

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
SEPTEMBER 10, 2001  
REGULAR MEETING  
Town Hall - Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

The regular meeting of September 10, 2001 was opened by Mayor Daniel Hughes on Monday, September 10, 2001, at 6:30 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 JEANNE DAVIS, BEACH UNITED METHODIST CHURCH**

Reverend Jeanne Davis gave the invocation.

**IV. PUBLIC COMMENT ON DRAFT 2001/2002 BUDGET**

None.

**V. PUBLIC COMMENT ON AGENDA ITEMS**

Bill Thomas came forward and addressed the Comprehensive Plan. The Town of Fort Myers Beach was originally conceived because they wanted to stop rampant commercial development. The high-rise development of Diamond Head was the catalyst. The community wanted control over their future, and by forming their government it seemed to be the best way. The past 5 ½ years of discussion on high rises have been that they have been grandfathered in. Now the developers want to change the Comprehensive Plan to allow more density. He feels that they do not have the infrastructure to support more density, and the quality of life will be affected. This will be a dangerous precedent for the rest of the island. Increased density will affect the quality of life and the environment of this island. He read a quote from one of the greatest environmentalists of this nation. It states, "We are not opposed to progress. We are opposed to blind progress".

Harold Douglas had planned to make some statements, but indicated that Mr. Thomas had just said them all. Therefore, he feels they can move along with the meeting.

Jennifer Kaestner would like to comment on Agenda Item X. Specifically, the approval of the January 22, 2001 minutes. This is 133 days later than this meeting. Her opinion is that this is the gross mismanagement of the public record or the brilliant manipulation thereof. She feels that 133 days is long enough, especially, since this meeting is the public record of the approval of the Rusty's development order. These are the first of two development orders, which the Council approved per staff recommendation contingent upon a Comprehensive Plan

amendment. She is not alone in wanting to read the minutes of this meeting. She asked that if they approve these minutes this evening they direct staff to post them on the Town's website, first thing tomorrow, and provide a copy to the information desk at the public library.

**VI. CONSENT ON AGENDA**

- A. Proclamation: Citizenship Day and Constitution Week
- B. Proclamation: Industry Appreciation Week
- C. Proclamation: Celebrating Jane Parker for her service with SWFLC
- D. Proclamation: Celebrating International Peace
- E. Interlocal: Road Maintenance
- F. Contract for Gini Ross - Code/Sign Specialist
- G. Lease agreement for Town vehicle
- H. Annual update of Floodplain Management & Flood Hazard Mitigation Plan

Councilman Ryneason would like to pull Item G. Councilman Reynolds would like to pull Items A,B,C,D,E,F,G & H.

Councilman Reynolds indicated that there is a lot of public present and he would like them to hear Item A - Proclamation: Citizenship Day and Constitution Week. Mayor Hughes asked Councilman Reynolds to read this Proclamation to the public. Councilman Reynolds complied.

**MOTION:** Made by Councilman Garr Reynolds and seconded by Vice Mayor Ray Murphy to approve Consent Agenda Item A - Proclamation: Citizenship Day and Constitution Week. **Motion passes unanimously.**

Mayor Hughes indicated that Vice Mayor Murphy has been involved with Item B - Proclamation: Industry Appreciation Week. He has a relationship with the Horizon Council. He asked for him to read this proclamation. Vice Mayor Murphy complied. Mayor Hughes mentioned that on Friday, September 21, 2001 at 11:30 a.m. the Horizon Council will have their annual Industry Appreciation Luncheon. It will be attended by all Council members. He will present this proclamation to the Horizon Council.

**MOTION:** Made by Vice Mayor Ray Murphy and seconded by Councilman Garr Reynolds to approve Consent Agenda Item B - Proclamation: Industry Appreciation Week. **Motion passes unanimously.**

Mayor Hughes discussed that the third proclamation is celebrating Jane Parker for her service with SWFLC. He asked Councilwoman Cain to read the proclamation. Councilwoman Cain complied. Councilman Reynolds added that he was Jane Parker's treasurer last year for the SWFLC. She is a fine lady. Mayor Hughes mentioned that there will be luncheon of the SWFLC, which is scheduled for Thursday, September 13, 2001. The organization has become a lot more active and he feels that it is very worthwhile. He will present this proclamation to Ms. Parker at this time.

**MOTION:** Made by Councilwoman Terry Cain and seconded by Councilman Garr Reynolds to approve Consent Agenda Item C - Proclamation: Celebrating Jane Parker for her service with the SWFLC. **Motion passes unanimously.**

Mayor Hughes read the last proclamation regarding International Peace.

**MOTION:** Made by Vice Mayor Ray Murphy and seconded Councilwoman Terry Cain to approve Consent Agenda Item D - Proclamation: Celebrating International Peace. **Motion passes unanimously.**

Councilman Reynolds did not have anything in particular to discuss. As he reads it, it is a duplicate from last year. Mayor Hughes replied that it is a renewal of last year's agreement, except for the provision for the handling of permits for driveways and right-of-way issues, as set forth in the memo from Damon Grant. Mayor Hughes went to add that on Exhibit A - page 2, the heading reads "for the installation or the construction of residential driveway located on County maintained roads". He believes that this should be modified to provide County and local roads.

Deputy Town Manager John Gucciardo replied that this has been discussed with the County DOT. He is not thrilled with the language, but this is their language. They are just referring to the roads that the Town has given them the authority to work for them on. They recognize that the side streets belong to the Town, but this agreement allows for them to do work for the Town on those roads.

**MOTION:** Made by Vice Mayor Ray Murphy and seconded by Councilwoman Terry Cain to approve Consent Agenda Item E - Interlocal: Road Maintenance. **Motion passes unanimously.**

**MOTION:** Made by Mayor Daniel Hughes and seconded by Councilman Garr Reynolds to amend the contract as follows: Section 2 should be stricken. Section 3 be modified to indicate that Gini Ross will be the sole liaison with the Town. **Motion passes unanimously.**

**MOTION:** Made by Vice Mayor Ray Murphy and seconded by Councilman Howard Rynearson to approve Consent Agenda Item F - Contract for Gini Ross - Code/Sign Specialist as amended. **Motion passes unanimously.**

Town Manager Marsha Segal-George indicated that at their last meeting they approved an interlocal with Lee County. Two specific things were not included in this interlocal that had been in the years past. One was the service of a sign tech. The next item would be the vehicle for Dave Crabtree. She added that the cost of \$30.00 per hour is approximately \$9.00 an hour cheaper than last year for Gini's services under the County's interlocal. She will be an independent contractor and provide her own vehicle, phone, computer, etc.. The only issue they are not sure on would be her hours. Tentatively, they are looking at 10 hours per week and the contract does have a maximum on hours.

Town Manager Segal-George commented on Item G. Under the interlocal the Town had with the County last year they had paid the County for the truck that was used by Dave Crabtree. Some problems existed with insurance. It was suggested that the Town lease their own vehicle for Dave. Under those terms the Town can have Dave go with another County employee to look at a particular problem. They will also have the use of this vehicle in the event of a Hurricane. Both issues can be handled at the same time.

Councilman Reynolds referred to the present lease agreement. They furnish the vehicle and all maintenance. Will they still cover these items if the Town leases a vehicle? Town Manager Segal-George replied that they will not. The Town was paying for these items. It was part of the interlocal to pay for the vehicle.

Councilman Rynearson discussed the possibility of buying instead of leasing. He gave figures to show that it would be more beneficial to purchase.

Councilman Reynolds agreed that it would be less expensive to purchase. Most

businesses lease for the write off. If you have a straight ownership there are more records to keep. A lease is cleaner and easier to deal with.

Town Attorney Dick Roosa commented that a lease works well in a profit organization, because it is a current expense. This has no relevancy when you are dealing with a municipality. The analysis of Councilman Ryneerson makes more sense in terms of rate of return.

**MOTION:** Made by Councilman Howard Ryneerson and seconded by Councilman Garr Reynolds to authorize staff to negotiate the purchase of this vehicle at the best possible price. **Motion passes unanimously.**

Deputy Town Manager Gucciardo indicated that Item H was originally on the Consent Agenda, because there is no need for action on the part of the Council. This is merely information they are passing along on the status of an ongoing program.

## **VII. ADMINISTRATIVE AGENDA**

### **A. FIRST PUBLIC HEARING: Budget 2001/2002**

Mayor Hughes announced that this is the first public hearing. A second hearing will take place on September 24, 2001. He opened public comment and asked if anyone wished to address the Council. He commented that this is one of most important issues they handle each year, and they never seem to have anyone express any views until it is adopted.

Deputy Town Manager Gucciardo indicated that the Council had received a first draft of the budget on June 25, 2001 along with the Town Manager's budget message. Over the course of the summer some modifications were complete to include some new information received. They also made some slight adjustments based on input they had gotten from Council during the course of the summer. He attempted to give a narrative breakdown on the changes that they will see in the draft budget. The changes since the June version are positive. They are showing more revenue than was originally estimated. The bulk of this comes from research with the State Department of Revenue on their municipal revenue sharing line items.

Councilwoman Cain expressed that this is a brilliant job and she feels this is the reason they do not have many comments. She had an idea about the roll back millage rate. She feels very strongly that they have done well for five years with the millage where it is. She proposes that they keep the millage where it is, and use the roll back millage as a land trust. In the future they would have an amount of money that can be used as an incentive to purchase land for the community. For a \$200,000.00 household the rollback would be approximately \$25.00. This is the amount each household would give for the land trust in this community. She referred to page 22, under expenditures/contractual services, for legal expenses and would like to see them have a fund for this in the amount of \$100,000.00. This is the amount that it was last year.

Deputy Town Manager Gucciardo replied that the reason for the reduction is due to last year it was raised in anticipation of continued litigation of the Bay Beach issues. Since this is behind them now the figure was reduced. He understands Councilwoman Cain's concern and he feels that this is a line item they can afford to put more resources into.

Councilman Reynolds does not see a need for an increase at this time. Since there are no issues pending litigation he feels this amount is appropriate.

**MOTION:** Made by Councilwoman Terry Cain and seconded by Councilman Howard Ryneerson to increase the Expenditure on page 22, under Legal Special Master, from \$60,000 to \$100,000.00. **Motion passes with a 4 to 1 vote. Councilman Garr Reynolds dissenting.**

Councilman Reynolds discussed the roll back and indicated that he has been involved

since the beginning. A good comprehensive study was complete on the income vs. probable expenses. He expressed that they have not needed any extra money and would like the community to know that they are in a pretty good place financially. He would like to see it rolled back.

Vice Mayor Murphy likes Councilwoman Cain's suggestion about creating the land trust. He feels that it will take a lot of time to accumulate the dollars needed to do this. He likes the idea of the roll back and agrees with Councilman Reynolds. They have been very prudent in the first five years with the money. Money has been saved for the projects they have wanted to complete. They have accumulated a pretty good dollar amount in the reserves that will allow them to do these projects. The past four years have been good times both nationally and locally. It has been indicated that things will not be as good over the next few years, and he feels that this would be an appropriate time to roll back the millage. He is in favor of the roll back and has not discounted Councilwoman Cain's idea. He would like to get more input.

Councilman Rynearson also likes Councilwoman Cain's idea. He feels that they need to start something like this. Land is not getting any cheaper and they need a fund to protect what they have. He would support Councilwoman Cain.

Mayor Hughes feels that Councilwoman can has a good idea. However, he thinks that there is a perception issue here. He favors the roll back. He is not foreclosing the trust fund idea. If they did not have a roll back he would like to see that they dedicated the additional revenues to something such as this. He is not convinced that building something from ad valorem taxes is essential. It is really going to be necessary to acquire properties like this from funds such as the 20/20 fund or other types of grants. He is still open on this.

Councilman Reynolds indicated that in the first three years they accumulated 4 ½ million dollars. They have more than sufficient money to spend, if used wisely. He fought the last couple of years to get gulf park land acquisition on here. He is disappointed that some of the money going into capital funds is not in here. No one wants land acquisition more than he does. He does not feel that they need to keep the excessive taxes in order to do this. He feels they have enough money coming in.

Councilwoman Cain expressed that they are still trying to get a piece of property on Fort Myers Beach through 20/20 funds. If they acquire it, it will probably be the only piece they will ever get through 20/20 funds, because they are not very enthusiastic with small pieces of land.

Vice Mayor Murphy questioned Item 15 - Bay Oakes expenses that will be raised by about \$5,000.00 to reflect anticipated cost increases including security. Will they have security at Bay Oakes? Deputy Town Manager Gucciardo replied that they do now. They split the cost with the County on having mostly night patrols.

Councilman Reynolds referred to page 24 regarding the RFA processing. He read this to the people in the audience, and felt that they would be interested in this. He indicated that the service is \$720.00 annually and feels this is a good deal for the people. He thanked the staff for coming up with this. He went on to page 18 and indicated that they have quite an increase in Times Square. He asked if the businesses are paying their share? Is the Town taking on all of this expense?

Deputy Town Manager Gucciardo replied that part of the expense is borne by the Times Square merchants.

Councilman Reynolds discussed page 17 regarding salaries. He does not have a full breakdown. He asked if it is in order to request from staff a breakdown of each employee's salary schedule? He would like to see a salary schedule established for the employees. He would also like to see a breakdown of benefits. Deputy Town Manager Gucciardo replied that this would not be a problem and will furnish to Councilman Reynolds.

Mayor Hughes replied to Councilman Reynolds regarding the breakdown of benefits. He suggested that he meet with Janeen and inform her specifically of the items he wishes to have.

Mayor Hughes went to page 13, under ad valorem, and referred to the third paragraph.

He indicated that he proposed an ordinance and the Council unanimously approved the Seniors Exemption. He felt that it would be appropriate to add this on page 13. He referred to page 15, under gas tax, and discussed the two different figures regarding the percentage. Is there some reason these are different?

Deputy Town Manager Gucciardo will have to check his notes on this. He indicated that this has to do with the first go around with the County. He believes that the figure is 2.31.

Mayor Hughes commented that he reviewed his tax bill from last year and his TRIM notice for this year. He computed the percentages. He indicated that the Town receives 5.5% compared to the Lee County General Revenue of 21% and the Beach Fire District of 31%. The budget message from the Town Manager should be required reading for everyone. It is an extremely informative summary of finances and projects happening. He commends the Manager and Deputy Town Manager for their preparation.

**B. FINAL PUBLIC HEARING: Ordinance 01-04: Amending Ordinance 99-09 - Times Square MSBU**

Mayor Hughes indicated that this ordinance will be increasing the number of the Board of Directors on the Advisory Council from 5 to not more than 9. They must be owners or agents of owners of the Times Square district. He went on to read the caption of the ordinance.

**MOTION:** Made by Councilman Howard Rynearson and seconded by Councilwoman Terry Cain to approve Ordinance 01-04. **Motion passes 4-0. Councilman Garr Reynolds is temporarily absent.**

**C. FIRST PUBLIC HEARING: Ordinance 01-05: Jetski/Parasail**

Mayor Hughes asked Vice Mayor Murphy to read the caption for the above ordinance. Mayor Hughes indicated that this ordinance was introduced before the Town Council on August 27, 2001 with many questions.

Bill Spikowski came forward and expressed that the changes in this ordinance fall into 6 areas. One is a reorganization and a consolidation of the two separate chapters of the code into a single chapter. It includes a lot of updates to state laws that have taken place over the last two to three years to keep the regulations consistent. It includes specific rules for structures out on the beach and signs. New environmental rules exist that jetski's cannot be moved across the beach in the morning until the Turtle Patrols come by. It also reduces the cap on jetski rental licenses from 15 to 10, and has some additional requirements, so that the non-conforming licenses are not automatically renewed each year.

He responded to several questions, which came out at the last meeting. One question was in regards to the minimum age of the operator of a rented personal watercraft. The response is that there is not an age requirement. The ordinance contains the age for the renter only. The state law requires the operator to be 14 years of age. He indicated that this is not in their current ordinance, but can be put in or be referred to.

He referred to question #3, which asks if there is anything in the ordinance to keep the rental operators from using the beach for overnight storage of their equipment? He replied that this section was not changed. It states that any person who is storing a personal watercraft vessel or associated equipment cannot block pedestrian traffic on the beach. He does not know how it can be stored on the beach without blocking some pedestrian traffic, and he considers this phrase to be extremely vague. The new ordinance does require that the booth/storage box be moved off the beach every night. It does not address the personal watercraft itself. He can draft some new language for Council and have it at the final hearing.

Bill went on to comment that this ordinance does not include or address any of the safety issues related to the tragic accident this summer.

Councilman Reynolds questioned the booth/storage box. He feels they need to be

portable, so they can be moved. Bill Spikowski replied that this is the wording they presently have. It cannot be any larger than 4 ft. x 6 ft., and must be moved off the beach every night.

Councilman Reynolds indicated that they do not have much enforcement. He knows of a couple places that have not moved their jetski's off the beach since last November. Bill Spikowski commented that the language is presently very ambiguous. He can see why the enforcement person would have difficulty. If the Council would like to be sure they are moved off the beach just let him know tonight and he will draft a few lines for the final hearing to require this.

Town Manager Segal-George commented that she had a report from the turtle patrol that at night during turtle season everything was coming back off the beach and they had total island compliance. Councilman Reynolds replied that he can assure her it is not being done.

Mayor Hughes left this item up to Bill to either cross reference to the Beach and Dune Ordinance or have a similar provision in this ordinance to add that personal water craft be moved back at night.

Vice Mayor Murphy feels that it would be best to put the exact language in this ordinance, so that any inspector with the ordinance in hand can enforce it accordingly.

Councilman Reynolds has concerns with the size of the signs permitted. Bill Spikowski replied they are fairly large signs. In some cases the signs wrap around three sides. The operators wanted the ability to be able to locate the signs anywhere they might be on the beach. He encourages the Council to consider the size of the sign permitted. He feels it is a little bit on the ridiculous side.

Harold Douglas came forward and asked if there was any information in the ordinance regarding noise? He gave an example of tractors without mufflers. He indicated that it is very disturbing early in the morning when they are setting up. Mayor Hughes indicated that there is nothing specific regarding noise. Town Manager Segal-George suggested finding out the name of the condominium and the condominium could request that this particular operator get a muffler or make changes, so they will not disturb the neighbors.

Councilman Reynolds asked if they could establish a speed regulation. He indicated that there are jetski's doing 70 M.P.H.. Bill Spikowski replied that they cannot touch this. He indicated that as of last year the legislature slipped in a sentence that stated they couldn't discriminate against operation of personal watercraft. If they have a speed limit it must apply to all types of boats.

Tom Merrill came forward to ask about the environmental issues on the jetski's. He asked if there has been any enforcement on this? He expressed that there has not been any enforcement of the jetski's on the beach during turtle time. There is a lot of conflict with jetski's being on the beach during high tide by Mayor Hughes' condominium. He indicated that this particular jetski operator does not remove his jetski's from the beach at night. Both subjects get into enforcement.

Bill Spikowski replied that there is no change on this subject in the ordinance. There is a requirement that the fueling, which takes place on the beach and in the water, requires a spill proof nozzle or other acceptable device designed for prevention of fuel overflow. He can add a sentence regarding the sloshing of fuel on the beach or in the water constitutes a violation. He will draw up this language and bring it in for the Council's review at the final hearing.

The Second/Final Public Hearing will be held on September 24, 2001.

**D. FINAL PUBLIC HEARING: Ordinance 01-06: Charter Amendment- Elections**

Mayor Hughes began by reading the ordinance. He indicated that this arose out of the request by the supervisor of elections that she will no longer process their elections in the fall. The municipalities have met and

the consensus is that elections will be held every 4 years. The original ordinance had it in odd numbered years. It appears that the other municipalities are going in even numbered years. This reflects that revision. Mayor Hughes is tempted to table this issue. The Southwest Florida League of Cities is holding a meeting on September 13, 2001, which he will be attending with Councilman Rynearson. The other municipalities will be reporting at this meeting. They are not under a time constraint and would like to be sure they are making decisions that comply with the other municipalities.

Attorney Dick Roosa replied that he spoke with the Supervisor of Elections and she indicated that she hoped everyone would adopt under these lines. It is not mandatory and all of the municipalities have not agreed to this. This is the least expensive way for a municipality to hold elections.

Councilman Reynolds feels no matter what the others do this is the best way for this Council to go. He hopes that the others will follow and he strongly believes they will.

Councilman Rynearson feels that they should move forward. He indicated that someone needs to put the first foot forward and he feels that they should be the ones to do this.

Mayor Hughes expressed some of his concerns regarding the new terms and dates. He consulted with Attorney Dick Roosa to be sure the items are properly expressed in the ordinance.

**MOTION:** Made by Vice Mayor Murphy and seconded by Councilman Howard Rynearson to adopt Ordinance 01-06 as presented. **Motion passes 4-0. Councilwoman Cain is temporarily absent.**

**E. FIRST PUBLIC HEARING: Comprehensive Plan Amendments:**

- 1. Application 2001-1-TEXT.** Annual updating of the five-year schedule of capital improvements.
- 2. Application 2001-2-TEXT.** Consideration of amending Comprehensive Plan Policy 4-C-6 to encourage landowners along both sides of Old San Carlos Blvd to build second and third stories over their storefronts without being limited by the current hotel-room equivalency factor.

Mayor Hughes began by reading the caption. He indicated that this is a matter that has been at various stages for approximately one year. One of the Fort Myers Beach citizens had written a letter to the media, which indicated that she had caused the Town to start holding public hearings. She felt they were not going to hold them and that could not be further from the truth. This matter has been scheduled for hearings for months.

Bill Spikowski came forward and indicated that there are two separate amendments. The ordinance is drafted on the assumption that the Council will be adopting both. They can adopt either or neither.

He referred to the first one, 2001-1-TEXT, which is the routine updating of the five-year schedule of capital improvements. There is no policy decision to be made. This is a legal requirement to be done once a year and reflects the decisions from last fall.

The second is advertised as 2001-2-TEXT and this is a little more controversial. When the Comprehensive Plan was adopted, in the final stages, he was negotiating for the Town on their behalf with the State officials to avoid a challenge. He suggested to them a sentence that has caused a problem and this is what they are trying to correct this evening. This would limit the number of hotel rooms island wide. Island wide was a good rule, but it conflicts with the redevelopment plan for Old San Carlos. They must go through all the same process as was done to adopt the plan originally. This is why it keeps coming up over and over. Tonight is the

first of two public hearings.

This amendment is seen by some people as a density increase. To put the amendment into context he has prepared a memo that compares the rules for Times Square and the immediately adjoining areas. It explains the rules as they existed for this area when the Town incorporated. In a separate column it shows the rules as they exist today. He indicated that they are going forward with additional controls for development along Old San Carlos. The overlay allows four story buildings and the new code will allow only three story buildings. If someone would like to go to a four story they will have to go through the CPD process. The new code has mandatory architectural controls. In the current situation optional guidelines appear. This has caused some real surprises with some of the new buildings that have come in during the last couple of years that did not live up to people's expectations. When the reduction is from four stories to three stories he means three stories total including the ground floor. These buildings would be a little taller than a house that is two stories over parking, because the commercial floors are a little higher. They are basically three story buildings that are only 50 feet deep. The buildings look big, but are not very deep. Behind them is the parking area screened from public view. The size of building is sized to match the width of the right-of-way, so when complete it gives a feel of enclosure to the pedestrian street they are creating. He referred to some drawings before the Council and stated that the beautiful renderings are what the new Land Development Code and Comprehensive Plan are trying to create. If someone wants to do something different they can come in through the CPD process. All of the changes tonight are going in the same direction. Some give the property owners some additional rights and some take some of the rights away. They are all moving in a single direction of creating a downtown Main Street for Fort Myers Beach.

Mayor Hughes commented that the memo prepared by Bill Spikowski was extremely enlightening and helpful.

Councilman Reynolds indicated that this is the same as the original they presently have, except that they are allowing unlimited hotel rooms/units as far as the building space would provide. Can be intermixed with commercial offices or storage, even though you have three stories. Bill Spikowski replied that the way it is setup the landowners can meet the parking requirements and it would allow the landowners within the three story building to put hotel rooms, convert to office space or covert from one to the other as long as they meet all the building codes. It would not require them to build one or the other.

Councilman Reynolds asked if the properties being discussed are zoned CPD presently? Bill Spikowski replied that some are. The Rusty's CPD had its own zoning. He is giving the downtown regulations that would apply if this CPD for Rusty's was not in place. The total building bulk is the same, but arranged differently.

Councilman Reynolds indicated that they had discussed three, four and five stories. Has the five-story concept been ruled out? Bill Spikowski replied that it had. He even suggests eliminating the four story and keep it at three stories unless they receive a CPD with good reason.

Councilman Reynolds does not feel that they have made much progress, if the landowners can come back and request additional stories.

Mayor Hughes commented that this is true of any zoning provision. Someone can come back and ask for it to be amended. If they seek to amend the Land Development Code the burden is on them. Councilman Reynolds would like to see the current plan in effect. He does not agree with the language in the second and third paragraph. He is concerned regarding the effects on everyone.

Bill Spikowski replied that this amendment does not originate from the landowners asking for it. It originates from the Town's plan for the area.

Councilman Reynolds asked Bill Spikowski if he can make a limitation so that the LDC can not come along with the CPD process and increase these to five stories? He thinks that

Council needs some protection with this Comprehensive Plan to make it a maximum rather than a minimum. Bill Spikowski replied that the Council could include a height limit for someone taking advantage of the extra motel rooms. He does not know how this would effect the case of the Rusty's approval, which predates this. He is not sure of the legal ramifications. The LPA was concerned that by making this change someone would have an incentive to put a lot of really small hotel rooms in rather than spacious and luxurious rooms.

Mayor Hughes does not have a problem with a height restriction and feels that this is a good idea.

Councilman Reynolds indicated that he will not be on the Council in November. He hopes that the people taking his place and the place of Vice Mayor Murphy will remember this discussion, and try to prevent an LDC request to come up to five stories plus.

Councilwoman Cain discussed building height as written by Bill Spikowski. It states "limited to 40 feet above flood elevation and limited to three stories including ground level". She assumes that this is what he was going to write in the code. Bill Spikowski replied that this is the code he has drafted for them and he recommends that they keep with this. They are discussing that in addition to this the Comprehensive Plan would have an absolute cap of four. He will draft some language for the next meeting, and think of both how it will work with the Plan and the Code, so they are not in conflict.

Lucinda Keller came forward and indicated that she has lived on the beach approximately 29 years. The problem she has with the change to the Comprehensive Plan is the traffic at the base of the bridge. Any increase in density would change the traffic. It is already unbearable in the season. She feels that they should talk to the people who voted them in and see what their ideas are. She is totally opposed to this. She is unsure why it has come to this point. This will add a major traffic problem.

George Barber came forward and indicated that they are having a hearing to set into motion a course of action that will forever change their islands appeal. This will negatively impact the residents and businesses of the island. The Comprehensive Plan amendment brought forth from the Town will only benefit a small group of developers. Before they make decisions that will negatively impact the majority of the residents and businesses they must look at the cost to all. Due to traffic created by the increase in density and lack of parking, and the demand placed in their limited resources vote "no" to this amendment. Recognize the importance to all and not just one.

Pete Persky came forward and indicated that they have a beautiful depiction of Old San Carlos, but it does not justify standing in traffic an extra 10 or 20 minutes. He is having a problem determining the maximum number of hotel spaces this is allowing. He feels that there is a significant increase and this will increase traffic terribly. Even in the off-season traffic is getting worse. Lets concentrate on the number one issue all residents have and this is traffic. This will cost everyone hours each week in traffic.

Jennifer Kaestner expressed that she has not approved or appreciated the way this has been brought through. She reminded Mayor Hughes that they had a public hearing on these in June. They could technically have had a public hearing for their first meeting in August, and tonight could have been the final hearing. She made an error regarding the 133 days since January 22. It is actually 33 weeks, 231 days. A development order that was contingent on this Comprehensive Plan amendment has not been available as a public record. She does not feel that the look of the buildings are important to the public. What is important to her is what is put in there. She is a fan of the Plan. It was never discussed on the public record that this plan would include increased density.

Bill Van Duzer came forward and indicated that there is a misconception in this program and it is being called density. The misconception is that the people can build on this property that has been allowed through this Old San Carlos Master Plan that was developed back a couple of years ago. He referred to the Old San Carlos Master Plan on page 8. It states on the

second or third floors motel or hotel rooms could take the place of offices. This is not his argument. His argument is the word density. He gave an example of office space consisting of 250 square feet or a motel space of 250 square feet. He asked that they compare the two. If you have a motel room you will have one or two people staying with one vehicle. Compare this to office space with many employees and visitors. In his opinion, along with 8 out of 9 LPA members, consider that this proposed use would be less density and intensity on that area, island and citizens. He believes the information being offered is being done so in an incorrect manner, and is being offered on an idea that it would be a political snowball. He suggests that they move forward.

Tom Merrill has questions and likes the chart. He is questioning how many hotel rooms per acre under the new plan? Why are you getting more density for your lot size when you are trying to reduce the height and size of the building? He is trying to figure out the parking issue. When are they going to start addressing the issues of not getting the cars to the beach? Why are they not looking at other parking alternatives? People are fine, but cars seem to be the problem.

Mayor Hughes expressed his concern along with the frustration of other Council members regarding the lack of use of the parking lot on San Carlos. They have tried a number of ways to encourage the use of this. They will continue to promote this.

Barbara Johnson came forward and indicated that she has the La Playa parking lot at the base of the bridge. She has owned this property for the past seven years. She came this evening to listen and is not prepared to speak. She expressed that she is hearing information much different than her experience over the past 7 years. Parking is no longer the problem it was 3 years ago. You could almost go bankrupt if parking is your business. The problem is the traffic getting around the beach.

Bill Spikowski responded to many of the questions raised by the public comment. The issue of getting people to leave their cars on the mainland is the biggest challenge. The people who would stay in this area would be the people to come in without a vehicle or park and leave their vehicle for the majority of their stay. He addressed the hotel intensity question. He indicated that the way the Comprehensive Plan now reads the dwelling units are allowed at 6 dwelling units per acre. The maximum for hotel is three times that much under the current code. The maximum under today's code is 18 hotel rooms per acre. How much of an increase could this be? It looks like an increase of around three times or a little over. This is dependant on the property owner building a three-story building and converting the entire upper area to hotel rooms. He responded to Mr. Merrill's question about the 180% floor-to-area ratio and why is it larger there than it would be over on Estero Blvd.. He indicated that the new Land Development Code is drafted for the commercial areas from roughly here to Times Square. The buildings on the bayside would be two stories and the buildings on the beach would be three stories. The reason for the beach side being one story higher is due to the coastal construction line. They will not be able to use the ground floor. To be fair they would be allowed to go one story higher. This code will not be allowing people to build five story buildings on Estero Blvd.. The only ones you will see are the people with vested rights cases that cannot be taken away.

Mayor Hughes indicated that this public hearing will be continued until September 24, 2001 at 6:30 p.m.. He apologized for getting to this matter so late, but other matters needed to be handled first.

#### **F. RESOLUTION: Water Utility lease agreement**

**MOTION:** Made by Vice Mayor Ray Murphy and seconded by Councilwoman Terry Cain to adopt the resolution of the Water Utility lease agreement. **Motion passes 4-0. Vice Mayor Ray Murphy is temporarily absent.**

Attorney Dick Roosa commented that he did not include the number of years they wanted to lease the property. Mr. Roosa suggested 30 years. If at any time during that 30-year period all the debt is retired then all the assets of the corporation come to the Town. The corporation provided the funds that acquired this real estate.

Mayor Hughes asked Attorney Dick Roosa to check and make sure that no taxes have accrued on this property.

#### **G. RESOLUTION: Summarizing Water Utility Purchase**

**MOTION:** Made by Councilman Howard Rynearson and seconded by Councilwoman Terry Cain to adopt the resolution summarizing the water utility purchase. **Motion is unanimously approved.**

Attorney Dick Roosa indicated that everything in this resolution has already been adopted by the Council. All this is doing will be to consolidate it. He addressed Councilman Reynolds concern of liability. This will only occur should the Council fail to increase the rates sufficient to retire the debt. The corporation is responsible for the debt. He assumes that the Council will increase the rates sufficient to retire the debt. He expressed that they have a three-year note and will most likely be renewable every three years.

Councilman Reynolds commented that even though he voted for this he still has some problems with it. He stated that even though it says three years it is plainly 30 years. It is in reality more than 3 years. He feels that they are skirting the charter in his opinion.

Attorney Dick Roosa replied that he does not feel this is correct. It is only a three-year loan. If during the period of time of operation the corporation establishes the ability to make rate payments there then may not be a requirement for a guarantee by the Town. It is not likely that the Town would have to guarantee it for another three years.

#### **H. STATUS OF TELEVISED COUNCIL MEETINGS**

Janeen Paulauskis indicated that the Council has an update in their packet from the March 19, 2001 meeting discussing televised Council meetings. At this time, they would be doing video taped Council meetings until the end of the year. She spoke with Comcast today, and they are unable to provide live feeds. They are presently working out some kinks on their end. It is definitely something that can be done by the end of the year. The taped meetings can be done starting in November with Council approval. The equipment can be ordered and it can be installed by the end of October.

**MOTION:** Made by Vice Mayor Ray Murphy and seconded by Councilman Garr Reynolds to accept the staff's recommendation for the equipment involved in the taping of Town Council meetings. The amount required would be \$15,653.00. **Motion passes unanimously.**

Councilman Reynolds asked who will operate this equipment? Janeen replied that she will learn how to use the equipment along with Julia, Michelle or Jill. She will also attempt to get some students from Cypress Lake High School to volunteer time and receive some extra credits. The Beach School also has a Media Department and she will see if they can get some of the younger students involved.

#### **VIII. COUNCIL MEMBER ITEMS AND REPORTS**

**Councilman Howard Rynearson** - Thanked John - The Estero streetlights are going up and they look great. He and John went to a TDC meeting and he will have more on this. There

is a seat becoming open and he hopes that Fort Myers Beach is in line for this.

**Councilman Garr Reynolds** - Mentioned the tolls coming onto the island. It has hit a sore spot with most of the people. He has over 100 letters to prove it. He does not feel that this will solve the problems of traffic. There is no doubt that it will bring in some money. Public transit systems are not a profitable operation.

The people have also mentioned the building down in Times Square. They realize by what they have read that there is an increase in density. There will be an increase in intensity.

He spoke in regards to the LPA member who has come forward during this and the last meeting. He feels that any member or any committee has every right to speak out on anything that is public record.

He commented that Ms. Keller expressed the feelings of the people on this island the best. She has been here long enough and knows.

He appreciates Bill Spikowski and is interested in seeing what he comes back with at future meetings.

**Councilwoman Terry Cain** - She indicated that a lot of people present went to Sheriff Shoap's Town Hall Meeting on September 4. It was a fabulous meeting, and when he does it again please come. He had a terrific slide show. It was enjoyed very much.

She was at a CRAB meeting and the Matanzas Pass Preserve was discussed. On August 30, she went to the Smart Growth meeting, and it was very interesting.

September 15 is Coastal Clean-Up and they meet at Beach Elementary School.

September 29 is Estuaries Day. A tour will be provided through the Matanzas Pass Preserve. October 28 is monofilament Madness.

**Vice Mayor Ray Murphy** - Also, attended the Smart Growth meeting. The speaker came down from Maryland to give their experience with Smart Growth. They are having great success with this. A lot of people at the meeting and through the Press felt that this was something that would now move forward. The commissioners have put it in the budget and they will fund it. It will now move forward and everyone is very happy. They addressed a lot of the issues this Council struggles with such as where to put the growth and how to do it. He looks forward to everyone hearing more about this.

**Mayor Daniel Hughes** - Commented on the Town Hall meeting hosted by Sheriff Shoap and expressed that it was very interesting. He is very articulate and they appreciate him coming out.

He also attended the CRAB meeting. He commented on the speakers at this meeting and felt that they had all done a great job. He is very interested to see what CRAB will come up. He feels that they will be coming up with some very good programs.

The Horizon Council Luncheon will be held on September 21. He will present the proclamation that was adopted tonight.

The Southwest Florida League of Cities meeting will be held on September 13. The proclamation that was adopted tonight will be given at this time. If anyone has anything they would like him to address to the other members attending this meeting let him know.

On September 28 there is a Southwest Florida Leaders Forum. Redistricting is coming up. He referred to a letter he had written with the approval of Council. He received a response and they are looking into a possible change for the location. He will let everyone know if this takes place. He received a letter from the Chairman of the Collier County Commissioners. They expressed their concern about the redistricting. They feel that it would be in the best interest of the citizens of Southwest Florida to keep the congressional districts aligned together and not have them attached to the East Coast Districts. They would be adopting a proclamation at their meeting tomorrow. They encourage this Council to adopt a proclamation. Mayor Hughes would like to prepare a statement of this Council's concerns regarding the merging of their congressional district with the East Coast. He asked for any objections? None were heard. This will be put on the agenda for September 24.

**X. TOWN MANAGER'S ITEMS**

**Town Manager Marsha Segal-George** - At the next meeting on September 24 at 6:30 p.m. they will have a presentation on some new techniques for crosswalk lighting. The County will be coming in and they are looking to try a couple of test cases on Fort Myers Beach and Bonita Springs.

They have scheduled 5 groundbreaking's beginning on the week of the 17<sup>th</sup>. Council will be receiving a memo. Shovels and hats will be provided.

**Deputy Town Manager John Gucciardo** - At the last meeting they discussed the renewal of the contract with Champion for the operation of the pool. Two issues were brought up for clarification. He understood that Council was approving this renewal contingent upon explanation of the two questions. He indicated that there was no excess liability umbrella coverage provided on the first contract. They have contacted the insurance carrier and they have three options tonight. These options would be to do nothing and except the contract as they had previously without the excess liability coverage, get the excess liability coverage for an extra million or increase the general liability limits by one million from 2 million up to 3 million. This will save about \$500.00 and the cost is about \$2,000.00. It is his understanding that the 2 million coverage they originally had would be considered standard.

Mayor Hughes feels that he is comfortable with the 2 million. Attorney Dick Roosa agreed that the 2 million should be sufficient. Mayor Hughes directed Deputy Town Manager Gucciardo to let this go and forget about paying the additional \$2500.00. He asked him to be sure this is properly referred to in the agreement.

**X. TOWN ATTORNEY'S ITEMS**

Attorney Dick Roosa indicated that he has been working with Attorney Jones on the Primo settlement. There has been two different concerns. One has to do with the fact there is not a proper legal description for the property the Town is purchasing. The Primo's feel the Town should pay the cost of having the legal description determined. It may require another survey. It is an unresolved issue due to it having an expense involved.

Councilman Reynolds feels that it is OK if a small fee is involved. They need to settle this up. He is not happy with the additional charges, but feels they need to get this over with.

Mayor Hughes is happy with the legal description they presently have. He asked Town Attorney Roosa to put in the agreement his legal description at this point with the option to substitute a surveyor's description prior to execution of the agreement.

**XI. APPROVAL OF MINUTES: JANUARY 22, 2001 AND MAY 7, 2001**

**MOTION:** Made by Vice Mayor Ray Murphy and seconded by Councilwoman Terry Cain to approve the minutes of January 22, 2001 and May 7, 2001.  
**Motion passes unanimously.**

**Discussion:** Councilman Reynolds discussed the late minutes that had been mentioned by an LPA member this evening. He feels that the point was well taken. He asked if Council can receive future minutes in a more timely manner.

**XII. PUBLIC COMMENT**

Mr. Douglas came forward and congratulated the Council for the addition to the website. He hopes that people will use it and Council people listen.

The dogs are still running rampant on the beach. Can we not get it stopped? They

leave a mess on the beach. It would be nice if they could get it stopped.

He discussed the weeds at Times Square between the sidewalks and streets. He would like to see this also get cleaned up.

Vice Mayor Murphy suggested when someone sees an infraction of an ordinance they call the police.

Deputy Town Manager Gucciardo responded that dogs loose on the beach are being handled by animal control. He will have one of the staff members get in touch with him in regards to the specifics. They can then focus the extra patrols around this area at these particular times.

Mayor Hughes feels that they should put the phone number to call in the next Beach Access.

### **XIII. ADJOURNMENT**

The meeting was adjourned at 10:32 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