

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
MARCH 8, 1999**

NationsBank Building, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

Mayor Ray Murphy opened the meeting on Monday, March 8, 1999 at 9:00 A.M. Present at the meeting were: Mayor Murphy; Council Members Daniel Hughes, Garr Reynolds, and Anita Cereceda; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

Excused from the meeting: Vice-Mayor John Mulholland

**II PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III PUBLIC COMMENT ON AGENDA ITEMS**

There was no public comment on the agenda.

**IV PUBLIC HEARING: NORMAN PRIMEAU 98-05-223.01S 01.01**

Beverly Grady, with Roetzel Andress, said the applicant is requesting a special exception for a parking lot. It has had a special exception for 5 years. Staff has recommended approval with conditions and the LPA recommended approval with conditions. It is consistent with the Comp Plan and the LDC. Parking is needed in this section of the town, and it is compatible with the surrounding land uses. There is one residential section that will need buffering. The conditions have been different at each stage of the recommendations, so she addressed the LPA conditions 1.) Parking lot surface – the owner could add some additional material to the parking lot, but they believe it is only needed in a limited area where there has been washout. 2.) Buffers- they submitted a site plan that indicated the buffers they would like to propose. They feel it would be an improvement to remove the fence on north and replace it with 10-12 coconut palms of a minimum height of 15’ with a continuous line of 4’ shrubs. On the east property line there is an existing line of trees where it abuts the Lani Kai. Along Estero, they would add a palm in each corner and some ground cover in between (there are already two trees there). On the west, the fence would be removed and coconut palms would be added. 3.) Access - Now there are two points on Estero. They would eliminate one on the east side and put the egress on the 20’ alleyway. The access way is too narrow for both ingress and egress. They need ingress on Estero so there will be a circular traffic flow. 4.) Bumper blocks – they do not see the need, except perhaps on Estero where the cars might go into the pedestrian easement. But now they have an attendant at the parking lot and they don’t think they need it. On the interior, bumpers would get in the way of people with trailers or RVs. They would request no bumper blocks at all. 5.) Drainage – They passed out pictures taken after a rain in the fall of 1998. The neighboring Lani Kai is 100% paved and the water flows from their parking lot, down Estero and into Mr. Primeau's parking lot through the entrance drive, across the parking lot and out the alleyway. That water flow has worn a path of erosion. She presented a drawing as Exhibit A. They propose to install a low (about 3") barrier along Estero that would keep the Lani Kai water from entering his parking lot. They would put new material in to repair the parts of the parking lot that have eroded. There will still be a drainage problem on Estero but it will not come across the commercial parking lot anymore. It won't cure the problem because the water will have to go somewhere. But after installation of the barrier, if there is still a drainage problem on the property, they will agree to submit a plan for drainage improvements to the Town for review and approval. This is an interim use and that is why they need the extension. The site will be developed, but the town needs the parking now and it will be viable for the owner to use.

Mr. Hughes said he has a problem with the drainage condition unless they define who determines if there is a drainage problem. The town could say there is and Mr. Primeau could say there is not. He suggested adding “if it is determined by the Town.” Ms. Grady said people from Lee County development review could make that determination. She said it should be someone with an engineering background that is doing it for the town. Mr. Hughes asked about the rationale about why it should be a 5-year extension. Ms. Grady said the reason is that they will be doing some improvements and there will be some cost

involved. It may not be needed for all of five years, but to make these improvements it needs to be that long. In addition she thinks the town will need the parking for five years. Mr. Hughes suggested that if the request is approved with conditions, the town should include a date when the improvements would be completed. Mrs. Grady said they would agree to June 15 because there will be less use of the lot at that time. Mr. Reynolds asked why they did not include buffers along Estero. Ms. Grady said they need clear site visibility that it is a parking lot and they need to see the access point clearly. The point of buffering is to protect the residential areas. No buffer has been required on Estero, but what they are suggesting would just be an improvement. They don't want a shrub border of 4' height, because that would be a dangerous block of sight line for cars leaving the property. Mr. Reynolds feels they need the bumpers on Estero. Ms. Grady said they feel the problem of people parking on the right of way has been fixed now because of the attendant. Mr. Reynolds asked why you can't have ingress and egress on Estero. Ms. Grady said someone had suggested that they only use the access way so they had not really addressed only using Estero. But the traffic flow really works best if you use Estero and the alleyway. She said the egress is planned to be where it is now and it works now. Mr. Hughes pointed out that the staff recommends no access on Estero. He also pointed out that Mississippi's parking encroaches on the alleyway. We need to make sure that people parking at Mississippi's do not stick out into that 20' alleyway. He thinks the modification to one access on Estero and one on the alleyway is viable. He also said the staff recommended a wall with shrubs on both sides of the north and they are suggesting landscaping and no concrete wall. Why do they not want the concrete fencing? Ms. Grady said this is an interim use and that kind of fence is a major permanent structure. Eventually this lot will be developed for a more permanent use and it should not be impeded by that wall. Mr. Hughes said he is not convinced it will become anything else. It will have already been a parking lot for 10 years. He suggested this only be approved until July and then all of our LDC would apply. Ms. Grady said they don't know what the LDC will say yet so they can't agree to that now. There is not a need for a permanent wall. There is a need for buffering and they think their plan is better than a wall. Mr. Hughes said the development order calls for parking under the building on stilts, so if it is developed that way, this temporary parking lot will become a permanent parking lot. Ms. Grady said she is not discussing the development order today, and things have changed and they will be looking at that plan again. There are now incentives in the overlay. They will probably be bringing revisions to that plan and will be looking at bringing the building to the ground. Mr. Murphy said he does not see the need for the interior bumpers, but he does see the need on Estero. It would also discourage people from exiting the parking lot on Estero across the sidewalk, which is a safety issue.

Nettie Richardson, with Lee County Development Services, was sworn in. There are now four sets of recommended conditions. Every time it has been heard, it has been studied and everyone recommends approval but the conditions are different. The applicant's suggested improvements today are better. She submitted a memo of March 3 that outlined each case. The LPA recommended approval but put four conditions and modified some of the staff recommendations. They were concerned about the bumpers and the drainage. They stated that the lot should be shell-based with designed drainage and also bumpers. Also the staff had recommended an 8' fence but there were concerns from the neighbors about security and also how it would look. So the LPA said it should be shrubs. Also they recommended that traffic flow be in accordance with the development order. Also signage would be permanent and not exceed 12' and must be approved by two LPA members. The consultants said the parking surface could be gravel/river rock. In buffering, the consultants recommended that the wooden fence be removed and replaced with a concrete wall and 30 native shrubs per 100' unless the town manager approved a different design. Regarding the access points, the consultants said there should be no access on Estero or Santos. They said that bumpers should be on the whole perimeter to protect the buffering. They said the lot should provide drainage on site. Mrs. Richardson said the existing 1987 development order has been continued 3 or 4 times already. On February 24 Lee County required another extension for 2 years. That is usually an administrative procedure by Lee County but has been put on hold until the council could address it today. Staff recommends that it is obsolete and should be discontinued because it is not consistent with our new Comp Plan. Staff agrees there needs to be a time limit for completion of the improvements.

Ms. Cereceda said the development order worries her because it doesn't conform with the Comp Plan, but where does that leave Mr. Primeau? Mr. Reynolds said if there are no bumpers around the perimeter, he is afraid the lot will end up with the way it is now. This does not look like a temporary lot anymore but it is being governed on temporary conditions. Ms. Richardson said the applicant used the same argument 5 years ago because they did not want to do the improvements on a temporary lot. Now they are asking for 5 more years. Mr. Hughes asked why staff does not recommend a buffer along Estero.

Pam Houck was sworn in. She said she does recommend a Type A buffer along Estero, which would be 4 trees and 12 shrubs per linear foot. The LPA recommended a C buffer along Estero. Ms. Richardson said a lot of the property owners behind on Santos did not like the 8' fence. The consultants just show trees along Estero. Mr. Reynolds asked how far back shrubbery and trees must be from the right of way. Ms. Houck said typically the ROW is 10' and the trees and shrubbery is usually centered on it.

The public hearing was opened. There being no public comment, the public hearing was closed.

Ms. Grady said their buffer along Estero would provide for 4 trees and shrubs on Estero so they would be in agreement. What they are proposing would exceed the requirements along the north and east. The east side already has large trees with a canopy. They are opposed to a concrete wall because they think it is an interim use. This meets a need of the town and they believe they have achieved what is needed without such a permanent structure. The long-term plan would be for access on Estero and the alleyway would be a pedestrian walkway. Mr. Reynolds asked how many spaces will be available for parking. Mr. Primeau was sworn in. He said the number depends on what is happening on the beach. Sometimes there are motor homes and cars with trailers. They can park about 70 cars. Mr. Reynolds said he thinks the lot has gotten a bad rap on drainage. Mr. Primeau has to do something about everyone else's runoff.

**Motion:** Ms. Cereceda moved approval with the following conditions: 1.) The parking lot surface shall be gravel or river rock on the whole surface with bumpers along the Estero property line; 2.) Access will be on Estero and egress on the alleyway in accordance with the applicants proposal; 3) their proposal five regarding drainage would be accepted with the addition that the review will be made by county staff as to sufficiency; 4.) buffers will be in accordance with the applicant's condition two with the addition of a completion date of June 15, 1999. Mr. Hughes seconded the motion. **Amended motion:** Mr. Hughes moved to add the following conditions: 5.) Development order is not be extended and will be allowed to expire; 6.) Signs will be in accordance with the new sign ordinance; and 7.) the temporary parking lot use shall be allowed for a maximum of five years from this date and shall expire on March 9, 2004. Ms. Cereceda accepted the amendments to the motion and it became the main motion. **Discussion:** Mr. Reynolds said he is concerned that there would be no opaque fence along the back. He thinks it should be a 4' fence with shrubbery. **Action:** Mr. Hughes, aye; Mr. Reynolds, aye; Ms. Cereceda, aye; Mayor Murphy aye. The motion carried unanimously.

The council took a break at 10:30 AM and reconvened at 10:45 AM.

## **V Public Hearing: Thomas D. and Susan Piascik 98-12-279.01Z 01.01**

Mr. Piascik was sworn in. He said the council has voted to put these two parcels into Mixed Residential. They are affected adversely by commercial. These parcels have been in his family for 35 years and they want to do something that is fair and right with that property. Mr. Piascik said the house was built as a beach cottage on the Estero lot for his aunt, and there is terrible drainage on the lots. The utility area under the house was rotted away. He investigated raising the house to fix the drainage but it was not economically feasible. The house had a flat roof and no insulation. The house was not tied down to the pilings. So the home was moved. The photographs he presented as evidence were taken within the last 3-5 days. Photographs A 1-4 are the adjoining commercial properties: Century 21, laundromat, and car wash. B 1-3 are of the west side adjacent to the property. A variance was asked and granted for the porch. It is single family residence but for five years there has been a sign saying it is for rent. The side is supposed to be beach access but it is posted "keep out". C 1-9 relate to the house to the south that faces Estero. They have jet skis and a boat stored there and they use his property as an access. D (lot 2) is the lot behind his property. It may have an accessory apartment under it. E is a home that is east of lot 2. There are appliances stored underneath. Lee County granted an apartment underneath it. He didn't take pictures of the Women's Club, but they do bring in a lot of traffic. E5 is a garage used for storage, E7 shows a seasonal rental, E9 has a lot of concrete and not much vegetation and a concrete block wall. F 1-5 all are supposed to be single family but they don't look like it because of the number of cars and motor homes. G1 (lot 8) is listed for sale now at \$229,000 and is assessed at \$98,400. It has a mother in law apartment added to it. The garage has no windows and is air conditioned and they are running an upholstery business out of there. Photograph "I" is a house on Bonita that is built so high they can view the Gulf. H1-2 are duplexes on Indian Bayou. A home built like that is comparable to anything in McPhie Park and that is what he has in mind to build. A duplex next to a single family has not been proved to devalue the property next door. J 1-5 are of his own residence in Lee County. He wants to use the two lots for something that is

pleasing. He envisions someday living in one of the duplexes and leaving the other three units for his three daughters. He may not end up building two duplexes but he wants the right to plan for it. He showed a drawing representing the two lots and how the buildings could be configured. If they were single family homes, they would have to put up extensive buffers to protect from the laundry and the car wash, which is operated 24 hours per day. Duplexes would be more compatible with that area than single family homes. People have said there were offers on the house and he is just being greedy. There was only one offer and that was from the fire department. He has never put boats or parking on it--the neighbors have just chosen to use it for parking.

The council members disclosed their ex parte communications.

Mrs. Richardson said the request is to rezone from RS1 to RM2. The surrounding areas are RS1 and next door are C1 commercial businesses that generate a lot of traffic, and it is a highly traveled intersection. However staff believes RM2 is inappropriate, but they would recommend TF1 which would still allow duplexes. It would be consistent with policy 4-B-4. Also Policy 4-C-5 would allow it to meet the density. At the LPA hearing, they recommended denial of RM2. Mr. Hughes asked under RM2 or TF1, would the setbacks be different than from single family on this corner lot. If the driveways face Sterling, would that affect the setbacks? Mrs. Richardson said the street setbacks would be 25'. The side setback would be 7' for single family or duplex. TF1 is a 6' side setback. The setback for corner lots can be modified to 15'. The rear setback is 20'. Mr. Hughes said he is concerned about where it would sit on the lot. Mrs. Richardson said TF1 is only 2-family and RM2 is multi-family and would allow more than two, depending on the size of the lot.

The public hearing was opened.

**A FRANK TUOHY**

Mr. Tuohy said Mr. Piascik talked about putting an RV park at that location. The neighbors are trying to protect their property. In their neighborhood several properties have been sold quickly. There is a vacant lot that was just sold. Property is selling and getting good prices. He is disturbed that Mr. Piascik has gone around and looked at violations in the neighborhood. The laudromat probably shouldn't have been put in, but it was and they are trying to prevent more commercial and rental property. He thinks Mr. Piascik can sell his property and get good value for it.

**B BETTY SIMPSON**

Ms. Simpson said she has served on the LPA, but she is speaking as a property owner within about 125 feet. She has owned it for many years and rents it. There used to be a beach cottage on Mr. Piascik's property and it was a fine home. Mr. Piascik inherited it and the house was moved off. Just because a property doesn't sell quickly does not justify a change in zoning. What if it does not sell as a duplex property? Will he come back for another zoning change? Almost all houses on Estero are near commercial, but there is always buffering. There can be a rule that the car wash must close at night. Mr. Piascik's is not the only large lot in the area. The large lot would allow buffering on the street side.

**C CLAUDE GOBET**

Mr. Gobet said he bought a single family home there recently because it was in a single family area. Don't spoil this good place to live.

**D HERB CORSON**

Mr. Corson said he has lived in the area for about 40 years. Once this happens and you have amended the law, you will have the domino theory and there will be no stopping it. He does not have a rental home. He and his family use it. They would like the neighborhood to stay the way it is.

**E ELEANOR HARKINS**

Mrs. Harkins said was told by her mother who lived on Lauder Street for over 40 years, that the laundry was put there one summer while everyone was away. Now that we have a town, she thinks they should try to keep what we have as it is. They love their homes and bought them because they are single family homes. If they wanted duplex they would have gone over to Indian Bayou. She thinks the reaction from neighbors would be that they would make their house duplex too. Please keep it as it is.

**F JOSEPH MORELLO**

Mr. Morello read a letter dated Feb. 5. It said when they purchased their home it was because in was a quiet area. There used to be a nice single family home on that lot. The street is already too busy and does not need extra density on it. They urged it remain single family. He made a contract offer on Mr. Piascik's property and did not even receive a counter offer. They have called Mr. Piascik's home and he never returned their calls. If he gets a duplex approved, he sees no reason why he shouldn't apply for one himself.

**G WILLIAM WENG**

Mr. Weng has lived on Sterling for 22 years on the Gulf. The devaluation of the neighborhood is a factor. The most serious thing is the added congestion at that intersection which is already dangerous. It should remain a single family lot.

**H EDWARD STIVELETTA**

Mr. Stiveletta is opposed because it would adversely affect his property which he just recently purchased.

**I CAROLYN STIVALETTA**

Mrs. Stiveletta said her property abuts Mr. Piascik's property. They purchased it one year ago. They are concerned that the value of their home would go down. It would be at their expense.

**J SUE SCOTT**

Ms. Scott lives on Lauder and is an adjoining property owner. It is legally enclosed on the bottom. She requests this not be allowed. Mr. Piascik has talked to them about putting in a high-end RV park.

**K MIKE CHILDS**

Mr. Childs said if Mr. Piascik turns his buildings onto Sterling and builds it up 16' high, it would take out all the privacy in their yards. Mr. Piascik does not live in this community. They ask that this be denied for the value of their property.

**L CHRIS SWIHURA**

Ms. Swihura said she is diagonally across the street and is opposed for the loss of property value. The owner will not be living on site or even on the island. The street and traffic congestion is complicated by a blind curve that is already unsafe. To place four apartments above 16' would tower above the neighbors' yards. She requested single family remain in that area.

**M KATHY CASSON**

Ms. Casson lives on the same property as Ms. Swihura and they purchased it 4 years ago. They love the single family residential area and they would hate to see it depreciate because they have put a lot into it. She read a letter from Ardis Chester who expressed her disapproval. There is no reason for it be rezoned. It has poor traffic flow and is a hazardous corner.

The public hearing was closed.

Mr. Piascik said he keeps hearing the profit motive. No one has come forth with any substantial data that property values will come down. The domino affect cannot take place because when they voted his lots to Mixed Residential, they were the only two lots that were changed. The property appraiser gave a hardship appraisal on it years ago because of the commercial next door. The man who said he made a cash offer may have but the offer may have been so ridiculously low that it didn't justify a counter offer. He still stands with his statement that he did not get an offer. Lot 1 has a Sterling Address, so you can't say it was intended to go on Lauder. Regarding setbacks stated by Ardis Chester, he visited one of her single family homes. There is a property behind it that she rents that doesn't even have a place to park. He has been trying to sell the lots for \$75,000 each and that is not being greedy. Mr. Spikowski first said that a strip shopping center would be a good buffer for his lots.

**Motion:** Ms. Cereceda moved that the request be denied. Mr. Reynolds seconded the motion.

**Discussion:** Ms. Cereceda said his financial status is not of relevance. If he got the lot free or he paid a million dollars, it doesn't matter. Her concern is whether they should increase the density on those two lots. The Comp Plan says we are to control density. It is a single-family neighborhood, regardless of whether they are modern or comfortable homes. Mr. Reynolds asked for clarification on whether they are voting on changing to RM2, not to TF1. They are talking about zoning, not the type of building to put on there. He said the problem is if we approved RM2 he could come back and ask to put a 4-family on each lot. Mr. Hughes said the applicant has stated in the record that he is only seeking to put duplexes on that lot. He is not seeking all the uses in RM2; he is only seeking the use of a duplex.

**Action:** Mr. Hughes, no; Mr. Reynolds, aye; Ms. Cereceda, aye; Mayor Murphy, aye. The motion carried. Mr. Hughes explained that he was on the LPA when they decided to change these lots to Mixed Residential. He agrees with staff that the proposed zoning is consistent with the Comp Plan and the Mixed Residential category. He thinks we are reversing a previous decision. He is sympathetic with the property owners. He would have wanted to approve a duplex on Estero but not on Lauder.

The council took a break at 12:43 PM and reconvened at 1:15 PM.

## **VI DOCK OF THE BAY, INC. 98-11-161.02V 01.01**

Russel Shropp, with Henderson Franklin, was sworn in. He said there are two requests for the same property. They want a submerged land lease for the dock that is there and also an expansion of the dock. The state of Florida requires this step. The docks have been there since the 1940's. They have been used for charter fishing, live-aboards, etc. In 1984 the previous owner applied for and received grandfathered status for the dock. The grandfathered status has expired because of the sale of the facility. He passed out two drawings showing the existing dock and the proposed extension. The staff report is for approval of Request A, but denial of request B for the extension. The county's position is that it is historically not a marina but a multi-slip docking facility. The applicant's position is that the facility is a marina. In C1 a marina is a permitted use by right if it was in existence already. If the town decides it is not a legal marina use, then their position will be that they have taken action to get rid of an existing permitted use. He understands there has been concern that these docks would be used for commercial shrimping. The owner has stated that these will not be used for that.

Joanne Semmer James, consultant for the property owners, was sworn in. Mrs. James showed five aerial photographs from 1944 to the present showing that the docks have been existing as early as 1944 to the present. They show that the dock has not changed much from what is there now. She also showed an advertisement from the Beach Bulletin from 1954 showing the dock was in use. She gave a history of the use of the property. It was used for repair and for rental slips. The cradle to haul boats out of the water is still there. It was also used as a commercial charter boat location. Two pump-out stations were installed and public bathhouses were added in 1996. Mr. Reynolds asked why the staff could not find any records that it was used as a marina. Mrs. James said the previous owner said she was never asked if it was used as a marina.

Mr. Shropp said the staff report cites a code enforcement action in 1994 where the county determined there was not a marina at this location, but a multi-slip docking facility, citing Section 26-116 of the LDC. It says any marina must have certain things required. The owner had to come into compliance with these items which is applicable only to marinas. If staff did not think it was a marina, they would not have required them to comply. The owner installed the pump-out facilities and the occupational license calls it Del Mar Marina for boat dockage, repairs and storage. There is a provision in the code that no person shall live aboard except at a marina. Live-aboards have been there for many years. Also in the town's Comp Plan, it talks about existing marina space and the potential for it to be taken over by commercial shrimp boats. In the narrative it refers to the docks at the end of Del Mar as a marina facility that the town desires to continue. The existing docks constitute a marina and have always been a marina under our definition. It is a legal use under C1. The expansion is a legal use if it complies with other applicable regulations. It is consistent with the Comp Plan. The staff report suggests approval of Request A but has conditioned that approval with 3 conditions. The conditions require that exotic pest trees be removed, the existing use for liveabords may be used but shrimp boats are prohibited, and the parking area must have a limited review development order and be brought into compliance. You cannot impose conditions for something that has no new impacts. They have been there for years. There must be a rational reason for the conditions. If you approve the expansion, it would be appropriate to attach certain conditions to address the new impacts. They request approval of both requests. He passed out a sheet listing the conditions they believe are appropriate if the second request is approved.

Mr. Reynolds wondered why the client brought a shrimp boat over there if he had no intention of parking shrimp boats there. Mr. Shropp said that the client did think about that use at first, but now realizes that will not happen and will no longer request that use. Mrs. James said the extension of the dock was designed this way to accommodate larger boats. If it were not done this way it would go into the adjoining riparian rights. Mr. Reynolds said the neighbors are concerned about the large boats going into that facility. Mr. Hughes asked how far out into the bay would the proposed extension go. It was determined that the extension would be 110' which would make the whole dock 120'. Mr. Hughes said that boats that are mooring in Matanzas harbor are encroaching on the channel. It is not a very wide channel along there. Would extending that 110' go into the area that boats use now? Mrs. James said the Island Bay Marina next door goes out farther than this that is proposed. Mr. Murphy asked if he could assume that shrimp boats would not be repaired or serviced at the dock either. Mr. Shropp said that was correct.

The county requested five minutes to review the new evidence presented.

The public hearing was opened. The public who wished to speak were sworn in together.

**A NAOMI BLEILL**

Ms. Bleill said she has lived on Pearl Street since 1969. She lives now at the Island Bay Marina. As long as she has been there, the Del Mar docks have never been known as a marina. It has mostly been for parties. It was rowdy. She can't believe the pumping stations are operable. You can see feces and garbage floating from under the dock. There have been shootings and people found in cars in the parking lot. They should not have a permit if they are going to operate in that fashion.

Rick Joyce, Deputy Planning Director of Lee County Development Services was sworn in. He said this is the first local approval for a submerged land lease we have had in the town. The idea is that you are leasing public property for a private use. The state allows that through a letter of consent. If that use is commercial or revenue-generating, it must go through this process. This grandfathered existing use must be converted to a lease since the property was sold. Staff looked through the records. There was a code enforcement action in 1994-5 and there were discussions at that time about whether this was a marina. He said that part of leasing public property is that there must be some benefit that can be obtained for the public, so he believes the conditions can be attached to Request A. Ms. Cerededa asked if the applicant knew he would have some risk in not getting the grandfathered conversion when he bought the property. Mr. Joyce said that is correct. Mr. Hughes said it is only the transfer of title that triggered this. Mr. Joyce said that is correct. The time limit would have expired in 2000 anyway. Mr. Reynolds asked if the lease would have a time factor. Mr. Joyce said generally they are for five years and are typically automatically renewed unless the governor and cabinet who sit on the trust board change the policy.

Pam Houck was sworn in. She addressed whether this is a marina and the consistency with the Comp Plan. In the LDC, C1 zoning allows existing marinas only. She is not convinced from the information given that it was a marina in 1986 or 1993. The code procedure said it was not a marina. The property is in the Mixed Use category, not the marina category. The Comp Plan only identifies Moss Marina and Mid Island Marina as marinas. Mixed Residential is for a mix of housing types, mobile homes, etc.. An expansion of the dock at this location is inconsistent, whether it is a marina or a multi-slip docking facility. The Plan seeks to protect neighborhoods.

The public hearing was continued.

**B LOU CHINA**

Mr. China said he is in total opposition. He lives on Pearl Street.

**C ROBERTA BRIGHT**

Mrs. Bright lives on Del Mar. She said many of the residents of Pearl, Del Mar and Fairweather Streets came to the LPA hearing because of their concern about the commercial. Because the LPA denied the extension, they thought that was the end of it so they didn't show up today. They are still opposed. They have no objection to what is there now, but an extension would be a density problem for boats and for their street.

**D JACK BRIGHT**

Mr. Bright said his purpose is to protect DelMar which is a rapidly-improving street. They don't need any setbacks and this could be one. He is concerned about the configuration of the dock because it doesn't limit the size of boats. We need to be concerned about diesel boats. The town does not need another monitoring job. We can't monitor what we have to monitor now. He has no problem with people who live on the boats now. He is not sure if they have holding tanks or not, but when he goes out in his boat there is a strong fecal smell from the dock. He does not see that it is a legal marina, but if it is, there needs to be some changes to protect the quality of the water in the bay. People are putting trees in their yards, there are new houses, old houses are being rebuilt and renovated, and we are becoming the island we want to become. Even the Shamrock and Periwinkle are looking better. He hopes they will decline the request.

**E DON BAKER**

Mr. Baker lives on Pearl and used to live on Del Mar. As a high school student he fished on the dock. The 1954 advertisement for the Beach Boat Haven was for his father's marina, which is now Island Bay Marina. He has no opposition to Request A, but boats should be limited to the 30' length as in the grandfathered use. The definition of a marina says that it must have engine repair, etc. Those have not occurred at Del Mar since 1990. The expansion would mean they could have a casino boat or commercial fishing or large boats that would be detrimental and cause more traffic on Del Mar.

**F LORETTA PORTER**

Ms. Porter lives on Pearl Street at the water. She has been coming down here for about 50 years. She feels that there is a hidden agenda. If we give an inch today, we will have something industrial come on this side of the island. She doesn't want to deny someone enjoying the beauty of the bay. But we need to be concerned about the density in the water. It is so thick now. She has had three boats come to her dock for repairs in the last 36 hours. The pollution is bad there now. She is from Cleveland where they had a river catch fire. But that was cleaned up and we can too.

**G TRACY MOON**

Mr. Moon lives on Pearl Street. In the 70's he started coming down here and used to swim in the bay and could see all the way to the bottom. Now he won't even swim on the bay side. His wife is the owner of Island Bay Marina. It was not in good shape when they took it over, but they hired a dock master and he has done a wonderful job of cleaning up the area and supervising the dock. It depends on how the property is going to be run. He knows the man brought the property and wants to make money, but there are a lot of problems involved. The dumpsters are overflowing and garbage is on the ground.

**H JEANNE MOON**

Mrs. Moon said that in November they purchased a home on Pearl for their children. They love it here but she hates to see commercial coming in next door. She feels safe walking day and night but she does not think it will be safe if commercial comes in. She is not opposed to Request A and hopefully all the regulatory agencies will see that it is run properly.

**I MIKE SOOKLARIS**

Mr. Sooklaris has lived on Del Mar for about 10 years. You need to look at the definition of marina and what is allowed if it is a marina. People will call it a marina even when it is not. If you open the expansion of something that is currently not a marina, then you can't stop it. If it becomes a marina they can have forklifts and pull boats out and can have a large dock and large boats, and it turns his street into a nightmare. If not shrimp boats, he is sure there will be something like a casino boat that will be loud and have lots of people. Look at the definition--it is scary. In the previous case, people were concerned about a duplex and having 3 or 4 more people on a street. If they allow industry on this side of the island, it will be one of the single largest blows to this island. They will want to pick up the property next door and expand further. If you have a marina with repair capabilities and facilities, you could take a shrimp boat there for repairs and it could stay there for a long time. This is industry expanding. Don't let it happen.

**J ED BELLEFEUILLE**

Mr. Bellefeuille said Fort Myers Beach is beautiful and we have the best government he knows of.

**K CECILE BELLEFEUILLE**

Mrs. Bellefeuille said Pearl Street is beautiful and they come down for 4-5 months of the year. Please keep it the way it is because it is so clean compared to what it used to be.

**L ELAINE LUSSIER**

Ms. Lussier lives on Pearl Street and hopes to retire here. She is concerned about the environmental impacts of commercial development on the back bay. She would hate to have the sanctity and peace of that area destroyed. They moved in Island Bay Marina back when it was not the most desirable area. It has been cleaned up and she would like the council to decide against Request A and B.

**M CLAIRE ROBERTS**

Ms. Roberts has lived on Pearl Street for almost 12 years. It is so peaceful and quiet and she is opposed to anything that would change the beauty of that area.

**N ALYCE CAVENAUGH**

Ms. Cavanaugh lives on Pearl Street. They are opposed to the expansion. She hopes they will consider their welfare.

The public hearing was closed.

Mr. Shropp said that he believes the determination in 1994-5 that it was multi-slip facility did not go to hearing but was an internal Lee County staff determination and the applicant had no opportunity to appeal that. He said their position is that the marina is a permitted use. If you are saying that the Plan is taking that away, it would give rise to a claim under the Burt Harris Property Rights Act. There are pump-out stations there. It may not be what you envision a marina to be, but it meets the criteria and should be approved.

Ms. Cereceda asked Mrs. Segal-George if this went before the MRTF. Mrs. Segal-George said no. She asked Mr. Hughes if the same argument would apply to this as to Mr. Primeau's development order to let it expire because it doesn't conform to what the town is trying to do. Mr. Hughes said it is similar but in the Primeau case, that order is expiring and they need an extension. This is a conversion of a grandfathered situation. Ms. Houck said the staff believes the existing multi-slip facility is a grandfathered structure, but they do not believe it is a lawful marina. She said a marina is a boating facility chiefly for recreational boating which provides a boat ramp with parking for vehicles and trailers, boat slips, dockage or dry boat storage with a service place to place boats in the water and one or more marina accessory uses. Accessory uses include sale of fuel, marine supplies, boats, motors, boat parts, restaurants, boat rentals, minor boat rigging and motor repair. It is their position that those uses did not exist as of 1986 or 1993. Regarding the submerged land lease, they do not know what the state would do if they took no action. Ms. Cereceda said she does not think we have to extend the lease. We have the opportunity to start over. Mr. Roosa said that in Mr. Primeau's case there was no current use that you are taking away. If the state's preexisting non-conforming use expires, then they have to start paying for the land. Up to now they got the use for free. To get the lease, they have to get the blessing from us on zoning. Ms. Cereceda asked if the state is looking at these leases in order to get rid of undesirable facilities. Mr. Roosa said he thinks they are looking at revenue only.

**Motion:** Mr. Hughes moved to accept the recommendation of the LPA and the county staff to recognize the nonconformity of the docking facility and allow the right to maintain and improve the existing dock, incorporating the conditions of the staff and LPA. Mr. Reynolds seconded the motion.

**Action:** Ms. Cereceda no; Mr. Reynolds, yes; Mr. Hughes, yes; Mayor Murphy, yes. Motion carried.

**Motion:** Ms. Cereceda moved to deny the request for the proposed expansion. Mr. Reynolds seconded the motion. **Discussion:** Mr. Reynolds said he has trouble with businesses or residences when they want to use public property. When you give that use away, it never returns. **Action:** Mr. Hughes, aye; Mr. Reynolds, aye; Ms. Cereceda, aye; Mayor Murphy, aye. The motion carried unanimously.

#### **VII JAMES & DEBORAH FIGUERADO IN REF. TO PUBLIX SUPERMARKET 96--02-186.02Z 02.01**

Mr. Roosa stated that this request has been withdrawn by the applicant.

Mayor Murphy said the state attorney requested a proclamation for Juvenile Justice Week March 14-20. Since the Council will not meet again until the 15<sup>th</sup> he read the proclamation.

#### **VIII PUBLIC COMMENT**

There was no public comment.

#### **IX ADJOURNMENT**

**Motion:** Mr. Hughes moved and Mr. Reynolds seconded that the meeting be adjourned. The meeting adjourned at 2:55 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary