

**FORT MYERS BEACH  
TOWN COUNCIL – REGULAR MEETING  
Town Hall – Council Chambers  
2523 Estero Boulevard  
Ft. Myers Beach, FL 33931**

**I. CALL TO ORDER**

Mayor Bill Van Duzer called the regular Town Council meeting to order at 6:30 P.M. on Monday, May 2, 2005.

**II. PLEDGE OF ALLEGIANCE**

All present stood and recited the Pledge of Allegiance.

**III. INVOCATION**

Pastor Tom Snapp of St. Peter's Lutheran Church gave the invocation.

**IV. MULHOLLAND STEWARDSHIP AWARDS**

At this point, Mayor Van Duzer announced that there would be a short break after the awards were presented, and that when the meeting resumed, the agenda was going to be taken up in a different order than had been originally planned.

Terry Cain was introduced as a former Vice Mayor and Council member of Ft. Myers Beach and one of the Town's finest citizens.

Ms. Cain came forward and explained that the Mulholland Stewardship Award had been created in memory of John Mulholland, a former Mayor of the Town and creator of the Marine Resources Task Force, as well as having been a member of various groups dedicated to the preservation of the environment of and around the Island.

Ms. Cain then indicated the award plaque hanging on the wall in Council Chambers, onto which peoples' names are added as they become recipients of the Mulholland Stewardship Award. She characterized the appearance of the award as being an original rendering of a red mangrove tree, and explained that the tree was selected by the Town to represent people who come to work, play and live on the Island who act as stewards of the local environment. Ms. Cain explained that the Marine Resources Task Force usually would select three or four people every year to receive the award, and that each recipient had shown conservation of habitat and wildlife through promoting awareness, education and preservation of the Island's natural resources.

Ms. Cain, on behalf of the MRTF and the Town Council, then introduced this year's recipients:

Estero Bay Aquatic Preserve and State Park Staff – Ms. Cain described this group of people as having secured three \$1 million federal grants for land acquisition and restoration surrounding the Island's bay. She said they had monitored and restored cultural sites in the bay, removed exotic plants, monitored water quality and sea grass beds, conducted wading trips, conducted weekly anchorage counts in the harbor for years, and had educated thousands of people on the importance of protecting the natural and cultural resources in Estero Bay.

Claude Bowyer – Ms. Cain said that Mr. Bowyer had devoted every other Saturday of his time to the Matanzas Pass Preserve, picking up litter and controlling the exotic plants that creep into the natural area, in any kind of weather, with a smile. She added that he had maintained a Florida Friendly Yard for over a year, and had to replant it because of Hurricane Charley. Additionally, Mr. Bowyer supplies trash bags for his busy section of the beach. Ms. Cain noted that his award stated he made his contributions with "Florida graciousness, as usual".

Eve Haverfield – Ms. Cain introduced Ms. Haverfield as the "Turtle Lady", having devoted years to tracking the nesting of sea turtles, and ensuring that dead turtles were retrieved and analyzed for the cause of death. Ms. Cain explained that Ms. Haverfield has kept an eye on all the creatures on the Island to keep them from harm, and has spent hundreds of hours educating residents and visitors about the Island's natural resources.

Corporal Jim Urb – Ms. Cain announced this recipient as being from the Lee County Sheriff's Office, and said that Mr. Urb was instrumental in the construction of the Matanzas Harbor mooring field. She related that his calm demeanor, distinguished performance of duty and superior professionalism led to the smooth transition of Matanzas Harbor from an unregulated anchorage to a controlled mooring field. She added that Corporal Urb had tagged each abandoned vessel that was to be removed from the harbor. Ms. Cain said that the Harbor Plan had begun when she was in her thirties, before she had any children, that she had waited a long time for it to come to fruition, and that she really appreciated the work Corporal Urb had done.

At this time, Mayor Van Duzer called for a ten-minute break so that everyone present could enjoy the refreshments, congratulate the awardees, and admire the plaque.

**V. PROCLAMATION: NATIONAL SAFE BOATING WEEK – MAY 21 – MAY 27**

Mayor Van Duzer asked if Robert Cohen was present. When Mr. Cohen did not come forward, Mayor Van Duzer said the entire proclamation would not be read aloud.

**VI. PUBLIC COMMENT**

Mayor Van Duzer told those present that they could speak on any item or items on the agenda, including those who were interested in being selected for the Council seat. He explained that, once the item regarding the selection of a person to fill the vacant Council seat was taken up by the Council, there would not be any opportunity for Public Comment, and invited commentary regarding that or any other agenda item at this time.

Pat DeVincent of 160 Bahia Via came forward and said he wanted to put into public record the contents of a fax he had sent to the Council members regarding the Interim Town Attorney and Temporary Council replacement urgency. He said it was interesting to compare the progress of Ft. Myers Beach to the progress of Bonita Springs and cited a News-Press article written on April 26, 2005 entitled “New Town Hosts First Meeting”. He read from the article that a facility to which he was referring had cost \$2.92 million and took three years to plan and build. He pointed out that the first \$3.2 million collected from Ft. Myers Beach taxpayers was supposed to correct traffic safety and blight conditions along Estero Boulevard, but instead was used to redevelop Times Square and Old San Carlos. He said that after the Town Attorney Roosa executed the Town’s CRA contract with Lee County, never mentioning the blight conditions along Estero Boulevard, by signing “Dick” to execute the CRA contract. He said after just seven years of existence, the Town of Bonita Springs not only designed, developed and built a new city hall building, it also has a full-time attorney, Audrey Vance, an assistant attorney, Cammy Corbett. He said they recently completed the run-off election of Councilman John Joyce. He asked what Ft. Myers Beach had after spending millions of dollars for consultants for almost ten years. He answered that the Town has a built-in hazard to the thousands of cars, trucks, mobile homes, construction equipment and emergency vehicles that come to the Island every day. He said this hazard was the trolley express lane. He asked why the Town was advertising for a part-time Town Attorney when Mr. DeVincent believed the Council had moved for a Full Time Attorney who would report directly to Council and not the Town Manager. He said Council did not need a part-time attorney but a full-time Town Attorney to help make appropriate legal decisions in the best interest of the Town. He quoted a recent Sand Paper article that quoted Mr. Roosa as saying “Thomas’s replacement should be made as quickly as possible.” Mr. DeVincent said this was the same fired Town Attorney who delayed the March Town elections until November and

allowed the Mayor to stall for several months before Vice Mayor Rynearson was finally selected on December 29<sup>th</sup> of 2000. He said that Council needed to advertise for a full-time Town Attorney, and honor the legacy of Bill Thomas by taking no action, allowing Bill Thomas to complete the remainder of his term of office.

Delores Yost came forward and said she was not there to talk about the election, but said she works at the Mound House as a volunteer. She said she had just recently found out that the two people who work there were not covered with major medical insurance. She read from a note she had written in which she asked the Council to make a change in the Town By-Laws so as to allow the Town to provide medical insurance and other benefits to the two professionals who operate the Mound House. Ms. Yost said that when she had asked about it, she had been told that the directors of the Mound House because they were classified as independent contractors. She pointed out that both Ms. Schober and Mr. Corbett were called onto the Island before residents were allowed back on the Island after Hurricane Charley, when residents had been told that only Town employees, Councilmen, and emergency and repair services would be allowed back on the Island during that period of six days of initial recovery. She felt that implied that Ms. Schober and Mr. Corbett were technically Town employees. She felt that they should be under the same rules and same benefits as everyone else who works for the Town. She thought they had done a wonderful job at the Mound House, and had turned it into a tremendous asset for the Island. She said their personalities and hard-working attitude caused all the volunteers who work at the Mound House to respect them both. She asked that Council help get benefits for Ms. Schober and Mr. Corbett, and thought it would be a real tragedy to lose them because they were industrious and honorable. Ms. Yost said she knew how much they were working for, and that she would never work for that money. She said she had worked in many large cities over thirty years ago and had made more money than Ms. Schober and Mr. Corbett together. She felt the environmental and educational programs that they provide to the busloads of children who visit the Mound House were wonderful, and opined that if her generation had received that sort of an education about the environment they would have kept the waterways cleaner and would have protected their lands better.

Bob Simon of 13 Sunview Boulevard came forward and distributed a photo to each of the Council members and asked them to look at it while he described some of its details. He noted that the occupants of the cart in the photo did not have seatbelts on, but were driving on public streets in probable violation of Florida State laws. He also noted the stroller that was strapped on the rear of the cart, and that the woman in the picture was holding a baby in her lap, which he said was a very dangerous situation. He pointed out that unlicensed vehicles were not permitted on public streets, nor were motorized vehicles allowed on sidewalks. He said that a few months ago there had been three

teen-aged girls using the streets of Fairview Isles as a racetrack for several hours had been hit by an SUV when they had made a left turn right in front of the SUV. He said the golf cart was tipped over, and emergency services were called, and while fortunately none were seriously injured, all could have been killed. He felt the Town needed more law enforcement of the existing laws. Mr. Simon then spoke about Segways. He indicated copies of two letters he had distributed to each Council member, which had appeared in the Toronto Canada Star, on April 11<sup>th</sup> and on April 28<sup>th</sup>. He cited the April 11<sup>th</sup> letter from the co-chair of the Toronto Pedestrian Committee in which it was explained that Segways and similar were not permitted on streets, sidewalks, and park paths. Mr. Simon added that Segways were banned in San Francisco and all Disney parks. He pointed out that on Ft. Myers Beach there were approximately 7,000 permanent residents, with a seasonal population of many thousands more. He said that the uniqueness of the Island contributes to the traffic problems, with a very narrow if not altogether non-existent bike path, and the sidewalks, where they exist, are very narrow and heavily used. He said that if Segways and similar devices were allowed on the Island, they would add to the congestion and would erode the safety of all. He felt Segways and other similar devices had a place, but not on the Island. He asked the Council to ban them and similar devices from the streets, bike paths and sidewalks.

Jeff Warner of 7150 Estero Boulevard came forward and commended the Town Council on the way the meetings had been conducted since the induction of the new mayor, and thought it was very nice to see how well organized the meetings had become and felt a spirit of unity emerging. He thought they had an opportunity to round out the Council with a person who would be civic minded, knowledgeable on Town issues, and a consensus builder. He publicly endorsed Tom Babcock for the vacant Council Seat #4.

Mayor Van Duzer called Randy Brown forward, but he asked if Jim Hansen could go first, to which Mayor Van Duzer agreed.

Jim Hansen of 18 Avenida Carrida came forward and to speak about a weekly rental in a designated quiet residential area. He said he had looked into how the house had been rented, and had found that the paperwork that had been turned in to make it a weekly rental had been illegal or incorrectly filled out paperwork. He said he had been on Ft. Myers Beach since 1964, and he and his wife had lived in Canal Point Trailer Park for a lot of years, and then moved to their current address in 1976, where they had found it to be a quiet neighborhood. He said in the middle of the street currently is a house that operates like a motel, with people coming and going all hours of the night and was an annoyance. He went on to say that he had not voted for incorporation of Ft. Myers Beach, but he had seen a lot of benefits as a result of incorporation and had changed his feelings about it. He wanted to know how the Town was going to protect his rights as a residential owner and hoped the

case could be re-opened so that the Town could see the house was given weekly rental status incorrectly. He said the adverse effect on the neighborhood was that there was an increase of noise and loud music, and it currently appeared that there were three families renting the house simultaneously, and additionally the “caretakers” apartment downstairs was also being rented out. He said that when he had gone to the renters and complained about the loud music they told him they didn’t care how he felt about it because they were only there for the week. He told the Council that he was there as a representative of the entire street of Avenida Carrida, the majority of whom were retired people. He said it was a nightmare of cars and people coming and going at all hours. He said the neighbors and he didn’t understand how it could have been okayed, and cited the documentation he had distributed to the Council which explained why and how he and his neighbors all felt.

Randy Brown, a five-year resident of Ft. Myers Beach came forward and said that Jim and Judy (Hansen) were great neighbors, as well as Dave and Sally. He joked that his wife was a great neighbor, too, but the jury was still out on him, which drew some chuckles. Mr. Brown said they all get along, help each other out, and respect each other’s privacy. He said they were not all perfect, but they had done the best they could do, and got along well, but that there had been a compromise in their neighborhood over the last few years regarding one home that he and the neighbors believed was misrepresented in its sale. He said they had given the people the benefit of the doubt, and believed what those people had told them regarding paperwork that had been submitted to the Town, and felt that it was questionable. Mr. Brown said that the man who sold the house had told them that he had never rented the home, and that due to the size of the lots, the neighbors were pretty well aware of what went on there. Mr. Brown said that before the house was sold, there had never been any renters in it, and cited a letter that “made the case” on that. He asked the Council to revisit the issue of this house, as he and his neighbors had not known about the thirty-day challenge period after the new owner had applied for a permit to rent the house. He said when the new owners first showed up, they had told everyone that they were just setting up a second home there, and then gradually the rentals came in at first and then subsequently became more and more frequent. Mr. Brown asked the Council to revisit the application process that was undergone by the current owner of that house. He said the Statement for Rental served as an affidavit under Florida State Statute 92.525, which addresses affidavits and false declarations and for which the time limit is 5 years rather than 30 days.

David Saunders came forward and asked the Council if the letter he and his neighbors, including Jim Hansen and Randy Brown, had written and distributed to them would be read into the minutes to become part of the minutes. Mayor Van Duzer said it would not. Mr. Saunders asked how they could accomplish that, as they wanted it to be on record officially with the

Town. Mayor Van Duzer pointed out that this was not the appropriate time for dialogue between Public Commenters and Council, but he was trying to tell him that the letter would not be read into the minutes unless a Council member asks for it to be brought forward at a subsequent meeting as an Agenda Item. Mr. Saunders asked how to accomplish that. Mayor Van Duzer said it was not time for open dialogue. Mr. Saunders asked him to just answer his question as to how he could get the letter into record. Someone off the microphone suggested Mr. Saunders bring the letter in the next day. Mr. Saunders expressed frustration. Mayor Van Duzer said he had answered his question. Mr. Saunders said there was probably a reason why they were doing it this way, and felt his question had not been answered asked again how to get the letter on the Agenda. Mayor Van Duzer repeated that that was not the appropriate time for open dialogue, but told him to contact a Council member and ask him to bring it forward. Mr. Saunders acknowledged that he could get the letter onto the agenda only through a Council member. Mr. Saunders then added that there were 19 homes on Avenida Carrida and that it was a dead-end cul-de-sac and very quiet. He characterized the street as being about 60% older folks, and that about half the residents were full time and half were gone in the summer. He said he didn't have any problem with the people who lived across from him, but his concern was that things may not have been handled properly and legally, and he hoped the case would be reviewed by the Town's attorney and whoever was responsible for enforcing ordinances.

Jodi Hester of 2 Avenida Carrida came forward and thanked the Mayor for allowing her to speak after her group of neighbors. She said she would never have thought she would find before Council discussing short-term rentals so late in the game. She had been the chairman of the Short-Term Rentals Task Force and was a member of the LPA so she had put in a lot of time on the subject. She thought that Mayor Van Duzer and Vice Mayor Rynearson had both been involved with those discussions as well. She said those who had worked on the issue had really wanted to protect the rights of the people who had properties and were renting them legally on a short-term basis. She said that in the year 2002, if a property owner could prove he or she had had short-term rentals, they were allowed to apply for the registration and license to continue doing so. The property on Avenida Carrida was not sold until 2003, and the neighbors had subsequently learned that the prior owner had never rented that property on a short-term basis. She and her neighbors believed that fabricated leases may have been presented as proof that it had been rented on a short-term basis prior to the current owner's purchase of the property, and that no Florida license giving the right to transient rentals, nor County sales tax reports showing the Tourist Tax had been paid had been offered as proof. Ms. Hester requested of Mayor Van Duzer that he put the issue on as an Agenda Item for a future meetings.

Peter Beauchamps of Future Rides, Inc came forward and said he conducted guided Segway tours from the Pink Shell Beach Resort. He said he was there

to basically educate everyone about Segways, and hoped that with that would come understanding as to what the Segway was about and why it didn't need to be banned on Ft. Myers Beach. He indicated the Segway he had brought into Council chambers, and said it had been developed at a cost of over \$100 million by a man named Dean Kamen. Mr. Beauchamps said Mr. Kamen's medical inventions were more recognizable, and they included drug infusion pumps for cancer patients, an in-home dialysis machine, an in-home insulin pump, the stents such as those in Vice President Cheney's heart. Mr. Beauchamps said the Segway was developed as a spin-off from the I-Bot wheelchair, also developed by Mr. Kamen, that goes up stairs and allows handicapped people to rise up on two wheels and talk eye level with people who are not handicapped. Mr. Beauchamps said the gyro technology employed by the I-Bot and the Segway keeps the rider upright at all times, and even if you were to push the rider, it would be impossible to do so. Mr. Beauchamps said the wheelchair was recently approved by the FDA and could be purchased for \$26,000. He said the reason Mr. Kamen developed the Segway was as an alternative transportation mode to replace or cut down on the use of automobiles. He said over 60% of car trips in the U.S. are less than 5 miles with one person in the vehicle, so from an emission perspective as well as environmental perspective, the Segway represented a huge alternative to people who would normally drive cars to get somewhere. Mr. Beauchamps said that contrary to what Mr. Simon had said earlier, the Segway was ideally suited for congested areas because of its footprint, which was no wider than Mr. Beauchamps' shoulders. He felt that the next logical step to banning the Segways from the sidewalk using Mr. Simon's argument was to ban overweight people from the sidewalk. Mr. Beauchamps then addressed the subject of who uses the Segways currently, and said the U.S. Postal Service, police and security agents, the Broward County Beach Patrol, Palm Beach, City of Miami Beach, Atlanta Police Department, New York Police Department, Los Angeles Police Department, and various parking authorities around the country, airports – including Southwest International, which purchased two, Ft. Lauderdale and Miami have tour operators. Mr. Beauchamps corrected some things Mr. Simon had said in an article he had written in opposition to Segway use, including the fact that one can rent a Segway at Disney World, and said there were hundreds of studies done to support the idea that Segways were pedestrian-friendly.

Jack Bright of 146 Delmar Ave. came forward and said he had lived on the Island for ten years. He said that while a lot of important things had been said, the most important thing was the leadership of the Town. He said each Council member had a responsibility to find the person who would help with the leadership. He said he did not know who the person was, but he did know the qualifications and the qualities that the person needed. Mr. Bright felt the person chosen should be smart, have vision, be articulate, be able to compromise when necessary, be courageous, be a consensus builder, and be able to make conclusions as to what the Town was going to be. He felt

whoever was chosen for the vacant seat could not be picked through the “good ol’ boy” system. He felt the Council members would need to be gutsy and would have to take a tough stand, and that it may not be the person they would ordinarily choose. Mr. Bright expressed his appreciation to all of the Council members, and opined that local politics had to be the toughest job there was in the whole world. He thought it would be really easy to be in office in Tallahassee and to receive letters from constituents, but to be out for dinner one night and have people come up and say insulting things because they don’t agree with something you’ve done or said in Council he thought was very tough. Mr. Bright quoted someone as having said to him “If you don’t tick people off you aren’t getting anything done.” Mr. Bright acknowledged that that hadn’t been precisely the way the man had worded it, which brought some laughter. He asked the Council members not to pick their buddies for the vacant seat, but to select the man or woman who would get the job done. Mr. Bright received a polite smattering of applause when he concluded and left the podium.

Tom Babcock of Williams Drive came forward and expressed his reluctance to follow Mr. Bright’s comments, and that he agreed with everything Mr. Bright had said. He cited a paper he had given to the Council members on which he had listed out what he felt were his qualifications for being chosen to fill the vacant Council seat. He said he would not focus on his recent contributions in the five years of his residency on the Beach, because he agreed with Mr. Bright that the type of person the Council should be considering should be a person who had the right skills and not necessarily someone in support of any particular issue. Mr. Babcock believed he was a good candidate, not so much for what he had done since moving to the Beach, but because of a lot of the things he had learned prior. He explained that he had a Masters Degree in Physical Chemistry, which he quipped wasn’t worth a penny on Ft. Myers Beach. This evoked some laughs. He went on to say that it did get him a job in Eastman Kodak and he had learned a lot in the 31 years he had worked there. He said his ten years in the research area had him doing a lot of data analysis and data collection, and wrote a lot of papers, and then in product development and manufacturing he was able to develop a lot of creative and problem-solving skills. He went on to say his fifteen years in management gave him leadership opportunities rather than opportunities to dictate. He felt a leader would pull people along and develop consensus, and that was what needed to be done on any issue that was raised on the Island. He pointed out that on any issue, there would be 20% strongly for it, 20% strongly against it and then 60% of the people who need to be heard. He felt that “silent majority” was being lost on the Island. He wanted to believe that the years he spent team building and mentoring of teams had taught him to be a good listener, to be flexible, and to be willing to yield. He said he wanted the opportunity to help the Council become more cohesive.

Ken Katko of 330 Donora Boulevard came forward and jokingly nominated Tom Babcock for the vacant Council seat. This brought some hearty chuckles. There was some humorous banter between the Mayor and Mr. Katko at this point. He said “You guys aren’t Donald Trump, and I’m not vying for a \$250,000 a year job, so you’re not going to break my heart if you don’t pick me.” This drew more laughs. Mr. Katko went on to say he had been on the Island for ten years, and said the first thing he had done was buy a business, join the Chamber of Commerce, and had spent a lot of time during those past ten years becoming a member of the community. He said that he and his wife owned two businesses, and they had to make a living, so many of the issues that come before Council were extremely important to them. He felt because he was both a resident and a business owner that he had to find a balance between the two. He said he didn’t want to ruin the Island his pleasure of living on it for the past decade because of business interests, but he definitely it was difficult to make a living on the Island eight months out of the year. He said he had been through it, he knew how to do it, and his businesses were successful. He said he had been Chairman of the Board of the Chamber of Commerce, and during his tenure had brought in a lot of new, younger members who had previously not understood the true nature of the Chamber, in that it is business organization made up of members who are residents of the Island. He said he was the type of person who brought people together, and if he were appointed to the vacant seat on the Council, he would weigh each issue carefully. He explained that he had no specific agenda. Although he had not been planning to run for the Council in November, he said if he were appointed to the vacant seat, he would then go ahead and run for that seat, as he thought that would be the right thing to do. He said he didn’t have any degrees, but he felt a lot of issues are common sense and he thought he had some of that.

Ray Murphy of 8402 Estero Boulevard came forward and stated that he considered himself more of an applicant than a candidate. He pointed out that he had run for office on the Island twice and had been elected both times. He pointed out that he had served six years on the Council, and had been the second mayor of the Town, and then joked that another mayor, Dan Hughes, also lived at the same condo complex which made that address a “hotbed” for local politics. He said everyone who were there to present themselves as candidates for the vacant seat were fine people, but considered himself the alternative because he had been on Council for six years, and already knew the procedures and histories and the Staff, as well as the Comp Plan and the Development Code. He felt his experience probably qualified him as the only one among those being considered for the vacant seat that could sit up on the dais and immediately get going without needing any learning curve. He felt he was not bragging, but simply stating facts. He pointed out that he had presented a letter of interest that had been required for appointment consideration, but said he hadn’t actually lobbied for the position – he had written no letters to the newspaper, nor asked anyone to speak on his behalf.

As he was wrapping up his presentation, he noticed the orange timer light, which he said was a new innovation since his tenure on Council – a comment which drew a few chuckles. He went on to say just about everyone in the Council chambers knew who he was, and that Council knew that he had a proven record and knew what he had accomplished for the Town. He said it would be his honor and privilege to serve the Council again on an interim basis. He said he had no desire at that time to run for the Council in the future, but if he found, after being in the interim position for five months, that he did enjoy it, his feelings about running for Council could change.

Carl Conley of 2801 Estero Boulevard came forward to address the Council. He pointed out that most people in Town had probably already read his editorial in the Sand Paper wherein he had discussed his feelings about the applicants for the vacant seat. He said that whomever does get appointed will most likely want to keep the job because it was a job of recognition and people like to be recognized. He referred to some comments made earlier by Jack Bright about the appointment, when Mr. Bright had said that gutsy decisions needed to be made and that a consensus builder was needed. He said there was currently tremendous pressure on the Town from big money outside trying to control the Beach, and that there was no doubt about it. He felt anyone denying that was living in fairyland, saying the property prices were going through the roof, and the pressures to develop would be continuously relentless. He felt that someone had to get on the Council who could be a consensus builder so that the Council could get on with the business on the Beach. He said he had lived on the Beach for 17 years, and for a long time had just laid back and enjoyed the Beach lifestyle, and lately had become more active. He said that he had served on the Chamber of Commerce Board of Directors with Ken Katko, and had seen him in action. He said Mr. Katko was a good guy who knew what he was doing and knew how to run the Board meetings. Mr. Conley said that everyone in Town knew that Petro had been king of the Chamber for a long time, but when Mr. Katko was on the Chamber Board, Petro had not been the king, in that Mr. Katko was his own independent man. Mr. Conley had not wanted to denigrate anyone with “a lot of age”, but thought that the Town needed a younger person who brought that perspective to the Council deliberations. He realized that a newspaper editor should probably stay aloof from the local politics, but that Ft. Myers Beach was a small town and that would be a fantasy to expect that. He thanked the Council for allowing him to speak and wished them well in their deliberations.

Harold Huber of 4263 Bay Beach Lane came forward and said he felt it would be conspicuous if he did not speak about the Council vacancy. He pointed out that he had served on the LPA for two terms, and felt that he could hit the ground running if he were to be appointed to the vacant Council seat for the interim. He listed out his business experience, where he had been in charge

of 1400 employees and real estate, and felt his years of experience and vast knowledge would serve to help the Town move forward.

Brian Benton of Nature View Court came forward and said he had been a Beach resident for about two years. He said he had submitted his name as an applicant as an alternative to the many other qualified applicants for the vacant Council seat. He reminded Council to consider that the decision they made regarding this interim seat would affect the rest of the decisions they would be making until the elections in November. He thought the Council should consider how the public would view their decision. He said people would be aware if there were some hidden agenda in their choice. He understood that the person selected needed to be someone who could get things done, and recognized that each Council member would want someone who would be in agreement with them. He said what should be considered first and foremost was what would be best for the Town. Mr. Benton thanked the Council for their time and consideration.

Joe Casey of Bay Beach Lane came forward to speak on behalf of Ray Murphy as an applicant for the vacant seat. He said he had known Mr. Murphy for several years through church. Mr. Casey said the appointment was a temporary position, and that for the five months the Town needed someone who had experience. He pointed out all the letters of support for Ray Murphy that had been sent to Council, and felt that Mr. Murphy could just jump right into the seat. He said that while he did not always agree with Mr. Murphy's views, Mr. Casey respected him because he was consistent. He didn't feel there were any bad applicants, but felt Mr. Murphy's experience with the job was more important and desirable for the temporary position.

## **VII. DISCUSSION AND/OR SELECTION FOR COUNCIL SEAT #4**

Mayor Van Duzer opened the discussion by saying that the procedure by which they would make their selection had to be established first. He pointed out that they had not established it prior to the meeting so as to not violate the Sunshine Law. Mayor Van Duzer said he had sent around a memo to all the Council members about it and that each Council member had subsequently received a letter from the Town Attorney laying out several different processes by which they could reach their decision.

Ms. Dalton recommended that Council set the time frame within which the procedure would take place before deciding upon the voting procedure.

Vice Mayor Rynearson said he was ready to move forward. Councilman Massucco said he thought he could move forward, and that he was glad that the applicants had an opportunity to give a brief presentation to the Council earlier as he thought that would save some time. Councilman Reynolds said he was ready to move forward, but thought it was too fast because he did not

have all the names of the candidates before him, nor did he have any resumes. He thought the Council should proceed to establish the procedure they were going to use to make their selection, but felt they would be jumping the gun to try to elect from the limited pool available. Councilman Reynolds asked his fellow Council members if they had resumes from all the applicants, and they all affirmed they did, and Mayor Van Duzer said they were basically letters of intent sent to Town Hall and that they had subsequently been distributed to Council. Councilman Reynolds did not acknowledge that, but went on to say that there were some candidates who were out of Town that week who had contacted him and expressed their interest in filling the vacant seat, and that person's resume was not available. Councilman Reynolds did not feel there was an urgency to select someone immediately, and asked Council to hold off.

Ms. Dalton raised a point of order, in that she had thought Mr. Rynearson had made a motion and wasn't clear as to whether Mr. Massucco had seconded that motion. Mayor Van Duzer said he had not taken Vice Mayor Rynearson's remarks as a motion, and Mr. Rynearson concurred. Mayor Van Duzer said he was trying to get a consensus on Council before making any determination, and went on to say that he also felt that the Council needed to take the action, be firm and move forward on the selection process immediately. He pointed out that everyone in Town unfortunately knew that the position was going to become available (because of Mr. Thomas' long illness and recent passing), and felt there had been adequate time for anyone interested in the appointment to make themselves known to Council. Mayor Van Duzer said he had had eight letters of interest. He then entertained a motion to set the time frame as immediate.

**MOTION:** Vice Mayor Rynearson moved to proceed immediately with the selection process. Councilman Massucco seconded the motion.

Councilman Reynolds referred Council to a letter sent to Town Hall in which it was opined that if Council jumped into the appointment process that it would give the perception that the Council wanted to move too fast, and Councilman Reynolds agreed with that. He said he was not going back on anything he said earlier, and hoped they did not vote for a Councilman that night.

Mayor Van Duzer disagreed with Councilman Reynolds in that he had heard from people in the community and they had all expressed their desire to see the process take place immediately and as fast as possible.

**VOTE:** Motion carried 3 – 1, with Councilman Reynolds dissenting.

Having established the time frame, Mayor Van Duzer then asked Ms. Dalton to present some of the options they had regarding how the nomination and voting process could be undertaken by the Council.

After Ms. Dalton presented historical examples of how this type of selection process had been conducted by Town Council in the past, and gave her recommendations, Ms. Dalton said the decisions regarding voting procedures were for the Council to make, because the Charter specifically reserved to the Council the authority to decide what the voting procedure should be.

There ensued a very lengthy discussion among the Council members as to how to go about nominating and electing someone to the vacant Council seat. At one point, Councilman Massucco asked Ms. Dalton if it was required that each nominee be given time to address the Council again after nominations were closed. Ms. Dalton said it would be up to the Council to determine, but the Council would have to determine if they wanted that time allotted before the nominations process began. She went on to say that if they decided not to have the nominees speak after nominations are made, and someone was nominated who had not chosen to speak during the Public Comment segment earlier, it could be deemed as unfair. Councilman Massucco said he found himself in that position, as his nominee was not present and so had not made a presentation to Council.

Mayor Van Duzer responded to Councilman Massucco's last comment, and said it was something the Council needed to discuss. Mayor Van Duzer pointed out that the Council had the obligation to determine the process by which they made the selection, and if they wanted to hear from the nominees after the nomination process, that was their choice. Councilman Massucco opined that the time between the current meeting and the point at which the person he had in mind could address the Council was too long, and Councilman Massucco did not wish to postpone the selection process in which they were engaging at that time.

**MOTION:** Vice Mayor Rynearson moved to have each Council member nominate a person if they so desired, and once the nominations had been made, to close the nominations and move forward without presentations. At that point, each Council member would then vote using roll call vote. Councilman Massucco seconded the motion for discussion purposes.

Councilman Reynolds asked if it was out of order for a Councilman to make a motion before all the Council members had a chance to speak, and Ms. Dalton said it was not out of order. Councilman Reynolds said that two Council members had had a chance to discuss it, but neither he nor Mayor Van Duzer had had a chance to say anything.

Mayor Van Duzer began recapping what the motion was before Council, but Ms. Dalton interjected a clarification. She said she understood the motion to be that each Council member would have the opportunity to nominate one person, or not if they so chose, then the nominations would be closed, no

presentations by the nominees would ensue, and then a roll call vote would take place.

Mayor Van Duzer thought when each Council member nominated someone, they would then vote for their nominee, and then it would not come to any resolution or conclusion at that meeting, which is what he wanted to have happen. He therefore liked the idea of casting two votes, one for each Council member's preferred nominee, and one for their second choice from among the nominated candidates. He felt that was the only way they would get past the point of nomination, and be able to come up with a consensus from Council. He also felt it should be done by ballot so that there would be a written record of the vote that could not be questioned in the future. He suggested either distributing ballots with nominees' names on them, or have each Council member write their choices. He said for the reasons he had just given, he would not support the motion as made, except for the part about closing the nominations once each Council member had had the opportunity to nominate the person of their choice.

Councilman Reynolds said he was not sure that he understood how voting twice would work. He asked if he voted once, then voted again for the same person, would he then have increased the chances for a particular candidate. He didn't believe any Council member's vote should be allowed to count twice toward one particular candidate. Ms. Dalton believed that was a piece of the puzzle that had not been discussed, in that Vice Mayor Rynearson's motion was a bit different than what they were discussing at this point. She said in 1998, every person had marked a choice of two different names on the ballot, and the top vote-getter was then subject to nomination, and so it had therefore been a two-step process.

Councilman Reynolds said as a nomination process, two was okay with him. Ms. Dalton said it would not be a run-off at that point. Councilman Reynolds expressed that it was still not clear. Mayor Van Duzer pointed out that he had suggested each Council person would vote for a number one choice and a number two choice, not that they would have two votes wherein a Council member could vote for the same person twice. Councilman Reynolds asked if he was saying 'vote' or did he mean 'nominate'. Mayor Van Duzer said what he meant was that the nomination would be made, and then ballots would be cast. He said that at that point, if a consensus had been reached, the person would then be officially nominated for possible election to the vacant seat.

Councilman Reynolds believed that Ms. Dalton had said that they needed to deal with step one, which was why they could name two people, and asked Ms. Dalton if that were correct. Ms. Dalton said it was not, and that each Council member would nominate one person per the motion that was on the floor at that time. After each Council member had nominated a candidate, then the nominations would be closed. At that point, there would be four

candidates, and then through roll call vote, the nominee with the majority vote would be the new Council member. Ms. Dalton pointed out that the process Mayor Van Duzer had suggested was different from the motion on the floor. Councilman Reynolds thought the first motion was a cleaner process, and thought they would want to keep it pretty clean. Mayor Van Duzer opined that they could try it, and if it didn't work they could try something else.

Vice Mayor Rynearson thought what they were attempting to do at that time was to set a process and not change it. He asked Ms. Dalton, if they voted in favor of this motion, if this would then be the process used all the way through until someone had been selected for the vacant Council seat. Ms. Dalton said if that was the motion, yes.

Mayor Van Duzer asked for more discussion, because he thought the process was going to be a difficult process. He thought if one nominated someone, one would vote for that same person. Vice Mayor Rynearson expressed his understanding of that concern. Mayor Van Duzer said they would basically be casting ballots repeatedly until they got to a point of agreement. Councilman Reynolds didn't think they had to make a decision at that point. He said if they couldn't break a deadlock, they didn't have to decide anything until the next meeting. Mayor Van Duzer pointed out that they had already voted on the time frame as being immediate and without delay.

Councilman Massucco asked if they could try the system Vice Mayor Rynearson had suggested, and then if they were deadlocked, if they could then try a different process, such as the one suggested by the Mayor. Ms. Dalton said they would have that ability, and thought it would be cleaner and sounder to stick with one process. She also pointed out that the Council policy manual did suggest that one process be picked. However, she said it could be reconsidered down the road if they so chose. Councilman Massucco said he could see where they could get deadlocked using the first process, in that each would vote for the applicant of their choice and they would get nowhere. Mayor Van Duzer agreed that if he nominated someone he would certainly vote for that person also. He quipped that as long as everyone on Council nominated the same person, he wouldn't have a problem. This drew some laughter and provided a bit of comic relief. Councilman Massucco wondered if they could change the process if it was evident that it was not going to produce results. Ms. Dalton said they could reconsider the motion.

Mayor Van Duzer asked if Vice Mayor Rynearson would accept as an amendment to his motion that they go through three balloting cycles, and if a consensus was not reached, that another method be tried. Vice Mayor Rynearson said he understood what the Mayor was trying to do and had no problem with it. Vice Mayor Rynearson then suggested adding to that amendment the exact process they would switch to if they needed to change after three ballots had been cast. Ms. Dalton said they could amend the

motion if the seconder of the motion agreed with it. Mayor Van Duzer then asked if they would accept the amendment to the motion that, if they needed to go to another process, they then would use the process by which each Council member would write down both his first and second choice for the Council seat. Vice Mayor Rynearson agreed to that as long as that alternative was set before the process began so that everyone on Council knew how it was going to go. Ms. Dalton asked for clarification, and then referred to the first process in the motion as Process A, and the second one as Process B. She asked if Process A would be a verbal roll call vote, and Process B would be a written vote with two candidates on it, with the election occurring when someone from the two-candidate written ballot received a majority of the votes. Vice Mayor Rynearson said that sounded fine. Councilman Massucco seconded the amendment to the motion.

**MOTION:** At Councilman Reynolds' request, Vice Mayor Rynearson's amended motion, with Councilman Massucco having seconded the motion and the amendment, was read as follows: Nominations would be accepted from each Council member for one candidate, then nominations would be closed. A roll call vote would then be taken, and the majority vote getter would be elected. If, after three votes, a consensus could not be reached and no one was selected, then the alternate process would be begun, where each Council member would write down a first and second choice from the field of nominees on a ballot, and this process would be repeated until someone received the majority vote. Ms. Dalton added that, following that second process, there should then be a motion to nominate the person who got the most votes, and a second if possible. At that point a verbal vote on that person should occur. Ms. Dalton said it was up to the discretion of the Council to put in this motion that no one could vote for the same person twice if they did go to that second process. Vice Mayor Rynearson thought it should be stated clearly that a Council member cannot vote for the same candidate on the same ballot twice.

Councilman Reynolds said he heard the words "vote" and "nominate" intermingled. He said that the first process was verbal, and that would be just to get the nominations. Ms. Dalton excused herself for interrupting but said that was not correct. She said every Council member had the ability to make a nomination, as long as the person was qualified. At that point, someone would move to close the nominations. Then, there would be a roll call verbal vote. If a selection is not made after three verbal votes, then the alternative process would begin. Ms. Dalton suggested to Mayor Van Duzer that if in fact the first three verbal roll call votes were unsuccessful, that a five-minute break could be called so that the written ballots could be prepared for the alternative process. It was pointed out to Ms. Dalton that ballots would not be necessary, as all that would be needed would be blank pieces of paper. Mayor Van Duzer then asked how many times the process of writing first and second choices on the initialed ballots should be tried. This question brought lots of

chuckles from around the room. Mayor Van Duzer suggested limiting that to three times as well, but both Vice Mayor Rynearson and Ms. Dalton pointed out that it would have to be done over and over until a choice was made. Mayor Van Duzer quipped that he had something to do that weekend, and that drew laughs again. Vice Mayor Rynearson said they could table it until the next meeting, but that they had to set the policy before they started. He felt two alternatives would be plenty.

Councilman Reynolds asked if he could call someone from the audience to come up and explain the motion, and if that person could understand it, then the Council could understand it. This caused a lot of laughter around the room again. Mayor Van Duzer said he would not allow that. Councilman Reynolds said he was just being facetious.

**VOTE:** Motion carried 3 – 1 with Councilman Reynolds dissenting.

At this point each Council member nominated a candidate:

Councilman Massucco said it was his wish to appoint a person who had no allegiance to anyone, no axes to grind, and would be able to commit the time necessary to conduct Town business in a fair and intelligent way; someone who could focus on the issues without prejudice or influence; that person was Mr. Carl Luke and was whom Councilman Massucco nominate. He then pointed out that he was out of Town, and although he was not able to make a presentation that night, Mr. Luke had submitted an impressive resume.

NOMINEE: Carl Luke

Councilman Reynolds said that what they were doing had brought memories of the years 1998 and 2000. He said he was very impressed by the number of candidates and the quality of the applicants. He thought he hadn't seen all the resumes, and would have liked to read them. He said in the earlier similar situations, there had not been as many applicants, nor as well qualified. He expressed his pleasure at the level of active involvement evident from the field of applicants for the vacant Council seat. He thought it was difficult to single one person out of the eight applicants because they were all good. Councilman Reynolds then nominated Charles Medders (sic), whom he characterized as one of the finest residents on the Island.

NOMINEE: Charles Meador

Vice Mayor Rynearson nominated Ken Kenko (sic), explaining that he thought he was well-versed being on the Traffic Committee, and that he was very familiar with all the various issues that were coming at the Council. He pointed out that his nominee had been a part of the Island for a long time and was very level headed and open-minded.

NOMINEE: Ken Katko

Mayor Van Duzer said there were three or four applicants who he felt he would be comfortable with on the Council. He said he had given it a lot of consideration, and definitely had a number one and number two choice. Mayor Van Duzer said his nominee was a man who he felt had proven that he had the ability to be a consensus builder and the ability to digest the problems and issues before Council and make logical and reasonable decisions. He expressed admiration for this person because of the work he had done for the Town, and felt strongly that he would be an excellent person to sit on Council. The Mayor then nominated Tom Babcock.

NOMINEE: Tom Babcock

**MOTION:** Vice Mayor Rynearson moved to close the nominations. Councilman Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

Mayor Van Duzer asked if it was procedurally okay that a roll call vote was not taken. Ms. Dalton said it couldn't get any better than unanimous. This drew some chuckles.

There was some discussion as to how to go about casting the verbal votes. It was decided that each of the three votes would be a poll vote, where each Council member would be asked for whom they were voting. If a consensus were reached within the three designated polls, that person would be elected to the vacant seat.

FIRST POLL: Each Council member voted for his own nominee.

SECOND POLL: Each Council member voted for his own nominee.

THIRD POLL: Each Council member voted for his own nominee.

This first process of voting was greatly amusing to everyone present.

As no consensus was reached, the Council started the second process, wherein each Council member cast their first and second choice for the vacant seat and then initialed their ballots. Mayor Van Duzer commented to those present in Council chambers that it may seem comical to watch, but that the Council was trying to get something important accomplished and asked that those present remain polite and quiet.

Councilman Reynolds asked if they were now voting for two candidates. Ms. Dalton said that was correct. Councilman Reynolds asked if that would determine a winner. Ms. Dalton explained the motion that had carried, wherein a written ballot would be cast by each Council member, with a vote for their first and second choice for the vacant seat, and whoever got the majority of those votes would be nominated for election by motion, a second and a vote for election.

There ensued much whispering and paper shuffling as the Council members filled out their ballots. Ms. Dalton then announced that she had tallied the ballots in conjunction with the Town Manager, and the results were as follows:

Ken Katko	3 votes
Tom Babcock	2 votes
Carl Luke	2 votes
Charles Meador	1 vote

Ms. Dalton then said that therefore, in accordance with the procedure that had been determined by the Council earlier in the meeting, it would be proper for the Mayor to entertain a motion and a second to nominate Mr. Katko for the empty seat. Mayor Van Duzer happily exclaimed, “It worked”.

**MOTION:** Vice Mayor Rynearson moved to nominate Ken Katko to fill Seat #4 on Town Council. Mayor Van Duzer seconded the motion.

**VOTE:** The motion was passed unanimously by roll call vote.

There ensued applause from around the Council chambers.

Ms. Dalton recommended that Mr. Katko not take a seat on the Council except in an advisory capacity because he had not had the opportunity to get “up to speed” and may not be able to make the decisions that may be required of him at that meeting.

Mayor Van Duzer then congratulated Mr. Katko and told him that at the next regular meeting at 3:00 P.M. on May 16<sup>th</sup>, his presence was requested so that he could be sworn in properly and to take his seat on the Council. Vice Mayor Rynearson asked if Mr. Katko could come up and say something, to which Mayor Van Duzer agreed happily. There was some joking as he approached the dais.

Mr. Katko came forward and said he was a bit speechless. He remarked that there had been excellent candidates for the position, and felt it would be his privilege and honor to serve the position on Council for which he had just been chosen. He said he would do his best to honor Bill Thomas. Mr. Katko went on to say he had a great deal of respect for him, in that he had continued to serve the Town through three years of a very tough illness. Mr. Katko thanked the Council for the unanimous vote, and said he would do his best to represent the Council and the Town of Ft. Myers Beach. Mr. Katko received more applause at the conclusion of this statement.

Mayor Van Duzer asked Town Staff to do everything in their power they could to help Mr. Katko get “up to speed” so that he would know what

Council had facing them and he would be able to sit with the knowledge of what to do.

Mayor Van Duzer and Vice Mayor Rynearson both expressed relief and said they felt better once the matter had been concluded.

## **VIII. CONSENT AGENDA**

Minutes: April 4, 2005  
April 11, 2005

**MOTION:** Vice Mayor Rynearson moved to accept the minutes of both dates. Councilman Massucco seconded the motion.

Councilman Reynolds commented that the minutes of April 4<sup>th</sup> were very extensive at 39 pages, and he thought it was wonderful because it was the meeting when Council had dealt with the boat docks at Royal Pelican. He felt there had been some credible things said by the attorneys and it was all recorded, and thought that was a good move. He offered compliments to the transcriber and felt she had done a good job.

Councilman Massucco agreed that the minutes were very extensive at 39 pages, and he had never seen minutes that long on Council, and the minutes for April 11<sup>th</sup> were 14 pages long. He asked who the transcriber was. Both Mayor Van Duzer and Vice Mayor Rynearson said it was Jo List. Councilman Massucco said there was a lot of effort put into the minutes and he expressed his wish to thank the transcriber publicly.

Mayor Van Duzer commented that the transcriber was the person who had come before Council on behalf of the Island Arts Foundation a few weeks prior. He recalled that he had asked her if she wanted to sing or talk, and complimented her on her singing abilities. He went on to say that he thought the transcriber had been doing a beautiful job and thought the minutes were very concise.

[The transcriber wishes to thank the Mayor and Council for the wonderful compliments].

**VOTE:** The motion carried unanimously.

## **IX. ADMINISTRATIVE AGENDA**

### **A. Mound House Restoration Plan Recommendations**

Theresa Schober, Director of the Mound House, came forward to address the Council. She pointed out that she had provided a detailed memo that

attempted to clarify some of the questions that had arisen at the April 11<sup>th</sup> presentation given by architect John Parks. She particularly took up the recommended 1921 Restoration designation. She reported that further discussion of the proposed restoration plan was taken up at a subsequent CELCAB meeting on April 25<sup>th</sup> as per Council direction. A motion to reconsider their recommendation of the plan failed 10 – 2, Ms. Schober reported, and then CELCAB moved to reaffirm their initial recommendation to accept the restoration plan of circa 1921 with a vote of 10 – 2 in favor, and then asked Ms. Schober to bring that back to Council. She offered to answer any questions about the item.

Vice Mayor Rynearson said he was very happy with what had been done and moved the item.

**MOTION:** Vice Mayor Rynearson moved to accept the recommendation for restoration of the Mound House to 1921 as per the Parks plan. Councilman Massucco seconded the motion.

Councilman Massucco said there seemed to be a disparity as to which year would be the best to restore the Mound House, and mentioned the 1938 date. He then asked Ms. Schober if restoring to 1921 would be the most expensive date to which the Mound House could be restored. Ms. Schober said the 1938 date was based on an assignment of the upstairs bathrooms in the facility having been added in 1938 as part of a renovation of the house when it was passed from the Case family to their son and his business partner and then made available to renters. She said that date has since been proven to be inaccurate. She acknowledged restoring to the 1921 date would be expensive, but it was the restoration date that had received the most support from the outside professionals as well as the State in terms of the parts of the building that would be removed and their recommendations to do that in order to achieve a National Register nomination. She said the 1921 date was also the date that would allow the Town to get the most financial support from the State in doing a restoration. Ms. Schober cited a letter from the architect, John Parks, in which he said that in order to keep the building within a 1959 restoration period, much as it was currently, the \$170,000 already granted from the State for the pool excavation project would have to be paid back, and then an additional \$250,000 - \$270,000 in costs to renovate the building would be incurred that would not qualify for State assistance, and the Town would also have to wait until 2009 before the Town could even apply for funds. She pointed out that the restoration to 1959, while it was the other most popular restoration date she had heard about from people on the Mound House board, the Council and general public, would cost the Town at least \$250,000, would cause the Town to lose \$170,000 in already granted funds that would have to be paid back, and would disqualify the Mound House from consideration for the National Register until at least 2009. Ms. Schober then pointed out that if the restoration to 1921 was done in grant periods, the Town

could end up with two \$350,000 grants, maybe having to pay up to \$100,000 out of pocket, and would end up with a building likely on the National Register of Historic Places and costing significantly less. Councilman Massucco asked if they had time to submit the applications for the grants, as he recalled that Mr. Parks had said they had a May 31<sup>st</sup> deadline. Ms. Schober remarked that if Council did vote to proceed with the 1921 restoration, she would have a lot of work to do to get the application done. She said this year the Town would apply for a single \$350,000 grant, and do Phase 1 which would essentially be removal of the additions and dealing with water penetration problems – roof, exterior windows and doors – making the structure sound. The application put in this year would be from next year's state budget, making the earliest time the funds might be received July 2006. At that point, a two-year project would be commenced, Ms. Schober explained, and then in 2007 the second grant would be applied for, and the funds from that would become available in July of 2008. She opined that the entire restoration project could be completed by 2009 or 2010, but could take longer depending on the grant ranking the Mound House receives, which would affect how much would be granted to the project. She explained the ranking of the grant application that had been submitted for the pool excavation project: out of 100 applicants, the pool project was ranked 2<sup>nd</sup>, which all but guaranteed funding the following year. She explained the top fifty ranked projects usually get funding, but if the State has a bad budget year, they may only fund 4 or 5 projects. She explained that how high the application gets ranked would determine whether their project would get funds. Councilman Massucco expressed concern about getting the second grant, and asked Ms. Schober if she was optimistic about getting the second grant. Ms. Schober said she was very optimistic, because once the State invests in a project, or in a property, the State traditionally will continue to fund it. She said they like to see other sources of funding, and to the Town's benefit, the State Special Category Grants allow the Town to count all the money that has been invested in the property in the preceding five years to count toward matching funds, which would include the Florida Communities Trust grant of over a million dollars. Ms. Schober said that when the State sees that the Mound House project has been invested in already by the Town and that the Town has already been awarded grants from other sources, the ranking of the Mound House application will be higher.

At this point, Mayor Van Duzer explained to Councilman Reynolds that while he had been absent from the dais, there had been a motion and second to go forward with John Parks' recommended 1921 Restoration project.

Councilman Reynolds remarked felt the Council should stand by Ms. Schober and CELCAB and Mr. Parks recommendations so as to gain status on the National Register of Historic Homes (sic).

Mayor Van Duzer said he was very happy that the meeting with CELCAB had been productive and he was glad it came back the way it had. He felt this was the best direction to go with the restoration.

**VOTE:** The motion carried unanimously.

### **B. Appointment/Re-appointment of Town Committees**

Mayor Van Duzer commented that there seemed to be a problem with the reduction of the committees. He said the ordinances had been sent to him to sign, and he had signed them, but he was having some problems with the perception that seemed to be there about it. He wished to continue the discussion until they could get some clarification as to what the word “attrition” meant. Mayor Van Duzer said he had spoken with Rachel Lambert a few times about it, and he said there was a question as to whether they had or had not developed a lifetime committee. He said he didn’t want to do anything to violate the work that is done by the committee members on their committees. He once again asked if they could continue the discussion of Item B to a time certain in the future so as to gather clarification and proper legal opinions about what the ordinances mean.

There was some discussion about when the date certain would be. Councilman Reynolds wished to comment, but Mayor Van Duzer asked him to wait until they had determined a date certain.

**MOTION:** Mayor Van Duzer moved to continue the discussion of Item B, Appointment/Re-appointment of Town Committees to the May 16<sup>th</sup> Town Council meeting. Vice Mayor Rynearson seconded the motion.

Ms. Dalton pointed out that some of the committee members’ terms would be up before the next Council meeting, and thus suggested to include that all members should remain as is until the item was discussed and settled by Council. Mayor Van Duzer said that was reasonable.

Councilman Reynolds asked Ms. Dalton if she had any problem legally with the Council’s use of the work “attrition” in the ordinance regarding committee membership. Ms. Dalton said she thought the language in the ordinance might be a little contradictory. She said it had just been brought to her attention that day, and she asked for some time to review it so that she could advise as to whether it she thought it should be changed or could stand as is. Councilman Reynolds gave examples of how a person’s appointment could end on a committee, and asked Ms. Dalton which example could not be called attrition. When Ms. Dalton did not immediately answer, Councilman Reynolds said they were all attrition because it is understood that that person would not be replaced. Ms. Dalton thought the question being considered was different, in that what had been related to her was that there was a concern that

the language that was approved might not be consistent with other language in the ordinance regarding annual appointments or terms of office. She went on to say if every position was up for reconsideration every year, the language of attrition and reduction of numbers needed to be looked at.

Councilman Reynolds commented that he didn't see anything wrong with people who wanted to serve on a committee for two or three years. He pointed out that some people had served on some committees for up to ten years. Councilman Reynolds stated that he saw no need to push anyone off a committee, in that eventually some will retire or move on and the committees would naturally reduce in size. Mayor Van Duzer said that was not what they were discussing. Councilman Reynolds then reviewed the various committees' sizes, and concluded that the only committees that they had to be concerned with were CELCAB and MRTF and he felt they would both reduce in size by attrition. Ms. Dalton explained to Councilman Reynolds that she had asked the Mayor to pull this item from the agenda because she felt it was very important for the ordinances to be internally consistent, and based upon the ordinance that was drafted, she was not sure all the pieces of this particular ordinance were internally consistent. Councilman Reynolds agreed with that because he had been surprised to learn that many of the committees did not have term limits, and he felt there should be term limits. He asked if Ms. Dalton could work in something about staggering term limits. Ms. Dalton indicated it was up to the Council to direct her as to what language was needed.

Mayor Van Duzer said that the way the ordinance read currently, it sounded as if Council meant to make committee membership a lifetime thing, and that was definitely not what he had meant. He felt clarification was needed before the Council even talked about term limits and all of that.

Councilman Massucco asked to read a prepared statement that he hoped would clarify what his intentions had been regarding this issue. He thought the "attrition" word had muddied the waters, and that he had come up with a better approach. He offered to wait and read it when the issue was revisited, or to read it at that time. Mayor Van Duzer said it was fine with him if Councilman Massucco wanted to read his statement, but explained that they had already voted for and adopted the ordinance, and that what they'll have to do if they find there is a problem with it is go back and rewrite the ordinance.

Councilman Massucco then read his statement in which he recounted a conversation he had had with Fran Myers on January 3, 2005, when she had told him it had been getting increasingly difficult to reach decisions on issues in a fair amount of time because of the size of the committees. He said he had agreed with her at that time. Councilman Massucco thought it was time consuming, unnecessary and repetitive to have eleven or twelve people having to give their opinions on any given issue. He believed between five and seven

people seemed sufficient for a committee size, and stressed that the suggestion he had made to reduce the number of members on a committee or agency had been an attempt to help expedite the many varied and important decisions that the committees must address. He said that, as he had predicted, there had been some disagreement with his suggestion to regulate the size of the committees. He referred to the LPA and CELCAB, who have the most members and would be the most affected. He suggested looking back at the original method of staggered membership in the original LPA, which was comprised of seven members, and felt there was no reason why that could not work for all the committees. He said it would afford interested and qualified residents to serve the community. He suggested the committees with more than seven members currently could decide for themselves how they would bring their committee's size into compliance, suggesting voluntary resignation or some type of lottery, illustrating his belief that there were solutions to achieve compliance with the reduced committee size. He felt this would encourage, rather than discourage, more citizens to volunteer knowing that there would be seats available and that they would have an opportunity to serve. He said that, in the event there were more applicants than committee seats available, the Council would vote as they currently do, to select the required number of candidates. Councilman Massucco then read a portion of a letter he had written some time past in which he said "It is true that many volunteer members have served for long periods of time in their respective positions, and served well. But they must remember that they serve under the term limitations imposed at the time these committees were formed. Does one's longevity in a position guarantee that they may hold that position for as long as they wish? I don't think it works that way. It would seem that no one need apply for a position on a committee, because that position is held by someone who only himself or herself may occupy. No one owns any position on any committee or agency beyond the term limit. I reiterate when a volunteer accepts an appointment they do it knowing full well that there are term limits attached to that position and no one in Town government can give the promise of tenure." He continued to read his prepared statement, in which he expressed his desire to see the number of members of any committee regulated to a number more realistic to the responsibilities with which they are charged. He said he was a firm believer that progress could only be achieved through change, and that change was sometimes met with adversity, as it had been in this case. He felt it was important to state that he has respect for all the committees, all the members, and his intent was only to resolve what he characterized as a simple problem with a simple solution while at the same time not discouraging any qualified citizen from seeking the opportunity to serve the community. He pointed out that nowhere in his statement had he mentioned the word or concept of attrition. He hoped his statement clarified things a bit, and offered to give a copy to the Town Attorney. Ms. Dalton said she would appreciate that.

**VOTE: The motion was carried unanimously.**

Councilman Reynolds pointed out that the LPA was covered under a different ordinance and asked if that was going to come back to Council also. Mayor Van Duzer felt the motion that had just passed was inclusive of that ordinance as well.

Ms. Dalton believed it was not included. John Gucciardo thought that the LPA was included in the item they had just moved to continue to May 16<sup>th</sup>. Ms. Dalton said her request to pull this item had been with regards to the attrition question, and attrition had not been part of the LPA language and so was not part of what she had wanted to research and review. Mayor Van Duzer said he wanted to reconsider all the committee size ordinances under one item. Ms. Dalton said she wanted to be sure the ordinances hang together internally. She explained that reconsidering the ordinances themselves would be a separate issue. Mayor Van Duzer said the LPA had to be addressed and perhaps it had to be addressed at that time as a separate issue. He said he had the same problem with the LPA ordinance as he had with the other ordinances addressing the other committees and would like the opportunity to reconsider them all. He said it was very difficult for him to consider removing any of the committee members from the LPA. Ms. Dalton said if the ordinances that contain the attrition language are not internally consistent then the ordinances would not be legally sufficient and would have to be readdressed so as to bring them into legal cohesion with the rest of the ordinances. She went on to explain that the LPA ordinance did not have the attrition language, so as far as she was concerned it was a legally sufficient ordinance. Ms. Dalton said a motion to reconsider the LPA ordinance would be out of order at that time, because a motion to reconsider has to be done at the meeting in which the motion was originally made or, if the meeting was continued, at the first available opportunity, and that meeting had not been continued.

Councilman Reynolds said that the problem was that the LPA was contained within the Comp Plan, because the LPA is a requirement within the Comp Plan. He said that Council had no control over that committee as far as numbers were concerned. He asked why they couldn't create an ordinance that gave them control of the numbers of members as they have for the other committees. Ms. Dalton said she did not have an answer for that. Mr. Gucciardo said he understood that there was an ordinance that dealt with the number of LPA members, which had been amended from seven to nine members at some point. Mr. Gucciardo asked Jerry Murphy for confirmation of that understanding, and Mr. Murphy concurred. Councilman Reynolds said the Council had not been privy to that. Mr. Gucciardo countered that the Council had actually approved that ordinance. Jerry Murphy stated that it was called the Glitch Ordinance and the number of the LPA members had been reduced from 9 to 7 and the Council approved it. He said if they wanted to reconsider it, not as a motion to reconsider but to reevaluate that decision, it would have to be done through another ordinance. Ms. Dalton agreed it could

be done through ordinance amendment, but wanted to make it clear that the reason she requested continuance of this item on this agenda had nothing to do with the LPA. John Gucciardo recapped what was going on at that point as the Council wanting to continue the agenda item regarding the sizes of volunteer committees, separating out the LPA. He felt the choice at this point was for the Council to move on the LPA re-appointments, or ask that there be a re-evaluation of the ordinance language that reduced the number from 9 to 7. Ms. Dalton said it would have to go through the entire ordinance procedure from scratch, but in the meantime, the ordinance was a valid and legal one and the Council was obliged to reduce the number of members on the LPA.

Mayor Van Duzer said he was hoping they could continue the LPA re-appointment issue as well, and reminded everyone he had voted against reducing the numbers. He said if they were legally obligated to reduce the size and could not put it off, then that was what they would have to do. Mr. Gucciardo said if the Council accepted Hank Zuba's letter of resignation, there would be two positions to fill with three nominees.

Mayor Van Duzer told the Council that Hank Zuba had not resigned per se, but had offered to resign to allow other people to remain on the committee. Vice Mayor Rynearson said he had read that letter, and thought Mr. Zuba was a retired architect, and he felt that was a very important qualification and preferred not to let Mr. Zuba go from the LPA.

Councilman Reynolds asked if that was not going against the ordinance they had approved. Mayor Van Duzer said they were still going to reduce it to seven, but they would only be able to reappoint one person instead of two if they did not accept Hank Zuba's resignation. Councilman Reynolds did not understand how that would bring the number to seven. Mayor Van Duzer explained that three LPA members were up for reappointment, but only one would be able to be reappointed to bring the number into compliance. Mr. Gucciardo said the question for this meeting was whether to fill one seat out of the three that are up for reappointment, or, if Mr. Zuba's resignation is accepted, then filling two seats out of the three up for reappointment. Councilman Reynolds said he understood that completely, but currently there were nine members on the LPA. Mayor Van Duzer said it was going to be reduced to seven. Councilman Reynolds said that would be true if the Council didn't approve anyone who was up for reappointment. Ms. Dalton said it would go to six if they didn't approve any of those members who were up for reappointment. Mayor Van Duzer then reiterated the choices that had been detailed a bit earlier by John Gucciardo. Councilman Reynolds thought it was fuzzy math, and Mayor Van Duzer disagreed with him and again explained the choices as described by John Gucciardo a bit earlier in the discussion. Mayor Van Duzer then brought the discussion back to consideration of Hank Zuba's offer to resign.

Councilman Massucco said Mr. Zuba had offered his resignation and thought the Council should accept it, which would mean that only one of the LPA members whose term was up would have to be dropped. Mayor Van Duzer agreed with Councilman Massucco. The Mayor spoke highly of Mr. Zuba, and indicated his offer to resign as a sign of his good character. Councilman Massucco said he knew that Mr. Zuba had been absent from the LPA meetings for a protracted period of time and while he did not know why he had been absent so much, he felt it could be an indication that perhaps he was not as committed to it or not able to do it.

**MOTION:** Mayor Van Duzer moved to accept Mr. Zuba's resignation. Councilman Reynolds seconded the motion.

Councilman Reynolds agreed that Mr. Zuba was a fine man, and while they didn't like to lose strong people like him, Mr. Zuba had understood the situation and had offered to resign to help with it, and Councilman Reynolds thought they should accept his offer to resign.

**VOTE:** The motion carried unanimously.

At this point each Council member was asked to fill out their ballots to reappoint the two available LPA seats from the three LPA members whose terms were up for reappointment, initial or sign their ballots, and turn them in. Mr. Gucciardo reminded them that they were to select two of the three people on the ballot.

A break was called at this time.

After the break, Mayor Van Duzer announced that while two people had been selected for reappointment to the LPA, they now had to determine who would go on for a full three-year term and who would go on to finish off Hank Zuba's term, which was an unknown amount of time but less than three years.

Ms. Dalton announced the vote tally as follows:

Jodi Hester	4 votes
Betty Simpson	3 votes
Harold Huber	1 vote

Ms. Dalton felt their knowing how many votes each had received would help the Council in determining who would be reappointed for the full three-year term and who would finish off Hank Zuba's term. Councilman Reynolds suggested that the one with less votes, of the two top vote getters, should take over the shorter unfinished term. Mayor Van Duzer thought that was a fair way of doing it, and asked if the rest of Council concurred with that. Councilman Massucco asked how long the shorter term was, and no one was sure, but Mr. Gucciardo pointed out it was something less than three years.

Ms. Dalton asked if the motion was to have Ms. Hester appointed to the full three-year term and Ms. Simpson to the unfinished term. Mayor Van Duzer thought that would be a fair way to do it, unless everyone on Council wanted to vote on it again. He asked once again if each of the Council members concurred that Ms. Hester should get the full three-year appointment and Ms. Simpson should finish out the unfinished term being vacated by Hank Zuba. Councilman Massucco asked if it would be legal to ask Ms. Hester and Ms. Simpson which one they would prefer. Ms. Dalton said it was actually Council's decision. Mayor Van Duzer thought that would put the pressure on the LPA, and if the Council all concurred on who would fill which term then they should just say so. Mr. Gucciardo quipped that it was a nice try on Councilman Massucco's part to try to give the decision to the two appointees. This caused a few giggles.

Mayor Van Duzer announced that the Council concurred unanimously to reappoint Ms. Hester to the full three-year term, and to reappoint Ms. Simpson to finish out Hank Zuba's remaining time.

### **C. Appointment of Coastal Advisory Alternate**

Mayor Van Duzer reminded everyone that Councilman Massucco was the delegate to the Coastal Advisory Committee, but that an alternate needed to be named. Mayor Van Duzer suggested this item be postponed until the next Council meeting so that Mr. Katko would be present and a full Council would be present. Mr. Gucciardo said it was not a problem to postpone it until the next meeting. The Mayor asked the Council if they concurred on the postponement and they did.

### **D. Discussion of Transportation Enhancement and Mitigation Project**

Jerry Murphy indicated a memorandum in the Council's package that outlined the next steps the Staff recommended following the recent successful negotiation with the developers of the Beachway Resort CPD. He said he was looking for some direction from Council regarding the steps as outlined, and to see if Council did concur that those were the next steps that should be taken.

Vice Mayor Rynearson concurred. There was some question asked, and Vice Mayor Rynearson said he thought that Mr. Murphy just wanted some direction from Council to go ahead and sit down with the County consultants and try to work it out. Mayor Van Duzer wanted everyone to understand that it could cost the Town \$100,000 in consultants fees. Vice Mayor Rynearson pointed out that it would have to come back to Council before any deals were struck. Mr. Murphy said that was correct. Councilman Reynolds thought that was an exorbitant amount of money. Mayor Van Duzer said he would have a chance

to consider that at a later date, but what they were trying to do at that time was to decide whether Council wanted Mr. Murphy to go forward with negotiations or not. Councilman Massucco said he was not 100% sure what Mr. Murphy was going to do from that point on, and said the \$100,000 had him concerned. Mr. Murphy said the fee was a ballpark figure about what the project might cost maximally if they were to go forward with it, and the direction he was looking for was to proceed as outlined in the memorandum to make discussions with the County's consultant and start finding out what the numbers would be and how it would be accomplished. Councilman Massucco thought the County was well versed in impact fees, and asked Mr. Murphy if the Town couldn't just take theirs and copy it. Mr. Murphy said that was what they had been doing with regard to the impact fees, but the Town did not have any kind of process in place with the County for addressing projects in unincorporated Lee County that were going to have impacts on the Beach. Councilman Massucco said he agreed with the interlocal, but the second step concerned him. He asked if they weren't going to almost duplicate what the County had. Mr. Murphy said in terms of the transportation mitigation proposal, there was nothing in place for that. He went on to say the interlocal agreement was the very first step and he had already gotten direction on that, and would get the Beach something like what Sanibel has which is basically notification – they let them know when a project will be occurring within what had been determined as their sphere of influence, but there is nothing in place beyond that to address how those impacts would be mitigated. Mr. Murphy explained that they were hoping to put something in place so that the Town wouldn't have to participate in every public hearing in the County where it was thought there would be impacts on the Beach. Mr. Murphy said the other aspect was the revisiting of the current impact fee schedule that had basically been copied from the County's fee schedule. He explained the rationale the County used was that it gets additional funds for new development on vacant land. Mr. Murphy said while the Beach has very little vacant land, there is a lot of new development and it is basically larger development where smaller cottages had once been. He said they wanted to look at that fee structure to see if there was a better way for the Town to manage its fees than just copying the County. He added that the Town does not collect a lot of impact fees because there were not a lot of new developments, particularly with regard to residential.

Vice Mayor Rynearson asked if it was possible that the Town could get a grant, through transportation perhaps, for whatever the project ended up being. Mr. Murphy said it was possible, and described the situation as being cutting edge, and didn't really know if the Town would be eligible for a grant for the project. Vice Mayor Rynearson pointed out the Town won't know what the costs will be until the Town sits down with the County and some ideas are come up with and brought back to Council for consideration. Mr. Murphy said that was correct. Vice Mayor Rynearson reiterated that he was in support of Mr. Murphy taking the steps as outlined in his memorandum.

Councilman Reynolds asked Mr. Murphy how he was doing things now. Mr. Murphy said the County had agreed to work with the Town, and that the Board of County Commissioners had directed the County to address the issue. Councilman Reynolds asked what Mr. Murphy would need, beyond what they're willing to do. Mr. Murphy said they had not agreed to pay the bill. Councilman Reynolds asked to what bill Mr. Murphy was referring. Mr. Murphy said whatever it would cost to collect the data and develop the methodology for whatever fee the County would agree to adopt. Councilman Reynolds asked how it had been done thus far. Mr. Murphy said he went to some public hearings on a specific case and asked for their help. The Board of County Commissioners agreed that was a good idea, and then he sat down with the consultants and together they had developed a solution for that particular project. Mr. Murphy indicated he had attached that solution in a draft agreement at the end of the Council members' packets with regard to the Beachway CPD. Councilman Reynolds said it looked like Mr. Murphy was establishing a new procedure. Mr. Murphy said he was asking for direction to explore the establishment of a new procedure that would allow the County to provide mitigation on projects that happen in the County but that affect the Beach.

Mayor Van Duzer explained that when something is built, an impact fee is paid, which goes to support transportation, parks, fire, schools, etc. He said what the Town was saying to the County was that there was a problem on Ft. Myers Beach in that the structures that are being built off the Island are affecting the Beach. He added that the Town wants the County to collect additional impact fees and give them to Ft. Myers Beach. Mayor Van Duzer said the reason it would probably cost \$100,000 in consultant fees was because the construction industry is going to go after this increase in impact fees and try to stop it from happening, and a lot of legalities would have to be reviewed. He said the way he understood things currently, the County Commission is giving direction to the County to give this idea consideration regarding collecting impact fees on behalf of the Beach. He pointed out that there was one case where the Beach was going to receive \$20,000 per year in impact fees by way of the process that Mr. Murphy was working toward getting put into place permanently. Councilman Reynolds asked how far that would extend. Mr. Murphy said that was one of the things that would have to be determined in negotiation. Mr. Murphy said what Mayor Van Duzer described was pretty much the situation, but that it may not end up being an impact fee, but possibly some other form of infrastructure finance. But he said the idea was to get those projects that would impact the Beach transportation to contribute to the mitigation of that additional impact. Councilman Reynolds asked if Mr. Murphy had any idea how long it would take to recoup the \$100,000 fee. Mr. Murphy thought that if five projects paid \$20,000 per year, it would be pretty quick. He pointed out that the project that pays the Town \$20,000 was a hashed out at the table quickly, and with well

researched impact data that would show what the impacts actually are from various projects, the fees paid to the Town could be a lot higher.

Councilman Massucco asked Mr. Murphy if he would be signing anything if Council gave him direction to take the next steps as outlined in the memorandum. Mr. Murphy said he was absolutely not signing anything, but just wanted to move it forward so that he could get something before the Council to look at.

Mayor Van Duzer asked each Council member if they agreed to give direction for Mr. Murphy to go ahead and take the next steps in the process as outlined in his memorandum. All the Council members agreed to give Mr. Murphy direction to proceed with the next steps as he had outlined in his memorandum.

**MOTION:** Vice Mayor Rynearson moved the item with Staff's direction. Mayor Van Duzer seconded the motion.

#### **E. Discussion of Permit Fees**

Councilman Massucco said that Town Staff had recently revisited the fees associated with the processing of permit applications in light of what Lee County charges for the same or similar permits. He asked what the County's fee schedule was. Mr. Murphy said the County did not have the permits that the Town has. He said the County fee for a Comp Plan amendment was \$2,000; a Comp Plan text amendment \$2500; sign permits were \$25 with a fee schedule based on square footage of signs; he said the rest of the permits were strictly Town permits and there weren't any at County level that would be comparable. He said they had worked to determine how much time and effort was required of Staff for the processing of any given permit so as to recoup the cost. He said what he had done was suggest that as new applications were taken over from the County, or simply came into existence, the permit would be the same as the County's had been, or if it's a permit the County doesn't have, the fee could not exceed \$500 without coming before the Council for approval of the fee amount. Intermittently throughout his presentation, Mr. Murphy was asked by Councilman Reynolds to explain what sort of permits were required for various types of projects. Mr. Murphy answered all his questions.

**VOTE:** The motion carried unanimously.

#### **F. Introduction of Ordinance 05-14: Prohibition of Electric Personal Assistive Mobility Devices**

Mayor Van Duzer said they needed to set discussion of this ordinance for a date certain. Vice Mayor Rynearson asked if they were just introducing this item. He asked for some clarification as to what direction they were going with this item.

Damon Grant said they had left off at the last meeting that the Council opted to move forward with a draft ordinance for the banning of these devices. He said they had received information, and were continuing to receive information from Sanibel, Lee County, Ft. Myers and other municipalities as they are faced with the same issue as to what the Segway is, and whether it is something wanted. He said he had given them the most recent information from Sanibel, as it was going to go before their Planning Commission and Lee County's attorney's office had basically stated they were not allowing Segways and that they were prohibited in their parks and facilities. Mr. Grant felt that was going to include sidewalks and streets as well. He said he would like to say there was a consensus, but that it didn't seem to be the case. He felt Sanibel was going to allow them under certain circumstances and on certain parts of their island, whereas they were not going to be allowed by Lee County in Lynn Hall Park or Bowditch Point. Vice Mayor Rynearson clarified his question as wanting to know if Mr. Grant was satisfied to move forward to put it to Public Hearing or did he need more time. Mr. Grant said it was what it was, and the Council might find merit in reserving judgement on it. Mayor Van Duzer interjected and said that they had an ordinance and it needed to be set for hearing. Mr. Gucciardo thought rather than asking about the content of the ordinance, the Council was asking a procedural question. He said they could set the hearing for a date certain, and then if, before that date, Staff needed to get new information to the Council, Council could either deal with the ordinance at that time or they could continue the Public Hearing again. Mr. Gucciardo felt it was important to set the Public Hearing for a date certain at this point.

Mayor Van Duzer then read the ordinance. The Public Hearing was then set for May 16<sup>th</sup> at 3:00 P.M.

#### **G. Beachway Resort CPD**

Jerry Murphy said it was just the agreement Staff had negotiated with the developer of the Beachway Resort project and had been submitted to Council as had been indicated previously. He said it just needed to be accepted and signed.

**MOTION:** Vice Mayor Rynearson moved the item. Councilman Massucco seconded the motion.

Councilman Reynolds said everything was okay, but that he wanted to insert the following statement: "This agreement shall be terminated either party

when the 60 day notice is given to the other concerned party.” Councilman Reynolds was speaking off-mike, and so was difficult to understand. However, it sounded as if he was concerned about the agreement being open-ended. Mr. Murphy said he had a copy of the memo Councilman Reynolds had sent around about this issue, and had discussed it with the Town Attorney, and said he would defer to her about it. But Mr. Murphy felt confident that the language in the agreement protected the Town and the language suggested in Councilman Reynolds’ memorandum would potentially allow the developer to get out of the agreement prematurely. Ms. Dalton said there were two contingencies in the contract, and the contract provided a source of annual revenue for the Town. Ms. Dalton couldn’t understand why they would want to stipulate in the contract that the developer could get out of it. Councilman Reynolds still had some objections, and it sounded as if he thought the \$20,000 per year revenue may be considered peanuts some years in the future. He thought the people of the Island would not want 20,000 people brought over to the Island. He also said he didn’t think the Town should be locked into having to provide trolley service. He added that most contracts leave a way for the parties to get out of them. He felt the contract as it stood was all for the benefit of the management of the hotel.

Ms. Dalton said the government contracts she was familiar with generally give the government the ability to terminate, not the other party. She said if they added his language to the contract, the developer could cease paying the \$20,000 in 60 days. Councilman Reynolds didn’t see anything wrong with that. John Gucciardo suggested that language already existent in the contract qualified the contract in terms of “if the trolley service continues” which he characterized as the “out” for the Town. His understanding was that if at some point the \$20,000 was not sufficient he believed the Town had the option of not supplying the service, and at that point, the developer would not be obligated to pay the Town the \$20,000. Mr. Gucciardo said that as long it made sense, the developer would be obligated to pay the \$20,000 each year. Mr. Gucciardo thought it would be counterproductive to give the developer the option of not paying the money at his own discretion, while still getting the service. Councilman Reynolds challenged that statement and said the contract as written would not allow the Town to withdraw the service. He read the contract to mean that the Town would be obligated to provide them the trolley service for as long as they are in business. He felt the Town might not want to go in there because it was a very treacherous area for a bus to pull in and out, and that it might not be advantageous for the Town to be into it forever. Mr. Gucciardo understood the point Councilman Reynolds had made, but said his understanding was that the language in the contract implied that the Town had the option not to supply that service, at which time the developer would no longer be obligated to pay the Town. Councilman Reynolds asked Ms. Dalton if that was how she read it and she said it was. He said that was not how he read it, and he would not agree to it unless there was

an escape clause put in the contract such as the one he had suggested in his memorandum.

Ms. Dalton asked Councilman Reynolds whether he meant a mutual escape clause or an escape clause for the government only. He said he wanted the clause as it appeared in his memo.

Councilman Massucco asked about the frequency of pick-ups required at the hotel per the contract, and wanted to know if the HOV lane would have to be kept open on the Bridge. Mr. Murphy thought the four-time pick-up requirement was modest, in that the regular trolleys were more frequent than that. He said the HOV lane would have to be kept open to Summerlin Square anyway. Councilman Massucco also agreed with Councilman Reynolds in that this would bring more and more people onto the Beach. Mr. Murphy said the approach Staff had taken in negotiating with Beachway was that they would be coming to the Beach anyway, and if they could get them out of their cars and into the trolleys it would be better for the Town.

**VOTE:** The motion carried 3 – 1 with Councilman Reynolds dissenting.

## **X. COUNCIL MEMBER ITEMS AND REPORTS**

Councilman Massucco said he was glad Ms. Schober was still present in Council chambers because he wanted to tell her the sunset cruise for the Mound House volunteers had been extremely enjoyable. He said there had been more food than one could handle, the night was beautiful, and the boat had been full. He told Ms. Schober she had done an excellent job. He also noted what a huge success the Town Tree program had been. He had been at the Mound House watching the trees leave the property, and he had heard someone comment that every tree that had been taken was going to be planted on the Island. He said that had given him a very good feeling to see that positive response.

Vice Mayor Rynearson echoed Councilman Massucco's comments and sentiments. He said that 430 new trees were planted on the Island as a result of the Town Tree program. He thought the beautification of the Island would happen very fast with that sort of participation, and noted that every new tree planted was one more free breath of fresh air.

Councilman Reynolds said that, with regards to Arbor Day, he hadn't bought any trees at all because his lot is already so crowded with palm trees that he had no room for any more trees. He mentioned that Council had received a very important letter to Dan Volk regarding some work Mr. Hansen had wanted to do on Mango St. He felt Mr. Murphy had cleared up some confusion regarding that item. Councilman Reynolds then mentioned that

they had always received a lot of letters about dogs on the beach. He thought it had improved over the years, but felt there should be more enforcement.

Mayor Van Duzer said he had no items.

**XI. TOWN MANAGER'S ITEMS**

None.

**XII. TOWN ATTORNEY'S ITEMS**

None.

**XIII. PUBLIC COMMENT**

Frank Shilling of 6672 Estero Boulevard came forward and asked the Mayor regarding Item #8 if the description of the Segway could be taken to mean a golf cart or a scooter. He expressed concern regarding the definition of the Segway in the ordinance and wondered if it was correct from a legal standpoint.

**XIV. ADJOURNMENT**

Mayor Van Duzer adjourned the meeting at 10:08 P.M.

Respectfully submitted,

Jo List  
Transcribing Secretary