

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 12, 2000
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The meeting of June 12, 2000 was opened by Mayor Daniel Hughes at 9:00 a.m.

Council members present at the meeting: Terry Cain, Anita Cereceda, Daniel Hughes, Ray Murphy and Garr Reynolds.

Member absent from meeting: None.

Town Staff present: Town Manager Marsha Segal-George, Pam Houck and Town Attorney Richard Roosa.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

IV. APPROVAL OF WILSON MILLER STREETSCAPE PLAN

We were reminded that at our last meeting a motion to approve the master plan was delayed so that Councilman Garr Reynolds would have an opportunity to review the material.

Councilman Reynolds advised that three of the six sections of the plan are of great concern to him: having a center lane at the south end; having a center lane at the high rise section; having a roundabout in the core section, which he feels is the worst place to put a roundabout because of the hot points there. Mr. Reynolds said he is representing the public in this matter.

Dr. Richard Woodruff, director of planning services for Wilson Miller, addressed the Council. He advised that they believe that their recommendations are valid recommendations. The plan they presented to us is a conceptual one and not one that we are obligated to actually construct. He explained why each feature was recommended for each of the sections.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to approve the Wilson Miller Master Streetscape Plan. Motion approved by a 4-1 vote with Garr Reynolds dissenting.

V. PUBLIC HEARING: JOE & GRACE WORKMAN. CASE NUMBER VAR2000-00015.

Two variance requests to allow (1) a 21.7 foot and a 14 foot water body setback, and (2) a 7.5 foot rear yard setback. This property is located at 194 Coconut Drive.

Input by Applicant:

Applicant Joe Workman advised that all of his immediate neighbors have signed statements saying that they do not object to this addition. In addition, to his knowledge there have been no objections. Furthermore, this property is surrounded by palms and other trees, most of which he has planted. No one can see in the yard so nothing there should be a visual blight. The improvement to his house would be favorable to the rest of the surrounding area.

The resolution, Mr. Workman stated, says he would be entitled to 280 sq. ft. of wood deck. It doesn't specify that from the very beginning his plan was to cover that deck with a roof that

replaces his present roof and to enclose it with a screen enclosure. If not specified, he feels he might run into problems in the permitting process. This was an afterthought that was not mentioned to the LPA.

Councilman Reynolds noted that without a roof and a screen enclosure he would probably have difficulty using the deck most of the year.

Input of County Staff:

Dan Faulk with Lee County Community Development advised he has reviewed this request and prepared the staff report. Staff is recommending approval of the request with one condition: that the variances are limited to the two 14-foot wide additions, which include 280+/- sq. ft. of wood deck and 843+/- sq. ft. of enclosed living area as shown on the enclosed site plan. Regarding the wording of the square footage of the wood deck, the staff report makes a distinction between parts of the deck that are open air and parts of the deck that are enclosed with a roof and screening. But from the staff's point of view whether it's enclosed or open air was not the basis for the recommendation. As the condition is worded, Mr. Faulk does not believe it would prevent the applicant from either enclosing the deck or leaving it open. The variance for a setback would still be needed. Staff feels that the wording of the condition is appropriate.

Subject property is zoned RS-1 and the existing family home was built in 1970. It is located in the low density future land use category. Staff has found that the property is consistent with the density requirements of the Fort Myers Beach Comprehensive Plan. It is surrounded by a single-family residential development zoned RS-1.

On the northwest side where there is a boat launch, the applicant is asking for a 21.7 ft. water body setback. Staff believes that this setback will not be detrimental to the property owners on the other side of the boat launch area; that at its closest point the setback will be the minimal 21.7 ft. and as the addition is built to the south it actually would meet the required 25 ft. setback.

On the southeast side of the property where the 7-1/2 ft. rear yard setback is being required, this setback is consistent with the adjacent property. It is the rear of this property because of the street frontage, however it really acts as a side setback. As the property on the adjacent property is built 7-1/2 feet from that property line, staff feels that the variance is appropriate.

Regarding the 14 ft. water body setback which would be along the bay, this setback is consistent with the existing structure and staff does not feel that it would be detrimental to the surrounding properties as far as blocking any water views. The adjacent property, which had an addition built in 1993, currently sits 12 ft. from the seawall.

Dan Faulk explained to Mayor Hughes that the seawall and the property line are the same on the bay side. On the side of the property where the wood dock is, the property line actually is inside the seawall and the setback is from that property line and not from the seawall.

Mayor Hughes asked the councilmembers if they had had any ex parte communications in connection with this matter. Councilman Reynolds and Councilwoman Cereceda admitted to having driven by the property.

Public Input:

None.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve the resolution incorporating the recommendation of the condition by the LPA, adding covering the screen, and striking the word "not" from the resolution in paragraphs A and C and striking the word "disapproved" in the last paragraph. Approved unanimously.

VI. Public Hearing: Jerry Sawyer & Olivia A. Sawyer. Case Number ADM2000-00005.

Applicants have requested that this case be continued to June 19, 2000.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to continue this hearing to June 19, 2000, at 3:00 p.m. Approved with a 4-1 vote. Councilwoman Cain is away from the room.

VII. PUBLIC HEARING: BEACH AND DUNE ORDINANCE

This is a continuation of the final hearing.

Public Input:

A. Bonnie Fedder

Mrs. Fedder referred to a quote in the May 17 Observer of the Mayor saying that almost 90% of the objections have come from one particular development. She is here to say that they have the support of many of the condos on the Beach, plus more than the 800 signatures from the petitions they handed to us last year. So the objections are not just from their group. Frank Schilling has commitment and concern to take the time to make all these presentations to us on the dune ordinance. He has become the unofficial spokesman and that is why we seem to think that the objections come from just one area, but he is speaking for all of them.

Mayor Hughes advised that at the time the letter was written, he had had only two communications from people who weren't at Sandarac, and so the statement in the News-Press was an accurate one. Mrs. Fedder reminded him of the 800 signatures that came from all over the south end.

Mayor Hughes advised that Mr. Schilling has proposed some changes, and if the Council has no objection he thinks we should address them on an item-by-item basis.

B. Frank Schilling

Mr. Schilling of Estero Boulevard advised that in front of us was a summary of the key points being discussed and the actual changes that they made. He went through these points one by one. He advised that the issue quite simply is that the May 31 letter is substantially inconsistent with the ordinance; that our pledge does not match the ordinance as it stands today. He has included in our package the legal definitions of the terms involved as well as the common dictionary versions. Specific word changes were given to the Mayor on May 24 and he has discussed these issues with three of the councilmembers. Quite simply, the ordinance needs extensive changes. Council has promised genuine, serious consideration and he thanks us for that.

Going through his points one by one, Mr. Schilling noted that the dune ordinance is critical to the definition, which prohibits any vegetation removal. The definition includes in our ordinance actual dunes and any area for dune vegetation. With that overly broad definition, it seems rational to conclude the dune language includes the entire beach as defined by the ordinance. The proposed revision corrects this inconsistency with the May 31 letter.

Rack line changes are currently regulated by the DEP. The ordinance clearly goes beyond those regulations. Photographs show that vegetation does grow both at the north end of the island and the south end of the island within that 10-foot space. The Marine Resources Task Force has acknowledged that possibility. Failure to remove this raking restriction will allow brush to grow up and down the beach wherever you can't rake. The ordinance provisions they have proposed will allow Council to meet its pledge not to affect it.

Photographs show brush growing into the rack line at the north end of the beach and the same situation exists at the south end of the island.

The ordinance defines "beach" to include property to the grass line. Much of the dry sand is private property. The use of private property is a right and private property rights are affected by the ordinance. Restricting beach raking within 10 feet of the rack lines, allows brush to grow. By allowing dogs on leash on beach private property puts children at risk and affects the property rights. Prohibiting fireworks is also affecting property rights on their private property. Restricting the removal of vegetation also restricts property rights.

Mr. Schilling went over the revisions they have made to our ordinance. He suggested that Council appoint an ad hoc committee of the Marine Resources Task Force and the residents to give us a final set of language changes that we all can live with.

Councilwoman Cain stated that we've had public hearings on this and that Mr. Schilling has been there as well as many of the people from the condominiums. We've had a lot of input and she doesn't know what else we can do. He has given us some good things to think about, but she feels that this could go on continuously and we're 2-1/2 years into this now. Mr. Schilling said they have attended since the beginning of 1998 on and it has not been an easy process. It is not all that difficult to write a precisely worded ordinance and get it done within the next two weeks.

Councilman Reynolds said he agreed with Mr. Schilling's last statement. He believes that a few weeks ago the Chairman suggested that Mr. Schilling work on changes in language and that's what he has done. Now he's asking if we can't go along with what we have here today. We don't want to take Council's complete time with this item. Mr. Reynolds feels that Mr. Schilling has made more specific comments and changes and is trying to get some rewording.

Mayor Hughes asked Attorney Roosa if we could, in fact, set up an ad hoc committee of MRTF and residents and include a councilmember. It seems to him that that poses some problems. Town Manager Segal-George advised that time-wise it wouldn't be possible to advertise the meeting.

Mr. Schilling said he was not suggesting a committee of dozens of people but selected people that we would appoint and that interested residents could attend and with give and take on both sides, we could do this in a couple of weeks.

Attorney Roosa advised that in the legislative process when there's a land use regulation it must go through the LPA. Once it has gone through the LPA for a recommendation, the only agency that's authorized to change the ordinance is the Town Council. The changes must be made at an open public meeting.

Councilwoman Cain and Councilman Murphy felt that we should discuss the changes now and Councilwoman Cerededa agreed with them.

Public Input:

A. Kathleen Fisher

Mrs. Fisher operates the beach concession in front of Diamond Head Beach Resort. She feels it wouldn't be possible to store equipment 200 feet from the water in front of her location. They already have dune sea oats growing probably about 30 feet from the hotel and they stack everything at the dune line. There should be a variation for particular parts of the beach. Mayor Hughes advised that where the beach is narrow, equipment is only required to be moved to one's adjacent permanent structure. Mrs. Fisher said they would actually have to use a beach access because of blockage. As regards the location of one's equipment during hurricane season, Mrs. Fisher feels there is already something on file that was filled out when applying for a permit.

B. Dennis Poole

Mr. Poole is from Sunstream Hotels and Resorts representing Gull Wing Beach Resort and Pointe Estero Beach Resort. They sent out a survey to all of their owners at both properties. The 59 responses he received back all oppose this. They will work with the Sandarac to help as much as they can. The survey was shown to Council. Mayor Hughes noted that it only touched on one aspect of the ordinance -- beach raking.

Councilman Reynolds said he was glad Mr. Poole has come forward to let us know that there are other concerned condominiums.

Councilmembers went over Mr. Schilling's changes item by item.

Beach definition: Councilwoman Cain said a beach is the soft white sand that lies either between a seawall or a vegetation line to the mean low water line. The only problem she had with Mr. Schilling's ordinance is that he leaves out the seaward line of vegetation, so we have a section of Fort Myers Beach that's not inclusive in this ordinance.

Beach areas needing to be restored or renourished: Terry Cain said that needs to be determined. Different rules will apply to renourished sections of the beach.

If a beach area was restored, according to Councilwoman Cereceda, it would become part of the beach. She's not comfortable with that addition.

Mayor Hughes said that within the operative provisions of the ordinance, there are regulations that would apply to private property ownership, and he thinks it would be better to address that in the operative provision rather than in the definition.

Suitable for dune vegetation on a dune: Terry Cain noted that there are areas of dunes that have no vegetation.

Mayor Hughes said he had a little concern about the word "suitable" in an ordinance as being subjective. Who determines whether it's suitable and what are the standards for determining suitability?

MOTION: Moved by Dan Hughes and seconded by Garr Reynolds to strike "suitable for dune vegetation," and not add "on a dune." It should just be characterized by dune vegetation. Passed 4-1 with Anita Cereceda dissenting.

Councilwoman Cereceda said she said no because in the beginning it says "Dune: a mound, bluff or ridge of loose sediment," which would not make the entire island a dune. It doesn't say sandy white flat beach there.

Areas specified as suitable for establishment of dune vegetation: Mayor Hughes said we're talking here about areas restored or renourished. Councilman Reynolds had concern with the word "specified." Mayor Hughes said there would be a permit process here that he would feel comfortable with.

In the absence of a dune structure, the seaward boundary of a dune would be deemed to be the seaward line of vegetation: Mayor Hughes said he doesn't know why Mr. Schilling would want that stricken.

Seaward line of vegetation: Councilwoman Cain said that again this is a definition and if it is struck, it doesn't give credence to other parts of the ordinance.

Striking "in an area containing dune vegetation." Mayor Hughes wished to know if this really harmed anything to strike it.

MOTION: Moved by Dan Hughes and seconded by Ray Murphy to strike this clause. Passed unanimously.

Plant vegetation other than dune vegetation: Councilwoman Cereceda stated that other than dune vegetation would be plant vegetation. Mayor Hughes said he thinks it means if you're going to plant something, it has to be the proper kind of planting, it has to be dune vegetation. He doesn't think we can delete that because it's talking about what you can do on a dune.

Destroy or harm a dune or remove dune vegetation from any dune: Mayor Hughes said he has no problem with this suggested change.

MOTION: Moved by Dan Hughes and seconded by Garr Reynolds to make this change.

Discussion:

Councilwoman Cereceda indicated that to include "from any dune" would be to imply there could be dune vegetation that is not on a dune.

MOTION: Moved by Dan Hughes and seconded by Garr Reynolds to make this change without adding "from any dune." Passed unanimously.

Adding air powered or any engine powered: Councilwoman Cain asked if there wasn't already an ordinance in place to take care of this. Mayor Hughes noted that there are apparently some types of air powered vehicles.

MOTION: Moved by Anita Cereceda and seconded by Garr Reynolds to add air powered and engine powered. Passed unanimously.

Add the phrase "and remove.": Mayor Hughes said he thinks this is a helpful addition. He would move to make this change if he could put the phrase "and remove" after the word "mine."

MOTION: Moved by Dan Hughes and seconded by Anita Cereceda to put the phrase "and remove" after the word "mine."

Discussion:

Councilwoman Cain said that at our May 1 meeting she thought this had been changed to say "excavate mine and remove all sand or soil from the beach or dune except in emergency situations as such declared by the Town Council. Councilwoman Cereceda concurred and said she was removing her second. Mayor Hughes said that in his notes he has the phrase "that except in emergency situations due to hurricane or flood" (added by the LPA). Bill Van Duzer disagreed. Anita Cereceda determined that we were going to talk about it when we came to the ordinance and, therefore, she would leave her second in place.

Motion approved.

Councilwoman Cain felt that we could eliminate "due to hurricane or flood" when we say emergency situation.

MOTION: Moved by Terry Cain and seconded by Dan Hughes to replace "due to hurricane or flood" with "as declared by the Town Council." Passed unanimously.

Dogs: The insertion of a violation no less than \$250 and up to \$500: Mayor Hughes noted that we have a general penal ordinance which provides for a fine not to exceed \$500 or imprisonment not to exceed 60 days, which absent any sanctions in this ordinance would apply. So unless we want to make that something different, we do not need that phrase. Councilwoman Cereceda felt we could put in that line "enforcement and penalties ... original ordinance are applicable here." Mayor Hughes did not feel that was necessary and besides, you wouldn't put it here but at the end of the ordinance as a general penal provision.

MOTION: Moved by Garr Reynolds and seconded by Anita Cereceda to make the Schilling change in the second line. "Dispose properly off the beach any type of dog waste."

Discussion:

Vice Mayor Murphy took issue with "any type of dog waste."

Councilman Reynolds said he's had problems with dogs on a leash on the beach and dogs on the beach period. We're not allowing them down in the critical wildlife areas but we're allowing them on the beach where little children play in the sand. If he had a choice, he would show that dogs are not allowed on the beach. Mayor Hughes indicated that that would be a separate ordinance, and if he wanted to do that he would have to ask that we bring that ordinance up and change it.

Motion unanimously approved.

Beach furniture and equipment. The change from 350 ft. to 200 ft.

According to Mayor Hughes there was testimony by Mr. Hickey that at a hearing he moves his furniture and equipment back 150 ft. at the present time and that the furthest he's seen a turtle nest is 90 ft. from the water line. He has discussed the matter at some length with Mr. Schilling and he felt he could even go to 200 ft. and that's where they came up with the 200 ft.

Terry Cain said that when this ordinance was being issued it was a very heated issue between Bill Perry and Eve Haverfield. Eve Haverfield said the turtles go even further than that. The 300 number was a compromise number.

Councilman Reynolds said "Where no dune line is present" takes care of those people who are concerned about the 200 ft. or 350 ft. If the beach is wide enough, he feels that as Terry Cain has mentioned the 350 ft. was a negotiated line and is appropriate. This is a daily thing and we do have some impromptu storms coming off the gulf so he would propose that we go with the 350 ft.

Vice Mayor Murphy said that basically where now we have just about no beach, it is his understanding that the restoration is going to be about 200 ft. So that would bring it right up to the line anyhow. Mayor Hughes said he thinks 250 ft. Mr. Murphy said if we had uniformity throughout the island and in the ordinance itself, there wouldn't be any question. Councilman Reynolds advised that the ordinance says the furniture and equipment must be moved either behind the dune line, or where no dune line is present and the beach is wide, then the 200 ft. would apply. Councilwoman Cereceda asked what if there is no dune line and the beach is narrow? And what if there is no permanent adjacent structure? Mayor Hughes felt there would be something sooner or later that they'd come to.

Debated was how to word what would be needed to be done if the beach is narrow. Attorney Roosa said we might provide that there be relief through a permit process for specific parcels.

MOTION: Moved by Mayor Hughes and seconded by Anita Cereceda to add a clause saying "Or in unusual circumstances where a permit may be obtained from the Town Manager to vary from the provisions of this clause."

Discussion:

Councilman Reynolds felt we could eliminate the very last line "or where the beach is narrow" etc., and that would serve the same purpose, but Mayor Hughes did not think so.

Councilwoman Cereceda advised she had discussed the distance from the water with Bill Perry. He felt that the 200 ft. mark was a fair distance but that the 350 ft. was a compromise primarily for Eve Haverfield and the turtles. Mayor Hughes noted that his motion includes the

200 ft. change as well as the clause authorizing the permit.

Attorney Roosa noted that we have a provision in our land use development regulations where you can apply for a special permit in situations where you can't comply with an ordinance. But that would be approved by the Town Council. It can't be delegated to the Town Manager because there are no guidelines. Mayor Hughes said then that's his motion.

MOTION: Moved by Dan Hughes and seconded by Anita Cereceda to add a clause saying "Or in unusual circumstances where a permit may be obtained in accordance with the provision in our land use development regulations."

Councilwoman Cain said she wanted to know about the permitting process. She did not want it to be a hardship to someone who didn't apply. She learned there was a fee of \$1,000. Mostly at issue here was the woman with a business in front of the Diamond Head Resort where there was no room to move her equipment.

Councilwoman Cereceda asked if we could say "applying for a special permit and waiving all fees." Attorney Roosa said that the problem is that those permits are processed by Lee County.

Mayor Hughes asked if we could just make up something specific to this ordinance, such as "in extraordinary cases where the ordinance cannot be complied with that the Town Manager may grant a permit to locate the furniture and equipment at a different location than is required." Attorney Roosa reiterated that we would have to establish guidelines for the Town Manager to issue a permit.

Councilwoman Cereceda asked if we could move on and give Attorney Roosa time to come up with a solution to this problem.

The allegation is that the 10 ft.x10 ft. stacks can be dangerous and we should replace that language with "safely stacked." Mayor Hughes felt that "safely" was subjective. He also felt that the wording should read "not greater than 10 ft. sq."

MOTION: Moved by Dan Hughes and seconded by Anita Cereceda to use the adjective "safely" in front of the word "stacked" and replace "10 ft. x 10 ft. stacks" by "stacks not more than 10 ft. sq." Passed unanimously.

Attorney Roosa suggested adding a sentence, which was put into a motion.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to add a sentence saying "Where compliance with the foregoing would cause undue hardship, the Town Manager after determining the minimum variance from the requirements of this ordinance may issue a permit designating the storage location. Passed unanimously.

During the hurricane season no later than June 1: Mayor Hughes said he struck "During the hurricane season" and said "During June 1 of each year." Councilwoman Cereceda felt this was a good change.

MOTION: Moved by Anita Cereceda and seconded by Dan Hughes to strike the words "During the hurricane season" and say "During June 1 of each year." Passed unanimously.

Beach raking and rack line policy: (Section 8 A.). Mayor Hughes suggested changes to the ordinance which would be a modification to the suggested change by Mr. Schilling.

MOTION: Moved by Dan Hughes and seconded by Ray Murphy to say that the use of a box blade may be made with the prior approval of DEP and upon filing said approval with the Town Manager.

Discussion:

Mayor Hughes said this takes away the onus of approving this by the Town Manager, but the Town Manager has to be furnished with the approval of DEP. Councilwoman Cain felt that we may not be able to get the prior approval of DEP in an emergency situation. Mayor Hughes noted that this doesn't change the original ordinance which required the concurrent approval of DEP and the Town Manager.

Motion passes unanimously.

B1. Rack line. Mr. Schilling recommends deletion of some language. Mayor Hughes feels that we can deal with B1, 2 and 3 here because it all deals with landward language regarding the rack line. Councilman Reynolds spoke of the damage to the beach when the rack line was being constantly raked. With DEP's intervention, the beach has come back to normal.

It was determined that we should leave this section as it is.

Tires with the maximum pressure of 10 psi making contact with the ground.

MOTION: Moved by Dan Hughes and seconded by Ray Murphy to modify the specification about tires with the maximum pressure of 10 psi making contact with the ground. Passes unanimously.

Dune Systems (10a., b.). Some of the language has been struck and others added by Mr. Schilling. Noted is that in the comp plan it says that dune systems will be encouraged throughout the island and not that they will be required. Anita Cereceda felt there should be some reference to this. Attorney Roosa said it seemed to him that the concerns have to do with the requirement of the dunes on private property. What we could do is after the introductory phrase saying in the areas where the beach has experienced erosion, add "on public land or with the consent of the owner."

MOTION: Moved by Dan Hughes and seconded by Garr Reynolds to refer to Goal V., Objective V.,D. of the comp plan in the introduction' and to add "on public land or with the consent of the owner." Passed unanimously.

Attorney Roosa said if we could continue our decision on this ordinance until our next meeting, he could then draft the ordinance with all the new language in it and we could see exactly what we're voting on. Mayor Hughes said he agreed with that.

MOTION: Moved by Anita Cereceda and seconded by Garr Reynolds to direct the Town Attorney to draft an ordinance incorporating all of the changes that we've approved today and have that presented to us at the next meeting on June 19 at 3:00 p.m.

Councilwoman Cereceda suggested that maybe Mr. Schilling could contact Mr. Roosa as soon as possible to get a copy of that so that they can see the changes that have been made.

Attorney Roosa advised that this not reopening the public hearing, which has been concluded. Mayor Hughes added that there will be an opportunity to talk on agenda items.

Motion passes unanimously.

BREAK -- 11:50 P.M. -- 12:00 P.M.

VIII. PUBLIC HEARING: Amendment to Land Development Code, Chapter 34

This is a hearing on an ordinance amending Chapter 34 of the Town of Fort Myers Beach transitional land development regulations, providing authority amending Section 34-2, definitions, restaurant, fast food, providing severability and establishing an effective date.

Mayor Hughes noted that on June 5 the Town Council was introduced to this ordinance and set it for hearings today at 9:00 a.m. and for final hearing on June 29 at 6:30 p.m. This is changing the definition of a restaurant to delete a restaurant which contains a drive-thru facility.

It was established that the LPA did not recommend approval of this change.

Input by Applicants' representative:

A. Robert Pritt

Mr. Pritt is an attorney here on behalf of the property owners Reynolds and DiPaolo. They own the service station located at 6231 Estero Blvd. that has been used for over 20 years. He feels this ordinance is most likely here because of a proposal of his clients to make a slight change of the use of the property to allow a Taco Bell drive-thru restaurant as well as a service station. The ordinance appears to be directed at his clients' proposal. It is their position that this is an overreaction, although understandable. It fails to allow a fair shot at modernizing and upgrading the property. They feel the ordinance is overbroad and without any foundational basis. Most importantly, it effectively singles out this property for a somewhat draconian treatment after the owner has made serious and potentially expensive commitments to the transaction. It is their position that the owner should not have to be able to shoulder the burden of a reactive type of zoning change after investing time and money. The very nature and planning of zoning is that it is a vision for what the Town should be. But by the same token there are property rights that need to be paid attention to. For that reason zoning, of course, cannot be done as an emergency measure. A zoning proposal must also go to the local planning agency to keep the city council from taking actions that may be an overreaction. Their proposal today is that we deny this, which can be done under state law.

Councilman Reynolds said that when you try to put two businesses on a lot, that only increases the density. Mr. Pritt said it is his understanding that there will actually be a reduction in intensity of use.

Applicant Input:

Al DiPaolo, Jr., one of the owners of the property, advised that his repair business is moving from that location and off the island and there will only be a service station and a Taco Bell.

Pam Houck explained that the new owners of the property will have to go through a redevelopment process and rezone the property. Councilwoman Cereceda ascertained that drive-thru or no drive-thru there will be public hearings that will affect the end result of whatever redevelopment occurs there. Mayor Hughes said the key phrase is intensification of commercial use.

Mayor Hughes advised we have three choices in this matter: continue this hearing to the second hearing date on June 29; to suggest a change in the language so that if this ordinance is adopted it would only become effective at some future date that would not preclude Mr. Pritt's client from pursuing his CPD. The third thing according to Mr. Pritt is that we can't actually terminate this at a first hearing. Vice Mayor Murphy said he is inclined to select choice b.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to suggest a change in the ordinance to prohibit drive-thrus but have it worded so that it wouldn't apply to the pending permit request.

Discussion:

Attorney Roosa stated that Mr. Pritt had provided him with a provision that he agrees with. It is a transition provision. "This ordinance excludes property subject to an application for rezoning pending on June 14, 2000, or an amendment filed thereafter requesting substantially the same relief."

It was ascertained that on June 29 Attorney Roosa would submit a revised draft of this ordinance to us and a public hearing on that will continue on that date.

Councilwoman Cereceda said that the reason this is before us is to decide whether or not drive-thrus should be permitted. What we're saying is no, they shouldn't, but we don't want to impose that when we can on the current property owner, which she feels will create a real stir. If the will of the community is that drive-thrus should not exist, then she thinks we are beholden to go to a second hearing, hear what the community has to say about it and get more input on it.

Vice Mayor Murphy felt that this was a reactionary situation because of the property owners' desire to do what they wanted with the property. He says let it go to public hearing but he wants to hear about it in this fashion instead of just ruling it out altogether. Mayor Hughes said he would concur and added that all options would still be available.

Terry Cain had felt there would be only one drive-thru on the island -- McDonald's. Garr Reynolds noted that we have several drive-thrus without windows. He would hope we don't try to outlaw drive-thru restaurants. Ray Murphy said his concern was with fairness and equity.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds that the Town Attorney present a revised draft to us that contains the revision of the draft that we have before us but also the provision that he expressed earlier so that it would not be applicable to Mr. Pritt's clients' property.

Public Input:

A. Bob Bradhill

Mr. Bradhill owns the property behind the service station and wished to know who has the ultimate say in how the property looks.

Attorney Roosa explained that we are bound by our own land development code that does impose certain provisions for a buffer zone. There are certain requirements regarding landscaping that are required by the ordinance when commercial property abuts residential. There are additional conditions that may be recommended by the LPA and ultimately the Town Council will then review that plan and either adopt it or not and add any other provisions that they may wish to adopt.

Motion passes 3-2 with Terry Cain and Anita Cereceda dissenting.

Mayor Hughes restated the motion.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to continue this matter at a public hearing at which we will have the opportunity to determine whether we wish to adopt this as it is presented to us or with an additional clause that allows these people to go ahead with their CPD.

Discussion:

Mayor Hughes said there is nothing being finalized here. What we are doing is adding another option.

Councilwoman Cereceda stated that we're adding the option that we could eliminate drive-thrus forever except for this one. This is why she has voted no.

Mayor Hughes said we're only voting on the fact that we're getting another option to be discussed at the public hearing on June 29. At that time we will have the modification of a proposed amendment.

IX. PUBLIC HEARING: HARBOR ORDINANCE

According to Town Manager Marsha Segal-George, Mr. Stead appeared at the LPA and asked for a series of changes. The LPA made those changes and they held a public hearing with those changes. Originally the ordinance in our packet did not have those changes in it. Dick Roosa got the changes on Friday and now we have the ordinance that has the changes in it. Mayor Hughes said there were changes that he had requested that aren't in the ordinance.

First Hearing: An ordinance establishing the Town of Fort Myers Beach anchorage. Management ordinance providing authority, name, purpose, definitions, anchorage advisory committee: composition and appointment, qualifications of members, purpose and scope, duties of the anchorage advisory committee, members terms and vacancies, forfeiture of office, compensation of members, election of officers, duties of officers, clerk, rules and procedures, appointment of staff and experts, reimbursed expenses, supervision of staff, functions, powers and duties, cooperation with anchorage advisory committee, appointment of the harbor master, duties of the harbor master, duties of Town Council, providing severability and establishing an effective date.

Public Input:

A. Ken Stead

Mr. Stead is from the Southwest Florida Marine Industries Association. He was before the Town Council about a month ago and has also appeared before the LPA. He had requested that a representative of his organization be added to the membership of the Anchorage Advisory Committee and advised that those changes have been incorporated in the ordinance as amended by the LPA. He is here to offer his support and the support of the Southwest Florida Marine Industries Association. After the final adoption of the ordinance they are here to assist us in any way they can. Mayor Hughes thanked him.

Mayor Hughes noted that in Section 24B of the ordinance there is reference to a harbor advisory council, which at one time the anchorage advisory committee was called. Town Manager Segal-George advised he had asked for definitions on mooring and mooring field, which are in there, and the live-aboard definition has been changed.

Mayor Hughes noted that there are two sections that deal with the anchorage advisory committee and he had suggested that those be consolidated. Another format change he'd like to see is the combining of Sections 22, 23 and 24, which all deal with the harbor master. He also would have had everything from 5-20 dealing with the anchorage committee as a subsection. There should also be a section on harbor master and everything dealing with that and then the

duties of the Town Council.

This matter will go for a second hearing on June 29 at 6:30 p.m.

X. PUBLIC COMMENT

None.

XI. ADJOURNMENT

The meeting was adjourned at p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for Action June 12, 2000

1. Sawyer case is being continued to June 19, 2000.
2. Regarding the Beach and Dune Ordinance Town Attorney Roosa will draft an ordinance incorporating all of the changes that we've approved today and have that presented to us at the next meeting on June 19 at 3:00 p.m.
3. On June 29 Attorney Roosa will submit a revised draft to us of the ordinance amending Chapter 34 of the Town of Fort Myers Beach and a public hearing on that will continue on that date.
4. The Harbor Ordinance will go for a second hearing on June 29 at 6:30 p.m.