

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
SEPTEMBER 20, 1999  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

Vice Mayor John Mulholland opened the meeting on Thursday, September 20, 1999, at 9:13 A.M.

Council members present at the meeting: Vice-Mayor John Mulholland, Daniel Hughes, Garr Reynolds and Anita Cereceda.

**Absent from the meeting:** Mayor Ray Murphy.

**Town Staff present:** Deputy Town Manager John Gucciardo and Town Attorney Richard Roosa.

Also present: Mike Raydor, Pam Houck, Beverly Grady, Tom Kohler and Bill Spikowski.

**II. PLEDGE OF ALLEGIANCE**

All assembled at the meeting recited the Pledge of Allegiance.

**III. PUBLIC COMMENT ON AGENDA ITEMS**

None.

**IV. PUBLIC HEARING: 99-05-102.05V 01.01. EARL EWING & ALTHEA GONYA REP. BY PETER ASHDOWN.** A variance request in the residential single family (RS-1) district from the minimum required street setback of 25 feet to allow a setback of 10 feet per the Land Development Code, and a variance in the RS-1 district from the minimum rear setback of 20 feet to allow a setback of 9 feet per the Land Development Code. The property is located at 4660 Estero Boulevard.

**Mike Raydor**, Director of Planning for Humphrey & Knotts, was here on behalf of Mr. and Mrs. Ashdown who are the contract purchasers of this property. They are looking for two variances, one from the front setback and one from the rear setback. He advised that the sketch in our packets will show that this is a very unusual situation, because the frontage of this property along the access lane is the wider of the dimensions. Normally that would be the depth, but it's the width the way the County is viewing it. According to the County's interpretation and the Town's interpretation, there is a very wide but shallow lot, but if it were turned around, the variance wouldn't even be needed here. If these were sides, they would be meeting the setbacks with room to spare. Over and above that, he thinks that the most important piece of information for our purposes is the fact that this lot received a single family determination from Lee County in 1987, which means it is entitled to have a single family house built on it. However, when you go through that procedure, you still have to come back and receive variances for any setback issues. He has come to understand that without that, you could put a house that went from lot line to lot line. They believe that they are asking for a very modest variance from the front and rear setbacks on this property given its location and the price of the lot and the size of the house being proposed.

This matter has been to the LPA twice, who have recommended some conditions due to the concerns of a neighbor. They have tried to be as cooperative as they could. The staff will confirm that this was not a self-created hardship. This has been a platted lot since 1925 and its configuration has not changed in all those years.

Pam Houck, Principal Planner with Lee County Development Services, explained the variances before us today to permit construction of a single-family house on a lot located in the Hyde Park Subdivision. The lot is a gulf front lot that is 50 feet wide by 100 feet deep. Because there is a 20-foot-wide access easement going along the westerly side lot line, by definition that becomes the front of the lot and you have a lot that's only 50 feet deep. Staff has recommended approval of the variances with conditions limiting the variances to the 10-foot setback to the access easement and the 9-foot setback from the rear property line.

There was some discussion during the LPA hearing on the easement and whether or not it was a public or private easement. She has researched all the minutes and there was some discussion before the Board of County Commissioners in 1991 at a point in time when the easement was improved for beach access. The attorney for an adjacent property owner had asserted that that easement had been vacated. It has not. She has thoroughly checked all the County records and has even talked to the County Attorney, who was involved in that process, and the access has not been vacated and is still a public easement.

Staff's had also asserted that since this lot had been part of a number of lots that were all under single ownership, that you could not separate those lots. But because it is a platted lot, each and every lot is entitled to development with a single-family house. And this lot did receive a minimum use determination from the County, which is still recognized under the Town's comprehensive plan and is consistent with the plan for a single family home.

#### Questions from Council:

Councilman Garr Reynolds asked Ms. Houck what the setback will be on the side of the lot where the other house is. He was told that the street setback will be 10 feet, the interior line adjacent to the next lot will be 9 feet. Mr. Reynolds ascertained that the street setback referred to the access easement.

Councilman Dan Hughes said he read the opinion of the County Attorney, but he noted that it was written in 1987 and the parcels were conveyed in 1988. Mr. Hughes asked if that County Attorney is correct on this opinion, would that also mean that all of these other lots could have been developed as residential lots? He was told yes. On the survey plan, Lot 4, immediately next door, would have absolutely no access to any street or roadway. Ms. Houck explained that there is a provision in the plan that you have to have access. At the time that minimum use is reviewed, it is reviewed for access. Dan Hughes stated that then if it didn't have access, it wouldn't be buildable. So it's only because this lot is a legal nonconforming lot.

Mr. Hughes asked Ms. Houck if she knew when the house next door was constructed, and she said that she didn't. He then asked isn't there a requirement that if you build over one lot line and there's common ownership, they have to file a plat of consolidation? He was told no. Mr. Hughes stated that that was not the issue here but that he feels strongly that we should address this issue. Looking at the survey plat, he said that Lot 6, the lot that fronts on Estero Boulevard, and a little triangle of Lot 2 down in the corner on the gulf side are all part of one residence now. He said that he compared this survey plat to the legal description of the deed and this is what was conveyed in the deed to the present property owners. And then they either must have sold or

built themselves and just left Lot 5 on its own over there. According to Illinois law, once that went into common ownership the attorney's opinion would have been rendered invalid, but this is apparently not the law in Florida. Pam Houck stated that the way it's treated is if two lots are recorded on a single deed and you build on the two lots, then the interior lot line is not an issue. Dan Hughes asked what if taking just a little piece of Lot 2 then made Lot 2 substandard? Pam Houck advised that if that little piece was removed from Lot 2 the lot of record status would be lost. There is a provision for recombination of lots status, but you have to have larger pieces than what you started with.

Mr. Hughes stated that the County's position is that the attorney's opinion is still valid, because it doesn't matter whether or not a person later acquired that in one common ownership. Ms. Houck said that was correct, and her understanding of the Town's interpretation of those minimum use determinations that were issued by the County is that they're recognized under the Town's plan.

Mr. Hughes asked the significance of the approximate flood zone lines on the survey. Ms. Houck advised that there were two issues. Because they are seaward of the current coastal construction control line, it means they will have to have a different type of construction. The 1988 line, also known as the 1978 line, is a setback line, and the principal structure cannot be built seaward of that line. She thinks that line comes across approximately where they're showing the tip of their porch. And then there is also a setback from the Gulf, which is 50 feet. That would not be a deterrent from their getting their development order.

Vice Mayor John Mulholland ascertained that Ms. Houck had said that the access to the property is by the road right next to it that runs from the Gulf up to Estero Boulevard. And it's a public access and not a private driveway. The beach access, Mr. Mulholland said, looked to him very much like the beach access in question that's going to give the applicants access to this plot, and Ms. Houck concurred. John Mulholland also noted that she had recommended granting the variances and she then had conditions concerning vegetation and removal of trees. Ms. Houck said she had no objections to those conditions if the LPA and/or the Town Council wish to impose them, but that Staff did not recommend them. The opposition's attorney proposed those conditions and the applicant agreed with them.

Councilman Garr Reynolds stated that a power line goes over the porch of the building and asked if that was permitted. He was told that it would have to be removed during or at time of construction and relocated. He also asked if we could have permission to change the map called Exhibit C, which was originally Exhibit B, where it says "existing 20-foot road." It should say existing 20-foot access. Pam Houck advised that that was the way the applicant labeled it. It is an existing public road and Staff can call it that if that is our wish. She noted that "road" was interchangeable with "street" or "access."

Public Comment:

None.

Mike Raydor stated that at the risk of confusing the issue, he would like to address the conditions a little more. They are satisfied with the LPA recommendation and would urge us to accept it. The neighbor had requested some more stringent conditions as part of the approval. His clients, since they're only planning to build a very modest one story house with no porch, were willing to go along with that in order to get through the process, recognizing that there may be some concern there. But, frankly, given that this is a gulf front lot that's selling for a quarter

of a million dollars, it doesn't seem reasonable to attach some of those originally requested conditions. The LPA decided that the request from the neighbor was too restrictive and that's why they modified the conditions, and he believes that was an appropriate response. The client's house may be there for 10 years or for 50 years, but at some point somebody will probably want to build a bigger house there and he doesn't think that the variance should be overly restrictive

Councilman Dan Hughes said that Mr. Raydor had stated that if we imposed a one-story restriction now, that that's all they had intended to build and they had agreed to that in their letter, but that at some point down the road it could be razed and rebuilt with two stories. He wished to know if in a zoning variation case that kind of limitation could be imposed when it's not at issue in that case. And would it apply in perpetuity? Attorney Richard Roosa said that there needs to be a relationship between the condition imposed and the variance requested. Once you've established a relationship, you then can impose a restriction. Mr. Hughes wished to know if a relationship could be seen between one story versus two stories in height and setback. Mr. Roosa said he thinks it's pretty well accepted that height and setback are interrelated.

Councilwoman Anita Cereceda made a motion that we approve the request, seconded by Garr Reynolds.

#### Discussion:

Anita Cereceda said that she appreciated greatly the professional consideration between Mr. Edwards and Mr. Raydor and their respective clients. However, as considerate as they were of each other, she would not be comfortable in setting any kind of precedent to put limitations on existing property owners on any future property owners. The bottom line is that we either approve this variance for that piece of property and then that property be developed within our Town's restrictions or we don't.

Garr Reynolds stated that when he seconded Anita Cereceda's motion, he didn't recall where a second story is tied to this request. Ms. Cereceda said that the LPA's #4 on their resolution says that the applicant may build a single family home that meets the Town's code requirements up to and including a two-story single family home with an open porch if desired. She is assuming that #4 was placed in the LPA's resolution in response to the memos from Mr. Raydor's office and Mr. Edward's office expressing the three conditions that the Newton's would like to see the property developed with. And, perhaps, as Mr. Raydor is indicating, his plans will only build something that will suit their neighbors, the Newton's. But she believes the LPA was correct in stating that they would approve the variance request, and in that variance request they are allowing for whatever legal structure would be built on that property without any type of limitations to it. John Mulholland advised that when Anita Cereceda made the motion she was going in accordance with the LPA's recommendations and resolution. Mr. Reynolds said that he doesn't believe that the applicants should have an open porch and he doesn't believe that the code would allow that. He was told that the porch was in the motion and he thereupon withdrew his second of the motion.

As she reads #4, Anita Cereceda said, it is simply saying in an explanatory way that any legal single family home can be built on that lot. So if that is a legal thing to occur, it could occur.

Dan Hughes ascertained that Councilwoman Cereceda's motion was following the resolution of the LPA. He noted that we do in fact have a proposed resolution presented to us by Staff, which essentially follows the language of the LPA resolution but adds the findings that are necessary in connection with a variance. He would ask that she modify her motion to say that

we adopt the resolution as presented to this meeting, which sets forth the findings in it. In finding A we find that there are (strike the word not) exceptional conditions. In finding C the variance is (strike the word not) the minimum variance. The site plan is Exhibit B and not Exhibit C in both 1 and 2. In paragraph 4 this was repeated in error in the LPA resolution and the word residence should be inserted after build a single family.

Vice Mayor Mulholland stated that the motion is now amended by Councilman Hughes.

Mr. Mulholland said that Mr. Raydor indicated that they paid a lot of money for the lot; however, he doesn't think that the cost of any lot or building should be any criteria for this Council to make a decision. We make it based on our comp plan and our laws and not on cost.

Dan Hughes asked for clarification what the LPA meant in 3, starting "Where they may remove as much vegetation as desired from the front..." as the front of this property faces the easement where there is a heavy row of trees.

Councilwoman Cereceda said that she would amend her motion again. She will eliminate in item 3 from the front so the applicant may remove as much vegetation as desired from the beach side of the applicant's property.

Councilman Reynolds said he would certainly be strongly against it if on the front were put in there, because he believes that one of the biggest concerns of the neighbor, Mr. Newton, is that those trees not be removed.

**MOTION:** Made by Anita Cereceda and seconded by Garr Reynolds that we approve the request for a variance in the case of Earl Ewing & Althea Gonya and accept the approval and the resolution of the Local Planning Agency, No. 99-11. Passed unanimously.

## **V. DISCUSSION OF RESOLUTION 99-12 FROM THE LOCAL PLANNING AGENCY: HYDE PARK BEACH ACCESS.**

Vice Mayor Mulholland advised that we have a report from Pam Houck saying that if this was not a public access, the residents would not be allowed to build.

The resolution from the LPA recommends that the Town Council determine the legal status of the "Hyde Park beach access," and if it is determined to be a legal beach access, the Council should take the necessary steps to make this access open to the public.

Councilman Dan Hughes said that he believed Pam Houck has represented that as far as the County has determined that it is in fact a legal beach access.

Councilman Garr Reynolds indicated that it is his opinion that the parties on the other side of the property would appreciate it if the Council would leave it as a public access but not advertise it so much at this particular time. But he would like to be on record indicating that it is a public access. Vice Mayor Mulholland advised that on the comp plan it is listed as a beach access and it has been referred to as the Hyde Park beach access for many years.

Dan Hughes stated that if, in fact, the beach access is public, then this Council has no right to make any restrictions on the accessibility of that to the public. He would go back to the material that was included in our packets regarding the Board of County Commissioners in 1990. Apparently, when Ocean Harbor was developed, a boardwalk was built through there that was later removed. At the present time there are wooden steps at the sea wall. But in their resolution in 1991 they specifically said "Remove the boardwalk, provide beach access signage subject to the approval of the Department of Community Services. Redesign the boardwalk seawall to provide for a flaring out parallel to seawall." Mr. Hughes said that it didn't look to him that this

was done. He compared this access to Strandview. The only concern he would have is if you put signage there, it should say no vehicular parking because that would, in fact, block the accessibility to the two parcels in question.

Dan Hughes asked if the width of the driveway had been prescribed, and Vice Mayor Mulholland stated that it had not. Pam Houck added that there was no minimum or maximum requirement for a single-family home.

Garr Reynolds advised that he was not suggesting to make this a limited access except for no signage out front out of respect for the long-time resident there.

Councilwoman Cereceda said she'd like to make a motion.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes that the Town Council direct Town Attorney Roosa to prepare a resolution for our adoption, acknowledging the information relayed to us as to the legal status of the Hyde Park beach access at 4660 Estero Boulevard, which, in fact, is that it is a legal beach access, and that we direct our Town Staff to proceed with whatever measures are necessary to see that that access is improved and designated as public access. Passed with 3 yea votes and one nay vote from Garr Reynolds.

## **VI. PUBLIC HEARING: Request to vacate a part of Fourth Street and a tract of land lying in part of Fourth Street and part of Fifth Street.**

Vice Mayor Mulholland advised that this matter has been before us previously.

Beverly Grady stated that she was representing the Koehler's Lighthouse. She displayed a color-coded exhibit prepared by Bill Spikowski and explained each area. She said she would like to incorporate the prior presentations made to the Town Council on the vacation and this area. The Staff can confirm to us that today they are providing everything that has been discussed. They are requesting a vacation of that area outlined in blue on the map, which is a portion of Fourth Street and a portion of Fifth Street. There would need to be two motions today if this meets with approval. One motion would be the resolution prepared by our Town Attorney granting the vacation to the area in blue. Then, what they have prepared and are delivering to us today is what they have discussed with the Town Council, which would be the deeds prepared, signed and executed for Parcel 1, Parcel 2, Parcel 3 and Parcel 4. She pointed out where the parcels were located on the map. Also being delivered today is a signed sidewalk easement, which is marked in green on the map and specifies that it may be built over, which is in compliance with the plan that we have. The architecture will be reviewed during the zoning process. Also provided is that the windows and awning are contained within the easement.

Since this plan needs to go through the zoning process and we will have to approve it, it does provide that there will be an easement to the Town over that vacated area to continue to provide for public parking. In return, the Koehler's have an easement retaining over Parcel 1, because they have structures there. Then there is a termination that will be held and signed by our Town Attorney. Those easements will disappear when a demolition permit is pulled after the zoning to actually build the new facility. Physically, we won't notice any change to Fourth Street or to Parcel 1 until some point in the future. But all of that documentation is prepared today so that it is settled. It will be held by our Town Attorney until after the zoning. At that point those

easements will be released and we would have clear title to Parcel 1 and they would have clear title to that Fourth Street vacation. There is an agreement setting forth all of the above.

Mrs. Grady advised that there were three utilities that have infrastructure in Fourth Street. Sitting in the County files are three original easements belonging to us to be recorded. The Fifth Street legal description has been authorized by County Staff to be added to that. They will deliver an original easement for the Town to record in favor of Sprint. The Koehler's and Lighthouse are actually in current negotiation to determine what the utilities will end up having, but the utilities are more than protected by the easements being granted to them.

They would request a motion for the first resolution granting the vacation of the area in blue on the map. The second motion would be to accept the deeds to Parcels 1-4 and accept the easements from the Koehler's to retain the public parking, to enter the agreement which then authorizes our Town Attorney at a date in the future to file a determination of those easements when the time is appropriate and to accept those documents for the utilities, which will safeguard their rights. They have also filed an access easement for their one mortgage holder so that they are protected in case they ever have to foreclose. That document has also been provided. Everything is signed and executed. They have provided a title commitment for the property to our Town Attorney.

**Questions from the Council:**

Garr Reynolds asked Mrs. Grady why it would be necessary to give away the small triangle in the area marked 3. All we're doing is creating a real bad turn there in the street. And if that stays part of the right-of-way as it is now, the turn for the street would be made easier. Mrs. Grady explained that they are giving that triangle to us.

Mr. Reynolds asked the width of Parcel 1. He was told it was 28 and the length was 95.

Dan Hughes said he assumed that the title evidence would show that the Town would be getting free and clear title of Parcels 1-4, and he was told yes.

Bill Spikowski was asked if he had anything to add. He advised that Beverly Grady had related the facts accurately. He has gone over the planning aspects of the various easements, the most important one being the sidewalk easement. And the Town does restrict the use of that sidewalk easement. There can be columns placed of a certain maximum size to support the building above it but the applicant retains design control over the wall that will abut the sidewalk, and he believes that all those terms adequately protect the Town's interest.

Garr Reynolds asked if those parking spaces would be available for meters if we want to meter them. Mr. Spikowski told him that there could be ten parking spaces in Parcel 1 and 19 diagonal spaces along Fifth. They are all Town-owned and can be metered.

**Public Comment:**

None.

Attorney Roosa said he would just like to remind the Council that to make a determination that we're going to vacate a road right-of-way, we must make a determination that there is no public purpose for that property. In this instance it was determined that that road right-of-way provided public parking. The applicant has provided the public parking that would be lost by the vacation. So this is not an exchange of property that is not authorized, but what they've done is they've resolved the public use by an alternative public use. And by addressing that, it would no longer be necessary to hold this as public property.

Comments from Council:

Garr Reynolds said that he wanted to go on record as saying he does not agree with this "swap." He has indicated this in prior discussions and wishes to reiterate it.

Dan Hughes noted that Mr. Reynolds had characterized this as a swap and Attorney Roosa has precisely said that is not what it is.

Mr. Hughes made a motion.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that we adopt Resolution 99- of the petition to vacate this property in the form as presented to us at this meeting by our Town Attorney, which grants the vacation and vacates, abandons and discontinues the public's interest in that portion of the right-of-way described in the exhibits. Passed with 3 yea votes and 1 nay vote from Garr Reynolds.

Attorney Roosa said that he had in his possession four deeds that are the identified parcels in the drawing, one sidewalk easement and the utility easement. He would ask that the Council by separate vote accept those deeds and easements.

Garr Reynolds said he would suggest voting on number 1 separately, as he is not in agreement with it.

Discussion:

Councilman Reynolds said that he cannot go along with the motion because he has requested that item 1 be a separate item to vote on. And since all four parcels are thrown in together, he would not be able to approve any of these.

Dan Hughes said that he doesn't see how we could accept any portion of this without accepting all of it. It's all part of a plan here. He asked Mr. Reynolds if he was referring to Parcel 1 as item 1 and if it was his wish that we not get title to that? It was established that Mr. Reynolds was referring to Parcel 1 and Dan Hughes said that he purposely included everything in the resolution because he feels this is an all or nothing type of situation. The key to this whole thing is that we are, in fact, getting Parcel 1, and Parcel 1 is these four parcels and the easement. Otherwise, we really nullify and defeat the effect of our vacation because we have deprived the public of parking on those other parcels. One without the other is not legally adequate. Vice Mayor Mulholland said that he agreed with Councilman Hughes.

Councilman Reynolds said that he wanted it to be noted that he's been against vacating Parcel 1 and then accepting a gift from another location because he doesn't think that it's very equitable. He has no objection to these two properties being worked out in such way that they would be joined, but he thinks there should have been an equitable gift each way. The reason that he asked for Parcel 1 to be excluded and done individually and for the other three parcels to be together is because they're just tiny pieces and Parcel 1 indicates an acceptance because we vacated Fourth Street. He sees Parcel 1 as a different issue.

Vice Mayor Mulholland stated to Mr. Reynolds that he would like to respectfully point out to him that the first time we had a hearing on this he, himself, kept saying, "What's in it for the Town?" He would look for the Town to get something. And to their credit, the applicants left and came back with what he thought was a very good proposal. He'd like to point out that this is not a giveaway in any sense of the word.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that we accept the deeds delivered to the Town this date by counsel for the petitioner for Parcels 1-4, as shown in checkered red on the exhibit, and that we accept the grant of the sidewalk easement as referred to by counsel for the petitioner. Our Town Attorney has reviewed that and finds it in satisfactory form, and Bill Spikowski is also satisfied with the terms. We are also accepting the utility easements on behalf of the public. Passed with 3 yea votes and one nay vote from Garr Reynolds.

Attorney Roosa advised that the next thing to consider is that there are two temporary easements. The Town is granting one easement to allow for the continued existence of the building on the property which we have just accepted. The other easement is being granted by the property owner to allow for continued parking until such time as the building has been demolished. The third document to be approved is an agreement with regards to these temporary easements so that upon the pulling of the permit for the demolition of the building, the Town will then be able to go ahead and build parking spaces and there will no longer be a need for the temporary easement on the road right-of-way. And, of course, once the building is gone, there would be no more need for the temporary building easement and so they'll be able to be canceled out. He'd like a vote accepting an easement, granting an easement and agreeing to the dissolution of those easements by separate agreement.

Mr. Roosa was told we didn't know this would get so complicated. In explanation, Mr. Roosa advised that the agreement is one that identifies these as temporary easements and, without coming back to the Council, allows for those easements to be vacated when the permit has been issued for the demolition of the property.

Vice Mayor Mulholland asked to see the documents before we take a vote on them.

Mr. Roosa was asked for the definition of a "temporary easement." Mr. Roosa said that he used the term "temporary" because there's a time limit on it.

Vice Mayor Mulholland asked Attorney Roosa if we shouldn't have public comment on the agreements and if he is making this part of the Fourth Street vacation. Mr. Roosa said it is part of the vacation and that if we wanted to have a separate hearing on the agreements, he would have no problem with that.

Vice Mayor Mulholland asked if it would be appropriate if we took a short recess before we work with Mr. Roosa on this, and he said it would be fine.

## **R E C E S S**

The meeting resumed at 10:40 a.m. Attorney Roosa noted that we had been provided with copies of the agreement and that the agreement is as was represented. The effect of the agreement is to maintain the status quo until such time as the building is demolished. When the building is demolished, that will trigger the removal of the easement for the building and at the same time we'll release the easement for parking on the vacated property.

Questions from the Council:

Garr Reynolds stated that a whole bunch of exhibits were mentioned and asked what they were about. He noted that we do not have copies of any of them. Janeen thereupon made copies

of the exhibits for Council.

Councilman Reynolds referred to "Escrow" on the last page of the agreement and read the last four lines referring to grantor having obtained a permit, and he asked what this meant. Attorney Roosa explained that what is meant is that we're going to execute the release of those easements now but they'll be held in escrow until the appropriate time for them to be recorded. Mr. Reynolds asked if he meant that we were signing now but they had 20 years to vacate and tear the building down, and Dick Roosa said that was correct. How long are we going to give them to be able to use Fourth Street which they are vacating? Twenty years, if that's how long it takes them was the response. Mr. Roosa explained that in order to be sure that we get access to the property for the new parking spaces at the same time as we give up the easement for the old spaces, all those releases will be signed at this time and held in escrow.

Garr Reynolds then asked if he was to understand that Fourth Street would not be immediately vacated, that they have 20 years to actually do anything with Fourth Street. Mr. Roosa stated, no, Fourth Street has been vacated, but they're giving back an easement so that we can continue to use it for parking. In other words, tomorrow it will be exactly as it was yesterday, except instead of a dedicated roadway it will be an easement for the benefit of the public. And then, when their development is ripe and they want to redesign their structure, they will tear down that building because they need this road for part of their structure. And when they do that, we will get the parking spaces. Garr Reynolds stated that the construction planning and all isn't really so urgent after all. Mr. Roosa said that it could take up to 20 years but he doesn't know anything about the applicants or what their plans are.

Councilwoman Anita Cereceda stated that that was clearly discussed in the presentation made by the applicant during the public hearings, where they said that the development would be phased. So to believe that nothing will happen for 20 years is incorrect. Mr. Reynolds said his question was simply that this could remain as is for perhaps close to 20 years.

Dan Hughes asked what would happen if the applicant did not demolish after termination. Attorney Roosa said that our remedy would be to file suit to have the building removed and we would have parking on the street until such time as they remove that building.

Garr Reynolds asked what was different now than before we starting vacating this as far as the Town is concerned and the use of those properties. Mr. Roosa said that the way it's structured, from a practical point of view there is no difference. Mr. Reynolds said that was the way he saw it too. But, Attorney Roosa stated, we have told the property owner that when it is to his economic advantage to want to start building, the mechanism is there. All he has to do is give us our new parking spaces and we'll release our easement.

Copies of the exhibits were handed out.

Mr. Hughes said he would make a motion for purposes of further discussion.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that the Town authorizes and approves the execution of the agreement to convey land and create easements as presented by our Town Attorney.

The motion was amended.

Discussion:

Councilman Reynolds said that we're doing the same thing with this piece of property as the County did with Bay Beach. We're reaching twenty years into the future, and that creates

and awful lot of uncertainties and hardships. If this could go to ten years, he thinks it would make a lot more sense.

Vice Mayor Mulholland told Councilman Reynolds that he respectfully disagreed with him. This is not Bay Beach.

Councilwoman Cereceda remarked that when Mr. Van Duzer and Mr. Kohler came before us originally, we saw the plan and we approved a plan, and that is the major difference between this and Bay Beach. And the twenty-year deal on this in no way reflects what the applicants discussed with us at the beginning. It simply gives them a comfortable window in which to accomplish a very significant project for the Town of Fort Myers Beach, and she believes we'll be seeing that project begin shortly.

Councilman Reynolds said he would suggest in the future that we get all these materials ahead of time so that we can study them and vote intelligently. But from what he hears, he would have to vote nay.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that the Town authorize and approve the execution of the agreement and the appropriate supplemental documents needed to implement this agreement. Passed with 3 yea votes and one nay vote from Garr Reynolds.

**Public Comment:**

Tom Kohler from the Lighthouse Resort thanked everyone for being here. He stated that on behalf of himself and his family they hoped to make us very proud of what they are trying to do. They are planning on starting construction in May.

**Via. HYDE PARK BEACH ACCESS**

Dan Hughes said he would like for the Town in connection with the adoption of our Land Development Code to address this issue. He referred to the survey toward the back of the package on the Ewing application and advised that the whole parcel shown on the survey was in common ownership by reason of that conveyance in 1988. If somebody then later came in to build on Lot 5, under a lot of zoning ordinances that he has seen it would be denied unless Lot 5 had been in a single chain of title and only owned by one party historically. Admittedly, it was a legally platted lot at one time, but when the zoning ordinance was adopted, it became substandard in terms of size. It would then be a legal nonconforming lot. If somebody came in for a building permit on this lot like they're planning to do here now, they would have to submit an affidavit that that chain of title has always been in a single individual and at no time did the owner of Lot 5 own any contiguous property. Asked what this accomplished, Dan Hughes said it accomplishes preventing people from using up four tracts and maybe part of a fifth tract for one house and leaving one little lot for a second house. They couldn't have gotten a building permit for that house that is built on Lots 3, 4 and 6 unless there was a resubdivision of those three lots into one lot and the remainder lot met the minimum size standards at that time. Other examples were also given by Attorney Roosa.

Bill Spikowski also gave input. The Lee Plan, which is the Town's plan now, says that if the lot was platted within a certain time period, it remains buildable regardless of the fact that it may later have been combined. In fact, if the two lots were combined for one house and that house is demolished, you still are allowed to build on each lot. This is in our comprehensive plan. There are things we could do in the Land Development Code to tighten that up, but the

basic principle is in our plan and if we're not happy with it, it can be amended the next time around.

Attorney Roosa said he definitely feels we should go the other way, otherwise we would never get rid of substandard lots. According to Dan Hughes, these four lots are an example of subdividing and planning at its worst because of excesses in size and everything else. But at least we should make an effort to adopt whatever we can legally that would enable us to prevent similar situations in the future.

Bill Spikowski advised that that they have identified one error in the comprehensive plan that the LPA has voted to bring forward like a Town initiative amendment. They made a mistake in drawing the maps of the Crescent Street area. If the Council desires, they could re-examine that provision on the status of platted lots as a planned amendment, do it at the same public hearings where there are any private amendments. Dan Hughes said that speaking for himself, he wants to do that.

Anita Cereceda said that she is assuming that getting rid of substandard lots is a good idea. She would be interested in hearing more about it.

Further discussion was held regarding substandard lots.

Garr Reynolds expressed the opinion that probably 6% of the lots on the Island aren't as big as the lot in question today. This island has some very small lots on it.

Councilman Hughes said he would like for Bill Spikowski to address any provisions of the Land Development Code that might be brought to bear on this issue that could be modified to address this situation.

Dan Hughes was asked by Mr. Reynolds what he felt about his suggestion. The lot is substandard and does he think it should be brought up to standard by measuring halfway to the street. Mr. Hughes said, no, measuring out into the street is absurd. The lot is only what is platted. If there are a lot of substandard lots, this won't prevent building on the bulk of them that have been in single ownership. It's only in certain situations that you could require consolidation or refuse a building permit.

Attorney Roosa said that we should ask the LPA to review the Code.

Bill Spikowski said that to amend the comprehensive plan there will need to be three public hearings, the first before the LPA and two before the Council. But if we made a motion to schedule those hearings to review that portion of the comprehensive plan concerning substandard lots and their continued buildability, that would be enough to get the process started. He and the LPA will come up with a proposal that will be presented to us at the second hearing. Anita Cereceda asked that this be put as an agenda item on our next meeting rather than make a motion right now. Dan Hughes said he'd like to get this started as we have some time concerns here. Bill Spikowski suggested holding this for the Council's November 4th meeting so that we have time to get some background material. Dan Hughes said that then he would change his request and concede to Councilwoman Cereceda's concerns.

Councilman Hughes said that in looking at this situation, something came to his attention regarding beach accesses regarding whether there was a minimum or maximum width for an access driveway off a beach access. He described the driveway at Strandview. He proposes that we have a provision in our ordinance that would limit the size of driveways off beach accesses.

Vice Mayor John Mulholland said he would request that if the councilmen have issues, to bring them up at a regular meeting.

**VII. PUBLIC COMMENT**

None.

**VIII. ADJOURNMENT**

The meeting was adjourned at 11:15 a.m.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary

### **Items for action from the meeting of September 20, 1999**

1. Bill Spikowski said that to amend the comprehensive plan there will need to be three public hearings, the first before the LPA and two before the Council. But if we made a motion to schedule those hearings to review that portion of the comprehensive plan concerning substandard lots and their continued build-ability, that would be enough to get the process started. He and the LPA will come up with a proposal that will be presented to us at the second hearing.
2. Dan Hughes proposes that we have a provision in our ordinance that would limit the size of