

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

I. CALL TO ORDER

The Regular Meeting of November 4, 2002 was opened by Mayor Daniel Hughes on Monday, November 4, 2002, at 3:00 p.m..

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Howard Rynearson - Council member and Bill Van Duzer - Council member

Excused absence from meeting: Council member Bill Thomas

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Damon Grant, Attorney Dick Roosa, Dan Folke, Bill Spikowski, Jerry Murphy and Pam Houck.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REV. DR. ROBERT STUCKEY, First Baptist Church of Fort Myers Beach

The invocation was given by Rev. Dr. Robert Stuckey.

IV. PUBLIC COMMENT

Anita Cereceda came forward from the Times Square and Old San Carlos Improvement Alliance. She is present to answer any questions with regard to the 12 Days of Christmas and extension on premises.

V. CONSENT AGENDA

A. Proclamation: National Epilepsy Awareness Month

B. Approval of minutes: October 7 and October 14, 2002

C. Financials: September, 2002

Mayor Hughes pulled Consent Agenda item B - minutes of October 14, 2002 and Vice Mayor Cain pulled minutes from October 7, 2002.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to approve Consent Agenda items A and C.

VOTE: Motion passes unanimously.

Corrections and changes to minutes (10/7/02):

1. **Vice Mayor Cain** - Page 3 (Discussion) Strike the word "Island" following Estero and replace with River.

Corrections and changes to minutes (10/14/02):

_____ 1. **Mayor Hughes** - Page 1 - Strike of pertinent and replace with appurtenant.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve Consent Agenda item B the minutes of October 7, 2002 and October 14, 2002 with corrections.

VOTE: **Motion passes unanimously.**

VI. A. PUBLIC HEARING: John Richard in reference to Shipwreck, case #ADM2002-00017, appeal of staff's denial of an administrative approval.

Attorney Dick Roosa indicated a resolution identifying John Richard was present for Council. This resolution is a resolution of appeal, which is the same form that has been used for prior appeals. He pointed out a concern and indicated that there is no established procedure for handling this request except for the appeal process. Attached to the resolution is a copy of the code, which was interpreted by the administrator at the time the decision was made. Bold print was added in paragraph B, which indicates that amendments may be approved by the division director. He expressed in general law when the term "may" is used this does not indicate mandatory. When the term "shall" is used, it would indicate mandatory. He feels if the word "shall" were used and not approved by the administrator there would be a basis for appeal. In this case, may was used which is discretionary. An alternative exists within the ordinance that would grant the authority to the administrator. He indicated there is a concern with jurisdiction. The original findings are jurisdictional. The applicant did not have time to prepare for this matter and is requesting a continuance.

Beverly Grady from Roetzel and Andress came forward representing John Richard. She had spoken with the Town Attorney prior to the hearing and is requesting a continuance. Also, she did request the Town Attorney issue a memorandum to make clear the position. She indicated the applicant feels they should have the opportunity to present all the information with regard to the appeal. It will then be clear under the regulations what decision will be made by the Town Council for overturning or upholding staff's decision.

Mayor Hughes commented that he deems this a very reasonable request. No objections were heard from any Council members. He asked Dan Folke to check the ordinance to verify the specific provision dealing with administrative appeals (Section 34-145). The memo should indicate whether or not Section 34-145 is relevant.

Attorney Dick Roosa added that there is an amendment to the Code, which identifies the Town Council as the hearing examiner in this particular case. The appeal comes directly to the Town Council and was completed most recently.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to continue this matter until December 9, 2002.

Discussion: Mayor Hughes feels if an alternate procedure is determined the applicant should be entitled to a credit for the amount paid to apply toward the cost of going through the alternative procedure.

Dan Folke asked Pam Houck to address this concern. He indicated that through the interlocal agreement Lee County does keep all of the fees.

Pam Houck replied that in this case they will be able to credit the fee pay or refund the fee should the applicant decide to withdraw.

VOTE: **No vote taken for this motion.**

B. PUBLIC HEARING: Estero Beach Club East, case #VAR2002-00023, variance from the requirements of LDC Section 34-1174 to allow construction of a

residential accessory structure (covered carports) within six inches of a side lot line and twelve inches of a rear lot line in the residential multi-family (RM-2) zoning district.

Mayor Hughes began by asking for ex parte communications. None were heard.

Robert Lee Johnson, President of the Estero Beach Club East, came forward. He passed out four drawings to help make the matter more clear for the Council. He indicated in September of 2001 there was a storm called "Gabrielle," which took down part of the carports. They are presently in the processing of having these replaced. At the same time of this replacement, there are four owners who would like to have a carport over their parking stalls. He indicated these are shown in yellow on the drawing. This is actually a continuation of the carport structure. No changes exist to the car area itself. This is just a matter of covering this particular area. Freedom Aluminum has been contacted and is ready to put up the damaged carports.

Mayor Hughes clarified these are existing spaces that have been allotted to the owners, but presently do not have the covering? Robert Lee Johnson replied that this is correct. He proceeded to point out the proposed areas on the drawings.

Mayor Hughes questioned how the post will be closer to the property line than the overhang? Robert Lee Johnson asked the representative from Freedom Aluminum to come forward to answer this question.

Jack Shefulbine from Freedom Aluminum came forward. He could not answer the question and indicated that this does not make sense to him either.

Jerry Murphy came forward to present the staff report. He directed Council's attention to the resolution and noted that the LPA has approved the request for this variance unanimously. The conditions and findings within the staff report have been revised slightly. Staff is adopting the resolution and is in accordance with the request. Staff does recommend approval. He addressed the issue of setbacks raised by Mayor Hughes. He feels the distance is 1.4 feet from the overhang to the side lot line. He indicated a variance could be included for clarity allowing for a 1.4 foot setback on the side property line.

Mayor Hughes referred to the first three lines of page 3 in the staff report. He indicated that he has concerns with this being a valid rationale. This will allow others to come forward and indicate they have no other room and ask for a variance. Jerry Murphy replied that this is part of the rationale, but is not all of the rationale.

Council member Van Duzer indicated that each situation is looked at case by case and would not set precedence.

Jerry Murphy added the point made by staff referred to when the project was designed, none of the current owners had anything to do with the design. The design was the developer's design. Subsequent to this the existing structures had been blown away and additional owners would like covered parking. By looking at the layout for the site plan there is no other place for accommodation. He is unsure if this is a hardship, but is a factual aspect of this property that could be taken into consideration.

Ralph Gordon, an owner from Estero Beach Club East, came forward. He is an original owner. He addressed that there is car parking for all 49 units plus visitors. Some of the parking spots are located on the wall of the building, which faces the ocean, and contains windows within the wall. He indicated it was never considered to place an obstruction against these windows. This is the reason for it being stated there is no additional room for carports. He indicated that 10 coverings were taken down by Gabrielle, but there are 12 parking spots. He was present when the 10 were built originally, and they tried to get 12 people to approve. These owners were new to Florida and did not understand the harsh Florida sun. Also, they are low income and decided it could not be afforded. He expressed that all 49 owners were addressed on this issue and 91.8% came back in favor of having these spaces covered. He indicated the original carports were built in approximately 1975 with a permit from Lee County.

Some additional clarification took place between Mayor Hughes and Robert Lee Johnson with regard to which parking spaces contained covers and which do not.

Mayor Hughes asked for public comment on this matter. None was heard. Public hearing was closed.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Van Duzer to accept the resolution with the conditions and findings as listed. The Town Council finds that there are exceptional conditions and therefore are approved. In addition, to include the necessary side yard setback to be consistent with the information within the narrative.

Discussion: Mayor Hughes is not convinced that this matter meets the statutory and ordinance requirements of a variation. He indicated that this matter is questionable. He feels they must become more liberal in their interpretation of the findings that are necessary in granting variances. He feels the LPA is not following the law closely.

VOTE: **Motion passes unanimously.**

C. Request for extension of premises for 12 Days of Christmas and New Year's Eve.

Mayor Hughes expressed that New Year's Eve has been removed from the agenda. Damon Grant began by providing a correction. On December 7 and December 8 referring to the Car Show Events should indicate the locations being Times Square and Old San Carlos.

Mayor Hughes expressed that the memo provided by Damon is clear. A waiver of the open container is being considered along with an extension of premises for those merchants who have a current state alcohol license.

Council member Rynearson raised the issue of plastic containers. Damon replied that this should be stipulated.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to approve the waiver of open container and extension of premises.

Discussion: Mayor Hughes raised the issue of plastic containers and feels this should be in the ordinance. This matter is addressed with each event. He would like staff to look into this matter.

Attorney Dick Roosa replied that you are prohibited from having any type of open container. The appropriate time for the plastic is when an exception is granted. He did agree the language could be written and included within the ordinance as suggested by Mayor Hughes.

VOTE: **Motion passes unanimously.**

***The Council will recess as the Town Council and reconvene as the Town of Fort Myers Beach Public Works Services, Inc. Board.*

1. Adoption of Utility Operations Manual

Deputy Town Manager John Gucciardo indicated the Town Council should have a memo prepared relative to the adoption of the Operations Manual. He also included a copy of the

resolution passed a few weeks back, which contained the adoption of the technical specifications. He has copied the entire Operations Manual for Council's review prior to the adoption.

MOTION: Made by Council member Howard Ryneerson and seconded by Vice Mayor Terry Cain to approve the Utility Operations Manual. **Motion amended:** to modify and include a table of contents, change Town of Fort Myers Beach to Lee County and the cross reference with the OSHA requirements.

Discussion: Council member Ryneerson spoke to Attorney Roosa with regard to the specifications for excavating requirements from OSHA. He would like to see these added into the specs, which does put the contractors on notice they must follow OSHA's requirements.

Deputy Town Manager Gucciardo expressed that references to OSHA would be included within the technical specifications, which have already been approved. He asked for Council's direction on where this should be located within the Operations Manual.

Council member Ryneerson replied within "Legal Restrictions and Permit." He also asked Attorney Roosa for his input.

Mayor Hughes feels this manual needs an index or table of contents. He expressed that it is difficult to find material within the manual.

Attorney Roosa added that page 9, section 5.4 deals with excavation, trenching, backfilling and restoration. He feels this is the most appropriate area to include the language.

Council member Ryneerson feels there should be a late fee for water bills. Mayor Hughes agrees and feels there should be some penalty for paying late.

Deputy Town Manager Gucciardo expressed that in the resolution recently passed with regard to fees and charges a late fee was not added. He indicated that it does not appear to be a common practice to charge late fees with regard to water and sewer billing. Staff felt that the Council desired to keep as consistent as possible with other local utilities. He explained that "turn off and turn on charges" are in place presently.

Mayor Hughes is in agreement with a late fee. He feels the motion should direct staff to amend the ordinance, which addresses rates and fees.

Council member Van Duzer would prefer not to address this issue at this time, especially since no one else is charging. If this becomes a problem in the future, the matter can be readdressed.

Vice Mayor Cain is also uncomfortable with the late charge at this time. Her concern lies with the transient population.

Council member Van Duzer suggested staff should look into this matter and report back to the Council with a recommendation. Council member Ryneerson was in agreement. No objections were heard from the board members.

Mayor Hughes discussed the back flow prevention. He questioned what will happen to an entity who was advised as a result of a water break and during the course of the repair that it would be a good time to put in a back flow? If a time period of one month had been waited, a rebate would have existed. He has concerns that this is not fair. He indicated that this matter should have been advised, if this was under consideration.

Attorney Dick Roosa replied that this could be changed to be retroactive until the time the company was obtained. He feels this should be made retroactive, so they will not penalize those who have voluntarily cooperated.

Deputy Town Manager Gucciardo indicated that he has asked Beach Water to give him a summary on back flow prevention and part of their survey they are required to perform under the manual. He can then ask this manual be modified, if necessary.

Council member Van Duzer would like to either continue this matter or move the motion and ask for additional clarification.

VOTE: **Motion passes unanimously. Resolution 02-34U**

Mayor Hughes asked staff to look into the rebate situation.

***The Council will recess as the Town of Fort Myers Beach Public Works Services, Inc. Board and reconvene as the Town Council.*

VII. COUNCIL MEMBER ITEMS AND REPORTS

Council member Howard Ryneerson - Attended the Offshore Power Boat meeting. He indicated that they are requesting for approval to place a banner up by Times Square. He is in support of the placement of this banner.

Town Manager Segal-George added the issues with the banner refer to liquor advertising and also how long in advance the banner will remain up. Council member Ryneerson will relay this information and get the answers to the Town Manager's questions.

Council member Bill Van Duzer - On Sunday there will be a Pilot Club Fashion Show and Luncheon. Tickets are going fast. On Saturday, the Fort Myers Beach Lions Club, is having a cancer benefit to include a fish fry. All fish provided for this event comes from local commercial fisherman. 100% of the money collected will go toward the cancer benefit. He feels the money is going to the Ronald McDonald House this year. Discussed the Sand Sculpting Contest. Mentioned he was questioned why deputies' could not be obtained during this event to help with the traffic situation. Will attend the Chamber Board on Wednesday morning and on Friday he will attend the Chamber Traffic Committee to discuss alternating lights.

Vice Mayor Terry Cain - On Monday night, she and Julia gave the resolution for the Spirit of the Gulf. She expressed that the resolution was received and everyone was very

thankful. Commented on the amount of people who come out in the middle of the night to view the sand sculptures. It was good to have the Scout out and the Chamber of Commerce was very good in recognizing the Scouts for being present. This was a good weekend.

Mayor Daniel Hughes - He was appointed to the "Lee County Blue Ribbon Lobbying Committee." Meetings began a week ago and will continue every two weeks. He and the Town Manager met with the "Needs Task Force." He indicated that this is not an official Town agency. The intent is to help try to put together an entity similar to "The Fish" on Sanibel and in other places.

VIII. TOWN MANAGER'S ITEMS

Town Manager Marsha Segal-George - She indicated a scheduled meeting with Sanibel is taking place on December 13, 2002 - 9:00 a.m. at Sanibel. She will meet with their Manager to work up the agenda. She reviewed her list with Council and asked for additional input.

On November 15, the Mayor will go to Tallahassee to Florida Communities Trust with regard to the Newton Property. The Town scored very well and a delegation is being sent up that will include the Mayor, County Commissioner, Representative from Uncommon Friends and Dan Folke.

On November 26, the Mayor will go up to appear before the Governor in Cabinet with regard to the Harbor Plan. She indicated this topic needs to be addressed today.

The Traffic Committee meeting on Friday with regard to alternating lights will have two Council members in attendance. She indicated that this will be advertised and this portion of the meeting will be taped.

Deputy Town Manager John Gucciardo - Mentioned the notice for the Southwest Florida League of Cities Luncheon for Thursday. He is looking for a consensus for attendance. All Council members indicated they would be attending this luncheon.

He had a conversation with Gary Price, Manager at Bonita Springs, with regard to the Marine Lab. This does not show up as an agenda item, but staff has been told Commissioner Judah will be bringing up the issue of the Marine Lab. He indicated staff will be monitoring the Board of County Commissioners and will bring back any information to the Council.

Town Manager Segal-George felt the topic should move back to the Harbor Plan. She feels the main issue is if the Aides or Cabinet will not support the request for the 10 year round spaces, what is the Council's pleasure with regard to direction to the Mayor as he goes into this meeting?

Mayor Hughes expressed if the lobbying is unfavorable should the matter be deferred or accept the DEP restriction and request that the project proceed with the future intent of a change. He feels they should continue to stand by their position, but he does not want to see 3 to 4 years of work lost.

Council member Van Duzer added that he does want to betray those he feels the Council owes an obligation too. He also does not want to see the back bay lose its valuable resource. He expressed the Mayor should go and fight for what they feel is right, but if no other alternative is available they must move forward and go on. He feels this is important for everyone and is a positive step.

Vice Mayor Cain does not like the request with regard to the proposal to name the individuals as well as their boats. She has had long discussions on this matter and does not agree. Someone may elect to get another boat. She would like to see language which states that upgrades would be allowed. She is very upset that a part of the group which formed this plan is excluded from the plan. The Cabinet is making this so you will not be able to keep a good neighbor. She feels this is very distressing. Council member Ryneanson feels a lot of time and money has been put into the Harbor Plan. He knows the Mayor will do his best, but

this must go forward.

Mayor Hughes recapped that three Council members do not want let this situation slip away on the live aboard issue.

Council member Van Duzer added that everything about the Harbor Plan is a plus.

Mayor Hughes will keep everyone advised. He is clear on the position of Council.

IX. TOWN ATTORNEY'S ITEMS

None.

X. PUBLIC COMMENT

(? no name given) questioned the 3:00 p.m. time? Mayor Hughes indicated this time is selected when public hearings are included in the agenda. The next regularly scheduled meeting will be in the paper, which is the first Monday in December.

He commented that the discussion with regard to the carports at Estero Beach Club was a waste of Council time. Mayor Hughes commented that this is required by law.

Discussed his water bill and feels there is a problem with the gallons being calculated. Mayor Hughes replied that this is an administrative matter. The Town Council does not adjust water bills and this must be discussed with staff.

XI. ADJOURNMENT

The meeting was adjourned at 5:10 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