

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 4, 2001
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The regular meeting of June 4, 2001 was opened by Mayor Daniel Hughes on Tuesday, June 4, 2001, at 3:00 p.m.

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Ray Murphy, Howard Rynearson - Council, Garr Reynolds - Council, Terry Cain - Councilwoman

Excused absence from meeting: None

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Janeen Paulauskis, Pam Houck, Dick Roosa (Town Attorney) and Dan Folke (Lee County Planner)

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REVEREND DICK TAFEL, NEW CHURCH OF SOUTHWEST FLORIDA

Reverend Dick Tafel was not present for the invocation.

IV. PUBLIC COMMENT ON AGENDA ITEMS

D.J. Petrocelli, President of the Greater Fort Myers Beach Chamber of Commerce, spoke regarding the function of the Chamber, They are in the capacity to work with residents and businesses to create a prosperous community for all people to work, live and play. It is the opinion of the Beach Chamber that Diamondhead Beach Resort is an excellent example of a business that effectively contributes in a positive manner to the Fort Myers Beach Commerce, but also has proven itself to be a friend to the community. Diamondhead employs over 100 people and many are beach residents working hard to support and raise families. On a regular basis Diamondhead Resort extends its support to the community by either participating in or helping to sponsor a number of community efforts and events. In addition to participating in community activities through employee involvement they also provide cash donations, donations of room nights at the resort, food, beverages and meeting room space which amounts to well over \$25,000.00 annually. Diamondhead resort has made a significant contribution to the local economy with its Group Business Department booking over 7,670 room nights. In the year 2000 alone the resort hosted 325 meetings, banquets and weddings. Many of these were local community groups, organizations and beach residents. The resort exhibits quality and professionalism. They have provided a quality resort that visitors patronize and tell friends and family how nice Fort Myers Beach is. They have proved, despite much initial opposition, that they are worthy of the trust, support and respect of the businesses and residents of Fort Myers Beach. They have made every effort to be sensitive to their neighbors and when presented with problems have consistently tried to provide a workable solution. He would hope given their consistent track record that the Town Council will consider the request currently being made by the Diamondhead Resort. They have no desire to do anything that will adversely effect their neighbors or the standing that they have achieved within the community, and only wish to enhance the quality of their facility. He feels that their request deserves every consideration.

V. CONSENT AGENDA

A. Resolution: Phosphate Mining Projects

Mayor Hughes commented that the format of this resolution was suggested by Southwest Florida Regional Planning Council and sent to all the municipalities at the last meeting. He had asked if the

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Council wished to put this on the Consent Agenda and they had indicated that they did.

MOTION: Moved by Councilwoman Terry Cain and seconded by Councilman Howard Rynearson to approve the resolution on Phosphate Mining Project. Motion passed unanimously.

VI. ADMINISTRATIVE AGENDA

A. PUBLIC HEARING: WCSJR II Corp., in ref. To Villa Santini Plaza. Case number 2000- 00020. A variance in the C-1 Commercial zoning district from Land Development Code Section 30-153(b)(1)(h) which states that no sign permitted by this subsection shall contain any advertising message concerning any business, goods, products, services or facilities which are not manufactured, produced, sold, provided or located on the premises upon which the sign is erected or maintained to allow a 32 square foot off-site sign for a business located on an adjacent property. The subject property is located at 7205 Estero Blvd.

Mayor Hughes began by asking the Council members if anyone had any ex parte communications regarding this matter. Mayor Hughes indicated that he had not. Councilwoman Cain, Vice Mayor Murphy, Councilman Reynolds and Councilman Rynearson all indicated that they had none.

Steve Hartzell was present on behalf of the applicant requesting a variance to the sign regulations in order to allow the approval of an off site sign at Villa Santini Plaza. The signs are located at Villa Santini and the Fish Tail Marina. Fish Tail Marina and the Fish House Restaurant are located behind Villa Santini Plaza. For years a couple of signs at the plaza have directed the restaurant and marina customers coming from Estero Blvd. down the access road to the restaurant and marina. One of the signs is a 300 square foot billboard and the other is a 62 square foot sign. The applicant is proposing a 32 square foot sign to be located at the corner of Lenell and Estero Blvd.. The purpose is to remove about 362 square foot of signage and replace it with a 32 square foot directional sign that shows the customers the safest and most direct route to get to the Fish House Restaurant and the Fish Tail Marina. This would be by going down Lenell instead of down and around the access road. The present access is a much less direct route and it takes people thru the back alley, which is often blocked by service vehicles and delivery vehicles.

The other two signs (Exhibits E & F) total about 95 square feet and they are proposed for replacement with two 32 square foot signs for Villa Santini. Those two signs are already allowed under the present sign regulations and would not require a variance. The purpose is to improve the appearance of the Villa Santini Plaza and the general neighborhood.

Mr. Hartzell believes that they have met the requirements as the Staff Report indicates and the LPA has recommended unanimous approval. The four conditions that are suggested by the Staff in the Staff Report and in the LPA findings are acceptable to the applicant.

Dan Folke, Planner with Lee County Department of Community Development, reviewed the request and prepared the Staff Report. The Staff is recommending approval of the request. The LPA has also recommended approval. Four Conditions have been recommended. The first condition would limit the off site sign to one 32 square foot sign - 8 feet in height. It also specifies that it would be the sign which the applicant submitted and is Attachment B to the Staff Report. This condition would limit any signage to the one shown on Attachment B.

Condition two specifies the location of the sign. It would be located at the corner of Lenell and

Estero Blvd. as shown on the site plan. This is Attachment C to the Staff Report. Dan Folke pointed out the proposed location for the sign labeled as G. He added that the sign would be set back a minimum of 30 feet from Estero Blvd. and 15 feet from the Lenell St. right-of-way. This insures that it will meet the minimum set back requirements from the right-of-way, which is at least 25 feet from Estero.

Condition three is that the non-conforming signs (labeled as D,E,F & G) will be removed prior to the issuance of a permit for the signs. These are the four signs that they have indicated in their application that they will remove as part of the request.

Condition four addresses the total signage for Villa Santini Plaza. Dan Folke has recommended that the total signage be limited to three and that each sign have a maximum of 32 square feet with a maximum height of 8 feet. The allowance now for the multiple occupancy development is (2), 32 square foot signs limited to 8 feet in height. This in essence would give them one additional 32 square foot sign.

He feels that the most important issues are the location for the off site sign and the best way to direct traffic to the restaurant. The way the code is now they would be limited to put the sign up at their entrance to the Marina, which is south of Villa Santini and this would then bring traffic down and around behind the plaza. This would not be the best way because the restaurant is located up on the North corner. This will provide the most direct and safest access to the restaurant. The other important item is that they will be removing the large 300 square foot billboard, which is located on the Marina property. This will result in a more timely removal of the non-conforming sign. He believes that the sign ordinance has an 8 year sunset clause and this would certainly bring it down much earlier. They are recommending approval.

Councilwoman Cain has some confusion as to the location of the proposed sign. She referred to G & A and asked Dan Folke for explanation of the A. Dan Folke responded that he believed A is where they would like to do their new sign. They have the right to do this and they are allowed (2), 32 square foot signs. He believes that A is where they would like to do the new one, B indicates the second sign and G would be the third sign.

Vice Mayor Murphy expressed his concern on the location of the new sign. He wanted to make sure that this is the optimum location, not necessarily for the restaurant or plaza, but for the safety at the corner. This is one of the worst corners on the island. He wanted to be sure there would be no blockage of vision for the people coming out of the plaza on to Lenell making the left hand turn on to Lenell back to Estero or for the people coming in off of the Blvd., and making the right hand turn into Santini Plaza. He needs to know this will not create any problems with the pedestrian traffic and vehicular traffic.

Dan Folke responded in terms of sign G, which is the proposed sign, the reason for the wording of condition two referring to 30 feet from Estero Blvd. right-of-way is that when discussing a vision triangle we are talking about the minimum set back of 25 feet. If you started at the right-of-way at Estero and went up to Lenell 25 feet, and then went down Estero 25 feet and connected the points this would be your vision triangle. By requiring it to be 30 feet off of Estero you are assured that it will not be within that 30 feet vision triangle. This was his reasoning behind putting the measurement in and will keep it out of a vision triangle. He feels that there will be no problem with sign G. Sign A has already had the permit issued, so he cannot speak regarding this sign.

Mayor Hughes commented that by relocating the road from coming off of Estero Blvd. and moving it further down Lenell has been a major improvement, especially for the safety factor.

MOTION: Made by Vice Mayor Murphy and seconded by Councilwoman Cain to approve the request for the variance as proposed in the resolution incorporating the conditions set forth by Staff. Motion passed unanimously.

Discussion: Mayor Hughes commented that he is pleased to see that they are moving in the right direction regarding signs. We are approving a sign today, but we are eliminating a number of signs. He does not have a problem with them getting three signs due to the fact that two relate to the property in question and a third relates to the off site property. He commends the applicant.

B. PUBLIC HEARING: First Central Invest. Corp., in ref. To Edison Beach House (fka Pink Porpoise CPD). Case number: DCI2000-00002. Amend the existing Commercial Planned Development (CPD) for Parcel "B" containing 0.26± total acres of land by amending Conditions 1 and 3 of Resolution #97-14 to adopt a new Master Concept Plan to add the use of Parking Lot: Commercial as a permitted use. The subject property is located at 815 Estero Blvd.

Matt Uhlie is present today representing the applicant. They are here today to ask for the Council to uphold the recommendations of the Staff and the LPA to approve the amendment with the conditions proposed in the draft resolution. This application has some history and goes back to 1997 when the approval of the zoning resolution had taken place, and some units had been moved off of one of the parcels to another. The property remained in private ownership and the remaining problem was making sure that the parcel from which the units had been moved had a reasonable use that was consistent with the recreation category in the future Land Use Plan. This has been a difficult task. They feel that they have accomplished this. The first plan that was presented to the LPA was controversial and was not supported by the LPA. A meeting with the Town Staff, Bill Spikowski and Ship had taken place to try and find a solution to the problems associated with this parcel. The plan presented today arises from that discussion. Mr. Spikowski wrote a memo after this meeting suggesting some additional changes to the plan and these were incorporated in the Staff conditions. They have agreed to all those conditions. The LPA also suggested a number of additional conditions and we have also agreed with those. They are in complete agreement with the Staff and LPA. The application is for a parking lot. A previous version of the plan showed two access points on Lagoon, but we have removed them and there will be no access on Lagoon. One access on Estero. They are showing 19 parking spaces. The space themselves will be created in a surface that is pervious and consistent with the findings in the Santo study. The whole area that will be used for parking will be surrounded by a 40 inch low wall. We had proposed 30 inches, but the LPA wanted 40 inches and that is fine with us. The signage will be very limited. There will be two fairly large areas on both sides of the parcel that will be a green area with benches and shade trees. One of the surrounding property owners had concerns with two of the parking spaces close to him. The LPA proposed a condition that we have agreed to which will be to reduce the length of the parking spaces, and it requires them to plant additional shrubs to provide him protection. They feel this is a workable plan and seems to work for everyone. It has been supported by the LPA and Staff, and they are asking that the Council approve it as described in the zoning resolution.

Councilman Rynearson asked a question regarding the two parking spaces to be made compact spaces. He has concerns about the type of vegetation to be planted due to the home being right on top. He would like to know what they have in mind?

Matt Uhlie responded that the resolution only makes reference that additional shrubs be planted in front of the spaces. If the Council would like to specify the type they would like planted they would not have a problem with this. It is totally negotiable.

Councilwoman Cain would like it to be known regarding ex parte that she had spoken to Mr. Yax probably almost one year ago.

Mayor Hughes apologized for not asking if anyone had any ex parte communications in this matter.

A Council member commented that he had also met with Mr. Yax and he could not remember how long ago it was. He did mention that it had been quite some time ago.

Mayor Hughes also had communication about one year ago and he had walked around the property and was shown what was intended to be done.

Councilman Reynolds was down about one year ago and saw this when it was turned down by the LPA. He has not talked to him since then to his knowledge.

Councilman Reynolds asked for clarification regarding the Estero side and the wall, which looks to be going along the right-of-way with no buffering in front of it on Estero. He is asking if he is looking at this properly? When driving by you will see nothing except a 40 inch wall?

Matt Uhlie responded that they will find that it is a decorative wall. The idea is that the Staff will

review the wall and approve it before it is built.

Councilman Reynolds asked if you go to the South part of the property there is a house close to it? He believed that the person living there was objecting because there was nothing to keep the noise and lights from coming her way. It looks to him that there is only a very small wall that will be going not even half way up her property?

Matt Uhlie responded that the parking space will be cut back significantly in size and they are also subject to the additional planting requirements. These are the adjustments that were made in response to that particular property owners concerns.

Councilman Reynolds is concerned along Lagoon St. because it looks as if there will be a one foot set back. It is normally about 15 feet. It seems to him that the property is being bordered all the way to the right-of-way line and all the way around. Either on the line or in the back next to residence. That wall will be one foot off the right-of-way line. There is no buffering to hide this wall.

Matt Uhlie responded that this is true. That particular wall was not in that location with the previous plan with the two accesses on Lagoon St.. It is not possible to push the wall very much further away from Lagoon St.. The wall is to be a low decorative wall. The wall should serve to block out any of the aesthetic problems associated with headlights. It should not be ugly and must be approved by and meet the Town's standards.

Chip Block with the Department of Community Development spoke and would like to concentrate on the actions made by the Local Planning Agency at their May 8 hearing. A recommendation of approval from the LPA took place and the Staff had also recommended approval and finding of consistency at that public hearing. The Local Planning Agency did recommend approval of this with 12 conditions. Staff concurs with this finding by the Town's LPA and supports their recommendation, and recommends to this Council that if Council does approve this request to amend the plan development by allowing for the parking lot as designed and conditioned within this action.

He would like to address Councilman Reynolds concerns regarding landscaping. He directed him to condition 5, which does indicate that there will be a requirement for Streetscaping along both Estero Blvd. and Lagoon St.. You will not be directly looking at the wall. The landscaping and Streetscaping must be approved by the Town Manager prior to the approval of the local development order. He would also encourage the applicant to work with the environmental staff to try to come up with some landscaping provisions and then present the entire package to the Town for review under that condition, if it is accepted by Council today.

Councilman Rynearson would like to follow up on Councilman Reynolds statement on the 1 foot set back. It is his understanding the it is a 1 foot set back, but it is on their property back off the easement. Is this correct?

Chip Block responded that it is off of the right-of-way and on to their property.

Councilman Reynolds is going back three years ago when Parcel A did not qualify for the density that this owner wanted for his property. He wanted a transfer of density from Parcel B in order for this to happen. The idea was that this would be a park of some kind. Nothing has changed other than we have a different request. In order to do this some changes will probably have to be made to the LDC or the Comprehensive Plan in some way when it comes out. The Council approved something at that time that covered both parcels with the intent of not putting more intensity in that area, especially on that lot. Now we are going back on this. What happened?

Chip Block responded that he does not see this as going back on it. What he sees is that the applicant is utilizing, under the Land Development Code and the Town's Comprehensive Plan, the ability to utilize that property for a little more use but not necessarily intensity of the site. When it was reviewed from the County's Staff prospective and the Staff recommendation we recognized that the recreation land use category, which exists under the Town's Comprehensive Plan, did not exist at the time of the original zoning and does allow for public uses of that particular property. The applicant is offering the opportunity to provide a little bit of additional parking for their particular use and activity in Parcel A, while also providing for a public use on the subject property. They do not feel in this instance that he is increasing his intensity. If he had come back to ask for commercial use of this property or tried to put

residential uses on this property then it would be in increase in intensity, and we probably would not have recommended approval of this. It is commercially zoned today and all he is doing is providing the opportunity for himself and providing public parking. Staff believes that this is one of the appropriate uses under the recreation category.

Councilman Reynolds went back to what was original stated and read Chip Block's own words from the original approval. We are no longer talking about parks we are talking about commercial parking lots.

Mayor Hughes asked if the parking is on a first come first serve basis. If the lot fills up they will have no parking for patrons of the Edison House.

Chip Block will describe what the applicant would like to see happen, if this is approved today. It is his understanding that they will be allowing the public to come on to the site, pick a particular space, park at that site, walk across the street to the Edison Beach House, buy a some type of indication from the Edison Beach House that they have the right to park on that property that day for a particular time period, walk back across and place on their car and then go on to the beach. It is a first come first serve. It is most likely for over flow parking from the Edison Beach House.

Mayor Hughes referred to the Staff report on Page 2, Condition 10. The Concept Plan shows a 30 foot wall on the easterly side. He asked if the 30 foot wall is going all around the property?

Chip Block replied that it is difficult to follow on the Master Concept Plan. From the entrance along Estero, North along Estero Blvd., over to Lagoon, down along Lagoon, down along the southern side of the site and back up to the entrance there is suppose to be a 40 inch wall.

Mayor Hughes commented that this is not clear from the drawing itself and if the Council sees fit to approve that this it should be clarified in Condition 10.

Councilman Reynolds asked regarding neighborhood compatibility on page 5.5.. He has a corner parcel located on Estero Blvd. and Lagoon St.. Both are two lane roads. Estero Blvd., in this area, serve as access to both residents and commercial use. Lagoon St. is predominately residential in character. The characteristic of this neighborhood was an important part of the original approval, which led to the use of Parcel B. The use of a park on this site is reasonable and does provide reasonable use of the land. We are now going a different direction and it is OK to forget that and go this way. The land and nothing has changed in this area. He has a problem with doing something one time and then going back to confer with another problem.

Chip Block responded that 33% of the site will be devoted to park and recreational use and 67% will be devoted to the parking lot. You do have public use of this site. It is in keeping with the recreation land use category and it has been found by the Staff recommendation and the LPA's recommendation to be consistent with the purpose and intent of the recreation land use category, and also the purpose and intent of the original zoning approval by the Council. He commented that If they desire to find it differently this is their position to take and render a different decision beyond the recommendations as offered by the Town Staff and LPA.

Mayor Hughes commented that this parking lot, if approved, has a lot more landscaping and with the wall provides more protection to adjacent property owners then they have in the residential districts. In the single family residential districts in this Town they have cars parking all over the front yards with no restrictions, no landscaping between them, no wall and he has attempted to bring this to the LPA to restrict this type of situation. It is kind of noteworthy that when someone has a parking lot that will be public and commercial we require a lot of safeguards, screening, landscaping and yet we do not provide any type of protection in our single family neighborhoods for this type of thing.

Councilwoman Cain referred to the LPA Condition 5. It refers to no less than six large shade trees planted inside of and outside of the parking lot area to provide shade both for patrons of the parking lot and for those using park benches. Streetscaping along Estero Blvd. and Lagoon street must be provided. The landscaping and Streetscaping must be approved by Town Manager. She needs to have clear in her mind that this is the same as the Staff Report # 5, where their paragraph states shade trees must be planted inside and outside of the parking area etc. She needs to feel comfortable that the shade trees will be planted inside and outside of the parking area.

Chip Block responded that this is correct. During the public hearing a question arose regarding the number of shade trees and where they would be placed. The Town's LPA came back and decided on six shade trees and they will be inside and out.

Mayor Hughes commented that it appears the Staff had 10 conditions and the LPA had 12. In provision 10 he sees the differences as being a change from a 30 inch to 40 inch wall. They added the two compact car parking spaces and the signage conditions. These were added by the LPA beyond the Staff recommendations.

Vice Mayor Murphy was here when this project was approved originally. He is confused if this is to be a public parking lot, but whoever parks will have to go over to the Edison Beach House to pick up a permit. He is concerned with this as far as a public lot goes. He sees problems with the procedure of obtaining a parking permit.

Chip Block responded that he understood the concern. This was a concern expressed at the LPA. Mr. Yak's testimony at the last hearing was that there is no question that he complies with the land development code requirement for parking on Parcel A. There is no reason to believe that on any kind of a regular basis there will be a need for the hotel to provide parking on this particular parcel.

Larry Yak commented that at the last meeting he stated that the Edison Beach House might use up to 10% of the parking lot. He sat down to re-figure and came back up to say that they would probably use 5%. The collection aspect has gotten out of hand and he really does not know how to handle it. It may just go to meters. Regarding the objecting neighbor this neighbor has moved. The new neighbor does not have objections and his real plans are to try and do something commercial on the lot. We really need the parking in this area. His neighbors have supported this. The wall will look good when complete. He does not want it to be an eye sore.

MOTION: Made by Councilwoman Cain and seconded by Howard Rynearson to approve the form of the resolution presented, which includes 12 conditions and these are the same 12 as contained in the LPA resolution. Motion amended by Mayor Hughes to add language in Condition 10 and insert "the entire perimeter of the parking area except for the ingress and egress on Estero." This language should be inserted to complete the existing language which reads "to allow a 40 inch wall on." **An individual vote was requested: All were in favor except for Councilman Reynolds. Mayor Hughes announced that this motion was approved 4 to 1.**

Discussion:

A council member wanted to bring to everyone's attention that the only topic of conversation has been bushes, walls and how many parking spaces. The pros and cons have not been discussed of the original plans. It should be kept in mind. He feels that they should make up their minds to what they are going to do and cannot be one way one time and be another way the next.

Mayor Hughes commented that the purpose of this hearing is to amend what was once approved. They have this right to seek this. He feels that this is an improvement over a vacant lot. 1/3 is really a park or benches and we do need some off street parking in that area. He sees two positive sides to this situation. A council member expressed his concerns and commented that originally the owner was going to give us this land for use as a park. Town Manager Segal-George replied that the Council refused it. She went on to explain that this is one of the first land use cases that the Council handled. Mr. Yak offered it and the Council refused to take it. Coming out of the LPA was a list of potential uses for Parcel B. When it got around to the Council they did not want to take the property and stripped all the other possible uses and left park. The Council did not require the applicant to make it into a park, but just left the park use. A lot of misunderstanding has resulted from this.

Councilman Reynolds feels that his memory is a little different than what Town Manager Segal-George

has just shared. He feels if the tape is listened to they would get another meaning. Council did not reject excepting the park. Mr. Roosa advised us against taking it. He felt that the Council should not take it because it would look like a bribe. There would be nothing wrong with the owner offering this at a later time.

C. PUBLIC HEARING: Diamondhead Island Beach Resort. Case number: COP2001-00044. A special permit in the C-1 (Commercial) district for consumption on premises for outdoor seating in conjunction with an existing 4-COP-S (beer, wine and liquor) beverage license for a hotel/motel per Land Development Code section 34-1264(a)(2)a.2. The subject property is located at 2000 Estero Blvd.

Mayor Hughes began by asking the Council members if anyone had any ex parte communications regarding this matter. Councilman Rynearson commented that the man showed him where he would like his deck. Mayor Hughes had also talked with Mr. Robert Swanson who had shown him the area for the deck. Vice Mayor Murphy spoke with Mr. Swanson and Mr. Lawrence regarding this on the telephone. Councilwoman Cain and Councilman Reynolds did not have any communication with anyone.

Beverly Grady from Roetzel & Andress was present to represent Diamondhead Beach Resort in the request for approval of consumption on the premises for outdoor seating. This is in conjunction with the existing 4-COP-S, which is a beer, wine and liquor for an existing resort. They would like to incorporate the Beach Chamber letter for the record as an exhibit and also the comments made by Mr. Petrocelli at the opening of this meeting. He had to leave for another engagement.

Diamondhead Beach Resort is located at 2000 Estero Blvd. on a 3+ acre parcel of land. The property is designated as pedestrian/commercial by the Town's Comprehensive Plan and this is defined by the Town's Comprehensive Plan as the primarily commercial district applied to the intense activity centers of Times Square, and nearby portions of Estero Blvd. The Property is located within the core area of the Town of Fort Myers Beach Plan. The downtown core area proposes a revitalized entertainment area and that the outdoor seating areas, as stated in the Staff report, with consumption on the premises are consistent with that vision.

The zoning for the property is C-1. It is a commercial designation. It authorizes hotel and restaurants as a permitted use. The 3+ acre parcel contains full service existing hotel, restaurant, lounges, meeting space and amenities. It is customary and typical for a hotel in Florida, especially on the waterfront, to provide for outdoor seating and an outdoor area as a gathering place for special events such as food and beverage service. The restaurant currently has Chloe's restaurant and lounge and Cabana's bar and grill, which are approved for consumption on the premises. The purpose of this request is to permit consumption on the premises on a deck to be constructed, which is shown on Attachment E of the Staff report.

A Staff report and testimony at the LPA hearing fully supported approval of the request subject to 4 conditions. The applicant agrees with conditions 1,2 & 3. All the discussion at the LPA revolved around Condition 4. They are proposing to have some limited music, which does not intrude into the neighbors space. The Staff's proposed condition prohibits any outdoor music or entertainment. They would request the ability to provide some limited music.

There is currently, if you are just an operating resort, no prohibition on music, live entertainment or recorded music anywhere in the resort except for the noise ordinance. When the request is made for consumption on the premises and outdoor seating this is where the Staff has proposed that a limitation be placed.

At the LPA hearing they proposed a condition to substitute. She passed out the condition and wanted to be sure everyone would be clear on how it would work. The condition that they are proposing would permit recorded background music. It would exclude rap, hard rock and heavy metal music. Second, a non-amplified guitar or violin would be allowed. An instrument that is not connected to anything would be allowed. Third, any entertainment or live music would be restricted to the mono background system and be designed to direct sound at a low level or background volume level. Today we

have Sherry from Muzak to explain the limitations of the existing system and what a mono background system actually is.

Sherry [REDACTED], a representative for Muzak, passed out information to the Council regarding the specific speakers and system they currently have in place surrounding the pool at the Diamondhead Beach Resort. She went on to explain the purpose of the company is to design appropriate sound systems and to deliver music to the sound systems for their clients. They design systems in two different types of modes. Either a background or foreground sound system. JC Penny would be an example of the background music. Stevie Tomatoes, a Sports Bar, would be an example of foreground music that is played extremely loud.

A Council member asked Sherry if an individual musician came in would they be able to tap into the speakers and play through them? Sherry replied that this person could. If they have an output from whatever type of instrument they may have to plug into the jack and utilize the surrounding speakers to project the sound. However, the volume will never be any greater than the volume on the amplifier in the building. This person will not have the capability to make the sound any louder.

Councilman Reynolds expressed his confusion to Sherry regarding her explanation. The letters that he has received from the residents who live in the area indicate that they can hardly listen to their T.V.'s sometimes with the windows closed and A/C on. How can you explain their problem? Sherry responded that in the past the Diamondhead Beach Resort has had entertainers there that have brought in their own amplified power systems.

Mayor Hughes asked who sets and how do you set the decibel level of the system? Sherry replied that there are two things which determine the volume of the speakers. One of which is what the speakers are tapped at. A speaker has the capability to produce from one to a number of watts, depending on the type of speaker and what the intended use is. These speakers were set at 2 to 3 watts. JC Penny is tapped at 11/2 to 2 watts. They are trying to create the same level of sound that you would hear in an office or department store.

Mayor Hughes asked who has access to change this? Sherry replied that the tapping of the speakers is done at the time of installation. There is no way to access and change the wattage.

Councilman Rynearson asked who would determine the volume level? Sherry replied that when the system was installed they go out into the particular environment knowing that they are looking for that background level and balance the speakers. The decibel level depends on what type of environment you are in.

Beverly Grady thanked Sherry. Clearly the issues that were raised by the noise have related with the offsite speakers being brought onsite by entertainers. What is being proposed completely prohibits this. The only system that can be used will be the Muzak system. The applicant is in agreement with Conditions 1-3, but would ask that the Council substitute their proposed condition for Condition 4.

Brian Kellner will not go into great deal regarding the Staff report because he feels that everyone knows what the issue is here. The Staff and the Local Planning Agency have agreed on the conditions. The only difference between Staff recommendations and LPA is item #2, to be sure that the site plan was added to the resolution so everyone would understand where these areas are.

The problem with Condition 4 is that it has been agreed that outdoor music and entertainment is prohibited with the very reason of how do you control the volume levels of the music. At the hearing Muzak was raised as an issue. Everyone had a concern on how to control volume. His concerns are with the 360 degree system, which means that music will radiate in all directions and will radiate toward the nearby residents. He asked that maybe the people who install these systems could give any explanation of this.

Some other concerns raised would be in reference to the types of instruments that are non-amplified and could be used. How do you control the level on something such as a trumpet? What instruments are really being talked about? Some instruments this system may not possibly work for. What other types of systems are available besides the Muzak system? What wattage would distortion occur? Mention was made regarding the decibels. What does the reference of 90 to 92 decibels really mean? Is this a horn honking, a siren going off or exactly what is 90 decibels? How loud is this?

He can understand the background music and if that was at a level that could be maintained and directed at the pool in a very low volume he feels that this would be fine. He visited the site and someone was playing in the little band area. From the parking lot he could hear this. It was not loud or obtrusive, but it could be heard and this was only one person. These are his comments and his concerns are regarding the neighboring residents.

Councilman Reynolds asked Brian Kellner how the residents who have lived in this area longer than this establishment deal with these issues? They have been fighting this for four to five years. They are very unhappy and we get many letters and calls.

Brian Kellner feels that this is a concern of not only these residents, but in any area where you have loud music playing. How to deal with it in this case? He feels that the Staff, himself and the LPA recommended no entertainer or live music. This would be the way deal with this in the sense that it would be restricted all together. It is a difficult issue.

Public Hearing:

Ken Katko, a beach resident, came to give his support to Diamondhead and speak on their behalf. He does have a business in the Seafarer's Mall and they had a Muzak system at one time. It created a great atmosphere and the people shopping loved it and kept them shopping longer. It has been taken out and the atmosphere is no longer the same. The Muzak system is very limited in its volume level and should no be a problem for Diamondhead. He has been past Diamondhead on several occasions and does not recall hearing any music coming from there, other than when a live performer was there with their own speakers. He feels that it is essential that they be allowed to use the Muzak system for the enjoyment of their guests. He feels that it is a reasonable request that the Council should consider.

Maureen Coleen, Sales Manager for Diamondhead would like to enter in a letter that she has. It is a reaction of group leaders in reference to them not having any music by the pool. What is being proposed to have outside entertainers only pipe into our sound system will allow for us to have full control of the volume. Diamondhead has been very involved in the community. A few groups she has spoken to that have had outside functions are seriously considering not coming back, if this is not an option. She is here to support that the Council will let them use the Muzak and they will control the music.

Joan Moss from the SOC (Sports Organizing Committee for Lee County) does a lot of group bookings with Diamondhead. She is here today to support Diamondhead. Entertainment is a criteria and if it is not available they may or will not come to this resort. It is a nice property and they should be able to take advantage of the people who do come here. She hopes that their request will be passed.

Bob Young, Vice President of Surf Song Condominium, spoke that they share 200 foot of property line with Diamondhead. He appreciates the recommendations made here today. He is not sure if the point is getting across. Their loss of business should not invade into the condominium or cottages along side of the resort. The point is if they want to have outdoor entertainment it must be under control. They do not care to share in it. He would like to see them be successful. He would like to see them come to some type of agreement. You cannot be on your balcony and even by coming inside and closing the storm shutters you still have a booming noise coming in over ordinary conversation. Since the LPA meeting it has dropped down to a very low level. The history shows that he has not got the rapport he would like. If he calls to say it is too loud that it gets turned down. This is what he is looking for. He would like to put an addendum to not only the structure here that has been proposed by the LPA, but to the no outside entertainment and no live music. Drums are non-amplified and can be very loud. He likes the LPA's recommendation because it is a fix and not a patch. He understands the specifications on the Muzak system. The hours of operation are important to the residents also. How long and how late do they play this type of music? When is it shut down? It is important that there be some kind of control that can assure us that the Muzak system can be kept down to a lower volume. He hopes they will consider the LPA's recommendation.

Mayor Hughes asked Bob Young if he had personally observed the distinction between occasions when they have had performers with their own amplifier versus the Muzak system? Bob Young replied

that when people come and play on their own systems they are obviously very loud. When the Muzak system is on he has no way to tell. Since the LPA meeting it has been very quite over there.

Councilman Rynearson asked if it would be possible to get Bob Young, Diamondhead and the rest of the neighbors together to try and work this out? He can understand why they need the Muzak, but he can also understand where the residents are coming from. He was asked if he could live with something like this? Bob Young replied that he could. He said at the LPA meeting it is as simple as turning the volume down. Someone must be in charge.

Dena Turner, General Manager of Diamondhead, has been there since May of 1999. She feels that the number of occasions that they have had outdoor functions and brought outside musicians in has been more limited to the number that has been actually held. Everything that they have tried in the past to be good neighbors has not worked. They have gone very restrictive here to try and keep the peace. Many people visiting the resort are looking for more variety in the types of entertainment offered. A D.J. was present on Memorial Day weekend and for the Boat Races. She walked the property and by the condominiums and cottages with concerns regarding the noise level. The D.J.'s voice was very distorted and the noise level low. She had talked with Bob and Dee on Sunday and they both felt that this was not intrusive, and they felt very comfortable with this volume level. She feels that a control and enforcement issue is put in place.

Councilman Reynolds asked the question of whether a separate Muzak system will be placed on the new deck, so those seated in this area will not have to depend on hearing the music from another location? Dena Turner responded that they are planning to install the same type of system for use at the deck area.

Councilwoman Cain has heard a lot today, but she has not heard anyone suggest any acoustics that could be implemented on the outside areas. Acoustic panels can be incorporated to different areas to absorb sound. Why have they never tried any type of acoustical solution? Dena Turner replied that they would be open to looking into it, but they have not been convinced that this will work due to the way the building is angled.

Sherry from Muzak commented that the speakers, which were chosen for the pool area, were designed to cover a low area. When the design of the system is complete for the deck it will be totally different with more of a directional type speaker.

Mayor Hughes referred to Exhibit E and commented that the LPA did not reference it as they did Exhibit G. Town Manager Marsha Segal-George replied that it was because they were eliminating outdoor entertainment.

Mayor Hughes feels that landscaping not only serves as a buffer, but landscaping serves as an aesthetic purpose. He feels that they may want to possibly incorporate this by reference as well. Brian Kellner replied by stating that it could be incorporated by reference. By having the additional buffer it will provide some visual relief to the people of the condominium units.

Beverly Grady in closing would like to review the substitute condition that was provide. It contains three separate components. The first was to request that Condition 4 be re-worded, so it would permit recorded background music to be allowed excluding rap, hard rock or heavy metal music. Non-amplified guitar or violin to be allowed. The Council would be able to limit to the type of instruments allowed. The third would apply to any entertainment or live music being restricted to a mono background system designed to direct sound at a low level or background volume level. They will have to plug into the existing jack system, which is attached to the low level background system. With the testimony provided and with the use presently of the Muzak system they would request that each component is reviewed and recognize that there is a need for some type of music at the resort.

Mayor Hughes has concerns along with other Council members regarding control. It appears from the testimony heard today the Muzak system is working fine. If they can have some assurance that it will remain the same. Is there some way that this can be done conditional. If this is approved and it does not turn out to be as testified to by the witnesses we then have a difficult situation to cure the problem. Town Manager Segal-George replied that a hearing could take place to revoke their special permit. This is the issue that the LPA wrestled with also.

Beverly Grady commented that they can include in the condition the limitation on wattage. They can also include in the condition the limitation of what is at the amplifier level. Once they are set they are in the ground and they cannot be changed without major construction.

Mayor Hughes asked if something like this is approved and if it is not working to the satisfaction of this Town can it be revoked in 3 months?

Councilman Rynearson asked if they could vote on the consumption request and go on to study the volume issues. He feels that they do not have near enough information to make a decision and possibly do this on a trial basis. In the meantime, Mr. Young and Diamondhead can get together and come to an agreement. If they can come to a situation such as this than they have solved their problem.

Vice Mayor Murphy was also thinking along these lines. He would like to get past the COP issue. He feels they need a consensus from the Council on whether or not they all agree on the serving of alcohol outside by the pool deck and on the new deck. Once they get past this issue he feels that from the testimony today the people at Diamondhead have made several major concessions on the types of music being played outside. He hears from Mr. Young that when this system is being utilized there are no objections from the neighbors. He feels that they have the basis in condition 4, assuming that they are past the COP issue, and they can work through this condition now and end this. He would like to suggest that they deal directly with Counselor Grady, who can go back between her client. A restriction should be implemented that no music will be heard outside after a certain hour. This narrows it down in his mind.

Town Manager Segal-George asked if these conditions are applying to around the pool and the deck? Mr. Young has an issue regarding if the door from the lounge could be open at any time they will get the live music flowing outside and go right at them. If you allow them the hours of 10:00 p.m. they can still have the live music coming at them until 10:00 p.m.. Vice Mayor Murphy responded stating that they could further restrict them. If you come up with an hour that you cannot hear any music outside then there will be no question about the enforcement.

Mayor Hughes suggested having a provision that states if they are having some type of music in the lounge that did not meet these criteria they would have to keep the doors closed. This is fairly simple to him.

Town Manager Segal-George commented that when Diamondhead was originally built it was approved by the County. Conditions were not put with regards to outdoor entertainment. It is only by them coming to the Council for the COP and asking to have alcoholic beverages around the pool and on the deck does this Council have the authority to impose conditions. The conditions with regards to outdoor entertainment are directly related to the COP. She does not feel that they can be split apart.

Town Manager Segal-George suggested bringing a completed resolution with the conditions back to the Council. Mayor Hughes replied that he preferred this. In the meantime the Council could work with the Staff and our Council to incorporate the items discussed.

Vice Mayor Murphy is saying that the first element of Condition 4 is OK. The second element is restricted to stringed instruments. The third element is OK. If the lounge has entertainment at any given time and the music does not meet the criteria they must close the doors, so that it is not heard outside. The last one to further enforce would be to tie in the fact that the hours of operation for serving would also be the deadline for any outside music.

Councilwoman Cain does not feel comfortable with the entertainment and live music restricted to a mono background system. With all seen and heard she does not know that she would feel comfortable with allowing this to happen on the decks. She cannot accept it either on the deck or in the pool area.

Mayor Hughes would like to have this condition revised and drafted. He would like to incorporate Site Plan E and the landscaping therein. The three conditions from the Staff and LPA and Condition 4 as modified. Add a condition 5 with incorporating by reference Exhibit G.

Town Manager Segal-George reviewed and asked the Council to look at the LPA resolution: Condition 1 - Consumption on premises approval for the two outdoor seating areas and in conjunction with the existing 4-COP as hotel/motel license. Condition 2 - Consumption on premises for the two outdoor seating areas is restricted to the areas depicted on the attached Site Plan Attachment G. Condition 3 - The hours of operation for the two outdoor seating areas for consumption on premises and

music will be restricted to the hours of 9:00 a.m. to 10:00 p.m. daily. Condition 4 - Would contain a number of parts to it. The first would be that recorded background music that is restricted to a mono background system is allowed. Only non-amplified stringed instruments are allowed. Entertainment and live music is restricted to a mono background system designed to direct sound at a low level or background volume level. Music in the lounge area that does not comply to the previous three conditions would require the lounge door to be kept closed. The landscaping buffer as provided in Exhibit G. These conditions were reviewed for clarification to the Council.

Dena Turner came up to clarify some confusion that is taking place regarding the wording of Condition 4. The stringed instruments that would be allowed would not be required to go through the mono background system. Any other type of entertainment, such as a D.J., would need to be hooked up to the Muzak system.

Town Manager Segal-George suggested defining what entertainment and live music means. Entertainment/Live Music defined as a keyboard with or without a D.J. and/or vocalist that is restricted to a mono background system.

MOTION: Made by Vice Mayor Murphy and seconded by Councilman Rynearson to incorporate the various items discussed and were outlined by Town Manager Segal-George. This is subject to being reviewed at the following meeting in terms of the language to be assured the language is in accordance with what was respectively intended to be done. **Approved 4 to 1. Councilwoman Cain dissenting.**

**The time is 6:05 p.m. and Mayor Hughes declared a 10 minute recess.
They will reconvene at 6:15 p.m.**

*******The Council will recess as the Town Council and reconvene as the Fort Myers Beach Public Works Agency Board**

1. Resolution 01-01: Purchase of Water Utility Service

Mike Burton, President of Burton and Associates, have been the consultants working with the Town on the financial feasibility study of the aquisition of the water distribution system within the Town. Jonathan Varne, an associate of the firm, is also present and has been working very closely with John Gucciardo on this.

Mike Burton commented that tonight's presentation is the results of the study, which is essentially complete. The scope of work was to evaluate the financial feasibility of acquiring a water distribution system that serves the Town of Fort Myers Beach within the Town limits from Lee County. It included the development of a five-year projection of the revenues and expenses, and a determination of whether the aquisition can be accomplished without the need for any increase in rates and to project any future rate increases over a five-year projection period.

A five-year revenue significancy analysis was completed and a financial management plan was created for the utility after aquisition, which includes projected revenues, projected operations and maintenance expenses. This includes purchased water from Lee County. Contract operations, which includes a meter replacement program that should enhance revenues. The projected debit service for the aquisition. The projected renewal and replacement expenses on an annual basis. Working capital reserves that are necessary to keep on hand for emergencies and for liquidities.

He showed a graphical representation of what happens in the model. Jonathan will be showing the model. They take projected financial data, historical billing data that was obtained from Lee County. Economic Assumptions with regard to growth and inflation on operations costs, the capital and operating plans of the utility, policy considerations and regulatory requirements that would have to be met in terms of permitting. Several different scenarios were evaluated. Two scenarios are being presented this evening. For each scenario they contain revenue projections, projections of operation costs, identification

of the borrowing requirement and the debt service coverage requirement.

The assumptions underlying both scenarios this evening are that there will be 4,774 ERC's. An ERC is an equivalent residential connection or meter equivalent. The usage in gallons is approximately 489 million gallons per year. The growth in revenues will be -0-. Their assumption is that there will be no growth in revenues. The purchased water rate will start at \$2.26 per thousand gallons, which was a rate negotiated with Lee County. In the agreement with Lee County they have the ability in 2003 to raise the rate to as much as \$2.50. For the purpose of these projections they have assumed this will happen. The contract operations and maintenance will be 3% per year beginning in 2005. It will actually began at the end of 2004. You have a three year freeze on operations and maintenance expenses. The other Town costs that will be incurred, such as audits or other costs on your side, they have escalated at 3% per year beginning with the first year of the projection period.

The results of their analysis are that they have two scenarios to show . The fundamental differences in the scenario are that scenario A does not include connection fees in the calculation of the debt service coverage. Scenario B does include connection fees in the debt service coverage calculation.

Scenario A - The current rates provide insufficient net income for required debt service coverage thru FY204. They provide sufficient debt service coverage in FY205, which is the last year of the projection period. This assumption applies to Scenario B also. This assumes a pass thru increase of 6.7% for the projected increase in purchase water rate from Lee County.

Scenario B - The current rates will provide sufficient net income for the required debt service coverage in all years of the projection period.

The conclusions drawn from this analysis are the financial feasibility of the aquisition as contingent upon either or the following. One of these would have to be done to make this feasible. They would have to get confirmation that connection fees can be used in the debt service coverage calculations. Renegotiate the terms of the debt. Another possibility is the reduction in the water purchase rate from Lee County. Reduction in the operations contract. These two items are contingent upon negotiations with other parties.

If none of the above can be done an implementation of a 1.66% rate increase at the time of the aquisition would provide significant net income to meet all the requirements and it would be a feasible financial plan.

Two adjustments were made from the draft report. One was ERC's and the other is usage. The draft report showed significantly higher levels of net income and revenues than the report today. It was based on a number or ERC's that was a little over 8,000 ERC's. We now have about 4,700 ERC's and this is substantially lower. The usage was pretty close. The estimate prior to this was 495 million gallons and we are now at 488 million gallons. We used estimates in the draft and now have actual numbers. The numbers have been adjusted and they feel that they are accurate.

Jonathan and Mike spent some time showing different models to the Board and Mike provided explanation of each model.

Mayor Hughes asked for clarification of the 6.7% increase. Is this the difference between \$2.26 and \$2.50? The response was "yes". This would happen in 2003.

A Board member made comment that they do not have the comfort level they had several months ago. Assuming they can negotiate good terms with the lender they may get through this without the rate increases.

Town Attorney Dick Roosa commented that he felt it helpful to go back and remember how they got into this confusion. It is a real opportunity for the Town to have more local self control. Early on Avatar Properties decided that it would sell its utility system for a value that was computed by taking the revenues of the system and the interest rate available at that time, and converting these mathematically into a formula to create the purchase price. The purchase price was based upon a bond interest rate. Those were 30 year bonds. Once the price was determined that was set for the entire system statewide and then divided among the various counties. They allocated a price to the Lee County System, which included the sewer, the North Fort Myers system, South Fort Myers and Fort Myers Beach system. When the lawsuit was filed it stated that they wanted to acquire the Fort Myers Beach system to avoid the

consequences of this litigation. They removed the Town of Fort Myers Beach from the system. They based it upon a value established from Avatar Properties.

When you are a private utility your profits are based upon a reasonable rate of return on your investments. A utility company likes to have a lot of money on the books as investments. They leverage it by loans, and this is how the share holders make their profit in the private utility.

The price was set low because they did not intend to retain it. They intended that it would ultimately be sold to the County. If not sold to the County it would be a marketable system and they could sell it to a private utility.

Two issues exist in dealing with the County. The first is the purchase price of the water. The second is that they can change water suppliers by a buy out provision. Although the County is very difficult to deal with he still feels that if the County would look at the numbers they may be able to obtain some relief. He feels that their calculations were made in error. They have two years to make a determination of what the bulk rate will be. It is possible that it could go down.

Mike commented that due to the errors made with the terms of the debt and ERC's it is remarkable that they are still able to make it work. It is something that can be done and is a viable plan. They would have to make the assessments as to the advantages in terms of your own ownership and the ability to control the rates.

Mayor Hughes asked if there could be any relief in terms of the purchase price due to the error by the County Staff? Town Attorney Dick Roosa commented that he did not believe so. The error had no relationship to the purchase price. There is a potential that it could effect the bulk rate and there is potential that it may effect the buy out rate.

John Gucciardo commented that they have already started the conversation with the County in regards to the bulk rate and a potential adjustment. He also pointed out that the implementation of a 1.66% rate increase would get them through the first year. He is not recommending a rate increase, but it is a viable alternative. Assuming that the average residential user pays \$24.00 a month on their water bill this would translate to \$24.40. This is not a significant increase.

Town Attorney Dick Roosa discussed rate increases. The only revenues you have are sales of water and the expenses will go up. The day will come when you will have to impose a increase. This is part of the responsibility of having a utility system. He would be very surprised if the lender does not require a covenant where if the rates are not sufficient to generate revenues you will have a rate hearing and increase rates to cover revenues. Owning a utility obligates you to generate sufficient revenues to keep it in operation.

Vice Mayor Murphy commented that over time with a fixed system there must be increases. When they get involved with something with County or go out on your own they try to measure what the impact will be on the people had they still been with the County. He asked how they stack up as far as percentage of increases and if they were still under the County system?

Mike Burton replied that if they stay as a private utility they would have still had to have the purchase water pass thru and still had the indexing happening every year. The same rate structure would apply, if the private utility maintained ownership. It was sold to the County and the same rate structure applies. The County could come in and change the rate structure. If you own the system then you have control over the structure.

Mayor Hughes announced that the Board of the Town of Fort Myers Beach Public Works Agency, which is the Town Council sitting in this capacity, is now holding a public hearing. The purpose of which is to make a determination that the purchase of this system from Lee County is in the public interest. He asked if anyone would care to address the Town Council on this?

Town Attorney Dick Roosa would like the Town Council to continue this public hearing to the next meeting. There is still some information that needs to be presented and be more specific. They need to know what the loan is going to be and this information cannot be given tonight.

John Gucciardo has made a list of issues that still need to be addressed between now and when a final recommendation can be made. The first issue is regarding how to finalize the numbers either by one of the five alternative options listed on page 5. Second, from Burton & Associates they need help

addressing the confirmation of the information of requirements outlined in the Florida Statutes. They need the actual revised loan commitment from the lender, so it can be checked for applicable conditions and make recommendations on those conditions. They need to obtain the finalized version of the closing documents from the County attorney's office. Some logistical issues need to be resolved with the County's utility department. For example location and placement of the master meters. They will anticipate on giving them a repair list of issues that need to be addressed in terms of the actual condition of the system and determine how this will be dealt with prior to or at closing. He feels that a package can be completed by the June 25th meeting, which will contain options that can be addressed and voted on.

Mayor Hughes has a brief question on repairs. The County is indicating a willingness to make the repairs that now seem to be apparent in light of the person brought in to potentially do the management, who found some problems that were previously ascertained by the consultant.

John Gucciardo replied that none of these issues are particularly serious in terms of the integrity of the system. They are issues that need to be address in order to see that the system functions as efficiently as it can. The County has not only been willing to deal with the issues, but in his opinion has gone out of their way to try to work with them to make the repairs as they have been identified. His concern is that just as they are ready to close all the issues may have not been addressed.

Mayor Hughes asked if they are willing to commit to make repairs even after the closing. Town Attorney Dick Roosa replied that the contract is an "As Is" contract. There is no contractual obligation on their part.

John Gucciardo feels that they have been cooperating as fully as he would have expected them to. Probably more so in terms of keeping them whole.

MOTION: Made by Vice Mayor Murphy and seconded by Councilman Reynolds to continue this matter until the June 25th meeting. Motion passed unanimously.

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

1. Approval of Bylaws

They are being asked to approve the proposed bylaws. The bylaws of the Town of Fort Myers Public Services, Inc.. This is the Florida not for profit corporation that was recently incorporated. All of the Town Council, whoever they may be from time to time, are the sole members of this not for profit corporation. They are also the directors.

Mayor Hughes asked regarding directors that there is no reference as to when they are elected. He assumes that they will be elected at the annual meeting of the members. The officers on Article #5 are elected at the annual meeting of the board of directors.

Town Attorney Dick Roosa replied that the unique aspect of the directors is that you are not elected as directors. When you become a Council member you then become directors. There is no real election of directors each year.

MOTION: Made by Vice Mayor Murphy and seconded by Councilwoman Cain to approve the bylaws. Motion passes unanimously.

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

F. SELECTION OF REVERSE 911 VENDOR

G. REQUEST FOR AUTHORIZATION TO BID LENELL STREET SIDEWALKS

H. TIMES SQUARE ADVISORY COMMITTEE: Request by Joerg Wiebe

G. Mayor Hughes commented that the Council has all decidedly reviewed the plans and specifications.

Pam Houck commented that they have the plans before them and it is being requested that they authorize them to bid on the project. They can bring the bids back to the Council for approval or they can authorize for them to take the lower bid. Bill Morris is present today to answer any questions and he has an estimated cost for the sidewalk.

MOTION: Made by Vice Mayor Murphy and seconded by Councilman Rynearson to move that they authorize Staff to proceed with the bidding of this Lenell Sidewalk Project. Also, authorizing them to do this expeditiously and take the low bid in our absence and proceed with project. Motion passes unanimously.

Bill Morris commented that one of the reasons the alignment was changed was to reflect a conflict with some existing utilities that are located in that part of the right-of-way. They were able to maintain a nominal offset from the roadway. They maintained a 4 foot offset from the travel lanes. This is a low speed, low volume local road.

Councilman Reynolds asked what would happen down the road when the sidewalk is being built 4 feet from the present pavement? How much space is on the other side to the right-of-way, which will become peoples yards. Bill Morris responded that due to this being a low volume and speed area this is not an uncommon practice. He would not recommend it for a street such as US 41, but is a common practice for residential. The reason it was not placed further away is due to a conflict with some underground utilities in the area.

Councilman Reynolds wanted to encourage Council to go at least 6 to 8 feet away from the present paved road. Bill Morris replied that the one issue of going that much further away is due to the existing swale. They did not want to locate the sidewalk in the middle of the roadside ditch. During rainy season use would be fairly restricted.

****Mayor Hughes declared a recess until 8:05 p.m.****

F. John Gucciardo is looking for direction to have the Mayor sign the agreement. The agreement is sent in and the grant money is received. The State has given them the approval to sign up with whichever vendor they deem most appropriate. They would like to go to an offsite vendor and they will keep the 911 system at their remote location. No lines will have to be maintained here. They are looking at a cash contribution of \$1,250.00 from the Town, a matching amount from the Fire District and they anticipate no further cash contributions for the next two years. They will use the grant money to service it for the next two years. Hopefully, the County will have instituted a County wide reverse 911.

Town Attorney Dick Roosa will review the governmental contract.

MOTION: Made by Councilman Howard Rynearson and seconded by Vice Mayor Ray Murphy to approve the execution of the State funded grant agreement for the Reverse 911 Program. Motion passed unanimously.

H. Town Manager Segal-George advised Mayor Hughes that Joerg Wiebe has asked to be appointed to the Times Square Advisory Committee. The ordinance provides for 5. We presently have 5 and she is not sure if he would like to enlarge it because someone else would like to be part of it or tell him he needs to wait for a vacancy.

Mayor Hughes had a meeting with the Times Square merchants. 2 or 3 expressed a desire to be on the committee as well. He told them that it would require an amendment to the ordinance to increase it. He personally feels that it should be increased.

Mayor Hughes would like to recommend that our Attorney draft an amendment to the ordinance of no less than 5 and no more than 9. He asked Town Manger Segal-George to respond to Mr. Wiebe and notify him that at this point there is no vacancy and it is being considered. His name will be held as an

applicant.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Councilwoman Terry Cain - Last week on Friday, May 25 she was in Englewood representing the Town on the policy committee for the Charlotte Harbor National Estuary Program. A lot of the meeting was dedicated to their budget and to review the budget. They have an excess. A change in fees may take place.

She also went to a meeting of the Lee County Canoe and Kayak Trail. She believes it will be called The Caloosa Blue Ways Trail. Primarily because the trail is going to meet in different counties. Rick Sowash and Rebecca Harris were present and made excellent suggestions to the County that were noted.

Vice Mayor Ray Murphy - In preparing for the meeting he has reviewed the minutes and is unhappy with them. Spelling and grammar is a problem and it is obvious the transcriber is not reviewing their work. The minutes are not acceptable.

Mayor Dan Hughes - Agreed with Vice Mayor Murphy about the minutes and feels some of the errors could be rectified with a phone call to Janeen. It is a difficult problem and a little editing would have cleared up a lot of this.

He attended the meeting at Citrola's and was requested by John Lallow who headed the meeting. A number of concerns exist. The meeting was broadened out beyond the garbage and maintenance. He just listened and they were aware he could not speak for the Town Council. He has some items to discuss with Staff about some of the other concerns. A lot has to do with communication problems. You will see people paying their maintenance fee, but he does not see a lot paying for the garbage. It will be up to this Town Council, but he feels that it may have to be reconsidered.

He was invited by the Hispanic Chamber of Commerce to meet the Vice President of the Dominican Republic. This was an interesting meeting and took place at Mayor Humphrey's office. This gentleman is the front runner to become the next President of the Dominican Republic. They have invited us to a convention in the Fall. The National President of the Hispanic Chamber of Commerce of the United States was also present.

He commented on the petition that was delivered to Chapel By The Sea by objecting neighbors in this area to the North and objecting to their program. This is a matter that is not within the Council's jurisdiction, if the church wishes to do this. It does not take any action on our part. Town Manager Segal-George asked that they not bring it in front of the Council because they have no jurisdiction or authority.

Councilman Garr Reynolds - He mentioned that one of the next items to be mentioned is regarding the employee salary increase. He is wondering why this is coming to Council? He understands that the Town Manager has the power to do this. He would like to know what the rationale is?

He commented regarding the minutes. He expressed his empathy to the typist. He asked Town Manger Segal-George to classify her experience. She responded that he would need to direct the question to Janeen. Janeen replied that she had done some typing of minutes in the Midwest and she seems as if she is familiar with this type of work. He does not have that much difficulty with the minutes that have been provided. He suggested giving the transcriber the commonly used names to incorporate in her word list. He commented that he hoped she worked out and he felt that she was really trying.

VIII. TOWN MANAGER'S ITEMS

A. REQUEST FOR EMPLOYEE SALARY INCREASE

B. TIMING OF TOWN ELECTIONS

Town Manger Segal-George began with a few items not included on the agenda. The Beach Access was recently mailed to everyone. It contained an insert from the Marine Resources Task Force with their annual report, which she felt came out extremely well.

They were featured in USA Today on Friday, May 25. Some people were copied on this and she

felt someone would have mentioned it. She feels that it is really incredible that they received in the paper a picture and that The Town of Fort Myers Beach Community Pool is listed and recognized as one of the 10 greatest public pools in the United States.

At the last meeting she was asked for an estimate from Metro with regards to North Estero Blvd.. She does have it. He gave an estimate of \$5,000.00 to do the same technical drawings for North Estero Blvd. that he had done for the rest of Estero Blvd. She can put it on the next Council Meeting. The other work that he had done was submitted to the County on time. She has packets to copy everyone with. She feels that he did a very good job and she understands that his bill will come in substantially less. Hopefully, it will be scheduled in front of the Board of County Commissioners on June 19. Greg from Metro will be making a presentation to the Board of County Commissioners on June 19. The Town has a really good chance of being successful with this project.

A. The request for employee salary increase is for John Gucciardo. The reason it is before the Council is due to a couple years ago the Council approved salary ranges with regards to a number of positions. The raise that she would like to give John exceeds the original salary range that was authorized. She does not have the authority to increase the ranges without Council approval. She is asking for the Council to take his range that ended at \$65,000.00 and extend it to \$75,000.00. She would then give him a raise from \$65,000 to \$70,000.00. This goes back to the information given to them on the retreat with regards to a comparison on the scope and responsibilities that John is handling. They used the Bonita position and the reason that the Bonita position was used is that it was a new position created with a specific job description listing the types of tasks and duties that were entailed in that position. She felt that it was illustrative of what John is doing and the complexities that must be handled that compare the kinds of responsibilities that he is handling versus what the similar position in Bonita is handling.

MOTION: Made by Councilwoman Terry Cain and seconded by Councilman Howard Rynearson to extend the salary range from \$65,000.00 to \$75,000.00. **Motion passes 4 to 1. Councilman Reynolds dissenting.**

Discussion: Councilman Reynolds has been doing some research on the positions of General Manager, Assistants, etc.. Many places in the country you can find a very qualified Town Manager for certainly less than \$70,000.00.. He has also been comparing John Gucciardo's work with Bonita. Bonita has fewer things after their name, but they have more responsibility along with individual lists they have. He finds its very difficult to increase the Deputy Manager or Assistant Manager in light of the fact that they are such a small little place, and most of the work is contracted. He does not see a need in any of the salaries at this point.

Councilwoman Cain is in and out of the office quite often. Tonight is another example of the work done by John Gucciardo. Burton & Associates and the grant of the reverse 911 are examples of his work. She feels that they do more on Fort Myers Beach than what the city of Bonita does. So much is dealt with between the beach and harbor. John has been instrumental in the hurricane management and the list is endless. This was something discussed at the retreat and she felt that everyone was in agreement with this. She felt this was something already done for John and it is now before us again.

Mayor Hughes commented that it is very difficult to compare one community to another on these items. He knows from experience that the duties assigned to somebody having the same title in Town A can be far, far different then the duties assigned to someone with the same title in Town B. He also knows from experience that population is not a major factor. This is not a significant increase and is a minimal effect the budget and he would favor this request to extend the range. He commends Town Manager Segal-George for giving him this raise.

B. Town Manager Segal-George commented that when this was put into the packet she was more concerned than she is now. The reason is that when this all came up she thought that a charter change in

order to change the time of the election, if this proved to be necessary. She was concerned that they would not have enough time to get it on the ballot this Fall. Town Attorney Dick Roosa did research on it and it appears that if it would come to pass you would need to change the time of the election and it could be done by ordinance, and would not require a referendum. She has had communications with a few of the cities and they are all in the same boat. Everybody had moved their elections to the Fall. They are upset. She was told that the Mayor of Cape Coral was going to call a meeting of all the Mayors. They really do not need to do anything about it this evening and they have the opportunity to allow it unfold.

Councilman Reynolds commented that since the primaries are all Democrat or Republic he asked how they would run? Would they have to do the same? Town Attorney Dick Roosa replied that a primary election would be held if there are more than two candidates. Otherwise, they would just have the general election. No date has been set.

Town Attorney Dick Roosa went on to comment that legislature has changed the balloting machines and balloting setup. There are limitations on the number of subjects that can be listed on general elections. In order to insure that there is adequate room to provide for national and state general elections most counties are setting up a separate municipal election program. He repeated the state statute 100.32605 for Councilman Reynolds and commented this was passed this session or in 2000.

Vice Mayor Murphy would like to invite Philanda Young down here to a meeting. Mayor Hughes feels that would be fine, if she would be willing to come in.

IX. TOWN ATTORNEY'S ITEMS

Town Attorney Dick Roosa discussed the County Commission meeting he was attending this afternoon and waiting for them to discuss the Primo Settlement. He had distributed a memo on May 4 or thereabouts regarding the position of the law as he saw it. They had agreed to transfer the facility as designed and that included free of all liens and encumbrances. He distributed a copy of this to the County Commission. The County's attorneys office, Mr. Tom Wright, was of the opinion and cheered on by all of the County Commissioners, except for Bob Janes, that this was a Town of Fort Myers Beach matter. They will meet tomorrow and he feels that they will vote on it. He is pretty comfortable that the vote will be that the Town of Fort Myers Beach can, if it would like to pay \$40,000.00 to Mr. Primo, keep the bus stop. In the absence of having made such payment they will tear out the bus stop. They feel that they have just given the Town 2 million dollars and we should give Mr. Primo \$40,000.00.

Legally if they would like to contest it they could go and file a motion to go before the court for an interpretation of this interlocal agreement, in which they agreed to provide the facilities that were capable of being completed for the monies available. Mr. Roosa feels that they can show that there was more than \$65,000.00 available and it should have been paid for. He could also bring up to the court whether the judge had the authority to authorize them to tear down their bus stop. He can do this if the Council would like to contest the \$40,000.00. The decision has not yet been made and he provided this information for them to think about.

Town Manager Segal-George commented that the majority of the bus stop is within the Town of Fort Myers Beach right-of-way and is not Mr. Primo's property. They would be entering into our property to tear it down.

Mayor Hughes feels that they should wait to see the action taken and a memo or report can be given from Mr. Roosa at the next meeting.

X. APPROVAL OF MINUTES: FEBRUARY 26, 2001

Councilwoman Cain has some questions regarding the motion located on Page 14 of the minutes. Page 9 does not indicate any statement of the vote on the Bay Beach. Town Manger Segal-George will have them pulled and have the transcriptionist re-listen to the tapes for clarification.

A discussion was held regarding the back log of minutes. Town Manger Segal-George tried to explain the situation with Lorraine's illness and the difficulty of finding people to complete the work. Some discussion was held regarding the hiring of someone full time to complete only minutes. A report of dollars spent on transcription over the past years will be compiled and brought to a future meeting.

XI. PUBLIC COMMENT

Bill Thomas would like to offer his congratulations to John Gucciardo on his salary increase. He has another request. Several months ago when the dedication took place for the beautiful flag outside of Town Hall he had made a request for an MIA flag. Tonight is his second request for an MIA flag on Fort Myers Beach. Recently County Commissioner John Albion was discussing having an MIA flag on all County buildings in Lee County. He feels that this would be a great idea for Fort Myers Beach to be the first to have an MIA flag on a government building, and not follow the County. Let us take the leadership. The Fort Myers Beach VFW would be happy to dedicate the MIA flag to the Town. He thanked the Council for their time.

Major Hughes feels that no one on the Council would object if the Fort Myers Beach VFW would donate the flag to the Town.

Councilman Rynearson commented that he had conversation with Bill McCarthy a few weeks ago. He told him that it would be a great idea if they made a formal presentation to the Council with the flag. It would gladly be accepted.

XII. ADJOURNMENT

The meeting was adjourned at 9:12 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