

**FORT MYERS BEACH
TOWN COUNCIL MEETING
AUGUST 27, 2001
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The regular meeting of August 27, 2001 was opened by Mayor Daniel Hughes on Monday, August 27, 2001, at 3:01 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, Damon Grant, Dick Roosa (Town Attorney), Dan Folke and Bill Spikowski

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. INVOCATION BY REVEREND WILLIAM DODD, ST. RAPHAEL'S EPISCOPAL CHURCH

Reverend William Dodd gave the invocation.

IV. PUBLIC COMMENT ON DRAFT 2001/2002 BUDGET

None.

V. PUBLIC COMMENT ON AGENDA ITEMS

Jennifer Kaestner came forward to discuss Item VII - G. Comp Plan Amendments. She feels that it is overdue to discuss this major change in policy. She has read the Old San Carlos Master Plan over and over, and has not seen anything discussing the increase in hotel density. She referred to the joint workshop of the Town Council/ LPA in February of 1999, and does not recall any discussion of increased hotel density being part of this workshop. She expressed that if a property owner comes forward with a redevelopment request and it is not in compliance with the Comp Plan she would hope that their Town management would say that they are not in compliance with the Comp Plan. She would like the Council to listen to the information given to them by the community, and to hold off on the decision and ask for more input.

George Barber is speaking on behalf of the density issue. He feels that this must be put on hold and they cannot increase density on the island without working on the infrastructure of the island. Other projects are in greater need at this time. He expressed that it is difficult for the people of the island to presently get around. If they continue to keep building hotel rooms they will have problems with the sewer system, water system and traffic. These items must be taken care of first. He urges the Council to think about this when voting on any issues.

Tom Merrill came forward to address the density issue also. He is looking that there is the possibility of an increasing split between quality of life for business and quality of life for residents. He feels the density issue may get into some of this. They obviously have a traffic problem on the island. He referred to there being many more tables and bar stools in and around Town, as opposed to several years back. They are presently in a situation to stop this with the density. He feels that the difference in the increased traffic is due to the slipping around the edges. He is against business development at the expense of the residents. He feels that balance is the most overriding concern at this time. He would like them to ask the business owners, who are making the extra money by having increased traffic flow, to help elevate the situation for residents.

VI. CONSENT ON AGENDA

- A. Review of Financial Reports: June and July 2001
- B. Resolution: Calling for 2001 Election
- C. Contract Renewals: Champion and Community Development

MOTION: Made by Councilman Howard Ryneerson and seconded by Vice Mayor Murphy to approve Consent Agenda Item A. **Motion passes unanimously.**

MOTION: Made by Vice Mayor Murphy and seconded by Councilwoman Terry Cain to approve Consent Agenda Item B with the following changes. Seat 2 to be changed to seat 3 and the names in seat 4 to be alphabetical. **Motion passes unanimously.**

MOTION: Made by Vice Mayor Murphy and seconded by Councilwoman Terry Cain to approve the annual interlocal agreement with Lee County and the Town of Fort Myers Beach. **Motion passes unanimously.**

VII. ADMINISTRATIVE AGENDA

A. FIRST READING: Amending Ordinance 99-09 - Times Square Advisory Committee

Mayor Hughes indicated that the only amendment to the existing Ordinance is to increase the Advisory council from 5 members to not less than 5 or no more than 9. It will also allow owners to designate a person as their agent. He indicated that a typo exists and should read “than”, instead of then. This is the first reading and will be set for adoption on September 10, 2001.

B. PUBLIC HEARING: Boykin Hotel Properties, L.P. in ref. To Captiva Useppa Property

Rezone from Residential Multiple Family (RM-2) to Mixed Use Planned Development (MPD) to consider two potential development plans: **Alternative 1:** A maximum of 43 hotel units, 12,000 square feet of commercial resort uses, including restaurant, guest services and consumption on premises, and accessory hotel uses, not to exceed 83 feet in height above base flood elevation (7 stories over parking), on 1.84± acres of land. (Consideration of the 12, 000 square feet of commercial use is requested in conjunction with the removal of an equivalent amount of commercial use from the approved Pink Shell CPD located on the bayside of Estero Blvd. and with the creation of an additional bayside view); or bayside of Estero Blvd. and with the creation of an additional bayside view); or **Alternative 2:** A maximum of 43 hotel units, accessory uses and limited consumption on premises, not to exceed 66 feet above base flood elevation (6 stories over parking), on 1.84± total acres of land.

MOTION: Made by Councilman Howard Ryneerson and seconded by Councilman Garr Reynolds to send this back to the LPA due to the amount of changes that have taken place. **Motion fails. Mayor Daniel Hughes, Vice Mayor Ray Murphy and Councilwoman Terry Cain dissenting.**

Discussion: Vice Mayor Murphy indicated that he has come to the meeting today prepared to discuss this issue. They have had plenty of time to review and it has already gone to the LPA. He does not feel it is fair to the applicants to keep prolonging the matter. He feels that they are prepared to make a decision and they should.

Councilman Ryneerson feels that they do have issues. He mentioned the height issue. He feels that it is the job of the LPA to work this out.

Beverly Grady came forward and indicated that during the Council’s break they have met a number of times with their consultant and staff. She feels they can provide a very positive position. They have two alternatives that the consultant and staff for the Town say is consistent with the Comprehensive Plan, and meet the Land Development Code. It is up to the Town Council to make the

determination of the better plan. No issues are in dispute over either alternative. The square footage, which was a big issue at the last meeting, has been completely resolved. They believe that they deserve the opportunity to make this presentation to the Council. She mentioned that the application heard by the LPA was 7 stories over the parking. They have considered the height issue and a recommendation is included in the packet of the Council.

Rich Conti came forward and introduced himself as the President of Boykin. They own the Pink Shell Resort and had purchased it in 1988. He took a few minutes to prepare some easels for his presentation.

Mayor Hughes asked if any of the Council members have had any ex parte communications in this matter. Councilman Rynearson had spoken to John Naylor. Councilman Reynolds spoke with John Naylor yesterday on the telephone. Mayor Hughes met with John Naylor briefly at Town Hall last week. Vice Mayor Murphy met with Mr. Naylor regarding the two new alternatives being proposed. Councilwoman Cain also met with him as well.

Rich Conti thanked the Council for the opportunity to bring the plan before the Council. Since the last meeting on June 25 they have met with Mr. Spikowski and Mr. Folke on two occasions to determine the question at hand. He feels they have come up with two alternatives, both of which they would re-develop. He feels that both of these opportunities are better than the original plan. They have tried to enhance view corridors. Mr. Folke's report recommends approval of their plan in all areas. Mr. Spikowski's report acknowledges that they are not violating any part of the Comprehensive Plan.

Mr. Conti went on to discuss that the buildings have some problems relative to the Comprehensive Plan that they would like to correct. The first is that it is in front of the coastal control line and the second is that the Useppa building extends all the way out to Estero Blvd. The current situation is that they have an economically viable building, which is physically viable and they could continue to maintain it. They would like to enhance this building, which will enhance the overall resort. They feel they need to make all 43 units parallel to the gulf. He referred to a handout given to the Council listing the benefits of this project. He feels that they will be able to reduce traffic on Estero Blvd by moving the Useppa building back 40 feet. This will allow for a connecting area that will keep all of the traffic within the Pink Shell complex.

The most crucial decision is regarding the building height. He referred to the Comprehensive Plan and quoted that particular attention would be paid to any permanent view corridor to the gulf or to the bay waters that could be provided in exchange for a taller building. This became their goal. The second aspect of height is regarding the heights of the surrounding buildings. To the south is the White Sands building that will be 9 stories. Farther to the south is the Beach Villas, which is a 7-story building. To the north are 5 and 6 story buildings. He feels that having the 6 or 7 story building will keep them in balance with the surrounding properties.

Mr. Conti went on to discuss the alternatives. He began with alternative two and indicated that the 6-story structure is simply residential units. They have agreed with Mr. Folke and Mr. Spikowski that the total square footage would be 28,219 square feet. Everyone is in agreement that this is within the Comprehensive Plan. They were able to shrink the building from being 122 feet wide to 112 feet wide. They will still be able to accommodate the 43 units. They will be adding 5 feet to the view corridor on the south and adding 5 feet to the north. It will be a stair step type of building versus a square box providing greater blockage of the view.

Alternative one required additional brainstorming. This alternative transfers their rights to have the commercial space on the bayside and put it on the gulf side. They will have 700 or 800 linear feet of view corridor unobstructed. This will allow for a wide-open view corridor. Their objective was for a dynamic change in the view corridor.

In closing he thanked the Council and indicated that they need to be economically viable to tear down economically viable structures and convert to one that will benefit them long term, and also the community.

Beverly Grady reviewed the staff proposed conditions and deviations. She spoke of alternative one and indicated that it removes 12,000 approved commercial square feet from the bay. This increases the view corridor of 140 feet and provides a total view corridor of 740 feet of bay that has not been seen before. They have no changes being requested on alternative one.

She went on to discuss alternative two and indicated that it reduces the height from 7 stories to 6 stories. This will reduce the height from 72 feet above base elevation to 66 feet. This is a reduction from what was seen on June 25. Both alternatives provide for greater setbacks from Estero Blvd. than what

exists today. Both alternatives remove the construction, which is seaward of the original coastal construction control line. There will be more distance between the proposed structures and gulf than exist today. Both remove two floors of units that are below base flood elevation, and eliminate two existing structures that do not comply with the current building codes and wind resistance. She indicated that both alternatives can be found by the Council to be consistent with the Comprehensive Plan and the Land Development Code. There is no increase in intensity or density with either alternative. They respectfully request that will review both alternatives and make a decision today of approval on either alternative.

Councilman Reynolds asked why they are referring to the buildings as being 6 or 7 stories when they are actually one story above parking, which makes them 7 or 8 stories? Beverly Grady disagreed because all the building on the island, when over parking, are referred to as how many stories over parking. They have been historically referred to this way. They are referring in alternative one to 7 stories over parking, and alternative 2 is 6 stories over parking.

Councilman Reynolds commented that he feels when looking at the current buildings from Estero Blvd. you see more gulf presently than with the proposed buildings. Dan McGahee came forward and pointed out the difference between the existing and proposed buildings. He feels that they have created 70 to 80 feet of nicer views to the beach rather than through a parking lot of cars and vans. He feels that these issues have been addressed with either alternative.

Vice Mayor Murphy questioned if the path will extend beyond the parking to connect all the way to the north end? It was responded that with the original approval it will come bayward of the parking and continue across the seawall and dock. There would be no change other than the building disappearing. The walkway would be public. With this alternative (alternative one) a 740 linear foot bayside path would exist.

Councilwoman Cain questioned the building with alternative one. She referred to the first floor and the uses, and asked for further explanation. Mayor Hughes referred her to page 4 of 10 of the report for further explanation. An explanation was also provided indicated the how the spaces will be utilized.

Dan Folke came forward and indicated that he has prepared an additional memo dated August 15. He handed out an additional list of conditions. Mayor Hughes commended him on a very good memo summarizing the two alternatives, along with the staff report.

Dan went on to comment that after the June 25 meeting there were two outstanding issues. One was pertaining to the build back policy in the Comprehensive Plan and the second was dealing with the height. He had presented a recommendation of approval at the last hearing with some conditions. He feels that the two alternatives presented today are both improvements from what was presented at the last hearing. He reviewed the conditions of approval for alternatives one and two. He feels alternative one is consistent with the Comprehensive Plan.

Mayor Hughes questioned condition of approval #5. This relates to the relocation of the 12,000 square feet of commercial uses. He indicated that there is no reference to the time in which they would do this. Dan Folke indicated that a time frame could be added for the amendment to the CPD. He is not sure what would be appropriate. Attorney Dick Roosa commented that it would be better addressed when the amendment is reviewed. Councilman Reynolds agrees with Mayor Hughes regarding this matter and feels it should be added at this point.

Attorney Dick Roosa went on to add that in order for the Council to have the jurisdiction and authority to make this amendment they would have to have an advertised public hearing.

Rich Conti indicated that once they received the certificate of occupancy for the new restaurant they can close the old restaurant and tear the building down.

Mayor Hughes opened this up for public hearing and asked if anyone wished to address the Council. At this point, no one stepped forward. He asked Bill Spikowski to come forward.

Bill Spikowski, planning consultant for the Town, came forward and indicated that they have heard a good summary of the case and commented that Dan Folke had gone over the conditions carefully. At the last hearing in June he had given the opinion that the previous proposal was not consistent with their plan, because the building was going to be bigger in square footage than the existing building. This is no longer the case. They have agreed to reduce the size of the building. He indicated that it is a judgment call of the Council. He is convinced that there is no more room for negotiations. Alternative one makes the most sense to him and would make a dramatic change. Alternative two is a major reduction in the view of the gulf. It is at the Council discretion and he wished them good luck.

MOTION: Made by Vice Mayor Ray Murphy and seconded by Councilwoman Terry Cain to approve alternative one with the conditions of approval that have been presented by staff. **Motion is approved 4 to 1. Councilman Ryneerson dissenting.**

MOTION: Made by Mayor Daniel Hughes and seconded by Vice Mayor Ray Murphy to amend the motion to provide in Condition 5 an additional sentence to read “ the building housing those commercial units shall be removed promptly upon occupancy of the new facility”. **Motion passes unanimously.**

Discussion: Councilman Ryneerson would rather see lower stories than view corridors. He feels that the public has spoken in this sense. He feels that they should try and keep these heights down. He cannot support this.

Mayor Hughes feels that they will be removing two obsolete buildings and getting a wonderful park along the bayside. The height does not bother him, but it would if it were in a different location. He believes that this will be a beautiful resort on the island. He feels if they approve this, the general public, including the residents, will believe that they have vastly improved the whole area.

Councilwoman Cain agrees that if the location were different the height would be more of an issue. She feels that this is an exciting proposal. This will be one of the greatest views of the bay accessible from Estero Blvd. She liked that they will be eliminating one access to Estero Blvd. and they are trying to keep some of the traffic off of Estero Blvd.

Councilman Reynolds feels that the some of the good items of alternative one is that the density is the same as the buildings presently there. The bay view will be enhanced by the removal of the building. Public accesses will be marked. He does not see where the gulf view will be enhanced. He has never voted for a building higher than 3 stories. He feels that the Town is gaining by having the removal of the commercial building. He believes that this is the best way to go.

C. MUD APPEAL: Cossu-Cohen

Kathy Cossu-Cohen came forward and expressed that they have the same situation as Mr. Easterbrook. They purchased there home in July of 1999 and at the time the home had an addition of a storage area and staircase, which straddled the common lot line between the two lots. Before they purchased the home they requested a zoning letter from Lee County. The zoning letter indicated that there were two buildable lots. In November of 2000 when the Comprehensive Plan was passed this lot was taken away from them. Both of their lots are 6300 square feet. They have since removed the stairs and storage area that was built by the previous owner without a permit. They feel that their lot has been taken away from them.

Bryan Cross came forward and expressed his concern as a homeowner. Kathy and Gary are his neighbors. He lives at 5230 Estero Blvd. He is here today to ask the Council to let stand the original decision and deny the appeal they have put before them today. He was advised at the time of his purchase of a home on Fort Myers Beach that this would not be a buildable lot. They further checked with Lee County and they also indicated that this was not a buildable lot. In November of 2000 this Council reaffirmed its position by passing an amendment to the Comprehensive Plan. He indicated that their neighborhood is composed of three lots. They share a common driveway. These lots together make up a very small compact area that presently supports two houses. If you add a couple of guests at each house with cars it becomes very tight. The addition of a third home would be a huge problem. He feels that the Councils decision today should support the idea of lower density.

MOTION: Made by Councilman Howard Ryneerson and seconded by Councilwoman Terry Cain to uphold ruling by the Attorney for the LPA. **Motion passes 4 to 1. Councilman Garr Reynolds dissenting.**

Discussion: Councilman Reynolds commented that he lives a lit bit south of this property. He indicated that the section they tore down was in bad shape and made the rest of the home look bad. Just removing this section has improved the looks of the property a great deal. He has a problem with people having full size lots and not being able to utilize them. He expressed Bryan Cross' concern and does not feel that the traffic will be an issue.

D. MUD APPEAL: Easterbrook

Mayor Hughes announced that the issue is whether or not Town Manager Marsha Segal-George, sitting in her capacity as the Attorney for the LPA, has properly denied a request to allow a second lot to become a buildable lot, and if the application of the Ordinance was properly applied.

Mayor Hughes went on to read Case Number MUD 2001-58, administrative interpretation of single-family resident provision. The applicant is David and Diane Easterbrook. The property in question is 123 Bay View Ave. He will allow for public input. It is not technically a public hearing, but it has been discussed with Council and will be treated in this matter.

Beverly Grady came forward representing David and Diane Easterbrook. They are requesting that the Town Council look at this provision and recognize the right to a dwelling unit for Lot 6 and Lot 7, which is located in Block B, Hyde Park, Plat Book 7, Page 20. Each lot exceeds 6,000 square feet. Hyde Park was originally platted in 1925. When the Town developed its own Comprehensive Plan it adopted a Comprehensive Plan, which recognized the property rights and protected the property rights of owners of platted lots. Mr. Easterbrook handed out a copy of a page from the Town's Comprehensive Plan, which was adopted and became effective on January 1, 1999. There were several criteria that needed to be met. David and Diane Easterbrook still meet E-1 (the date create), both criteria under minimum lot requirements of A & B. Many property owners own contiguous property and have a right to a dwelling unit on each lot, except in one instance based on the change that the Town has made. The Council took Ordinance 00-15, which was adopted 9/25 of last year and changed the ownership requirement for a very small segment of those property owners. If you own two lots that were platted and vacant each one was and is entitle to a dwelling unit. If you have two platted lots and there is one dwelling unit on one lot, and the other is vacant you are entitled to two dwelling units. If both lots are owned by the same owner and each one is built upon that is two dwellings. She referred to a change made effective November 2000 referring to a person owning two lots, and a portion of the structure crosses the lot line they have lost the dwelling. She asked them to look at their criteria and the Easterbrook's still meet E-1 (date created) and both criteria under minimum lot requirements. They have changed #3 ownership and made ownership only in one instance controlling. This has resulted in the taking of a dwelling unit from the Easterbrook's. She wanted the Council to take note that in their change there is no recognition of the actual lot size. The Easterbrook's purchased this single family home years ago when they understood that there was a unit entitled to each lot.

Dave Easterbrook came forward and indicated that he resides at 123 Bay View Ave. He expressed that he and his wife originally resided at the property in 1991. They rented the property at this time with the option to purchase. They could not purchase the property until 1996 due to it being in probate. In April of 1997 they purchased the property with the knowledge that they had two buildable lots according to Lee County. He had researched this prior to the purchase. He bought the property with full intention of it being part of his retirement package, and it is very important to him to see this through and see his dream come to pass. In 2000 they found that their dreams had been taken away. He hopes that the Council members will look into this and grant his request.

Beverly Grady commented in conclusion in reviewing the record it appeared that there was an effort to have some density reduction. The only burden was for the property owners who had a structure that crossed the lot line. They respectfully submitted to the Council, in reviewing their changes, they came to point out the unfairness of the burden, and to request that the Town Council recognize this and provide appropriate relief to give the Easterbrook's back what they had originally had.

Mayor Hughes replied to Beverly Grady and made her aware that this particular Ordinance was initiated by him and taken to the LPA by him also. He feels that what they have here today is two examples of what they are trying to accomplish by the Ordinance. This Ordinance is to prohibit someone who has a home on more than one lot, to tear it down and build more homes on each of the lots that are substandard under their existing provisions. Mayor Hughes went on to add that today's discussion is not whether or not the Ordinance is fair, it is to determine whether or not the Attorney for the LPA has

properly applied the Ordinance.

Beverly Grady feels that it is. She indicated that this is the process they must follow to lay before them the problem of the Ordinance. This is the time that they would have the ability to fashion a remedy and to recognize this.

Councilman Reynolds mentioned that when this came up last year and it was discussed they discussed substandard lots. He does not look at this situation as a substandard lot. He feels that it is larger than many of the lots on the island. He agrees with Beverly Grady 100% on this matter. Someone built this home haphazardly on the lot, and it will forever be tying up another lot. This gentleman bought this lot in good faith at the time when the law was exactly as he had stated. It was last year that this change has taken place. He commented that when this was discussed and passed they would view some of the cases individually. He believes that this is one of the exception cases. They should go along with this couples request.

Attorney Dick Roosa commented that if the Council decides to give them relief it would require an amendment to the Ordinance. Town Manager Segal-George commented that it would require an amendment to the Comprehensive Plan.

Vice Mayor Murphy agrees that he would like to see relief for the Easterbrook's. He is not sure of the procedure for today, but will continue to listen to the discussion.

Councilman Ryneerson feels they also need some relief. This cannot be accomplished today.

Mayor Hughes expressed his opinion that any attempt to go back and amend the Comprehensive Plan would be a large step backward on the island. They have hundreds of situations like this one and if they open the door to one they will be flooded with many more. To him this is not what they are wanting.

MOTION: Made by Councilman Howard Ryneerson and seconded by Councilwoman Terry Cain to uphold the ruling by the Attorney for the LPA. **Motion passes unanimously.**

Vice Mayor Murphy commented that he is in agreement with Councilman Ryneerson. He feels that a lot of time when an Ordinance is passed and it is tested you then find the cracks that people can fall through. In his mind this is one of the situations. He would like them to take a further look at this, so they can provide relief for these types of people.

Mayor Hughes does not agree. He feels that this is precisely the type of situation that was contemplated.

E. FIRST READING: Jetski Ordinance

Vice Mayor Murphy read that this is an ordinance repealing Chapter 27 and 28 of the Town of Fort Myers Beach transitional Land Development Regulations providing authority repealing Chapter 27 & 28 of the transitional Land Development Regulations adopting a new Chapter 27 of the Land Development Code providing Division 1, definitions and enforcement, Sec. 27-45 definitions, Sec. 27-46 area of enforcement, Sec. 27-47 means of enforcement, Division 2 personal water craft, Sec. 27-48 regulations for operation of personal water craft, Sec. 27-49 regulations and locations for personal water craft rentals, Division 3 parasailing, Sec. 27-50 regulations and locations for parasail activities, Division 4 additional rules and procedures applying to both personal water craft and parasailing, Sec. 27-51 additional rules applying to both conditions of PWVL and PAL business, Sec. 27-52 PWVL and PAL applications and regulatory fees, Sec. 27-53 PWL and PAL renewals, Sec. 27-54 display of PWVL and PAL licenses, Sec. 27-55 transferability of PWVL and PAL licenses, grandfather clause, Sec. 27-56 insurance, Sec. 27-57 penalty, Sec. 27-58 standardized rules providing severability and establishing an effective date.

Mayor Hughes asked about the age limit. Bill Spikowski replied that this would be parallel to the state law, which was changed in the legislative session last year to require that the renter be 18. It does not state that the 18-year-old renter cannot let their 15-year-old brother ride it. The person who signs the rental slip must be 18 years old.

Councilman Reynolds questioned not seeing anything regarding the leaving of signs, life jackets and Jetski's on the beach overnight. Bill Spikowski replied that there has been no clear regulations on what someone can have out on the beach. The businesses will be able to have one free standing structure on the beach and it must be moved in during the night. One of the most important changes will be the boxes that store equipment and stay at the beach all night will have to go.

Town Manager Segal-George commented that this ordinance will have two public hearing on September 10 at 6:30 p.m. and September 24 at 6:30 p.m.

F. FIRST READING: Referendum question on elections

Mayor Hughes indicated that future elections will not be run at the cost of the County beginning in the Fall. The other municipalities have all indicated a willingness to change the election date from November to the Spring. He is referring to the City of Bonita Beach, Sanibel and Fort Myers. The Mayor in Cape Coral is objecting to it and will be having his own election.

Attorney Dick Roosa commented that they have two ordinances before them. The problem is that in the transition there are two choices with regard to the seats, as to how long they will stay in office. Seats 1 & 2 shall be from November to April 2003 and this would be a 2-½ years rather than a 3-year term. The next one states that Seats 1 & 2 will be from November of 2000 to April of 2005 and this is a 4 ½ year term. These would be their choices in order to have part of the Council elected in one odd numbered year and part in the other odd numbered year. Either one would work as far as the elections are concerned. He feels that they should set them up for public hearing and get some public input, as to which they would like to adopt.

Mayor Hughes commented on the possibility of having even numbered years. They would be able to have it run at the same time as the Presidential Primary and it would cost them nothing in those years. You still run into the same problem of having to extend or cut short somebody's term. He expressed that they need to decide on even or odd numbered years and explained a couple of options to the Council.

Vice Mayor Murphy feels that their best course of action would be to fall in line with the other cities and to get a consensus on where they are. It makes a lot of sense to him to receive every other year's election free. He suggested the possibility of the Mayor's getting together.

Mayor Hughes feels that they need Attorney Dick Roosa to find out what the other municipalities are doing, and then have him draft another set of ordinances appropriately. He discussed the terms of the present Council members.

Mayor Hughes went on to discuss that it is the consensus of Council for Attorney Dick Roosa to draft an ordinance for the even numbered years. He will advise them as to the status of Bonita Springs, Sanibel and Fort Myers.

MOTION: Made by Vice Mayor Ray Murphy and seconded by Councilman Howard Rynearson to set the public hearing for September 10, 2001. **Motion passes unanimously.**

G. DISCUSSION OF COMP PLAN AMENDMENTS

Mayor Hughes read that this is the ordinance of Fort Myers Beach entitled second amendment to the Fort Myers Beach Comprehensive Plan establishing purpose and intent amending Chapter 4, future land use element, amending Chapter 11 capital improvements elements providing for conflicts, providing for severability and establishing an effective date.

Bill Spikowski, Planning Consultant for the Town, came forward and commented that since their last hearing back in June it has gone to the state and regional agencies for review. None have offered any objection, and the state has given a formal letter that they will not even write a formal report on it, and they are free to adopt it if they choose. Tonight they will be setting the public hearings for September 10, 2001 and September 24, 2001. The ordinance would adopt two of the three original amendments. The third one for Seafarer's Village was withdrawn in June.

Councilman Reynolds has received calls and letters. People are very concerned about this ordinance. They are connecting it with the publicity that has been put out on the large projects down in Times Square. He does not believe that they should be making this change.

Mayor Hughes replied that Councilman Reynolds was getting into the merits and they will be having a public hearing. Hopefully, the people concerned with this will attend the public hearings.

H. DISCUSSION OF REALTOR'S REQUEST ON SIGNAGE ISSUES

Jake Slatte came forward and indicated that he is the Director of Governmental Affairs for the Realtor Association of Greater Fort Myers and the Beach. He is present on behalf of the Board of Directors and is speaking for the membership of that Association. This is in reference to the Land

Development Code Ordinance enacted in September of 1999. The real estate profession on Fort Myers Beach will comply with the new ordinance, specifying that all real estate signs shall be sized in accordance with the 24x24 sign face. He has provided two examples of a standard 24x24 signs. The Management staff has been very cooperative with this issue. He paid a special thanks to Town Manager Segal-George and her staff for their congeniality. They are here today to request relief of the 8 inch ground clearance requirements, as stated on the illustrated maximum dimensions of the typical real estate sign dated August 21, 2000. Due to the unknown ground situation they are not sure how far they can be stuck into the ground. They are asking for some understanding of the 8-inch rule.

Town Manager Segal-George commented that she had spoken with Mr. Slatte. This is not going to be an issue for them. As long as the sign face complies and there is an attempt to keep the dimensions as required in the ordinance. The only issue they would have would be in regards to the sign face. It is also important to point out that this applies to For Sale By Owners, as well as Realtors.

Mayor Hughes expressed that this will be taken care of administratively with Town Manager Segal-George. He thanked the real estate community for their willingness to comply with the ordinance. **(Mayor Hughes called for a 45-minute break. When they return they will go back to Agenda Item VII - E.)**

I. DISCUSSION OF PAVER BIDS FOR TIMES SQUARE

Damon Grant, Service Delivery Coordinator, came forward and commented that before the Council's summer break they had discussed researching the maintenance of the Times Square brick pavers. They did have a request for bid go out. The three options would be restoration, staining and replacement. They have had bids come in on all three options. In his memo he has listed each of the options, and the bidders for each. They need to set some goals and decide where they would like to go.

Mayor Hughes expressed that there is a significant difference in cost.

Councilman Rynearson would like to look at option 2 a little more in depth. He would like to go back to the factories that make the stain and get to the source of it. If they do a good pressure cleaning most of this can be removed. He feels that they need to get a little more mileage out of the pavers.

Councilman Reynolds went back to the beginning of the present pavers and commented that they were told they would likely stain due to having such light colors and being so porous. He feels that they should look to see what the businesses are using. He has hopes that if they are going into this again they will not go into something that will require all the high maintenance. He feels that they should go with option 3.

Damon went on to comment that if they restore the pavers they will be able to extend the longevity, but they will not be able to get back the quality that was once there. The sealant has worn away and the pavers are soaking up all of the dirt and oils. He commented that if they choose the option of staining they will most likely have to go with a darker color to cover over what is presently there. His recommendation is to go with option 3, especially, if they are going to incorporate it with the Old San Carlos restoration.

Vice Mayor Murphy likes Councilman Rynearson's idea of exploring option 2 further. Option 3 is appealing, but it is quite a big number.

Councilwoman Cain feels that it is a good idea to look into staining and coating. She is concerned about the staining. A color already exists and it may be difficult to achieve the color you originally intend the pavers to be. She would not like to invest this type of money and not be happy with the end product.

Councilman Reynolds advised Damon Grant of the \$30,000 machine they have for cleaning the pavers. If they receive the correct type they may be able to save on the cost of maintenance by using this machine.

Mayor Hughes feels that option 3 is the most desirable. He is in agreement with Vice Mayor Murphy and Councilman Rynearson. Many new products are now available for staining and the key is the preparation. He would like to see this explored further. Possibly take a small area and test before a decision is made. He asked Damon to check this out further with regards to the coating and staining.

J. DISCUSSION ON ARCHEOLOGICAL BID FOR THE MOUND HOUSE

Rebecca Harris, Director of the Fort Myers Beach Cultural Museum and Environmental Learning Center came forward. She is present today to apprise the Council of a recommendation made during the last CELCAB meeting on August 22, 2001 concerning the choice of an archeological

contractor. CELCAB is the recipient of a grant from the State of Florida to complete an archeological survey of the property located at 289 Connecticut St. Three archeological bids were made by the deadline set on August 15, 2001. CELCAB members were provided copies of each bid a week prior to the meeting. The three parties that bid on the project were invited to attend the CELCAB meeting. After a lengthy discussion concerning the candidates each member expressed their thoughts and recommendations. The outcome of this discussion was a consensus vote for Florida Gulf Coast University. She respectfully asks the Council to accept this nomination from the Cultural and Environmental Learning Center Advisory Board, so they may enter into a signed and executed contract with the Cultural Resource Management Program at FGCU.

MOTION: Made by Vice Mayor Murphy and seconded by Councilwoman Terry Cain to accept the recommendation that CELCAB negotiate a contract with FGCU. **Motion passes unanimously.**

Rebecca Harris indicated that the three principle investigators for FGCU are present and would like to say a few words to the Council.

Corbett Torrance came forward and introduced himself as the Director of the Cultural Resource Management Program at Florida Gulf Coast University. On behalf of FGCU they thank the Council for their support. This project promises to be very exciting. They look forward to working with them to further integrate the historical, archeological and educational value of the Mound House property with the interest of the local community. They recommend that this project be done in early Spring of next year. The excavation period will be approximately 4 to 6 weeks, depending on weather. The analysis will take another 4 weeks. The whole project will be approximately 2 months.

Mayor Hughes asked if the University had made a decision as to the location of the Marine Lab? Mike McDonald came forward and indicated that the negotiations for the Marine Lab are still under way. They have not made a final decision on location.

K. DISCUSSION OF PRIMEAU LAWSUIT SETTLEMENT

Deputy Town Manager John Gucciardo referred to a memo in the Council's packet. He attempted to bring them up-to-date from the summer break. He feels that this is self-explanatory. A letter at the end of the packet dated August 9, 2001 is from the Attorney that represents Primeau, and he attempts to outline the scope of a proposed settlement agreement between the Town and the Primeau's. This would effectively resolve the Town's issues with the Primeau's and County, and then the County and the Primeau's would stipulate a settlement to their formal lawsuit. He handed out a sketch of the survey from Norm and Bev's property. At this point, they indicated to the Board of County Commissioners and the Primeau's that this would be brought to the Council's attention this evening. They are in need of the Council's direction.

Mayor Hughes commented that this issue has taken up a lot of time. It was put in the judgment that they had a deadline of July 30 to remove the shelter and restore the property. He is referring to the vehicular access road and the Trolley shelter. He did not know why they had put in their judgment an option to pay \$40,000.00 when they never intended to do this. Then they had approached the Town and informed them to pay the \$40,000.00, if they wanted to keep the Trolley. It all boils down to the proposal before them this evening. He went on to summarize the proposal before the Council. The alternative is to do nothing and Lee County will come down tomorrow morning to knock down the shelter.

MOTION: Made by Vice Mayor Ray Murphy and seconded by Councilman Garr Reynolds for recommendation for settlement including survey. **Motion passes unanimously.**

Norm Primeau came forward and indicated that the shaded area is the area that is the drive thru that goes into the Top O Mast. The way he understands it, and he would have to check with his Attorney, but he feels that this was part of the deal. This property would be conveyed to the City.

Attorney Dick Roosa commented on the Town giving an easement for parking. He has a concern with this. He spoke with the Attorney and is waiting for a reply. The way he feels this should be addressed is for another lawsuit to be filed for purposes of a consent judgment between the Town of Fort Myers Beach and the property owners allowing them those easements. He feels if they can get this by

court order he will not be concerned with the legality of it. If it is the Council's intent to give an easement for parking this is the proper way to go about doing it.

Mayor Hughes wanted to make the public aware that the license for the three vehicles is not in addition to anything they already have. Parking spaces are there that were approved. They are not receiving anything new.

Mayor Hughes went on to comment that this was not Mr. Primeau's preference. He would have just assumed to see the Trolley stop removed. Mr. Primeau agreed to this statement.

L. DISCUSSION OF WATER UTILITY PURCHASE MEMO

Deputy Town Manager John Gucciardo referred to the memo as being just a status memo to bring the Council up-to-date on some of the happenings over the summer regarding the purchase of the water utility. He mentioned the lease agreement between the Town and the not for profit corporation that will be owning the utility. A resolution will be coming to the Council.

Most important in the memo is Item #1 regarding the placement of the master meters. As part of the Town's settlement with the County they had argued and were successful in getting a condition that indicated the master meter should be located within the jurisdiction of the Town of Fort Myers Beach. Their thinking was that they would want it on Estero Island, so that the responsibility and liability for the issues relating to the pipes would be the responsibility of the County and not the Town. The Town's responsibility would be from the meters forward. The more practical, useful and safest location for the master meter would be on San Carlos Island rather than Estero Island. They are still in the process of working out the terms of an interlocal agreement that will be brought to the Council. The interlocal agreement will stipulate that they will still maintain responsibility and liability for the pipes as they cross under the channel. The Town will receive the protection that they are looking for. He is comfortable after speaking with their engineers that this will work to their advantage and is the correct way to go. He felt that it needed to be brought forward, because it is different from the stipulated terms of the settlement agreement.

Attorney Dick Roosa gave his input that the Council would need to bring forward any objections that they may have regarding this issue. It will then be included within the interlocal agreement.

Mayor Hughes asked for any objections? No objections were heard.

Deputy Town Manager John Gucciardo went on to comment that just prior to closing they received some information regarding the source of funding that they had arranged for the purchase. This is an issue that has not yet been resolved, and it will be brought back to the Council in the future.

Mayor Hughes is in favor of his recommendation. He asked Town Attorney Dick Roosa to continue to investigate alternative sources for short term financing.

VIII. COUNCIL MEMBER ITEMS AND REPORTS

Councilwoman Terry Cain - She welcomed everyone back. The Marine Resources Task Force met August 8 with updates on the Harbor Plan. The Harbor Plan is in permitting. Hans Wilson gave a review of the canal projects looking at the oldest canals first, and trying to tie the project in with the ongoing drainage projects. Requests are being made to the MRTF for specific canals to receive priority. Some policy needs to be made that will be forthcoming to the Council in regards to this. Mr. Wilson gave a feasibility assessment on the Laguna Shores, Carlos Point and Marina Towers projects. The MRTF honored three original and very devoted members who have stepped down. They are Eileen Barnett, Dr. Irwin Everham and Joe Workman. They will be greatly missed.

CELCAB met August 22 and they reviewed three excellent RFP's. The Mound House has a new gate for security. Rebecca Harris has been very busy preparing archaeology programming. Future CELCAB will be bringing back to the Council adaptive reuses for the Mound House, as well as logos they have been working on.

September 15 is Coastal Clean-up at Beach Elementary. September 29 is National Estuaries Day and she will be giving free guided walk thru's at Matanzas Pass Preserve. October 28 is Monofilament Madness.

She commended staff for a wonderful job.

Vice Mayor Ray Murphy - Is happy to be back. He thanked Julia Campbell for the work she did on the Beach Access edition that came out this month. It has come a long way in a short time.

Last week Thursday he was up in Orlando as part of his seat on the Regional Planning Council, and he is also on the Florida Regional Councils Association Policy Board. They meet quarterly around

the state. In the next year or so some changes will be seen in the Department of Community Affairs. A lot of the Comp Amendments will be settled and determined at local level. This seems to be the direction the Governor is leaning toward.

They attended the Florida League of Cities Conference. Good meeting with great speakers.

Councilman Howard Rynearson - Carl from the Sand Paper called him and requested that they advertise the meetings and land use hearings in his paper. He feels that they are an island paper and this would be a fair thing to do.

MOTION: Made by Councilman Howard Rynearson and seconded by Councilman Garr Reynolds to advertise the Council meetings and hearings in the Sand Paper.
Motion passes unanimously.

Councilman Garr Reynolds - He referred a letter that was written to the Town Manager while he was on vacation. This letter was in regards to the forwarding of any correspondence he may receive during this time that he was away. For some reason he received nothing and when he arrived back he had lots of mail that could have been forwarded. He was wondering why this was not done and is disappointed that his request was not fulfilled.

Mayor Daniel Hughes - July 9th the Mayor of Sanibel called a meeting of the other communities. This is regarding the concerns of CBDG, which this Council had approved. They were not happy with this. Everyone felt that they should have more of an interrelationship among the communities. He will provide further information to the Council on legislation that he would like them to help him introduce to the legislatures before the legislative session next Spring.

He and Deputy Town Manager Gucciardo met with Phlinda and other representatives of other municipalities on July 24.

August 3 was the closing on the water utility. Within the first 30 hours of closing was the worst water break.

August 9 they met at Ken Jones' office regarding the Primeau matter. Also, later in the day they had a meeting with the Times Square people. They were not happy with the methodology of the garbage. Damon Grant was assigned to this project and did an outstanding job on revising this methodology. The numbers worked out and the attitude was very good.

August 23-26 they attended the Florida League of Cities Convention. It was a good convention and he felt that he received a lot of benefit from it.

September 13 is another meeting of the Southwest Florida League of Cities. A meeting of the Mayor's will be ½ hour prior. Hopefully, this will become a regular tradition.

With no objections from the Council he would like to send a letter to Jennifer Chester, on behalf of the Town Council, to address the concerns of the facilities. Mayor Hughes heard no objections.

A vacancy still exists on the Citizens Advisory Committee. He would like it to continue to be advertised.

He received a letter from Carol Green, Florida House of Representatives, that the Lee County State Legislative Delegation Public Hearing is scheduled for Thursday, November 1 at Cape Coral Chambers.

Beach Access went out this Summer and a very nice job has been done by Julia Campbell.

He received a letter from the Friends of Peace. They would like to proclaim September 18 as International Day of Peace. With no objections he will give to Janeen to put on the agenda for the next closest meeting. No objections heard.

He received a letter from Harry Hendry, Attorney at Law. On September 17 is the 214 anniversary of the Constitution of the United States of America. He would like to put this on the agenda with no objections. No objections heard.

August 28 is the Public Safety Task Force annual Hurricane Preparedness Seminar at Chapel by the Sea.

August 30 they are invited to a presentation on Smart Growth issues at the Lee County Economic Development Office. Vice Mayor Ray Murphy will attend.

In October people across the world will be observing World Population Awareness Week. They would like them to claim the week of October 21-27 as World Population Awareness Week. He asked if anyone felt they should or should not participate? Mayor Hughes responded that they would be aware.

After the Council recessed for the Summer the County did approve the funding for the acquisition

of properties at Bunch Beach. He feels that they should be commended.

IX. TOWN MANAGER'S ITEMS

Deputy Town Manager John Gucciardo - Gave a reminder of the Town Hall meeting that the Sheriff's Office will be holding on September 4 from 6:00 p.m. to 7:00 p.m.

X. TOWN ATTORNEY'S ITEMS

None.

XI. APPROVAL OF MINUTES: 2/26/01, 3/12/01, 4/2/01, 4/16/01, 4/23/01, 5/14/01 AND 6/25/01

MOTION: Made by Vice Mayor Ray Murphy and seconded by Councilman Howard Rynearson to approve the minutes 2/26/01, 3/12/01, 4/2/01, 4/16/01 4/23/01,5/14/01 and 6/25/01. **Motion passes unanimously.**

Discussion: Councilman Reynolds referred to the minutes of April 23, 2001. On page 2, last paragraph should read "we" instead of they. By using they it puts it off into another person.

Councilman Reynolds went on to comment on Page 3, last paragraph - next to the last line - " He has expressed his views and knows that most members are against him". The minutes do not reflect that a comment was made for clarification purposes of Councilman Reynolds intentions following this statement.

XII. PUBLIC COMMENT

David Easterbrook came forward and commented that he did not hear any discussion regarding stained/stamped concrete down in the Times Square area. This can look just like pavers. The stain is actually mixed in with the concrete mix.

He referred back to the MUD Appeals for Cossu-Cohen and Easterbrook. He asked if there would be any Council members willing to make a motion to amend the amendment already in place. He feels that it is putting 20 to 25 residents in a position they are not even aware of.

Councilman Reynolds is directing the attorney to get underway with an amendment to the Comp Plan.

XIII. ADJOURNMENT

The meeting was adjourned at 9:00 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