

1. Requested Motion:

Meeting Date: December 21, 2009

Approve Ordinance 09-01, which amends the Land Development Code to provide for a process to vacate the Town's public interest in real property.

Why the action is necessary:

This action complies with prior Town Council direction to bring forward an ordinance to allow for vacation of Town-owned interests in real property.

What the action accomplishes:

This action provides the Town with a process to vacate Town-owned interests in real property.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other:

4. Submitter of Information:

Council
 Department: Community Dev
 Town Attorney

5. Background:

The Town Council previously directed the Town Attorney and staff to draft an ordinance regarding vacation of Town-owned interests in real property. Since this is a proposed amendment to the Town Land Development Code, it has had an introduction and first hearing before Town Council and a hearing before the LPA. In addition, at the first hearing of this ordinance, the Council requested that staff provide information regarding the process utilized by the County to vacate public interest in property within municipal boundaries and a comparison with the Town's proposed process, so that these processes could be duplicative as much as possible. Attached is Interim Community Development Director Shockey's memo in response to this request.

Enclosures: Town Attorney Memo of 12/14/09; Draft Ordinance 09-01; Staff Memo 11/2009; LPA Resolution; LPA Minutes; LPA Recommended Ordinance

6. Alternative Action: Do not approve the Ordinance.

7. Management Recommendations:

8. Recommended Approval:

Finance Director	Public Works Director	Comm. Development Director	Town Clerk	Town Attorney	Town Manager
					

9. Council Action:

Approved Denied Deferred Other

Anne Dalton, Esquire
2044 Bayside Parkway
Fort Myers, Florida 33901
(239) 337-7900

MEMORANDUM

To: Mayor, Vice Mayor, Councilmembers, Town of Fort Myers Beach

CC: Town Manager, Interim Community Development Director, Clerk

Date: December 14, 2009

Subject: Vacation Ordinance - Modifications

At the first hearing on this ordinance, there was considerable discussion regarding the requirement set forth in Florida Statute regarding County involvement in vacating platted property.

Since that time, both staff and the Town Attorney have discussed this matter with Lee County representatives, with limited success. Although this has not been confirmed in writing, they have taken the position that Lee County is not involved in vacating platted property within municipalities and there is no requirement for the Town to have such a requirement in the Town ordinance. However, the statute, which is being provided to Council separately, appears to be clear.

In order to get past this dichotomy and have a Town ordinance for vacating property, I have proposed the deletion of the requirement that County approval be obtained within 18 months or the Town Resolution is null and void. However, the Ordinance still states that the applicant must obtain a letter from the County indicating that no county action is needed, as appropriate. This will avoid the awkward situation of an applicant's obtaining the vacating of property without getting County approval, and a third party coming forward in the future and indicating that the applicant should have gotten such approval and that the Town process is flawed. It is the intention to streamline the process to conform to Council's directive.

In addition, I have taken the liberty of removing various requirements of document submittal to the Town Attorney, in the assumption that Town staff will be able to vet those documents and provide only those which contain legal concerns to the attorney. This will hopefully reduce costs to the applicant. Further, I have suggested deletion of provisions requiring appraisals and related language, since it is very unlikely that the Town would be involved in any vacating transactions requiring an appraisal. Finally, I have streamlined the Council process by suggesting the elimination of at least one Town Council meeting/hearing. Obviously all of these suggestions are up to Council's policy making determination.

Upon passage of an ordinance regarding vacating, it would be a good idea to consider a resolution to set the application fee(s) as soon as possible.

ORDINANCE 09-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; FINDING OF NECESSITY; PURPOSE AND INTENT; ADOPTING AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE WHICH IS ENTITLED "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS"; ESTABLISHING APPLICATION REQUIREMENTS AND LEGAL PROCEDURES FOR VACATING TOWN-OWNED PUBLIC INTERESTS IN REAL PROPERTY; AMENDING DIVISION 5 "PLATS AND VACATIONS"; AMENDING SUBDIVISION II "VACATION OF TOWN INTEREST IN REAL PROPERTY"; AMENDING SECTION 10-218 "PURPOSE AND INTENT"; AMENDING SECTION 10-219 "APPLICATIONS"; AMENDING SECTION 10-220 "PROCEDURE"; PROVIDING SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494 Laws of Florida; Chapters 163, 166, 177, and 336, Florida Statutes, and other applicable provisions of law.

SECTION 2. Finding of Necessity. The town council finds that the establishment of application requirements and legal procedures for vacating town-owned public interests in real property as set forth elsewhere in this Ordinance is necessary for the effective administration and operation of the town.

SECTION 3. Purpose and Intent. It is the purpose and intent of this Ordinance to establish procedures for the town to follow in considering the vacating of town-owned public interests in real property. The procedures established by this ordinance are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

SECTION 4. Adoption of Amendments to Chapter 10 of the Land Development Code. Chapter 10 of the Town of Fort Myers Beach Land Development Code is titled "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS." Chapter 10 is hereby amended as shown in Exhibit A. Entirely new language is indicated by underlining. Language being repealed is indicated with ~~strikethroughs~~. This Ordinance amends the following sections of Chapter 10:

- Division 5. Plats and Vacations
- Subdivision II. Vacation of Town Interest in Real Property
- Sec. 10-218. Purpose and Intent.
- Sec. 10-219. Applications.

Sec. 10-220. Procedure.

SECTION 5. Severability. If any one of the provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or should for any reason whatsoever be held invalid, then such provision will be null and void and will be deemed separate from the remaining provisions of this Ordinance, and in no way affect the validity of all other provisions of this Ordinance.

SECTION 6. Effect of Ordinance. The provisions of this Ordinance are deemed cumulative and supplemental and will have no legal effect on the ordinances of the Town of Fort Myers Beach, except as expressly provided.

SECTION 7. Effective Date. This Ordinance will become effective immediately upon its adoption.

The foregoing was enacted by the town council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor _____
Herb Acken, Vice Mayor _____
Tom Babcock _____
Jo List _____
Bob Raymond _____

DULY PASSED AND ENACTED this _____ day of _____ 2009.

ATTEST: TOWN OF FORT MYERS BEACH, FLORIDA

By: _____
Michelle Mayher, Town Clerk

By: _____
Larry Kiker, Mayor

Approved as to form by:

Anne Dalton, Esquire
Town Attorney

Chapter 10 DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

ARTICLE II. DEVELOPMENT ORDERS AND PLATS

DIVISION 5. PLATS AND VACATIONS

Subdivision I. Plats

Sec. 10-211 through Sec. 10-217 [No changes]

Subdivision II. Vacation of Town Interests in Real Property

Sec. 10-218. **Purpose and Intent.** It is the purpose and intent of this ordinance to establish procedures for the town to follow in considering the vacating of public interests in real property. The procedures established by this ordinance are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

Sec. 10-219. **Applications.** ~~In order to determine that there is no further public purpose in property to be considered for relinquishment by the town as well as to offset the loss in public access, the town will evaluate every application to vacate town-owned public interests in real property to determine if remuneration to the town for disposition of the real property interests sought is appropriate.~~ All applications must comply with the requirements below.

- (a) An application to vacate town-owned public interests in real property must be submitted to the Town Department of Community Development with a duplicate copy submitted to the Department of Public Works, on forms provided by the Town.
- (b) The application must be notarized and must include the following:
 - (1) Title certificate or attorneys title opinion acceptable to the town attorney indicating that the applicant owns fee simple title to the tract or parcel of real property to which the vacation of the town-owned public interest in real property will inure as well as indicating what liens or assessments currently exist on the property; and
 - (2) A copy of the most recent tax bill applicable to the property in question as well as proof of payment in full of all current and former tax bills; and
 - (3) A legal description of the area to be vacated and an accompanying survey indicating the location of all existing improvements including, but not limited to, drainage, utilities, surface water management facilities, streets, buildings, and other physical features **within 500 feet of the real property** that is the subject of the application request. This drawing must also show the relationship of the subject property to other real property in the surrounding

area and the most direct route to the nearest arterial street and must be signed and sealed; and

- (4) A copy of the plat indicating the area thereof subject to the request, if applicable; and
- (5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and
- (6) The original signatures of all persons holding any private legal interest; and
- (7) A printed list of all current property owners, STRAP numbers, and mailing addresses **within a 500-foot radius** of the subject property, including two (2) sets of mailing labels for the real property owners on this list; and
- (8) An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:
 - a. Is not for the purpose of unlawfully obtaining public property for private purposes;
 - b. Will not adversely affect the ownership rights or convenient access of persons owning other real property; and
 - c. Will not adversely affect future infrastructure and is not in conflict with town, county, state, federal, or other governmental entity's plans regarding transportation, surface water management, utility, drainage, or other public purposes.
- (9) Signed letters of approval or no objection from:
 - a. The Town Department of Public Works
 - b. Florida Power and Light
 - c. The local cable television company serving the town
 - d. The local telephone company serving the town
 - e. The local liquid propane gas company serving the town
 - f. Lee County or other provider of sanitary sewer services
 - g. Lee County Sheriff's Office
 - h. Fort Myers Beach Fire Control District
 - i. Any other provider of private or public utilities whose facilities or infrastructure may be affected by the action requested, as determined by the director following review of an otherwise complete application.

If the required reviewing entity determines that the vacation may not serve the best interest of the public, the applicant may offer an alternative or replacement easement. However, the reviewing entity is under no obligation to accept the offered alternative. If an application to vacate is premised on the grant of an alternative or replacement easement, town council will not take action on the application until the instrument necessary to grant the alternative or replacement easement has been accepted in form and content by the town attorney, properly executed by the granting or conveying entity, and delivered to the town attorney to be held in trust pending the town council's consideration of the requested vacation.

- (10) Payment of the applicable application fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.
- (11) Subordinations agreements with all holders of liens against the real property subject to the request.
- (12) ~~Increase in market value of the applicant's real property if the town approves the vacation. The increase in market value will be determined by two (2) independent appraisals commissioned by the director with the full cost of the appraisals paid by the applicant to the town prior to initiation of the process.~~
- (13) Disclosure of county requirement of vacation or statement by the Lee County director of community development or designee that no county vacation is required.

Sec. 10-220. Procedure.

- (a) After receipt of a complete application for vacation of town-owned public interests in real property, the director of community development will prepare a report stating both the current and potential town uses, both short-term and long-term, of the town-owned public interests in real property subject to the vacation request. This report will make specific reference to the adopted Capital Improvements Program (CIP) and to the goals, objectives, and policies of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does, or does not further the adopted goals, objectives, and policies of the Comprehensive Plan and the adopted CIP.
- (b) The complete report will be provided to the town public works director, town finance director, and any other applicable town staff for review and comment. All written staff comments will be included in the packet provided to the local planning agency and the town council.
- (c) The packet, with staff comments, will be referred to the local planning agency for public hearing and recommendations. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation in Lee County at least once a week for each of two (2) weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the town attorney, with a copy to the department of community development, for presentation to the local planning agency at the time of the public hearing and attached to the LPA resolution.
- (d) Following the public hearing before the local planning agency, the complete report and staff recommendations and the local planning agency minutes and resolution with recommendations will be reviewed by the town council in a public meeting. If, after reviewing the report and the local planning agency minutes and recommendations, the town council decides to pursue possible vacation of the town-owned public interest in real property, the town council will direct the town

manager to prepare a report indicating any interest from other governments, governmental agencies, quasi public organizations, or private conservation organizations in acquiring an interest in the subject real property, and proposed uses for the property.

- ~~(e) The town manager's report will be referred to the town council. If, after reviewing the town manager's report, town council decides to pursue possible vacation of the subject town owned public interest in real property, the town council will schedule the request for a properly noticed public hearing on the possible vacation. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation in Lee County at least once a week for two (2) weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of public hearing confirming legal notice of the public hearing must be presented to the town attorney, with a copy to the department of community development, for presentation to the town council at the time of public hearing and attachment to the council resolution.~~

At this hearing, the town council will determine:

- (1) Whether the vacation of the subject real property for other use will adversely affect the future land use map category, as set forth in the Comprehensive Plan, or adversely affect the zoning district, as set forth in the Land Development Code, and whether it is otherwise consistent with the requirements of state and federal law; and
- (2) The original intended use of the real property at the time of its acquisition by the town; and
- (3) Whether the conditions and circumstances of the use of the real property have undergone change with respect to intended town use of the real property; and
- (4) What constitutes surplus property, in terms of the original intent, and whether the real property is surplus property; and
- (5) The basis of the vacation of town-owned public interest in real property; and
- (6) Findings of fact and conclusions of law in support of the action to be taken; and
- ~~(7) Whether and how the public would benefit from the proposed vacation; and~~
- ~~(8) Whether the proposed arrangements associated with the vacation are equitable, considering the market value of the town owned public interest in real property and alternative disposition procedures including:~~
 - ~~_____ a. sealed bid;~~
 - ~~_____ b. negotiated offer and upset bid;~~
 - ~~_____ c. public auction;~~
 - ~~_____ d. exchange; and~~
 - ~~_____ e. conveyance to government(s) or governmental agencies, quasi public organizations, and/or private conservation organizations~~

- (f) If, following the public hearing held as set forth above, the town council decides to pursue vacation of the town-owned public interest in real property, town

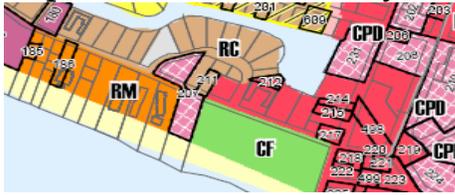
council will direct the preparation of a resolution declaring the subject real property interest as surplus to the town's needs, containing the details of the proposed disposition, and setting a date for an adoption hearing for the resolution no less than 30 days from the date of the decision and direction to prepare the resolution. The applicant is responsible for all recording costs.

- (g) ~~If Lee County approval is also required to fully vacate the public interest in the subject property, the following procedure must be followed: If the applicant has not provided the town with a certified copy of a document indicating county approval of the vacation of the public interest within 18 months of town approval of the request to vacate the public interest, the town resolution of approval will be null and void. Any town resolution of approval will specify this condition when county approval is also required to vacate the public interest and the town resolution of approval will not be recorded in the public records until and unless the applicant has delivered to the director the requisite certified copy of a document indicating county approval of the vacation of the public interest.~~
- (h) Notwithstanding the foregoing process, after review and consideration of the report referenced in subsection (a) of this section, town council, in its discretion, may determine that to proceed, subsections (c) and/or (d), ~~and/or~~ (e) are not required if:

- (1) The conveyance is back to the original grantor(s), its successors and assigns, who are currently the abutting owner(s); or
 - (2) It is part of another process, such as:
 - a. Straightening of a real property boundary line in connection with a boundary dispute;
 - b. Settling an action to quiet title; or
 - c. Other like proceeding, as determined in the discretion of the town council upon the consideration of the director's recommendation;
- or;
- (3) It is a vacation that is *de minimis* in area, cost, and overall impact.

Upon finding any of the items enumerated in this subsection (h), the town council may exempt the transaction in question from continuing with the procedures set forth in paragraphs (c) and/or (d), ~~and/or~~ (e), and continue with the determination concerning the vacation of the subject real property interest. The town council, however, may apply any of the considerations contained ~~in paragraph (e)~~ therein that it deems relevant and helpful in rendering its decision.

**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Town Council

CC: Jack Green, Interim Town Manager

From: Frank Shockey, Interim Community Development Director

Date: November, 2009

RE: Proposed Ordinance 09-01, amending LDC Chapter 10, Article II, Division 5, to add Subdivision II. "Vacation of Town Interests in Real Property"

At the first hearing of proposed Ordinance 09-01, which would amend LDC Chapter 10 to add application requirements and procedures for vacating town-owned and public interests in real property, Town Council members had a number of questions about past practices and some provisions of the proposed ordinance. The contents of the Ordinance are generally arranged to maximize the protection of the public interest while endeavoring to remain consistent with arcane matters of state law, statutory and otherwise.

The broadest question asked was the mayor's question of how different the proposed requirements to be included in LDC Chapter 10 are from Lee County's analogous administrative procedures. The County has two similar administrative procedures, one for the vacating of plats and portions of plats created through the platting process under Chapter 177, *Florida Statutes* and one for the vacating of rights-of-way in accordance with Chapter 336, *Florida Statutes*. The requirements for the County procedure under Chapter 177, which is designated as AC-13-1 in the Lee County Administrative Code, are similar to the most common situations that will arise in the Town, where a public interest such as a public drainage easement or a street, created by plat, is sought to be vacated. What follows is an accounting of purposes and/or origins of each requirement in the proposed Ordinance 09-01.

Section 10-218, Section 10-219 and 10-219(a): These sections state general policy and intent, and designate the reviewing Town entities. They could be altered to match Council policy, but should not be removed.

Section 10-219(b)(1) and Section 10-219(b)(2): These requirements address statutory requirements in Chapter 177, which the County specifically requires in AC-13-1.

Section 10-219(b)(3): A legal description and survey of real property are necessary to determine the location and extent of the property in question with sufficient clarity for the Town to take action. AC-13-1 does not specifically require a survey, but allowing an applicant to provide only a sketch of description could conceal the existence of drainage pipes, water lines, or other essential public facilities, or encroachments by buildings, fences, and other such objects that might have a bearing on the request. The scope of this requirement could be reduced to require the information for within a smaller distance than the 500-foot radius.

Section 10-219(b)(4): Required by AC-13-1. Where an interest created by a plat is sought to be vacated, the plat itself is any important reference in understanding the nature of the interest sought to be vacated.

Section 10-219(b)(5) and Section 10-219(b)(6): Required by AC-13-1 to cover a requirement by F.S. 177.

Section 10-219(b)(7): For mailing of notices to neighbors, who may be affected by the request, so that they can appear at any hearing or provide written statements of objection or support.

Section 10-219(b)(8): Asks applicant to make statements to address specific considerations required by F.S. 177.

Section 10-219(b)(9): These requirements are similar to but more specific than AC-13-1. The Lee County Sheriff's Office and the Fort Myers Beach Fire Control District reviews were requested to be added by the LPA. The requirements could be less specific and could be made more similar to AC-13-1 if Council desires. The "alternative easement" phraseology is similar to AC-13-1.

Section 10-219(b)(10): Payment of required fees is typical for any standard activity requested by a private party for its own benefit involving Town staff and

Town attorney time. This phrasing allows for use of the County fee schedule unless Council creates its own fee schedule. If Council adopts a resolution creating a fee at the same time as the resolution, the reference to the County's fees would be unnecessary. Fees defray the expense of responding to private requests of the Town and encourage prospective applicants to gauge the likelihood of success before applying.

Section 10-219(b)(11): This is a detail that may apply only rarely, not specified in AC-13-1. Where this is unnecessary, an applicant will simply have to attest that there are no liens against the subject property.

Section 10-219(b)(12): The appraisal was added to help Council consider whether the arrangements with the applicant would be equitable, though there may be some cases in which requiring an appraisal might be inappropriate. This ordinance is drafted broadly to allow the Council to consider whether vacation of the public interest is the appropriate process to use, on a case-by-case basis. In some cases the appraisal may help determine if disposing of the property by vacation of the public interest is appropriate or not, if some other process is more appropriate, or if the public would not be served by pursuing any such process and the interest should be retained by the Town. The LPA recommended the additional requirement for a second appraisal. The County does not require any appraisals in AC-13-1. The requirement for two appraisals, or for any appraisals, could be removed if it is the will of Council, but if no appraisals are required staff recommends that this process only be used to vacate non-possessory interests in real property.

Section 10-219(b)(13): This provision ensures that the applicant is aware that further action from the Lee County BOCC will be necessary for the public interest to be vacated fully, in situations in which that is the case. No analogous provision is in AC-13-1, of course.

Section 10-220: This section departs from AC-13-1 by providing the following process detail:

- (1) a specific outline of content for a report about the request,
- (2) a hearing before the LPA,
- (3) an opportunity for Council to consider at a meeting whether to hold a hearing,
- (4) a subsequent hearing on the merits of the request before Council,

(5) a subsequent hearing to adopt the resolution declaring the facts found by the Council in support of the decision, and making the decision effective, if this were the will of council following the preceding step.

The final provision of Section 10-220 would give Council the option to determine that several of the intermediate hearing steps listed above, including the LPA hearing, the initial Council consideration of whether to hold a hearing, and the first Council hearing on the merits, are unnecessary in certain specified circumstances.

The hearing process steps number 1 through 5 above could be reduced in scope and specificity to accord with the will of Council. Many of the decisions broken into separate hearing dates could be made at the same hearing, with additional staff and attorney work done up front (such as preparing a draft resolution in advance). This could make for fewer hearings, but additional costs to the Town before the Council would have the opportunity to decide not to take action on the petition.

One other question was about the possibility of including criteria for situations in which the Town simply would not consider vacating public interests. This question is partly a question of policy for the Town Council to decide, and partly a question of policy as to how Town Council wishes to implement existing policies of the Comprehensive Plan. Applicable Comprehensive Plan policies could be considered in the hearing process under the proposed ordinance (this is part of the purpose of involving the LPA), or they could be implemented in the ordinance to preclude the holding of hearings categorically. The relevant policies are attached to this memo.

projects, as FEMA may fund about 75% of the cost. Another item would include 5-10 year "wish list" items, as suggested by staff. Ms. Schober had suggested checking into retaining the Town's share of "20-20" funds that it currently pays to the county for conservation land, since there is no land on Estero Island for this purpose. Jack Green added side-street resurfacing to the items. Ms. Shamp recommended that she and Dr. Shockey continue to schedule CIP presentations on the LPA agenda on a monthly basis by appropriate staff.

Ms. Shamp asked Mr. Janke to join her and answer questions, etc. Mr. Mandel referred to the Conservation "20-20" funds and asked for an explanation of how that works. Mr. Janke explained the process. Mr. Janke also explained that the charter does not allow the Town to go into debt so a major project would require serious payment planning. Ms. Kay asked for clarification of the first comment on Ms. Shamp's report and Mr. Janke explained. Ms. Shamp asked for Mr. Janke's personal opinion as to the prioritizing of the projects. He opined that the LPA should look to review the Comp Plan to see if any projects are linked to that plan. Ms. Shamp asked if there would be any merit in having a presentation on storm water relating to funding, etc. Mr. Janke agreed that it may be a good idea to have a presentation to give the LPA a better grasp of these two huge issues. Mr. Weimer referred to the current issue CIP that LPA could address, specifically #1: funding sources, and the fact that the charter does not allow debt. Ms. Dalton clarified that it may, however, be accomplished by referendum. Discussion ensued regarding tax millage for specific capital improvements.

Mr. Weimer also commented on item #2, on the same page, Implementation of Storm Water Project. He asked Mr. Janke what the LPA could help with on this issue. He said that there is not much the LPA can do as a body, other than keep abreast of what the project accomplishes as it moves forward. More general discussion ensued about a possible presentation regarding this issue. Mr. Janke suggested that Cathie, Town staff, present some information to the LPA, since she is well versed in the details. Mr. Weimer asked about the level of service projected for these projects. Mr. Janke pointed out that this pilot project will give a glimpse of that level. Dr. Shockey expanded on the term "level of service" and how it applies to the improvements planned. Ms. Shamp suggested that the proposed presentation should be a storm water presentation that would also include the CIP process and right-of-way.

VI. PUBLIC HEARING

A. Ordinance 09-01 Amending LDC Chapter 10-"Procedure for Vacating Town Interests in Real Property"

Ms. Dalton read the ordinance caption for the record:

"An ordinance of the Town of Ft. Myers Beach FL amending the Town of Ft. Myers Beach Land Development Code providing authority, finding a necessity, purpose and intent, adopting amendments to Chapter 10 of the Land Development Code, which is title "Development Orders and Engineering Standards." Establishing application requirements and legal procedures for vacating Town owned public interests in real property, severability; amending Provision 5, Plats and Vacations; amending subdivision 2, Vacation of Town Interest in Real Property; amending section 10-218 "Purpose and Intent;" amending sec 10-219, "Applications;" amending sec 10-220

“Procedure;” providing severability, effective ordinance and effective date.”

Dr. Shockey gave an overview of the ordinance. He explained that the state law provides for certain guidelines within which residents can ask local public governmental entities to vacate their interests in easements, rights-of-way, etc. He said that in the past, county staff would prepare the petitions and bring them before the Town Council, before they went before the Board of County Commissioners; however, this is not the case any more and referred to the attorney’s memo, included in the LPA packets.

Ms. Dalton noted that the LPA had asked how issues came before them so she included in their packets the “blue sheet” that went to the Town Council that requested that this matter be referred to the LPA. She also pointed out the 3 page memo in the packet.

Mr. Weimer asked for public comment.

PUBLIC COMMENT

Mr. Melsek addressed the LPA and cautioned the panel not to make it too easy to give away Town property because these easements, etc. are valuable to the Town. He pointed out that there is a concern that many easements have been given away and the utilities and others who acquire the property are using it without compensation to the Town.

Public comment closed.

Mr. Weimer asked for LPA input. Mr. Van Duzer asked if any vacations done in the past, when the Town did not have specific laws to address it, were done illegally. Ms. Dalton stated that it was legal according to FL statute. Ms. Barnes noted her appreciation for the inclusion of the “blue sheet” in the packets. She also stated that these issues will be looked at on a case-by case basis. Mr. Mandel asked if fire and rescue should be contacted along with utility companies when vacating properties. Ms. Dalton agreed that may be a consideration. Ms. Shamp asked if there was a mechanism in place for this to go to the property appraiser for implementation. Ms. Dalton answered that there was no automatic process to do that but that the property appraiser is normally left to do that job. Mr. Weimer asked if the county holds the overriding right to vacate the property. Ms. Dalton said that is true but the county couldn’t do this without some input from the Town. Mr. Weimer also had a concern about chain of title to the vacated property. Ms. Dalton stated that the county records its resolution, vacating the county’s interest; the Town’s resolution, vacating the Town’s interest, she assumed that the county would also record the Town’s resolution as part of the packet because it is a statutory requirement to have Town approval. Mr. Weimer suggested that, prior to this going forward to Council, the question be answered regarding the deed requirement. Mr. Weimer asked if Ms. Dalton is confident with the resolution, at this point, being comprehensive enough to legally address any possible legal issues. She said that she is confident and that perhaps staff could also include a check list of items necessary to be addressed with the vacation. Mr. Weimer also asked if the resolution could be streamlined since it is very involved. Dr. Shockey opined that just the fact that there is an ordinance will be helpful. Mr. Mandel brought up the appraisal issues, suggesting that the Town not

need to pay for any fees and possibly including language in the resolution to that effect. Mr. Van Duzer suggested that the fire and sheriff's departments be included in the approval process of the vacating. Ms. Kay asked for some definitions and Ms. Dalton answered her questions.

The general consensus was that EMS be notified along with the utilities when considering the vacation; there should be an appraisal included in the vacation process; Town's resolution would be null and void if the County has not passed an accompanying resolution within a certain timeframe. Much discussion ensued about the county vs the Town's interests as well as hearing processes for vacating any Town interests in property. Discussion also about additions, edits and deletions agreed upon by the members for inclusion in the resolution.

Short recess to review the resolution edits.

Reconvene with more discussion about edits (see copy of resolution for changes) and extensive discussion about appraisals and those requirements.

Request for additional public comment;

Mr. Melsek again addressed the LPA. He said that states and counties often require two appraisals and he gave reasons why this is a good idea. He also pointed out that it is more fair for there to be two appraisals since each side should have their own, with fair sharing of the costs. He also asked the LPA to exempt beach access property and not give any of that away. There was more extensive discussion of the same topic, being appraisals and the need for two, one paid by the Town. Finally, the consensus was that there should be one appraisal, paid for by the applicant; but then members were split evenly about having two appraisals, one paid for by the Town.

Recess for lunch at 1:00 PM

Reconvene at 1:50 PM

The LPA attorney was not able to change the ordinance verbiage because of a computer issue. Mr. Weimer asked for a motion to continue the hearing to the next meeting when there would be a completed resolution and with the corrected wording.

MOTION: Ms. Barnes made the motion and was seconded by Mr. Mandel, to move the item to March 10, 2009 at 10:30 AM.

VOTE: Motion was carried 6-0 and the hearing was closed at 1:55 PM for continuation at the next meeting.

VII. ADMINISTRATIVE AGENDA

A. Report on Commercial ROW Use and Storm Water Plan (verbal)-Mr. Van Duzer

Mr. Van Duzer stated that Ms. Shamp drafted the report distributed to the members and he turned the presentation over to her. Ms. Shamp stated that the survey for the island will not be done for about 18 months. However, there are known issues of concern that have been identified: completion of the North Estero Blvd. survey, visual inspections of Estero Blvd. and side streets, etc. Specific issues are: 1) is the definition of right-of-way in the LDC complete? 2) driveways, accesses and apron design, uses, issues relating to the right-of-way and storm water plan; 3) any structures or overhangs that cross the right-of-way; 4) any allowed uses or easements that may be later permitted in the right-of-way; 5) development standards for future development that may relate to right-of-way,

Ms. Peggy Scarpetti addressed the meeting and is an employee of the Pink Shell. She supported the requested proposals and stated how these would help the whole area.

Ms. Robin Jordan, also employed at the Pink Shell, addressed the LPA and also supported the changes, stating that they will help the beach.

Ms. Jacqueline Rowllins, also an employee of Pink Shell, addressed the LPA and supported their requests.

Public Comment Closed.

Mr. Weimer asked for a motion to recess for 45 minutes to give Community Development and the applicant an opportunity to discuss the issues.

Motion by Mr. Yerkes;

Seconded by Mr. Mandel. Ms. Dalton asked to make a comment before the vote. She stated that if there is to be a continuance, the public can submit documents to Dr. Shockey and they would be furnished to the LPA after the hearing.

Vote: 6-0.

LUNCH BREAK

1:55 PM RECONVENE

Mr. Weimer reconvened the public hearing.

Mr. Weimer asked the staff to present its case and asked if there were any requests as a result of the recess. Ms. Dalton stated that there was a mutual consent between the applicant and staff to ask for a continuance; the applicant requested a continuance to April 28th. Mr. Weimer asked for a motion to continue the hearing until April 28th at 10:30 AM.

Motion by Mr. Van Duzer to continue the public hearing on the White Sands, Captiva Villas and Bayside CPD until April 28th ;

Second by Mr. Mandel.

Vote: 6-0, with Ms. Barnes absent.

Discussion took place regarding the requirements of the LDC about notification of the continuance. Dr. Shockey will investigate and ensure that notices comply with the requirements.

Public Hearing on DCI2006-001 and DCI2006-002 closed.

**C. Ordinance 09-01 Vacation of Town interest in Property
Continued from March 10, 2009**

Ms. Dalton read the ordinance for the record, #09-01: *"an ordinance amending the Town of Fort Myers Beach LDC, providing authority, finding of necessity, purpose*

and intent, adopting amendments to Chapter 10 of the LDC which is titled "Development Orders and Engineering Standards;" establishing application requirements and legal procedures for vacating Town-owned public interests in real property severability;" amending division 5, "Plats and Vacations;" amending subdivision II "Vacation of Town interest in real property;" amending section 10-218 "Purpose and Intent;" Amending section 10-219 "applications;" amending section 10-220 "Procedures;" Providing severability; effect of ordinance; and effective date."

Mr. Weimer refreshed the LPA about what needed to be changed from the last hearing to the current draft of the Ordinance. He said that the items have been updated, referring to the draft in the packets.

Mr. Weimer opened the meeting up for discussion. Mr. Yerkes asked if he can now vote to break the 3-3 tie from the last hearing. He stated his opinion as to the two appraisal requirement and thinks two are needed. Some discussion ensued regarding the appraisals; Ms. Shamp and Mr. Weimer discussed remuneration and Mr. Yerkes believed that the value of the property helps determine the process and number of appraisals needed. Mr. Weimer stated that the basic decision from this meeting should be whether one or two appraisals shall be required. Members were polled as to who was in favor of two appraisals; four members were in favor and two were not; Ms. Barnes was absent. Mr. Van Duzer, who is not in favor of two appraisals, wished to be on record and referred to the ordinance, Sec. 219 b 12 "increase in market value of the applicant's real property if the Town approves the vacation; the increase will be determined by an independent appraisal commissioned by the director with full cost paid by the applicant..." His feeling is that if the Town is commissioning the appraisal, the Town should pay for it and he does not see the sense in two appraisals.

Mr. Yerkes asked Dr. Shockey how many vacations are done in the Town, on average. With an answer that it may come to 1 in 4-5 years, the cost maybe being \$500.00 dollars per appraisal, Mr. Yerkes said they were arguing "about nothing." He feels strongly that two appraisals are necessary. With no further argument, Mr. Weimer asked for a motion on the resolution.

Mr. Yerkes suggested a motion to take the wording of the existing motion and say that the motion failed and the enclosed draft ordinance contains the requirement for two appraisals. Dr. Shockey added that they should adopt a resolution that recommends that Council pass or not pass an ordinance, not fail to pass a resolution that would have recommended the opposite of what they want. Mr. Weimer said the ordinance would be modified and it would be the basis of the resolution recommending the Town Council pass it. He clarified that a motion regarding this resolution and the ordinance before them.

Motion: Mr. Mandel moved that the Resolution 209-01 that therefore be it resolved that the LPA recommends that the Town Council approves the adoption of Town Ordinance 09-01, with the change on page 2 of 5, changing the word

“and” to “two,” and deleting the paragraph that begins with “In addition.”
Second by Ms. Shamp.
Vote: 6-0, with Ms. Barnes absent.

Hearing on 09-01 was closed at 2:30 PM.

Motion: Ms. Shamp moved to adjourn as the LPA and reconvene as the HPB;
Second by Ms. Kay;
Vote: 6-0

IX. ADJOURN AS LPA; RECONVENE AS HPB

A. Update on Historic Vistas Project

Ms. Shamp began the meeting at 2:32 PM and turned the meeting over to Ms. Kay. Ms. Kay reported on the last meeting and gave suggestions which were made to the brochures. The group discussed vistas and signs vs. markers, as well as the need for photographic vistas and said this is still a work in progress. She said that the HAC also urges the Council not to destroy the Cottage and feels it is important to the history of the beach. Mr. Weimer asked Dr. Shockey for a status on the plaques and he reported that he is in the process of getting additional mailings together for that purpose.

Ms. Kay explained the position of the HAC concerning the vistas and discussion ensued regarding that and the use of public or private property for these vistas. Mr. Yerkes had concerns and questions about this and Ms. Kay asked if he could attend the next meeting to bring up his issues. Dr. Shockey will notify Mr. Yerkes of the next meeting date.

Mr. Mandel asked if Theresa Schober has researched any possible funding for kiosks. Ms. Kay said it was discussed but that the HAC wants to see this go forward as an historical item, not archeological one. Mr. Mandel thought she could find grant funds to make attractive kiosks, etc. to place around the beach. No further discussion.

Ms. Shamp asked for a motion to adjourn.

Motion to adjourn by Mr. Weimer;
Second by Mr. Mandel.
Vote: 6-0

X. ADJOURN AS HPB; RECONVENE AS LPA

Mr. Weimer reconvened the LPA at 2:44 PM and moved to the Administrative Agenda

XI. ADMINISTRATIVE AGENDA

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009-01A

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted public hearings on February 24, 2009, and March 24, 2009, to consider proposed Town Ordinance 09-01 to establish a procedure within Chapter 10 of the LDC to vacate Town-owned interests in real property; and

WHEREAS, a copy of said Ordinance 09-01 is attached hereto as Exhibit A and is hereby incorporated by reference.

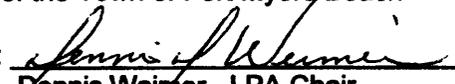
NOW THEREFORE BE IT RESOLVED, that the LPA recommends the Town Council approval and adoption of Town Ordinance 09-01 to amend Chapter 10 of the Town LDC to create procedures for vacating Town-owned interests in real property within the Town of Fort Myers Beach, Florida.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Mandel and seconded by LPA Member Shamp and upon being put to a vote, the result was as follows:

Dennis Weimer, Chair	<u>aye</u>	Alan Mandel, Vice Chair	<u>aye</u>
Evie Barnes	<u>absent</u>	Rochelle Kay	<u>aye</u>
Joanne Shamp	<u>aye</u>	Bill Van Duzer	<u>aye</u>
Joe Yerkes	<u>aye</u>		

DULY PASSED AND ADOPTED THIS 24th day of March , 2009.

LPA of the Town of Fort Myers Beach

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle Mayher, Town Clerk

ORDINANCE 09-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; FINDING OF NECESSITY; PURPOSE AND INTENT; ADOPTING AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS"; ESTABLISHING APPLICATION REQUIREMENTS AND LEGAL PROCEDURES FOR VACATING TOWN-OWNED PUBLIC INTERESTS IN REAL PROPERTY SEVERABILITY; AMENDING DIVISION 5 "PLATS AND VACATIONS"; AMENDING SUBDIVISION II "VACATION OF TOWN INTEREST IN REAL PROPERTY"; AMENDING SECTION 10-218 "PURPOSE AND INTENT"; AMENDING SECTION 10-219 "APPLICATIONS"; AMENDING SECTION 10-220 "PROCEDURE"; PROVIDING SEVERABILITY; EFFECT OF ORDINANCE; AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494 Laws of Florida; Chapters 163, 166, 171 and 36 Florida Statutes, and other applicable provisions of law.

SECTION 2. Finding of Necessity. The town council finds that the establishment of application requirements and legal procedures for vacating town-owned public interests in real property as set forth elsewhere in this Ordinance is necessary for the effective administration and operation of the town.

SECTION 3. Purpose and Intent. It is the purpose and intent of this ordinance to establish procedures for the town to follow in considering the vacating of town-owned public interests in real property. The procedures established by this ordinance are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

SECTION 4. Adoption of Amendments to Chapter 10 of the Land Development Code. Chapter 10 of the Town of Fort Myers Beach Land Development Code is titled "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS." Chapter 10 is hereby amended as shown in Exhibit A. Entirely new languages is indicated by underlining. Language being repealed is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or show without underlining or strike-throughs. This ordinance amends the following sections of Chapter 10:

Division 5. Plats and Vacations

Subdivision II. Vacation of Town Interest in Real Property

Sec. 10-218. Purpose and Intent.

Sec. 10-219. Applications.

Sec. 10-220. Procedure.

SECTION 5. Severability. If any one of the provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or should for any reason whatsoever be held invalid, then such provision will be null and void and will be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this Ordinance.

SECTION 6. Effect of Ordinance. The provisions of this Ordinance are deemed cumulative and supplemental and will have no legal effect on the ordinance of the Town of Fort Myers Beach, except as expressly provided.

SECTION 7. Effective Date. This Ordinance will become effective immediately upon its adoption.

The foregoing was enacted by the town council upon a motion of Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor _____
Herb Acken, Vice Mayor _____
Tom Babcock _____
Jo List _____
Bob Raymond _____

DULY PASSED AND ENACTED this _____ day of _____ 2009.

ATTEST: _____ TOWN OF FORT MYERS BEACH, FLORIDA

By: _____ Michelle Mayor, Town Clerk
By: _____ Larry Kiker, Mayor

Approved as to form by _____
Anne Dalton, Esq.
Town Attorney

DRAFT 0900324

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 10 DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

ARTICLE II. DEVELOPMENT ORDERS AND PLATS

DIVISION 5. PLATS AND VACATIONS

Subdivision I. Plats

Sec. 10-211. through Sec. 10-217. [No changes.]

Subdivision II. Vacation of Town Interests in Real Property

Sec. 10-218. Reserved Purpose and Intent.

It is the purpose and intent of this ordinance to establish procedures for the town to follow in considering the vacating of town-owned public interests in real property. The procedures established by this ordinance are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

Sec. 10-219. Reserved Applications. In order to determine that there is no further public purpose in property to be considered for relinquishment by the town as well as to offset the loss in public access, the town will evaluate every application to vacate town-owned public interests in real property to determine if remuneration to the town for the disposition of the real property interests sought is appropriate. All applications must comply with the requirements below.

(a) An application to vacate town-owned public interests in real property must be submitted to the Town Department of Community Development with a duplicate copy submitted to the Department of Public Works, on forms provided by the Town.

(b) The application must be notarized and must include the following:

- (1) Title certificate or attorneys title opinion acceptable to the town attorney indicating that the applicant owns fee simple title to the tract or parcel of real property to which the vacation of the town-owned public interest in real property will inure as well as indicating what liens or assessments currently exist on the property; and
- (2) A copy of the most recent tax bill applicable to the property in question as well as proof of payment in full of all current and former tax bills; and
- (3) A legal description of the area to be vacated and an accompanying survey indicating the location of all existing improvements including, but not limited to, drainage, utilities, surface water management facilities, streets, buildings, and other physical features within 500 feet of the real property that is the subject of the application request. This drawing must also show the relationship of the subject property to other real property in the surrounding area and the most direct route to the nearest arterial street and must be signed and sealed; and
- (4) A copy of the plat indicating the area thereof subject to the request, if applicable; and
- (5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and

(6) The original signatures of all persons holding any private legal interest; and

(7) A printed list of all current property owners, STRAP numbers, and mailing addresses within a 500-foot radius of the subject property, including two (2) sets of mailing labels for the real property owners on this list; and

(8) An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:

- a. is not for the purpose of unlawfully obtaining public property for private purposes;
- b. will not adversely affect the ownership rights or convenient access of persons owning other real property; and
- c. will not adversely affect future infrastructure and is not in conflict with town, county, state, federal or other governmental entity's plans regarding transportation, surface water management, utility, drainage plans, or other public purposes.

(9) Signed letters of approval or no objection from:

a. the Town department of public works;

b. Florida Power and Light;

c. the local cable television company serving the Town;

d. the local telephone company serving the Town;

e. the local liquid propane gas company serving the Town;

f. Lee County or other provider of sanitary sewer services;

g. Lee County Sheriff's Office;

h. Fort Myers Beach Fire Control District; and

i. any other provider of private or public utilities whose facilities or infrastructure may be affected by the action requested, as determined by the director following review of an otherwise complete application.

If the required reviewing entity determines that the vacation may not serve the best interest of the public, the applicant may offer an alternative or replacement easement. However, the reviewing entity is under no obligation to accept the offered alternative. If an application to vacate is premised on the grant of an alternative or replacement easement, town council will not take action on the application until the instrument necessary to grant the alternative or replacement easement has been accepted in form and content by the town attorney, properly executed by the granting or conveying entity, and delivered to the town attorney to be held in trust pending the town council's consideration of the requested vacation.

(10) Payment of the applicable application fee in accordance with the schedule of fees adopted by resolution of town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(11) Subordination agreements with all holders of liens against the real property subject to the request.

(12) Increase in market value of the applicant's real property if the town approves the vacation. The increase in market value will be determined by two (2) independent appraisals commissioned by the director with the full cost of the appraisals paid by the applicant to the town prior to initiation of the process.

(13) Disclosure of county requirement of vacation or statement by the Lee County

director of community development or designee that no county vacation is required.

Sec. 10-220. Reserved Procedure.

(a) After receipt of a complete application for vacation of town-owned public interests in real property, the director of community development will prepare a report stating both the current and potential Town uses, both short-term and long-term, of the town-owned public interests in real property subject to the vacation request. This report will make specific reference to the adopted Capital Improvements Program (CIP) and to the goals, objectives, and policies of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does, or does not further the adopted goals, objectives, and policies of the Comprehensive Plan and the adopted CIP.

(b) The complete report will be provided to the town public works director, town finance director, and any other applicable town staff for review and comment. All written staff comments will be included in the packet provided to the local planning agency and the town council. Capital Improvements Program (CIP) and to the goals, objectives, and policies of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does, or does not further the adopted goals, objectives, and policies of the Comprehensive Plan and the adopted CIP.

(c) The packet, with staff comments, will be referred to the local planning agency for public hearing and recommendations. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation in Lee County at least once a week for each of two (2) weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the town attorney, with a copy to the department of community development, for presentation to the local planning agency at the time of the public hearing and attached to the LPA resolution.

(d) Following the public hearing before the local planning agency, the complete report and staff recommendations and the local planning agency minutes and resolution with recommendations will be reviewed by the town council in a public meeting. If, after reviewing the report and the local planning agency minutes and recommendations, the town council decides to pursue possible vacation of the town-owned public interest in real property, the town council will direct the town manager to prepare a report indicating any interest from other governments, governmental agencies, quasi-public organizations, or private conservation organizations in acquiring an interest in the subject real property, and proposed uses for the property.

(e) The town manager's report will be referred to the town council. If, after reviewing the town manager's report, town council decides to pursue possible vacation of the subject town-owned public interest in real property, the town council will schedule the request for a properly noticed public hearing on the possible vacation. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation in Lee County at least once a week for two (2) weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the town attorney, with a copy to the department of community development, for presentation to the town council at the time of the public hearing and attachment to the council resolution.

At this hearing, town council will determine:

- (1) whether the vacation of the subject real property for other use will adversely affect the future land use map category, as set forth in the Comprehensive Plan, or adversely affect the zoning district, as set forth in the Land Development Code, and whether it is otherwise consistent with the requirements of state and federal law; and
- (2) the original intended use for the real property at the time of its acquisition by the Town; and

- (3) whether the conditions and circumstances of the use of the real property have undergone change with respect to intended town use of the real property; and
- (4) what constitutes surplus property, in terms of the original intent, and whether the real property is surplus property; and
- (5) the basis of the vacation of the town-owned public interest in real property; and
- (6) findings of fact and conclusions of laws in support of the action to be taken; and
- (7) whether and how the public would benefit from the proposed vacation; and
- (8) whether the proposed arrangements associated with the vacation are equitable, considering the market value of the town-owned public interest in real property and alternative disposition procedures including:
 - a. sealed bid;
 - b. negotiated offer and upset bid;
 - c. public auction;
 - d. exchange; and
 - e. conveyance to government(s) or governmental agencies, quasi-public organizations; and private conservation organizations.

(f) If, following the public hearing held as set forth above, the town council decides to pursue vacation of the town-owned public interest in real property, town council will direct preparation of a resolution declaring the subject real property interest as surplus to the town's needs, containing the details of the proposed disposition, and setting a date for an adoption hearing for the resolution no less than 30 days from the date of the decision and direction to prepare the resolution. The applicant is responsible for all recording costs.

(g) If Lee County approval is also required to fully vacate the public interest in the subject

property, the following procedure must be followed: If the applicant has not provided the town with a certified copy of a document indicating county approval of the vacation of the public interest within 18 months of town approval of the request to vacate the public interest the town resolution of approval will be null and void. Any town resolution of approval will specify this condition when county approval is also required to vacate the public interest and the town resolution of approval will not be recorded in the public records until and unless the applicant has delivered to the director the requisite certified copy of a document indicating county approval of the vacation of the public interest.

(h) Notwithstanding the foregoing process, after review and consideration of the report referenced in subsection (a) of this section, town council, in its discretion, may determine that to proceed, subsections (c), (d), and/or (e) are not required if:

- (1) The conveyance is back to the original grantor(s), its successors and assigns, who are currently the abutting owner(s); or,
- (2) It is part of another process, such as:
 - a. straightening of a real property boundary line in connection with a boundary dispute;
 - b. settling an action to quiet title; or
 - c. other like proceeding, as determined in the discretion of the town council upon the consideration of director's recommendation;

or;

- (3) It is a vacation that is *de minimus* in area, cost, and overall impact. Upon finding any of the items enumerated in this subsection (h), the town council may exempt the transaction in question from continuing with the procedures set forth in paragraphs (c), (d), and/or (e), and continue with the determination concerning the vacation of the subject real property interest. The town council, however, may apply any of the considerations contained in paragraph

(e) it deems relevant and helpful in rendering its decision.