

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 29, 2000
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The meeting of June 29, 2000, was opened by Mayor Daniel Hughes at 3:09 p.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, Deputy Town Manager John Gucciardo, Town Attorney Richard Roosa and Pam Houck.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance.

III. INVOCATION

The invocation was given by the Reverend David Pierce of Chapel-by-the-Sea.

IV. PUBLIC COMMENT ON AGENDA ITEMS

None.

Mayor Hughes acknowledged Marilyn Stout who was in the audience and is a candidate for District 74 of the State Legislature.

V. CONSENT AGENDA

A. Resolution on Bridge Maintenance Agreement

B. Resolution supporting the G. Pierce Wood Memorial Hospital

C. Update on the Beach Project (the channel dredge and the beach restoration)

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the Consent Agenda.

Discussion:

Vice Mayor Murphy advised that with reference to item B, Rep. Harrington of District 72 sent a letter to our planning council that asked all the cities and counties to support Gov. Bush regarding the present mental health crisis.

Mayor Hughes advised re A. that in the interlocal agreement related to Matanzas Pass, in the first Whereas clause "negations" should be changed to read "negotiations."

Motion passed unanimously.

VI. ADMINISTRATIVE AGENDA

A. Receipt of Budget Message and Public Hearing to set tentative millage.

Town Manager Segal-George advised that this was our fifth budget and as usual there has been no increase in millage. No public hearing is needed.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to set a tentative millage of 1.0961.

Discussion:

Vice Mayor Murphy felt that the narrative plainly lays out what the plans are for the next couple of years -- very well done.

Town Manger Segal-George advised that the draft budget will be made available to anyone wishing to make a copy of it. From this agenda forward until we adopt the final budget this will be on every agenda for comments.

Motion passed unanimously.

B. Public Hearing: Case No. DC12000-00027. Fort Myers Beach Fire Control District Office Building. A request to rezone from two-family conservation district to Commercial Planned Development to permit offices of the Fire Control District. This property is located at 100 & 102 Voorhis Street.

Applicant's Representative:

Richard Pringle, attorney for the Fort Myers Beach Fire Control District, advised that Staff, as well as the LPA, has reviewed the application and has recommended approval. The property on Voorhis Street is less than a block away from the fire station. There is a definite need at this time to move the administrative offices out of the fire station to another location so that the existing space can be used for personnel needs. Their best choice of a new location are the 6 lots on Voorhis Street just off of Estero Blvd. The property is currently zoned TFC-2, essentially a mixed residential land use category with residential on three sides. For compatibility with its surroundings, the new offices will be built in the old Florida style. It will have approximately 3000 sq. ft. and will house administrative offices only.

Four deviations are being asked for. One is the distance between the driveway entrance and the next driveway and the other deviations have to do with the width of the buffer area, which must be narrower.

The building will be one story off the ground because of the 14 ft. flood elevation requirement. There will be on-site surface water management. They do not adversely impact roadway systems and have submitted a draft impact statement. They will try to make the building as good looking and as residential looking as they can in design.

Everyone in the neighborhood was notified through a meeting at the fire station about the plans.

Mayor Hughes was told that there was a contract with the Florida Cities Water Company who owns the property and it is contingent on approval of the zoning.

Mayor Hughes was advised that there were no ex parte communications to report.

County Staff Presentation:

Chip Block with Lee County Department of Community Development, Development Services Division. He is representing the Town in this case.

Staff recommendation: consistency with the Town's comprehensive plan and a recommendation of approval of the planned development rezoning on the subject property with a series of conditions. .

Mr. Block passed out a copy of a detailed master plan showing location of building, parking area and surrounding site.

Public Input:

Stephan Markus, Fire Chief for the Fort Myers Beach Fire District, thanked Council for their vote of confidence and noted that they have been cramped for space since 1949. Moving their administrative offices will give them the latitude to remodel their fire station.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the resolution from two-family conservation zoning to commercial planned development to permit the development of this parcel as the offices of the Fort Myers Beach Fire Control District with a maximum of 3000 sq. ft. gross floor area and a minimum building height of 35 ft. Strike the word "denied" in the "Therefore" clause.

Discussion:

Mayor Hughes said he assumes that the attachment will incorporate the staff report by reference. He would also like to see typed in condition B. "subject property exists on this date" and insert the word "deviations" along with "conditions".

Vice Mayor Murphy congratulated Chief Markus and wished him luck with his building project.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the resolution from two-family conservation zoning to commercial planned development to permit the development of this parcel as the offices of the Fort Myers Beach Fire Control District with a maximum of 3000 sq. ft. gross floor area and a minimum building height of 35 ft. Strike the word "denied" in the "Therefore" clause. Type in condition B. "subject property exists on this date" and insert the word "deviations" along with "conditions". Passed unanimously.

C. Public Hearing: Case No. VAR2000-00023. Miller Carport Replacement. A variance request to permit a 4.2 ft. side setback to reconstruct a carport. This property is located at 5670 Estero Boulevard.

Applicant's Input:

Larry Miller, the owner of the property, is here requesting permission to rebuild the carport that was torn down in error, basically with the same footprint that has existed since 1947. It is approximately 11 ft. x 22 ft., which violates the side property line setback. At the smallest point it would be 4.2 ft. and it extends on out to 6 ft.

Staff Input:

Dan Faulk with Lee County Department of Community Development advised he had prepared the staff report. Staff is recommending approval of the variance request to permit a side setback of 4.2 ft. with one condition: that the variance is limited to the 11.1 ft. x 20.2 ft. carport depicted on the site plan, Attachment B. Property is approximately 10,000 sq. ft. and is an irregularly shaped lot with approximately 70 ft. of frontage. It is located in the low density portion of the property and none of it is located in the recreation land use category. It is zoned RM2, which is the multi-family district requiring a 7 ft. side setback. Single family uses are to the east and west. To the north is Estero Boulevard and then some properties zoned CT -- Commercial Tourist. To the south are also single-family homes zoned RM-2. Staff has found that property is consistent with the density requirement of the Town's Comprehensive Plan. The

way the house sits there is no way to replace the carport without the variance. The minimum variance at its closest point would be 4.2 ft. from the property line and then gradually increase to 6 ft. at the NW corner. Adjacent to the proposed carport is an existing gravel driveway. There is vegetation and railroad ties along the property line so Staff does not believe that approval of the variance would harm the adjacent property.

Mayor Hughes asked if DEP approval is needed since the property is seaward of the '91 line and was told that approval would be needed.

On attachment B. the carport is labeled "covered shed."

MOTION: Moved by Anita Cereceda and seconded by Terry Cain to approve the request by adopting the resolution before us today with the findings that there are (a) exceptional and extraordinary conditions; (b) that the exceptional and extraordinary conditions are not the result of the property owner, the applicant; (c) that the variance is the minimum variance that is required; (d) that the granting of the variance will not be injurious to the neighborhood; (e) that it is not of a general or current nature. Include in the resolution the condition as set forth by the Staff proposal that approval is limited to an 11.1 x 20.2 plan as presented in Attachment B. of the Staff Report. Strike "disapproved" in the last clause. Passed unanimously.

D. Public Hearing: Case No. 9501-034.03Z.03.01 (DC1962915). Pink Shell Resort. Request correction of a scrivener's error in the legal description of the Pink Shell Resort. This property is located at 275 Estero Boulevard.

Pam Houck advised that before us was a corrected resolution. They have found a couple of typos in the resolution: (1) in the third line lots 33 and 34 were typed 3 and 334; on the following page, second page, W should be E.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to correct the scrivener's errors as noted. Passed unanimously.

E. Approval of contract changes for Harbor Plan: Coastal Engineering.

Town Manager Segal-George advised the Mayor he had a memorandum in his packet with regards to what she is calling the Revised First Supplemental Agreement for Professional Services. He also has a copy of the memorandum from December 1, 1999, when the services were approved for Coastal. They have completed those but there is also a memo from Ilene Barnett stating there was a visit with DEP regarding putting the application together that we have to submit for the harborage. There are two issues: one is the application fee that they're charging us of \$1,000 that they will not waive. They believe we should just go get some grant money to pay it. The other issue is that DEP has not changed their rules with regards to permitting and requiring us to have more information than we believed we had to have when we filed the DEP application. So the only things she is asking for approval right now in the scope of services is Item 1, Preliminary Site and Architectural Design, and Item 2, Surface Water Management Design. These items are needed to complete the DEP application and to submit other grants to try and get the dollars to construct those facilities. For the first scope of services that we had with Coastal that money was reimbursed through the county through boater improvement dollars. If we approve this she will submit this also to the county to try and get grant dollars to pay both for the DEP application and for the scope of services in Item 1 and Item 2. This has gone to Marine Resources Task Force and they approved this, recommending that we approve it and that this continue on.

Mayor Hughes ascertained that we're not approving the entire proposal at this time but are only being asked that Items 1 and 2 be approved at this time.

Town Manager Segal-George advised that we will need facilities for the harborage.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to approve Items 1 and 2 of the First Supplemental Agreement for Professional Services for Coastal Engineering. Passed unanimously.

F. License Agreement for Seafarer's 1997. Inc. A request to use a small alleyway as the location for a grease trap.

Pam Houck advised that this was a request from Mr. Wiebe to Ms. Grady for a license agreement for use of a platted right-of-way located behind Seafarer's and Ocean Jewels. He wishes to use it for a grease trap for the restaurants that are currently under construction at Seafarer's, and they have requested the license agreement that is attached to the request from Ms. Grady. They propose to pay a dollar for the license agreement. Actual installation of the grease trap will not impede vehicular or pedestrian traffic as it will be underground. The grease trap will be an underground container with a manhole cover over the top of it.

Beverly Grady advised that the alleyway was 40x20 ft. which right now provides access into Seafarer's Lot 4. Very shortly they will be submitting a CPD on that site and it should not interfere in any way with the alleyway. It provides something that is necessary for the restaurant.

Councilman Reynolds ascertained that the alleyway separates Ocean Jewels and Papa John's Pizza.

Mayor Hughes was told that the grease trap would not create any maintenance problems for the municipality. He would like inserted in paragraph between sentences 1 and 2 that licensee shall maintain the grease trap in a safe condition the area in question. Attorney Roosa said he would recommend that we add a sentence that "This license may be revoked at any time by unanimous vote of the Council giving a one-year notice." He said maintenance has already been covered in "after installation or repair and servicing of grease trap."

Mayor Hughes also felt that we should have a hold harmless indemnification clause for property damage and personal injury as may be sustained as a result of the construction of the grease trap. He would also suggest that we have a certificate of insurance and that the general liability coverage on Seafarer's would name the Town of Fort Myers Beach as an additional insured.

MOTION: Moved by Anita Cereceda and seconded by Ray Murphy to authorize the execution of the license agreement as submitted with the changes discussed. Passed unanimously.

G. Times Square Projects: Approval for underground wiring for lighting, drinking fountains and tree grate replacement.

Town Manager Segal-George advised that we have bids anywhere from \$20,000 - \$30,000 for the moving of the pavers while trenches are dug to do the lighting. With regards to the lighting sign and the electricity site, there is really only one individual who can do that for this project -- Bill Semmer. This project could well be underway this summer and Bill Semmer has proposed a not-to-exceed figure for doing all this work of \$50,000, which includes the pavers, the electricity, some additional wiring so that we can plug sound in and have conduits that are more easily used. We are going to bring water into a couple of locations in the Square where we don't have water. There would be drinking fountains. We have to redo the whole grate system and we're looking at trying to put benches around some of those trees. If we're willing to entertain this, she'd like to enter into a not-to-exceed figure in the contract and put all this specificity into it. Dick Roosa would approve it and the Mayor would sign it.

This is all grant money that is absolutely dedicated to the Square and can't be spent for anything else.

Mrs. Segal-George noted that we are having problems with the pavers as they are very porous and the stains go down into them. When we clean them the stains go away and then pop back up. The pavers are coated only at the top. Someone is coming from Craley next month to look at our pavers and determine if we can recoat them in any way. Absent that, we'll be faced with a situation where we're going to have to replace pavers.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain that we approve an amount not to exceed \$50,000 to contract with Bill Semmer to provide the services as discussed by the Town Manager.

Discussion:

Mayor Hughes was told that this project has been bid and we're just modifying the bid and changing it to where Mr. Semmer is the supervisor.

Councilman Reynolds did not feel it was a shock to any of us that these pavers would be difficult to keep clean and we just purchased last year a \$30,000 piece of equipment to clean them with.

Motion passed unanimously.

H. Property for a Gulf Front Town Park.

Councilman Reynolds said he realized that the Town doesn't have any parks and during the 13 years that he's been here, there have been several lots available. Perhaps we should make some park and rest areas along Estero Boulevard and he hopes we will give some real serious thought to this today.

Councilwoman Cereceda asked Mr. Reynolds if he had any other information on the Red Fisher Tarpon parcels. She was told no, but that he knew they were big lots and have been on sale for a long long while. One of them is being filled up now with sand, which means somebody is getting ready to build on it. On another one the sign has disappeared which means somebody has probably bought that and it may not be for sale. He believes there might be a for sale sign on one of them yet. Anita Cereceda said she had no problem with the staff investigating the possibility of purchasing the lot.

Councilwoman Cain said she thinks it's a great idea to look into some parks and she thinks there are some other lots too that are very nicely vegetated on the island that she personally would like to see saved. She thinks that the second park on Mr. Reynold's list is exceptional because it sounds like it already has water and plumbing on it that could accommodate restroom facilities if desired.

Vice Mayor Murphy felt it was a great idea to acquire lots for parks.

Mayor Hughes agreed that this is something that we should explore further in terms of the availability of the parcels, the cost and the loss of tax revenues.

Town Manager Segal-George said that 2-1/2 years ago when this issue came up she explored a couple of lots on the south end, including the one with the tiny house on a big lot, and there was quite an outcry on the south end of the island from folks who did not want a park and the traffic. She spoke at one of the organizations and was severely berated at that meeting for wanting to buy lots. But she thinks it's a great idea too. Councilman Reynolds said he didn't think that those were the prevailing feelings because he's had a lot of inquiries regarding what had happened to the park idea.

Councilwoman Cereceda said she thought that the objection that's going to be raised by the Town is that people who live on Fort Myers Beach don't need any more beach accesses, and what we're really doing is encouraging opening up more public accesses and why should the Town

dollars be spent for this?

Councilman Reynolds felt that we could put in parking meters and let everyone share in the cost.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Murphy reported that he had a request from the Horizon Council regarding some participation for their annual industry appreciation luncheon. Last year our pledge was \$1,500 and they're asking us to come in with the same pledge this year. The luncheon is to be held September 22 at Harborside.

MOTION: Moved by Ray Murphy and seconded by Terry Cain that we approve a pledge of \$1,500 to the Horizon Council for their annual industry appreciation luncheon.

Discussion:

Councilman Reynolds said that last year he didn't agree with it and he doesn't agree with it this year. He sees nothing that the citizens of Fort Myers Beach get out of that particular organization.

Motion passes 4-1 with Councilman Reynolds dissenting.

Councilwoman Cereceda advised that the week of qualifying for the county-wide race is July 17-21 and she will have to submit her resignation as a member of the Town Council that week. The effective date of her resignation would probably be November 14. Also, she doesn't know what to do with her position as chairman of the MPO. Should she place a resignation for that position as well? Attorney Roosa advised that she would have to do so.

Ms. Cereceda said she has been speaking to a lot of business people here on the island. Business is very good here. The Realtors are in their hey day right now, just having a great year. A gentleman in the county brought up the turn around in attitude towards Fort Myers Beach. Mayor Hughes said he has noticed that the condominiums at Smuggler's Cove sell within one or two days when they become available and he thinks that's true in other areas. Sometimes there's more than one bid for the asking price.

Councilman Reynolds reported they were having a Shore and Beach Conservation Seminar Conference over on Captiva in the middle of September. Reservations should be in by July 7. Unless the discount of \$75 is received the cost will be \$300 per person. He would like very much to go. Deputy Town Manager Gucciardo may go and he explained it was a 3-day seminar but a lot of what happens may not be applicable or appropriate for all the members. But in particular he wanted to call our attention to the Thursday afternoon session that they're advertising as the ABCs of beaches. His feeling is that as we go forward with the renourishment project that we may be called on more and more to answer questions about the hows and whys and dollars involved. From what he understands, this could be a very helpful session. Mayor Hughes said he would like to go to the Thursday afternoon session.

VIII. TOWN MANAGER'S ITEMS

A. Historic Structure Grant -- Mound House

Town Manager Segal-George reported that we are going to reapply in August for the archaeological assessment grant and the state has basically assured us that we will get it again.

The work on the historic structure grant has to all be completed by September 30 and there's no way we can to out and advertise and receive proposals and get this work done. The State Historic Preservation Agency that gave us this grant has really been working to try and help us save it. The reason we're in this predicament is because it took us so long to acquire the

property. The Preservation Agency recommended that she contact Archaeological Consultants, Inc. (ACI) in Sarasota and send them the scope of our project and ask them if they could get the work done in that time frame. She did so and received a fax this morning from them. They have a significant resume and say they can get the work done by September 30 and can do it within our \$16,000 budget. They are registered professional archaeologists and they have an architectural historian on staff. She needs to issue a notice to proceed on them as soon as possible.

MOTION: Moved by Anita Cereceda and seconded by Garr Reynolds to enter into a contract with ACI for \$16,000 as requested by the Town Manager outlining her presentation and agreement with ACI.

Discussion:

Vice Mayor Murphy said he was all for this but he asked Attorney Roosa if we would be opening ourselves up for criticism. Dick Roosa didn't think so.

Motion passes unanimously.

B. Change Order for Palmetto/Easy Street.

Pam Houck passed out documentation. She advised that a culvert in front of Mr. Linskey's house at 5537 Palmetto came up several months ago as a complaint. Engineers thought it could be fixed without costing us anything. Contractor was on job yesterday. Culvert is damaged beyond repair and must be replaced. A cost from Ajax Paving is \$5,104.63. Culvert is in the swale that provides drainage from the north part of Palmetto and Dakota Street. She would request that the change order be approved. Ms. Houck has a letter from Bill Morris, project engineer of Morris & DePew, who believes the culvert was damaged some time ago, possibly even when the house was constructed. The damage didn't show up when the engineers did their initial surveys because of its location.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve change order.

Discussion:

Mayor Hughes said what concerns him is that with Tim Linskey living there, he would be the one to know when the culvert was damaged. He'd like to be sure that we're not paying the contractor for something that Mr. Linskey in fact damaged himself. Pam Houck advised that when the engineers pulled the culvert out they were able to see all the damage and it was old damage.

Motion passes unanimously.

C. Sand

Deputy Town Manager Gucciardo advised that the memo he gave us earlier about the update on the restoration project was written after the last Coastal Advisory Council meeting on Monday. On Wednesday he had a meeting with the CPNER engineering about sand sourcing

The Army Corps of Engineers concluded that the appropriate site to get sand offshore was located a few miles to the south and west of Sanibel Island. It would be a 13 - 14 million dollar project. Our engineers came to the conclusion that the site was not really as compatible with our sand as the Army Corp had thought nor did they find the amounts to be appropriate. But they have located three other sites. If their initial tests prove to be correct and if they're able to come to certain conclusions about storm protection, the offshore shoal between us and Sanibel may, in fact, be the best sand source available to us. We need assurance, however, that removing the shoulder of the shoal will not affect the top of the shoal and, therefore, would not affect the storm

protection benefit that we get from having that offshore shoal. Their initial impression is that it will not be a problem to make those statements. If that's the case, it would significantly drop the cost of the project, perhaps to \$8 million.

Pam Houck asked why the engineers will still be recommending a terminal groin at the north end of the Estero project. Mr. Gucciardo explained that the original Army Corps of Engineers plan was for a 600-ft. structure at the north end of the island. Subsequent engineers that have looked at the project have all determined that that's probably not necessary but that some terminal structure on the north end could be included in order to get the Corps of Engineers to agree with our permitting process and go along with our design. They're looking at either 100 ft. or 200-ft. structures. In most cases, that technology is not in favor. Generally speaking the northern groin would be just off the southern tip of Bowditch.

The Army Corps of Engineers did not look at the south end of the island, but Hummiston & Moore did and also recommended a terminal structure there. General thinking now though is that we would not need a terminal structure on the south end because that portion of the island is naturally accreting.

As a condition of this project, we will have to do monitoring on an annual basis.

D. Lease of Property

This is with respect to the land under the Matanzas Bridge. There was a lease between the state and the county for those lands, which has now expired. The county no longer wishes to be involved and we have negotiated directly with the state about entering into a lease with them about control of those lands. Part of their requirement is a resolution from this board indicating a public purpose for that lease and Attorney Roosa has prepared a resolution.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the resolution. Passed unanimously.

IX. TOWN ATTORNEY'S ITEMS

A. Bowditch

Attorney Roosa stated he went before the county commission and told them of our request, which after some discussion they granted. This they did on a limited time frame and will reconsider this September 15. It would seem appropriate that all of the alternatives that have been considered by the county commission would be presented to us at some meeting. Town Manager Segal-George advised she is not aware of any alternatives that have ever been presented. Attorney Roosa stated that they had indicated to him off-site parking, shuttle bus systems.

Councilwoman Cereceda stated that she feels that the county commissioners' courtesy to us is no more than a courtesy. She feels there has got to be some negotiated position. She'd like to be a point person on this to deal with the county and see if she can come up with some reasonable plan on August 29 to implement some parking at Bowditch Pointe.

Councilman Reynolds said he feels that everyone in the county wants parking at Bowditch Point and that Ms. Cereceda is as opposed to parking as he is for it. He would like to be the representative rather than her because he believes he can speak for the people.

Councilwoman Cain said that although she personally feels the park should remain passive, she has heard arguments both pro and con for parking and that Anita Cereceda would be a good representative for the community.

Attorney Roosa was asked what kind of action we would have to take on August 29. He said the county commission said they were going to continue their decision until September 15 and they made it very clear that they were going to make that decision and that we weren't. They also expected that the Town Council would give them further input at that time. Town Manager Segal-George said she believes they want us to present alternatives to them although she is not aware of what these alternatives would be.

Councilwoman Cereceda stated that she is going to attempt while we are on vacation to bring back to the August 29 meeting some consensus of our community, especially the people who are upset about the implementation of parking and other entities who are involved with this; of how we can move forward with implementing parking at Bowditch in an agreeable way to as many parties as possible.

Vice Mayor Murphy noted that it had been the county's decision that Bowditch was to be a passive park and now the onus is on us.

Town Manager Segal-George advised that we have two regional parks that sit on a town road that we're responsible for. We have issues with whether or not they're going to give us a sign if they put parking in to show when the parking lot is full. When the park was originally planned, there was a lifeguard at Bowditch, but there no longer is one. If there is a drowning, this island will take a black mark and not the county. Those are the kinds of issues that need to be addressed that have been submerged in the question of parking or no parking.

Mr. Roosa said that a public hearing was not required, but he felt that was one way to get input for making these decisions. The hearing would be for the pros and cons of parking and the collateral issues.

Also brought out by Mr. Roosa was the idea of to what extent the park was going to be developed. The more developed it is, the more parking and facilities will be needed. The big question is to the character of that park as one that is developed for sports and amusements or one that is more passive. And just because it's a passive park doesn't mean that it's for the next door neighbor. People will travel great distances to go to Echo Park, for instance, which is a very passive park. In the public hearing we should identify what is the highest and best use for that park.

Councilman Reynolds felt that the park was bought with taxpayers' money and not tourist development money.

X. APPROVAL OF MINUTES: JUNE 5, 2000

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve the minutes of June 5, 2000.

Corrections or changes to Minutes:

1. On page 8, I., Introduction to Land Development Code, show "regs." instead of "rates" in the first paragraph.

2. On page 11 Councilman Reynolds said the secretary did not include his comments about tourist development dollars, which was that the BOCC will tell you that no records will substantiate this claim.

3. On page 13 where the motion was not seconded, strike the phrase "and seconded by."

4. On page 17, paragraph 4, Mr. Reynolds referred to the statement "Councilman Reynolds also mentioned that the luncheon held last week at FGCU ..." "FGCU" should have read "Royal Palm Theater" and "Dr. Merln" should be changed read "Dr. Merwin."

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve the minutes of June 5, 2000, with the corrections noted. Passed unanimously.

B R E A K -- 6:05 - 6:52

XI. Public Hearing: Amendment to Land Development Code, Chapter 2

Mayor Hughes read this amendment into the record.

This is the second and final hearing. These are chapters that were prepared by our

consultant Bill Spikowski with direction from the Town Council. It was referred to the LPA, which held public hearings, and has now come to us.

Public Input:

None.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the ordinance.

Discussion:

Councilman Reynolds referred to Article V. He said that it sounds like we're getting ready to set up another department on the island. We can get the same services without all the additional problems and costs and he has reservations on this. Town Manager Segal-George advised that that section has been in the Land Development Code that this Town has operated under since we came into existence and the sections that deal with that still have the same system that we had before, and that's using the county and not developing any of this within the Town.

Motion passes unanimously.

XII. Public Hearing: Amendment to Land Development Code, Chapter 6

Vice Mayor Murphy read this proposed amendment into the record.

Public Input:

None.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to adopt the amendment. Passed unanimously.

Mayor Hughes stated that our consultant Bill Spikowski did an excellent job of preparing these provisions of our Land Development Code, as did the LPA.

XIII. Public Hearing: Amendment to Land Development Code, Chapter 34

Mayor Hughes read this amendment into the record.

At the last meeting we were presented with this change in the definition of restaurants which inserted the words "may not contain drive-thru facilities" and examples of drive-thru facilities were deleted. At the first public hearing we directed the Town Attorney to a Section III, which was done -- a transitional provision -- so that the Council has as an option before them to adopt this with the provision that it does not apply to any property that is the subject of a development order that is pending on June 14, 2000, or to an amendment filing that application requesting substantially the same relief.

We have three options before us: (1) not to adopt this ordinance; (2) adopt the proposed ordinance as originally drafted which would prohibit any drive-through restaurants; (3) adopt the proposed ordinance with the transitional provision.

Applicant's Representative:

Beverly Grady represented Al DiPaolo, Sr., president of AFA Rentals, Inc., owner of a parcel that is situated at 6231 Estero Blvd. It is currently the Texaco station that is subject to a contract of sale for a fast food restaurant with a drive-thru. The property is zoned Commercial (C-1). The Texaco station has a drive-thru as permitted today. This parcel has the zoning for a fast-food restaurant as listed in the permitted uses in the C-1 district. It has been operated as a service station for about 20 years.

On or about May 15, 2000, an application for a development order was filed for renovation on this site by the engineer for the buyer using the same building but adding open space and landscaping for a fast-food restaurant that did contain a drive-thru. On June 14 there was submitted as a substitution for that original application a limited review development order requesting approval, and correspondence has been submitted to clarify that the limited review development order approval is to replace or substitute the original application and it did contain revisions based upon some of the comments that were issued by Lee County Staff on our behalf. They appreciate the Council's direction at the last meeting of June 12, which added Section III., a transitional process that recognized and exempted those parcels with a pending application for a development order from the application of this ordinance. This is the only application that they are aware of requesting the drive-thru.

If we decide to adopt this ordinance tonight, they would respectfully request that we maintain Section III., which would permit this parcel to continue through the permitting process its application.

Ms. Grady noted that the plan that was submitted on the 14th has been revised and shows improvements from what was originally submitted, which she detailed. They would like to reiterate to Council that it is not fair to change the rules in the middle of the game.

The Staff of Lee County has interpreted the ordinance that we have adopted in December '97 that had two exceptions: one is for those developments in the redevelopment overlay district and the other is for the development that qualifies for the limited review process as set forth in the Land Development Code. Their understanding in reading the code is that if we're doing something that qualifies for a limited development review, then that is still permissible with the zoning category we have.

Town Manager Segal-George felt it was inappropriate for Ms. Grady to be relaying this information to us at this time. We haven't had an opportunity to have a Staff report or work up anything with regards to this particular case. There is a comp plan issue that is going to have to be addressed and then Ms. Grady can react to how it is addressed on behalf of her client. At that point she will have the benefit of her staff making recommendations and not having this discussed in an unrelated manner.

Ms. Grady said she'd like for us to adopt this ordinance with Section III.

MOTION: Moved by Ray Murphy and seconded by Dan Hughes to approve the ordinance as presented to us here, which includes Section III., the transitional provision.

Discussion:

Vice Mayor Murphy advised he had spoken to this the last time we were here. It is his feeling that in fairness to these people that we had a law in place at the time and that they were following it and went through what they were required to do and we're now trying to stop them from doing that. There will be other hurdles that they will have to cross to get the permits that they're after. So we're not necessarily approving their project this evening but are at least giving them the opportunity that he believes they deserve under the conditions that were in place when they made application.

Councilwoman Cereceda ascertained that in his motion Vice Mayor Murphy is not granting the applicant the right to a drive-thru. Mr. Murphy said his only concern is the issue of fairness and equity and that this motion is in no way an endorsement of the drive-thru.

Councilman Reynolds said the part he objects to is the restaurant that may or may not contain a drive-thru as an ordinance. He is still for the transitional provision. The other part he's absolutely against. He feels that it's a disservice to the people in a community if we do not allow drive-thrus.

Town Manager Segal-George stated there were a couple of ways that this could end up in

front of us. One is that Ms. Grady appeals whatever it is from county Staff in the development order process and that would come to us; the alternative would be the ruling that this has to be rezoned to CPD and so the rezoning would come to the LPA and then the Council. She knows there are issues with regards to this limited review, and if it would qualify under this limited review, then none of this would come in front of the Council and there would be no opportunity for public comment with regards to any of the issues that we've been talking about.

Councilman Reynolds said that if this motion is defeated, then the rest of the case is moot. Attorney Roosa advised it was moot as far as an amendment to the zoning ordinance but not as far as getting permission to do what they want to do. They would still have to go through the development order process.

Mayor Hughes stated that when you adopt an ordinance, that's a quasi-legislative action. What he's doing is adopting a law that applies throughout the Town of Fort Myers Beach. The one case that we're considering shouldn't be considered in a legislative capacity but in the quasi-judicial capacity

Mayor Hughes said he was ready to support the motion based on the rationale articulated by Vice Mayor Murphy.

Discussion:

Councilman Reynolds would like to eliminate reference to Section III. in the ordinance.

Motion passes 3-2 with Councilwoman Cain and Councilman Reynolds dissenting.

XIV. Public Hearing: Harbor Ordinance

This is Ordinance 00-14. Mayor Hughes read it into the record.

Attorney Roosa has made the redundancy changes for Section IX. suggested at a prior meeting. In Section XXIV. B., there still needs to be a change made: the Harbor Advisory Council should be changed to Anchorage Advisory Committee.

Councilwoman Cereceda referred to a statement in the Observer wherein someone said he was going to ask for exclusive rights for his water taxi. This has never been discussed and we have never said we were going to give anyone exclusive rights to anything. Councilman Reynolds said he spoke to the gentlemen and he denied having said this and that he welcomed competition.

Public Input:

None.

MOTION: Moved by Ray Murphy and seconded by Garr Reynolds to approve and adopt the Harbor Ordinance. Passed unanimously.

XV. Request from MRTF: Renaming Little Estero Island

Town Manager Segal-George stated that Bill Perry of MRTF raised this idea about renaming Little Estero Island Mulholland Point. We would have a sign made and a dedication ceremony. Nancy and all of MRTF felt this was a great idea. Mr. Mulholland was very much involved with the island and would have appreciated having it named for himself.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain to proceed with whatever state, federal and local entities we need to follow through with to put the name Mulholland Point on the map, replacing whatever names may exist, and that as soon as possible

some sort of celebration to commemorate Mulholland Point be put together.

Discussion:

Mayor Hughes said that one thing this will do besides honor John is straighten out a misnomer, because Little Estero Island is not in fact an island, it's a peninsula.

Bill Perry pointed out that the kiosk signs that are up right now have an error in the artistic rendering of the critical wildlife area, which has caused a lot of controversy with some of the property owners landward of the tidal pool at the south end of the island because it engulfs their property. It also calls the island Little Estero Island.

Also on the signs should be the two-shell limit on live shells and should show that no dogs are allowed.

The dedication will be in the fall.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain to proceed with whatever state, federal and local entities we need to follow through with to put the name Mulholland Point on the map, replacing whatever names may exist, and that as soon as possible some sort of celebration to commemorate Mulholland Point be put together. The Town Manager will see that whatever information is necessary is put on the signs.

Motion is approved unanimously.

XVI. PUBLIC COMMENT

A. Mr. & Mrs. French

Mr. French said he doesn't understand all the problems regarding the gas station, but if this man leaves the gas station and locks the doors he puts a lot of people out of work, and who's going to dig up the gas tanks and get rid of them. Mayor Hughes advised that there would continue to be gas pumps there. They are closing down the service part of the gas station, not the pumps.

XVII. ADJOURNMENT

The meeting was adjourned at 7:55 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for Action June 29, 2000

1. Town Manger Segal-George advised that the draft budget will be made available to anyone wishing to make a copy of it. From this agenda forward until we adopt the final budget this will be on every agenda for comments.
2. Someone is coming from Craley next month to look at our pavers and determine if we can recoat them in any way. Absent that, we'll be faced with a situation where we're going to have to replace pavers.
3. Vice Mayor Murphy felt it was a great idea to acquire lots for parks. Mayor Hughes agreed that this is something that we should explore further in terms of the availability of the parcels, the cost and the loss of tax revenues.
4. There will be a Shore and Beach Conservation Seminar Conference over on Captiva in the middle of September. Reservations should be in by July 7. Unless the discount of \$75 is received the cost will be \$300 per person. He would like very much to go. Deputy Town Manager Gucciardo may go and he explained it was a 3-day seminar but a lot of what happens may not be applicable or appropriate for all the members. But in particular he wanted to call our attention to the Thursday afternoon session that they're advertising as the ABCs of beaches. His feeling is that as we go forward with the renourishment project that we may be called on more and more to answer questions about the hows and whys and dollars involved. From what he understands, this could be a very helpful session.
5. Town Manager Segal-George reported that we are going to reapply in August for the archaeological assessment grant for the Mound House, and the state has basically assured us that we will get it again.

The work on the historic structure grant has to all be completed by September 30 and there's no way we can to out and advertise and receive proposals and get this work done. The State Historic Preservation Agency that gave us this grant has really been working to try and help us save it. The Preservation Agency recommended that she contact Archaeological Consultants, Inc. (ACI) in Sarasota and send them the scope of our project and ask them if they could get the work done in that time frame. She did so and received a fax this morning from them. They have a significant resume and say they can get the work done by September 30 and can do it within our \$16,000 budget.
6. The offshore shoal between us and Sanibel may be the best sand source available to us. We need assurance, however, that removing the shoulder of the shoal will not affect the top of the shoal and, therefore, would not affect the storm protection benefit that we get from having that offshore shoal. As a condition of this project, we will have to do monitoring on an annual basis.
7. Councilwoman Cereceda stated that she feels that the county commissioners' courtesy to us is no more than a courtesy. She feels there has got to be some negotiated position regarding parking at Bowditch.. She'd like to be a point person on this to deal with the county and see if she can come up with some reasonable plan on August 29 to implement some parking at Bowditch Pointe.

Councilman Reynolds said he feels that everyone in the county wants parking at Bowditch Point and that Ms. Cereceda is as opposed to parking as he is for it. He would like to be the representative rather than her because he believes he can speak for the people.

Attorney Roosa advised that the county commission said they were going to continue their decision until September 15 and they made it very clear that they were going to make that decision and that we weren't. They also expected that the Town Council would give them further input at that time.