

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
DECEMBER 15, 1997**  
NationsBank Building, Council Chambers  
2523 Estero Boulevard  
**FORT MYERS BEACH, FLORIDA**

**I CALL TO ORDER**

Mayor Anita T. Cereceda opened the meeting on Monday, December 15, 1997 at 3:00 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

**II PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III INVOCATION**

The Council was led in prayer by The Reverend Ralph Dirkson, pastoral assistant at Chapel By The Sea Presbyterian Church.

**IV PRESENTATION TO COUNCILMAN ISLER**

Mayor Cereceda thanked Mr. Isler for his service to the town, particularly with the computer system, and on behalf of the Town Council, she presented Mr. Isler with a clock, and a certificate for a brick at the historic cottage and the pool. Mr. Isler said he thoroughly enjoyed being on the council and he thanked everyone for the opportunity. Mr. Reynolds said that he felt that they had all benefited by Mr. Isler's service on the council and thanked him for serving.

**V PUBLIC COMMENT ON AGENDA ITEMS**

There were no public comments.

**VI APPROVAL OF MINUTES FROM DECEMBER 1, 1997**

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

**VII REVIEW OF FINANCIAL REPORTS FOR NOVEMBER**

There were no questions concerning the financial reports.

**VIII COUNCIL MEMBER ITEMS AND REPORTS**

**A RUSTY ISLER**

Mr. Isler had no items to bring before the Council.

**B TED FITZSIMONS**

Mr. FitzSimons asked for an update on the status of the sign ordinance. Mrs. Segal-George said that the LPA has a draft but does not have a final version yet.

He also asked about the potential for reducing the amount of grandfathering in the town. He wondered if the Council can put time limits on any future permits or development orders so that they will not be grandfathered forever into the future.

**C GARR REYNOLDS**

Mr. Reynolds reported that FDOT will not put flex stakes on San Carlos Blvd because they feel that the hash marks are sufficient.

**D RAY MURPHY**

Mr. Murphy said that the city council of Sanibel just reorganized. Wally Kane is the new mayor and George Madison is the new Vice-Mayor. He asked if the Town could send some form of congratulations.

**E ANITA CERECEDA**

Mayor Cereceda said she would like to ask for some allocation to help with the cost of the Town birthday party. Last year the cost fell upon the ladies that put on the party. In addition, since it will be an annual affair, she would like to make it a budget item for the future.

**Motion:** Mayor Cereceda moved and Ted FitzSimons seconded that the Town birthday committee be allocated up to \$500. The motion passed unanimously.

## **IX PRESENTATION ON VARIABLE CONGESTION PRICING**

Chris Swenson with Lee Co. Dept. of Transportation spoke about Lee Way. He gave a history of the project. Congestion pricing is not just a function of how many people want to use a roadway, but also when they use it. It provides a financial incentive for the public to use the facilities at off-peak hours. Now it involves electronic toll collection and in the spring it will involve a 50% discount during selected off peak hours to cars that have transponders. In order to change travel behavior, they are only giving discounts during the hours just before and after the morning and afternoon peak hours. Discount hours will be 6-7 AM, 9-11 AM, 2-4 PM and 6:30-7 PM. Margie Beyers showed what a transponder looks like. She explained that you set up a pre-paid account and it automatically deducts from your amount. She answered some of the most frequently asked questions regarding big brother, accuracy and access to credit card security, etc. Mr. Swenson said they are investigating adding airport parking to the transponders, and it is possible that the Town could use them for some parking in the future.

## **X PUBLIC HEARING: PAUL AND BARBARA BOGDANSKI (5200 ESTERO BLVD) 97-09-294.05V**

Matt Uhle, attorney for the Bogdanskis, handed out a packet of exhibits. Mr. Uhle referred to the site plan, showing an irregularly-shaped plot with two building, an existing single family residence and the subject building that received a CO in 1996. It is located 7.5 feet from the property line. Smugglers Cove Condominium is next to the property. They rent out units on a weekly basis. There are 84 units on 4 acres, which makes the density about 20 per acre. On the southeast is the Tropical Inn, which is also controlled by Mr. Bogdanski. Most of the other adjacent properties are single family, although there is one 6-plex and some duplexes. The overall density is well over the currently-allowed 6 units per acres. The applicant would like to change the existing duplex into a four-plex. The side setbacks complied as a duplex but not as a multi-family dwelling. Mr. Roosa swore in Roland Stout, licensed architect. He stated that the permitting process began in Dec. 1994, and that the building that is on the property is not the same as what was originally permitted. It was originally a one-story duplex above parking. They were turned down by the state so they had to build two-stories above parking. The building is 37.8 by 75.4 in length at its widest and longest. There is 2230 sq. feet of habitable space on each floor. If this is approved, they will create two units per floor by adding a hallway and a kitchen. The individual units will be approximately 1165 feet each, which is a typical size unit at condos on the beach. He stated that if the building had to be relocated on the property it would be very difficult with the state regulations. He said they were misinformed at the time about how many units are allowed on the property, or they would have built a four-plex in the first place. He said this current building meets all codes for a duplex.

Mr. Uhle said that in order to get the variance there must be 1) extraordinary conditions (irregular shape), 2) not the result of anything done by the applicant (it was platted in 1925), 3) the minimum that would relieve unreasonable burden (the neighborhood is well over 6 units per acre yet his client is not even allowed 6 units, and he cannot move the building), 4) will not cause public harm (the same building will be there whether it is a duplex or a four-plex, and Tropical Inn is the only one who could be harmed and they don't care.) Regarding the code violation that is mentioned in the staff report, he said they would need the variance whether or not they win or lose the appeal. The judge has ruled that there was no substantial evidence to support the finding of a violation after the notice of violation was sent out. If they get the variance, it will no longer look like a hotel. Otherwise, they will be left with an unsatisfactory status quo. He feels everyone is better off if they grant the variance. Mayor Cereceda mentioned that there is a long corridor with each door numbered up to 10, which is why it looks like a hotel. Mr. Reynolds asked how you can park under a building that is enclosed. Mr. Stout said there is a portion that is open and a portion that has been enclosed with breakaway wall for storage. He also asked how close the balconies are to the Tropical Inn. Mr. Stout said it is 7' at the closest point. He said there are presently 10 bathrooms in the building. Mr. Isler asked why the building could not just be a duplex as it was permitted rather than asking for a 4-plex.

Mr. Roosa swore in Nettie Gustison, with Lee County Development Services. She gave a description and history. The Lee County Hearing Examiner found there was a violation and told the applicant they would have to convert back to a duplex or get a variance to convert to 4 units. Staff has recommended denial because the applicant's decision to convert the unit created the need. The LPA recommended denial also. Mr. Uhle asked Ms. Gustison if there were unusual dimensions to the lot and she answered yes. He asked if the unusual dimensions are not the result of the applicant, and she answered yes. He asked if the LDC reference to hardship is in the considerations section but not in the findings section and she answered yes. He asked if it is therefore not necessary to find hardship to grant this variance and she answered yes. He asked that since his client controls the other parcel, does she see any damage other than to the applicant. She replied that it sets a precedent that others could come in and apply for one thing, build something else, then come back and apply for a variance after the fact.

Mr. Roosa asked Ms. Gustison if the need for the variance was the result of the size and shape of the lot or because there is an existing structure on the lot. She answered that it was because there is an existing structure. He also asked if that structure was constructed under the same rules in the county that exist today for the town. She answered that there has been no change in the rules.

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

Mr. FitzSimons said this request appears to be an attempt to justify the existence of a building that was built as something other than that which was permitted.

**Motion:** Mr. FitzSimons moved that since there are no extraordinary conditions inherent to the property, and since any exceptional conditions are the result of actions by the applicant, and since the request is not the minimum that will relieve the applicant, and since the granting of the variance will be injurious to the Town of Fort Myers Beach, and since the condition is not of general or recurrent nature, that the variance be denied. Mr. Isler seconded the motion. **Discussion:** Mr. Murphy said that he has seen many instances where people will try to build or add a little extra, expecting a slap on the wrist or a minimal fine as the worst that could happen. This was zoned and permitted as a duplex, and built as a 10-unit structure, and now they are asking for 4 units. If that were to be allowed it would be an insult to his profession, and would be sending a signal that business is open on Fort Myers Beach and if you happen to build a little extra, you come back to the Town Council and ask for forgiveness. **Action:** Mr. Isler, aye; Mr. FitzSimons, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried and the variance was denied.

#### **XI STEER-MILL INC. IN REF. TO TOP O'MAST (1046 ESTERO BLVD) 97-08-145.03V**

Maureen Kilbourne, representing Steer Mill, was sworn in by Mr. Roosa. She said the applicant is asking for a 0' setback for a sign. She said during and since the beautification process, Top O'Mast has little visibility and the 15' setback requirement would make the sign not visible and would take up some of their parking spaces and would cause a lot of confusion. Mr. Isler asked if the posts would get in the way of pedestrians walking. She replied that it is not in the walking path and showed some pictures. It was clarified that the point where the signs come together would be at 0', not the posts. It would be lighted from the inside toward the front, but there will be no light toward the gulf and will not interfere with the turtles. Mr. FitzSimons asked if the applicant would be willing to submit the sign design to the Town Manager before building, as a condition, and the applicant indicated they would be. It was clarified that they would remove the currently existing parking signs.

Ms. Gustison said the property is a parking lot that is adjacent to Top O'Mast. They are requesting the sign for paid parking and also for free parking for patrons of Top O'Mast. It is confusing now because of the pavers and people are not sure they can drive over them. Staff recommends approval because it is in an area that is confusing and difficult to find a parking place, and because there is a hardship for the applicant that is not the result of action by the applicant, and because it will not be detrimental. The conditions staff recommends are that the sign be no larger than 36square feet at 0' setback, and they must remove all other signs for parking. The LPA recommended approval with the same two conditions. Mr. Reynolds asked if other businesses could make the same request and make their parking paid versus for the convenience of their customers. Mr. Gustison said it has always been used as a commercial parking lot, so any other lot would have to be zoned properly for a parking lot first. Mr. Isler asked Ms. Kilbourne why the posts extend above the sign, and she replied that it is for esthetics. The posts will be primed and painted with a light color. He asked if they could be matched to the colors of the lamp posts. She will explore it, but they envisioned a light beige.

The public hearing was opened. There being no comment, the public hearing was closed.  
**Motion:** Mr. Murphy moved approval of the variance request including the two conditions recommended by the LPA. The motion was seconded by Mr. Isler. Mr. Reynolds asked to add the third condition that the Town Manager must approve the final design. Mr. Murphy and Mr. Isler agreed to the amendment. The vote was as follows: Mr. Isler, aye; Mr. FitzSimons, aye; Mr. Murphy, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion passed unanimously and the variance was granted as conditioned.

The council took a break at 4:50 and reconvened at 5:07 PM

**XII PUBLIC HEARING: LEE COUNTY COMMISSIONERS REP. BY COMMUNITY REDEVELOPMENT AGENCY, IN REF. TO CONSOLIDATED REALTY HOLDINGS, INC (JIMMY B'S) 97-04-188.03V (1130 ESTERO BLVD.)**

Ray Judah, County Commissioner, stated that the issue goes back to 1991 when the commissioners reviewed a permit for a consumption on premises at Jimmy B's. He was the lone dissenting vote. There was a condition that there be no signage visible from Estero. He is here because of his involvement with the CRA project in Times Square. They removed overhead power lines and put them underground, which was an aesthetic plus, but it will also be helpful in case of a major storm. The undergrounding would never have happened without the support of Mr. Kotsopoulos. The LPA in reviewing staff recommendations, supported the approval for the two instructional signs, but also the two additional signs at Jimmy B's. He is here to convey if it weren't for the efforts and generosity of Mr. Kotsopoulos it would not have happened even though he knew it created a hardship for himself. That fact has been held against him. The electric switch boxes and transformer are quite large and sit in easements that he dedicated to the county. These equipment boxes not only assist the three hotels, but also all the other businesses in the area. The problem is that motorists can no longer see Jimmy B's from Estero. He thinks it is a fair request and he asked that the council support it. Mr. Kotsopoulos was sworn in by Mr. Roosa. He stated that he is president of Consolidated Realty, the company that owns the Ramada Inn, Howard Johnsons and Days Inn. He explained that they created their own hardship (loss of business), but they have been here 16 years on the beach, and have spent millions of dollars renovating those hotels and feel they have been good citizens. In 1991 they applied to build Jimmy B's and were granted with the condition that no signs were visible from Estero because they had signs on the other three sides and you could see from the street that it was a lounge open to the public. He was told the equipment box would be 2 x 2 x 2 so he gave the approval to put the box on his property. The box is closer to 5 x 5 x 5 and it obstructs the view of the building. Telephone cable boxes were also put in where they had no easement. Mr. Judah came to see him and asked him to work with the town and accept the box. He expressed the fear that it would obstruct the view. Mr. Ryffel suggested a sign that would solve the problem. With that in mind, he allowed the project to go on. He gave up 11 easements and sacrificed quite a bit. They can prove that occupancy is up, but revenue from Jimmy B's has gone down. He asked for approval so they can stop the sacrifice and loss of money and correct an injustice.

Mr. FitzSimons asked if, in the original application in 1991, he stated that the purpose of the bar was to satisfy the tenants of the three hotels. Mr. Kotsopoulos said he is not aware that that statement was made.

Ms. Gustison showed a map of the area. The hotel is about 3-6 feet from Estero. She gave a history of the subject property. She enumerated the conditions that were previously attached to Jimmy B's by the county. The applicant is requesting two variances and a modification: 1. Four instructional signs, two at the entranceway to the courtyard at Days Inn, and two at the entrance to Jimmy B's parking lot (instructional signs are allowed if it is not more than 4 feet in area, but these would be about 9 feet.); 2. Variance from the 15' setback to allow 0' setback; and 3. Rescind the condition that there would be no signage on Estero for the bar, to allow a free standing sign of 72'. The LPA recommended that it be lifted to allow signage on Days Inn so they won't add an additional free-standing sign. They approved the two instructional signs for Days Inn, and also the two for Jimmy B's. Staff has concluded that a hardship exists (congestion, confusing to motorists) and recommended approval for the two instructional signs for Days Inn only. They are recommending that the other two requests be denied because the bar use was supposed to be incidental to the hotel use.

Mr. Isler said it seems the issue is whether this will convert Jimmy B's to a full-fledged open public bar. If it were for in-house use, no sign would be needed. Mr. FitzSimons asked if Jimmy B's had a

separate parking lot and does the present parking conform. Ms. Gustison said she did not do a check on the parking. Pam Houck was sworn in. Ms. Houck said it was her case in 1991, and at that time the bar complied with the parking regulations. She believes it could stand on its own still. He asked if the county staff looks at the best interests of the town when they are making recommendations, or if they go by the book. She replied that they go by the book. He said he felt we would be changing from a hotel with a bar attached, to a bar with a hotel attached. He asked if parking was added when the county approved outdoor seating, and Ms. Houck replied that it was not required. He asked if she recalled that the applicant made the point, at that time, that the bar was for the use of the hotel. She replied that their argument was that it was a subordinate use to the hotel. Mr. Reynolds asked if this becomes a neighborhood bar, would it require more parking. She said she thinks it would be in compliance. Ms. Cereceda asked Mr. Kotsopoulos if Jimmy B's is a separate business. He replied that it is one parcel of land and it is actually attached to the hotel. The main part of the business of the property is as a hotel. The bar could never be sold as a separate business. But like any other hotel with a bar, it is open to the public. She said Jimmy B's has created itself and people already go there who are not patrons of the hotel, so the Town would not be permitting a bar that is not already there. Mr. Isler asked if the LPA solution is acceptable without the free-standing sign. He said it is not because the entranceway to parking is on the other side from Jimmy B's. It would look like Jimmy B's is within that courtyard. Mr. FitzSimons asked if they currently advertise Jimmy B's in the media. He answered yes.

The public hearing was opened.

**A TONY PINTO**

Mr. Pinto asked how many parking spaces are required for how many people. Ms. Gustison replied that it depends on the use (retail, restaurant, hotel, etc.).

The public hearing was closed.

Mr. Isler asked if the parking was calculated on the bar and the hotel or just the hotel. She replied just the hotel. Mr. FitzSimons asked if parking requirements are different between the bar and hotel use. She stated that hotel is figured by unit, and bars on square footage. Mr. Isler asked Mr. Kotsopoulos if people from the hotel ever come back and can't find a place to park because it is being used by bar patrons. He said they have not had that problem, and if they did, their patrons would be able to park at any of the three hotels. They make sure their hotel patrons have a place to park.

Mr. FitzSimons said if we change the 1991 decision, we should review the entire special permit application because it was the result of a hearing examiner subject to conditions. We are talking about increasing the visibility of a bar. He reminded that the town was not involved in the decision to underground the utilities. In fact the town wanted to do more of the specified projects and less undergrounding, and they recommended that to the county commission. The request for items B and C constitute a step back for the town. He was at the 1991 hearing and tried to tell them what it is like to live in a residential community whose main road has so many DUI fatalities. When you come over the bridge, where is the family island? Do you first see an attractive hotel complex or a bar? It is important that our core area message should be that we are a family island. Family islands don't need to have bars flagrantly advertised. Directional signs for the hotel are fine, but regarding promises made by the county, we are not obligated. We have to consider community impact: how many bars do we need in our community and how many drivers can we put on Estero?

**Motion:** Mr. FitzSimons moved approval of item A and denial of items B and C. Mr. Isler seconded the motion for discussion. **Discussion:** Mr. Isler said he has been to communities that have very strict sign regulations and it looks very strange, although it works because everyone has to comply with the same regulations. If you give a big free-standing sign, wouldn't they all have the right to have a large free-standing sign? Also this bar is for the internal customers, but putting a free-standing sign is contradictory. He thinks this becomes a change in use. Mr. Murphy said that if you deny all three signs for Jimmy B's then you have not given him any consideration for his actions. It was not our decision, but it has been a major improvement to the beach to have the undergrounding. Mr. Murphy said he thought the free standing sign should not be allowed, but the two instructional signs are OK. Mr. Isler said he agreed and withdrew his second. **Action:** The motion failed for lack of a second.

**Motion:** Mr. Murphy moved approval of items A and B and denial of item C as recommended by the LPA. Mr. Isler seconded the motion. **Discussion:** Mr. Roosa said this would mean that paragraph 3 of the resolution would be deleted. Mr. FitzSimons asked if Mr. Murphy would allow the condition that the Town manager approve the sign. Mr. Murphy and Mr. Isler agreed to the amendment. Mr.

Reynolds said he has a problem with putting up more advertisements for bars. The people in the motels will already know it is available. **Action:** Mr. Isler, aye; Mr. FitzSimons, nay; Mr. Reynolds, nay; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried and the variance for items A and B were granted as conditioned.

### **XIII DISCUSSION WITH BARB MANZO, LEE COUNTY PARKS & RECREATION**

Ms. Manzo said she thought this issue had already been decided 6 months ago. She feels they have bent over backwards to help us solve the problem and have tried to be a good neighbor in the park and during the construction. The county has incurred a loss of revenue in the park and a large amount of extra expense largely due to the trash issue. Because the dumpsters are still there, they have had to put on more staff. They have had to pick up trash around the dumpsters. She does not understand why we would want them there anyway. It is unsightly and the smell is bad. People sit outside and eat and look at and smell dumpsters. The garbage that Mr. Lawler picks up on the square, he puts in the Lee County dumpsters and therefore their costs for trash hauling have gone up. There are no great solutions to a lousy problem, but she thinks the best solution is the area under the bridge. She can offer for the county to haul the trash to the outside location for a fee using their employees and equipment. Mr. Reynolds asked if we could talk to the commissioners and get them to donate a section of the park to the town for the placement of the dumpsters, or for the town to buy that section. She said that Parks and Rec would be totally opposed but it would not be their final decision. They are hoping to better the park. They had considered a smaller compacting dumpster on the other side of the park. But she wants to get rid of the dumpster at Lynn Hall and also Bowditch and get rid of garbage in our parks. She would like to go in with the town under the bridge. Mr. Reynolds asked if she knew how much revenue was lost because of the dumpsters. She said they have hired someone to help with the cleanup. If there is a dumpster, people will use it. If they are locked, they will leave the trash on the side. The bills have doubled at their dumpster. They have also opened up the parking lot 24 hours, so they must now clean it more. It costs about \$12,000 per year for the additional maintenance. They want to create paths and landscaping where the dumpsters are, and then repave the parking lot. Mr. Murphy said we know it is a bad use of the property, but it could be argued that the problem is caused by a design flaw in the project. We are working toward MSBU's in the area and he asked for a temporary use there until they can be set up. He thinks it would take about 8 weeks. She suggested instead that the county pick up the garbage for the town for a minimum cost until the MSBUs are in place. She would take out the dumpsters and move them under the bridge, and set out a schedule for the merchants to put out bags for pickup by the county. Mr. Isler agreed that this plan should be accepted and that the town should work toward the MSTU. Mr. Murphy said he felt that the cost was insignificant compared to the problem of frequency of pickup.

**Motion:** Mr. Isler moved that the process of moving the dumpsters and having the County pick up the garbage be set in place, that Ms. Manzo and our staff work out the logistics, and that the town pay until the MSBU is in place. The motion was seconded by Mr. Murphy. **Discussion:** Ms. Manzo said that the parks generate 55 tons of garbage per year and the merchants generate 230 tons. Based on that, she is guessing that the split in cost will perhaps be 75/25. **Action:** The motion passed unanimously.

The council took a break at 6:45 and reconvened at 7:55 PM

### **XIV FINAL PUBLIC HEARING: ORDINANCE AMENDING THE LAND DEVELOPMENT CODE**

Mayor Cereceda read the titles.

Mr. Spikowski stated that he prepared this ordinance for the LPA, and gave a brief overview.

Mr. FitzSimons asked if the 850 square feet could be a minimum size rather than a maximum. He said you tend to have more permanent rental situations in larger accommodations. By not allowing smaller ones, you would accomplish this. Mr. Spikowski said if you set the minimum at 450, some would be too small, and they would just add on, and he's not sure that's what the town wants. Mayor Cereceda asked what the intent was. If you have an owner-occupied home with a unit below, what difference does it make about the size? She feels that the importance is the owner-occupied feature. Mr. Spikowski said the county does not differentiate between a duplex and a small apartment. They wanted to ease the rules without causing a backlash. This is not a magic number. You could eliminate that and still require that this only

apply to existing apartments constructed before 1984, that the owner must live there, that it must meet flood regulations, and that you can only have one unit. He suggested the size just so there would be some safeguards. Mrs. Segal-George said the LPA changed it from 400 to 850. They did not discuss eliminating the size requirement altogether. If you leave the number in and they have a larger unit, they would have to reduce the size of the apartment, ask for a variance from the Town, or rezone to duplex. Mr. Murphy asked if these larger apartments would increase density. They were originally supposed to be for a mother in law and now they might house a whole family or several roommates.

Regarding the rule that requires restaurants to keep separate records showing that they are making more than 50% on food, it would not require them to submit that information regularly. They would only have to produce it if there was suspicion they were not complying and they were audited.

The public hearing was opened.

**A JOHN MULHOLLAND**

Mr. Mulholland, chairman of the LPA, said that the 450 square feet was increased to 850, and that still feels small. He thinks the LPA was trying to keep it from looking like a duplex. An apartment should be smaller than a duplex. Mr. Spikowski clarified that there are two kinds of duplex, those owned by one owner and those owned by two owners.

**B SANDI SUTER**

Ms. Suter asked what provisions are being made for these units, now that they are legal, that they meet code for electrical, plumbing, etc. Mr. Spikowski said this does not grandfather any illegal construction. If something was built without a permit, it will still have to be inspected. She also asked what we would do about the reappraisal of the value of property. Mayor Cereceda said she assumes that when people apply to become legal, they will be admitting they have these apartments.

**C JOHANNA CAMPBELL**

Ms. Campbell encouraged them to keep the square footage limit because they wanted to keep them from going even more to duplexes and then being broken down even further into smaller units.

**D JOHN MCCLAIN**

Mr. McClain stated that he owns three apartments on the beach. He has only bought legal duplexes. Now some of the apartments he could have bought are going to become legal. For his duplexes he pays more garbage, more taxes, etc. It is more expensive for a duplex, there is more turnover, etc. Mayor Cereceda clarified that we are not making these into legal duplexes. It is making a legal apartment in a home where the owner lives. Mrs. Segal-George said the problem is that we have all these illegals and a terrible enforcement problem. We send code enforcement, and they take out stoves, and then the next year the stoves go back in. They are trying to make a workable situation out of a bad situation. We will still have a problem with those built after 1984. It will at least take some out of circulation.

**E MICHAEL WYATT**

Mr. Wyatt has visited the beach for 20 years and lived here for three years. He thanked the Town for making this ordinance because up to now there has been no mechanism in place to keep people from buying homes with illegal apartments. He does not think the size should be limited because there are some nice units and if they are owner occupied it will help with code enforcement. He asked how this will be implemented and what is the time frame. He is trying to re-mortgage his home so he can do some remodeling and his lending institution will not recognize his lower apartment. Mrs. Segal-George said we have been giving letters stating this action is pending. If this is passed, we can now give an official letter to the mortgage company saying it is legal.

**F DON DEANE**

Mr. Deane spoke regarding the cap of 850 feet. He thinks it makes more sense to eliminate the cap or perhaps add a minimum figure. With a smaller apartment you have more turnover and less likelihood that they are paying the tourist development tax. The cap would mean a 29 x 29 room and people are not comfortable in that size apartment for a long time. He would rather see a minimum of perhaps 600 square feet.

**G JOHN LALLO**

Mr. Lallo spoke concerning the restaurants with alcoholic beverage licenses. He said the council should consider whether if he sold his restaurant, would it be grandfathered in, or can it become a bar without having to follow these rules and regulations. He also asked how we plan to enforce the audit. If you lower the price of beer enough, you can actually do more beer business than food business and still

sell 50% food by dollar amount. You have to decide whether to audit by sales or purchases. He recommended talking with the city of Fort Myers to see how they are enforcing their rules.

The public hearing was closed.

Mr. Roosa said that he would take care of the typo in Section 12. There was general agreement that except for sections 14, 17 and 19, the rest of the sections could be agreed upon as is. Regarding Section 14, Mr. Isler said there are two kinds of mother in law apartments: a garage closed in, or a piling home where the bottom is closed in. He is not sure the footage makes any difference. If you say it must be under 850 feet, people will say that 850 feet is the apartment and that the rest is storage. Mother in law apartments do have some advantages, such as you only have to have one meter and pay one base charge on your water bill, sewer, and electric. Duplexes must pay two garbage bills entirely. It is cheaper to be mother in law than duplex.

**Motion:** Mr. Murphy moved to eliminate the upper limit of 850 square feet. Mr. Reynolds seconded the motion. Mr. Murphy, Mr. Reynolds, Mr. Isler and Mr. FitzSimons vote in favor of the motion. Mayor Cereceda voted against the motion. The motion carried.

Regarding Section 17, Mr. FitzSimons recommended going to a zero multiplier on both, on the basis that our sheer numbers of hotel/motel units is becoming a volume problem and adds to our problems. He said that Captiva has a zero multiplier. If someone wants to go higher they would have to come to the town for a variance.

**Motion:** Mr. FitzSimons moved that the multiplier be changed to 1.0 on both. Mr. Isler seconded the motion. Mr. FitzSimons, Mr. Isler, Mr. Reynolds and Mayor Cereceda voted in favor of the motion. Mr. Murphy was opposed. The motion carried.

Regarding Section 19:

**Motion:** Mayor Cereceda moved that the dates be changed to Nov. 15 to July 15. Mr. FitzSimons seconded the motion. **Discussion:** Mr. FitzSimons asked if people could come to the town manager for a request to be open on a special event. Mrs. Segal-George said we have already been allowing it on an informal basis. The problem is that there is now not much difference between a temporary and a regular parking lot. Mr. Isler asked why we have temporary lots anyway instead of making them get an annual permit. Mayor Cereceda said you would be giving an advantage to temporary lots if you just required them to come in for an annual permit. Mrs. Segal-George said you must pave, have drainage, and get a development order for a regular parking lot. This gives more flexibility to the temporary lots, and some of them want to be temporary lots. Mr. Reynolds likes December 15 through May 31. All they have to do is request if they want to be open some other time. They have no requirements and are competing against lots that have a lot of regulation. Otherwise we are almost making them regular lots. **Action:** Mayor Cereceda, Mr. FitzSimons, Mr. Murphy and Mr. Isler voted in favor of the motion. Mr. Reynolds was opposed. The motion carried.

Regarding the ordinance as a whole:

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the ordinance be adopted as modified.

The vote was as follows: Mr. Isler, aye; Mr. FitzSimons, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

## **XV RESOLUTION OF THE FLORIDA LEAGUE OF CITIES CONCERNING REVISIONS TO THE FLORIDA CONSTITUTION**

Mrs. Segal-George said the Florida League of Cities asked that this be passed and sent to the appropriate parties.

**Motion:** Mr. Murphy moved and Mr. FitzSimons seconded that the resolution be adopted. The motion passed unanimously.

**XVI NEW BUSINESS**

**A RESCHEDULING OF JANUARY 19 MEETING**

Since January 19 is a state holiday, Mrs. Segal-George suggested that the meeting be moved to a joint meeting with the LPA to hear 3 more elements. After talking with the LPA, she will arrange a date.

**XVII TOWN APPOINTMENTS**

**A LPA VACANCY**

Mrs. Segal-George explained that the LPA must have between 7 and 9 members. As of January 5 when Mr. Mulholland becomes a member of the Town Council, there will be 8 members on the LPA. She asked if they want to fill the vacancy or not. Mr. Murphy felt that the vacancy should be filled. Mr. Reynolds said it should be open to people who want to serve. Mr. Gucciardo said he will put an ad in the paper.

**XVIII TOWN MANAGER'S ITEMS**

Mrs. Segal-George had no items to bring before the Council.

**XIX TOWN ATTORNEY'S ITEMS**

Mr. Roosa had no items to bring before the Council.

**XX PUBLIC COMMENTS**

**A SANDI SUTER**

Ms. Suter played a recording of the noise she hears from her house. She asked what can we do about incoming noise. The Bridge is not within our jurisdiction but everyone on the bay has to live with the noise every day. Property values have gone down on at least one property because of this and she has lost sales because of it. Mr. Roosa said you have to deal with the county noise ordinance which applies to San Carlos Island. It was noted that that Snug Harbor now owns The Bridge and they are on our island, so perhaps the problem can be addressed through them.

**XXI ADJOURNMENT**

The meeting adjourned at 8:15 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary