear and objective and they can appeal, but the appeal cannot be granted. An option that he has provided was to establish a variance procedure. He indicated that the Council may come up with some variance criteria today, but he has been unable to create the language.

Mayor Hughes commented that know one likes to deprive anyone of their rights. He indicated that municipalities throughout the United States have adopted zoning ordinances. A zoning ordinance by its very nature takes away rights. He does not feel this is a constitutional issue or legal issue. The intent of this Town Council and Local Planning Agency is to upgrade the community. To change a situation that he feels is working would be a step backward. He does realize this is a depravation of property rights, but so is every provision in the zoning ordinance to one degree or another.

Council member Van Duzer commented on private property rights and this was a major part of his campaign while running for this seat. Some property owners have been caught in a situation where they purchased property knowing what could be done with it and without any warning have now had their property rights taken away. He indicated that he was a member of the LPA when this was originally proposed. He voiced his objection to the proposal and was swayed into voting for it because he was assured that before it would be presented to the Town Council every one of the property owners would be notified. He was further assured if the proposal became part of the Comprehensive Plan these property owners would be able to apply for a variance easily and inexpensively. Neither of these two issues were addressed and this was not fairly handled when presented. He favors some control, but he cannot favor the taking away of property by ordinance. He feels fair rules can be established. He cannot and will not support the motion.

Vice Mayor Cain replied that she was on the Council originally when this was passed. She respects Mayor Hughes' opinion on this matter. She feels this was a good thing to do, but feels that maybe it was not done completely correct. Some balancing of development rights needs to be developed with the public needs.

Dan Folke commented that once the amendment was adopted in 2000 there was no extension of time.

Council member Rynearson feels that housework is being done for Lee County. He has trouble with this issue. He supports this motion and does not feel they are taking away property rights.

Council member Van Duzer commented on the discussion of possible transition time. He feels the time frame of two to three years is ridiculous. He feels a reasonable time would be 15 years.

Mayor Hughes commented when there is an adoption of a general zoning ordinance you are not required by law to give specific notice to individual property owners.

Vice Mayor Cain suggested having a transition time for only the people who owned the properties as of November 2000.

VOTE: **Motion passes 3 to 2. Council member Bill Van Duzer and Vice Mayor Terry Cain dissenting.**

N. FIRST PUBLIC HEARING: Comprehensive Plan Amendment 2002-3-TEXT. Revise the Recreation Element to establish policies regarding public acquisition of beachfront land.

Bill Spikowski reviewed that this public hearing deals with the proposed amendments to the recreation elements of the plan. This refers to the Newton Property. In order to obtain state funding from the Florida Communities Trust one of the key measures is how much of a proposed grant request implements a local governments Comprehensive Plan. By purchasing the Newton Property it very much implements the Fort Myers Beach Comprehensive Plan. He indicated that this language will be more specific.

Mayor Hughes complimented Bill Spikowski on the language in the amendment. He opened the public hearing and asked for input from the public.

David Easterbrook commented that he lives close to the property and expressed that this is all seawall with no beach. He asked what type of parking will be available and the exact intentions for the property? Town Manager Segal-George replied that the house may be removed. This is an area where there are plans to renourish the beach. She is sure something will be done with the seawall. She expressed that they are looking toward some type of passive park with some type of parking. The idea is to get as much park as possible with very limited parking.

Mayor Hughes closed the public hearing.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to transmit the amendment as proposed in the memo to the state agencies for state and regional review.

VOTE: **Motion passes unanimously.**

VII. COUNCIL MEMBERS ITEMS AND REPORTS

Council member Howard Rynearson - A TDC committee meeting took place regarding special events. They gave out $186,840.00. The Fort Myers Beach Film Festival received $28,500.00, boat race $29,000.00 and the sand sculpture received $15,000.00. Fort Myers Beach received a total of $70,000.00

and he commented that this was good. The staff did a good job presenting their case for the Film Festival.

Gave his input on the Newton property. He cannot support the figure of $2.7 million and would like to receive a consensus from the other Council members. He feels that the owner is under the impression the Town will pay anything. A message needs to be sent that the Town is already at this point.

Council member Thomas commented that the Erickson's were supposed to be given some material in hopes to freeze the price at $2.1 million. When this first came out, he indicated that he would not chase this issue. If the price keeps going up he will not keep chasing the price. He feels the owner should work with the Town.

Council member Van Duzer agrees if financially the figures get out of hand this is a cause they should not pursue. He would like to see them move forward, but understands if due to funds it cannot be accomplished.

Vice Mayor Cain also has reached her ceiling with the new appraisal. Normally, she would pursue the land at any cost, but this figure is now getting high.

Mayor Hughes replied that the attempt will be to try and enter into an agreement with a hope to secure the initial amount prior to the new appraisal. Either way it will come back to the Town Council for discussion on June 24, 2002.

Council member Rynearson reported that the widening of the shoulder on Estero Blvd. should be completed within the next week and a half. It still needs to be stripped, it will taper back where the sand comes down and they will run a row or two of sod all the way along. Everything will be swept from one end of the island all the way to Red Coconut and back again. He drove it and found several spots they will need to do additional work on. He asked the Council to go up and down and pick out areas that are not acceptable.

Vice Mayor Terry Cain - A CELCAB meeting took place with Corbett and Theresa. The property on Connecticut Street came forward and she is happy that this made it before the Town Council. She attended a meeting with the Friends of the Matanzas Pass Preserve. She feels the Council needs to be made aware that they will be hearing things in the future from the Friends with regard to the community dealing with the County. A lot of the community members around the Preserve are upset with what is being done by the County. Some issues are the removal of vegetation, placement of signage and part of the Donora Street entrance to the Preserve is being used as a mulch area. Better communication needs to take place with the County. The Friends will review the Matanzas Pass Plan that has not been reviewed since it was created. The Leadership Beach Program was canceled on Saturday due to the weather. The Taste of the Beach was a great success.

Council member Bill Thomas - Attended the Taste of the Beach. The new location is fantastic and has a lot of room for growth. On the 13th he attended the Southwest Regional Planning Council meeting. Friday was Flag Day and he attended two flag raising's. The flag raising at Santini Plaza was very emotional and it was great day for this plaza.

Council member Bill Van Duzer - Sent a recent memo to all Council members regarding the support of the Town Council to the local MPO regarding surface transportation programs. He indicated that he will need comments and support for this draft. He and Damon met with the local electric inspectors from Lee County at the Mound House regarding the recent bid. At the conclusion of the meeting it was decided that some guidelines should be established for a rebid. He and Damon will meet again on Wednesday morning to prepare a list of the work they see and feel is required. This will then be put out again for bid.

Town Manager Segal-George expressed that she believed it was the intention of the Town Council to have the County go to the Mound House to see if the electrical bid proposed from Shamrock would meet code. Once this determination was made, it would come back before Council to decide how this matter should be handled.

Council member Van Duzer added that the inspector had indicated numerous items were on the site that do not meet code. These items were not addressed in the proposition as offered to Council.

Council member Rynearson would like to see Council member Van Duzer meet with Damon on Wednesday, go over what needs to be done and write the criteria. This way it can go out to bid again. If this is the consensus of the board, he sees no reason why they cannot go forward.

Town Manager Segal-George suggested that the Council reject all three bids. The criteria can be redone and it can go out for rebid.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Thomas to reject all three bids. New specs will be prepared and the staff will go

out for new bids immediately.

Discussion: Town Manager Segal-George explained that Damon and Council member Van Duzer will write the new specs.

Mayor Hughes asked if the specs they will be going for will require a total upgrade to the current code? Council member Van Duzer replied that he will be meeting onsite to establish some guidelines of the work required to bring the building within reasonable safety standards. He commented that the present electrical in the home is a mess.

Council member Rynearson suggested the preparation of the specs be made for purposes of bidding. The bidders can be told if they see additional work to be done it can be prepared separately and this will allow the bidding to be fair among all bidders.

VOTE: **Motion passes unanimously.**

Council member Van Duzer went on to discuss the issue of the private land trust. He would like to see the Council take whatever action is needed to make this happen.

He commented that the two leadership programs he has attended have been very informative.

Chris Swenson will be the speaker at the Civic Association tomorrow evening to discuss the Fort Myers Beach traffic study. He feels this should be interesting and invites all who can attend.

Council member Van Duzer is concerned about the Mound House. Has the contract been resolved? Town Manager Segal-George indicated that this contract is being worked on.

He enjoyed the Taste of the Beach.

Mayor Daniel Hughes - Mentioned that Helen Caldwell came to a prior Council meeting to establish a community assistance program. He indicated that two meetings have taken place. This will not be an agency of the municipality, but he and the Town Manager have been attending the meetings. There are a good number of enthusiastic and dedicated people who are willing to move forward.

Town Manager Segal-George feels that this group should have a very positive effect on the elderly residents on Fort Myers Beach.

VIII. TOWN MANAGER'S ITEMS

Town Manager Marsha Segal-George - Mayor Hughes indicated that a letter was received from Scott Gilbertson. This is in regard to a reduction, which would have a significant effect on the budget. This would effect the reduction revenues, capital improvements and also impact the five-year capital improvement plan. He contacted Bob Jaynes who was rather sympathetic. Mayor Hughes expressed that the budget has been established. This decrease has been reconsidered and it is recommended the Town receive the 2.8 for the next year. The first call indicated this could be done administratively. Unfortunately, after discussion with the Town Attorney it was decided that the Board of County Commissioners must act upon this matter. He asked the Town Council members to take a moment and read the letter.

Town Manager Segal-George explained that the Board of County Commissioners is planning to discuss the matter next week on Tuesday. This will be the day following the last Council meeting. She is concerned that staff get direction and authorization to file suit, if necessary. She would also like authorization to retain a law firm who can give the same kind of interpretation of state statute as the County has received. Also, an engineer to do the gas tax calculations under the statute.

Attorney Dick Roosa asked for a motion which states if the County Commission intends to pursue the action that is addressed in the letter the Town Council would declare these circumstances as an emergency and authorize the filing of an injunction.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain that if the County Commission should fail to accept the recommendation of their staff for the 2.8% this effect would cause an emergency in the Town and therefore the Town Manager, Town Attorney and staff are directed to protect the Town's interest.

Discussion: Town Manager Segal-George expressed that if the Board of County Commissioners follows through with what she feels their intention will be the 2.8% will remain in effect for the next year. Negotiations and discussion will be held for the next year.

Mayor Hughes indicated that this is a protective fall back position and not an attempt to pressure the County Board, which he feels is attempting to be helpful. The elected officials are intending to overturn an administrative action.

Council member Rynearson does not feel the language is offensive. He had a conversation with three members. He has high hopes that this will go in the Town's favor.

Town Manager Segal-George explained when this letter came in it caused a great deal of confusion and removed staff from their routine. Deputy Town Manager Gucciardo replied that the Board of County Commissioners owes this Town Council an apology for the way this matter was handled. He does not feel this Council needs to be apologetic. The Town Council is doing everything possible to protect the interest of the residents.

Mayor Hughes commented on the letter and does not feel that it is apologetic. He feels some very strong statements have been made.

Attorney Dick Roosa proposed the following motion. Should the County Commission fail to accept the recommendation of their staff of the 2.8% this effect would cause an emergency in the Town, and therefore the Town Attorney is directed to protect the Town's interest.

VOTE: **Motion passes unanimously.**

MOTION: Made by Mayor Daniel Hughes and seconded by Council member Howard Rynearson to accept the recommendation of the Town Manager and give her the authority to have a higher outside Counsel experienced in tax matters to review the statute and the interpretations of the statute. Also, to authorize someone from the economic standpoint to take the various elements in the statutory formula and determine where they would come out under the statutory formula in default of entering into and interlocal agreement.

VOTE: **Motion passes unanimously.**

Deputy Town Manager Gucciardo indicated that a fax was received today from Burton and Associates. The Town has been in contact with them to see if they would be willing to review and give a report on the proposed rate increase study as put forth by the County with regard to water and sewer rates. Burton and Associates gave a not to exceed cost of $5,500.00. Normally this would be put out to bid, but conversations with the Town Manager and Town Attorney concluded that this firm would be the recommended choice. Staff is looking for direction from the Council for approval to move forward on this matter.

Mayor Hughes would be in favor of this recommendation. He asked the Council for any objections. None were heard. Mayor Hughes indicated that staff has the unanimous support to pursue this matter.

IX. TOWN ATTORNEY'S ITEMS

Attorney Dick Roosa - Commented on the private land trust. This must be done much in the same way as the community services. It is not to be part of the Town, because this will invoke government and sunshine. Some interested citizens should be secured along with one of them being a local attorney who can help with the incorporation of the documents.

Vice Mayor Cain replied that citizens have expressed an interest. Phil Buchanan will be willing to help with the documents.

Attorney Roosa hopes to have a resolution for the Town Council next Monday regarding Comcast.

X. PUBLIC COMMENT

Diane Easterbrook came forward to express her disappointment with the Council's decision this evening. She thanked Council member Van Duzer and Vice Mayor Cain for their support. She is disappointed with Council member Thomas who did not live up to his campaign promise to her and her husband. She expressed that they did go to apply for the MUD, but it was too late. Their dreams and plans hinged on a 6-month period. It is helpful to have money to do what you need to do as soon as possible on this island. When you talk to people on the island regarding the direction of this Town they are not very satisfied. She suggested the Town Council go out and talk with the public.

Council member Thomas replied to Mrs. Easterbrook. He commented on his campaign. A big issue for him was against density. He has fought every increased density matter on this island. He is consistent against increased density on this island whether it is in a commercial area or residential. If he would have voted in favor of this issue, it would have possibly increased the density by 93 homes.

Mayor Hughes added that he felt all Council members are sympathetic to their position. The remarks of Council were not intended to be unsympathetic. In this case he felt it was in the communities interest to maintain the ordinances and Comprehensive Plan provisions that were in effect.

XI. ADJOURNMENT

The meeting was adjourned at 9:17 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