

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 20, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, April 20, 1998 at 3:00 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Ray Murphy, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; Assistant Town Manager Terry Dillon; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Reverend Thomas Snapp of St. Peter Lutheran Church led the Council in prayer.

IV PUBLIC COMMENT ON AGENDA ITEMS

A VICKY MASSEY

Ms. Massey spoke about the curfew ordinance. She has a 17-year-old son and she agrees there should be a curfew for the youth. But there is a big difference between a middle school and high school student, and the Council should take that into consideration. 16 and 17 years olds should be treated differently than younger teenagers. Older teenagers often don't get off work until 9:30 and may want to go to a movie afterwards and needs to stay out later.

John Lallo with Fort Myers Beach Off-Shore Grand Prix announced that there will be parade on May 14, and he extended an invitation to the Council members to participate in the parade and ride in a car or boat. There will be a party afterwards in Times Square.

V APPROVAL OF MINUTES: MARCH 19, 1998 AND APRIL 6, 1998

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the minutes be approved as submitted. The motion passed unanimously.

VI REVIEW OF FINANCIAL REPORTS FOR MARCH

Mr. Reynolds asked about expenses for Peggy Freshour. Mr. Gucciardo said the hiring of Ms. Freshour to do a workshop on MSTU was approved by the council. It was clarified that the bill for Hanson Appraisal was for an appraisal on the Mound House, and was not related to Donna Hansen.

VII UPDATE ON BAY OAKS AND THE ADVISORY COMMITTEE – VICKY MASSEY

Ms. Massey said the advisory board is up and running. The members are: Lee Conger, Trudy Harby, Joanna Hogan, Jennifer Kaestner, Jane Plummer, Ellie Sullivan, Charlie Whitehead, Betty Simpson, Bill Thompson, and Tom Myers. They have had two meetings, and have reviewed and voted on the by-laws and elected officers. The Chair is Mrs. Kaestner, the Vice-chair is Mrs. Conger, and Mr. Whitehead and Ms. Plummer are co-secretaries. They talked about the sunshine law and discussed the number of members on the board. (It has recently changed to five appointees from the county and five from the town.) They discussed the county-wide survey and reviewed it. A second survey was started about 5 months ago and was for a 6 month period, at random times, during high season. This survey actually asks for address, not just zip codes. They will meet on the 2nd Thursday of the month (at least 8 times a year) at Bay Oaks and all are welcome to attend. Council members will receive copies of the minutes and John Gucciardo meets with the committee to represent town staff.

VIII COUNCIL MEMBER ITEMS AND REPORTS

A JOHN MULHOLLAND

Mr. Mulholland commended the concerned citizens and chamber for the Easter egg hunt. He reported that the MRTF will be painting storm drains on Saturday the 25th and they need volunteers. The MRTF is also going to have an educational presentation on April 29, mainly for jet ski operators, but all are invited. He also reported that last weekend he attended a meeting of the Institute for Municipal Officials, and it was well-worth the effort. He thinks that the council is overdue for an evaluation of the Town Manager, and he recommended that it be done within the next month.

B TED FITZSIMONS

Mr. FitzSimons asked, regarding the Bay Oaks interlocal with the county, if we agreed to pay half of the expenses or \$350,000? Mr. Gucciardo said we agreed to pay ½ of the operating expenses for the rec center and also for the ball fields. The total for last year was \$352,000, but they also took in about \$50,000 leaving about \$300,000 of which we have agreed to pay half. Mr. FitzSimons also asked if the Thursday workshop agenda could be expanded to include a discussion of our legal defense system especially regarding land use issues. Mr. Mulholland said he would like to see it set up as a separate workshop, because it is too large an issue to combine with the pool discussion. Mr. Murphy agreed and said he didn't see the urgency of doing it this Thursday. It was suggested to add it to the May 21 agenda so the public would be aware of it. Mr. FitzSimons also talked about temporary parking lots. He requested a report from staff that lists all new issued permits. If the council could be informed, they would not be taken by surprise. He also said that at an earlier meeting, he brought up the possibility of having our own building inspector. He hasn't heard back from staff on it. He also said he has some applications for the MRTF appointments. He was told to submit them to town staff so they can be put in the council packets.

C GARR REYNOLDS

Mr. Reynolds said he has had calls about changing from 6 units per acre to 10 units per acre. He said the original goal of incorporation was to try to contain growth. He hopes the staff and LPA will give some consideration to that. He also talked about the overlay zone. Since the Waffle House and the Barking Shark have been built, a lot of people are not happy. Maybe the LPA and Council might want to consider what this will look like in the future. He fears it will be like driving through a canyon. He would like that type of building restricted to Old San Carlos.

D RAY MURPHY

Mr. Murphy encouraged everyone to remember Roxie Smith who had heart surgery this morning.

E ANITA CERECEDA

Mayor Cereceda said that the AVP volleyball tournament will be this weekend at Lynn Hall. She also mentioned that she has had a lot of people talking to her about trash along Estero, especially at trolley stops. She is going to try to get some businesses to adopt a bench or trolley stop, and pay for a container and maintain it and empty it. She also noted that the bridge is looking trashy again. She is trying to get a group of people together to clean or paint it since it is our front door. After the summer, she would like to have a workshop on the past 2 ½ years, what has been accomplished, where we see ourselves moving, what incorporation means, and what government lite or bare bones means to us. We can't assume all Council members believe the same thing.

Barbara Hill spoke about Earth Day. She invited the council and audience to participate. They will be giving away live oak tress in exchange for the trash. They would be good trees for the town treescaping program. They will have Pepsi and pizza. They will be painting the storm drains. It will be from 9-12 at Beach Elementary School.

IX PUBLIC HEARING: ANTHONY KUHNS (98-01-078.05V)

Mr. Kuhns was sworn in. He stated that he has applied for the variance so he can finish adding a deck on the back of house. Originally there was a 5' uncovered porch in bad repair. He needed to replace it and wanted to expand it to a 12' x 31' deck along the back of building. He started construction then stopped when he found out he needed a variance. He brought pictures to show how it fits into the neighborhood. He feels that sometimes property can be close to the property line and still fit into the neighborhood. He brought letters of support from his surrounding neighbors, and one neighbor is here to speak for him. The LPA didn't want it to be 12 feet wide, but he feels that 10-12 feet is appropriate for a deck. The LPA recommended that he reduce it to 5' wide but he feels that is more like a porch than a deck. If the deck is wider, he has a view of the ocean. Mr. Reynolds asked Mr. Kuhns if he would vote for the wider deck if he were on a board that was charged with enforcing ordinances for the whole island. Mr.

Kuhns said you should look at each individual property. This deck blends into the existing structures in the area. The people on his street like their property and take good care of it, and the deck is an enhancement to the neighborhood. He felt that the LPA did not have all the information when they made their decision, so he brought the pictures to give them a better idea of what he was trying to do.

Nettie Gustison, with Lee County Development Services, was sworn in. She stated that this hearing is to legitimize an existing deck. She said this duplex was built in 1959, and the rear setback is only 16 feet, but there were no rules then. The small 5 x 5 porch that was there was 11 feet from the property line. He replaced it with a larger deck without the necessary permits, which resulted in a code violation. The Lee County hearing examiner, acting for the town, ordered the applicant to remove the deck or obtain the necessary permits. Staff recommends denial. Applicant has reasonable use of his property. However, staff approves the 11' setback with its original 5 x 5 deck. The LPA also recommended denial and approved the 11' setback to allow the smaller deck. They also added two conditions: that it be an open deck only and that it could be as wide as the house (31 feet), but only 5' toward the rear setback. She said she has no problem with the LPA's recommendation because the width was not an issue, just the depth. Mr. Murphy said all the letters are in support of the deck and he asked if staff talks to adjoining property owners. She said she received no phone calls about this, and she has not seen the letters so she hasn't taken them into consideration. Mr. Murphy asked why we have setbacks. She said they are to protect the adjoining property owners. Mr. Murphy said when adjacent owners are encouraging, doesn't it change the whole issue? Mayor Cereceda asked what the average setback is in that area. She said it is mixed. Mr. FitzSimons said good buffers make good neighbors, and we have to look beyond the present neighbors.

The public hearing was opened.

A WILLIAM PATTERSON

Mr. Patterson said that he lives on Estero and his lot touches Mr. Kuhns'. It is a super deck. You can't put a table and chairs on a smaller deck. There is a large hotel built next door and someone put a large boat cover up nearby, so they no longer have a view except up. In Florida you should be allowed to enjoy the sun.

The public hearing was closed.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that we accept the recommendation as forwarded by the LPA. All voted in favor of the motion except Mr. Murphy and Mayor Cereceda. The motion carried.

X PUBLIC HEARING: SPAS PASEV REP. BY BILL VAN DUZER IN REF. TO SANDBAR RESORT (95-04-118.02Z 02.01)

Mr. Mulholland disclosed that he knows Mr. Van Duzer personally and served with him on the LPA. He does not think that would be a problem in making a fair decision. He also received 5 letters and one telephone call, and he has walked the site. Mr. FitzSimons received about 10 letters and has talked with about 6 people. Mr. Reynolds called the appraisers office to verify that it had 12 units. He also talked with Chip Block. He has had brief conversations with several neighbors and residents. He met with Mr. Pasev last spring after checking with Mr. Roosa that it was OK. Mr. Murphy met with Michael and Jennifer Kaestner and received several letters. Mayor Cereceda said she has known Mr. Van Duzer for many years, and has spoken with several people. She lives in the area and is familiar with the site. Mr. Van Duzer was sworn in. He stated he is representing the owner. He believes this is a landmark case and will affect many business owners who contribute to our tourist industry and our residents. He gave each member a packet. For the record he asked each member if they have talked with any other council members. They all answered no. He asked if any have been involved in any zoning hearings regarding this property. Mr. FitzSimons and Mr. Reynolds said they were involved during the application for the tiki hut. He asked if any council members are involved in any litigation involving the property. They answered no although Mr. Reynolds said he has been involved with the jet ski operator on the site. He asked Mr. FitzSimons and Mr. Reynolds if they could judge this case fairly based on the testimony today. Mr. Reynolds said he is a neighbor of the property, but if he thought he couldn't be objective, he wouldn't be there. But he said he had a problem with Mr. Van Duzer doing this when he is an LPA member. Mr. Van Duzer said he knows that Mr. Reynolds was present during the hearing before the LPA. Mr. Reynolds said he heard the engineer's presentation and then left. Mr. Van Duzer asked Mr. Roosa is that would have an effect on what would transpire today. Mr. Roosa asked Mr. Reynolds if he can make a decision based only

on the evidence presented today. He answered yes. Mr. Roosa asked Mr. Van Duzer if he felt he could have a fair hearing today. He answered yes.

Mr. Van Duzer said he did some research into the Sandbar, and found that they were a member of the FMB Chamber in 1959, listed as a resort. The property is owned by a corporation, and the sole member is Mr. Pasev. He also owns several other properties on the beach. He is from the Czech republic, is blind, and speaks no English. He acquired the property when he asked his agents to buy another property. They took his money and bought the Sandbar instead. He wanted to tear it down and build a 28-unit motel, which his investor had told him he could do. Mr. Van Duzer told him it was impossible and that 12 would be the maximum allowable. They contacted the Lee County review department and all agreed no more than 12 would be allowed. He passed out an early site plan dated 7/18/97. They hired an engineering and architectural firm. They held informal review meetings with Mr. Block and were told that they would support no more than 12 units. The owner decided he did not want to operate the motel as it existed, so he boarded it up until a decision could be made. He showed a site plan showing existing and proposed buildings. He noted that the existing buildings are over the property lines, and are very close to Estero. The new structure would be 76' from Estero, and the side setbacks would be 15'. All parking is within the required guidelines. There will be one entrance off of Estero. The new structure allows for proper and adequate setbacks, and allows for drainage and retention areas. He also noted that on the existing land use map, it shows the present use as commercial. On the current zoning map, it shows the area is mixed residential and commercial, and the rest of the larger area is residential multi family. On the draft of future land use map, the whole area is mixed residential. Mixed residential allows for motels. In the packet he prepared there is a section called "surrounding land uses." The pictures and map indicate past and present use of properties. Staff says the surrounding area is single family residential and that is an error. Most is used as commercial rental residential, duplex residential, multi family, motel, interval ownership, and condos with rentals. There are only a few sites that are zoned single family residential. This fact was also determined by Mr. Spikowski, and that is why that area is called mixed residential which allows these uses. This project is consistent and compatible with surrounding land uses, so it complies with policy 6.1.2. It says that commercial development shall be approved only in locations which are appropriate and only when compatible with existing land use and facilities. The present use is not single family, it is mixed. What is a motel? It is a residence that you use for a short time. What is a rental property? It is a residence that you rent for a short period of time. It is also compatible with 6.1.10 which encourages upgrading and revitalizing of commercial areas but prohibits replacement if it is inappropriately located and will have adverse impact on the surrounding properties. It will not have an adverse impact, because they are compatible. He also submitted that any reasonable interpretation of 18.2.1 will show it is not in violation of that policy, because they are not expanding into a residential area. There is a 12-unit motel there now. All they want is to replace it with something that is viable and attractive. They are not asking to expand intensity or density. The present land use is RM2 and TFC-2, but that is not what it is being used as. Mixed residential says a motel is a low-density use. He talked about the height of structure. He was not at the LPA meeting, but he understands they were not happy with it. They are requesting a deviation from ordinance 97-9. He reminded the council that this project was in process prior to adoption of this ordinance. It was adopted as an interim ordinance until the town could adopt its own land use plan. In the draft of the new land use element, it states that sometimes extra height could be allowed in exchange for amenities, such as a view, trolley stop, or beach access. He believes the interim ordinance was adopted to give control over high rises and he was one of the primary authors. This project does not violate that intent, which was that anyone who wanted to redevelop more than 25 feet must come before council and that is what they are doing. They are only asking for a 15' deviation, which is less than the length of automobile. Currently you cannot see the beach, but with the new structure, you will have 15' on each side and you can also see under the building, which will be open except for a stairway and an elevator. It will improve the view tremendously. The county had wanted to develop the beach access at Dakota but the current building is hanging over the property line. There is a trolley stop and pedestrian crossing on the corner that is dangerous. They will consider putting in an off-the-road stop for trolleys to pull off. They are asking to go higher so they can get the proper setbacks and still have the best use of the property for the owner, who paid \$883,000 for the site. Even with the 15' deviation, it will not be as high as the Sandpiper, which is 200' up the street and will be further back from Estero. It will not be as high as Smuggler's Cove, which is one block away. The ordinance says you must measure the height from flood plain elevation. The building from grade will be 49'10" to the top of the perimeter beam line. The NGVD is 7'2" below grade, and they are not measuring from there. He talked about density and intensity. They are also requesting a

deviation from the multiplier (Ordinance 97-21). He noted that they were working on this redevelopment project prior to the adoption of this ordinance. The site presently holds 12 units, and they are only asking to replace them. When complete, they will have 17 units per acre, one of the lowest for a motel on FMB. Neptune Inn has 23 per acre, Holiday Inn has 26, the new Edison Beach House will have 27, Days Inn has 34, the Outrigger has 37, The Ramada has 80, and the Lani Kai has 102 per acre. A property owner has a right for the best use, and they are asking for bare minimum. They are asking for units that are 600 square feet. He designed this facility, and it would be impossible for them to be split up into more units. They will have one bedroom, one bath, a fairly small living area, and a kitchenette. Rooms at the Edison will have 730'. Gullwing has 1975'. The project will improve the immediate area and the whole town. It will correct the problems of safety, beach access and visibility. It will improve the surrounding property values. It does not violate any of the policies noted in the staff report. The surrounding neighbors approve and many have demonstrated support for project. Mr. Pasev has a large investment in the town and should be applauded for his effort to improve the site. Mr. Reynolds asked about acreage. Mr. Van Duzer said the actual lot is about ½ acre, but development standards say they can take half of the road right of way in figuring acreage. They did not take the measurement to the gulf, only to the seawall. Mr. Reynolds said he has lived there for 10 years and there is 235 feet from Estero to the seawall that is usable area. He asked Mr. Van Duzer if he didn't think that is too much density for the usable acreage. He answered that 12 units are already there and they are only trying to improve that. Mr. Reynolds asked the size of the present units. Mr. Van Duzer said they are different sizes, up to about 500', but three were very small. Mr. FitzSimons asked if residential use was ever considered (condo or multi family.) He replied no, because they would have the same problems and not as much opportunity to recover his money. Mr. FitzSimons asked if the land is too valuable to support residential. Yes, even 12 units is marginal. Mr. Reynolds asked why they requested a CPD? He replied that that is what the town said he must do because motels are now considered commercial. Mr. Reynolds asked why the building will be so far toward the gulf? He replied that they are only going 7' closer to the water and they will still be about 35' from the seawall and well behind the coastal construction line. They could have built right out to it, but they didn't because of the pool. They don't want parking on the back because motel rooms can't be rented if people are looking at asphalt instead of the gulf. Mr. Reynolds asked if they could bring it down to 3 stories and still keep 12 units. He replied that they cannot and still have all rooms with a gulf view, which is the best use of the property. He also mentioned that they have eliminated the dumpster on Dakota, and will use a rollout dumpster behind the elevator. It will only be rolled out when truck comes. Mr. Murphy said there is a rumor that if property is a CPD then the owner could tear it down and reconvert it. He replied that could be true but the council can condition that it will only be a 12-unit motel and nothing else. Mr. FitzSimons said one problem of motels is the accessory uses that go along with it. What accessory uses does he intend to have and will he continue the ones that are there now? He replied that there is presently a COP license and a commercial jet ski operation. They would like to keep both, but the council has the right to voice their opinion on that. The management team said they will not use the tiki hut as a bar. They might want to have a portable bar in each room and that could be a condition. They did not include the jet ski as an accessory use. Mr. Mulholland asked if they could lower the roof to make the building not look as tall. Yes, but it would not fit in with the vision of FMB. Mr. FitzSimons asked if they would have to remove parking places to put in a trolley stop? Yes, but they don't really need 18 parking spaces for this number of rooms although it is required. There could be a deviation that allows them to trade a parking spot or two for a trolley pullout.

Chip Block of Lee County Development Services, was sworn in. He stated that the staff report is the same as was presented to the LPA, because the applicant provided no new information. They believe that according to policy 6.1.2 and 6.1.10 this will not be a compatible use. The only high rise is a 5-story building, but this building of 4 stories above parking will be taller than everything except that motel. He believes the applicant can provide 12 units at two stories. The Town has passed a multiplier of 1 motel unit to one residential unit. The applicant is allowed 4 units today. RM2 is for residential but it allows some commercial uses if they are already existing. The existing motel is permitted so they are allowed to maintain it, but if they come back to redevelop, they can only rebuild to today's density. If you attempt to rezone to a commercial use, it must go through the CPD process. If he wants to stay RM2, he is entitled to 12 units. If he redevelops, he can only go to 4 units. Policy 100.9.5 and 5.1.5 say that you must protect from incompatible land uses. Staff believes the intensity is increased because the height is incompatible. The Comp Plan obligates you to protect from encroachment by providing an expanded buffer. But there is no way to add a buffer for that height. The maximum buffer is 8 feet, which only protects the ground level. Policy 18.2.1 prohibits intrusion. The applicant said that the deviation is for 15 feet, which means from 25

to 40 feet and that doesn't include the angled roof. The trolley stop was pointed out as an option, but it will require a deviation or they will have to put the parking space elsewhere. The two parking spaces under the building will not be approved because they have inadequate turnaround space. When you look at the draft of future land use, it shows mixed residential which allows for a motel, but it is only a draft and may be changed. If the council wants to approve the project, he would like the opportunity to provide some written directions on possible conditions. Mr. Mulholland asked about the surrounding property uses. Mr. Block said that at the LPA hearing, it was pointed out that some of the uses the applicant stated are wrong. Mr. FitzSimons asked Mr. Block what an RPD is. Residential Planned Development. It allows for a variety of land uses and has a clause that says you can add uses. He asked if the main difference in an RPD and CPD is use? Correct. Does an RPD have accessory uses? Yes. Storage sheds, fences, wall, pool, gazebos, etc. Mr. Reynolds said he is concerned about a CPD going into a residential area. He would like some other designation besides CPD. What is to stop the owner from going to court and saying he has a COP license and wants a bar? Mr. Block said he is not an attorney. He asked about the additional four rooms. He replied they will be a laundry room, rental office, storage, etc. They will be on the master concept plan and must be used in that fashion and could not be used as additional motel space. If they did, code enforcement would cite them. Mr. FitzSimons asked the difference between residential and commercial. Since residential can be rented, what is the difference? Mr. Block said essentially the use is the same but there is a tax difference. If it were residential, he could still rent it? Yes. The question is how many units? Yes. Mr. Reynolds asked if they as elected officials must be concerned about someone who may have made an unwise choice. Mr. Block said he knows of no rule that says that. Mayor Cerededa said that their decision is not based on what we may or may not like, and the council must decide to approve or deny what is presented to them, not what it might have been or what could happen in the future. The applicant has the right to ask for what they want, and the council has the right to say yes or no.

The public hearing was opened.

A WALTER EISSLER

Mr. Eissler was sworn in. He lives on Palmetto about one block from the Sandbar. He read a letter from John and Jean Kakatsch, who live on Oak Ridge and also own a duplex across from the Sandbar and 7 other duplex rentals in the area. The letter said he is in support of the plan. They believe it would be a major asset to the neighborhood and the beach. The new owner has invested a lot of money and will spend 1.2 million more to build and landscape. They are replacing 12 units with 12 units. He is willing to accept certain restrictions such as the Tiki hut and the jet ski business. Those will be major improvements. This will be a major new source of tax revenue for FMB. The present structure is dangerous and an eyesore.

Mr. Eissler stated that one of the main reasons for incorporation was so the town could control its exemptions. If we don't act to approve this, maybe a judge will approve it. Because of the current building, Dakota has been excluded from plans for beach access improvement. The cost of the property prevents the building of residential property. If approved, we will get a new building and new beach access improvements. We will send a message that FMB wants planned development that will improve the town. If not, investors will seek other places other than our island. But we need two restrictions: the tiki hut and jet ski rental business. He encouraged the council to stop the negative response to development.

B BOB KEENE

Mr. Keene was sworn in. He lives on Curlew. This would be a 60' tall building. If the council approves this four-story building, what can we say to future applicants who want a five-story building? He hopes the applicant will offer to revise his proposal to meet 6.1.2 and build something they are willing to live with.

C JACK HENRIKSEN

Mr. Henriksen said that the LPA denied this by a 6-2 vote and county staff also said that this plan is inconsistent. It is inconsistent with 18.2.1 and 6.1.2. There will be 13,600' total increase in floor space. That represents a gross increase in density. Vote denial because we have no responsibility to an absentee owner who paid too much. Why should the town give in on established rules and approve deviations contrary to everything we incorporated for.

D HOWARD RYNEARSON

Mr. Rynearson was sworn in. We became a town for a lot of reasons, not just to stop development. There are twelve units there, and there can be something nice there, or you will have to live with what you have. Vote for this proposal.

E AL VAN HORN

Mr. Van Horn was sworn in. He lives on Estero. This project has inconsistencies and incompatibilities and deviations. Now we hear there could be further deviations. If you believe in the comprehensive plan, go with denial. If we continue with deviations, it will so dilute our steps toward future land use, that we'll never get it off the ground.

F ANDY PRIEM

Mr. Priem was sworn in. He said this CPD should be rejected. We have worked long and hard and spent lots of money on our Comp Plan. In the vision statement, it refers to this section as the Quiet Zone. That area is to remain low rise and residential except for a few existing towers. The Council approved an interim height regulation. This is asking for 15 feet and two floors above that. It suggests that exceptions only be granted in an area where other high rises already exist. He agrees that the present situation is deplorable, but this is valuable property and it won't sit there as it is now. Maybe he overpaid for it, but it will be developed. If this were a reliable owner, he would not have allowed this place to be boarded up. There are more aesthetic ways to do that. The site should be redeveloped within the guidelines. Stay true to the vision and renovate it as a small low-rise hotel or residential building. Just because he paid a wrong price, doesn't mean we should allow him to build too much. It is not our responsibility to bail him out.

G JOELLEN RECKWERDT

Ms. Reckwerdt was sworn in. She has seen many changes on the beach, most of them good. She voted to incorporate to see us make our own decisions and have growth within reason. The Sandbar is certainly within reason. There are 12 units they are asking to replace. She was disappointed by the denial by the LPA. How can they deny a wonderful addition to the beach, not to mention the increase in the tax base. It fits in. It will generate jobs. Incorporation was a vote for choice and for each case to be decided on its own merit. It was not for a vote of no on all issues.

H RAY MERTENS

Mr. Mertens was sworn in. He was surprised that the LPA vote was not 8-0 to deny. He thinks it is the LPA's job to strictly interpret. It is the job of the council to not violate the law but to temper it by what is right for the community. The decision must be more than black and white, it must be what is good for the community. The LPA did their job, but he requests that the council decide what is good within the guidelines. You won't satisfy everyone. But what is best in this case, may not be best in any other case. The council can restrict it in any way they want for protection, but to destroy an effort to improve the community would be wrong. He said Mr. Reynolds should consider whether he should vote in this since he didn't disclose a communication, yet he mentioned it in his remarks. Mr. Reynolds said that he wrote it down on his form.

I JENNIFER KAESTNER

Ms. Kaestner said she lives on Palmetto and is a neighbor. Mr. Block mentioned the five-bedroom house next door, and she pointed out that it was rented to spring breakers last week and nobody buffered it. There are probably only 2 or 3 houses in that whole area that are eligible for homesteading. They are all rental properties. Four or five families rent them and stay in them. They are mom and pop motels. As for height, the draft says you can allow extra height for extra amenities, particularly views to the gulf. She also handed in several more letters from residents who are in favor. By and large the neighbors are supporting this with restrictions. She hopes the health, safety and welfare of the neighborhood will be taken into consideration.

J DON PETRIE

Mr. Petrie was sworn in. He agreed with everything Ms. Kaestner said. He lives on Easy Street and is a neighbor. If you look at the two-block area between Lazy Way and Pescadora and both sides of Estero, they are mostly rental properties. They serve a good purpose. This project will raise the looks of the whole community. Don't legislate everyone out of business because you think they should all be single-family homes. Consider this area as a small pocket of commercial even though it is not zoned that way because it has been that way for years and will always be.

K TOM MERRILL

Mr. Merrill was sworn in. We have an ambiance we can build on. If you start taking the height limit and giving deviations for no good reason, it doesn't make a lot of sense. The height changes the character. Next the guy in between will think he needs a higher building. Before long you have a corridor and you look like Miami Beach. A view through the parking lot is not much of a view. Now you have a view of the sky and a breeze coming through. You will lose those.

L BOB ROCKWELL

Mr. Rockwell was sworn in. This is a big improvement. He likes to share the beach. We need more people here. We need these improvements. He likes that it will be set back from Estero, that there will be easier access to the beach, that there could be a trolley stop, and that there will be a better view and better access to the beach.

The public hearing was closed.

Mr. Van Duzer said there was an error on three pieces of property when they made their presentation to the LPA. Although they were called the wrong thing, they are still properties that are rented out. He also talked about the 5 bedroom, 4 bathroom home with two exterior entrances. Mr. Block also mentioned two policies that Mr. Van Duzer didn't go into. He says they both relate to the same thing—whether this is a residential area, which he does not believe it is. Someone talked about this being in the Quiet Zone, but it is not. The staff talks about expanded buffers, but now there is none, but when they get through with this building there will be a 15' buffer. Previously they have approved a 5' buffer on something that went from RM2 to CPD. The height of the roof is not an issue because that is how the council said it was supposed to be counted. Regarding the choice of CPD, they were told they had to go CPD, so they did that. It makes no difference whether it is a CPD or an RPD because the council gets to put their restrictions on it. He is concerned for the multitude of properties on the beach that are RM2. People must be able to develop or we will end up with a whole bunch of Sandbar properties that are deteriorating if you tell them they can't replace them.

Motion: Mr. Murphy moved to approve the application with conditions: COP only for in-room use, eliminate the personal watercraft business, and add a trolley stop. In addition, if they need to eliminate one parking space in order to achieve the trolley stop, it is also hereby approve. Mr. Mulholland seconded the motion. Mr. Block passed out a paper showing 4 deviations that are needed. Mr. Murphy agreed to the approval of the deviations. Mr. Mulholland agreed to the amendment. **Discussion on the amendments:** Mr. FitzSimons said he did not agree with the COP license. It is a residential area. Most people are worried about the accessory uses. He thinks it should be a RPD and not designated commercial. Think of this as infill. You have residential on one side and residential on the other, so it should be residential in the middle. He would like to see the applicant build a 2-story with 6 units. Mr. Reynolds said he thinks that this is a breakdown in the direction we said we are going as a town. This is a residential invasion and we will regret this down the road. **Action on the amendments to the motion:** Mr. Mulholland, aye; Mr. FitzSimons, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The amendment to the motion was approved. **Discussion on main motion:** Mr. Mulholland said this is difficult case and he is aware of the height restriction and he is aware that the density replacement is 1:1. But those were interim measures and the new draft now says 3:1. We have to look at what is best for the town. He doesn't like the height, but what is compelling is the neighbors are in agreement with this. You can only tear this down and start from scratch. We can put enough conditions on it to make it OK. It is not a commercial invasion. The residents even admit it is a commercial neighborhood. Mr. Reynolds said the rentals are not commercial; most are rented on annual basis, so they aren't commercial. There are a lot of single-family homes in the area. Our staff thoroughly examined this and they said no. Are we wiser than the staff or the LPA? Are we abandoning our direction we have been developing? Maybe we shouldn't have ordinances, and just let people apply for anything and we will say yea or nay. He wants something decent and nice there, but he wishes it could be done within the guidelines. Mr. Murphy echoed Mr. Mulholland's comments. He thinks that all who spoke against it are not residents of the area. All the neighbors are in favor. If we continue to reject all these, investors will move elsewhere and we will have many derelict properties. We must allow owners to improve their properties. Mr. FitzSimons said the change from commercial to residential does not remove the ability to make a return on the investment. It is important to preserve the residential nature of the area while still accomplishing some objectives of the owner. He thinks we should reject this and move to continue until he can come back with a plan for a residential piece of property. Mayor Cereceda said our Plan strives to create an ideal world. It is the council's job to interpret it. How much this man makes or loses has nothing to do with decision, nor does the threat of a lawsuit. Nor does it matter how many people stand up and speak. The only thing that matters is what they feel is best for the community. There are 7400 people outside of this room she has to take into consideration too. **Action on the original motion:** Mr. Mulholland, aye; Mr. FitzSimons, nay; Mr. Reynolds, nay; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

The Council took a break at 7:30 and reconvened at 7:50 PM.

XI FINAL PUBLIC HEARING: YOUTH PROTECTION ORDINANCE

Mayor Cereceda read the titles. The public hearing was opened.

A JUDY EISSLER

Ms. Eissler said she is new to the community from Illinois. Since she was 20 she has worked with adolescents. She was a high school English teacher for 36 years. She has worked with counselors and other teachers and has raised four kids. Raising teenagers is not an easy task, but some are better with certain ages than others. The job of the teenager is to become autonomous and independent from their parents and to find their own identity. Teenagers think they are invincible so they take risks. We need to try to come up with some kind of ruling that will be enforced to help them make wiser choices and for parents to be more effective. Some parents don't know how to set limits and stick by them. It takes a village to raise a child.

B MARIE DENARD

Ms. Denard said she is a 15-year resident and has raised her children here. She is against the curfew ordinance. She has worked with delinquency in this area, and there are already plenty of laws on the books. We don't need a curfew, we need the deputies do what they are charged with doing. Parents are neglecting their duty. If kids are on the street at midnight, someone should be driving them to an assessment center and having their parents brought in. The deputy in the newspaper said they go from fight to fight to fight. There needs to be a consequence the first time. Enforce the laws that are there. Don't punish the kids that are not a problem and never get picked up and are honor students. If parents feel that their kids have a good reason to be out, it is up to the parents, not the government. We have too many people abdicating their responsibility. With incorporation we weren't looking to expand government on the beach.

C RAY MERTENS

Mr. Mertens is strongly in favor of the curfew. If there were not a curfew in the city of Chicago he would probably be in jail today. The police department had the ability to do something his parents were not able to do. He went before a judge and he made a choice. Some of his friends who did not get caught, are now doing time. Kids who are honor students should be home in bed. He had good parents, but he chose to defy them. If we care about the kids, we will have a teen center so they will have a place to go every day when they need help. When they make the decision to be good, there will be someone there to help them be good. We need deputies to tell the kids they must go home. It will give them probably cause to approach the kids.

D JOHANNA CAMPBELL

Ms. Campbell said Bay Oaks is doing a good job, but they are not all coming to the beach to go to Bay Oaks. On Friday night when she was driving back, she ran into all the 13 and 14 year old who live in Fort Myers and Lehigh Acres. They are drinking and have no business being down here alone. We need a curfew here after a decent hour.

E WANDA RODRIGUEZ MERRILL

Ms. Merrill asked what kinds of programs are out there for our children. It is a nightmare driving through Times Square. Parents should have a responsibility to control their children. It would be great if ordinances could be created to help. The ordinance should be fair so they don't feel they are being punished for being out there having a good time. It would be good to have a place to dance and share without alcohol. There is no place for the children to go and have fun with their peers.

F PARIS ROSS

Ms. Ross lives on the beach and she doesn't agree with the curfew. She grew up where there were curfews that were enforced and they didn't work. Find or make something for them to do rather than trying to make them be home by midnight. She has worked with a lot of kids and worked to find places for them to go and things to do.

G FRAN MYERS

Ms. Myers said this issue is frustrating because she has been on the corner of Times Square for 22 years and used to want a curfew. Now she does not think a curfew will work. She asked the council to pull it tonight and send it to the new Public Safety Task Force and have them come up with something that we could all live with. We do have a problem. Most are good kids but they travel in gangs and that makes older people intimidated.

H MARYANN DEMORE

Ms. Demore said she has lived here 20 years and has two children, 14 and 17. She said she is against the curfew. It is up to parents to control their children. If there is a problem, there are already rules on the books. Arrest those children who are doing wrong, but she doesn't want her 17-year-old being pulled over by a deputy asking where she is going. Under her permission she is free to go. If she gets in trouble, she would be the first to want her stopped. She also has nieces and nephews who come to visit in the summer. You give them a little more leeway in the summer. This is not downtown Fort Myers where all you have is bars and closed businesses. There is walking on the beach and other things to do. We should be looking at some other problems, like people coming out of the woods with knapsacks and brown paper bags at 7:30 in the morning.

I RAY CHESTER

Mr. Chester said he is against the curfew, and that we shouldn't punish all for a few. His beach access is a handicap access, and there are always cars parked there without a sticker. There are open containers on the beach. There are dogs on the beach. There are fires on the beach. If we can't enforce these laws, how can we enforce a curfew? The only law he sees being enforced is no horses.

The public hearing was closed. Mr. Reynolds said it is not about people on the street except after 11 PM on weekdays. Why would you want your child wandering the streets after 11 on weekdays or after 12 on weekends? It is trying to give the sheriff some opportunity to help parents who can't keep their youngsters home. It is not meant to be punitive. This would give officers a chance to approach runaways. He was hoping parents would look at this as a protection for their children. Maybe it should be adjusted to ages 16 or under. Kids are asking to be hurt if they are out that late. Mayor Cereceda asked if Mr. FitzSimons had any interest in pulling the ordinance and sending it to the PSTF. He said if it fails, he would like it to go to the PSTF as their first item of business.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the ordinance be approved.

Discussion: Mr. Mulholland said he does not feel there is proper enforcement. There is no question there is a problem, but this will not solve it. It is not realistic that the sheriff will take them home or arrest them. Maybe we will have to hire more deputies. Let's get some programs going. Mr. FitzSimons said the purpose is to protect people who are at a most vulnerable stage of their life from those who are immoral. Teenagers want to mix, but in this community that means they mix in the heart of our business district at a time of night when the only businesses that are open involve alcohol. Only a small percentage of the youth are probably local. They come from all over the county because this is where the action is. The beach is a park and a park is supposed to be closed at night. The ones who go to Bay Oaks are not the ones in Times Square intimidating people. Law enforcement can be used when appropriate. Mr. Murphy said that since downtown Ft. Myers was enacting this type of ordinance, the fear was that the kids would be run out of Fort Myers and head to the beach. There are no statistics to show that this invasion has happened. This is a tourist area and we encourage families to come here. How can ordinances be proposed before the facts are discovered? People say this is to protect children, but what hears is we are trying to protect the adults from the children. We expect the deputies to break up fights and arrest drinkers already. **Action:** Mr. Mulholland no; Mr. FitzSimons, aye; Mr. Reynolds, aye; Mr. Murphy, no; Mayor Cereceda, no. The motion failed. The council agreed that this should be given to the PSTF.

XII FINAL PUBLIC HEARING: ORDINANCE ESTABLISHING NEIGHBORHOOD IMPROVEMENT /MAINTENANCE DISTRICTS

Mayor Cereceda read the titles. The public hearing was opened. There being no public comment the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the ordinance be adopted. Mr. Mulholland, aye; Mr. FitzSimons, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion passed unanimously.

XIII OLD BUSINESS

A MOSS MARINA

Mayor Cereceda said that that Mr. Freeland is in the process of consolidating the two parcels and they expect to submit an application some time this week. This item will be moved to May 4.

B SEAFARER'S – PEDESTRIAN OVERPASS AGREEMENT

Jorg Wiebe, owner of Seafarer's, said that he has had a business disagreement with Mr. Fowler, but since a contract had already been signed between the town and those two parties, it would be honored. Mr. Fowler is about 80% complete the feasibility study and it should be complete in about two weeks.

XIV TOWN MANAGER'S ITEMS AND REPORTS

A SUMMER SCHEDULE AND SEPARATE HEARINGS FOR LAND USE CASES

Mrs. Segal-George said that because the land use hearings are so involved, they would like to split them out from the regular meetings. Because of the necessity of advertising, she has already agreed to hold the Publix hearing on May 6 at 10 am. The next regular meeting will be on May 4th at 6:30 PM. Mayor Cereceda said she has heard from residents and the council that the meetings are too long. Originally she thought about scheduling council meetings once a week but Mrs. Segal-George suggested separating out the land use cases instead. In addition, they have been meeting non-stop for over two years, and she wanted to suggest shutting down for the month of July and the first two weeks of August. In June, the meetings would be June 1 and 15, and we would have to add a meeting on the 29th in order to complete the preliminary budget work which is due in July. The budget message must be presented before July 15 and the tentative millage must be turned in by July 21. The LPA will be on vacation then too, so it will give the staff time to catch up on other things. This would mean that ordinarily there would be two regular meetings, one land use hearing and one workshop each month. Mr. Reynolds suggested putting two of the meetings in one week so you don't have a meeting every week which keeps you from taking short trips.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that land use cases be held separately. The motion passed unanimously.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the Council take a break during the month of July and the first two weeks of August and that the first meeting after the break will be August 17. The motion passed unanimously.

B REQUEST FOR FUNDING FROM CHARLOTTE HARBOR NATIONAL ESTUARY PROGRAM

Mrs. Segal-George said that now the Town has a seat on this board and Estero Bay is included in their work plan. They have asked everyone who has a seat to participate in the funding for project allocations.

Motion: Mr. Murphy moved and Mayor Cereceda seconded that the funding be approved for \$2500. The motion passed unanimously.

XV TOWN ATTORNEY'S ITEMS

Mr. Roosa said that he has reviewed the courthouse files on the Mound House. One lawsuit has been settled and the estate has been released, and the other is still pending. Florida Homestead law might be used. When a person dies owning property that is homesteaded, and it goes to the heirs free of creditor claims, on the instant of their death. The whole lawsuit is based on a deed from a personal representative (executor). He believes that deed could not validly convey 2/3 of the home, because 2/3 went to nieces and nephews at the time of Mrs. Long's death. To establish that we would have to go through a court procedure. If that happened, we could get good title to 2/3 of the home, and that would only leave 1/3 to be challenged. She is the one who allegedly signed the deed which she says was a fraud. The worst case is we would have 2/3 of the property and someone else would have 1/3 which we could condemn through eminent domain. That would cut the lawsuit down from \$1 million to \$300,000, which will have a different impact on litigation. He is still exploring this. The attorneys would all have to agree on this plan. If they do, we could acquire the property quicker.

XVI PUBLIC COMMENT

There was no public comment.

XVII ADJOURNEMENT

The meeting was adjourned at 8:55 PM.

Respectfully submitted,
Peggy Salfen
Recording Secretary