

**FT. MYERS BEACH TOWN COUNCIL**  
**Town Hall – Council Chambers**  
**2523 Estero Boulevard**  
**Ft. Myers Beach, FL 33931**  
**May 16, 2005**

**I. CALL TO ORDER**

Mayor Van Duzer commenced the regular meeting of the Town Council of Ft. Myers Beach on Monday, May 16, 2005 at 3:02 PM.

Council Members Present: Mayor Bill Van Duzer, Vice Mayor Howard Rynearson, Councilman Don Massucco, Councilman Garr Reynolds, Councilman-Elect Ken Katko

**II. PLEDGE OF ALLEGIANCE**

All present stood and recited the Pledge of Allegiance

**III. INVOCATION – Deacon “Scoop” Keisel of Ascension Church**

**IV. SWEARING IN OF NEW COUNCIL MEMBER – KEN KATKO**

**V. PUBLIC COMMENT**

Judy Hanson of 18 Avenida Carita came forward to thank Mr Sharples of Town Staff, the Town Council, especially Councilman Massucco, and the Town Attorney for helping her and her neighbors with a problem they had presented to the Town at a previous meeting. Her comments drew applause from those in attendance.

Pat DeVincent of 160 Bahia Via came forward to comment about a letter he had written on May 8, 2005 to the Town Manager regarding an incident concerning the leashed dog ordinance, and questions as to whether the ordinance had been changed in relation to turtle season. He requested clarification about that. Additionally, Mr. DeVincent cited a letter dated May 16, 2005 also addressed to the Town Manager and the Town Council, the subject of which was a parking violation issued on 11-29-04. He recounted what reasons he had been given for the issuance of the ticket, and all the subsequent steps he had taken to handle his disagreement and upset associated with it and the new parking regulations and the manner in which they were implemented. He expressed his opinion that he had waited long enough for answers to his letters requesting explanations and information regarding the manner in which those parking changes had been implemented.

Herb Acken, an Island resident and owner of E.B.Café, came forward and welcomed Ken Katko to the Council, and thanked the Council members for looking out for the residents’ interests. He offered comments regarding the people who use Segways in the Times Square area, as he had observed them

on a daily basis, and felt they had always been operated safely and respectfully. He pointed out that they had been creatively developed, were environmentally clean, did not disrupt traffic, etc. and hoped the Council would send the message to the community that creativity, drive and ingenuity were still welcome on the Island.

**VI. CONSENT AGENDA**

**A. Minutes of April 18, 2005**

**MOTION:** Vice Mayor Rynearson moved to consent agenda. Councilman Massucco seconded the motion.

Councilman Massucco cited an error in which he had been referred to as Vice Mayor on Page 6.

**VOTE:** The motion carried unanimously.

**\*Mayor Van Duzer recessed the Town Council and Vice Mayor Rynearson reconvened as the Town of Ft. Myers Beach Public Works Services, Inc. Board.**

**B. Public Works Services, Inc. Board**

**VOTE:** The motion carried unanimously.

**1. Modification of By-Laws**

Mr. Rynearson asked if everyone had received and had read the memo dated 5-13-05 from the Interim Town Attorney, and asked if everyone was happy with its contents. No objections were raised.

**MOTION:** Mr. Van Duzer moved to accept the contents of that memo for modification of the By-Laws. Mr. Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

Ms. Dalton pointed out that the original by-laws required the meeting in progress to have been held in February, and so recommended that the board vote to waive that by-law in order to render the current meeting proper.

**MOTION:** Mr. Van Duzer moved to waive the by-law referred to by Ms. Dalton. Councilman Massucco seconded that motion.

**VOTE:** The motion carried unanimously.

## **2. Election of Officers**

Mr. Rynearson asked the Town Attorney about the propriety of having officers, who are not board members, not present for the meeting. Ms. Dalton said the board had the discretion to have Council members only be officers. Mr. Rynearson asked if it was the will of the board to have only Councilman as officers. Ms. Dalton clarified that the person designated as Secretary would not be the minute-taker of the board meetings, and that the position was basically ceremonial.

**MOTION:** Mr. Massucco moved not to change it to require that all officers had to be Council members. Mr. Van Duzer seconded the motion.

**VOTE:** The motion carried unanimously.

**MOTION:** Mr. Van Duzer moved to fill the officer seats in concurrence with the Council positions, as it had always been done, so that the Mayor would be the President and the Vice Mayor would be the Vice President. Mr. Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

## **3. Approval of Minutes of May 3, 2004**

**MOTION:** Mr. Massucco moved to approve the minutes. Mr. Rynearson seconded the motion.

**VOTE:** The motion carried unanimously.

**\*President Van Duzer adjourned the Town of Ft. Myers Beach Public Works Services, Inc. Board and Mayor Van Duzer reconvened as the Town Council meeting.**

## **VII. ADMINISTRATIVE AGENDA**

### **A. Public Hearing of Carousel**

- 1. LPA Minutes – April 19, 2005**
- 2. Staff Report**

Beverly Grady, representing EcoVenture, Ltd came forward to speak with regards to the Carousel Inn RPD. She recounted the dispute resolution process that had been gone through with Town Staff and announced the success of that process. She then presented an application she characterized as consistent with the Town's Comp Plan and Land Development Code, and that was in agreement with Staff conditions. She briefly described the main concessions and revisions made by the applicant, and the positive benefits to the Town that were stipulated, such as the covered trolley stop and beach

access. She referred to the LPA minutes and the LPA resolution in which the LPA clearly recommended to approve the project, citing the numerous positive comments that had been made by the various LPA members. Ms. Grady also cited the specific parts of the Comp Plan and LDC with which the revised project plans complied. At that point, Ms. Grady asked the developer, Bob Mulhare, the architect, Bob Hall, and another gentleman, whose role was not made clear at that time, to come forward and give the Council some details about the design and master plan of the project.

Ms. Dalton pointed out that anyone other than the attorney would need to be sworn in before giving testimony at the hearing. At that point, everyone who had plans to speak at the hearing about the Carousel project was sworn in.

Bob Mulhare, representing EcoVenture Carousel Ltd came forward and introduced himself and Bob Hall. Mr. Mulhare briefly listed out the changes that were going to be made on the master concept plan to bring the project into compliance with the Town Recommendations, Comp Plan and Land Development Code. Mr. Hall then gave a presentation as to how the property would look from a design standpoint using visual representations. He gave many dimensions as to square footage, height, building placement on the lot, and various design features.

Councilman Reynolds asked what the administrative offices were that were mentioned on Page 2 of a document to which he was referring. Mr. Hall said there really weren't administrative offices. Mr. Mulhare said it would be for management of the complex, if there were actually going to be an office. Councilman Reynolds asked about the home occupation stipulation. Mr. Mulhare said it was no different than what was already allowed in the existing Town codes with regard to home businesses in a residential zone. Councilman Reynolds asked why the roof was going to be a flat roof rather than pitched, and Mr. Hall explained that, in order to be in compliance with height restrictions and to get the maximum amount of living space into the buildings, it had to be so.

Jerry Murphy came forward and submitted the Town Staff Report as testimony on the case, and observed that in the overall process of meetings with the applicant, the project had gone from 32 units to 12 units. He said the Town felt that it had been a very successful negotiation and an educational process. Mr. Murphy also specifically mentioned the dune restoration that had been offered by the developer, and pointed out that it furthered the objectives 5d and 6c of the Comp Plan.

Mayor Van Duzer asked if the developer had met the Staff conditions regarding the dune restoration, and if it had been presented and accepted. Mr. Murphy said that condition had been satisfied.

Councilman Reynolds asked if the proposed building was in front of the most recent build-back line. Mr. Murphy said it was in front of the 1978 Coastal Construction line, which was a line of prohibition, but it was actually seaward of the current line, and will require FDEP approval and review.

At this point, Mayor Van Duzer asked if there had been any ex parte communications on the subject. There were none. He then asked for any additional public comment regarding this project.

Marilyn Henkel of 6400 Estero Boulevard came forward and introduced herself as a resident and board member of the Sunset Condo Association, the south neighbor of Carousel. She acknowledged that her group had been vocal at the initial meetings, and then thanked the planning committee and the developer for the diligent work that had been done on the project. She said her group was very happy with all the changes and that they looked forward to having it come to fruition. She asked if the timeline for the destruction of the current building and the construction of the new project could be made available to her association as soon as was possible. She also made it known that she would be the person who would interact with the developer on behalf of the Sunset Condo Association should the need arise.

Ms. Grady thanked the Council and Town Staff for working with them so that the project could go forward. She noted that there had been no public objection to the project and requested approval from Council.

The public hearing was then closed. Mayor Van Duzer asked Ms. Grady if they could informally agree to keep Ms. Henkel informed regarding the timeline of the project, as he felt the Council didn't have the power to enforce that. Ms. Grady said they could agree to that. Mayor Van Duzer asked Ms. Henkel if that was okay, and she said it was and thanked the Mayor.

Councilman Massucco read a prepared statement, which started out with background information as to the process of mediation that had been gone through with Carousel, through the Florida Land Use Environmental Dispute Resolution Act (FLUEDRA), and pointed out that it had been a first for the Town. He felt that it was an uneven playing field, because while the Town started with its existing codes and regulations, the developer had entered the dispute with plans that far exceeded the town's codes. He felt that gave the developer the appearance of conceding a great deal over a period of time, while ultimately ending up with what seemed to be a highly refined project with many concessions, when he felt they ended up with a project that still was not strictly within the Town codes and plans. He referred to a case in Bonita Springs in which the Town had refused to compromise with the codes already on their books, and how the case had ended up in litigation, and the judge had found in favor of the developer, costing the City of Bonita Springs a great deal of money. Councilman Massucco said that as a councilman, he

could not allow that to happen to Ft. Myers Beach. He felt he was “between a rock and a hard place”. He stated that the Comp Plan and the Land Development Code were the only lines of defense available to the Town to fight overdevelopment on the Island. He said it upset him to compromise those documents. He acknowledged that the Carousel property was in dire need of upgrading, and that it had been approved for redevelopment by both Town Staff and the LPA, and he recognized that it would seem unreasonable to deny the request even though it went against the policy he believed the Council should follow regarding development and the effect it has on the quality of life on the Island.

Councilman Reynolds felt the Council had been put in an awkward situation, but fortunately, there were honorable developers in this case, and he didn’t think they had tried to take advantage of the Town. He felt some good had come out of the process.

**MOTION:** Vice Mayor Rynearson moved to accept Staff Recommendations with conditions so as to move forward with the Carousel project, in accordance with Resolution 5-10. Councilman Katko seconded the motion.

**VOTE:** The motion carried unanimously.

**B. Public Hearing of Mound House Rezoning**

- 1. LPA Minutes of February 8, 2005**
- 2. LPA Minutes of March 1, 2005**
- 3. Staff Report**
- 4. CELCAB Recommendations**

Mayor Van Duzer asked the Interim Town Attorney, Ms. Dalton, to swear in all who intended to testify during this hearing.

Jerry Murphy recounted how the Town Council had directed his predecessor to bring this application forward as was required by the agreements that were made in conjunction with the purchase of the Mound House property. He presented the Staff Report as being a relatively unrestrained list of uses, with the conditions that were recommended by the neighbors to limit the uses. He said the LPA adopted the Staff Report with the neighbor-recommended limitations, and that the case was now before Council for a final decision. Mr. Murphy then entered the Staff Report into the record as Staff Testimony.

Councilman Massucco commented that the CPD that applied to the Mound House case was very controversial. Mr. Murphy said it had been, and Councilman Massucco said it still was. He felt that the word “commercial” irritated people, and wondered if there were any way of obtaining a designation that wouldn’t be so offensive to people, and that might even further restrict some of the uses of the Mound House property. Mr. Murphy

said it was possible to develop another designation for a planned development. He said the Town's code, in comparison to the County's code, was very streamlined, mainly because there were many anticipated uses in the County that would never occur on Ft. Myers Beach, including industrial development. He said the County's 12 types of planned development were reduced to 2 types of planned development on the Beach – Residential Planned Development (RPD) and Commercial Planned Development (CPD), and which Mr. Murphy characterized as “everything else”. He felt creating another term would be form over substance. He explained that the substance of the CPD zoning district was outlined in its scheduled uses in the Master Concept Plan, which showed no changes over what existed at the Mound House currently, and would also be defined by whatever conditions the Council chose to adopt in terms of the uses that appeared in the schedule.

Councilman Massucco said he understood that the commercial designation did not mean there would be a store or a bar or restaurant, but for the general public, the commercial designation had a negative connotation. He felt that there may be other properties that would also need a different designation and that it should be something they might want to look at in the future. He said that LPA and CELCAB had done an excellent job with this case, but that because of the limited zoning designations, they had had to hand pick piece by piece what they did and did not want to allow. He felt that it had been a haphazard way to approach it. Mr. Murphy said that in terms of property that the Town owned it was difficult to foresee how it might be used in the future, but they had a good idea about the Mound House because CELCAB had worked on it for a long time. With regard to the Newton Property, there was some idea as to how it would be used, but Mr. Murphy said they were just not too certain about the other properties as yet. He felt they would still have to address each case on a property-by-property basis, and that it would be difficult to formulate a zoning designation that would encompass every scenario. Councilman Massucco realized that the CPD designation was the only one that would apply in the Mound House case. Mr. Murphy said every Planned Development Agreement was unique and crafted for each case.

Councilman Reynolds thought they had had good input from all the meetings. He felt there should be another zoning designation other than CPD. He hoped that everyone in the Mound House neighborhood had a copy of Robin Driscoll's speech from the March 1<sup>st</sup> meeting. He felt the neighbors' response to the case should tell Council that they needed something better than the CPD designation as it was still very worrisome to those people. Councilman Reynolds referred to the CF-1 (Community Facility) designation used by Lee County, and Mr. Murphy said that was probably the designation the County would have used. Councilman Reynolds said that as much as he wanted to do what was best for the Mound House, he did not want to create a conflict with the neighbors. He wanted it to go back and get a different zoning designation.

Mr. Murphy said the CF-1 zoning designation was a conventional zoning district, so it would not allow for the deviation needed to keep the driveway where it was. He said they could try to go back legislatively to create another zoning designation, but that it would likely be another 6 to 8 month process which would leave the Mound House not rezoned and not in compliance with the agreements made when the Mound House was purchased. He said they could come back, after developing a CF designation, and rezone the Mound House, but the nomenclature would be the only actual change, because the uses would be the same.

Councilman Reynolds said the way Mr. Murphy saw it was not how the people saw it, in that they did not want to take a chance with a CPD, because they felt if the uses could be limited now, they could be expanded later. Mr. Murphy said that could only happen through the public hearing process. Councilman Reynolds said he knew that, but it still could be done. Mr. Murphy pointed out that that could be done in any situation, in that any zoning category would allow someone to come through the process seeking changes. Councilman Reynolds didn't think that was so if there were a zoning appropriate for a museum or a learning center. He felt the Council had the authority to stipulate anything it wanted to within any zoning category.

Mayor Van Duzer believed the only problem was the word "commercial", and opined that perhaps it was because he had dealt with them his whole life, but that word didn't mean anything in this case. He felt if the word "commercial" was not in the zoning designation, there would not be so much upset. He said if the plan was adopted as presented, no one could alter it without going through the entire process. Mr. Murphy said that procedurally, the Council would have to direct the Staff to prepare an application and a report, present the report to the LPA, get a recommendation from the LPA at a public hearing, and then come forward to Town Council for another public hearing.

Councilman Reynolds thought everyone understood what the commercial part meant, and it did make an impression. But he felt it wasn't just the terminology, but the ramifications that the people were concerned about.

Roberta Bright of 146 Delmar came forward representing the 30 members of the Estero Island Garden Club. She said her club wished to be given permission to hold their twice-monthly meetings at the Mound House. She said that in return the Garden Club members would make themselves available in an advisory capacity to help with landscaping agendas at the Mound House. She explained that her group was comprised of several Master Gardeners, a retired Illinois State staffer with the agricultural department concerning Urban Renewal and Beautification programs, and many members with longstanding dedication to the beautification of Estero Island. She indicated that both CELCAB and Mound House personnel had approved this proposal. She listed out the many affiliations her group has with state and

county organizations, and assured the Council that their agenda was dedicated to the beautification of Estero Island through landscaping. She said the Estero Island Garden Club was founded in 1956. She listed out their ongoing landscaping and beautification projects around the Island throughout the year.

Mary Ann Babcock of 474 Washington Court, which she said was just across the canal from the Mound House. She characterized herself as a retired English teacher to whom language was very important. She cited the Staff's request for zoning, wherein some statements that were made to justify the zone change she found to be imaginative and often inaccurate. She felt the claim that it would not cause any hazard, damage or nuisance to anyone was not true. She thought the statement that streets had the capacity to carry any traffic that would be created was not true. She said the mention of the play in November as being "successful" was erroneous, because no one in the neighborhood thought it was successful and everyone thought it was a disaster. She said the statement that only three houses on Connecticut Street would be affected by the zone change defied belief, because the buffer mentioned to justify that statement was the canal, and she felt that everyone knew that a canal would not buffer but enhance the noise. She said the Staff Report claimed that the rezoning of the Mound House as recommended complied with the Comp Plan and the Land Development Code. She then referred to the Management Plan as "the bible" of CELCAB, which was from the Florida Communities Trust, and which gave the grant to buy the Mound House. She said the rules in the Management Plan were the overriding rules.

George Palko of 331 Washington Court came forward and prefaced his remarks about the Mound House by saying he thought the air show on the previous weekend had been awesome. He then strongly recommended that the Council approve the resolution of the LPA, number 2005-02 to rezone the Mound House property for two reasons: the resolution reaffirmed the commitment the Town gave to Florida Communities Trust; it was the result of many hours of work by Mound House neighbors concerned that the property would become commercialized and a nuisance in the neighborhood. He felt it was impressive how everyone had worked together in a spirit of cooperation among Town Staff, Mound House Staff, the LPA, CELCAB, Council and the neighbors.

Kelly Leary of 130 Mid Island Drive came forward and read a letter from herself and Audrey Ingliss of the Shell Mound community, wherein they encouraged the Council to lighten up the restrictions that had been presented concerning the Mound House. They also suggested that the Council educate the public as to what the definition of "commercial" was with regards to the Mound House rezoning. They expressed a belief that the Mound House should be afforded the same rules and regulations that everyone else enjoys in their own private homes, and that they trusted the directors of the Mound House and the Town would be respectful of all the residents in the Shell

Mound community. The letter also expressed that while there needed to be some restrictions in place, they should not be dictated by a small part of the community.

Paul Abraham of 450 Connecticut St. came forward and said that he was 100% of the same mind as George Palko, who he characterized as having just given a good summary. He said he had been a bit disturbed by the new memo 5-10 from CELCAB, in that he and his neighbors had reached 100% agreement with the LPA and then the memo recommended changing some of the agreements. He cited in particular the serving of beer and/or wine with restrictions and that during the LPA hearing, which had been completely eliminated. His main point was that the neighbors were generally in agreement with the LPA resolution but not the CELCAB recommendations to change some of the restrictions.

Warren Babcock of 474 Washington Court came forward and told the Council that their decision about the Mound House rezoning would forever affect the future of the quiet residential neighborhood in question, and the future direction of the Ft. Myers Beach Culture Museum and Environmental Learning Center (Mound House). He said after reading the CELCAB recommendations that day, he would have to make comments he had not otherwise planned to make. He said the CELCAB report contradicted many of the things he was in favor of. Mr. Babcock gave a bit of history regarding the Mound House and its management, including how the neighbors had initially and subsequently responded to the announced proposal to rezone the Mound House; through various meetings and hearings, the LPA resolution was finally achieved with everyone's agreement. He felt the LPA resolution contained recommendations that were just common sense. He went through the list of recommendations in detail, regarding noise, events, alcohol, etc. giving his opinion as to whether the neighbors agreed to them or not. He characterized the management plan that had been developed by the current Mound House co-directors in conjunction with CELCAB as being a plan that offers no protection whatsoever. He said the only protection the neighbors had was from rezoning with the stipulations as had been laid out by the neighbors in conjunction with the LPA.

Theresa Schober, director of the Mound House, came forward to clarify a few points. She said there were not two management plans for the Mound House, but a single document drafted by CELCAB, approved by Town Council and approved by Florida Communities Trust. She said it had not been modified since April 2000. She said it could be modified but would require a similar process as the one they were engaged in currently for rezoning. Ms. Schober believed the other management plan to which the Babcock's had referred earlier was actually an operations policy, and which CELCAB had been in the process of drafting since the previous August. She said there had been five public meetings of the advisory board where the operations policy has been

discussed, and which was included in the Council's packets that evening. She said it was currently in its third draft, and that CELCAB would be meeting again the following Monday to review that draft, with the intention of presenting a final draft to Town Council. She stressed it was not a management plan but an operational document.

Ms. Schober said the memorandum she had included which she had based on the CELCAB meeting of April 25, 2005 did suggest some modifications to the LPA resolution based on an underlying belief among CELCAB members that certain elements of operations of the Mound House property should be policy decisions rather than zoning restrictions. She said some of those suggested modifications included allowing the consumption on premises, and following the noise ordinance in Ft. Myers Beach to name a few. She felt the differences of opinion between the group of concerned neighbors who appeared before the LPA and what was contained within the memo were not new. She said her memo did not reflect a change in their opinion on the topic, in that they had been in favor of the original Staff Recommendations, and those recommendations had subsequently been altered by the LPA resolution.

Dan Hughes of 270 Randy Lane came forward and introduced himself as a member of CELCAB. He said he was in support of the recommended modifications to the LPA resolution as was outlined in Ms. Schober's memo. He felt Councilmen Massucco, Reynolds and Mayor Van Duzer had been correct in their assessment of public perception of the nomenclature with regards to rezoning as being unfortunate. He thought the "commercial planned development" designation had caused an inordinate amount of concern in residents of the neighborhood. He said the CELCAB members had felt unanimously that the LPA had gone too far in expanding the conditions to satisfy the concerns of the objectors. He said the concerns should have been addressed, especially of the abutting property owners, and were addressed in the original Staff Report and the CELCAB recommendations. He said the interests of the abutting property owners were very important but must be weighed with the interests of the community as a whole. He recognized that rezoning cases were never easy. He did not see any uses that would be allowed with the CPD designation, with the recommended conditions, that had not already happened at the Mound House at one time or another since the Town bought the property. He said when he was on Town Council, not one complaint had ever been received about the activities at the Mound House. He said the proposed CPD, as well as the Management Plan and several other documents in effect, all contained built-in safeguards that would protect the neighborhood from abusive activities, none of which could be changed without extensive and involved public hearing processes such as the one in which they were currently engaged. Mr. Hughes pointed out that the \$1.2 million investment in the Mound House was now worth at least three times that amount. But he said more than its dollar value was its value as a perpetual public facility, and it should be utilized to its fullest potential. He

felt it was the duty of the Town Council to enhance and preserve the property for the benefit of all the citizens of the Town, and all those who would follow in the future.

Mayor Van Duzer concluded the Public Comment segment of the hearing, and then called for ex parte communications. Councilman Reynolds said he had spoken with Warren Babcock, and then Councilmen Massucco, Rynearson and Katko said they had also. Mayor Van Duzer said he had spoken with Mr. Babcock, Mr. Abraham and Robin Driscoll.

Councilman Reynolds commented that Ms. Schober had expressed her desire to let CELCAB add and/or take away different uses for the Mound House as time went on. She responded that what she had been referring to were things like length of events, number of events held within a given year, and serving alcohol on premises with the limits CELCAB delineated. Councilman Reynolds asked why they were even discussing the LPA resolution if CELCAB wanted to make all the decisions. Ms. Schober said the property had to be rezoned accordant with the grant agreement with Florida Communities Trust, and CELCAB was comfortable with the LPA resolution, but with five specific changes that she outlined in her memo.

Councilman Reynolds said when he looked over the resolution, it reminded him of the previous hearing with Carousel and the remarks Councilman Massucco had made about the mediation process. He went through the list of possible uses that have been discussed and characterized many of them as having been beaten to death, and noted which ones he thought had been prohibited and which had not. He asked if the uses could flip flop between the LPA and CELCAB, what would prevent them from flip-flopping under the CPD zoning.

Mr. Murphy said the original schedule of uses that had been proposed with the application for the CPD was very broad. He pointed out the operations policy, the management plan, would never have allowed many of the desired uses. He explained that as the uses were discussed one by one with the neighbors, it had been agreed to specifically eliminate the uses such as a day care center, a laundramat, and they were never requested as uses by CELCAB. Mayor Van Duzer clarified that under the CPD those uses could have been allowed, but they were specifically eliminated. Mr. Murphy agreed that under the broad schedule of uses, those types of activities could be allowed at another property that was not similarly restricted as the Mound House.

Councilman Massucco, citing LPA Resolution 2005-02, with nine categories, asked if all those uses had been discussed with the neighbors. Ms. Segal-George explained that the LPA had a hearing at which a number of residents spoke and expressed to the LPA what they wanted, and based on those wishes, the LPA resolution was drafted to reflect those wishes. Councilman

Massucco commented that the LPA resolution was very specific. Ms. Segal-George concurred. Councilman Massucco said he could understand the frustration of the citizens because in the LPA resolution things were specifically prohibited that the CELCAB has recommended changing. Ms. Segal-George said that CELCAB and the Town had been working on the rezoning of the Mound House as was mandatory in accordance with the grant agreement. She said the only zoning classification the Town had that they could work with was CPD. She explained that when the process began, they started with the broad CPD, and then the winnowing process occurred where all the uses that were deemed irrelevant were eliminated, and then the stripped-down CPD went to the LPA. She said the LPA, in listening to the residents, then came up with their interpretation of how the CPD should read. CELCAB then decided to look at the revised CPD restrictions and allowances per the LPA recommendation at their next meeting, and then CELCAB sent their findings to the Town Council for this meeting. She said the usual process is that a case goes first to the LPA, and then the LPA recommendations would go to the Council, and pointed out that because CELCAB has the responsibility of making recommendations to Council with regards to the Mound House, they had put themselves between the Council and the LPA time-wise. She said ultimately CELCAB was asking Council to modify the LPA resolution in Council's resolution. Ms. Segal-George said the Council could go with the LPA resolution with or without the CELCAB recommended changes, or could create a completely new resolution of their own.

Councilman Massucco felt the concerns of the residents were valid because their proximity to the Mound House. He specifically mentioned wedding receptions, which he thought drifted away from the Mound House purpose. He felt there were still a lot of grey areas. He thought it was reasonable for the abutters to be able to enjoy peace and quiet on their property, did not think it was necessary to serve beer and wine.

Mayor Van Duzer said he had spoken with several people involved in the Mound House rezoning process, and had had a chance to consider it. He said the Town owns the property. He remembered when it came up for sale, and the concern then was that it would be sold off to a developer, and 18 condo units would have been allowed, and a lot of traffic would have been going up and down that street, and it would have been well within the zoned property rights. He pointed out that the zoning had to be changed in order to comply with the grant agreement. He mentioned that the Mound House structure was going to be restored back to circa 1928, and would hopefully end up on the National Register of Historical Places. He expressed his wish that the rezoning be approved, and then that the people of the Town would get together and set up a policy manual together. He felt that there had to be a way to come to agreement without such severe limitations, and at the same

time honor the property rights of the abutting neighbors and the owners of the structure.

Vice Mayor Rynearson agreed with the Mayor. He went on to say that the restrictions the neighbors were asking for were stricter than the ones imposed on the rest of the community. He pointed out that the neighbors could have parties, alcohol, and music as long as they are within the Town's restrictions and ordinances. He said that wasn't what was being done at the Mound House. He felt the Mound House needed the rezoning.

Ken Katko felt this issue was the toughest he had read about since being selected to the Council. He asked Mr. Babcock to clarify what he felt was acceptable regarding the amplification of sound at the Mound House. Mr. Babcock cited the LPA resolution that stated there should be no amplification of music. Mr. Katko wondered what constituted a "special event" with regards to the limitation of twelve special events in a calendar year in the LPA resolution. He then asked what the specifics about the retail sales were, and wanted to know why snack items couldn't be made available to people visiting the Mound House. He expressed his willingness to look at another zoning designation if it was necessary.

**MOTION:** Mayor Van Duzer moved to adopt Resolution 2005-11 with the conditions listed and with the exception of the five items included in the memo from CELCAB dated 5-10-05. With regards to those changes to the resolution, Town Staff and a committee of not more than four residents of the Mound House neighborhood to discuss those exceptions with the understanding that policy would be established outside of the resolution to cover those items. These would become part of the operations manual that would then be brought back in front of Town Council for approval, and if it was found to be inconsistent with the resolution, one of the two would then be modified.

Mayor Van Duzer asked if that motion was understandable, and Ms. Segal-George responded that it was. She went on to say that in the operations manual that CELCAB had currently been working on, those agreements would come forward for Council approval. Mayor Van Duzer reiterated that he wanted neighborhood participation in the adoption of policy regarding those issues. Ms. Segal-George said it could be done in the operations manual.

Vice Mayor Rynearson seconded the motion, saying those issues were going to come to the Council anyway with the operations manual. Ms. Segal-George clarified that if they did not adopt CELCAB's five exceptions to the LPA resolution, those issues would not come forward, and conversely, by adopting the five CELCAB exceptions, it would allow those issues to come forward when the operations manual comes before Council for approval.

Councilman Reynolds commented that the motion was very confusing and confused the original issue of whether or not to approve the CPD rezoning. He said he would rather have a simple motion to approve or disapprove the CPD, but he didn't want to approve it, but wanted it to go back to Mr. Murphy and Mr. Spikowski to see if they could come up with a new zoning plan that would more properly serve the Mound House.

Councilman Massucco asked if, ever the Operations Manual was completed if the Council could then come out with a resolution. Attorney Dalton said that Council could table the resolution until after the Operations Manual was made available, but she did not know what the timeline was for compliance with the grant document. Mayor Van Duzer felt his motion was putting everybody in the picture, in that the Mound House would be rezoned and then the restoration project and grant applications for it could move forward, and would also leave the door open for the neighbors and the Town to hash out the specific restrictions, which would still come to the Council, once worked out, for approval. Ms. Segal-George asked the Mayor if, should the operations manual come back to the Council and the Council was not happy with it or the Town and neighbors had not been able to reach an agreement about those issues in question, the Council could address the resolution again.

Councilman Massucco said the zoning was not his only problem. He said if they agreed to the resolution, they would be agreeing to all the language in it. He asked if the operations manual would be subservient to the resolution. Mr. Murphy clarified that they could just approve the zoning with the limited alcohol use as stated in the CELCAB recommendations, but then the operations manual could make it more specific or more restrictive. Ms. Segal-George added that the operations manual would attempt, based on the motion, to reach agreement on how it can be done. She felt the Mayor was basically trying to move it forward and also give the residents and the Staff the opportunity to see if, in the operational manual, there would be a way to work it out without going to lengthy conditions in the zoning document. Ms. Dalton said the operations manual would basically be the rules of the road. Mayor Van Duzer said the rezoning would specifically eliminate those usages that no one wanted at the Mound House.

Vice Mayor Rynearson pointed out that approaching the way the Mayor had laid out in his motion would allow the community to be more involved in the formulating the operations plan and also moves the issue along.

Councilman Reynolds stated that he was having problems separating the resolution 05-11 from the CELCAB and Staff recommendations. He pointed out what he perceived to be several contradictions, and said it was confusing.

Jerry Murphy explained that the attached portions of the Staff Report were only there to reference the conditions, and the remaining portion of page 7, which Councilman Reynolds had cited in his confusion, was not part of the resolution. Councilman Reynolds maintained his confusion with the documents and said he was not in line with it.

Councilman Katko noted that his pages were numbered out of sequence similarly to Councilman Reynolds. Mayor Van Duzer explained that those pages were just copies of other documents showing the items that were conditions of the resolution itself. Mr. Murphy added more explanation about the attached pages, saying they were there for reference. Councilman Reynolds asked how they were supposed to know that the attached pages were explanations. Ms. Segal-George said it was stated in the resolution, and read from the resolution where it explained what all the attachments were. She said this was done rather than rewrite the document completely with the lengthy explanations that already appear in the Staff Report, or to simply refer to the documents.

Councilmen Katko and Reynolds said they were still uncomfortable with the document, and Councilman Massucco remarked that it was a little complex. Mayor Van Duzer asked Mr. Murphy if they could come back with the resolution with all corrections, additions and exceptions put into the resolution rather than attaching references to them. Mr. Murphy said that could be done.

Councilman Reynold remarked that they could rationalize everything, but he did not feel good about voting on it in pieces, and also did not feel good about voting for the CPD.

Councilman Katko asked for a rereading of Mayor Van Duzer's motion, which Attorney Dalton did.

**VOTE:** The motion carried 4 – 1 with Councilman Reynolds dissenting.

Mayor Van Duzer asked if he could name the four citizens he would like to see on the operations manual committee. Ms. Dalton said if the committee were to be named by Town Council, the members would have to comply with the Sunshine Law requirements. She said if Staff met with local residents and they selected themselves, then they would not necessarily be subject to the Sunshine Law requirements. Mayor Van Duzer said they would then leave it up to Staff, but that he would like to see that get done immediately.

### **C. Public Hearing of Ordinance 05-14: Prohibition of Electric Personal Assistive Mobility devices**

Mayor Van Duzer asked who was doing the presentation, and Ms. Segal-George told him he should read the title of the ordinance, which he then did.

Peter Beauchamps, the president of Future Rides, came forward and introduced himself as a Segway tour operator from Pink Shell Resort. He commended the Mayor for his positive comments about Segways, which appeared in the Beach Observer a few weeks prior, in which he opined that they may offer a partial solution to congestion problems on the Beach. Mr. Beauchamps said that was exactly what the inventor of the Segway had in mind for the device. Mr. Beauchamps then listed out what he considered positive aspects of the Segway. He also alluded to the fact that many Florida communities have embraced the Segway, and hoped Ft. Myers Beach would do the same.

John Henry came forward and described his experience using a Segway as opposed to a bicycle, and characterized the operation of the Segway as being easier and safer than a bicycle for him. He said he was an environmentalist, and acknowledged that the Council members were very proactive in keeping the Island “green”, and felt the Segway was perfect for that purpose, in that it was quiet, gave off no emissions, would cut down on the number of cars on the road during busy season, very easy to control. He commented that when he was out on the Segway, people constantly stopped him and asked him all about it and seemed delighted with it.

Ken Smith of Estero Island Resorts, and said the Segway had been purchased to go between all of their resorts on the Island, and it saved a tremendous amount of time. He said he was very pleased with the Segway, and that he had used a bicycle, but he could carry more on a Segway and could use it for more work and could get it into a tighter spot, and get through the crowds much more easily. He said they were going to get golf carts, but they were more illegal and more difficult to get around, being almost half the size of a car. He felt the Segway, being smaller than a bicycle, had turned out to be the perfect tool for getting around in and between the resorts. He found most people were “utterly fascinated” with the Segway, and he was happy to tell visitors that modern technology was actually here in Ft. Myers Beach.

Donald Baker of 275 Pearl St. came forward and expressed his and his neighbors’ concern with the proposed ordinance in that it may limit use of handicap vehicles. He asked the Council to remember that there were handicapped residents who use vehicles that would be banned under the proposed ordinance.

Bud Hyatt of 28 Bay View Boulevard came forward and introduced himself as a 24-year resident. He felt there should be more interest in the residents than in the manufacturer of an instrument. He did not agree that the Segway was wonderful, but he felt it did have a place. He defined a sidewalk as a path beside a road usable by pedestrians. He said the Island was not a resort, and he didn’t agree with giving Segways to use the sidewalks and streets. He

added that he did not think that bicycles should be able to use sidewalks either. He noted that during season when traffic was backed up, there were mopeds and golf carts and he felt that indicated a lack of control. He commented that other than putting streetlights in on Morningside that not much had been done for the population of the Beach in the 24 years he had lived there. He also commented that there would always be traffic and thought no more surveys should be done, and that the money spent on them could have been better spent on pedestrian fly-overs. He began discussing the pros and cons of shifting the traffic near the Bridge, and Mayor Van Duzer indicated that Mr. Hyatt had used all of his time, and that he had gotten off the subject of the hearing. Mr. Hyatt apologized and ended his remarks by saying he wanted the Segways kept off the sidewalks.

Darren Smith of 740 Estero Boulevard came forward and stated that he owned several Segways. He said many people from their resorts, including 80 year olds, had been able to get onto the Segways and within a matter of seconds were able to operate them, even with bad backs, hips, knees, etc. He said the Segway enabled people with limited mobility to enjoy Times Square where they could shop and eat and get back and forth between there and the resort safely and quickly without ever having to get into their cars. He said the Segways had saved them mountains of time and overtime getting staff from property to property because they do not get tied up in traffic. He said taking away the Segway use would be a travesty for his business. He said there had been no injuries, and everyone who had used them was very happy with them. He felt it was strange to pick the Segway for banning, and hoped the Council would vote to keep them.

Mayor Van Duzer cited a memo he had written to his fellow Council members dated May 6<sup>th</sup> wherein it was asked that Council send the ordinance to the Public Safety Task Force and the Traffic Mitigation Agency because they both had a valid interest in the subject. He asked the Council members to consider that action before adopting the ordinance.

Vice Mayor Rynearson said that had been his intention when it had come up before in Council. He felt a lot more work needed to be done on it, and that they needed to hear from other municipalities regarding what their ordinances were going to be.

Councilman Massucco said he had originated the ordinance, suggesting the banning of Segways. He explained that he did not intend to include any vehicles that disabled people needed to get around. He said his intention was totally with regard to Segways. He remarked that the definition of a Segway was inclusive and could be interpreted to include vehicles used by disabled people, but he didn't know of any that would fall under that definition. He said he stood by the comments he had made when initially he introduced the idea of banning Segways. He felt they did not fit into the dynamics of the

Beach way of life. He said it had not been mentioned that there were absolutely no regulations governing the Segways – no registration, no operator’s license, no insurance of any kind, no experience, and no safety devices such as lights, turning signals, reflectors or anything to warn pedestrians of the approach of a Segway were required. He said the machines were silent and weighed somewhere between 69 and 90 pounds and could reach speeds of 12.5 mph, three times faster than a walking person. He felt they were totally unsafe for use on the Island, especially with such heavy pedestrian traffic. He cited a remark made by Mr. Beauchamps in which he said Ft. Myers Beach was the only community that had a problem with Segways, and countered with the fact that he had numerous newspaper articles from all over the U.S. and Canada that disputed that statement. He read from a few, and quoted the Town Attorney of Sanibel who opined that they could ban the Segway if it was determined that it was for safety reasons. He said he had heard or read nothing that diminished his concerns about the safety of Segways. He urged the Council to share his concerns and those of the American Academy of Pediatrics, which represents about 55,000 pediatric specialists, Disney, the California Council for the Blind, all who do not support the use of Segways.

Councilman Katko commented that the Segways looked like a lot of fun, but didn’t want to give false hope to owners of Segways by saying that. He said he would love to try one, but joked that he probably exceeded the weight limit. He felt the proposed was a knee-jerk reaction. He had received one letter and heard only one person at the hearing in opposition to their use. He said the man with Segways at his business made a great mistake when he got free publicity about the Segways, because up until then, no one had complained or said a word about them. He expressed he was totally in favor of Mayor Van Duzer’s proposal to put it through the TMA and the PSTF, because it needed to be looked at further. He said he did not care what Sanibel or any other town did with regards to the Segway, because the Island had its own problems, infrastructure, roads and the Segway should be addressed strictly from that angle. He said Sanibel was not the same as Ft. Myers Beach in any of those ways. He acknowledged that there might be some safety issues that needed to be looked at. Councilman Katko pointed out that the people who had addressed the Council in favor of the Segways had opened perfectly legal and allowable businesses according to the Florida Statute on Segways, had done nothing wrong, no one had ever been hurt or complained, and the net effect of banning the Segways would put them all out of business. He said they had probably invested \$50,000 or more on the units, and an ordinance that he felt had not been debated enough would just put them out of business.

Councilman Reynolds spoke for some time off mike, and it was difficult to understand what he was saying. Councilman Katko made a remark that caused several of the other Councilmen to chuckle. Councilman Reynolds

then turned his microphone on, and said he thought the Segways looked like they were a lot of fun. He didn't see how they would reduce the gridlock, and that he would rather be confronted by a bicycle-rider than a Segway rider. He did not see how they were going to do anything for public transportation. He felt it was a fun, not a functional, item. He referred to Councilman Katko's remarks that the Segway owners had invested a lot of money in them, and remarked that lots of people invest money in business and some do well and some don't. He didn't believe that should have any bearing on the way the Council voted, and that they were not elected to help a business get started at the detriment to the public. Councilman Reynolds said that the Town was run by committees, referring to the idea of sending the ordinance to the TMA and the PSTF, and wasn't sure if that was good or bad. He said he did not believe the Council was restricted or limited to send something to committees unless the Council felt there was a need for it. He thought they didn't need a committee to tell them whether they should or shouldn't pass legislation. He felt they had had plenty of input, and didn't see why they had to send it to a committee so that they could tell Council what to do.

Councilman Massucco said it was still a safety issue with him, but that he was concerned with what Sanibel, Toronto and other places had decided about Segways because they had had experience with them, and felt Ft. Myers Beach could learn from their experiences. He said those places were saying that the Segways were not good. He said there were more and more municipalities that were banning the Segways, and he offered to show everyone in Council the numerous newspaper articles he had in support of his position. He said he would hate to wait until someone was critically injured before doing something about it. He noted that there was a test track set up on the north end of the Island where people were being instructed on the use of Segways.

Vice Mayor Rynearson said he did not disagree with Councilman Massucco, and that he had voted to move it to an ordinance, but he thought they should wait until the committees gave their recommendations. He said he just wanted more input.

**MOTION:** Vice Mayor Rynearson moved to take the ordinance to the PSTF so as to get their input. Councilman Katko seconded the motion.

**VOTE:** The motion carried 3 –2, with Councilmen Massucco and Reynolds dissenting.

**MOTION:** Vice Mayor Rynearson moved to table the ordinance to a non-certain date. Councilman Katko seconded the motion.

Councilman Reynolds mentioned that he did not want to table the ordinance.

**VOTE:** The motion carried 3 – 2 with Councilmen Massucco and Reynolds dissenting.

Mayor Van Duzer then said he had specifically asked Fran Myers and Hugh (?) to come to the Council meeting, and then asked them to come forward and face the attendees. He then announced that an amazing thing had happened the previous Friday evening, when he and Vice Mayor Rynearson (as a member of the Tourist Development Council) had been invited to go to a sneak preview the brand new terminal at Southwest Florida International Airport. He said when he arrived, they were honoring people with regards to the development of the new terminal, and the first two people honored were Ms. Myers and Mr. (?). This drew applause from those in attendance. He went on to explain that they were part of a group of five people – the special management committee appointed for the management of the airport. He remarked that out of the entire county, for a \$438 million project, the chairman was Fran Myers, and the vice-chairman was Coach Hugh (?). Mayor Van Duzer felt they should be recognized, and remarked that the facility, the development for which they had been appointed to manage, would accommodate eleven million passengers a year. Mayor Van Duzer spoke enthusiastically about the new facility, likening it to Miami International in scope, and emphasized the fact that out of the entire Lee County, the top two people came from the little town of Ft. Myers Beach, which he joked must mean the Town was better than most. This drew some chuckles. The Mayor then called for another round of applause.

Ms. Myers spoke at the Mayor's invitation, and said she had been appointed to serve on the airport committee starting in 1991 or 1992. She said the last three years had been the most instructive in terms of how to run an airport than all the other years combined. She compared the amount of "homework" the Councilmen have had to go through with the amount of reading they had to do in order to get up to speed on the running and management of the airport. She said she was very proud to be there, representing the Beach, and that the Beach was well represented on the Tourist Development Council. She hoped everyone would go look at it, and believed it would pick up the "economic engine" of the community. She thanked the Council for the recognition.

Hugh (?) spoke a bit about his experiences with the committee and the amount of time invested in the development of the new terminal. He said he enjoyed being on the committee, and didn't need a gift certificate, just a scotch and water. This drew appreciative laughs and applause.

Mayor Van Duzer asked if the Council wanted a ten-minute or one-hour recess. The Councilmen opted for a ten-minute break, and the break commenced at 6:20 P.M.

Mayor Van Duzer reconvened the Council at 6:30 P.M.

**D. Clarification of Town Committee Ordinances (Continuation of Agenda Item VIII.B of May 2, 2005 Meeting)**

Mayor Van Duzer announced that the Council would now establish the membership for several Town committees, starting with the Anchorage Advisory Committee, the candidates for which were Robert Beasley, Jay Light, Mike Ratliff, David Richardson, James Rodwell, and Jeff Warner.

**MOTION:** Vice Mayor Rynearson moved to accept the named candidates for appointment to the Anchorage Advisory Committee. Councilman Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

The next committee was the Community Resources Advisory Board, and the candidates were Ann Alsop, Norman Calhoun, Tom Myers, Betty Simpson and Karen Swanbeck.

**MOTION:** Vice Mayor Rynearson moved to accept all the candidates for re-appointment to the Community Resources Advisory Committee. Councilman Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

The next committee was the Public Safety Task Force, and the candidates were Ann Alsop, Tim Linskey, Tom Myers, Joellyn Reckwerdt, Larry Schaeffer, Carolyn Van Duzer, and Daniel Shamp (a new candidate from 5664 Estero Boulevard).

**MOTION:** Vice Mayor Rynearson moved to accept all the candidates for appointment to the Public Safety Task Force. Councilman Massucco seconded the motion.

**VOTE:** The motion carried unanimously.

The next committee was the Times Square Advisory Committee. The candidates were Bill Whitaker, Evelyn May, Deborah Lalo, Jorg Wieb, Bill Freeman, John Richard and Marty York.

**MOTION:** Vice Mayor Rynearson moved to accept all the candidates for appointment to the Times Square Advisory Committee. Councilman Massucco seconded the motion.

Councilman Reynolds asked if Jorg Wieb was a resident, and remarked that he didn't know if Mr. Wieb still owned a business. Vice Mayor Rynearson remarked that living on the Beach was not a requisite for appointment to a committee. Ms. Segal-George said Mr. Wieb owned two restaurants in Seafarer's Mall.

**VOTE:** The motion carried unanimously.

The next committee was the Traffic Mitigation Agency. The candidates were Charles Demer, Ken Katko, Tom Merrill, Tom Myers, Frank Schilling, Tom Cameron and Warren Babcock.

**MOTION:** Vice Mayor Rynearson moved to accept all the candidates for appointment on the Traffic Mitigation Agency. Councilman Massucco seconded the motion for the purpose of discussion.

Councilman Massucco referred to a memo from Interim Town Attorney Anne Dalton in response to the question as to whether Councilman Katko could serve on the TMA while serving as Interim Councilman. Ms. Dalton advised that it was allowed. Councilman Massucco remarked that as a Councilman, Mr. Katko would be voting on issues such as the budget, and wanted to know if that wasn't going to be a conflict. Ms. Dalton said that because the TMA was a Sunshine agency, there would be no conflict and it would be no problem.

Councilman Reynolds referred to the memo from Attorney Dalton and said he did not see anywhere in the Florida statutes that an elected official could serve on a committee and then vote on issues as a Councilman that were referred to Council from that committee. Ms. Dalton said she knew of no prohibition against it, and that she had addressed the Sunshine issue. Councilman Reynolds said he had addressed the TWA (sic) committee and had complimented them on something, when there was no Councilman on the committee, and that had been allowed because it was a simple direct comment. He felt that if he had rebutted something that someone on the committee had said, the Sunshine Law would have been broken. Ms. Dalton said that was correct. Councilman Reynolds felt that if Councilman Katko voted for something in the committee, and then voted for it in Council, that it would be a conflict, effectively voting twice on one issue. Councilman Reynolds did not believe anything had been shown to him that allowed for Councilman Katko to serve both the committee and the Council simultaneously. Ms. Dalton asked if he was looking at the issue from the perspective of the Sunshine Law. Councilman Reynolds said the Town did not set laws by the Sunshine Law. He said statutes were different. Ms. Dalton said Sunshine Law was a statute, and was not understanding what Councilman Reynolds meant. He countered that he meant that it was the Roberts Rules of Order that governs how the Town meetings are run, and the

statutes determine whether certain things can or cannot be done with regards to voting. Ms. Dalton concurred. Councilman Reynolds said she had not shown anything in the statutes that would allow someone to vote on an issue in a committee and then vote on it in Council. He thought there were other committees with other Councilmen on them and he felt that they should also be excluded from those committees for the same reason.

Ms. Dalton cited the Attorney General opinion she had provided to the Town Manager, which specifically addressed a member of a governing unit being on a committee and then other members of that governing unit, in this case the Town Council, addressing that committee. She felt this left no question as to it being okay for Councilman Katko to be on both the committee and the Council. She said that from both the Sunshine and the legal perspective, there wasn't anything wrong with it. She said that Roberts Rules of Order was not relevant in this instance.

Councilman Reynolds agreed that it was not a violation of Sunshine Law for a government official to address a committee on agenda items. But he pointed out that, according to the statute he was reading, that same official was not allowed to engage in debate or discussion. He said there was no place that specifically said an elected official could vote on a committee and then vote on that same issue on the Council. Ms. Dalton felt that if it were not allowed, the statute would have been framed differently. Councilman Reynolds asked her to look at it again because he disagreed with her interpretation.

Mayor Van Duzer respectfully asked Ms. Dalton to look at the issue again. He thought Councilman Reynolds' concern about Councilman Katko being able to vote twice on an issue, once on committee and once on Council, was a valid concern. Ms. Segal-George pointed out Council members in the past who had held seats on committees concurrently with their time on Council. Ms. Dalton said that some committees are advisory and some are policy setting.

**VOTE:** The motion carried 4 – 1 with Councilman Reynolds dissenting.

The next committee was CELCAB.

**MOTION:** Vice Mayor Rynearson moved to accept Option 3, #5, to continue the committee the way it is with twelve members, and within a year, they should come back with their recommendations as to how to bring their membership down to seven. Councilman Katko seconded the motion.

Ms. Dalton said that if someone moved or dropped off the committee over the course of the coming year, that person would not be replaced under Option 3.

**VOTE:** The motion carried 4 – 1 with Mayor Van Duzer dissenting.

The next committee was the Marine Resources Task Force. Mayor Van Duzer said there were eight members, and there was one applicant.

**MOTION:** Vice Mayor Rynearson moved to leave the MRTF at its current size with the standing eight members, and within a year, if there is no attrition, they should come back with their recommendations as to how to bring their membership down to seven. Councilman Katko seconded the motion.

In answer to several questions, Vice Mayor Rynearson said this would mean that the eight people who were already on MRTF would remain on the committee, and the new applicant would not be appointed.

Councilman Reynolds asked how they would handle tie votes in the committees with even membership. There was brief conjecture on that.

**VOTE:** The motion carried unanimously.

#### **E. Clarification of LPA Appointments**

Mayor Van Duzer asked the Interim Town Attorney to draft an ordinance and establish for public hearings, to reconsider the action that was taken by the Town Council in the adoption of the ordinance that dropped two members from that committee. Ms. Dalton asked if he meant to start the ordinance process all over again, and he said that was what he meant.

There were a few questions as to how this would be done. Ms. Segal-George explained that it would come to the Council as a draft, and the Council would then have to decide if they wanted to proceed forward. If Council said no, it would go no further. If they said yes, then two public hearings would have to be held. Vice Mayor Rynearson asked if the Council said no, would that mean the LPA would stay at the newly mandated seven-member size. Ms. Segal-George said yes. Councilman Reynolds asked if the action would take the LPA out of the Comp Plan so that in the future if they wanted to change the membership they could do it without changing the Comp Plan. Ms. Segal-George said it had never been in the Comp Plan, but in the Land Development Code. She went on to explain that if it were changed by ordinance, that section would be changed in the LDC. Mayor Van Duzer said that in order to make peace with the Council, as he realized this was a personal issue, if it did fail when the draft came forward, he would not try to bring it back again after that. Vice Mayor Rynearson asked if that was in writing, and laughed.

Councilman Massucco thought it had worked out well because only one member was lost, and one member resigned, to get the LPA down to seven members.

Councilman Reynolds referred to a memo he thought Councilman Massucco had sent around pointing out that the Council seemed to be passing things one week and asking for them back the next week. Councilman Reynolds felt that, after all the time spent on things, they should not be brought back once a decision was made.

#### **F. Appointment of Coastal Advisory Committee**

**MOTION:** Vice Mayor moved to appoint Councilman Katko as a representative to the Coastal Advisory Committee. Councilman Massucco seconded the motion.

Vice Mayor Rynearson explained, as a reason for nominating him, that Councilman Katko was very new and didn't know enough to say no to the nomination. This was said in fun and all the Councilmen had a good laugh over it.

Ms. Segal-George and Mayor Van Duzer talked about a list, and Ms. Segal-George said that Bill Thomas had had the Regional Planning Council on his list, so she assumed that Councilman Katko would take the Regional Planning Council. Mayor Van Duzer felt there had been more than that, and Ms. Segal-George said she didn't think so as she had gone down the list. Mayor Van Duzer said there was definitely more as more alternates were needed on the Regional Planning Council, the Horizon Council, Charlotte Harbor Estuary, and the Chamber Traffic Committee. He said all they had alternates for were the MPL and TDC. Councilman Massucco asked John Gucciardo if an alternate was needed if the regular member was not a voting member. He believed all of the committee members had a vote on the committees on which they served. Mayor Van Duzer concurred, and felt they needed to fill those committee positions. Councilman Massucco asked if representation was limited to Town Council members only, and Mayor Van Duzer said it was. Mr. Gucciardo said that if it was the will of the Council, Staff would use the list and make it part of the next agenda and indicate which ones will need alternates on. The Councilmen felt that was a good idea. Mr. Gucciardo said that with a representative and alternate now named for the Coastal Advisory Committee, he would now bring Councilman Katko up to speed on it. Councilman Katko remarked that he didn't think there had been a vote yet. This elicited many funny remarks from the rest of the Council and lots of laughs

**VOTE:** The motion carried 4 – 1. It was not clear if Councilman Katko abstained or dissented.

Ms. Segal-George pointed out that the Town had no representative in the Regional Planning Council, and asked the Mayor if he wanted to wait on it.

He said he was going to attend a meeting of it that week, but said he could not do it on a regular basis. Ms. Segal-George suggested appointing Councilman Katko to that position. Councilman Katko made several joking remarks about that idea, including that he was the only one on Council who had a job. This drew a lot of laughs.

Mayor Van Duzer told Councilman Katko about a meeting coming up, and Councilman Katko said he would be unable to attend. Mayor Van Duzer explained how many meetings he was obliged to attend, and said he would attend the Regional Planning Council meeting this time, but Councilman Katko would be the representative from then on. Councilman Katko asked if they could table the rest of the appointments until they could discuss the schedule of the meetings. He felt there would be no point to appointing him to committees he would not be able to attend. Mr. Gucciardo said he would put it on the agenda for the next meeting.

#### **G. Resolution 05-11-20/20 Nomination of Parcels 283-284**

Mayor Van Duzer read Town Council Resolution 05-11.

Ms. Segal-George reminded the Mayor that she had been directed by Council to send letters to all the neighbors in the area of the proposed 20/20 nominated parcels. She reported her compliance to that direction, and said she had received no responses to her letter, but Terry Cain had received many letters of support. Mr. Gucciardo said one letter had been received that day in response to Ms. Segal-George's letter.

Terry Cain came forward and reported that the 20/20 committee had had a meeting and had moved the nomination forward with a few contingencies, including that the parcels both be acquired, and that the Ft. Myers Beach Town Council would approve Town Staff helping in with the application for FCT Florida Communities grants toward the property.

Vice Mayor Rynearson thought she had raised two separate issues: one, she wanted the resolution from Town Council, and two, she wanted the Town Council to direct Staff to help with the application to FCT for grants to be used toward the purchase of the parcels.

**MOTION:** Vice Mayor Rynearson moved to accept the resolution. Mayor Van Duzer seconded the motion.

Councilman Massucco asked if the \$100,000 request was now gone. Ms. Cain said it was, in lieu of Staff being directed to help with the FCT application. Mayor Van Duzer thought their discussion could be made more public by explaining what Ms. Cain and Vice Mayor Rynearson were talking about. Mayor Van Duzer then explained that by the Staff agreeing to help

write the grant application, the Town would not have to commit \$100,000 toward the purchase effort. Ms. Cain said that was correct. Councilman Massucco asked if they the 20/20 Committee would put that in writing, and Ms. Cain said they actually wanted the Town's commitment to helping with the grant application to be put in writing.

Councilman Reynolds pointed out that this was the second 05-11 resolution. Both Mayor Van Duzer and Attorney Dalton concurred. Mayor Van Duzer thought the Mound House was also designated 05-11. It was then changed to 05-12. Attorney Dalton asked Mayor Van Duzer to read the resolution again with the correct number designation, which he did.

**VOTE:** The motion carried unanimously.

**MOTION:** Vice Mayor Rynearson moved, with Staff approval and consent, for the Town to write the FCT grant for monies to purchase the proposed 20/20 parcels. Councilman Massucco seconded the motion.

Councilman Reynolds asked who would normally write the grants if the Town didn't do it. Ms. Cain said it would be the Land Acquisition Committee staff. Councilman Reynolds asked why they weren't going to write this one. Ms. Cain explained that they would forego the \$100,000 in matching funds from the Town if the Town wrote the grant application. Councilman Reynolds said he understood perfectly what she had said, but that it did not compute. He asked if they had purchased other 20/20 properties in the past 6 months, to which Ms. Cain replied yes. Councilman Reynolds asked if those other communities contributed and Ms. Cain said yes. She cited Pine Island as being a community that always contributes to toward those acquisitions, either with time in kind or with funds. Councilman Reynolds explained that everyone on Town Staff was so busy all the time and he wondered where they were going to find the time to write the grant, especially when it wasn't a Town function. Ms. Cain said she knew the Staff had written other FCT grants before.

Councilman Massucco asked if an appraisal of the property had come forth yet. Ms. Cain said that if the motion on the floor were approved, it would then go to the Lee County Land Acquisition group into negotiations. She said she was not privy to the appraisal. Vice Mayor Rynearson said it should be on record that they cannot pay over appraisal price, and Ms. Cain said the Lee County Acquisition group always got two appraisals and usually did not pay over appraisal price, as they were a very cautious group.

Councilman Reynolds thought they had never been concerned about the selling price, only about the \$100,000 they were going to have to ante up.

**VOTE:** The motion carried unanimously.

Mayor Van Duzer asked if she needed a letter sent to someone saying they had directed the Town to write the grant application. Ms. Cain said it would be nice if they did send something to Linda Riley. Mayor Van Duzer was sure Staff could take care of that.

Ms. Cain thanked the Council.

#### **H. Town Hall Lease Agreement**

John Gucciardo said he had included a summary memo in the Council's packets so as to give context in terms of where the Town was with regards to the lease of the Town Hall space. He said they had been in contact with the new owners who had been very cooperative and had offered some options. He asked for direction from Council to Staff regarding a lease agreement for the current space. He said if Council wanted to expand the discussion into long-term options, including the possible purchase of land to build a Town Hall, or the purchase of an existing building, or maybe the purchase of the building they were in now, it was their call as to how far they wanted to take that discussion. He said what they definitely needed at this meeting was to know the Council's will regarding the modification of the existing lease, especially regarding the term of the lease.

**MOTION:** Vice Mayor Rynearson moved that they go along with the lease as was proposed by Staff, which was a the lease renewable each year, with the option to terminate it at any time.

Ms. Dalton pointed out that it was not a year-to-year lease but a five-year firm lease, and there was no termination option in the lease in its current draft.

Mr. Gucciardo said the first option proposed by the new owners was a five-year first term lease, with annual options after that. Vice Mayor Rynearson said he would still move to accept the lease as is, because there was no ability to buy, no ability to bond at that point, so the Town should go ahead and lease because it would take at least the five years to come up with a way to buy and/or build something.

**MOTION:** Vice Mayor Rynearson moved to go with the five-year lease with the annual options after that. Councilman Massucco seconded the motion.

Councilman Massucco said the lease had to be renewed because the Town had nowhere else to go, and there was no other option being offered but the five-year option. Mr. Gucciardo said the owners were actually open to working out variations. He said their first choice was the five-year initial period and a five-year option period, and thought that the Vice Mayor had moved for the five-year initial period and then annual options. Mr. Gucciardo also

concluded with Vice Mayor Rynearson that it would very likely take at least five years to bring a new building on line. Councilman Massucco felt the process had to be started sooner or later in terms of having a Town Hall owned by the Town. Mayor Van Duzer pointed out that over the five-year lease period the Town would have paid almost \$600,000 in fees. Mr. Gucciardo suggested that the Council might want to discuss other long-term options at a retreat or something like that. He thought the Council might like to direct Staff to negotiate a right of first refusal at some point on the building they were leasing. Councilman Reynolds asked if that hadn't been tried before, and Mr. Gucciardo said it had but with the previous owners.

Councilman Reynolds mentioned that he had asked the owner of the old Mucky Duck property to send all the information about it to Town Hall, which he had done. He said he had not asked that Council put it on the agenda for discussion, and didn't know where that property stood. He pointed out that with the building knocked down, there were five lots there to build on. He understood the selling price for the land was now at \$1.9 million. He felt they were letting the opportunity slide. He thought there should be enough money in the Town "kitty" to go heavy on a purchase. He wanted the Council to think about that property. Councilman Reynolds also noted that the rent on the current location of Town Hall had gone up by 75% in the nine years of the Town's occupancy. Mr. Gucciardo noted that they had expanded and were using more space than they had in the beginning.

Mayor Van Duzer thought having the discussion was fine, but pointed out they were restricted by the Charter, because they were not allowed to indebt the Town for any reason. Councilman Reynolds said there were ways around that, and gave the water plant as an example. He felt if a good deposit was put down on the property, a good deal could be worked out, and believed that within three years the property could be fully paid off. Mayor Van Duzer agreed that they should look into it. Councilman Reynolds thought it should be done right away.

Mayor Van Duzer asked the Staff to put a discussion about looking into the possibility of securing property for a Town Hall on an upcoming Council meeting agenda. Mr. Gucciardo said they were coming up on a budget cycle and that it would probably be appropriate for the Council to suggest changes in the capital improvement long-term budget through land acquisition or building purchase. Mayor Van Duzer felt the first step was to discuss it and didn't think it was appropriate to talk about it at that very moment. Councilman Reynolds asked if Mr. Gucciardo could investigate both land and/or building acquisition and if he could bring the information to the Council, and urged that Council do something soon.

Councilman Massucco noted that the rent had gone from \$875 to \$1565 per square foot, and that the Town was picking up an additional 1540 square feet

of land which also will cost \$1565 per square foot. He felt the new owner was playing “hard ball” with the Town, and was also going to get a 3% increase each year for the next five years. Councilman Massucco said the new landlord knew that the Town had nowhere else to go, and was holding their “feet to the fire”. He wanted to point out to the people of the Town that it was getting very costly to accommodate the Town offices in that building.

Mr. Gucciardo asked if Council was giving permission for the Town Manager to finalize the lease agreement in their absence if it came in after they had gone on their summer break. Mayor Van Duzer said they were giving permission with the stipulations as delineated in the motion.

Councilman Katko thought if the Council was worried about the dramatic increase in rent he had to agree. He pointed out that he had lease space on the Island and he considered this to be an extremely dramatic increase, despite the fact that in the previous ten years, the Town had been getting an absolute bargain. He suggested asking for ten one-year options, or five two-year options, instead of locking the Town into the five-year agreement if they were serious about land acquisition. Councilman Katko also cited a part of the lease having to do with a time limit on making improvements with an allowance, and the loss of that allowance if the improvements were not effected by July 2005. He expressed concern over the short amount of time. Mr. Gucciardo apologized for not including an update that extended that time period. Councilman Katko asked Mr. Gucciardo if he could be more thorough in the future, and everyone laughed.

Ms. Dalton pointed out that there was nothing in the lease that would allow the Town to terminate, with or without cause. She suggested that, minimally, termination for cause language be added to the lease to protect the Council. Mayor Van Duzer thought that was a good idea. He wasn't concerned about the five years because it was government and he didn't think they could get land and a building and move the Town offices any quicker than that. He also acknowledged what Councilman Katko had said about the break the Town had gotten in the previous ten years, and that according to friends of his in real estate, they were still getting a fair price. Mr. Gucciardo said the landlord had been responsive when the Staff had asked for market comparables to justify the price.

Mr. Gucciardo then stated what he thought was the direction Staff had been given by Council regarding this item: They would be looking for a series of two-year options and there would be some default language created. He felt he understood what the Council wanted, and expressed hope that a further discussion would occur regarding other options.

Councilman Massucco asked whether the Town or the Landlord would be responsible for ADA improvements. Mr. Gucciardo said there had been a

legal opinion that indicated that the Town was responsible for them because the Town is a government. He said Ms. Dalton had been directed by him to look at that again to see if she concurs with that legal opinion.

**MOTION RETRACTED:** Vice Mayor Rynearson withdrew his motion at this point and suggested Council just give Mr. Gucciardo direction as to how to approach the lease. Mayor gave him that direction and asked if Mr. Gucciardo could report back to the Council before the break regarding the lease. Mr. Gucciardo said that would be okay.

#### **I. Taste of the Beach – Open Container**

**MOTION:** Vice Mayor Rynearson moved the item with the drawing on the back of the request submitted to Council. Mayor Van Duzer seconded the motion.

**VOTE:** The motion carried unanimously.

#### **J. Discussion of Process to Select Town Attorney**

Town Manager Marsha Segal-George reported to the Mayor that the position had been advertised and the advertising ceased the previous week, and from that five resumes had been received, which had been turned over to Council.

Mayor Van Duzer suggested that Council invite all the applicants to Council chamber on a time and date certain before the summer break, and give each applicant a half-hour interview. He thought this would give them the break time to really think over and consider who might be the best choice. Ms. Segal-George asked if May 25<sup>th</sup> or May 26<sup>th</sup> would be okay for setting up the interviews. There were no objections to those dates, as long as they occurred from 8:30 to noon. Ms. Segal-George said she would try to get all applicants to come on May 25<sup>th</sup>, and if that didn't work, she would try for the 26<sup>th</sup>. There ensued some discussion as to whether Tuesday, May 24<sup>th</sup> might be an option also, and it was determined that Wednesday was the first option, with Tuesday the second option and Thursday the third option.

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

Councilman Massucco said he had attended the open house at the new airport terminal and said he had been very impressed by it. He thought it was amazing. He congratulated Ms. Myers on her part in its creation. Councilman Massucco said he had had the opportunity to go out with the Town maintenance captain, Ed Lawlor, and was taken on a tour of what the Town maintenance crew does. Councilman Massucco said the crews were very busy, and now had a good idea what to tell people when they asked him what the maintenance crews were doing. He felt they were doing a good job.

Vice Mayor Rynearson said he had gotten Mr. Gucciardo's memo regarding the hurricane seminar, and asked if there was any way to move it sooner in the summer. He said for this year, he hoped the seminar could be moved to sometime in June, but in the following year, it get moved to the end of May. Mr. Gucciardo said he had not heard back from Council, and the PSTF had agreed that it should be done earlier than it had been traditionally been held. Mr. Gucciardo said it had been done in late August or later in years gone by. The PSTF thought the turnout would be better if it were to be held in July or early August, and Emergency Operations had August 2<sup>nd</sup> available. He said he could go back to Emergency Operations and ask if they have an earlier date, but he expressed concern that they may already be booked throughout the May/June/July period. Vice Mayor said that was okay, but for the following year it should be held at the end of May or the beginning of June. He also wanted to be sure the Town's plan was available for presentation to attendees so that everyone knew ahead of time what the plan was. Mr. Gucciardo said two things that would be different in this year's seminar would be: more focus on evacuation and re-entry issues; more focus on the insurance industry. Vice Mayor Rynearson noted that there would be volunteers standing by to help post-disaster, and wanted to be sure they understood that they would be on the Island to work as volunteers for the Town not to work on their own property. Mr. Gucciardo thought they might end up doing much more work off-Island. He added the the PSTF had invited the 25 or so volunteers to their June meeting to discuss in very frank terms what their duties and responsibilities would be. Mr. Gucciardo and Vice Mayor Rynearson engaged in a short dialogue regarding the aftermath of last year's storms, public perception, and steps that would be taken to improve all of that should the need arise.

Vice Mayor Rynearson then asked the Town Attorney to give a legal opinion with regard to the Council's procedure and policy manual and also in terms of how the meetings were run. He concluded by congratulating Ms. Myers on her part of the creation of the new airport terminal and said it was awesome.

Councilman Katko thanked the Council for their support and thanked the people who had contacted him to congratulate him or who had offered sympathy for having been appointed to the Council. He thanked the people who had brought the air show to Town, and he thought it was a nice event. He also mentioned, for business owners who didn't know, that sandwich signs were going to become prohibited on May 31<sup>st</sup> due to a sunset clause that was passed a long time ago. He realized there would be notices put in the paper, but thought many business people didn't have time to read the paper. He suggested that, instead of the notice "beginning June 1<sup>st</sup> the Town will begin violation citations and fines", the Town could be a little more lenient. He was not suggesting that the law be changed, but asked if the Town could have a policy where each business owner could be contacted in person to let them know that the signs were illegal so as to not be too heavy handed about it.

Councilman Reynolds said that he had put an article in the paper about the Park and Ride success. He didn't see how it could not have been a success with all the free rides and with the public relations firm having been hired. Councilman Reynolds opined that 50,000 cars were not kept off the Island and did not believe it. He said the article contained his own views and he had not brought anybody else into it. He said that on Wednesday, there was going to be a letter from Mayor Van Duzer criticizing him very strongly. Councilman Reynolds felt it was not an appropriate thing to do in a public forum, and felt it was against the Sunshine Law. He went on to mention various specific points on which he and Mayor Van Duzer differed in terms of money spent, and felt Mayor Van Duzer's accusation that his facts were wrong was a false accusation. He made the point that he didn't think the Park and Ride had been a success in terms of serving the people.

Councilman Reynolds then moved onto the topic of condo conversions and said he was still opposed to bringing old buildings into situations like that. He then brought up parking tickets being issued across from Mango Street, and hoped the Town would stop being so aggressive in giving tickets in front of those businesses, and hoped that Council would give the business owners some relief.

He then mentioned something about a motel sign.

He then said the single-family rentals had been handled well on the Island, although one had been identified as being a problem.

He concluded with remarks about a request he had made of the Interim Town Attorney for an interpretation of an ordinance that Beverly Grady had mentioned to Council regarding the docks at Royal Pelican. He said Ms. Dalton gave him an interpretation, but didn't think it had answered his question. He wanted clarification of the ordinance, not whether it was a legal ordinance. His question was whether the ordinance supported Beverly Grady's position on behalf of Royal Pelican or not. He concluded by welcoming Ken Katko to Council, and mentioned that he saw a little of the air show.

Mayor Van Duzer asked that the Council give consideration about the parking situation in front of the businesses across from Mango Street, and asked if that could be put on the Council's next agenda. He said he intended to ask that the No Parking signs there be changed to 15 Minute signs.

Mayor Van Duzer responded to Councilman Reynolds' remarks about the letter written in response to the letter than had appeared in the Observer.

Mayor Van Duzer said he did respond to Councilman Reynolds' letter and asked that everyone do as he was suggesting in his letter. He wanted remarks such as those made by Councilman Reynolds in his letter be made at Council meetings, not in newspapers. He characterized the remarks as potshots.

**IX. TOWN MANAGER'S ITEMS**

Mr. Gucciardo said that in preparation for Hurricane Season they would be testing the Emergency Notification System, with the tentative date being May 25<sup>th</sup> in the afternoon. He said there would be ads in the paper about it, and that a contact number would be published for those not receiving the phone call to contact the Town so that their number can be added to the database.

**X. TOWN ATTORNEY'S ITEMS**

Ms. Dalton understood it was Council's will that no more exploration of options to assist the Royal Pelican owners was to take place. She asked for direction from Council as to whether the issue was to be readdressed or not.

Vice Mayor Rynearson said it had been the consensus of the Council not to do anything further with it because it had been determined that legally they couldn't do anything.

Councilman Reynolds said he hadn't asked Council to intervene, but had simply asked for clarification of the ordinance. Beverly Grady said the ordinance had been ignored, and he wanted to know if it had been.

At this point, Councilman Massucco referred to a memo from Jerry Murphy asking Council for direction regarding publishing notices about signs. Mayor Van Duzer and Vice Mayor Rynearson said they were already being done. Mr. Murphy said he had already gotten direction from Council. Mayor Van Duzer suggested that a big headline be placed in the papers with the notices about the sandwich signs becoming outlawed.

**XI. PUBLIC COMMENT**

None.

**XII. ADJOURNMENT**

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

Mayor Van Duzer adjourned the meeting at 8:00 P.M.

Respectfully submitted,

Jo List  
Transcribing Secretary