

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
January 22, 2001  
NationsBank, Council Chambers  
2523 Ester Boulevard  
FORT MYERS BEACH, FL 33931  
(941) 765-0202**

**I. CALL TO ORDER**

The regular Meeting of January 22, 2001, was opened by Mayor Daniel Hughes at 3:30 p.m.

**Council Members present at the meeting:** Terry Cain, Daniel Hughes, Ray Murphy, Howard Rynearson. Garr Reynolds arrived later during the meeting.

Members absent from meeting: None.

**Town Staff present at the meeting:** Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Attorney Richard Roosa.

**II PLEDGE OF ALLEGIANCE**

All assembled and recited Pledge of Allegiance.

**III. INVOCATION**

None.

**IV. PUBLIC COMMENT ON AGENDA ITEMS**

None.

**V. CONSENT AGENDA**

**A. Review of Financial Reports: November and December 2000**

**B. RESOLUTION: Investment Policy**

**MOTION:** Moved by Ray Murphy and seconded by Terry Cain approving the consent agenda item A. Passed unanimously.

Mayor Hughes discussed the Resolution listed as item B with the committee. The mayor questioned if the word "as" belonged in the resolution and it was decided that it would be changed to delete the word "as". He then went on to Section II, adding there was no reference to any trust. He was advised it was the Florida Municipal Investment Program. It was decided that a *period* (.) would go after surplus funds and *of the town* would be stricken.

**MOTION:** Moved by Ray Murphy and seconded by Howard Rynearson approving consent agenda item B, the Resolution, with the two revisions as stated above. Passed unanimously.

**VI. ADMINISTRATIVE AGENDA**

**PUBLIC HEARING: RAYMOND AND PATRICIA ALVAREZ** Lot recombination variance in a single-family residence district requiring a minimum

## FORT MYERS BEACH

lot width of 75 feet reduced to 62.5 feet. Properties are located at 375 and 381 Palmermo Circle.

Beverly Grady representing petitioners addressed the committee with regard to the above request. She advised that Lot 4 was an existing plat of lot of Venetian Gardens, containing a single family home and that Lot 5 and one half of Lot 6 contains a dock. She added that each parcel was entitled to one dwelling unit. The petitioners would like to combine the property into two equal parcels adding there would be no increase in density. Ms Grady said that granting this variance is consistent with regulations and compatible with the existing development in the neighborhood.

Mayor Hughes asked what would happen to the remainder of Lot 6, the west half? He was advised it was combined with the adjacent property.

Dan Folke, Planner with Lee County Dept. of Community Development addressed the committee advising he prepared the staff report with regard to this subject request. He advised staff has recommended approval of this request with the two following conditions, #1 is that the variance is limited to the configuration of the two proposed lots as shown on the site plan as Attachment B, and condition #2, the variance may only be used in conjunction with the development of single family homes and must comply with the required minimum setbacks of the RS1 district of 7.5 feet. He explained the fact that the lot of 50 ft and 75 ft. would be combined into two 62.5 feet lots. He added originally the land was platted in 1925. He stated that if this variance is approved the applicant will be required to complete the type 4 limited review lot recombination. Mayor Hughes asked what is that and Dan explained it to him and that there was a \$350.00 fee involved and that they basically provide surveys and a limited application showing the reconfiguration and then staff reviews them as to consistency with the zoning district with regard to the land use category. Dan advised they fall within the realms of the comprehensive plan. Staff made the finding that the 50 ft width of the original lot is an exceptional condition. Staff does not feel that the change would be injurious to any of the surrounding properties.

Mayor Hughes asked a question regarding the docks on these lots and if they come into play in any way with this situation? He was advised that a dock was allowed on each lot and also that staff would probably look at it at the time of the reconfiguration.

**MOTION:** moved by Ray Murphy and seconded by Terry Cain to approve the resolution incorporating both of Staff's recommendations #1 and #2 in the staff report and also in paragraph A striking *not* and paragraph C striking *not* and in the now therefore paragraph striking *disapproved*. Passed Unanimously

PUBLIC HEARING: DC120000051 John Richard in regard to Rusty's rezoning of a parcel from C1 to CPD to permit a mixed hotel/motel, commercial office building, etc. The properties are located at 237, 239, 245, 309 and 320 Old San Carlos Boulevard.

## FORT MYERS BEACH

Beverly Grady representing the applicant with regard to this request. Ms. Grady stated what was requested adding how hard Mr. Richard has worked on this plan. Ms. Grady elaborated on the proposed plan in detail that there would be mixed commercial uses. It was noted that there was a scale provided for the committee's review. Ms. Grady advised that the Old San Carlos Plan was the guideline used to prepare this plan and the design for the building. She advised that they received the staff recommendation of approval. She advised there are four phases included in the plan. She stated Phases 1, 3 and 4 are proposed for parcel A, including 3 buildings, parking places and docking facility. Phase 1 building is a caretaker's residence to be located over a 1300 sq. ft. café, the phase 3 building is a 4-story building with mixed-uses on the ground floor and hotel/motel units or office for the 2, 3, and 4<sup>th</sup> floors, phase 4 will be a 3-story building with mixed on the first floor, and hotel/motel or office uses for the 2<sup>nd</sup> and 3<sup>rd</sup> floors. Phase 2 would be parcel B is proposed a single building 2 stories with mixed uses on the ground floor and combination of office and storage on the second floor along with parking spaces. She added the LPA recommendation had been included in the packet provided. She advised the applicant was agreeable with all recommendations and conditions except #2 that the maximum square footage for commercial uses excluding hotel/motel caretaker is limited to 25,426 sq. ft. She added there was a correction as to deviation #6 regarding parking spaces for 1 space per 200 sq. ft. to 1 space per 600 sq. ft. instead of 400 sq. ft. for retail office. She stated it was on page 5 of the staff report. She said that on page 3 nightclubs was crossed out but the LPA added it in with special permit only.

Joseph McHarris was sworn in and addressed the committee. He advised that looking at the site plan for this project was one thing we thought was extremely important was that as you are coming over the bridge it is a gateway to the beach and that presently you see the KFC and the backs of buildings. He advised with the plan it would be better laid out and that you would not see the backs of buildings. He stated when you come over the bridge it was important to see a nice structure. He added that there should be a pedestrian friendly atmosphere. He added there must be connection in the area with regard to pedestrians, trees and structures, etc. and this would be accomplished with high quality architecture. He said it was very important to give attention to detail to accomplish what was desired. Windows, columns, doorways, etc. He added with varied architecture it would be more interesting and not so ordinary looking as some structures as (K-mart, Wal-Mart, etc.) He stated one building was Mediterranean and one more traditional in style. He added that in Phase 2 and 3 would also have varied architecture, and the same idea to follow in Phase 4. He said varying roofs would also give a nice view so that everything would not be the same. He added that the footprint had also been varied so it was not just one straight line you are walking down the path, the buildings were pulled and pushed to accommodate the structures on the street so they did not look as if built all at once but over a period of time. A question was put for Mr. McHarris as to canopies; balconies, etc. were they going to be there, adding they were not on the artist's rendition of the building. Mr. McHarris explained the balconies, canopies etc. and where they would go pointing to the drawing for the committee. There was a question as to the north building and whether there would be a permanent canopy and the committee was advised it would be permanent.

## FORT MYERS BEACH

Ms. Grady again commented on the plan and the work that has gone into this project by everyone involved. She asked that the request be approved. Mr. Reynolds asked with regard to the 3-story building wanting to know if it meant 3 stories above flood zone? He was advised the first floor was a ground floor that pedestrians could walk into from the street. The next item requiring clarification was deviation #10 height and that 49 ft. was originally requested and staff denied it that it should be 40 ft. and the LPA recommended 43.8 feet and the applicant is in agreement with the 43.8 feet recommended for the North Building. The south building met the proper height requirement. Mr. Rynearson discussed the parking requirement of 8 ft. instead of 9 ft. and wanted to know if it was all over or just part of it. He was advised it was for the majority of the parking. He was also advised the idea is that people park and walk not get in and out of their cars. Ms. Cain wanted to know where the 86 hotel/motel units come in place? Ms. Grady advised that came from working with the architects but that did not have to be approved today at this meeting that this would be done at a later date upon approval of the comp plan and the applicant is aware of this. Mr. Reynolds again questioned the 86 number regarding hotel/motel units and the size of the units. He was advised that issue would come up later on. Mr. Reynolds asked when we would know how many rooms will be built and again was advised these issues would be coming back to the council for approval at a later date. Mr. Reynolds questioned deviation #6 regarding parking and was advised that the number was still 123 spaces at this time and indicated on the plan. The mayor asked with regard to the Schedule of Uses, shown on the map, he wanted to know how we have a clear record of what is approved? Ms. Grady advised that the county just requires a resolution. The mayor stated he would like a notation on the concept plan saying modified by resolution for the record. He asked if there were any ex parte communications. Howard Rynearson advised he talked to John Richard about where he was going to put his buildings. Ray Murphy also advised he met with Mr. Richard two months ago and he showed him some of the renderings. Dan Hughes stated he had conversations with Mr. Richard.

Dan Folke spoke with regard to this request advising he reviewed it and prepared the staff report and recommendation. He began with page #2 of 14 pages, staff recommended approval. He first mentioned condition #1 that the date be changed "December 8, 2000", but the one dated December 14, 2000 was the one provided, the only change to that was to parking and landscaping. He moved on to the Schedule of Uses stating he went through the requested uses and the ones crossed out are ones the staff felt were inconsistent with what is intended in the Old San Carlos area or uses which might be detrimental to some of the residential property in that area. He advised that some uses be "by special permit only", primarily the uses such as the bar and cocktail lounge, outdoor seating with consumption on premises, night club. Mayor Hughes mentioned the use of outdoor seating not a defined use and it was decided that should be deleted, as it was not necessary as outdoor seating on its own was not a use as defined in the LDC. Another use that came out of the LPA as to schedule of uses was for hotel establishment and the LPA agrees is that hotel establishment group 3, limited to small items such as jewelry, shells and coins and the like should be added. The mayor again stated he would like the Master Concept Plan to have a notation on it that it is subject to the resolution and in the event of any conflict between the comp plan and the resolution

## FORT MYERS BEACH

that the resolution shall control and Dan agreed this should be the case. Mr. Folke then referred to page 4, Site Development Regulations advising there was a typo in staff report under retail that it should read 15, 450 sq. ft. of retail, which was requested, and what is shown on the MCP. Dan continued with regard to height and stories advising they asked for 49 feet above base flood in parcel A and staff recommended 40 feet. The LPA recommended 43.8 ft. above base flood elevation for parcel A only. Parcel B would remain at 34 feet above base flood elevation. He advised he added the maximum stories for each phase and what was shown on the MCP. Dan Folke next discussed conditions 3, 4, 5, 6, and 7 adding they are standard conditions, pointing that #3 refers to some landscaping, that #4 the property owner will have to opt in with the downtown overly zoning district. Dan next discussed deviations 1, 2 and 3 on page 5 advising that staff has recommended approval of it. He addressed deviations 4, 5 and 7 dealing with parking lot dimensions, width space, size and entrance width and staff recommended approval of same. Dan discussed deviation #6, which deals with deviation from required number of parking spaces, which has been corrected previously by Ms. Grady today from 400 ft to 600 ft. Next discussed was deviation #8, Dan advised staff recommends approval of same limited to the phase I building. He advised deviation #9 was withdrawn. Deviation #10 with regard to maximum height above base flood elevation and he advised staff is in agreement with the LPA to allow 43.8 ft above base flood elevation to allow for architectural design of the buildings. Garr Reynolds questioned what was flood elevation; Dan advised he believed it was 12 ft. Dan discussed next deviation #11 which deals with density adding staff recommends approval of this deviation with the condition that the approved number of units must be consistent with comp plan at the time of the local development order and that it no instance shall hotel/motel exceed 86 units. He added the LPA added an additional condition, which is condition #6, which states that none of these units are eligible for transfer to other property located within the town, and staff would support that added condition. Dan reminded everybody again that the 86 units depended upon the comprehensive plan. Dan advised that Mr. Spikowski could give some more information as to this issue. At this point he asked if there were any more questions. Terry Cain asked about deviation #10 clarifying it would be approved if changed to 43.8 ft. and Dan advised that was correct as he stated earlier. The mayor commended the presentation given by everyone.

Bill Spowski next addressed the committee stating this has been a long time coming. He continued that the town was moving forward with the engineering for the sidewalks. He reminded the need for a comprehensive plan amendment so that the Old San Carlos plan can be properly applied. He stated he was recommending some form of amending the comp plan so that 3 story buildings would be allowed on Old San Carlos. He asked if there were any questions. Garr Reynolds discussed the December 19, 2000 amendment to the LDC. He was advised by Mr. Folke that on that date was initiated a comp plan amendment and that no legislative change was made on that day. He stated that at the end of each year the public is given a chance to approve amendments to the comp plan, he again said no decisions were made on December 19, 2000. Mr. Reynolds said he believed the town manager had the authority from council to make any improvements she wants to in the overlay district area except along Estero Blvd. Dan advised

## FORT MYERS BEACH

the multiplier has to come before the council. Dan advised again that the number of 86 might never be approved. Mr. Reynolds wanted to know why the number 86 was in the proposal if it was not going to be approved. He was advised that this is what they are requesting but the amendment would have to be adopted before this number of 86 could be used. He was reminded that the number of 86 was part of the design of the building. Mr. Reynolds is concerned that it would be from 25 to 86 which would could density and intensity. Mr. Reynolds expressed his concern with regard to this number.

Ms. Cain talked about B Site Development Regulations, specifically parking note where it says *combination of uses may be developed which requires more than 123 parking spaces unless additional offsite parking is provided*. She added there would be a combination of uses that are going to be limited to the parking spaces that are there. Mr. Reynolds also agreed with Ms. Cain on this issue adding there would not be enough parking spaces for 86 units adding his feelings that there are so many deviations in an already relaxed situation.

Mr. Murphy asked if Mr. Spikowski could give a little history of the comp plan and he did so briefly.

**MOTION:** by Vice-Mayor Murphy and seconded by Howard Rynearson that the Town Council of Fort Myers Beach approve the aforesaid resolution incorporating the findings of the LPA and the modifications discussed on this date with regard to deviations and conditions and that the Master Concept Plan have notations that any changes made today be reflected in said resolution and that said resolution will have control over the plan itself; and, that this resolution will be written in final form for signature by council. Motion passes 4 to 1, council member Garr Reynolds descending.

## MINIMUM USE DETERMINATION FOR 236 IBIS STREET

Marsha Segal-George stated this is a minimum use determination adding this does not normally come before the council she advised she had provided the committee with a memo as to the reason it was coming before the council. This goes directly to a comp plan amendment that the council passed last year and was approved. This has to do with two lots that had one residence on them and an attempt to basically create two lots and two homes. The opinion on this is rendered by the LPA attorney and not the town attorney. What has happened is it was reviewed and the staff recommendation was basically to deny the request because of the comp plan amendment. The opinion had not yet been rendered. The applicants came to see me and explain their circumstance which information you have in your packet today. You also have a memo from Mr. Spilowski. There is a procedural question here, and that is technically what happened is they filed an application for the minimum use determination. The question is if whether the new comp plan amendment will be applied in the onion which would then deny them that minimum use determination and not allow the two houses on two lots but only one house to remain. I put this before you as this was a recent comp plan amendment and I think it is important to see the effect of what happens and also I did not feel I had the discretion to do anything other than apply the laws as they exist. I would ask for your direction and then could write the opinion.

## FORT MYERS BEACH

Marsha advised that the applicants were present. She added she did not want to categorize this as an appeal of an opinion as the opinion has not been written but more as a procedural question.

Diane Bell advised that the sole reason for purchasing this property was to divide it into two lots that it was originally since 1952. The house built on it now was built in 1961. We bought it to divide it and sell it as a business venture. We thought we followed all procedures with this plan for the two lots. We were under the impression all that was needed was the minimum lot determination to continue and tried to do this. Ms. Bell added she had the demolition permit and then the bomb was dropped on us when Dan Faulk phoned Garry and said this amendment had been passed by FMB. We were surprised and upset at this news. We spoke with Marsha who recommended we come before you today. We are asking that even though we know rules change and are changing but we ask that you please reconsider on the basis that the law was not as yet changed in November. The mayor asked when they closed on the purchase and he was advised the closing was on November 15, 2000. It was also advised that the applicant was informed in October that they had to get a minimum use determination prior to closing. The applicant said they would not have a problem by several different persons. The mayor advised them they did not have the determination prior to the closing. The mayor asked when they contracted to resell the property and was advised it was approximately November 17<sup>th</sup> or 18<sup>th</sup>, 2000.

Bill Spikowski addressed the council with regard to this request. He stated he provided council and the town manager with a memo dated January 16, 2001, which discussed the comp plan amendment that took effect November 21, 2000, and describes the facts of this case. He advised he was not aware of any procedural issues or reselling, etc. My only concern were the facts of the case and the laws and how they would apply to it. He stated that the bottom line is the new law would not allow this property to be re-splitting because the existence of the single house on the property at any time prior to November 21, 2000, is deemed by the town through the new amendment to be a combination of those two lots. Originally the county was lenient with regard to splits but now the council decided last year that that was too lenient and did provide information with regard to this in newspaper articles in the Ft Myers paper and the FMB paper with 1/4 page adds in May an June and at two meetings in Sept. before being adopted. He added that the bottom line is this property cannot be divided according to the new rule.

The mayor mentioned the bad timing with this case and added this was a classic case of what we were aiming to put an end to. The mayor asked if the amendment did not apply in this case were there two build able lots as to the size of these lots and he was advised that they would not that they are just a little too small. Mr. Reynolds asked if there was any property like this anywhere in the county. He was advised by Mr. Spikowski again that Lee County has been always lenient in such cases but reminding that the new amendment would change the rule here. Mr. Reynolds asked if these applicants should be given consideration as to the time factor involved. Mr. Spikowski advised that the rule was in place and that the application date was not relevant. He said maybe attorneys know of a way but stated he could not see any in this case. Mayor Hughes added that when the house was originally built those two lots would have to have been consolidated.

## FORT MYERS BEACH

Dan Folke advised he was interested in this case as he is active in minimum use determinations. He felt at the time, which was prior to the amendment that there would have been able to have two houses built on each plated lot. Mr. Folke was faxed the new amendment and was aware of the new provision and I had to call the applicant and advise that I had been wrong. Mr. Murphy asked attorney Roosa if there was any latitude in this or were hands tied. Attorney Roosa advised that the law is clear in that when you adopt an ordinance that the decisions are made based upon the ordinance existing at the time of the decision not at the time of application. He did state, however, that there is a concept of estoppel and that concept is based upon action and reliance of the applicant. If the applicant can establish estoppel then they could apply under the ordinance at the time of the application. One thing that the council could do would be to put in the procedure is that any application no matter when it is filed will be judged by the ordinance, which is in existence at the time of the decision. He added, however, that if an applicant feels that they can establish the facts to support an argument of estoppel that in addition to applying for minimum use determination that they also apply that they intend to establish estoppel and that the law that should be applied would prior to the amendment, then the local planning agency would hear and first establish which law applied based upon hearing on estoppel and then if they decided that the old law applied then they would consider the case under merits applying the old law. Essentially, you must apply the existing law because the decision is being made now; therefore, to procedurally handle it you need to have a hearing where they would present evidence when they signed the contract, what was done in reliance. He added that even a written document from a town official saying that the town routinely approves these would not constitute estoppel and would not be sufficient. What they need to do is to show that they acted; they had done something to their detriment as a result of relying on the old law. If this occurred it would come before the council and you would then determine again as to whether or not there was any equitable estoppel and if you did you could then apply the old law. The mayor at this point reminded again that the applicants were on notice that they must get a minimum use determination and although there were erroneous statements made by the county they had gone through the process of getting the determination when they went into contract. The buyer had a better attorney than the seller as he determined there should be the minimum use determination and therefore refused to close of the sale. Mr. Roosa added that procedurally what would have to be done before the local planning agency could consider the application of the prior law would be to made a determination that equitable estoppel did apply. This would begin by staff making their recommendation on the facts presented and then to the local planning agency and they would hear the issue of equitable estoppel and if it did not exist and denial would be recommended, then both recommendations would come to the town council. Ms. Segal-George asked attorney Roosa if she did her opinion and denied the request if they could then appeal? Could they bring up the estoppel argument at appeal? Mr. Roosa advised it was not part of the application so they could not. Mr. Roosa added the only thing they could do was to petition for a determination of equitable estoppel and the application of the prior law. They would have to file a petition that because of the equitable estoppel that they should be judged under the old law. Mr. Roosa advised the committee that what they could do today is to advise the applicant if they choose to file application to establish equitable

## FORT MYERS BEACH

estoppel, but that is their choice. In any event there will be an opinion written on the current facts.

**MOTION:** made by Ray Murphy and seconded by Terry Cain allowing the applicants in this request to file a petition for determination of equitable estoppel.  
Passed unanimously.

AT 5:25 P.M, THE TOWN COUNCIL RECESSED TO THE INNAUGURATION. MAYOR DAN HUGHES INVITED ALL TO ATTEND AND ADVISED THERE WERE REFRESHMENTS SERVED.

AT 6.40 P.M. THE TOWN COUNCIL RECONVENED THE FORT MYERS BEACH TOWN COUNCIL MEETING OF JANUARY 22, 2001.

- D. PUBLIC HEARING ORDINANCE 11 – Mayor Dan Hughes read this Ordinance. He advised that at the previous meeting there was a draft of this ordinance provided. He added there had been a conference call with John Gucciardo and Richard Roosa, Esq.. At this time the mayor asked Mr. Roosa if he wished to make any comments. Mr. Roosa advised the change was with regard to the introductory paragraph involving the use of the word *franchise* instead of the word *agreement*, and also the repeat term which has to do with public streets alleys, waterways, easements and other public places in the town and that is used consistently throughout. He added also that in Section #6 on assignments was changed in order to allow the intent. The mayor reminded of the 5% franchise fee for a 25 year agreement. Mayor Hughes asked if there were any additional comments with regard to this from the public or town council, and there were none. The mayor set this matter for a second hearing on February 5, 2001.
- E. TOWN INFORMATIONAL PIECE MAGNETS -  
Marsha Segal-George explained that a resident had this idea regarding magnets that would go with the Beach Access, which would include phone numbers such as the Sheriff, the Town Hall, Animal Control etc. Marsha advised that Janice did the research on this with regard to costs etc. She asked the committee if they would be interested in this idea. Vice Mayor Murphy felt this was a good idea, as did Terry Cain. Garr Reynolds expressed he did not feel this would be a good idea as he did not think people would use them. Ms.Cain added this would have to go to bid for the pricing involved. The mayor asked if anyone had any objections to staff going forward to get bids for this project. There were none therefore the mayor directed Marsha Segal George to acquire the bids.
- F THE FILM FESTIVAL  
Mayor Hughes mentioned the memo addressed to Marsha Segal George from Sean Holiday with regard to money the town would have to contribute to this project. Mr. Holiday was present and spoke to the committee regarding the

## FORT MYERS BEACH

expenses adding they would not exceed \$11,800.00. He added that the original figure of \$20,000.00 to \$30,000.00 was in case we felt short of sponsorship or ticket sales or other expenses. He added the original comfort zone should insure that it is a great festival. Mayor Hughes asked if there were any questions. Terry Cain advised of her interest in the student films and she asked if we would get them locally or somewhere else she was advised that the Center for the Arts was the only high school that actually shoots film, and they have several ready “in the can”. Mr. Holiday advised they were working closely with the Center for the Arts for this project. He added that the UCF and FSU are probably the only programs that we will seek student films from. Mayor Hughes asked Mr. Holiday how he planned to solicit and obtain sponsors. He was advised that they had already spoken with accommodation sponsors, The Outrigger, the Sunstream Properties have expressed an interest. We are also looking at regional sponsors, such as TECO or Sprint, etc. We are also looking at all the local beach businesses. The Beach Bulletin has already agreed to be a media sponsor. Marcia added they are also looking at a local TV station, as this is the first Film Festival in Lee County. Sean advised the timetable for this is May 3<sup>rd</sup> through May 6<sup>th</sup>. Marsha Segal-George advised they were looking at the Holiday Inn as the place to show film on the beach. Mr. Holiday advised that the whole community would be a part of this project, music, art exhibit etc. Garr Reynolds asked how the tickets would be sold and where would they get admitted? Sean advised that tickets would be handled through the Beach Theater. He advised there would also be VIP passes and student tickets. The movie on the beach would be free. Mr. Reynolds asked how many people are included in the \$12,400.00 administration fee; Mr. Holiday advised it that his own fee as well as the film consultant’s fee was included in this amount. He added that from this festival money would be generated to continue with future festivals so that eventually this would self-sustaining. The mayor asked who decided what films would be shown. Mr. Holiday advised he had been to the Sarasota Festival and saw films there and that the consultant has tapes of films to be considered and from that it will be decided from what is submitted. Mr. Murphy asked if he was open to new film makers as he advised he knew someone and Mr. Holiday said yes we would be. Mr. Reynolds reminded that there was a filmmaker here at one time that did film, here and Sanibel called “Captiva” and he added the possibility if that could be shown. Sean said they are welcoming all local filmmakers to submit film for consideration.

### G. APPOINTMENTS FOR CRAB, COMMUNITY RESOURCE ADVISORY BOARD

Marsha Segal-George advised that CRAB had already had their first two meetings and advised there was a situation where there is a husband and wife on CRAB and she said she did not believe that this committee was aware of that fact. She has advised it had caused some problems adding she asked Mr. Roosa to look into this issue as to appropriateness. The Mayor advised that at the time of the appointment he was not aware that the persons involved were married. Mr. Roosa advised that the Attorney General has ruled that it is not a bar as far as the law is concerned that you can have two people from the same residence on a committee

## FORT MYERS BEACH

but what it does is subject the town to the possible challenge of violation of Government Sunshine if in fact that at any time they were to discuss something that was coming up before a board or agency of which they were both members. He advised that the other problem is that when you create these boards you try to get a diversity of opinion and when you put two people from the same residence, chances are those two people will be more likely to have the same background and input into an agency. Mr. Roosa advised the committee that they should adopt a policy that two people in the same residence could not be on the same committee or agency and by doing this you could ask these members where they would like to serve. Mr. Reynolds said he knows these people and they are very different, that they would not pose a problem reminding that they have different names though married. The mayor did say had he been aware he probably would not have agreed to them both on the same board and Terry Cain agreed. The mayor suggested the recommendation that we advise these people that only one should serve on CRAB but that we would be delighted to have one fill a vacancy on one of the other boards such as Bay Oaks.

**MOTION:** made by Terry Cain and seconded by Howard Rynearson to approve the reappointments all persons who have submitted their names to CRAB with the exception of Hattie and Don. Motion passes unanimously.

**MOTION:** made by Howard Rynearson and seconded by Garr Reynolds that Town Council of Fort Myers Beach directed the town attorney Richard Roosa to draft the policy that two persons who reside at the same residence can not serve on the same committee or agency. Motion passes unanimously.

Mayor Hughes advised Marsha Segal-George that she would have to advise Hattie and Don that they could not serve on the same board CRAB.

## VII COUNCIL MEMBER ITEMS AND REPORTS

Howard Rynearson thanked the staff for the party. He stated that he was appointed to the CDC and there was going to be a breakfast meeting held with DT on February 6, 2001.

Garr Reynolds commented on the letters received from Mr. Merrill with regard to restoring the beach and the concern that sand is going where it is not needed especially near the Outrigger. Mr. Reynolds stated he felt the same as they had plenty. He was advised by John Gucciardo that the Outrigger was not included in the project and that the project ends just at about Dakota.

Garr Reynolds next reminded that he did make the Traffic Committee meeting and discussed the left turn issue at 5<sup>th</sup> Street. Mr. Reynolds also said that on Friday, April 20<sup>th</sup> at 7:00 a.m. a breakfast was going to be held and advised the committee to note their calendars of this.

Mr. Reynolds also commented on the problem with the trolleys not pulling over to let the traffic flow. He advised that Mr. Davis said he would check on this and that a

## FORT MYERS BEACH

letter was sent out with regard to this problem. Mr. Reynolds added the problem is a sign cannot be put on the trolleys with regard to passing with care. Mr. Reynolds said it would be beneficial if a trolley does not do this to get the number of the trolley, the time it happened and the location to follow up on this with Lee Tran to discuss this with the driver.

Terry Cain advised that on Monday evening she had the pleasure of addressing the Historic Society about the Treasures of the Sea Program and she showed the video to about 75 visitors and residents. She advised that CELCAB had their meeting and she was happy to report that we were down from 14 candidates to 10 and that interviews would begin on February 7<sup>th</sup> for the director of the Mound House. She advised that on February 17<sup>th</sup> there would be a workday scheduled by the Estero Bay Buddies at the Estero River Scrub. Terry next discussed the Pool and the swim meet and how this will happen and advised that Jennifer Kaesnter is working out some things regarding this. Garr Reynolds asked Terry about the person at the Mound House on Saturdays and he was advised this was someone walking around on her own time.

Ray Murphy also discussed the pool and that Swim Florida wants to have a swim meet and that there was talk about charging for the pool and he wanted to know what the pool contract had with regard to this. He was advised that there was a meeting with the parties and that it was not finalized but it was encouraged that the pool staff and Swim Florida work this out amongst themselves and let us know what is the outcome.

Mayor Hughes advised he got a call from a Laura Miller from the League of Women Voters, requesting that the Town Council support the county enacting school impact fees. He added he advised Marsha and said that we do have the authority to enact our own impact fees but added that to date we have not. Marsha advised we just copied the county. The mayor asked Marsha about her view with regard to taking any action with the League of Women Voters. Marsha Segal-George advised that it would be necessary to do a study to determine what would be the appropriate level of impact fees to put on residential on commercial retail etc. The mayor asked could we wait until the county does this and then adopt their finding and Marsha said that would be the cheapest for a good idea and us. The mayor asked the council what they felt with regard to this and should we encourage the county to do this? All agreed they thought the county was going to do this and that we could eventually adopt this and fit it to our needs. All agreed this was the way to go.

The mayor advised he spoke last Wednesday to the Chamber of Commerce and how the town is in great shape, he added Terry, Howard, Marsha and John were there and said it was a good meeting. He reminded that Mr. Murphy was invited to a workshop on January 24, 2001 co hosted with Southwest Florida Regional Planning Council and Ray advised he was going to attend.

The mayor advised that they were invited to a reception at Florida Gulf Coast University tomorrow at 5:15 p.m., if anyone wished to attend.

The mayor advised that the school nurses association asked that we adopt a resolution declaring support for school nurses in Florida Public Schools. He added that apparently many schools do not have nurses and the childrens' health needs are in the hands of secretaries and bookkeepers, etc. not medically trained and licenses and they are asking us to adopt a resolution declaring a support requesting the Florida State Legislature to adopt funding for the 67 school districts for nurses in every school. He

## FORT MYERS BEACH

asked for input adding it was a good idea. The committee agreed and the Mayor directed the Town Manager to put this on the agenda for the next meeting.

Mayor Hughes next discussed the CRA adding he is not very optimistic.

### **VIII. TOWN MANAGER'S ITEMS**

John Gucciardo advised he was passing out copies of an e-mail received from Howard Marlow, our lobbyist that we use through the Coastal Advisory Council to represent us on the efforts of the beach restoration projects. He added what Marlow is suggesting is that we join with other coastal communities in writing to the new administration asking for support and continued and increased funding for these projects. He asked for direction to go forward with this and all agreed this was important to do.

Mr. Gucciardo as a liaison between the council and the Pool Foundation adding they had a productive meeting last week and he wanted to report to the council that their finances for the 1999-2000 is going well they have money in the bank. He added that in April on our agenda we would put some time for them to present the town with a check for \$20,000.00 towards the operation of the pool this year. He added how Mayor Grady was interested in our project came out to view it and wanted to build something similar. He added what they built was not the same as ours adding it did not have the kid die pool, etc. and as a result they do not have a finished product meeting the needs of their community. I brought that up to thank the pool foundation for influence back during the decision process and the design of our pool.

### **IX. TOWN ATTORNEY'S ITEMS**

Attorney Roosa mentioned that on the desk was an e-mail printed out that he received today at 1:46 from attorney Mark Ebelini attorney for Stardial which was an offer of willingness to negotiate under certain conditions regarding settlement. He advised the council to have an executive session on Waterside Bay Beach to consider this settlement. The mayor asked when this should be scheduled and was advised whenever Marsha says. Marsha advised this could be on the next meeting February 5<sup>th</sup>, all agreed. Marsha advised she would find out if Mr. Ciccerone were available on that date. Mr. Reynolds asked about the Waterside including all 8 buildings and asked Mr. Roosa what his interpretation was. Mr. Roosa advised he did not want to discuss it as this time.

**X APPROVAL OF MINUTES** Deferred at this time.

### **XI PUBLIC COMMENT**

Dan Parker thanked everyone for the invitation to the inauguration. He said he was thankful for the Beach Access that was cleaned up and is 20 feet wide. Marsha advised that was not the town's jurisdiction but the county's, it is the only undeveloped access on the island, the county has not developed it saying it was substandard and does not meet their requirements. Gentlemen who purchased the property across the street and claims he has an easement of his own, but he has not done but he cleared the are illegally we asked him to stop and he did. Marsha

## FORT MYERS BEACH

commented that it is a public area but the man claims part of it is his and was cleaning it so he could pull his catamaran up along there to see it from his property across the street and again said he has no evidence of that. She said she spoke to the commissioner and that he would look at the area and decides if any action was to be taken against this man.

Mayor Hughes commented on the February schedule in particular that the 19th was President's Day our meeting will be on February 5<sup>th</sup>, regular meeting which will be at 5:30 p.m., that there is zoning cases on February 12<sup>th</sup> at 9:00 a.m. and that a meeting on February 26<sup>th</sup>, he added the retreat should be scheduled for March.

. Garr Reynolds mentioned he had his grandson visiting Christopher Michael Reynolds. The mayor added that last Friday's Beach Bulletin had a picture of his grandson.

## **XII. ADJOURNMENT**

The meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Eileen Scofield  
Transcribing Secretary

Michelle Mayher  
Administrative Assistant, Town of Fort Myers Beach