

FORT MYERS BEACH TOWN COUNCIL MEETING

MAY 20, 1996

NationsBank, Council Chambers 2523 Estero Boulevard

FORT MYERS BEACH, FLORIDA

CALL TO ORDER

The meeting was opened on Monday, May 20, 1996, at 6:40 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted Fitzsimmons, Vice Mayor and Council Member; Council Members Ray Murphy, Rusty Isler, and Garr Reynolds; Marsha Segal-George, Town Manager; John Gucciardo, Assistant Town Manager, and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag and Councilman Ray Murphy gave the invocation.

III PUBLIC COMMENTS AND INQUIRIES

A. JOHANNA CAMPBELL

Ms. Campbell addressed Item 10 under the Manager's Reports, the Town Hall cleaning bids. As someone who owned a cleaning company, Ms. Campbell asked that the council make sure that the specifications are spelled out; that the number of people who would be performing the duty is spelled out. She hopes that the bidders furnish the council with certificates of insurance even though they have not been granted the contract yet. The certificate of insurance would also show that they carry workmen's comp. as well as property liability. Be sure that they are licensed to do business in the State of Florida, Lee County. When it comes time for the contract, make sure that there is an indemnification clause in the contract, which would hold the town harmless of anything that would happen to visitors to the Town Hall. Even though it is a small cleaning contract, you do have to protect yourself, especially for property liability. A vacuum cleaner could be wired wrong and blow up the whole building.

B. FLIP HARBY

Mr. Harby addressed item 10, d, Awning bids. He advised he didn't know if this had been put out to public bid and advertised properly. He questioned whether the Town Hall needed an awning and just how many people at one time could be protected by a 42" deep awning. The low bid is \$901 and he doesn't know if the council needs to spend this money now.

Regarding FEMA, Mr Harby applauded the council for taking action on an item he had brought to our attention several weeks ago. He received a letter addressed to Mr. Gucciardo in his packet regarding FEMA certification and thanked him for his efforts in obtaining it. We are certified through December 15, 1996; we are not going to lose our discount status. Council has until that time to apply, as outlined in the letter.

Mayor Cereceda at this time introduced Mary Evans, who is running for Seat 5 for the County Commission.

IV APPROVAL OF THE MINUTES OF APRIL 25, 1996 and April 29, 1996

MOTION:

Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of April 25, 1996, with correction noted. Passed unanimously.

MOTION:

Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of April 29, 1996, with correction noted. Passed unanimously.

Corrections to Minutes:

Rusty Isler is shown as being present at both meetings by the name Ray Isler.

V APPROVAL OF EXPENDITURES

MOTION:

Made by Ray Murphy and seconded by Garr Reynolds to approve the expenditures. Passed unanimously.

Discussion:

Councilman Reynolds noted that there was a bill for cleaning services among the expenditures presented, and wished to know if they already had a contract for cleaning. He was told they did have a lady come in and clean and they are now trying to formalize a contract. He also questioned the bill from Kelly Services and Mrs. Segal-George explained the hours put into transcribing minutes per month. This will be further discussed under the Manager's Items.

VI FIRST READING OF ORDINANCE PACKET "A"

- a. Town of Fort Myers Beach Alcohol Beverage
Establishment Exposure Prohibition Ordinance

Mayor Cereceda read the ordinance aloud. Attorney Roosa advised it could now be set for a hearing. Marsha Segal-George has set the hearing date for June 3, 1996, at 6:30 P.M.

- b. Town of Fort Myers Beach Sexually Oriented Businesses Regulation
Ordinance

Mayor Cereceda read the ordinance aloud. A hearing date for this ordinance has been set for June 3, 1996, at 6:30 P.M.

VII REVIEW OF FIRST DRAFT OF ORDINANCE PACKET "B"

- a. Town of Fort Myers Beach Liquor License Restriction Ordinance

Mayor Cereceda read the ordinance aloud. A hearing date for this ordinance has been set for June 3, 1996, at 6:30 P.M.

- b. Town of Fort Myers Beach Open Alcoholic Beverage Container
Ordinance

Mayor Cereceda read the ordinance aloud. A hearing date for this ordinance has been set for June 3, 1996, at 7:00 P.M.

Discussion:

Councilman Reynolds noted that on the second page, line 3, the word "no" should read "known." Councilman Fitzsimmons questioned line 23, definition of public beach relative to the town of Fort Myers Beach. Should this be added or is it in

place of #2, owned by Lee County? Attorney Roosa feels it should be added because the county beach is in the town of Fort Myers Beach and the county ordinance no longer apply. So we need to have "owned by the county" and should just add "or owned by the town." Councilman Reynolds feels that 3 and 4 already spells out the fact that this is for the town of Fort Myers Beach. We are talking about who owns it, he was advised.

Mayor Cereceda noted that especially since the beach renourishment, people are asking what part of the beach is the county's, the town's, the property owners'. She was advised that the property owner owned either to the mean high water line or the erosion control line. The public beach is owned by the state of Florida and is within the town of Fort Myers Beach, which can regulate it. Through the ordinance, the town can regulate tile conduct of the people using the county's park beaches although not the county's park beaches themselves.

VIII DISCUSSION OF EMERGENCY PLANNING OPTIONS

John Gucciardo, Assistant Town Manager, advised that this was a follow up item to the workshop meeting held with the Sheriff, the Fire District and the Public Safety people. The council needs to come to some understanding as to what the emergency evacuation or planning is going to be over the next few months. There is no need to formalize a plan per se unless the council wants to take that on. In terms of specifics, the council has been given copies of the Statewide Mutual Aid Agreement, Exhibit "A," which can be used as kind of a guide for that agreement. In also should be a guide to what the council might want to consider in terms of other options on its plans for local involvement, coordinating its efforts with those of the Sheriff, the Fire Dstrict and Public Safety. It should be completed and sent in. No final decision is needed tonight but it will probably appear as a recurring agenda item until it is formalized.

Councilman Isler expressed the opinion that one of the three staff people should be the council's representative at Lee County. Mr. Gucciardo advised that the council had different options available to it. He understands that the Board of County Commissioners does not participate at the Emergency Operations Center, but rather its staff does. According to the Town Manager, Sanibel and Cape Coral sent their mayors and in the past the Board of Commissioners sent their chairman. Sometimes a mayor and a staff member are sent. The town, Mrs. Segal-George feels, can designate someone to go to talk with FEMA and the state and implement the Mutual Aid Agreement although the county will be involved in all of that. Whoever represents the town, however, is the one the town would communicate

through and coordinate with until everyone gets back together again. In other words, according to Councilman Isler, one option would be not to send anyone and just rely on the county to represent us and have a contact available to us. The other option would be to send somebody from the staff or the council to just stay in touch. Mrs. Segal-George's recommendation would be that the council send someone to represent the town's interest.

One of the options that the town has, according to John Gucciardo, is to develop its own plan which would cover all kinds of different scenarios. We could have a designated person at Emergency headquarters and another one closer to home, like at Edison Community College. On the other hand, we do have the comfort of knowing that we are already part of a plan.

Lee County will provide us with a radio within the next few weeks. The Town Manager would also suggest putting a beeper on whoever goes to EOC.

If we opt to have two liaison people, one could be stationed more locally at the Bonita Fish Company building on the other side of the bridge or at Shell Point or at the Sheriff's substation at Summerlin or at Edison Community College.

The Statewide Mutual Aid Agreement dictates that three people are needed: one contact person with two alternates.

MOTION:

Made by Rusty Isler that the Mayor be our representative with the county and in the Mayor's absence, the Vice Mayor will do it, and in the Vice Mayors absence, the Town Manager will. And if there is a staging area set up, the Town Manager can assign someone to represent us at the staging area. Seconded by Ray Murphy. Passed unanimously.

IX

COUNCIL MEMBERS ITEMS AND REPORTS

A. RAY MURPHY

Current balances:

Operating Account: \$10,000.00

State Investment Account: 479,676.77

Total Balances: 489,676.77

Councilman Murphy has been informed by the staff that they expect to collect state revenues by May 28 in the approximate amount of \$40,000. Staff would like to submit the bills for approval for payment once a month, unless circumstances dictate otherwise.

Garr Reynolds wished to know if they had started doing a budgetary ledger on a monthly basis. The Town Manager plans to have software in place soon that can accommodate monthly calculations. Jody Hester, a CPA, is doing payroll right now at an hourly rate. Someone else will do revenue forecasts and some of the budget work. They will also need an auditor. Mr. Reynolds suggests the accounting work be put out for bidding, as he feels a CPA is more expensive than a bookkeeper. Ray Murphy feels that to get everything up and running, it was best to start out with a CPA. The Town Manager explained that her reason for hiring hourly help at this time is because figures have to be put before the council by the 15th of July. Mr. Reynolds doesn't feel that our charter provides for extra positions. Mr. Roosa explained that a charter doesn't establish positions. The town council determines the positions. The charter merely mentions the minimum in the way of employees and there is a provision for an auditor in the charter. The extra help aren't employees but outside contractors having their own liability insurance and workmen's compensation. There were items in the preincorporation budget with regards to dollars put aside for budgeting and the Town Manager advised she doesn't think we are going to spend anywhere close to the dollars in this preliminary budget.

Rusty Isler feels it is better to pay people on a weekly basis rather than on a monthly basis and that we should have an expenditure report at every regular meeting.

B. GARR REYNOLDS

Councilman Reynolds wished to know where we stood on the FP&L franchise fee and other matters that were brought up previously. The Town Manager advised that they have all the options and plan to bring them to tile council all at once or one at a time if preferred. Cable is still in the County Attorney's office. Regarding the gas tax, they are getting the statutory formula. The Town Manager sent a letter to Don Stilwell asking for a time table on when he is going to be negotiating with the other cities who are supposedly going to renegotiate

their gas tax agreements with the county. Sanibel has told her they have no plans to renegotiate and she understands that Cape Coral has said so also. County Commissioner Stilwell has not responded to Mrs. Segal-George's letter. Mr. Roosa has been trying to get some documentation from the county so that we would have a final document that could be appealed. We have no evidence or knowledge that the county is renegotiating and we plan on appealing their decision.

Attorney Roosa advised he had talked with Jim Yeaget, who is going to prepare a resolution for the County Commission to adopt in June, and he will notify Mr. Roosa prior to that adoption so that there will be an opportunity for the Town Council to be present at that meeting when they make a decision. The resolution will have Cape Coral's, Sanibel's, Fort Myers and Fort Myers Beach's allocations. In order for the town to take any legal action, we have to appeal some final action of the agency, and the County Commission hasn't taken final action in this regard, at least that's Jim Yeager's position and Mr. Roosa agrees with him. When the resolution is prepared, Mr. Yeaget feels that the County Commission will allow for the town to be heard.

Mayor Cereceda feels that the allocations are irrelevant and what we need to discuss is how they are arrived at. Attorney Roosa, advised that the allocations will just be listed with no explanation as to how they were calculated.

The Town Manager would like to have a franchise workshop where all the franchises are spoken about at one time.

The contract for the Town Manager is finalized and available to be viewed.

Attorney Roosa suggested that executed contracts could be attached to the minutes where a motion approved them. This delays distributing copies of the minutes, however.

Another suggestion is to have a copy of all signed documents in a notebook where anyone can come and view them. Right now, however, they are in individual folders and are logged in, and are available to the public.

Do we need two attorneys at a workshop? It was explained to Mr. Reynolds that

Mrs. Segal-George was only at the last workshop in the capacity of town manager, not as an attorney.

At the April 29 meeting, a motion was made that the Town Manager and the Town Attorney pursue a sufficient definition to accomplish a uniform understanding between the town and the county. Has the understanding been accomplished, Councilman Reynolds asked. Attorney Roosa produced a memo that outlined the things he is now working on. One of the items is the CRA. Attached to the memo is the most recent correspondence from Jim Yeaget where he has taken the position that the execution of the interlocal agreement empowered the CRA to execute a project within the town's limits, the nature and scope of which rests solely upon the CRA's discretion. Mr. Roosa does not agree with that legal conclusion but feels that the real issue with the CRA is a meeting of the minds. On tape in the Town Manager's possession is the actual CRA vote of the County Commission when two of the county commissioners said that they intended to complete the entire project including the sidewalks to the south, that there were insufficient funds within the CRA to complete that project, and that therefore they were going to do the Times Square and the undergrounding with the CRA funds but would later folios'; up with funding from the Ice Tea funds for the sidewalk project. It was with that thought that they went ahead to pursue the whole project. We have to assume that the County Commission intends to comply with that interlocal agreement, which means they are going to complete the entire project. Mr. Roosa feels that the next step for the town is to write the County Attorney to get specific as to the funding for the sidewalks and the time table for the sidewalks. If the County Commission does not intend to do the sidewalks, their contract with FP&L may be void.

Mr. Reynolds advised that it had been indicated to him that the TIF funds are increasing tremendously and that the county probably will have the money to do some of these extra things.

Mr. Reynolds would like for the council to know right away when an appeal is coming up. He would also like to see the Town Manager and the Assistant Town Manager give equal treatment to anyone wishing to make an appeal.

A letter was received that had gone to Senator Dudley about the water craft problems on the island and Mr. Reynolds feels that we really need to get a handle on that. Mayor Cereceda advised that it all depends on what their bare bones government is willing to spend to enforce laws regarding water craft.

Councilman Reynolds brought up the issue of dumping by the sewer plant into the Bay. Do we plan to sue the county? The Town Manager advised she

had said we might have a claim against the county. The most recent memorandum out of Don Stilwell's office had a variety of options for solving the problem. Last week she sent Mr. Stilwell a letter with a number of questions and hasn't received any direct response to them. We don't know exactly what they are going to do. Looking at the options, she gathers they have a very serious problem over there. All the options are very expensive -- 1 million to 2

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million dollars. We are asking for a briefing with regard to the various options. Johnson Engineering has been bred as an independent engineering consultant to go look at the sewer plant and to come up with cost estimates. Councilman Fitzsimmons wished to know if the Health Department was involved at all and was told not at this point. Is it posing a hazard to the health of the community or its guests? We asked that question of the county less than a week ago and are awaiting their answer.

FDOT advised Mr. Reynolds that the CRA had told them they were going to get rid of the signal light at Times Square and put a post there instead with a walk light. He suggested to FDOT that someone talk with Marsha Segal-George before making any decisions.

The five lanes that were supposed to be open last week are still not open.

Mr. Reynolds felt that the council should know that on the west side of San Carlos Boulevard they are bringing the sidewalk down within 200 feet of the Hurricane Pass bridge where there are four lanes. You can cross at this point, if you care to go back to the other side, you must go down to Buttonwood where there will be a signal light. You have to have breakdown lanes on each side of that traffic and, therefore, no one can cross there but must go around instead.

C. TED FITZSIMMONS

Councilman Fitzsimmons would like to know if the buoys are going to be restored into the 500 foot line after the dredging; is finished and how we can find out. The Town Manager advised that they would check into this.

Mr. Fitzsimmons also brought up the subject of town staff assisting county staff in delivering the approved CRA project. The county has asked us for help although they were to supply sufficient staff to accomplish the objective of

getting the easements signed. He has no problem with people in the community volunteering to help the county, but doesn't feel it is appropriate for the town to assist in a county project. The town shouldn't be involved in the delivery of something that the town has said was an expendable item of the project. It tends to bring the town into the project and make the town part of that project and therefore involved in all aspects of it, including potential liability. Mr. Roosa said it is clear in the interlocal agreement that we executed that the county would at their cost handle this to completion. The Town Manager advised that we had helped the county with obtaining easements for the dredging project and had agreed to help them again in this project. If the council prefers a hands-off approach, this can be done. Mayor Cereceda's opinion is that it's a question of policy. What is best for the town is to see things effectively and efficiently done as quickly as possible, and if Marsha and John expedite this by calling on others to help, this would be in the best interest of the town. Councilman Isler feels that if we are going to slow down the project by not helping, that wouldn't be a very positive approach. You can't divorce yourself from the project because ultimately, in its completion, it's going to be the town's, Mr. Roosa advised. He does agree that the town is using its money when it gets involved in the project. John advised that the CRA staff will attempt to make the first contacts and then let him know if our involvement is actually needed. Ray Murphy doesn't see it making a major dent in our budget nor does he feel it will be time consuming. He also feels we need to expedite this. There are going to be a lot of times in the future where we are going to have to cooperate with the county in any number of areas and it would be nice to send a message out now, yes, we are willing to cooperate with the county and we will in the future, too. Mr. Reynolds does not feel that we will be short changing the county if we do not help them in the project as they have plenty of staff. Regardless of whose project it is, we have to be involved in it, Mayor Cereceda feels. The direction on our involvement in the project appears to be three for and two against.

Councilman Fitzsimmons said he had a question regarding Section 34-1803 of the Land Development Code, which says that any hotel or motel proposing to convert to dwelling units or any residential building proposing to convert to motel/hotel units will be required to comply with the density limitations of the Lee Plan, all applicable parking regulations and all other regulations of this chapter affecting the proposed use. He does not feel that what the county has allowed to be permitted at the Gulwing is consistent with that piece of the Land Development Code, which was rewritten in August 1995, when the change of the Gulwing as he understands it was in November 1995. So there was regulation approved and in place that was not complied with by Lee County.

Mr. Fitzsimmons referred to a letter of today's date from Mr. Robert Young to Mr. Roosa. Mr. Young identifies himself as a resident of the Surf Song condominium on Fort Myers Beach, which is adjacent to the site of the proposed Sun Stream Convention Hotel at Virginia Avenue. He has been active in the efforts of the Virginia Beach fund seeking to prevent the construction of the hotel and advises that an appeal is presently pending before the 2nd District Court of Appeals regarding the validity of the Lee County Development order authorizing construction of the hotel. He requests that the town appear in the appeal as a friend of the court and advocate the interest of the people of Fort Myers Beach. Otherwise, the public's interest in this matter will only be represented before the court by Lee County. Mr. Young enclosed a copy of the initial brief for the attorney's reference. Mr. Fitzsimmons asked

Mr. Roosa for his opinion on the request. Mr. Roosa advised that there were two issues raised on the appeal. One was whether the lower court erred in nullifying an amended and more restrictive zoning ordinance in effect when the Sun Stream development order was issued, rather than the ordinance in effect when the application was filed. The other issue is whether the lower court abused its discretion by failing to permit amendment to the complaint, raising lack of due process to the Sun Stream development order. As a procedural order, this second issue probably wouldn't have any effect on the town one way or the other. The first issue could affect the town. Mr. Fitzsimmons feels that the town is an affected party and it is reasonable that the town resolve whether or not it should file an amicus with the court. The reason it is in the appellate court right now is because they're going to determine if there were any mistakes made in the lower court. The Mayor feels that the bottom line question is whether or not the town should get involved in the Diamond Head issue.

D. RUSTY ISLER

Mr. Isler spoke on the cleaning bids. Marsha feels that the bids can be withdrawn.

Suggested that the recording secretary continue taking minutes at the LPA meetings and the new administrative assistant could take minutes at the council meetings and in this way be brought up to speed on what is going on.

Regarding the sewer, Mr. Isler read where some mountain streams have been heavily chlorinated and been made crystal clear, but there are no life forms in them.

E. ANITA T. CERECEDA

Mayor Cereceda reported on two meetings she had recently. One was with Barbara Manzo of Parks & Recreation and had to do with vendors on the beach. She is going to come here on June 3 to make a presentation. The Mayor asked the council to think about what kind of policy we want to have about people selling things on the beach. The jetski people wouldn't be affected. They are land-based and are paying rent for a particular space. There is a man selling kites on the beach who pays only a nominal fee. The county has given the go ahead to a man giving puppet shows.

The Mayor also attended a meeting with the Times Square Merchants Association. These are people she feels who are very eager and willing to work with the Town Council. The Mayor has resigned as president of this association but will continue to attend meetings.

Suggestions are still needed for a Fourth of July celebration.

The Mayor has received several requests to serve on boards. She has made a distinction between something that has to do with the Town of Fort Myers Beach, for example, the MPC, and boards that are asking the mayor to be on, like the American Cancer Society or the Drug Free Coalition for Lee County. She asked the council if they wanted to have input into which ones she should decline or accept. If there are costs involved, as for a seminar, should she pay out of pocket or should the town? The American Cancer Society has a fund raiser coming up in July and is asking her as the mayor to be one of the fund raising people. Should she do this? Mrs. Segal-George feels that it is very typical for organizations to ask for the mayor of a city or town to be involved in their fund-raising efforts or other events. Her position would be that if the mayor is willing, she could participate. If there are too many of these kinds of requests, then they can be passed amongst the council. It doesn't really commit much as far as the town's resources, just your time. Mayor Cereceda's concern is asking people for money in her position as the mayor and not as a resident. Garr Reynolds said he understands the Mayor's position and that he wouldn't do it as a councilman. Ted Fitzsimmons felt it was all right and that he was sure the organization would pick up her expenses.

X MANAGER'S ITEMS AND REPORTS

A. Update on FEMA application

John Gucciardo advised that they had gotten the confirmation letter from FEMA they had been hoping to get. In terms of the Community Ratings Service Program, again it's a two-part thing. There's an application that's made to FEMA in order to get their six-digit identification number that identifies Fort Myers Beach as a separate municipality for their purposes. Once this is done, we will be judged by the Community Ratings Service to see where we fit into the scheme of things. The confirmation letter tells us there is not going to be any gap period, that in that process we will still be considered part of unincorporated Lee County and still maintain the benefits of their rating. The Community Ratings Service people are going to be with us on Wednesday and Thursday of this week to work with us. We have already gathered information that they have asked us to put together so that they can start the application. They will probably give us another follow up list and, hopefully, over the next few months, we'll be able to get that packet together. Our goal is to attempt to at least hit the rating that the county has and maintain the status that we have all been used to in terms of the rating benefits for the premiums on flood insurance and also for applicability of the federally insured mortgages.

B. Fire District use of Town Hall

It was agreed that the Fire District could use Town Hall for their meetings.

C. Update on SeaKruz/Port Tax Issue

The Town Manager and the Assistant Town Manager investigated where the port fee was going. What they found out was that the port fee wasn't really going to anybody. Does the council wish to direct Mr. Roosa to prepare some legislation to enable us to charge a port fee for the town of Fort Myers Beach? The Town Manager feels there are some impacts that the town realizes from the SeaKruz and that it would be appropriate to charge a fee based on those impacts. She would like the money to be used to have someone direct traffic and for parking.

MOTION:

Made by Ted Fitzsimmons and seconded by Ray Murphy that a port fee be charged. Passed unanimously.

D. Town Hall awning bids

An awning was suggested in order to give shelter to people entering the front door during rain. It would also be a good identification for Town Hall. The landlord would have no problem with it. The color would be mangrove green. Two companies have submitted bids. The lowest bid is the sunbrella acrylic fabric. Mayor Cereceda's only concern would be the cost. Ted Fitzsimmons feels that especially at this time of year it would be a welcome amenity. Four of the councilmen are for the awning. Oniy Rusty Isler did not feel a need for one.

E. Town Hall cleaning bids

This has been withdrawn.

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F. Upcoming Workshop S.,hedu=es

Budgets, franchise fees, revenues will be on the workshop schedules for the next month or so. Mayor Cereceda asked if we could dedicate 20-30 minutes during each workshop to policies and procedures. All were in agreement.

Councilman Isler said that it seems the trend now is not to raise property taxes but to have utility taxes and franchise fees. Isn't it simpler to raise property taxes than to make new taxes, he wished to know. He was told we only pay one franchise fee now, and that is cable.

It was learned that none of the utilities chargeed an overhead for processing. A number of them we'll have to enforce, like the phone.

G. Long Property

Mrs. Segal-George met with Don Morrow of the Trust for Public Lands last week, at which time it was decided that Mr. Roosa would draft a resolution for the council's consideration. There has been a lot of confusion on whether there is or isn't an offer on this property. Mrs. Segal-George advised she would like to make a back up offer on the property. If the offer doesn't close or if that offer wasn't there, then we're next in line. If the offer is legitimate and it's going to close, their back up offer won't have any effect. Mr. Morrow will meet with the realtor for the seller on Wednesday. The property is still slated to close on June 3 and Mrs. Segal-George would urge the council to pass the resolution and ask Mr. Morrow to submit a back up offer for the price of the property on the tax rolls or the appraisal,

whichever is greater. The appraiser who is going to do the appraisal of the property is coming in on Wednesday.

MOTION: Made by Ted Fitzsimons and seconded by Garr Reynolds that the Resolution authorizing the acquisition of the Long property by the Town of Fort Myers Beach be adopted.

Discussion:

Ted Fitzsimons read his copy of the Resolution which reads in part:

The Resolution of the Town Council of the Town of Fort Myers Beach, Florida, authorizing the acquisition of real property known as 8LL4 for park purposes.

WHEREAS, prior to 1953, an 8LL4 had been designated as a significant Caloosa Shell mound;

and,

WHEREAS, the subject property is located at 289 Connecticut Avenue, Fort Myers Beach, and is described more particularly as (legal description);

WHEREAS, the property's current strap number is as represented herein; and

WHEREAS, there is a public purpose in protecting the intact nature of the site and the human remains buried by the Native Americans;

NOW, THEREFORE, be it resolved by the Fort Myers Beach Town Council that the Council authorizes and directs the Town Manager to take the necessary actions to acquire the property for presentation for the public. The foregoing resolution was adopted by the Town Council and is being put to a vote, ect., etc.

They will not get the appraisal before they put the back up offer in, but they will say in the back up offer that it won't be any more than the appraisal would be.

Mr. Roosa advised he had contacted the attorney that represents the owner of the property, who told him that there was a contract, that the purchaser had what he called a free time to examine the site and make a decision to withdraw their deposit and that time had expired so that the contract was hard money and was set for closing early in June. The attorney had already been informed through the realtor

that the town was interested in purchasing the property and Mr. Roosa told him he had drafted a resolution and intended to present it to the council. The attorney said he thought it unnecessary and he

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didn't want the council to adopt the resolution. He told Mr. Roosa that if the sale went through, he would notify him and he could contact the new owner and attempt to purchase the property from the new owner. If the sale doesn't go through, then he would still contact Mr. Roosa because there were no other backup offers at that time (Friday). The attorney said he didn't want Mr. Roosa to become involved between the buyer and the seller. Mr. Roosa feels this way too. Mr. Roosa feels that the attorney will contact him and then they will either be dealing with a new seller or with the old seller. The attorney wasn't very excited when told the town would be buying the property for the appraised price and Mr. Roosa explained why that was. The purpose of the resolution was for a more aggressive action intended to be the threat of imminent domain, which has certain tax consequences on a seller. If the resolution is limited to the placing of a back up offer, Mr. Roosa doesn't see a problem. Perhaps under the Now, Therefore, part of the Resolution, they should authorize the Town Manager to make a back up offer.

Mr. Roosa said he had two concerns. What is the purchase price of the property and what is the property going to cost the town on a monthly basis. It will be on a lease-purchase type of arrangement. We need to get two appraisals. He suggested modifying the resolution to authorize a back up contract of \$740,000.

The resolution was revised as follows:

NOW, THEREFORE, be it resolved by the Fort Myers Beach Town Council that the Council authorizes and directs the Town Manager to prepare a back up offer for \$740,000 to acquire the property for preservation for the public. The foregoing resolution was adopted by the Town Council and is being put to a vote

MOTION:

Made by Ted Fitzsimmons and seconded by Garr Reynolds that the revised Resolution authorizing the acquisition of the Long property by the Town of Fort Myers Beach be adopted. Passed unanimously.

Discussion:

Ray Murphy stated that he would be wary of the purchase price. But he is all for pursuing acquisition of the property -- cautiously.

H. Expenditures

The bill for transcribing minutes was discussed. The hours put in by the recording secretary can be reduced if the Administrative Assistant does the council minutes and Lorraine does the LPA minutes without attending the meetings. Lorraine is now a licensed independent contractor.

MOTION: Made by Ray Murphy and approved by Rusty Islet to approve the bill for salary up to the date of May 26 for the recording secretary. Passed unanimously.

Discussion:

Councilman Reynolds questioned the hiring of additional employees and was informed that independent contractors were not in the same class as employees.

XI TOWN ATTORNEY ITEMS

A. Status of pending lawsuits

As per his memo, Attorney Roosa advised that the first case, a certiorari action, has to do with the granting of a setback. He has filed a motion to quash, which is the same motion that was filed by the county. The county is also a party to that action.

The next case is also a certiorari and both the town and the county have filed motions to quash.

Case No. 96-009 (Civic Association) has been dismissed. After the last hearing the plaintiffs filed a voluntary notice of motion to dismiss. Attorney Roosa made a bill showing the hours he worked on this case, and they came to 7.7 hours, or a total of \$962.50. The legislature has passed a statute which allows for the court to award reasonable attorney fees to the prevailing party. By the plaintiffs filing a voluntary dismissal, we can be considered the prevailing party in that action. Because initially he didn't separate hours as cases came in, Mr. Roosa advised that perhaps some of these hours could be shared with other litigation. Courts are generally reluctant to grant motions for attorney's fees. Should he pursue these attorney fees which he has already been paid by the town? If he won, the Civic

Association would pay the fees, about \$800.00. If the court rules that it was a justiciable issue, we would not get our attorney's fees.

In Case No. 96-3330 (Shenko), a motion for stay was filed in this action pending an opportunity for a hearing before the Town Council. There is a hearing set on that motion for June 17. This is the case that was before the County Commission and the defendants filed a letter with the County Attorney requesting that the county intervene in this case based mainly on their concern that the County Commission's interests may not be protected by the town's attorney. Mr. Roosa was told that the County Commission has directed the County Attorney to intervene, but he has not yet received a motion to intervene. Under Florida Statute 164, the governing body of a county or municipality may not file suit against another county or municipality unless the governing body is notified. This notice must be given no less than 45 days in advance of filing the suit. Then there is a provision that within 30 days of that notice there would be a chance to meet with the County Commission. So if we file a motion to intervene, there may be an opportunity for us to have a meeting with the County Commission to discuss their concerns of how vigorously our attorney will defend their interests. At the same time we have this motion coming up for a stay. We may be able to get all the parties together in one meeting.

B. Status of Nyman Special Master proceeding

A public hearing has been set for May 31 and Mr. Roosa and Marsha Segal-George will attend. Mr. Roosa does not recommend that the council attend. He has filed a motion to dismiss in this action based upon subject matter jurisdiction.

C. Gas Tax Allocation

The County Attorney is going to submit a resolution and at that time we will have an opportunity to appear and maybe that will force the issue of the County Commission to decide on whether it's a fair allocation or what they are going to pursue in this matter.

D. The Long Property (8LL4)

Mr. Roosa recommends that we go ahead with the appraisals and he has talked with Mr. Morrow about pursuing specific funding and providing us with the cost so that the council will have an idea of what the cost to the acquisition of the property will be. Mr. Morrow said that they did not get involved in the

development of the property, so one of the things the council would want to consider is what it is going to do with the property when it gets it.

E. Mid-Island Marina

Mr. Figuerado has filed the same hearing as the Nyman hearing and Mr. Roosa is in the process of preparing a response to that.

F. County Attorney's Letter

It would be Mr. Roosa's recommendation that he be directed to write to the County Attorney to basically request that he inform the council of the time table for the sidewalks and the funding of the sidewalks. Rusty Isler feels that Mt. Roosa's letter was a good way to approach the problem.

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G. Cable TV

Mr. Roosa talked to Attorney Peterson and told him that we didn't want to increase the cost to the users of cable TV on the Island. What we wanted to do was to take that portion that went to the county and have it come to us. He is supposed to get back to us on that.

XII PUBLIC COMMENTS AND INQUIRIES

A. FLIP HARSY

Mr. Harby said that the council passed a resolution to maybe spend \$740,000 on what is basically an undocumented piece of property that is supposed to be a Caloosa Shell Mound. How does the town plan to pay for it? Under Article XI, Section 11.03, paragraph B, "Unless authorized by the electors of the town in a duly held referendum election, the council shall not authorize or allow to be authorized the issuance of revenue bonds or enter into lease purchase contracts or any other multi-year contracts all for the purchase of real property or the construction of any capital improvement, the attainment of which extends in excess of 36 months unless mandated by state or federal governing agencies." Mr. Harby stated he didn't see how the council was going to buy the property in 36 months unless they are circumventing the charter.

He agrees with Mayor Anita that a franchise fee is a tax, call it whatever you want to. The county is charging a franchise fee to FP&L and not to the individual homeowners, and that is to charge them for the use of the property for the right-of-ways. There is a franchise fee on the telephone, and we get 911 service from that. Councilman Reynolds advised that he didn't think anyone spoke in favor of extra franchise fees and only mentioned the ones already in place.

They are doing a Matanzas Pass Preserve cleanup and he urges people to join in at 7:30 every Saturday morning. Free cokes and water are provided.

B. BOB GAYDOS

Mr. Gaydos said that tax is tax. He doesn't care where it comes from, it is still coming out of his pocket. Like the federal government, you are spending and then taxing.

With respect to the Long property, Mr. Gaydos said the council is saying the state is going to loan us \$1,000,000 for nine years. That comes to \$1,800,000 plus interest.

He doesn't feel the wheelchair ramp outside has any use.

Mr. Gaydos also referred to a letter from a representative who said that the "City" of Fort Myers Beach is responsible for putting lights out here.

C. PETER LISICH

Regarding the franchise fees, Mr. Lisich said he is hoping that as we bring some of them back to the town we will cancel the Fort Myers Beach version of those. Instead of raising additional fees, get rid of some of fees that we are paying already.

He believes that we have as a town delegated our responsibility and the expense of that to the county for permitting and for development orders. Tonight he heard Councilman Fitzsimmons quoting Section 3418.03 regarding the Gulwing Hotel and felt that there was some violation of that section. This perhaps resulted in a directive to staff to use staff time to further investigate that. If so, Mr. Lisich has a concern with the use of that staff time toward a project that the county is being paid for doing. That issue wasn't clarified, he noted. If we think the county is not issuing permits properly or handling the Land Development Code properly, we need to take that up with the county and ask them to do their job properly,

somewhat similar to the obtaining of the easements for the CRA. Let's not do the county's job unless we are getting paid to do it.

With respect to the Diamond Head project and a letter from the neighbors about their lawsuit, Mr. Lisich isn't sure about the directive on this matter. If tomorrow the council gets a letter from the property owner of the Diamond Head site saying my neighbors are harassing me, they are trying to

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stop my business and prevent me from proceeding forward, will you issue another directive to the attorney and say let's pursue that individual's property rights and requests and wants? Mr. Lisich expressed his concerns and feels that this ties into our policies and procedures workshop. He urges us to continue making progress on that front and how and who directs whom to do what.

D. RAY MARTENS

Mr. Martens referred to Councilman Reynold's concern about people coming in and talking to the Town Manager about what legal procedures they were supposed to follow. He advised he had done that with the intention of saving a couple of dollars for himself and the city. He thought there was a way to avoid everyone hiring attorneys. When he found out there wasn't, he decided to go out and hire an attorney. However, he thinks that is what the Town Managers role is and he thanks her for fulfilling her job. She helped him learn what the procedure was that he should follow. He feels the council could avoid their concerns if they give out an information sheet saying what to do.

Regarding the (Long) property, Mr. Martens advised he didn't care whether they bought it or not. His concern is more about the people who live on the dead end street with little kids who will have to worry about tour buses and 30, 40, 50 cars a day. They have a right for us to guarantee sidewalks, some better lighting and other things to protect their kids on that street.

He is saving for his kids' college and doesn't want to give his money to Diamond Head, Mr. Martens stated. If the town takes them on and loses, they pay. He can't afford this.

E. BILL WHITAKER

Regarding the town's dilemma of filing reports and whatever relates to payroll and things of that nature, it might look into leasing its employees. He is a leased employee himself who owns and operates the Dairy Queen. All it takes is making one telephone call a week or whatever your payroll is. Your bank account is drafted and all your reports are filed for you. The cost may be a little bit cheaper than the route the council is now considering.

At the Traffic Committee meeting, the suggestion came up that the city of Fort Myers Beach could have their own volunteers to help and control their own traffic and the Sheriff's Department has volunteered to train those people at no charge.

Mr. Whitaker also urged that they not get into any turf battles.

F. PAT LOFFRENO

By not allowing people to their properties in certain cases, Mr. Loffreno feels that the tax base is being taken away from the county, the state and the town of Fort Myers Beach. We are taxpayers and we are going to pay for space that is vacant. On top of that will be a possible litigation that the town will have to confront. He was one of the promoters of the town and feels that litigation will possibly be the beginning of the end of the town.

ADJOURNMENT

Mayor Anita T. Cereceda adjourned the meeting at 11:00 P.M.

Respectfully submitted,

Lorraine Calhoun

Recording Secretary

CORRECTIONS TO THE MINUTES

MAY 20, 1996

(As recorded iii the minute: of June 17, 1996)

Page 13, paragraph D: "Ray Martens" should be "Ray Mertens"

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 3, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The meeting was opened on Monday June 3, 1996, at 6:30 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Ray Murphy and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

Absent from the meeting: Council Member Rusty Isler

II. PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag and Mayor Cereceda gave the invocation.

III. PUBLIC COMMENTS AND INQUIRIES

A. JACK HENRIKSEN

Mr. Henriksen, a citizen of Fort Myers Beach, addressed the Council about the Virginia Avenue Beach convention center. He gave a brief history of the land use plan at the time the permit was applied for compared to the current plan. Since the case is still in the courts, he encouraged the town to get involved in the case while it is still before the courts.

B. SHARON FAIRCLOTH

Mrs. Faircloth, who along with her husband, is the owner and operator of two businesses on Fort Myers Beach, asked the Council to please not make any blanket decisions prohibiting vendors on the parks and public beaches. They previously had a beach concession at Lynn Hall and Bowditch Point, but since the beach was so small, there was not room for their concession. Now that the beach is larger, they would like the opportunity to reopen their concession. They might be able to give out tourist information about the beach from the same booth. They do not feel that a beach concession that rents chairs and umbrellas would be in competition with the Times Square businesses.

C. BOB KEENE

Mr. Keene, a resident of the beach, encouraged the Council to become a part of the appeal against the Diamondhead Convention Center, so that the residents would be represented by the town government rather than the county government.

D. DOUGLAS ECKHARDT

Mr. Eckhardt, a resident and property owner on the beach, wished to register his opinion about the Diamondhead Convention Center. Since the discussion of the pros and cons of Diamondhead was not on the agenda, Mr. Eckhardt withdrew from speaking.

E. JOHANNA CAMPBELL

Ms. Campbell wanted to encourage the Council to use the proposed contract form for the contract for the transcribing secretary, because it includes a termination agreement. She also spoke about the two proposals from CPAs. She expressed concern because their proposals are so different that perhaps the CPAs needed to be given more direction in what the town needs.

F. FLIP HARBY

Mr. Harby wanted to know if the Council has adopted a policy about voting on items not on the agenda. He also wanted to know if there are subjects in the council members portfolios tonight that they intend to speak about and to request a vote on, even though it is not on the agenda, and how it will be ruled.

G. PAT LOFFRENO

Mr. Loffreno, a resident, wished to discuss Diamondhead. Since only the legal issue was on the agenda, Mr. Loffreno was asked to withdraw.

IV. APPROVAL OF MINUTES

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to approve the minutes of the meetings of May 2, May 6 and May 9, 1996. Unanimously approved as amended.

Discussion: Ted FitzSimons stated that in the minutes for May 6, page 4, third paragraph from the bottom, the discussion between John Gucciardo and Attorney Roosa does not relate to the motion but to a different discussion about the Gullwing property. The two items should be separate. In addition, on page 5 at the bottom, the motion ends with a statement "not passed." There was no vote taken on that motion at that time. The motion was only seconded for discussion and the discussion evolved into the change in the motion as stated at the bottom of page 6.

V. APPROVAL OF EXPENDITURES

MOTION: Made by Ted FitzSimons and seconded by Ray Murphy to approve the expenditures as submitted. No discussion. Passed unanimously.

VI. PRESENTATION BY PARKS AND RECREATION ON BEACH VENDORS

Barbara Manzo, Parks and Recreation Superintendent for Lee County, stated that her purpose in coming to the meeting was for an exchange of ideas and to give an overview of how Lee County handles requests for permits for beach vendors. They do not want to do anything that would go against what the town would like on their beaches. Lee County allows vendors on some beaches and not on others. Since budgets have been cut recently, they are looking at innovative ways to come up with additional revenue, while trying not to have vendors that are in competition with existing businesses. They want to provide services to the people who use the beaches, attract people to use certain low-use beaches, and also bring in a little revenue. Now that the beach renourishment has taken place, there is room for vendors at Lynn Hall Park and she is getting a lot of requests. She would like direction from the town on if they want vendors on county beaches, and if so, what type of vendors? Private property owners can allow vendors (such as jet skis) on their beaches (they just need a vendor permit), so the only question is about county property. Her opinion is that county may as well get some money from it if there are going to be vendors on the beaches anyway. (The fees collected by the county go back into the maintenance of the beaches.) Some vendors pay a monthly license fee, and some pay a percentage of the business. She has put a hold on all permits for Lynn Hall for the time being. The town could have the option of approving vendors individually. The consensus was that the Council needs to schedule a workshop on this subject.

VII. PRESENTATION BY THE POOL GROUP

Ellie Bunting gave an update for the Build The Pool team. They meet weekly to make plans for their first fundraising effort. They have retained an attorney to help them become a not-for-profit corporation. The next step is to hire a CPA to help in preparing the IRS documents so that donations can be tax deductible, and also to help with books. The expenses to become a corporation are quite high and the team is looking for ways to raise money to cover administrative and annual costs without taking them out of the operating costs for the pool. They have sent letters to local organizations and clubs asking for donations. They want to have a fund-raiser that will become an annual event. There will be a community meeting next Monday here at Town Hall at 7:00 P.M.

VIII. PRESENTATION BY NATURAL RESOURCES ON NPDES

Tony Pellicer, Natural Resources Manager with Lee County and NPDES Coordinator for the county,

gave an overview of the NPDES (National Pollution Discharge Elimination System) permit process and how the town fits into that process. His focus was to make the Council aware that he is submitting an application for Part Two of the NPDES permit for Lee County that is due June 13, 1996. They would like to include the Town of Fort Myers Beach as a co-applicant if possible. NPDES is a federal program that manages pollutants that enter federal waters and is administered by the EPA. The town incorporation came after they had already filed Part I, and therefore it would not cost the town anything to file the application if they choose to sign on with the county. It will probably take two years to get a permit from the EPA. Andy Tilton from Johnson Engineering, who has been retained to prepare the application, said that in Part One, they have been mapping known water outfalls into federal waters and gathering data about water quality. Not only do rules need to be made regarding pollution, but they also need to make sure that the counties and cities have the capacity to control discharges. It is a five-year permit, and at the end of that time, the town would have to reapply. In Part Two they have been looking at water quality sampling during wet weather. Lee County is going to try not to create new programs unless absolutely necessary, but to prove through the application that existing rules of the county, the water management district, and the Florida Department of Environment Protection already exist to do the functions that the EPA is asking. Even though it is a co-application, each entity will be issued their own permit. The town will only be responsible for things that affect Fort Myers Beach. All the barrier islands have been lumped under year five, so the town probably won't be liable for any expense for about five years.

MOTION: Made by Ted FitzSimons and seconded by Ray Murphy to authorize the Town Manager to sign the certification statement for the Town to become co-applicants with Lee County for the NPDES permit. There was no discussion. The motion passed unanimously.

IX. PUBLIC HEARING ON ORDINANCE PACKET "A"

A. Town of Fort Myers Beach Alcoholic Beverage Establishment Exposure Prohibition Ordinance

Mayor Cereceda read the titles and then opened the public hearing for public input. Since no one wanted to speak for or against the ordinance, the public hearing was closed.

MOTION: Made by Ted FitzSimons and seconded by Ray Murphy that this ordinance become effective September 30, 1996. There being no discussion, the motion passed unanimously.

B. Town of Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance

Mayor Cereceda read the titles and then opened the public hearing for public input. Since no one wanted to speak for or against the ordinance, the public hearing was closed.

MOTION: Made by Ted FitzSimons and seconded by Ray Murphy that this ordinance become effective September 30, 1996. There being no discussion, the motion passed unanimously.

X. FIRST READING OF ORDINANCE PACKET "B"

A. Town of Fort Myers Beach Open Alcoholic Beverage Container Ordinance

Mayor Cereceda read the titles of the ordinance. Public hearing on this ordinance was set for June 17, 1996.

B. Town of Fort Myers Beach Liquor License Restriction Ordinance

Mayor Cereceda read the titles of the ordinance. Public hearing on this ordinance was set for June 17, 1996.

C. Town of Fort Myers Beach Solid Waste Facilities Assessment Program, MSBU, Ordinance

Mayor Cereceda read the titles of the ordinance. Public hearing on this ordinance was set for June 17, 1996.

XI. DISCUSSION OF DRAFT OF ORDINANCE PACKET "C"

A. Town of Fort Myers Beach Water Shortage Plan Ordinance

There being no discussion of this ordinance, it was set for a first reading on June 17, 1996.

B. Town of Fort Myers Beach Animal Control Ordinance

There being no discussion of this ordinance, it was set for a first reading on June 17, 1996

XII. DISCUSSION OF THE SEWER PLANT PROBLEM AND OPTIONS

John Mulholland, chairman of the LPA, reported that the LPA unanimously passed a resolution on the condition of the Estero Bay water quality. Since the comprehensive plan of Lee County, which calls for water quality improvement, has not been enforced, the LPA asked that the Council pass an ordinance to test and monitor the water quality in the back bay.

MOTION: Ted FitzSimons moved and Garr Reynolds seconded the motion to accept the resolution from the LPA. Passed unanimously.

Discussion: Mr. Roosa stated that we would need a test of the waters to see the extent of the problem, what the sources of the problem are, and then what legislation could be enacted to correct the problem. Marsha Segal-George said that we should be able to gather some of the data from other sources that have already made studies. She did not feel that the LPA was asking the town to spend money as much as to acknowledge the problem and study what the town can do. She said that the Council can set a workshop and have people from the county come out to talk about the problem. In order to draft an ordinance, Mr. Roosa would need more input. Marsha Segal-George will work with Mr. Roosa to get the data needed for a draft ordinance.

XIII. COUNCIL MEMBERS ITEMS AND REPORTS

A. TED FITZSIMONS

Mr. FitzSimons mentioned that off-shore marker buoys may need to be extended further south than they presently go. It needs to be discussed with Parks and Recreation to determine where they need to go.

He also recommended a resolution requesting the Lee County Commissioners to provide the appropriate funding for the installation of utilities for the historic cottage on Bay Road. Mr. Roosa suggested that perhaps a letter signed by the mayor would be enough.

MOTION: Ted FitzSimons moved and Garr Reynolds seconded that such a letter be initiated. Passed unanimously.

Discussion: Marsha Segal-George clarified that the commissioners have put this request for money on hold while the Historic Society puts together some information about volunteer hours. The society needs the money soon so that they can use some grant money for exterior renovation by September 30. They cannot start renovation until they get the utilities and put in roads.

B. RAY MURPHY

Mr. Murphy asked when would be the best time for people to come to the Council meeting if they want to speak to the jet ski issue. Marsha Segal-George said that the best time would be June 17, 1996, when this ordinance will be discussed in its draft form. If there is too much discussion, it may need to be put into a workshop session.

C. GARR REYNOLDS

Mr. Reynolds addressed some concerns about setting up an office accounting system. His ideas include hiring a payroll check company and hiring an accounting firm to do the bookkeeping. He

also wanted to question the contract for Lorraine Calhoun. Marsha Segal-George clarified that all contracts would be done under Mr. Roosa's form.

Mayor Cereceda called for a break at 8:12 PM. The meeting was reconvened at 8:27 P.M.

XIV. MANAGER'S ITEMS AND REPORTS

A. Marsha Segal-George stated that all of her financial requests have to do with services she needs in order to operate for the rest of the year. None of these proposals have to do with the budget she is preparing for the fiscal year 1996-1997. The proposal from Jody Hester is to do the initial work that is needed to set up the payroll process, approximately 15 hours. Randy Oliver's proposal has to do with setting up the software that is needed for the budgeting process, and also helping with revenue projections and capital improvements, etc. She also needs an auditor and that will be chosen based on competitive bids. She does not contemplate any problem being able to fill these functions and still stay within or below the projections of the pre-incorporation study (\$12,000 for the audit, \$7000 for payroll work, \$30,000 for budget preparation.) She needs them now and doesn't have time to get competitive bids because the budget must be prepared by July 15. If these services are still needed next year, she can put them up for competitive bid if the Council wants. They will all be placed into Mr. Roosa's contractual form, including Lorraine Calhoun's contract for the LPA minutes. Commitments would only be through this fiscal year.

MOTION: Ted FitzSimons moved and Garr Reynolds seconded that Marsha Segal-George proceed with the proposed financial package with a 15 hour limit on Jody Hester. There was no discussion. Passed unanimously.

B. Ms. Segal-George needed to comment on three issues even though they are not on the agenda. Before beginning, she addressed one of the statements made in public comment at the beginning of the meeting. She noted that sometimes things come up after the agenda is prepared and she knows of no other way to put important things in front of the Council.

The first is an update on the Long property. It was supposed to close today but did not. The closing has been delayed and is now supposed to close sometime at the end of June. Therefore the town will continue in the process.

The second issue regards beach accesses. She called Code Enforcement to ask if they can have inspectors out on weekends to check on the problem of people using beach accesses as boat ramps. Apparently it not against any county ordinance. The County Attorney is researching this issue. She thinks that this is an important safety issue.

The third issue is in regard to the use of community park impact fees. There is \$500,000 in the fund. Commissioner Judah last week asked if they could move \$300,000 out to be used by the DOT to build the south end sidewalks this summer. There was some dissension at the Board of Commissioners about what that money was earmarked for with regard to the sidewalk CRA issue and the pool issue. She would like the Council to prepare a letter stating the Council's understanding for the use of the money. Since that time, the pool committee has met with Mr. Judah. The pool committee is making a resolution agreeing to the understanding that the \$300,000 would be used for the south end sidewalks. Mr. Judah is trying to move \$200,000 for Cypress Lake High School, and the pool committee is willing to forego any attachment to those dollars in this current year with the understanding that the pool will be bonded in 1996-7 in order for the county to begin land acquisition and start design.

MOTION: Motion was made by Ray Murphy and seconded by Ted FitzSimons for Marsha Segal-George to draft a letter to the County Commissioners, to be signed by the Mayor, addressing the issue of the use of these funds. There was no discussion. Passed unanimously.

XV. TOWN ATTORNEY'S ITEMS

Mr. Roosa mentioned that he has been asked to review the brief that was filed by Attorney Bigelow on behalf of the Surf Song Condominium Association. Mr. Roosa's concerns had to do with municipal law and the impact on the town. The issue which affects our town is that of which law applies—the law at the

time of filing the application for a permit, or the law at time of issuing the permit. The County's opinion is that the issue has been settled by the Second District Court in 1980 (Smith Vs Clearwater) which said that cities cannot retroactively apply a zoning amendment to deny a permit unless the amendment was pending as the time of application for the permit. Mr. Roosa does not think this applies to the Surf Song Vs Lee County. The county's comp plan required that rezoning appropriate for the town of Fort Myers Beach take place, and that was years before the application. He believes that there was sufficient notice that the county intended to amend the codes. He thinks that the Florida League of Cities might want to join in this lawsuit because it will affect every town in Florida. His recommendation is that the town should file an amicus brief, separate from Surf Song, saying that the law at the time of issuing a permit should apply, not the law at the time of applying for the permit. Also the Council should encourage the Lee County Attorney not to file an amicus brief because the county is no longer an interested party. Mayor Cereceda expressed concern that the public will see this as an argument for or against the Diamondhead project rather than an argument for municipal law and how that law would affect the town in the future. Mr. Murphy asked how much it would cost to file the brief and Mr. Roosa estimated it would cost \$7000 to \$10,000. Mr. Roosa suggested that a possible solution would be for the Council to instruct him to turn this matter over to the Florida League of Cities, because they can be more objective about municipal law, to see if they think the case has enough merit that they would want to take it on and pay for it.

MOTION: Ted FitzSimons moved and Garr Reynolds seconded that we initiate a letter to the County, file an amicus brief, and contact the Florida League of Cities to see if they have an interest in joining. The motion was not voted upon.

Discussion: Ray Murphy questioned whether the League would have any reason to join the suit if the town has already authorized our attorney to file the brief. If possible, he would rather have the League pay if the object is to set a precedent. Anita Cereceda suggested that Mr. Roosa try contacting the League first before the Council makes a decision. Mr. FitzSimons offered to amend the motion to include only the letter to the county and to contacting the League, although he still thought that it is appropriate for Fort Myers Beach to file its own brief. Mr. Roosa said that if the League does decide to get involved, perhaps the town could file a brief later with very little money by copying the League's brief.

AMENDED MOTION: Ted FitzSimons amended and Garr Reynolds agreed to the amendment that Mr. Roosa contact the Florida League of Cities to see if they would be interested in filing an amicus brief in this matter, and that Mr. Roosa come back to the Council with their reply, and also that he initiate a letter to the County asking them not to file an amicus brief. There was no discussion. The motion passed with one "no" vote from Ray Murphy.

Mr. Roosa then addressed the question of ex parte communications. He reiterated that council members are allowed to talk to people, receive correspondence, and receive visits on matters on which they will sit as a judge as a member of the Council. But he stressed that the Council members are required to fill out a form and make it a part of the record every time they have such a contact. They should fill out the form on a regular basis even though they don't know at the time that it will come to them for judicial determination. If they don't fill it out, they could be disqualified from voting on the subject at a later hearing.

Mr. Roosa then spoke about the draft contract in the council members' packets. He cautioned that it is important that the contract be used for legitimate contractors and not used for employees. Mr. Reynolds questioned the part about purchase orders. Mr. Roosa explained that the contract can be used for service or for commodities such as gasoline that you want to purchase on a continuing basis but not take possession of all at once. The contract is intended to be an all-purpose contract, so that not all provisions will apply to each contract.

Concerning the CRA, Mr. Roosa reported that he sent a letter to the county attorney's office asking how they would complete the sidewalk project. The County Attorney replied that he does not see it as a legal

question. But it looks as if the county is attempting to do the entire project as promised, but the CRA portion is going to be the Times Square portion.

XVI. PUBLIC COMMENT AND INQUIRIES

A. MARY DE VINCENT

Ms. DeVincent requested that the Town Council take action on two issues: benches on Estero Boulevard that are too close to the roadway and should be moved back, and the lack of shelter to protect people waiting for the trolleys. She suggested that perhaps shelters could be placed at alternate stops in order to cut the expense. She also mentioned the need to post trolley and bus schedules at the stops, not just at the transfer stop on Summerlin..

B. CEEL SPUHLER

Ms. Spuhler, who lives on Estero Blvd., mentioned the danger to swimmers of jet skis coming too close to the shore. She stated that the regulation for markers is 500 feet from the 100 year mean high tide line, and that they are placed by the Marine Science Department of Lee County. The distance between markers is not regulated but is usually about and ¼ mile apart. There are no markers from the Holiday Inn south to the San Carlos Pass. The Sheriff's Marine Patrol said that the markers have not been replaced because of storms and/or vandalism and that the sheriff's department only patrols once a day. She suggested that there be a franchise fee on the jet ski businesses that is so high that it would generate money to go toward the costs of patrol. In addition, she also asked if signs can be posted saying that jet skis cannot go into the tidal pool.

C. PETER LISICH

Before addressing his issue, Mr. Lisich commented that the Town Council is not being consistent about enforcing rules and he encouraged the council to set a policy. Concerning Diamondhead, he asked Mr. Roosa what was the issue in the lawsuit, which court the suit is currently in (circuit or appellate), what was the decision of the circuit court, and how much experience Mr. Roosa has in the appellate court on land use and zoning cases? As he understands it, the lawsuit is between two property owners and he doesn't think the town should take the side of one over the other since Diamondhead was approved long before the town talked about incorporating.

XVII. ADJOURNMENT

Mayor Cereceda adjourned the meeting at 9:30 P.M.

Respectfully submitted,

Peggy B. Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JULY 1, 1996**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

The meeting was opened on Monday, July 1, 1996, at 6:30 P.M. by Anita T. Cereceda, Mayor.
Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag. Ted FitzSimons gave the invocation.

III PUBLIC COMMENTS AND INQUIRIES

A FLIP HARBY

Mr. Harby, President of Concerned Citizens of Fort Myers Beach, spoke about the Times Square project. The Concerned Citizens have voted to take on the triangle at the base of the bridge as a project and to correlate the triangle to the wave pattern of the beautification project. The company he works for has agreed to donate the pavers, Custom Pavers in Naples will install them, and the Concerned Citizens will provide the labor to prepare the site. He showed a sample of the colors that will be used. They will be installed in about three weeks.

IV APPROVAL OF MINUTES

A Minutes of May 16, 1996

Ray Murphy moved and Ted FitzSimons seconded that the minutes be approved as submitted. There was no discussion. The motion passed unanimously.

B Minutes of June 17, 1996

Ray Murphy moved and Ted FitzSimons seconded that the minutes be approved as submitted. There was no discussion. The motion passed unanimously.

V APPROVAL OF EXPENDITURES

Ray Murphy moved and Ted FitzSimons seconded that the expenditures be approved as submitted. The motion passed unanimously.

VI PRESENTATION BY LINDSEY SAMPSON, LEE COUNTY SOLID WASTE DEPUTY DIRECTOR

Mr. Sampson presented the proposed solid waste rates for 1996-7 for Lee County. According to the interlocal agreement, he will present this information annually to the Council. He passed out a packet and an updated summary sheet. Fort Myers Beach is included in Franchise Area #1. The residential rates will be reduced from \$196.11 to \$186.56. The disposal rate consists of tipping fee and solid waste surcharges, and the total will be reduced from \$66.20 to \$62.43 per ton. In addition the fee for horticultural waste processing will be reduced from \$26.43 to \$14.89 per ton. The rates for commercial construction and demolition debris will remain the same at \$35.00 per ton. The fee for tires will vary according to the size of the tire and preprocessing. The residential rate is made up of three categories: the collection fee paid to the hauler, the disposal and surcharge, and the billing fee which is paid to the tax collector (\$10 per customer.) The solid waste assessments are set according to the amount of garbage a unit is expected to generate. A residential building of up to 4 units is \$33.44 per unit. For multi-family areas of more than 5 units (apartment complexes, condominiums, and mobile home parks) the assessment is \$27.43 per unit per unit per year (billed directly by the tax collector to the owner of the facility). Businesses are charged according to their size and generation category. A low generating category would be cemeteries, parks, etc. High

generation would be a fast food restaurants or convenience stores. For the purposes of comparison, they have shown the difference between an MSBU (Municipal Service Benefit Unit) vs. a MSTU(Municipal Service Taxing Unit). The difference would be about .4 mils. Fort Myers Beach has decided to use the MSBU where the assessment is made according to usage rather than property value. Marsha Segal-George stated that these rates are in agreement with the interlocals that the council has already approved.

VI PUBLIC HEARING OF HISTORICAL PRESERVATION BOARD CONCERNING THE LONG PROPERTY

The Council was convened as the Historical Preservation Board.

Gloria Sajo, Annette Snapp, and Bill Grace from the Lee County Planning Division gave a presentation about the Long property. Ms. Snapp showed a slide that indicated that there were also Calusa Indian villages on Pine Island and Mound Key. Shells were important for tools because stones in this area are not good for tools. They have pulled carved and painted artifacts from other shell mounds that show the complexity and craftsmanship that the Calusa reached. The Calusa in this area had a highly developed society but were not agricultural. Ponce de Leon came to the area and reached Pine Island and Mound Key and interacted with the Calusas. Menendez, the Spanish governor of Florida, came here in 1566 and met with Carlos, King of the Calusas, probably at Mound Key which they believe was the capitol of the Calusas. The large size of the Long site, its uncommon location on a barrier island, its potential for yielding scientific information, the proximity to other known sites, and the components that are visible on the surface indicated to archeologists from the University of Florida and the Florida Museum of Natural History that the site would be eligible for archeological listing on the National Register of Historic Places.

Bill Grace spoke about the more modern history of the site. In 1896, this property was part of the first homesteaded property on Fort Myers Beach . It was homesteaded by Robert Gilbert who was a Koreshan. Robert Gilbert sold 80 acres, including the Long property, to William H. Case. Mr. Case was one of the earliest settlers in the area, he created the first subdivision on the beach, and was involved in putting the first bridge to the island. He built the house on the property in 1909. The house is still there and is incorporated into the house as it is today. The house itself has some historic significance, but especially because the site is associated with the Koreshans and with some of the earliest developers of the area, it would make the site eligible for historic preservation.

Mayor Cereceda asked if there was any more testimony from the public or from a representative of the property owner. There were no representatives from the owner. Nancy Coker, who has lived at 143 Connecticut Street for 14 years, stated that the property is beautiful, and since we have so little on Estero of significant value, she would hate to see it destroyed. There are 15 children on the street, and there is some concern about the added traffic, so she would like the Council to keep the potential traffic problem in mind. Helen Caldwell, a resident since 1964, lives in the Zimmer Estate, which is adjacent to Long property. She realizes this site is very special, and has seen the mound and some Indian relics when she visited Florence Long. She thinks it is wonderful that the town can save the site not only for ourselves but for our grandchildren, and she thanked the town for what they were doing. Flip Harby, a resident since 1946, feels that preservation of history should be of supreme importance, but he questioned whether the Town can afford to buy it and what would be the method of repayment of the debt. This would involve .75 million dollars out of a 2.3 million dollar budget, which he feels is too much to take on this early in the life of the town.

The public hearing was closed.

Mr. Roosa prepared a resolution which contains certain findings of fact. The Council should make those findings based on the testimony that was presented this evening. They do not have to find all the facts in order to make the designation. Mr. Roosa read the resolution for the benefit of the public.

Mr. Roosa said that it gives property owner certain responsibilities and benefits. It would give them great liberality for code variances (building code violations, etc.). Also, in order for owner to develop any activity on the property, they have to have the approval of the historic board.

Motion: Ted FitzSimons moved and Garr Reynolds seconded that the Council, acting as the Historic Designation Board, adopt the resolution. There was no discussion. The motion passed unanimously.

VIII PUBLIC HEARING ON PACKET "B" A TOWN OF FORT MYERS BEACH OPEN ALCOHOLIC BEVERAGE CONTAINER

ORDINANCE

Mayor Cereceda read the titles of the ordinance and opened the public hearing. There being no public comment, the public hearing was closed. Mr. Roosa pointed out that this is the same as Lee County Ordinance 84-1.

Motion: Mayor Cereceda moved and Garr Reynolds seconded that this ordinance be adopted. There was no discussion. The motion passed unanimously.

B TOWN OF FORT MYERS BEACH LIQUOR LICENSE RESTRICTION ORDINANCE

Mayor Cereceda read the titles of the ordinance and opened the public hearing. There being no public comment, the public hearing was closed. Mr. Roosa pointed out that this is the same as Lee County Ordinance 76-09 and 79-1.

Motion: Mayor Cereceda moved and Garr Reynolds seconded that the ordinance be adopted. There was no discussion. The motion passed unanimously.

C TOWN OF FORT MYERS BEACH SOLID WASTE FACILITIES ASSESSMENT PROGRAM, MSBU, ORDINANCE

Mayor Cereceda read the titles of the ordinance and opened the public hearing. There being no public comment, the public hearing was closed.

Motion: Garr Reynolds moved and Ray Murphy seconded that the ordinance be adopted. There being no discussion. The motion passed unanimously.

IX PUBLIC HEARING PACKET "C"

A TOWN OF FORT MYERS BEACH ANIMAL CONTROL ORDINANCE

Mayor Cereceda read the titles and opened the meeting for public comment. Flip Harby asked if there were going to be two fees, one for the town and one for the county. Mr. Roosa answered that there will be \$4.50 license fee, which will probably still be handled through the veterinarians, but you will only have to pay the town, not the county too. The Council needs to give direction to the town manager on how to set up the program, which will not raise taxes and is not a fee-funded service. The Humane Society provides this service to all the other cities in this county, but the County is the only one who has a contract with them. Fort Myers Beach has some good data (we were 4.2% of their service calls last year.) Since Lee County paid \$690,000, that would mean our portion should be about \$30,000. Marsha Segal-George will come back to the Council with an agreement as soon as it is available. The public hearing was closed.

Motion: Rusty Isler moved and Ted FitzSimons seconded that the ordinance be adopted. There was no further discussion. The motion passed unanimously.

B THE TOWN OF FORT MYERS BEACH WATER SHORTAGE PLAN ORDINANCE

Mayor Cereceda read the titles and opened the meeting for public comment. There being no discussion, the meeting was closed for public comment. Mr. Roosa stated that this ordinance is the same as Lee County Ordinance 90-3, and that the regulations of the Water Management District are attached.

Motion: Garr Reynolds moved and Ray Murphy seconded that the ordinance be adopted. There was no discussion. The motion passed unanimously.

X FIRST READING OF PACKET "D"

A TOWN OF FORT MYERS BEACH CONVENIENCE STORE SECURITY ORDINANCE

Mayor Cereceda read the titles. The ordinance was set for public hearing on July 15.

XI DISCUSSION OF DRAFT OF ORDINANCE PACKET "E"

A TOWN OF FORT MYERS BEACH NOISE CONTROL ORDINANCE

Ted FitzSimons said that Lee County is in the process of changing their noise control ordinance because the solid waste contract allows garbage pickups which are inconsistent with the times allowed in the ordinance. They are considering moving their time for haulers to 6 A.M. in residential area. They are not supposed to make noise until 7 A.M. under the present ordinance. However, commercial dumpsters can be picked up all night. It is our town and the Council can choose what time they want, but Mr. Roosa will check with the County before he puts it into final form.

Section 5 has to do with sound levels when measured at the property line of the receiving land use. The difficulty is with outdoor entertainment, Part C(3). This has a special prohibition against any noise that exceeds limits from the property line of the noise source. Mr. Roosa said perhaps section five should be retitled to just "Sound Levels" or break it out into a separate section. Mr. Roosa said he would get a copy of the Lee County Code of Noise Enforcement Practices that is mentioned in Section 5. Mr. Reynolds said he is not sure that Lee County is still using a decibel meter. He thinks the sheriff is using a subjective reading. Mr. FitzSimons said that proving "breach of peace" may be the only thing that will stand up in court. Marsha Segal-George said that we are looking at privatizing code enforcement instead of going to the county, so the Council may not want to make it too complicated to enforce. It was decided to pull this noise ordinance until they can get more input from the sheriff.

B TOWN OF FORT MYERS BEACH TAKING OF RECYCLABLE MATERIALS

There was no discussion. First reading was set for July 15.

C TOWN OF FORT MYERS BEACH COMMERCIAL WASTE DISPOSAL ORDINANCE

There was no discussion. First reading was set for July 15.

D TOWN OF FORT MYERS BEACH LOT MOWING ORDINANCE

There was no discussion. First reading was set for July 15.

E TOWN OF FORT MYERS BEACH TRANSIENT MERCHANT REGULATION ORDINANCE

It was clarified that this ordinance will apply to beach vendors also. The only change is that the jurisdiction on appeals changes from Lee County to the town. On page 2, paragraph E, the ordinance states that you cannot sell on the right of way of any road under the town's jurisdiction. It was decided to put a period after highway and delete "under the town's jurisdiction." On page 3, paragraph I, the wording was left "Lee County" on purpose.

First reading was set for July 15.

The Council took a break at 8:20 P. M. The meeting was reconvened at 8:32 P.M.

XII APPROVAL OF CONTRACTS

Marsha Segal-George presented the contracts for Randy Oliver and Joyce Hester for approval. The terms are the same as discussed in an earlier meeting, but they have been placed into the document that Mr. Roosa prepared.

Motion: Ray Murphy moved and Ted FitzSimons seconded that these two contracts be accepted. There was no discussion. The motion passed unanimously.

Marsha Segal-George also presented the contract that was prepared by Bill Spikowski, which contains everything that is in our contract form. The contract states that some of the work will be subcontracted to Carol Cunningham and Victor Dover. Mr. Spikowski will start next week, and the contract covers July, August and September. After that, he will be covered under the new budget. She thinks the ball park figure for the consulting costs for the comp plan will be about \$200,000 (actual consulting time.) She has asked the state for some financial support or else that they provide us with some technical assistance. The LPA needs a lot of help with the traffic, surface water, and coastal aspects and also with economic feasibility. They are still planning to finish the comp plan in a year and a half. Mr. Dover will have two visioning session that will be open to the public (the first one is scheduled for July) and

there will be a public hearing on the Times Square overlay in July also. The overlay will be brought to the Council in August for approval.

Motion: Ted FitzSimons moved and Garr Reynolds seconded that this contract be accepted. There was no further discussion. The motion passed unanimously.

XIII RESOLUTION ASSIGNING QUASI JUDICIAL DUTIES TO THE LOCAL PLANNING AGENCY

Marsha Segal-George stated that this resolution represents what the Council has already discussed at a previous meeting.

Motion: Ted FitzSimons moved and Ray Murphy seconded that the resolution be accepted. There was no discussion. The motion passed unanimously.

XIV RESOLUTION REQUESTING THE COUNTY RELEASE CONTINENTAL CABLEVISION FROM ITS FRANCHISE FOR THE SERVICE AREA INCLUDED WITH THE TOWN

Motion: Ted moved and Garr Reynolds seconded that the resolution be accepted. The motion passed unanimously.

Discussion: It was pointed out that this does not mean that they will do it. It is just the next step.

XV REVIEW OF FILE AND DISCUSSION OF OPTIONS ON GULLWING HOTEL

Marsha Segal-George stated that the information in their packets was compiled from the County file based upon a request from the Council in a previous meeting. The staff needs to know what the Council wants them to do. Because the information was so confusing, the Council discussed whether they were understanding the data correctly. Apparently a 57-unit condominium was permitted in 1987, then a 100-unit hotel, then a 130-unit convention hotel with 150-seat restaurant. Now it is down to 100-room convention hotel with a 150-seat restaurant. Mr. FitzSimons pointed out that it has had four different zoning classifications (C1, C2, CT and RM2). The RM2 classification does not allow hotels, but RM2 used to be RU3 prior to 1978, and it did permit hotels. It did not appear to him that the permit was issued correctly. Mr. Roosa said that the Council can hold a hearing to see whether this permit should be renewed again, but Mayor Cereceda felt that was too confrontational and asked if it would be improper to talk to the owner about what his plans are before scheduling a hearing. The owner has an active valid permit that will expire on August 16, 1996, and that all the owner has to do is call for an inspection any time before then and show proof that they are making progress, and the permit will be extended. Mr. Roosa suggested inviting the county staff to come to a workshop to let us know what has to be done in order to preserve the permit (what sort of progress has to have been made), and also invite owner to attend the meeting. The staff will set up an informal meeting with county support and the owner.

XVI REQUEST TO ALLOW TRUST FOR PUBLIC LANDS TO PREPARE GRANT APPLICATIONS FOR LAND ACQUISITION (LONG PROPERTY)

Marsha Segal-George explained the number and types of grants that the staff is pursuing in a very short time. Don Morrow from the Trust for Public Lands said that they routinely prepare grant applications and that there are two grants that have a high probability of success for our town (The Florida Community Trust Grant and the Department of State Grant-In-Aid.) One has a deadline of early August and we would find out by December if the application was successful. The Trust will do both grant applications for \$7500. There is no guarantee that it will be successful, but if they are, they would cover the entire purchase price of the Long Property and we would not have to put up any matching money. She is also working on the Preservation 2000 Grant with the Department of Community Affairs (to be submitted by August 8), the Community Development Block Grant Funds which has a \$600,000 ceiling for the town, two state historical grants which are due in August, and the

Mainstreet application which is due the end of July. Marsha Segal-George does not feel that we can get all of these grants ready by August without help.

Motion: Ted FitzSimons moved and Garr Reynolds seconded that the money be made available for grant applications. There was no further discussion. The motion passed unanimously.

XVII COUNCIL MEMBERS' ITEMS AND REPORTS

A RUSTY ISLER

The Council has decided that the next workshop on boating will have public comment throughout the meeting. He thinks that the budget workshops should also be open to the public so they can be interactive. The Council agreed that it was a good idea and they would like to try it.

B ANITA CERECEDA

Mayor Cereceda wanted to clarify her position about the sheriff asking for a letter supporting his budget. Her question is that if we don't know what the core level of service is, how do we know how much more we are responsible for if we decide that is not enough? Mayor Cereceda feels that if we are going to pay a set amount for the services of the sheriff, then we should be able to expect a set amount of services. Marsha Segal-George said that the governor has upheld the sheriff's right to do the budget the way he does, and if the voters don't like the way he is spending the taxpayers' money, their recourse is to refuse to reelect him. She said that if we have a rash of crimes, the Sheriff will send more officers at no extra charge, but if the town just wants more visible police patrolling activity, they can hire off-duty officers to do that job. Ted FitzSimons pointed out that if the town wants to, it can create their own police department, but the residents will still have to pay for the sheriff's department anyway.

XVIII TOWN MANAGER'S ITEMS AND REPORTS

The Town Manager had no items to present.

XIX TOWN ATTORNEY'S ITEMS

Mr. Roosa provided the Council with statements of the facts regarding Diamondhead. The Florida League of Cities has already said that they do not file these briefs unless it goes to the Supreme Court. However if Mr. Roosa prepares an amicus brief, they will review it at no charge. He needs direction from the Council whether he should proceed. He thinks that the Court will see this as a dispute between neighbors and won't see it as a weakening of power for the municipalities unless we file the brief. He feels that if the Town does not intervene, it will get rubber-stamped pro curium affirmed and the judge will not even look at. He thinks we will get a written opinion if we file an amicus brief.

Motion: Ted FitzSimons moved and Garr Reynolds seconded the motion that the Council direct the Town Attorney to file an amicus brief. Mayor Cereceda, Ted FitzSimons, and Garr Reynolds voted for the motion. Mr. Isler and Mr. Murphy voted no. The motion passed.

Discussion: So far Mr. Roosa has spent \$1300 to put the facts together and it will probably cost about \$2600 more to complete the brief. Anita Cereceda said she does not really want to fight Diamondhead but she feels like she has the opportunity to fight for a principle for the town for future development and it needs to be looked into. Rusty Isler commented that the Council just approved \$7500 on the chance that we would be successful and the town would gain a real benefit. But this is a case that has lots of little errors and it could go either way. It will just make a point of law and the town will not really benefit from it. Ted FitzSimons felt that Diamondhead was an example of the treatment of this community by Lee County and that is why we incorporated. He feels that the Council owes it to the community to take this step for the present and the future of the town. Garr Reynolds thinks the county treated the beach terribly and we should do something to stand up for our rights.

Concerning the local option gas tax, Mr. Roosa said that he has found out that the appeal will be to the Cabinet and will be held in Tallahassee. The most glaring error on the allocation system is that the Commissioners are supposed to consider the county as a whole, which they did not do, and instead entered

into unequal agreements with certain parts of the county. The Commissioners took money from the unincorporated areas and gave it to Sanibel. Since the appeal will be in Tallahassee, he wanted to know how the Council feels about hiring an attorney from Tallahassee to handle the case. The town has 30 days to appeal. Marsha Segal-George said we need to preserve our appeal rights, but not move too far until we are sure that there is no other way that this can be resolved with the County first.

Motion: Ted FitzSimons moved and Garr Reynolds seconded that Mr. Roosa be instructed to initiate the contact with an attorney and move toward an appeal if the county does not make a change. The motion passed with Rusty Isler voting no.

Discussion: Rusty Isler said that we should pursue the negotiations with the County. He thinks it is too early to hire an attorney. He thinks we will only get slightly more from the unincorporated areas, and not as much as Sanibel under any circumstances. Mr. Roosa thinks it will cost about \$5-10,000. The problem is with time—if the Council waits to see if the county will negotiate, they won't have time to contact an attorney in Tallahassee and file within the 30 days.

In regards to the Port Tax, everyone he has talked to is of the opinion that it would be an unauthorized tax. He is continuing to work on it, but it does not look very likely.

The staff has been talking about hiring a Special Master to handle traffic violations and code enforcement for the town. The town must have the blessing of the Chief Judge, but he thinks there may be some opposition by the county judges. If he can get their approval, then we would go to the County Commission to pass an ordinance creating the office, but the town would have to fund it. He thinks it would be a great benefit to the town. The Special Master would be a contractor to the town. He also has talked with the City of Sanibel to see if they are interested in sharing the special master.

XX PUBLIC COMMENTS AND INQUIRIES

There were no public comments.

XXI ADJOURNMENT

The meeting was adjourned at 10:25 P.M.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL & LPA JOINT MEETING
JUNE 17, 1997
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

The meeting was opened on Tuesday, June 17, 1997, at 6:30 P.M. by LPA Chairman, John Mulholland. It was determined that a quorum of members were present.

Council Members Present at the meeting: Anita T. Cereceda, Mayor; Ted FitzSimons, Vice Mayor, Ray Murphy and Rusty Isler; Marsha Segal-George, Town Manager; John Gucciardo, Deputy Town Manager, and Attorney Richard Roosa.

Excused council absence from meeting: Garr Reynolds.

LPA Members Present at the meeting: Linda Beasley, Johanna Campbell, Ron Kidder, John Mulholland, Betty Simpson, Roxie Smith and Bill Van Duzer. Also present was Town Manager and LPA Attorney Marsha Segal-George.

Excused LPA absences from meeting: Lena Heyman and Dan Hughes

II PLEDGE OF ALLEGIANCE AND INVOCATION

All assembled recited the Pledge of Allegiance to the flag and the invocation was given by John Mulholland.

John Mulholland advised all assembled that at last night's council meeting, Attorney Roosa had talked about the LPA and Sunshine. Mr. Roosa was called on to speak.

III GOVERNMENT IN SUNSHINE

Attorney Roosa stated that the first thing he wanted to point out is that there is only one Sunshine law in the state of Florida and it applies uniformly to large cities and to small towns. We must comply with the Sunshine law. It is a critical issue in defending lawsuits against enforcement of the comprehensive plan. The law is clear that any action taken after a Sunshine violation is void.

Mr. Roosa referred to recent articles in the press regarding the term "subcommittee." LPA members were assigned particular subjects to ensure that these subjects were addressed. Members met with people in the community in order to get their input and then reported back to the LPA. These efforts do not violate government Sunshine. The State Attorney's office has determined that there was no violation when the LPA assigned people to do fact finding.

An example of being subject to government in Sunshine would be if the town council delegated authority to the town manager to employ an architect. That single administrator when she acts as the council has to comply with

government in Sunshine. But when the town council directs the town attorney to prepare an ordinance, he would not be subject to government in Sunshine. His responsibility is to bring back information to the council.

IV DISCUSSION BY BILL SPIKOWSKI AND THE PLANNING CONSULTANTS

Mr. Spikowski stated that this was a midpoint discussion on their progress to date. With him tonight is Carol Cunningham and the gentleman in charge of the transportation element of the comprehensive plan.

The way the law is structured, Mr. Spikowski advised, the LPA is responsible for preparing the comprehensive plan but not for adopting it. When the plan is prepared and comes to the council for adoption, the Spikowski Associates want to know that they've worked out as many problems as they can.

Part of doing the comprehensive plan is the process itself, the activity of creating it as opposed to the result. This activity includes workshops, meeting with the LPA every two weeks and occasional council meetings. There is also the outreach efforts conducted by individual LPA members and all of the consulting team. They are doing what the town needs to do and also what the state says we have to do. The last part of the public process is the consensus building.

Another part of the comprehensive plan is the document. In the backup material tonight are three chapters (elements) covering specific subjects. There will be eleven altogether -- nine that we're required to have and two optionals. Within each element there are two distinct parts. Bill Spikowski explained the document in further detail. The state will look through the document very carefully and make sure that each and every item has been done.

By law, we have to adopt certain parts of the plan: the goals, objectives and policies, certain maps, a level of service standards, and some smaller matters.

The future land use map is probably the most important map that will be in the document. We have not prepared one yet but have been doing research for one.

Some policies in the plan must be absolute, clear and mandatory. Other policies will have to be implemented by an ordinance. Most of the policies in the plan will be general statements of what the town officials want. These policies are very important but we need to be careful that we word them in such a way that they say exactly what we want them to say, no more and no less.

When a plan is adopted, you have to follow all the mandatory parts of it. Citizens will challenge you over their view that you've misinterpreted your plan. When a case is not clear, a judge will look at the policies. Be careful on the wording so that it will be quite clear to everybody.

In other cases, we will have broad discretion in carrying out our powers of interpreting the plan, such as in rezoning cases where there is really no requirement that every allowable thing in this plan has to be allowed everywhere immediately.

What happens once the plan is adopted? Under current rules, if

somebody challenges it, it doesn't become effective until that's been resolved. Once any challenges are taken care of, we have one year to bring our land development regulations in compliance with the new plan. This is a big job, especially if we choose to change the format of that plan. Mr. Spikowski mentioned problem areas that will arise during this interim period.

Mr. Spikowski now answered questions from council members.

Rusty Isler suggested emphasizing Little Estero Island on the map because in the future it would be a nice asset. Mr. Spikowski said, definitely, and that we will have one or two categories that deal with conservation areas where human use is limited more to observation rather than building, such as the mango swamps in Little Estero Island. We will need to talk about further accretion of that land. Whatever we map, we'll try and map what's there today, but it is definitely still enlarging, and so is Bowditch.

V MOTHER-IN-LAW APARTMENTS

On Fort Myers Beach this is a major issue that pits neighbor against neighbor, Mr. Spikowski stated and really highlights some of the discrepancies between the plan and the zoning laws themselves.

We have current enforcement activities against quite a few property owners on Fort Myers Beach concerning the issue of illegal apartments. We discussed with county officials sometime back that we were looking at this situation. We ended up with having the LPA make this one of the priority land use issues that they would address through the plan, and we provided interim advice to the county as to which way we were going. In those cases where our direction was going to make things more lenient, the county would do their initial investigation and dismiss any complaints that were unfounded but not proceed to enforce them on the rest. We now need to give the county enforcement people advice again on what to do about the mother-in-law apartments: continue on a holding pattern or go forward with prosecution or something inbetween. Needed tonight from the council is if the direction the LPA and the consulting team has come up with is acceptable. We could go ahead and implement this now without waiting for full plan adoption, at least in several parts of it.

Mr. Spikowski said that in the memorandum he provided to us is a summary of the three different ways we might go about looking at the older neighborhoods where there are higher densities, and where even though they might not be consistent with today's plan, the apartments might be more acceptable. There are five exceptions under which these apartments would be legal. The first three exceptions are already in county law and we would keep all three of them.

The council asked questions of Mr. Spikowski regarding apartments that might be illegal.

The recommendation of the LPA to the council, Mr. Spikowski stated, is that apartments that meet the rules or could be adjusted to meet the rules would be legalized.

Emphasized by Mr. Spikowski is that apartments have to brought up to code.

Rusty Isler asked how expensive it would be to monitor apartments and Mr. Spikowski said that to do so would be much more expensive than what we're spending now. Not because the rules make it that way, but because the current level of enforcement compared to the problem is almost a joke. Ultimately, however, it leads to a resolution where currently illegal units now have a way to get legal in certain cases. And there is a very clear statement from the local government that in other cases there is no path. Every situation is unique.

Anita Cereceda asked if there were something that could make it definitively clear that an apartment is legal. Mr. Spikowski replied that if you have approval on an owner-occupied apartment and are on a list from the town, that will be in the public records and be very clear. Hardest to determine if legal is the multi-family unit that doesn't show up from the zoning. And the current method of calculating density is very complicated.

Ron Kidder asked about houses built between 1962 and 1964. If the owner lives there, does he have the right to one apartment? If a house was built before 1984 and is zoned multi-family, Bill Spikowski advised, the owner might have three or four perfectly legal apartments. There are five different categories to choose from.

Attorney Roosa said he didn't understand the reasoning behind changing the ordinance. Bill Spikowski advised that if an owner complied with one of the categories for multi-family use, he would be able to continue this use. The exception to that would be if the owner converts his multi-family dwelling to a single house. He would then lose his right for multi-family status after six months. If a house is rented every winter, however, that is considered continuous use.

In the case of a natural disaster, there is a policy in the plan that's very clear. It is called the build-back policy. When you rebuild, you have to meet all the new rules.

2> More items in the ordinance were discussed.

Marsha Segal-George was asked if she planned on budgeting more money for code enforcement. She advised that currently we don't have a full-time code enforcement person in our contract. Right now code enforcement is doing repetitive things for us and we are working toward making this unnecessary.

It was decided that the council and the Spikowski Associates would communicate with the enforcement people that we're considering the adoption of Item E with a cap of 400 square feet and add the language "while the owner's living in the house." We will suggest that those houses not proceed through enforcement until we finalize this regulation and make sure we go ahead with it.

Mayor Cereceda thanked Mr. Spikowski and the LPA for putting the ordinance together.

VI SPECIFIC ELEMENTS IN THE PLAN

A. COMMUNITY DESIGN

Mr. Spikowski advised that this incorporates all the work done by Wallace, Roberts & Todd in the core area master plan. It also incorporates all

the outputs of the two big community workshops we had. It will be drafted up with Carol Cunningham's work into a coherent whole. The images and drawings are by Dover, Kohl & Partners. What was found is that there is a lot more consensus about what people want this town to be like than even our fondest hopes. The question now is to what degree will this vision come about merely through inspiration, how much will take place through regulation and how much will take place through the town taking action, such as pouring concrete or making public improvements.

In the Goals, Objectives and Policies is a balanced view. It's probably a little short on the regulations, maybe a little strong on the inspiration.

Discussion:

Johanna Campbell brought up the subject of regulating the removal of valuable trees. Bill Spikowski said that Objective 3 was not the place to deal with this, but rather deals with getting more trees in the ground. The town may want to go with the kind of regulations that the county commission just adopted for Captiva Island where tree permits are required for cutting down native trees even when there's no development. Mrs. Campbell and Mr. Mulholland said that they would both like to go in that direction. Mr. Spikowski said he would put in a section dealing with this matter.

Rusty Isler questioned the advisability of giving names to the different zones and Bill Spikowski advised that the names at this point were just working titles for our own use.

Changing the name of Times Square was discussed -- most were against it.

Johanna Campbell wished to know if we could have a tram on the whole island. Would this be workable? Mr. Spikowski stated that the advisability of one was still being discussed.

Also asked by Mrs. Campbell was the legality of having water tanks buried underground. Bill said this is a different method for storing water. If your land is very valuable, you save a lot of space by having water stored underground instead of having an open lake. This is legal today but is very expensive and hard to clean.

Explained was why a porous pavement is beneficial in some cases. Water can seep into the ground instead of running off into the bay or onto someone else's property.

Betty Simpson touched on the boardwalk construction issue. Because lighting could be a factor in keeping turtles from the beach, this is still under consideration. The fact that bridges are so often destroyed in torrential rains was also mentioned.

Regarding costs, Mr. Spikowski advised that one of the mandatory elements in the plan is the capital improvements element. It addresses what we will spend our money on for the next five years. Anything we have not put aside money for will not be high on our priority list.

Mr. Spikowski noted that they tried to include a lot of graphics and drawings. There is one sketch that's from the WRT plan that shows the look for old San Carlos. To Mr. Spikowski, that one sketch gives a feel for what we are

looking for more than a dozen pages of the report. The finished document can have all the sketches in color.

Also included in the document is a part of the vision language that was passed out at the first or the second workshops.

The objectives and policies in each element are numbered separately now but ultimately they will be numbered 1-100 and fit nicely together.

There are nine required elements, but two are required to be combined. Combined will be conservation and coastal management. Also this year you have to combine traffic, ports and mass traffic. Proposed but optional is an historic preservation element. Storm water has been separated from utilities, although they could be together.

Mayor Cereceda said that the document makes your vision visual, as Victor Dover had suggested. Anybody could pick this up and look at it and have some idea of the direction the town is moving in. She thinks the format is excellent. You want to look at it. It's friendly and real.

This element will be just as binding as the future land use element; they just tried to make it the inspirational part of the plan. It could be totally combined with the land use element, but it wouldn't have the prominence in the plan that we want it to have.

The inspirational portion of the design element is set off in italics, Mr. Spikowski advised.

A short break was taken.

B. STORM WATER MANAGEMENT

Mr. Spikowski identified the engineering consultant company that worked with them on storm water management as Camp, Dresser & McKee. They don't often deal with a community that's almost totally built out. The state would like this element to be called drainage because there's a lot more to it than merely avoiding flooding. It's really an environmental element as much as anything else.

Laid out in the goals, objectives and policies is a three-year plan of action. With citizen volunteers we can map out exactly what drainage structures there are and also what used to exist but have gotten filled in. It must be determined to what degree drainage structures can be made to function better merely by regular maintenance. The third step would be to come up with a longer term plan for retrofitting the system we have and hopefully improving it in the future.

In the third year we would need to identify a source of funds to carry on this kind of program. Beyond that, most cities and towns have created a storm water utility that basically sets aside a certain amount of money just for maintaining the storm water system. There is usually a \$3.00 per month charge on the utility bill. Marsha Segal-George feels that a charge like this would be acceptable to the town as long as its purpose is clearly identified.

Asked if the Times Square project was the first time that filtration has been used in this community, Bill Spikowski responded that there had been other

applications. How have they survived the high water tables in the rainy season? Camp, Dresser & McKee were asked to look at the plans for the Times Square improvements and give their second opinion as to how well they worked. They say that their biggest concern is how close the seasonal high water table is to the bottom of these trenches. As you go to two feet or less, you reduce the effectiveness of it, because instead of going through the sand and getting cleaned, it goes directly to the ground water. This is not an ideal location for any of these techniques. If maintained, however, a lot of them have merits.

For discharges, in the order of priority putting in swales is best, the sewer system is the next best, and the beach is the worst.

Asked was if we have a line item on our tax bills now for storm water runoff. The response was no. Right now the county uses general fund money and the unincorporated MSTU money.

3> C. UTILITIES

Since we don't run our utilities like most cities do, we don't have a lot of control over it. We are required under state law to set a level of service standards. These are the standards that are in the policies. We are responsible for not issuing any building permits or development orders unless we are sure that those standards will be maintained for the new development.

Also discussed in the plan are some of the alternatives that we could get into on utilities should we choose to. Many communities end up buying the utility and running it themselves, but Bill Spikowski can't see any advantages for us to do so. More in our interest might be the ability to contract separately for solid waste hauling. Recommended for us is a very modest role on utilities.

The advisability of having a backup water system was discussed. The Regional Water Supply Authority is sponsored by Lee County and Fort Myers. There is a move afoot now to rejuvenate the organization and Cape Coral may or may not rejoin it. It exists as sort of an entity between the individual water suppliers and the Water Management District that has actually funded much of this authority. Mr. Spikowski advised that he thinks it is very worthwhile.

Asked how he would rank the utility companies on the island, Mr. Spikowski said he knew the most about the water system. Florida Cities is basically in the best situation as to well fill capacity and treatment capacity of anybody. They have staked out and have acquired easements for expanding their well field in just about the best place there is. As for the Regional Water Authority, if they ultimately cooperate, they probably in the early years will be selling water to the other utilities because they have done good planning.

Mr. Spikowski was thanked by John Mulholland for his fine presentation.

VII PROPOSED ORDINANCE FOR PROVIDING AN AMENDMENT TO SECTION 34-2174 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE

This amendment would prohibit the use of setbacks while increasing

height.

Rusty Isler explained that the height ordinance that is on the books at 35 feet has an exception that says if you increase your setbacks, you can go higher. He finds this too liberal and feels that it encourages people to put gulf front property closer to the gulf. Mr. Isler wants the exception to be eliminated.

Marsha Segal-George explained that Mr. Isler is suggesting just doing an interim regulation that would deal with taking away the use of setbacks in order to raise heights. If we wish to go in that direction, the LPA has to have the first hearing on it. If the LPA is willing to interrupt their vacation schedule and meet the first Tuesday in July, there would be sufficient time to advertise and hold a hearing. The proposal could then be transmitted to the council. It was determined that a quorum would be available next Tuesday, July 1.

VIII PUBLIC COMMENTS AND INQUIRIES ON THE AGENDA

None.

Mayor Cereceda advised that looking at the work that has been done says a lot for the maturity and the maturing process that the town has undergone in just one year and a half. She expressed her pride in everyone and her appreciation for the work done.

Ted FitzSimons complimented the LPA on their efforts and called it fantastic and much more prompt in delivery than he had ever anticipated.

A lot of credit, it was noted, also goes to Attorney Marsha Segal-George, Bill Spikowski and Carol Cunningham.

IX ADJOURNMENT

John Mulholland adjourned the meeting at 9:50 P.M.

Respectfully submitted,
Lorraine Calhoun
Recording Secretary

**JOINT MEETING
FORT MYERS BEACH TOWN COUNCIL
And LOCAL PLANNING AGENCY
OCTOBER 21, 1997
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

John Mulholland, Chair of the Local Planning Agency opened the meeting on Tuesday, October 21, 1997 at 6:45 P.M.

Present at the meeting from the Town Council were: Mayor Anita T. Cereceda; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds.

Present at the meeting from the LPA: Mr. Mulholland, Roxie Smith, Betty Simpson, Dan Hughes, Linda Beasley, Bill Van Duzer, Ron Kidder, Lena Heyman, and Johanna Campbell.

Also present: Town Manager and Attorney for the LPA Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

Excused from the meeting: Vice-Mayor Ted FitzSimons

II INVOCATION AND PLEDGE OF ALLEGIANCE

The Council was led in prayer by Mr. Mulholland. All assembled recited the Pledge of Allegiance to the flag.

III PUBLIC COMMENT ON THE AGENDA

A EVE HAVERFIELD

Ms. Haverfield stated that she has been involved in sea turtle monitoring on Fort Myers Beach for nine years. She is on the beach almost every day for about 6 months of the year and has extensive experience with beach renourishment and compaction. She wanted to address Policy 5-B, section 3, which deals with vehicles on the beach. She said people flock to beaches that are not groomed, where detritus is left, and which do not have heavy vehicles on them. Seaweed is clean, but beer cans, straws, etc. are dirty. On FMB, farm tractors are used to clean the beach and she knows of 14 that are active and weigh at least 5000 lbs. These tractors cause compaction of sand. Even moving jet skis compacts the beach. An acceptable compaction reading is 400 pounds per square inch. The reading at Little Estero Island is less than 200 near the surface then goes to 400 down lower. This is very good for sea turtle nests. Just north of there where there is continuous traffic, she could not get past the first inch where the reading was greater than 800. Tractors are one reason, but the fact that the frontal dune is flattened is another reason because the beach is no longer protected from a tidal surge. Also pool and water drain-off onto the beach causes compaction. Another problem is removing the rack line (stuff that washes ashore). It doesn't get worked back into the sand and that causes compaction. In that area she saw 27 attempts to nest and only 2 were able to nest, and of those, all the turtles died in one nest because the sand could not drain and they drowned. The beach is also left with a green slime when the sand is compacted. In areas where they rake less than two times a month, the compaction is OK and turtles can nest. She doesn't want to cause a problem for business, so she suggests going to all-terrain vehicles instead of tractors because they weigh less, and only clean the beach once a month. She has not found a single article that says that having vehicles on the beach is good.

There being no further comment, public comment was closed.

Mr. Mulholland said that the LPA is on schedule. There will be public hearings on the elements of the comp plan, and changes can be made at any time, but now is the best time. Ms. Campbell asked the Council what their vision is. She thought they were already on the same page, but after last night's meeting, she wonders if it has changed. Mr. Murphy said he doesn't think they are going down two different tracks. A particular case came along and the public got involved and that is their right. He felt there is nothing wrong with listening to what a large number of people are saying. But he feels we still have the same vision. Mr. Hughes concurred that they are not going down two separate paths. He did not think it was an issue before them this evening, and that they need to stick to the three elements before them tonight. Mr. Isler said he feels that the elements mirror how he feels about the whole plan. He felt the

zoning case that involved putting a building on the corner is a very small part and does not affect the whole concept. It doesn't mean he doesn't accept the whole plan and they will never all agree on everything. Basically he thinks the plan is sound but you have to be practical after some things are costed out. Mr. Reynolds said he was at the vision meetings and he did not come away with the vision that has become such a big thing with the LPA. He thinks Mr. Dover came up with those visions. Besides they were not told to be realistic. He thought they would be asked to come back later and see what was realistic. But instead, these paper came back as a vision plan. He felt like Eckerds was a good decision because of safety. He also felt like Eckerds did a lot to cooperate with the council and the neighbors. All towns are not going in the direction of bringing buildings out to the street. In fact, some towns are doing just the opposite. He is not strongly against it, but he does not think it is a vision that has been approved by most people. He does not mind if Santini wants to go that way if it is their decision. Mayor Cereceda said it is not a matter of being for or against something but of having the courage to look to a vision and implement it every single time you have the opportunity. We have already discussed the design element and she doesn't remember there being any objection or questions about the vision at the time. Then the first time they had an opportunity to go with it, they backed off. Even if we got 200 letters in favor of Eckerds, there were over 7000 we didn't hear from and we can assume they were in favor of the design. You may not be able to get all the way to your vision, but you try to dream as big as possible. These elements are very expensive to write and have taken two years. She suggested that the elements be accepted as we go along so that it can't be used against us that it is a "draft."

IV DISCUSSION OF RECREATION ELEMENT

Mr. Spikowski said this element has been one of the less controversial, but when it comes time to work on the capital improvements element, that won't be the case. Park financing is normally done through impact fees or tourist taxes or grants. But our impact fees are going to the pool, so that source is not available. User fees help, but usually only cover about 10% of operating costs. Lee County uses ad valorem taxes to operate their parks. The level of service is required by state law, and our current level is all that is required. Anything else is what we want for quality of life. Beach access on the south end is very important. Past the Holiday Inn there are none, and Little Estero Island is not available through public property. The tennis club at Bay Beach is already approved for development, and if the Town decides they want it to be public, they will be paying for development costs and rights. We are probably better off putting tennis courts somewhere else. Mr. Hughes noted that the element addresses recreation that is both public and private, and he thinks it would be helpful to add that in the introductory remarks and also in the goal. He suggested an objective in the private element that would ensure through the zoning process that adequate recreational areas are provided and maintained on new developments. Mr. Van Duzer suggested that another policy could be added under Policy 9 to that effect.

Mayor Cereceda said she thought it was good to have private recreational areas because it would help take the burden off the public. Mrs. Segal-George said that since we are almost totally built out, it would only involve redevelopment, and we can insist that they be open to the public. Mr. Isler said he thought the element was very good and thorough, but he thought beach easements should be a separate black title and should have the same status as the other sites because it is very important on the beach how we deal with them and manage them. He also thought that boating facilities and activities should have a paragraph because it is a very big reason why people are here. He said he does not want the whole bay to be idle speed, but every time a pier or a dock is approved, they are going to push for idle speed. If the whole back bay is idle speed, it will endanger the grass flats and mangroves. If it is too restrictive, it will make it impossible to boat. Mr. Mulholland said the MRTF has been talking about speed and there is a lot of disagreement. But he is not sure speed zones should be in the recreation element. Mr. Murphy feels like they have already addressed speed in the ordinances. Mr. Roosa said the speeds are posted by administrative order, which would mean the town manager would have the right to post speeds. In Cape Coral some people are so far away at slow speed that it takes a half tank of gas to get to open water. If it takes too long, the value of property in the middle of the island will go down. People will want to be at the ends of the island. Mr. Van Duzer said the coastal management element addresses boating in more detail. Mr. Hughes said that the entire back bay should be listed as a recreational area, not just the aquatic preserve. Mr. Reynolds asked why in the list of recreational facilities some business are listed and not others. For instance, why is Times Square mentioned but not Santini. Mr. Spikowski said Santini is discussed in other elements, and he thinks Times Square has a more recreational aspect because of the pier, etc. Mr. Kidder said Times Square is a walking area that the Town owns and Santini is private. They are

different. Ms. Simpson mentioned the birthday party, the musical events, New Years Eve event, etc. which makes Times Square more recreational. Mayor Cereceda said the plaza itself is different than the businesses that are adjacent to it. People come there just to hang out. Ms. Smith said because Times Square is next to the park and the pier it will always have a different ambiance than something like Santini.

Ms. Campbell wanted to make sure the Council will be comfortable with the section about exotic vegetation (Policy 2-A). Mr. Reynolds said he thinks the Australian pines provide a nice shade and give protection. They grow tall but they haven't fallen over in a storm yet. Mr. Isler suggested saying "manage and control the spread" instead of "take out". Mr. Murphy said the pines provide a benefit for people who like to sit in the shade. He thinks it is fine to keep a few that provide a service--we just need to manage them. Mayor Cereceda said she cannot support taking them all down. She does not see them as exotic but as a way of life. She would like to see them stay. Also Ms. Campbell wanted to make sure they would support the hidden paths (8-A). Mr. Reynolds said it was good for walking and biking for recreational purposes but he does not think it can be considered as a good way to get up and down the island because it winds around too much. He knows some people will not like it when it goes next to their house. Mr. Isler said he thinks the proposal is too specific for a vision plan. He likes the idea of a path, but to not have a dollar figure attached to it is wrong. It could cost 10 or 20 million dollars if you have to buy a house on every street. Mayor Cereceda said if we had a big storm, it would not be that expensive to put in the path. It is not required, just suggested. She said Orlando has a program called the Mayor's Neighborhood Grants. A fund is set up by the council, and people can apply to the fund for neighborhood projects for matching funds. It has created neighborhoods. Mr. Spikowski said if people don't want it in their neighborhood, the council won't go in and make them. Fort Myers does this with street lighting and it is very popular and people wait in line for the funds. It is intended so that if someone wants to give an easement by their house, their house won't become non-conforming. Mr. Kidder said he thinks it can be done with very little property having to be acquired. There are some closed street and beach accesses that can be used. Mayor Cereceda said that on Policy 9-C, she would like that to be more broad or regional. It should include at least all of southwest Florida.

V DISCUSSION OF COASTAL MANAGEMENT AND CONSERVATION ELEMENTS

Mr. Spikowski said it is easier to discuss these two elements together because they intertwine. The direction is a transition to a natural beach, which is less strident and immediate than they originally started to do. It would eliminate some of the management practices that are harmful to the beach without disrupting life as we know it. You do the specifics by ordinance so the language must be general. Some of the major issues are: the Town's role in declaring hurricane evacuation; the change in development regulations to allow owners to strengthen their buildings (some federal agencies think old buildings should just wither away and disappear, but some old building have great value to the community); the town would maintain enough funds to help with post-disaster rebuilding; move major power lines along Estero underground whenever possible (important so that evacuation routes are not cut off in a storm); renourish the beach on a major part of island; support re-creation of sand dunes where they have been removed (provides a lot of protection in a storm); update the beach lighting ordinance for sea turtles; reduce use of vehicles on the beach to the bare minimum; acquire more open spaces; remove encroachments on water access points on the back bay and open them up for public use; and initiate a Matanzas Harbor planning process that will involve the county and San Carlos Island and the Coast Guard to resolve conflicting uses of the harbor.

Eileen Barnett, an environmental specialist with the DEP, a member of the MRTF, and a resident for 8 years, spoke about the beach environment. She said the beach zone is a unique and dynamic environment that is made up of unconsolidated material (sand, gravel, and shell) which moves a lot. It is affected by wind, waves, tides, accretion, and erosion. In southwest Florida, the general tendency is movement to the south, but there is a point in the middle of our island near the seawall area where the sand moves in both directions and causes erosion. **A healthy beach protects from storms and provides recreation, and the economy is tied to a healthy and wide beach.** It provides habitat for wildlife, including many species of turtles and shorebirds which are protected, threatened or endangered. Erosion is a big problem and most of the Florida coast is eroding. One reason is because of a rise in sea level, but most erosion is caused by development. Construction of seawalls also increases erosion. When dune vegetation is destroyed we lose an important source of sand. Beach raking also causes erosion if it is done in the wrong way. There are less impacting ways to rake the beach. Large vehicles and box blades destabilize the beach. Accretion is where the beach is growing, and south of the seawall it is growing at a rapid rate.

Sand is coming off the seawall area, deposited in the sand bars, then carried down the island. A healthy dune area can slow erosion. First we need to renourish the beach then build the dune with vegetation to go along with it. Renourishment alone will have to be redone often, but dune vegetation can preserve the beach well into the future. Dunes make the wind slow down and drop the sand. It reduces the amount of wind blown inward on the island where it gets swept away and lost. Coastal development has displaced the dune system and seawalls are sure way to lose sand. Instead of a soft area for the sand to drop out, it hits the wall with full force and scours the sand and drags it back out. Riprap (limestone boulders) can be placed on a slope, instead of solid wall, which breaks up the energy of the wave and reduces the scour from the sea wall. But it doesn't do everything that a dune system creates. If you have a healthy dune system and vegetation, it feeds and replenishes the foredune system. People perceive that a beach should be pure white sand, but a healthy beach has some natural material on it. It is a food source for birds and near-shore fish and shellfish. Improper raking causes compaction of sand, and we provide a safe haven for a threatened species. Raking should be restricted to after heavy storms only, or once a week, or only as need arises, but you have to define what that is. We need to use smaller, lighter equipment. Mr. Reynolds said he thinks the raking should be minimal. He would rather put up with the smell for a while. Ms Barnett said a lot is perception of the tourists who put a lot of pressure on us to rake. Mayor Cereceda said that National Geographic had a good article on barrier islands. She asked if any communities have taken down seawalls. Ms. Heyman said there used to be a lot of sea walls on the south end and most are gone now. Mr. Kidder said Little Estero is never raked and eventually the gulf pulls the debris back. Maybe we need more education. Mr. Mulholland said Sanibel does not permit removal of material from the beach and the beaches recover by themselves. (It was clarified that you can remove debris on your private property but no vehicles are allowed. They will remove dead fish over a certain size.) Mrs. Segal-George said Ms. Haverfield is working on an ordinance that will be better for turtles and that will address some of the issues such as raking, beach chairs, etc. Raking will be addressed eventually in the land development code. Mr. Isler said you should only clean the beach when you have dead fish and red tide. He thinks that only ATVs with low pressure tires should be used even to move jet skis, beach chairs, etc. Mr. Van Duzer said he paid a lot to go to Costa Rica for a few weeks but he was only on the coast for a few days. They had a storm and there was a tremendous mess on the beach and it was a real disappointment for his grandchildren. So there is another side to it. We need to come to a realistic transition period. Mr. Murphy said his condo is creating a dune and planting sea oats. Ms. Simpson said she agrees on the importance of dunes, but she is in the tourism business and if people are only here a few days and the beach is a mess and they are disappointed when they have spent their money to come down here for a short trip. Mr. Murphy said there has to be a balance. Mr. Reynolds said a clean beach over time may mean no beach. Almost anything that washes in will clear out within a few days. If it is massive, it may take a few weeks.

The council took a break at 8:48 and reconvened at 9:00.

Mr. Spikowski asked if the town wants to get involved in evacuation or if it should it be taken out of the plan. It will take money and training, but it could be important that we evacuate before the county calls for one, which would also make it easier to get off the island. Mr. Roosa said there is no liability on the municipality as long as you do it for the public good. The Town will have that implied responsibility anyway. Our circumstances are different than the county, and getting a head start is important, but false alarms are very dangerous because the next time people will refuse to leave. Sanibel can do mandatory evacuations. But mandatory does not mean someone will come and arrest you if you don't leave. The city manager makes the call. Mr. Van Duzer says the element only says we should be prepared. It doesn't say they have to do it. Mrs. Segal-George said she is comfortable with the language. Ms. Heyman said her homeowners policy will not pay for a hotel room unless it is a mandatory evacuation, so it could help the residents. Mr. Spikowski cautioned that if you evacuate before the shelters are open, you haven't done people a service. Mr. Isler said the town should only recommend, not order, evacuation. We can't add any expertise to what the county can do with their big staff. Mr. Reynolds likes the idea of a mandatory order. Mr. Spikowski said it is estimated that it will take 5-6 hours to evacuate the island, but the big problem will be after you get to the mainland. Mr. Murphy said he feels we have the responsibility, but he thinks advisement and strong recommendation is necessary from the town. Mr. Hughes asked how you could have mandatory evacuation without the law enforcement to back it up. He is afraid there would be liability if you ordered mandatory evacuation and did not enforce it. Mr. Roosa said recommending evacuation and mandatory evacuation means a lot of difference to the compliance of people, even though you won't

actually remove them. There is sovereign immunity in the state of Florida that will protect the Town. Mr. Isler said he thinks the most effective thing you can do regarding hurricanes is to make plans on what to do after the hurricane. Mr. Spikowski said objective 3 addresses that and we have already adopted the county's plan and it just needs to be customized for the town.

Regarding Matanzas Pass, the language is now stronger that the town will initiate cooperation if someone else does not. He wanted to make sure we are not promising more than we will deliver. Mrs. Segal-George said she is comfortable with the wording. Mayor Cereceda said she feels we have already taken steps in this area because of Waterfronts Florida, the MRTF, and the Regional Harbor Board, etc. It was clarified that this new entity would be beyond just the Town's interests, and it would not necessarily be sponsored by the Town.

Mr. Isler asked about the vision on beach renourishment. Mr Spikowski said that we are lucky because the island is the number one priority on the county plan. This plan says there may be two groins at the ends of beach, but nowhere else. We are looking to the national and state government for funding, then to the TDC, and if all else fails it may have to be paid for through assessments.

Mr. Hughes said on the conservation element, the goal refers to protection. Can we have some language in the goal about improving, rehabilitating, restoring, etc?

Mr. Isler asked about mosquito spraying and lawn maintenance. He thinks mosquito spraying has killed some of the fish stock because it kills off some of the insects they feed on. He thinks they are spraying when there are not that many mosquitoes around. Manicured lawns have an impact on marine life too. Should the Town have a role in it? Mr. Spikowski said maybe we should and he can prepare something for the council to consider. He wondered if it should be more informational or regulatory. We may not have any authority over the mosquito district, which is independent. He said there are new products that almost exclusively kill mosquitoes, but they are about 5 times more expensive. Maybe with the limited area and wetlands we have, it could be done here.

VI PUBLIC COMMENTS

A BILL PERRY

Mr. Perry, who operates Aqua Sports at the Holiday Inn, talked about cleaning the beach. This past turtle season they tried not to rake with 100 feet of the water. They did not scrape the rack line. He feels you should only use tractors for jobs that are large enough to warrant it. A dune system would make his cleaning area much smaller. They would only need to rake in the case of fish kill or serious seaweed. He would like a chance to meet with Ms. Haverfield and the town to put together strict regulations during turtle season and non-turtle season.

B JEFF YOUNG

Mr. Young manages one of the condo units on the south end. He is under constant pressure to keep the beach clean. There are a number of different conditions on the beach, from no beach up to 1000 feet of beach. The tide will not take away the accumulated debris that is more than 50 feet from the water's edge. Unless it is raked it will never get clean. You have to think of the different areas when doing an ordinance.

C GAIL CLEBECKER

Ms. Clebecker is a condo owner. She said when you take your grandchildren to bathe on the beach you want it to be clean. The tide does not take out the debris or the dog excrement. If you don't keep it nice, it is awful for the tourists. As for mosquitoes, she doesn't think anyone wants to get encephalitis.

VII ADJOURNMENT

Mr. Mulholland thanked Mr. Spikowski for his work on the elements. The meeting was adjourned at 9:46 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL WORKSHOP ON PUBLIC SAFETY
FEBRUARY 12, 1998**

NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Thursday, February 12, 1998 at 6:30 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Ray Murphy, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; Assistant Town Manager Terry Dillon; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

Mayor Cereceda stated that the purpose of the meeting was to talk about things that concern our community. Donna Hansen is here to facilitate discussion. We are not talking about creating a police department or taking over the fire department

III PUBLIC COMMENTS

A CEIL SPUHLER

Ms. Spuhler thanked the town for tackling the problem of safety. Her concern is for the safety of swimmers. She often has to wave her arms to alert boaters to go 500' off shore. They don't seem to know that they must be on the other side of the buoy markers. It seems impossible to apprehend the offenders. She thinks we need to publish the heavy fines on boaters who are ticketed, so it will be well known that Fort Myers Beach is enforcing its boating laws. She also suggests having the buoys replaced with high markers. Since the sandbars are increasing, the swimmers are going farther out. We have been advertised as the world's safest beach. Perhaps we need a new slogan: SOS – save our swimmers.

B FRED DEVINS

Mr. Devins owns a security company and investigation business. He thinks we are moving in the right direction, and if we decide to add security to work alongside law enforcement, he would look forward to working with us. His company is made up of local residents, and they are trained by the state and have weekly training sessions.

IV DISCUSSION ON PUBLIC SAFETY

Mrs. Segal-George said this workshop was initiated by Councilman Murphy to identify some issues and complaints, and to see how we could address them. She said we are looking at the possibility of adding public safety as another element in our comprehensive plan. It is not required by the state of Florida, but she thought it might be a good addition, and would give a framework for gathering information to see what everyone's issues were.

Donna Hansen was introduced. Ms. Hansen, former police chief of Fort Myers, has been in law enforcement for almost 25 years, mostly in Miami. She has recently returned from peacekeeping in Bosnia. She said this workshop is a beginning to formulate our safety vision, and to identify concerns and potential solutions.

Ms. Hansen said that people are still arguing about whether community policing really works. She said it involves officers who are invested in the community and are involved. It is a problem solving partnership between police and community. Public safety is everyone's responsibility, and policing is only a part of it. She invited the council to help identify some areas of concern:

Vehicle Traffic: so many pedestrians crossing the street; so many crosswalks; congestion causing a problem for fire and rescue and frustration for drivers; widening of San Carlos causes problems getting on the island when two lanes merge into one; too many cars for this size island; speed at the south end (the road widens, there are no sidewalks and speed limit goes up, but the density in that area is higher); mopeds (lots of rentals, lots of kids on them, people who haven't ever been on one, people don't know if they should act like a car in a lane or a bicycle in the right of way); people using the middle lane as a speed passing lane (on Estero and San Carlos); delivery trucks, especially in Times Square.

Pedestrian Traffic: crosswalks (dangerous, cars do not know they must stop, cars pass cars who are stopped for pedestrians); jaywalking,

Loitering: not usually a problem except on weekends from the Lani Kai to the stoplight. The new, wider sidewalk has helped, and Times Square being closed to traffic has helped. There is more of a problem during local spring break, but the presence of deputies helps.

Signage: Signs and street numbers are not clear and make the visiting driver's job more difficult.

Parking: People ride around looking for parking; illegal parking; parking on public right of way on side roads across Estero if the accesses are full; some problem with parking in people's private driveways and yards

Towing: people do not understand that they can't park in a private lot even if it is empty or at night, but the new ordinance has helped.

Crime (general or adult): alcohol (the density of bars and restaurants serving alcohol is higher on Estero than anywhere else in the county); burglary (many times because of absentee owners), car theft; vehicle burglaries (mostly night time and early morning hours in condo parking lots); assaults; arson; mysterious deaths (probably due to the transient nature of the population); vagrants (often sleep in vacant buildings); family violence (probably the resident population not the tourists.) The hot criminal spots are particularly the core area and the grocery store area.

Crime (juvenile): probably more from our locals than visitors; vandalism and graffiti (core area mostly); shoplifting (not just juveniles)

Code enforcement: this is better now because we pay for a code enforcement officer. It is now only complaint driven, but maybe someday will be expanded to patrol also. There is a lot of illegal building on weekends.

Conduct on the beach: cleaning up after dogs; trash; drinking; bonfires; fireworks; loud music; intoxication

Disorder: loud music; barking dogs (not a major problem); landlord/renter disputes (a lot of managed property on the beach and absentee landlords); neighbor disputes (small lots make close neighbors, and mix of commercial and residence causes a problem); litter and trash (trash is put out after a weekend stay but not picked up off curb until Wednesday); dumping in back bay waters; motorcycle noise; airport noise

Alcohol: underage drinking (although we are getting good enforcement and cooperation); open container (not enforced but not sure it is a serious problem. It is hard for people to tell where it is OK to drink and where it is not since we have tiki bars and walk up bars and tables in Times Square); DUI

Drugs: big problem (delivery and pickup easy on an island); legal drug paraphernalia (attractive nuisance, but have had some success with approaching landlords)

The council took a break at 8:10 PM and reconvened at 8:27 PM.

Safety (juvenile): bicycles (more an adult visitor problem than a youth problem), rollerblades and skateboards (using the pier as a ramp in an area where there are lots of pedestrians, and using the wavy wall); mopeds

Recreation center: How can it be used to keep kids safe? Could we build a skateboard park? The rec center already does a tremendous service to many families.

School safety: DARE is in 5th grade, but we can also do bicycle safety, conflict resolution, classes on handling bullying, racial problems or stranger attacks; seatbelts; crosswalk awareness, etc.

Family safety: shelters; place for kids to call for help; Safe Place; etc. The Beach school is small and the parents seem to know one another and watch out for each other's kids; the PTA is very active.

Medical service: EMS on the Beach is second to none and is very well thought of in the community; good medical walk-in clinic; fire department is trying to get a grant for emergency phone boxes at the beach; response time is good but they have a problem with the traffic; fear of consolidation by the county

Fire: no problems - independent fire district

Water safety: we are now hiring off-duty deputies in boats but enforcement is still a problem; problem of swimmers and boats in the same area; liveaboards (some are really derelict boats and have no motor); our community has formed a Marine Resources Task Force, which is working on an education program; the town brought business people together to help write an ordinance on personal watercraft which has been successful; jet skis by private owners is the biggest problem (they can be launched

anywhere and mostly don't come from our island; the town manager is looking into temporarily licensing them so they will know the rules); alcohol and boats; ecology; commercial boats

Prosecution: we have no idea what is going on in this area. We do not get any fines returned to the town.

Court: We tried to get a traffic court on the island (still may be a long-range goal because it cuts down on traffic and the officers can get to the hearings here on the island), but the county judge is opposed.

Victim Assistance: We do not have a program in place, but since so many people don't have family down here, it would help people work through tragedy. It is for crime victims, domestic violence, hate crimes, etc. It focuses on the victim not the criminal, and is usually done through police departments. There are grants and federal money available. The churches are active in providing food, counseling, etc.

Weather and Hurricanes: The Town is working on an off-premise center with Sanibel. We are not part of Lee County All Hazards. Evacuation can be a problem for older people who don't get around and have no transportation. We are looking to the churches to help evacuate elderly. Property security becomes an issue when people evacuate.

Animal Control: Under contract with the Lee County Humane Society, but needs to be looked at.

Aircraft: We attract borderline flying machines that are void of regulation.

The Council noted again the problem of not knowing what level of coverage we are now receiving from the sheriff. Since it has never been quantified and we don't know what we have now, how do we know how much more we need? In addition the need fluctuates by season.

Ms. Hansen said that we know the issues we would like to solve, and the next question is "How do we get there?" We will need to take a hard look at the issues, and it will take a lot of planning and many meetings.

V PUBLIC COMMENT

A JACK HEYMAN

Mr. Heyman, chairman of the Fort Myers Beach Fire Department, clarified that you can get a permit for a cook fire on the beach from the Fire Department. He would like to see the town make lights on bicycles a requirement at night. He would like to see a fireworks ordinance that will eliminate explosive and propellant fireworks without a state license.

B BILL PERRY

Mr. Perry said he thinks the town should ban fireworks on the beach altogether. Not only is it a hazard, but he has to clean up afterwards. It is like a combat zone and he feels he has to sit in his vehicle to feel safe. Sparklers and things made with wire become a safety hazard. They rust and turn into dangerous needles.

Regarding fire permits, he said that during Spring Break, they have to hire off-duty deputies who patrol the beach. Before they did it, his whole area of the beach turned into a beer party and bonfire area, especially on Little Estero Island. The fire permits are for cooking fires (2' x 2') but once people have the permit, the fire ends up being a bonfire that is 15' x 15' with hundreds of kids around it, and the kids are throwing cabanas in the fire. The open container law is good for dispersing crowds. He has asked the fire department not to issue any fire permits during spring break and during summer time because there is no one out there to enforce it. He asked the town to help get involved. They are having trouble getting a vehicle for the deputy to patrol the beach in. He has had to buy a ATV and then sell it at a loss after spring break. If the town would buy an ATV, they would be willing to rent from the town.

C DAN PARKER

Mr. Parker, formerly in law enforcement, thanked Ms. Hansen for her presentation. He said there is a difference between opinion and reality. Those in law enforcement see things differently. Is there a problem with juveniles? An officer was killed by a juvenile who was wakened on the beach. Is there a problem with alcohol? The last cop to be beat up on this island was by a drunk. Mr. Parker thinks we should question the deputies on the beach about what the unique problems are. Just knowing how many complaints there are doesn't tell you anything. There may be 100 complaints called in, but they may have all been about the same event. Also talk to attorneys to see what the big problems are. Ask the fire department. If a task force is formed, he is willing to help.

D LENA HEYMAN

Ms. Heyman said she is on the LPA and also several traffic committees. One of the problems with truck traffic is that sometimes they park in the middle of the road. We need a code where they can only deliver during certain times of the day. Regarding vagrants, she knows that there are some in Playworks Park. One of the scariest things is that rollerbladers go down the middle of Estero Blvd.

She is also on the Domestic Violence Council, and when she called the sheriff's department, she couldn't get a breakdown of incidents within our town. At last month's meeting, they asked all the cities with police departments to cooperate with the schools. When there is a domestic violence incident and there are children in the home, they should send a report to the school. The sheriff is not willing to do it.

E ANDY PRIEM

Mr. Priem said a growing problem on the south end is that large boat docks are being put in at Bay Beach and Waterside, and there are a lot of cigarette boats with no muffler. Some of those boats are going 40-50 mph in the back bay. It is a noise and safety problem.

Regarding crosswalks, given the distance between crosswalks, you will not find people walking out of their way to use a crosswalk. They want to cross near their condominium. Putting in sidewalks will help because they may be more willing to walk to a crosswalk. Also the lighting at night makes it difficult to see the crosswalks and if someone is standing there waiting to cross. We may need to put more direct light on the crosswalks. Also in season when traffic is at a snail's pace, it is easy to let people cross the road and let cars from side streets in. But when you get to where the congestion lets up, there are no breaks in the traffic and it is very difficult to cross the road and for cars to enter the stream of traffic. There are no signal lights to break the traffic and allow people to enter the flow.

F STEVE MARKUS

Mr. Markus, chief of the fire district, said the main problem with trucks parking in middle lane is in emergencies. He also said the problem with a fireworks ordinance is enforcement. The same with the open container law. He would like to work on getting some lifeguards on the beach on ATVs – they could handle sting rays, EMS, lifesaving, etc. without sending a truck each time up to Times Square where most of the calls are.

They have an ambulance billing service, and if the town would like to give them some information regarding crosswalks or any other issue, they would be glad to put it in their ambulance billing envelopes.

Mrs. Segal-George would like to bring a proposal to the council at their next meeting to hire Ms. Hansen to do the draft element on public safety.

Ms. Hansen said the best enforcement is to get citizen compliance. Tax dollars need to be managed effectively. We should be looking for alternatives to our public safety issues. Education is important.

VI ADJOURNMENT

The meeting was adjourned at 9:35 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**JOINT MEETING
FORT MYERS BEACH TOWN COUNCIL
AND
LOCAL PLANNING AGENCY
MARCH 19, 1998**

NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Betty Simpson, Co-Chair of the LPA, opened the meeting on Thursday, March 19, 1998 at 6:35 P.M.

Present at the meeting from the Town Council: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Ray Murphy, Garr Reynolds, and John Mulholland

Present at the meeting from the LPA: Ms. Simpson; Co-Chair Roxie Smith; Lena Heyman; Ron Kidder; Johanna Campbell; Dan Hughes; Dave Smith. Excused from the meeting: Linda Beasley and Bill Van Duzer.

Also present at the meeting: Marsha Segal-George, Town Manager and Attorney for the LPA; and Richard Roosa, Town Attorney.

II INVOCATION

Ms. Simpson led the Council and LPA in prayer.

III PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

IV PUBLIC COMMENT ON AGENDA ITEMS

There were no public comments.

V DISCUSSION ON THE LAND USE ELEMENT

Bill Spikowski explained that on the map, property that is called a hotel and rents by the day is considered commercial, and property that is rented by the week (such as interval ownership) is residential, although he admitted the distinctions were somewhat artificial. The future land use map will be adopted as part of the plan and is divided into eight categories. The development categories are: mixed residential (allows single family, duplex, multi-family, and motels); low density (strictly single family); pedestrian commercial (Time Square area and Villa Santini - primarily commercial but residential is not forbidden); boulevard (includes area near Town Hall along Estero - designed to be permanently mixed use -if someone wants to use commercial in this area, they will have to come to the council for approval). **The Plan doesn't try to answer all the questions about land use, but this way the Council has discretion as long as they are consistent with the Plan.** (If something is put in the Comp Plan, property cannot be given a variance except by changing the Plan itself.) Mr. Spikowski asked the council if they are comfortable with the number of categories, which can still be changed. Changes can still be made at the public hearings, but the later you make the changes, the harder it becomes. Toward the end, the changes should be more minor, such as changing a boundary. This meeting is designed to address the big issues. What the Council has before them is the LPA's recommendation.

Mr. Reynolds asked about the mixed residential area near Big Carlos Pass and wondered if it is necessary to change it to CPD. He said the problem of blending CPD into residential neighborhoods is where do you stop. Mr. Spikowski said the Town will not go through and rezone any of that area to CPD. It would only become CPD if the landowner wanted it, usually for motel or office use. They would then be required to rezone to CPD. Mr. Reynolds asked if someone could modernize a hotel without going CPD. Mr. Spikowski said that if they are over the density already and want to rebuild over the density, they will have to go CPD. The Council can forbid it altogether if they want to, or they can consider each request case by case, which is what the LPA is recommending.

Mr. Spikowski said that the policies are an explanation to the community about what to expect. Some will not translate directly into land development regulations. The state reviewers will say that some of the objectives are not absolutely measurable, and we will have to do some rewording to satisfy them.

He explained that the term public realm involves streets, sidewalks, and public areas such as Times Square. It is different from the public area that may be behind your fence where the public is not allowed. The public realm is part of our plan because we care how it looks from the street, how close the walls are, etc. Some cities don't care about it, but we do. He thinks that is more important than the exact density.

Mr. FitzSimons asked about the limitation of our 2-lane road. Mr. Spikowski said that because we have too much traffic, we can say we will have no more, or we can say because we have too much, we will make ways for the public to get around in another way.

Mr. Mulholland asked if we shouldn't say something about the birds and wildlife that are within the town's jurisdiction. Mr. Spikowski said that if you only read this element, it would look like we don't have any natural resources or don't care about them, but they are in other elements. He can add it, but at the risk of repetition. It was suggested that perhaps there could be a cross reference to the conservation element.

Mr. Reynolds asked about Policy 4-B-4 (mixed residential) which talks about increasing density from 6 units per acre to 10. Mr. Spikowski said this would only apply to the overlay areas of Crescent Street, Santos (behind 7-11) and Anchorage. This is a way to legalize areas that already have that density. Most areas are going down in density.

Mayor Cereceda complimented Mr. Spikowski for capturing the essence of our community. Anyone could pick up this document and know what was going on. She asked if there are any other areas than those three that need to be singled out. Mr. Spikowski said there may be, and as we find them they can be added, but that is all we are aware of. There are lots of high rises that are over density, but they are not in this category. She asked about Policy 4-A-3, which talks about being vigilant in protecting from commercial intrusion into residential areas. She asked if there could be another way to define this because "intrusive" means something different to different people. Mr. Spikowski said that policy is not really needed there because there are other places where they talk more about commercial issues. This can be cross-referenced too. He said the term "no commercial intrusion" hasn't been very successful because it is too hard to define. We are trying to capture the town spirit, then it will be easier to defend in court.

Mr. Hughes said we are concerned about protecting single family areas not only from commercial, but also from high density multi-family residences. Mr. Spikowski said the future land use map does that the best it can. The only place it can't is where there is a big building right next to single family lot. The only other places where the density could be higher are in those three specific areas. Mr. Hughes said that some high rises, even though they are residential, are more obnoxious to a single family than commercial because they are so large.

Ms. Campbell asked about the territorial boundaries regarding the outer islands. Mr. Spikowski said that the memo by Mr. Hughes appears to be correct, so the new map revises the municipal boundaries. It now goes out 1000 feet regardless of whether there are freestanding mangrove islands or mangroves attached to land. That boundary only excludes San Carlos Island and Black island, because they are specifically excluded in the charter. Ms. Campbell said she was at the San Carlos meeting recently, and the county staff person said they are going to draw the line in the middle of Matanzas Harbor. Mr. Spikowski said he would talk to the county. They will not be allowed to overrule our charter, and if they draw the map that way it will mislead people who see the map.

Mr. Spikowski asked the Council to comment on Policy 4-C-1. Where there is a conflict in what is currently in place and what we adopt, he has given the Council two options. The more restrictive option will be a hardship on some people with projects in the works because there will be an overlap in time. Mr. FitzSimons asked if we don't already have the more restrictive language in place. Mr. Spikowski said that language is directly from the current Lee Plan. He said that the biggest problem is in C-1 zoning and in the mixed-use area. In the Lee Plan, C-1 allows commercial or residential. Under the proposed plan, they can only do commercial if the Comp Plan lets them. What do we do in the interim period? Most of the Council and LPA said they prefer Option A. Mr. Reynolds said he was undecided. Mr. Murphy said he would like something in between the two. Ms. Cereceda said she only prefers Option A because she doesn't like B. Ms. Smith said she is in favor of Option B because she doesn't like A, but she really doesn't like either one of them and would like something in between. Mr. Spikowski said he will try to come up with something close to A but perhaps not as punitive.

Mr. Spikowski said the LPA has done a lot of work on accessory apartments. This element is trying to explain to the community what they are trying to do. These are ideals and cannot be fully accomplished.

Mr. Reynolds asked about FEMA and noted that there are a lot of buildings that are built to the ground. Mr. Spikowski said he is amazed how many buildings are built to the ground and he wonders how that can be happening, not just on this island. Basically, if it was built before 1984, they are allowed to build to the ground. Sometimes they get by the regulations by tearing down all but a little bit and building up again. Sometimes building to the ground is OK if there is enough open space that water can go through it without knocking the building down.

Mr. Reynolds asked about using the measurement of the beach to allow people to increase the number of units they are allowed to build. Mr. Spikowski said this plan will not allow that any more. The dry sand will still stay private property, but it will not be used to increase density.

Ms. Smith asked about the definition of "excessively large structures" referred to on p. 29. Mr. Spikowski said this is designed to prevent the kind of huge houses that have gone up on Sanibel. It is not well defined in the Plan, but the Council will need to decide what measure to use in the land development code. Then it can be changed more easily or the Council can give a variance. If it is specific in this plan, it cannot be changed easily. He said these types of large houses are not a problem now, but it will be as land prices go up.

Ms. Smith asked if the owners of the Red Coconut had been consulted regarding the last page. Mr. Spikowski said he has met with most of the properties involved, but he had to be careful about these redevelopment concepts. The landowners today may like it, but they may sell their property and the new owner may not. These are pre-approved alternatives, if they choose it. They can still do something different by going into a CPD.

It was noted that the motel/hotel density multiplier is currently 1:1. Mr. Spikowski said that was adopted as an interim rule and was not meant to be permanent. This document is a concept not a command. He has suggested some things that allows you to keep certain categories at different levels. It does not include specific multipliers--that will be in the LDC. He cautioned if you do away with the density multiplier altogether, you will get rid of all motels, like Sanibel. On the other hand, the county has allowed large multipliers which is not good either. We must balance with the fact that we are a resort community. If you don't allow motels, they will build 4- and 5-bedroom condos and pack so many people in that you haven't gained anything.

Ms. Heyman said the proposed theatre is an example of Policy 4-B-4 (commercial activity). Mr. Spikowski pointed out that the theatre will be decided under the current zoning, and he will change the map to reflect that. The Council can decide to rezone, but usually it is done by request of the landowner. It is a lot of trouble, time and controversy, but we may have to do it to implement this plan. There would have to be several hearings before any rezoning.

On page 39, Policy 4-B-3, Ms. Smith asked about the definition of home occupations. Mr. Spikowski said they will be defined in the LDC. Currently there are 7 rules about commercial enterprises in a residence (no visible indication, no increase in traffic beyond what would be in a single family home, no outdoor storage, no sign, etc.) Basically this means only someone doing something in their living room. It may be too restrictive. What you want is something that is indistinguishable to the neighborhood.

Mr. Spikowski explained that these elements are available at Town Hall and the library (for browsing) and the Print Shop (for purchase). Each of the 15 elements will be available in a few weeks and then there will be public hearings. He encouraged everyone to come to the workshop on Wednesday, March 25, where they will all be discussed. The workshop will videotaped if someone cannot attend.

VI DISCUSSION OF THE TRANSPORTATION ELEMENT

Mr. Spikowski said this element is extremely long because it contains detailed analysis in Appendix A. The first part is summary of Appendix A and B, and the policies are even more concise. Congestion, parking, and speeding are the three big problems. New initiatives between the town and private sector can make a difference. This element gives no illusion about solving the problem, but only making it better. The use of impact fees is now restricted to building new roads. This suggests a way to get around that by expanding allowable uses to include hidden bike paths, water taxis, etc. (Water taxis would be private sector, but there are things the Town can do to encourage it without costing any money, like easing parking regulations and encouraging marinas and restaurants to provide dockage easements.) We want to make it easier for people to get along without a car after they fly in. If they can get here easily from the airport and know that there will be a way to get around once they get here, they will not rent so many cars. One of the parking options will use technology that the county is proposing so people will

know whether there is parking available before they get on the island. The fear is that if you provide enough parking, people will no longer double up or take the bus. The Plan also discusses the shared parking concept that evolved from the CRA plan, and there is also a discussion of the future of the bridges and why more bridge capacity will not really solve the problem.

Mr. FitzSimons said part of the reason we don't look like a small town is because we have big town traffic, at least part of the year. Are we expected to entertain more than we can accommodate? Mr. Spikowski said we inevitably will, and we do now. The concept is to accept that this is the way it is and to do what improvements we can. Some of those things, such as the sidewalks and beach accesses, will help the tourists but will also help the residents the rest of the year. Focus on things that are good for everybody. The fact is that there is little we can do to reduce the number of people who come, but the county can do a lot of things to make more people come here. The state runs the bridge and the county runs Estero. We may be able to get them to agree to the kind of improvements that we want. If not, we may have to take over Estero in order to make things happen and to keep Estero from becoming a freeway. He thinks it would be best for the Town if the county kept Estero and implemented the concepts in the Plan. There is nothing wrong with the bridge itself. The obvious reason for taking over the bridge would be so we can put a toll on it, thinking that it would reduce the number of people who come. In reality you just reduce the people with less money who come here, but for other people, it will make it seem more desirable. Tolls would only make sense if it were part of an option to park before the toll and use trolleys and water taxis. That way the toll raises a lot of money from people who want to bring their car but also encourages alternate modes of transportation. He said this is an optimistic plan that we can convince the other agencies to do this our way by addressing their concerns of evacuation and safety.

Mr. Reynolds said that the new construction at the Barking Shark does not add anything to the island and is so close to the sidewalk that he doesn't think people will want to walk there. Mr. Spikowski said the first building always looks wrong, but when they all move out to the street, it looks right. The overlay encourages buildings to come out to the sidewalk in that intense pedestrian area. Mr. Reynolds said he does not think that is a good idea in that area--maybe on Old San Carlos instead.

Mr. Spikowski said one of the biggest unfinished parts of the overlay area is public parking. The WRT study proposed 165 mostly on-site parking spaces in that area, but it hasn't happened yet. It involves the cooperation of private property owners. One of the first things we need to determine is if the on-street parking and shared parking behind the buildings is feasible and make it happen (paid for largely by the people who benefit), or reject the concept and make changes to the plan if parking garages are required. This must be done right away. The overlay is optional now, but it was not meant to be optional originally. In the long run, we don't want to stick with that. We need to make the rules, and if they don't like it, make them do a CPD and make their own parking plan. Right now some choose to and some not to. It won't work unless they all agree. The design concept is voluntary now also, and he thinks we need to go beyond that soon.

Mr. Murphy said this element is well done and he got excited reading it. Objective 7-H says that we should experiment widely and he agrees. We should try these things and keep trying until they work. Mr. Spikowski said taking over Estero is potentially expensive, but if you can't get what you want, you will have to. It all depends on the county's reaction. At first the county was against the ideas in the plan, but they are not anymore. Everyone is talking about traffic calming now and there is more movement in that direction. He said even FDOT is going to adopt a policy on traffic calming. It will state that when a state highway goes through a residential or downtown or pedestrian-congested area, they can consider more options. Hopefully this will help LDOT accept the concept. Ms. Heyman said that Estero has 33 pedestrian crossings, so it will definitely fit under the new FDOT guidelines of a high pedestrian corridor.

Ms. Campbell said a columnist recently said that whatever we decide to do, we don't want to lose the small-town character of our beach. Do we really want to spend taxpayer's money for just two or three months of heavy traffic? We have all lived in big cities and lived with worse traffic than we have down here.

Mr. FitzSimons said that traffic lights on Estero are unacceptable to most people. He wondered if we should take a position on it. Mr. Spikowski said it wasn't addressed because nobody has proposed it. We took a stand on 4-laning because that has always been talked about. Stoplights rarely come up because we only have one road with no major intersections. He said there are some times when a break in the traffic is a good thing to stop speeding, but it can be done if the Council desires. Sanibel has prohibited signals, even though it would probably help their traffic at the causeway, because they do not like the ambiance it gives. He cautioned that we may need something in the Villa Santini redevelopment area

because if you are going to have on-street parking, you have to have breaks in the traffic to allow people to pull out.

Regarding reversible lanes on bridge, Mr. Reynolds said that FDOT has turned thumbs down on that idea because it is not wide enough. Mr. Spikowski said it is physically wide enough, it is just not up to the standards they want, because we would lose the breakdown lane, which they don't like to do. He is still not sure it is a good idea.

Mr. Spikowski said there are two items still missing: the future transportation map that the state requires but is not significant to the town; and what to do about the concurrency requirement for traffic. (What is the point you refuse to issue any building permits even though you are going to get sued and lose?) But if it is done right it can be an evaluation standard in measuring new development. The system the county has been using expires next year but wouldn't be applicable for just the town anyway.

VII PUBLIC COMMENT

A BEVERLY GRADY

Ms. Grady, attorney representing the owners of Red Coconut, handed out some points she wanted to address. She said that Red Coconut was first developed in the 1930's and they want to make sure that it can continue as a commercial use. They propose that there be a third small commercial node added. They propose that the area that is designated Boulevard be changed to pedestrian commercial to include Gulf View Shops, a portion of the Red Coconut on both sides, and the restaurant. They also request to add to the Boulevard section the same provision as for pedestrian commercial and mixed use, to provide crosshatching that would indicate that that area could be 10 units per acre. They would like the Boulevard area extended to include the Red Coconut, because they think that is a more appropriate designation than mixed use, and have it crosshatched to indicate the higher density. They also want confirmation from the town that nothing would preclude the rebuilding or reconstruction of Red Coconut as it exists today. Their last concern is the inclusion of sketches. They are concerned about having that in the plan, because it becomes viewed as mandatory or concrete. Red Coconut is requesting is that the resort use be recognize at the same level of intensity. It will not change density because it is already there.

B CHARLES BIGELOW

Mr. Bigelow stated that he is representing some of the owners on Santos. Before making his comments regarding Santos, he complimented Mr. Spikowski and the LPA on the Plan, and spoke on the plan in general. He believes that the parking solution is one of the most important, and he suggested that we look carefully at the interaction of private and public parking. He is not thrilled to think that every public access will be turned into a parking lot. Perhaps we need to form a parking planning agency. He also said that the language in 18.2.1 in the Lee Plan was mandatory because county zoning was a disinterested party. Now you don't have to do that because we are an interested party. What are the limits of a neighborhood? Can it be on both sides of Estero? What is intrusion? There is a difference between intruding and annoying. The problem with a mandatory provision is that the court will require us to be very precise. They are great conceptual words, but not for defining precise limits. He cautioned the Council to think carefully about using that language. Regarding Santos, some provisions in the Plan have helped them out, but that area is a great redevelopment opportunity. It is put in mixed residential but it fronts on and interacts with pedestrian-commercial. It is very narrow and one side is the dumpsters of the restaurants on Estero, and on the back side is a canal. Their direct interaction is with the pedestrian-commercial area. The future of the parking lot that is there is uncertain, and if the ownership changes, they do not know what the impact will be. The owners on Santos think they could become an area with small shops downstairs and apartments above, instead of two living units. They could be a low intensity pedestrian area. Different owners have different ideas. Santos is also a dead end street except for the alley, so the future of the alley is critical to them. He would like the Council to think about including them in the pedestrian commercial category, initiate some kind of micro planning study for this neighborhood, and initiate a rezoning category that would facilitate this opportunity.

C ANDY PRIEM

Mr. Priem, a resident of the beach, said that a major impact on the traffic will be the build-out of Bay Beach. Traffic will flow out of Bay Beach Lane onto Estero. He asked the Council to not exclude the possibility of traffic lights, because they may be part of the solution in about ten years.

D MICHAEL SHORT

Mr. Short, a part-time resident for 6 months of the year, said he owns a house in the low density area on the bay. He said his fear from looking at the map is that we are planning to change the area

around Shell Mound from what it is now to something that looks slightly dangerous. Are we going to get more condos? Mr. Spikowski said that triangle is an older subdivision and the size of the lots made it so they couldn't be put in the low-density category. But they will stay the same, and the yellow areas will never have anything but single family homes. Then Mr. Short expressed his concern about the tennis court at Bay Beach, which is going to be lost to condos. The new condos are going to mean a lot of extra people. He is concerned that the Town could have voted for a tax to get money to buy sensitive land, and they turned it down. Diamondhead went ahead because we didn't have the money to buy it from developers. We ought to be able to stop the vested rights. In Britain, a development order can only last 5 years or you have to resubmit plans. He also said we need to encourage people to use alternates to cars. We need a multi-story car park on San Carlos Island to be serviced by trolleys and water taxis.

VIII ADJOURNMENT

The meeting adjourned 9:10 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

FORT MYERS BEACH
LOCAL PLANNING AGENCY WORKSHOP
MARCH 25, 1998

NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

Mayor Anita T. Cereceda opened the workshop on Wednesday, March 25, 1998 at 6:38 P.M. She said the name of the workshop is "Making It Happen." Just three years ago people were trying to make the town happen, and now we are working to build our community and create something we can be proud of. She thanked so many residents for attending. She introduced Roxie Smith and Betty Davis Simpson, co-chairs of the LPA. Ms. Simpson, on behalf of LPA, welcomed everyone and thanked them for their participation. This meeting will make it possible for everyone to see and hear what the LPA has been doing for the past 2 years. In addition the LPA has land use hearings. They meet every week, are all volunteers, and are appointed by the Town Council. Ms. Smith said that the LPA has worked hard, but they haven't always agreed on everything. But when they disagreed, they disagreed with respect. Their motivation has always been to make this the best town you have ever lived in. She encouraged the public to come to the hearings and tell the LPA how they can make it even better.

Bill Spikowski said that a Comprehensive Plan is a printed document that will be made up of elements, what are the same as chapters. But it is more than a document--it is a shared vision. They have tried to make it as visual as possible, because they felt that drawings, maps and charts can communicate better than words. The Comprehensive Plan is required by state law, and states that "no public or private development shall be permitted except in conformity with the comprehensive plan." It will be adopted by town ordinance. It is the town's road map into the future, where we want to go and what you have to do to get there. It takes a long time and is a very deliberate process.

He said that the Town was formed largely because of land use issues, because of disappointment with Lee County. One of the major land use issues has been mother-in-law apartments. (They may be legal if it was built before 1962 and has been in continuous use; if it was built between 1962 and 1984, it needs to comply with all current laws except density cap and floodplain elevations; if it was built after 1984, it may be legal if they meet the new density caps in the plan, if it is in an owner-occupied home, and if it meets the floodplain regulations.) Other issues are flood regulations (V-zone and A-zone); high densities; and building height.

There will be eight land-use categories: Low Density (single family neighborhoods – down from 5 units per acre to 4); Mixed Residential (areas that are already a mix of duplex, multi-family, high rise – maximum density of 6 units per acres); Boulevard (area along Estero that already has a mix of residential and commercial); Pedestrian Commercial (Times Square, Old San Carlos, Crescent Street, and Villa Santini); Marina; Recreation (parks, Matanzas Preserve and the sandy beach); Wetlands; and Tidal Water (which includes our jurisdiction out to 1000 feet and all the canals.)

The post-disaster redevelopment policy in the event of a big storm will be that you will be able to build back the same number of units, but they will have to be built to current standards. But the plan also addresses pre-disaster redevelopment, in case you need to rebuild without waiting for a disaster.

Over commercialization is another of the major land use issues. The commercial area in the south end is already surrounded by high rise development.

Victor Dover spoke about community design – how new buildings can improve our community. He said that not only is a town physical, but it is also a projection of the town's values, which translates into a greater place to live. All pieces, including open spaces, right-of-way, buildings, paths, etc., should come together into one ensemble. The special small town character of the Town could be imperiled without being guided. We have to balance the needs of neighborhoods and tourism. We also must balance the use of cars and other modes of travel. We can do things to encourage pedestrian life.

The design needs to foster neighborliness and face-to-face interactions. It needs to reinforce a strong family environment and a feeling of safety. We can capture the special character of the town, extend it, and protect it; we can direct private investment toward town-building; and we must establish clear and consistent rules. We need to shape the public spaces in a way that promotes walkable streets that are shaded, interesting and safe. We want the public places to be designed, not ignored. We can reinforce our special character by promoting a compatible mixed use (like having a corner store near a residential area) and mixed affordability within neighborhoods. We can promote a loose architectural style that is funky,

eclectic, and fits the image of the historic Beach, within a reasonable range. We need to get our traffic calmed, and promote a system of interconnected streets and paths as an alternative to pedestrians and bicycles.

We need to point private investment toward town-building by focusing on areas in transition and encouraging development in those areas (like Old San Carlos.) We need to be proactive in encouraging the kind of development we want, but we also need to reinforce the stable neighborhoods. We need to improve our linkages to the waterfronts. Property values will continue to rise and there will be an effort to rebuild on those lots, but we can say that water view is important to the town and try to reserve special sites for civic purposes and landmarks. We must create a result-oriented illustrated land development code.

The island has been divided into seven distinct areas: North End, Core Area, Near-Town; Heart of the Island; Quiet Center; High Rise Resort; South Point. In the Quiet Center, the streets are narrow but would be helped by adding a canopy of trees. In the Heart of the Island area, School Street is the key between the Boulevard and Recreation zones. It would be good to add trees and sidewalks along the street to lead into the recreation area. Perhaps we would want to build a stone arch entrance like the one that used to lead onto the island. Red Coconut may be interested in redevelopment, and the plans shows how it can be accommodated using detached cottages and houses, row houses and apartments, B& B, or mixed-use buildings. That area also has a good site for a civic building, which could be acquired by creative land swap. The Villa Santini area is centered in an area of high rises and is in transition. The area is pedestrian-hostile. It area would become the village center of the south part of the island, though milder and less entertainment-oriented than Times Square. Residents could walk there, enjoy a meal, walk to grocery store, etc. Parking would be distributed in smaller lots behind the buildings and the area would have on-street parking. Estero does not have to be a high-speed parkway. It is no longer a highway in the country, but is a road through the town.

Mr. Spikowski said that the main traffic problems are congestion, speeding, and parking.

Mobility needs to be improved using a variety of travel modes: make it easier for visitors to arrive without a car (regularly scheduled airport service that is privately owned and improved trolleys after they get here; use impact fees to build sidewalks to help congestion; encourage privately-owned water taxis landing at marinas, hotels, and restaurants by easing parking regulations; create a system of hidden paths.)

He spoke about ideas for upgrading Estero Boulevard: Expand the Times Square streetscape project (add sidewalks to the other side of the street); calm speeding traffic (put trees toward the curb instead of toward the buildings which makes pedestrians feel safer and makes the drive more pleasant); change the physical design of the larger intersections by adding pedestrian islands, making shorter turn radius, etc.) ; put buildings closer to the street in key areas (more pedestrian friendly); improve sidewalks and bikeways (hopefully on both sides of the street); and require new developments to study traffic impact professionally.

He spoke about optimizing the parking supply: use shared parking lots behind buildings so that you don't have to move your car for several errands); direct visitors to available spaces (signs with live information so people will know if parking spaces are available; if not, they can park and take the trolley).

He stated that the Sky Bridge is not the cause of traffic congestion, it is simply the site of the backup from narrow Estero Boulevard.

Regarding the Coastal Management element, he said that sand dues need to be re-created (for storm protection, to protect the boulevard, and because they are interesting to walk on and are good for wildlife). We will need walkways above the dunes at key access points. The element also addresses flood damage due to buildings being too low, and evacuation.

The Conservation Element addresses the Estero Bay State Buffer Preserve, the Estero Bay Aquatic Preserve; Little Estero Island (sandbar in front of Holiday Inn); sea turtles; and dolphins.

The Utilities Element is required by the state but the town does not have a big role in this because our drinking water is provided by Florida Cities Water (franchised by the state), our sewer service is provided by Lee County (even though we can't franchise this service, we need a voice because we are downstream of effluent), and our trash is provided by a private company under contract to Lee County (when that contract expires, the town can contract for it if they want to.)

The Stormwater Management element addresses two kinds of flooding: rainfall and rising tide. Since most of the island was developed before modern regulations, many retrofits are needed (re-digging swales, pumps for stormwater, etc). Some pools discharge directly on the beach even though they should

not. Swales can be retrofitted so more water sinks in than runs off, and parking lots should be made of porous material rather than impervious asphalt.

The Recreation Element addresses Bay Oaks and Matanzas Pass preserve; the swimming pool that is coming soon; Bowditch Point and Lynn Hall Park; and beach accesses.

The Housing and Historic Preservation Element recognizes our long and proud history. The Calusa kingdom was headquartered at Mound Key, we still have many cottage homes, and the elementary school may soon be on the National List of Historic Places. Buildings have been inventoried, but the list needs to be updated. The Plan suggests that we make one or two historic districts and perhaps promote them with walking tours.

The Intergovernmental Coordination Element addresses the Town's relations with Lee County, the state, the Regional Planning Council, the fire district, the mosquito control, and the library district.

Mr. Spikowski stated that the next step for the Comprehensive Plan will be the public hearing process. Residents will be able to get copies of the elements at Town Hall, the library, or the Print Shop. Seven of the 12 elements are ready now and the next four will be ready within a few weeks. The hearings will consider the elements in their draft form. The first hearing will be April 21 at 7:00 PM for the LPA. The Council will have hearings in May. It will not be adopted into law until after we send it to the state, who approves or suggests changes. Then the third public hearing will probably be in late summer. Final adoption will be in the late summer or early fall, unless the Plan is challenged. He invited the audience to make any comments on the sheets provided and turn them in by March 27.

Ms. Simpson and Ms. Smith introduced the other members of LPA and the members of the Town Council. Ms. Simpson invited questions from the public. Question: Does the plan for street trees call for canopy trees rather than just tall palms? The council has approved the printing of a booklet for appropriate side street trees to create a sense of neighborhood. The book will suggest 8 types of trees, mainly native with fruit or flowers that will all be low maintenance like gumbo limbo. Question: What type of trees are OK in a hurricane? The booklet will discuss the pros and cons of each tree. Question: Doesn't the county require a setback of 25 feet? Many of our buildings were built before the county code and are already non-conforming, so we can change the rules to make conformity along the street. Question: Why is acquisition of land not addressed in the plan? Earlier drafts did address it but the recent referendum put cold water on it. It could be brought back later. Question: What is pre-disaster re-development? It is re-development any time other than after a storm, including now. Fixing them up now would help protect them from damage during a storm. For example, if an old building is on a slab, it would be in the best interest of everyone to rebuild it now rather than waiting for it to be knocked down. Many of our private homes were built before 1984 and are on the ground. Federal law says you can't improve more than 50% on those homes. But he feels that if you put on something like storm shutters to protect your home, it shouldn't be included in the 50%. Question: Why do you show no telephone poles in your pictures? Are you planning to underground them? In the sidewalk area, yes, but it is not economic unless you are putting in other improvements at same time. The Plan encourages undergrounding.

The meeting was adjourned at 8:15 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

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

I CALL TO ORDER

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

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

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

IV PUBLIC COMMENT ON AGENDA ITEMS

A VICKY MASSEY

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

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

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

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

VI REVIEW OF FINANCIAL REPORTS FOR MARCH

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

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

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

VIII COUNCIL MEMBER ITEMS AND REPORTS

A JOHN MULHOLLAND

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

B TED FITZSIMONS

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

C GARR REYNOLDS

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

D RAY MURPHY

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

E ANITA CERECEDA

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

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

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

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

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

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

The public hearing was opened.

A WILLIAM PATTERSON

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

The public hearing was closed.

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

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

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

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

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

deviation from the multiplier (Ordinance 97-21). He noted that they were working on this redevelopment project prior to the adoption of this ordinance. The site presently holds 12 units, and they are only asking to replace them. When complete, they will have 17 units per acre, one of the lowest for a motel on FMB. Neptune Inn has 23 per acre, Holiday Inn has 26, the new Edison Beach House will have 27, Days Inn has 34, the Outrigger has 37, The Ramada has 80, and the Lani Kai has 102 per acre. A property owner has a right for the best use, and they are asking for bare minimum. They are asking for units that are 600 square feet. He designed this facility, and it would be impossible for them to be split up into more units. They will have one bedroom, one bath, a fairly small living area, and a kitchenette. Rooms at the Edison will have 730'. Gullwing has 1975'. The project will improve the immediate area and the whole town. It will correct the problems of safety, beach access and visibility. It will improve the surrounding property values. It does not violate any of the policies noted in the staff report. The surrounding neighbors approve and many have demonstrated support for project. Mr. Pasev has a large investment in the town and should be applauded for his effort to improve the site. Mr. Reynolds asked about acreage. Mr. Van Duzer said the actual lot is about 1/2 acre, but development standards say they can take half of the road right of way in figuring acreage. They did not take the measurement to the gulf, only to the seawall. Mr. Reynolds said he has lived there for 10 years and there is 235 feet from Estero to the seawall that is usable area. He asked Mr. Van Duzer if he didn't think that is too much density for the usable acreage. He answered that 12 units are already there and they are only trying to improve that. Mr. Reynolds asked the size of the present units. Mr. Van Duzer said they are different sizes, up to about 500', but three were very small. Mr. FitzSimons asked if residential use was ever considered (condo or multi family.) He replied no, because they would have the same problems and not as much opportunity to recover his money. Mr. FitzSimons asked if the land is too valuable to support residential. Yes, even 12 units is marginal. Mr. Reynolds asked why they requested a CPD? He replied that that is what the town said he must do because motels are now considered commercial. Mr. Reynolds asked why the building will be so far toward the gulf? He replied that they are only going 7' closer to the water and they will still be about 35' from the seawall and well behind the coastal construction line. They could have built right out to it, but they didn't because of the pool. They don't want parking on the back because motel rooms can't be rented if people are looking at asphalt instead of the gulf. Mr. Reynolds asked if they could bring it down to 3 stories and still keep 12 units. He replied that they cannot and still have all rooms with a gulf view, which is the best use of the property. He also mentioned that they have eliminated the dumpster on Dakota, and will use a rollout dumpster behind the elevator. It will only be rolled out when truck comes. Mr. Murphy said there is a rumor that if property is a CPD then the owner could tear it down and reconvert it. He replied that could be true but the council can condition that it will only be a 12-unit motel and nothing else. Mr. FitzSimons said one problem of motels is the accessory uses that go along with it. What accessory uses does he intend to have and will he continue the ones that are there now? He replied that there is presently a COP license and a commercial jet ski operation. They would like to keep both, but the council has the right to voice their opinion on that. The management team said they will not use the tiki hut as a bar. They might want to have a portable bar in each room and that could be a condition. They did not include the jet ski as an accessory use. Mr. Mulholland asked if they could lower the roof to make the building not look as tall. Yes, but it would not fit in with the vision of FMB. Mr. FitzSimons asked if they would have to remove parking places to put in a trolley stop? Yes, but they don't really need 18 parking spaces for this number of rooms although it is required. There could be a deviation that allows them to trade a parking spot or two for a trolley pullout.

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

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

The public hearing was opened.

A WALTER EISSLER

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

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

B BOB KEENE

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

C JACK HENRIKSEN

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

D HOWARD RYNEARSON

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

E AL VAN HORN

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

F ANDY PRIEM

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

G JOELLEN RECKWERDT

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

H RAY MERTENS

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

I JENNIFER KAESTNER

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

J DON PETRIE

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

K TOM MERRILL

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

L BOB ROCKWELL

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

The public hearing was closed.

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

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

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

XI FINAL PUBLIC HEARING: YOUTH PROTECTION ORDINANCE

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

A JUDY EISSLER

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

B MARIE DENARD

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

C RAY MERTENS

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

D JOHANNA CAMPBELL

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

E WANDA RODRIGUEZ MERRILL

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

F PARIS ROSS

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

G FRAN MYERS

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

H MARYANN DEMORE

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

I RAY CHESTER

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

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

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

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

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

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

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

XIII OLD BUSINESS

A MOSS MARINA

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

B SEAFARER'S – PEDESTRIAN OVERPASS AGREEMENT

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

XIV TOWN MANAGER'S ITEMS AND REPORTS

A SUMMER SCHEDULE AND SEPARATE HEARINGS FOR LAND USE CASES

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

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

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

B REQUEST FOR FUNDING FROM CHARLOTTE HARBOR NATIONAL ESTUARY PROGRAM

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

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

XV TOWN ATTORNEY'S ITEMS

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

XVI PUBLIC COMMENT

There was no public comment.

XVII ADJOURNEMENT

The meeting was adjourned at 8:55 PM.

Respectfully submitted,
Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL WORKSHOP ON PUBLIC SAFETY
MAY 21, 1998**

NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Thursday, May 21, 1998 at 6:30 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

IV PRESENTATION BY SHERIFF'S OFFICE REPRESENTATIVES ON VARIOUS LAW ENFORCEMENT AND PUBLIC SAFETY ISSUES

Colonel Dennis Dufala with the Lee County Sheriff's Department, presented two reports. The reports came out of the February 12 Town Council workshop where the council developed a task list. This is a work in progress, and as the Public Safety Task Force (PSTF) gets more heavily involved, they will discover more things to do. Many of the items on the task list do not involve law enforcement and it is not their job to tell the town how to address those concerns. But as the town's police department, they are here to work with us. This report is a one-sided effort since the task force has just been formed. The recommendations they are making are without the input of the task force.

Some of the issues have already been addressed by the sheriff's department and they just had to pull the data. They have combined some of the other items. They also put together a survey. Last year they had a poll done by the county and hired a polling service to do it. They took much of that information and put it together into their own survey. They have not tabulated all the information yet. It is a superficial attempt to try to find out how people on the beach feel about public safety. They printed 300 surveys and Captain Erne went to the leaders of civic groups to interview them. They took the rest of the surveys around the beach and trained VOICE volunteers on how to do the survey. They wanted a mix of homeowners and renters and business owners and full time and part time residents. The initial results show that the #1 concern is traffic congestion, #2 is litter and trash, #3 is traffic problems other than congestion, and #4 is the conduct of youth in public. Residents were also asked about their experience with the sheriff's department, code enforcement, and whether people would be willing to pay for enhanced police service. They asked about the feeling of safety, and issues such as parks and recreation, schools, etc. They asked about satisfaction with the fire service. They also asked if they had contacted staff members or council members to express their concerns. Their preliminary recommendations are: #1 have a member of the sheriff's department serve with the PSTF as a liaison; #2 assemble an advisory committee immediately to get information from the public and get information back to the public (one representative from each of the entities in the town); #3 the task force should conduct ongoing meetings; #4 include youth or youth leaders in the advisory committee because many of the decisions will impact youth.

Captain Mike Clifton, watch commander, said he was been a deputy on the beach before we became a town. His job was to assemble the data. The report contained a chart of the sheriff's organization and some demographics and projections from the University of Florida. He talked about the two-year trend in crimes which has showed a decrease. The report also shows the dispatch of the cases after arrest and the response time (which has gone down on the beach.) The report shows the log of types of calls. The maps show where the major crime areas are. Another report shows crimes by day of the week and time and date to get a picture of when crimes occur.

He said that manpower includes many more people than patrol officers. It also includes the person in the substation, detectives assigned to the beach, officers from the major crimes division, helicopter

patrols, the marine unit, the VOICE unit, community programs such as the school resource officer and DARE officer, civil process officers, etc. So the presence is not limited to uniform officers.

The most active month is March, followed by April, May and July. The busiest day of the week is Saturday, followed by Sunday and Friday, and the busiest time is from 9 PM to 12 PM. The most frequent call for service is for information followed by assistance calls, alarm calls, suspicious persons, nuisances (dogs, noise, kids, trash, etc), disturbances (fighting, loud parties, infringing on rights), and criminal trespass. Crime categories fall after that, so it seems that the health of the beach is good, that it is reasonably safe and secure. In 1996 the average response time for Priority 1 calls was 9.5 minutes, and for all calls it was 12.75 minutes. In 1997 that time dropped to under 9 minutes for #1 calls and under 11 minutes for all calls. That is timely especially with the heavy traffic on the beach. If someone was looking for a place to live in Lee County, he would tell them that this is one of the safer places to live. That doesn't mean there are no crimes on the beach, but they are not seeing any upward trend in serious crimes. The department offers a neighborhood watch program, but there is only one active program at this time. Those programs are the eyes and ears of the community, and it is their greatest program to prevent crime. They would like to look at increasing that on the beach. It can be used for both businesses and homeowners.

Dr. Croker said it would be interesting to see if the perception in the survey will be the same as the actual crime statistics. Capt. Clifton said they answer to the public and it is important to see their perception. If it is erroneous they can take steps to correct it. Mr. Mulholland said the #5 most common call is for disturbance. A curfew ordinance was proposed recently and he didn't feel it was the right way to accomplish what it was supposed to accomplish. If we have a disturbance during Spring Break, is that as major a problem as residents perceive it to be? Capt. Clifton said he thinks everyone knows we have two spring breaks. One is college students and primarily they come down, rent rooms, go to bars, and are rarely on the street. His perception is that the problem is with the local high school students who can't rent rooms and can't go into bars. That heightens the disturbances in the parking lots and parks, and when they are run off, they may go into the neighborhoods.

Mr. Reynolds said when someone calls in a complaint, before they will take the complaint they have to take your life history, which makes people reluctant to call in. Which is more important? Capt. Clifton said the information is vitally important. If the complaint is very serious and someone is injured or there is a robbery in progress, while they are taking the information the call has gone out to the dispatcher. Sometimes the information is sketchy and the deputy can't find the problem or the problem moves and they must contact the caller back to monitor it. Col. Dufala said that sometimes the call escalates while the deputy is going to the call. Someone may call in a burglary, then later notice three people come out of the house armed and they need to let the deputy know that the call has changed so he will know what he may be facing. Mr. Harby said he noticed there is not a category for vagrancy. Capt. Clifford said Florida did away with the vagrancy law. Now any arrests would come under trespass or nuisance. The homeless will usually end up in one of those categories. Dr. Croker asked if they have educational programs available on the neighborhood watch programs. Capt. Clifton said they would be happy to help people set them up and will hold a program and post signs. Mr. Gucciardo said the statistics are helpful, but he asked how often the data is put together and will we get it as it comes in in 1998. Capt. Clifton said the statistics department can give it to us in any format we want. Captain Erne goes through it on a monthly basis. Mr. Gaydos said he just attended a 2-day seminar on community/police partnerships. We already have some of the program in place because we now have assigned officers and some resident deputies. He recommended the rest of the task force be sent to the seminar if possible.

Col. Dufala said their crime prevention program also includes child safety and working with the elderly in addition to neighborhood watch. He has established a lot of neighborhood watch programs, and there have probably been as many as 50 at one time. But they are cyclic. When there is a lot of media attention, a lot of groups are active. After the crime is addressed, the programs tend to lose interest. Businesses can set up a phone chain to let other business people know that there is a problem such as a bad check writer. Even though there is only one program currently active, it doesn't mean that we don't have people out there who are looking out for their neighbors and who are trained in the effort. He recommended that the PSTF study the information they have provided and will continue to provide. Then they can decide what direction they want to take.

Col. Duffala said there are other law enforcement agencies and private security involved in public safety. They have mutual aid agreements between agencies. They have task forces made up of multiple agencies with a single concern. All this is supplemented with private security. Private security officers don't have the power to arrest and enforce and they are limited to the properties they manage. Deputies

will often take on off-duty jobs and they are then working for that company, but because they are licensed officers, they can respond to any situation. He recommends that the task force become familiar with the various agencies so they can understand their jurisdictional responsibilities. He also recommended a study of the security companies – how many are operating in the town, what are their services and capabilities and cost. One county has a public/private security task force and they are considering doing the same in Lee County.

Regarding youth concerns, they have school resource officers and the DARE program. One of biggest concerns is spring break. He recommends the task force identify any organized youth groups, analyze them to see if they are effective, and search out funding sources. They should also develop a survey to study the need for organized youth activities. He also recommended that they request that additional funding to be allocated to the Sheriff in order to enhance service beyond the basic level during spring break in particular.

Regarding fire and emergency services, he has included some data prepared by Chief Steve Markus.

Regarding social services, directories are available of services in Lee County. He recommended that we study the human service needs and identify the existing services and fill in the gaps. Cape Coral has printed a directory of services in their community. They also list the county, federal, and state agencies that are available in their area. He recommends that we do something like this for our citizens.

Regarding weather preparedness, the county has a plan but it is not specific to the Town. The Sheriff has several contingencies. They will relocate the substation to Edison Community college and the West District would operate out of there. The FMB Fire District would have a command post in that same area. He recommends that the town make this a high priority to be aware of what is going on and see what can be implemented. We should also work in conjunction with the fire department to inform citizens before a disaster and let them know what can be expected after the storm has passed.

Regarding writing a comprehensive plan element for public safety, he recommends that we study comprehensive plans from other communities and see how they have addressed and implemented this.

Regarding financial resources, he noted that the Town has chosen to have only basic services. We can form a strong partnership. Grants are more available if they are done in a cooperative spirit.

He also included information on domestic violence and the sheriff's budget.

Captain Ken Erne said he is excited about the new directions that have been taking place recently. Part of the concept of community policing we have already implemented: the same officers are assigned to the beach and their immediate supervisor is a beach resident himself. He recommends that Sgt. Matt Powell be named as the liaison officer between the task force and the Sheriff's Department.

Mr. Mulholland said we are going into the next budget cycle and he asked if there is a way to get a handle on what would be needed in the way of additional funding regarding youth concerns. Capt. Erne said he would be glad to have a representative work with us in the budget process. Mr. Hughes asked if the local government receives receipts from fines and penalties that are collected through the judicial system. Are they reallocated back to the community in any way? Mrs. Segal-George said the other cities receive money but we do not. Mr. Roosa said that that is done through the county clerks office and we are still working to get that corrected.

V PUBLIC COMMENT:

A JENNIFER KAESTNER

Ms. Kaestner asked if there is a way to separate out the juvenile numbers between beach residents who commit crimes and off-island kids. During the discussion about curfews, some people said an alternative might be programming, but she is not willing to spend tax dollars to entertain off-island kids. They are not her children or her neighbor's children; they are from somewhere else. She is not sure a curfew is the way to go. She has questions about the laws that are already on the books. When she drives by 7-Eleven she sees crowds of kids standing in front of the "no loitering" signs. How can they put up porta-potties for people who are loitering? Good kids aren't hanging out on the street and good kids aren't sneaking drinks and looking for drugs. Those kids keep her kids from being able to hang out on the beach in a safe atmosphere. She hopes the task force will look carefully at this issue.

Mr. Harby said one of the things they discussed is how can we get our citizens to come to the meetings and give their input. He asked Ms. Kaestner to tell her friends and get them to come too. Betterment of life on FMB is not just law enforcement.

Sgt. Powell agreed with Mrs. Kaestner. He is concerned about the quality of life on the beach. 95% of his calls are in a 10-block radius of the 7-Eleven, so that is why officers stay there in order to catch things. Their presence helps avoid things from happening. There are laws on the books, and he has motivated officers who will implement them. He agrees the children are from off the beach and the officers are outnumbered horrendously. He wants to give the message that if kids come down to the beach, they will be respectful and behave themselves. Mr. Gaydos said one of the problems mentioned at the seminar was an event in another city where up to 5000 kids invade the park with boom boxes every Sunday. People in the immediate area are harassed but the community is pretending it isn't happening. We must address this problem. Mr. Reynolds said many of the council wanted a curfew for that very reason, but some of the parents thought they were trying to harass their kids. Sgt. Powell said the important issue is quality of life, not a curfew. They will enforce the law, curfew or no curfew if they have the backing of the citizens and the business owners.

It was confirmed that Sgt. Powell is acceptable to the town as the liaison.

VI ADJOURNMENT

The meeting adjourned at 8:05 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 5, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, May 2, 1998 at 6:35 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Pastor Bob Stuckey of First Baptist Church of Fort Myers Beach.

IV PUBLIC COMMENTS ON AGENDA ITEMS

There was no public comment on the agenda.

Betty Simpson invited all candidates to the FMB Board of Realtors General Membership meeting on October 15 at noon. She asked each candidate to speak for a few minutes and then be available to stay afterward for questions.

V APPROVAL OF MINUTES: SEPTEMBER 14, 1998 AND SEPTEMBER 21, 1998

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the minutes of September 14 be approved as submitted. **Discussion:** Mr. Hughes said that on page 4, line 5, the word should be "cause of" instead of "causative." **Action:** The minutes were approved unanimously as corrected.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the minutes of September 21 be approved as submitted. **Discussion:** Mr. Hughes said that on page 7, Mr. Hughes' statement should be that "he doubted that anything (strike the word "that") could be done to make the residents happy." On page 9, after the public hearing is closed, the minutes state that "He can predict that if there had not been a settlement and joint request", it should have been "joint recommendation." Mr. Roosa clarified that it was a called a "joint request for special master's recommendation." **Action:** The motion carried unanimously as corrected.

VI CERTIFICATES OF APPRECIATION

Jean Matthew of Mainstreet said that she was not able to get the persons to the meeting that should receive the certificates. She said that these same volunteers were also called on to help the small businesses board up before the hurricane, along with other volunteers from the community. She also thanked the council members for their offer of help during the hurricane preparations. She will give the certificates to the volunteers personally.

VII COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

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

B GARR REYNOLDS

Mr. Reynolds reported that they have put plywood over the windows and doors at the Sanbar. He thanked whoever is responsible.

C DAN HUGHES

Mr. Hughes distributed a letter that was addressed to Arden Arrington from Irvin Solomon, a professor at FGCU. Mr. Solomon has requested the intern coordinator at FGCU to find out

whether they could put interns from the history department at the Cultural Center at the Mound House. Mr. Hughes said that he thinks it is a great idea.

D JOHN MULHOLLAND

Mr. Mulholland read a prepared statement in response to the Civic Association's letter to him of October 1 that responded to his letter of September 17. He said he is concerned by the response. He had requested a mailing list of the membership so he could correct the inaccurate statements that were in the Tidelines, and also asking that all candidates be allowed to be treated the same in the newsletter. Recent Tidelines only published information on the same four candidates while attacking candidates not invited to speak. The response refused to give the list and did not address the issue of the unfair treatment of the other six candidates. The Civic Association also questioned his honor and ethics. He said he has a lifelong reputation of honesty and integrity in his personal life and business career. The Tidelines is the only source of information for many people in the town. How could it be considered unethical of him to try to get accurate information to people who are his constituents? The council is under attack. They have been called liars and lawbreakers, and their intelligence has been questioned. He will be sharing his copy of the Tidelines with the other council members. The Civic Association was once a responsible and trusted organization and the newsletter used to be informative. Recent issues have been below their former standards. The only remedy is to correct the inaccuracies in a letter to the residents of the town.

He talked about a memo from Mr. Roosa on Responsible Growth Management vs Lee County. The memo said that the South Florida Water Management District would protect our interest concerning water quality. He wants us to intervene. He disagrees with the attorney's findings that we will be protected by the SFWMD. Estero Bay is the town's jewel and we should be heard on this issue. He asked the other council members to back him in asking to intervene in this suit.

Mr. Roosa said in the memo that we do not have standing in order to intervene and were not a party to the original hearing. Sanibel has addressed that problem with regard to development along the Summerlin corridor by having an interlocal agreement that, in effect, makes them a party. He does not believe that we can intervene in this litigation because we do not have standing. That is a statutory right. In future actions we can assure it by having an interlocal agreement with the county so that any time they have a development that would impact us, we would be notified and allowed to participate. It is for future applications only and will not help us gain standing in this suit. Mr. Hughes asked about the possibility of appearing as amicus curiae. Mr. Roosa said that would put us in conflict with the county. Mr. Hughes said that is not necessarily bad. Mr. Roosa said there is another statute that says that if we have a conflict with the county commissioners, we will meet with them to attempt to resolve the conflict prior to litigation. It might not be a bad idea to meet with the county commissioners on this issue. Mr. Mulholland said that sounded like a good step. Mr. Hughes said he feels that Estero Island is more affected than Sanibel. What can we do to help with this litigation before the court? He would like to see the town proceed with the interlocal. Mr. Roosa said he would work on the interlocal agreement. It should cover all of Estero Bay and also some distance inland. Mrs. Segal-George suggested we include the Summerlin corridor also.

Mr. Mulholland congratulated the town staff on their outstanding preparations to protect the town from Hurricane Georges. He commended the Deputy Town Manager in particular for assuming the leadership of interfacing with the EOC, sheriff and fire district. He moved that a plaque be presented to each of the staff members recognizing their efforts and showing their gratitude.

He reported that the Back Bay cleanup will be on November 1. The MRTF will be involved. After the cleanup there will be a barbecue at Fish Tail Marina. They could use more volunteers.

He also mentioned today's New Press and the study of sea grass at Tarpon Bay. We have the same problem in Estero Bay. Ours is probably from careless jetskiers and boaters. He invited Terry Cain to speak to the council. She is a member of the MRTF and is in charge of education program and is chairing the Back Bay cleanup. Ms. Cain said there are two events she would like the council to be aware of. On October 19 there will be a workshop in Ft. Myers on Eco Heritage tourism. All are invited to attend and the workshop is free. The second event is the fifth marine cleanup on November 1 from sunup until noon. People are also welcome to clean up the bay near where they live. Keep Lee County Beautiful has offered the barbecue afterward for the volunteers. She asked the Town to become a sponsor. She recommended a \$500 donation. It is an educational event. She said they also need people on land as well as on the boats to offload the litter.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that \$500 be donated as sponsorship for the event. **Discussion :** Mr. Reynolds asked if they needed the money immediately. He would like the

council to consider this at a later meeting. **Action:** The motion carried unanimously. The check should be made out to Keep Lee County Beautiful.

E ANITA CERECEDA

Mayor Cereceda gave a public commendation to Mrs. Segal-George and John Gucciardo in particular, but also Ron Himmelmann and Peggy Salfen for their efforts in preparation for the hurricane. We have an efficient and well-working staff. We learned a great deal from the planning.

VIII PUBLIC HEARING: ORDINANCE ESTABLISHING CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD

Mayor Cereceda read the titles and opened the public hearing.

A JEAN MATTHEW

Ms. Matthew asked if the Mainstreet director could be an ex officio member of the committee. The council was not opposed.

B BETTY SIMPSON

Ms. Simpson asked if this board would be partially made up of the old steering committee members. Mrs. Segal-George said Mr. Arrington is asking all the old members if they are interested in serving. They will have to be formally appointed by the council.

The public hearing was closed.

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

IX FIRST READING: ORDINANCE AMENDING THE PARKS AND RECREATION ORDINANCE

Mayor Cereceda read the titles. The ordinance will be set for public hearing on October 19.

X FIRST READING: ORDINANCE AMENDING THE LAND DEVELOPMENT CODE ON MOBILE VENDORS

Mayor Cereceda read the titles. The ordinance will be set for public hearing on October 19.

Mr. Hughes said that the title mentions farm produce stands, U-Pick operations, etc. Wouldn't it be appropriate to eliminate those references that do not apply to the island? Mr. Roosa said the title of Division 16 could be changed. Mrs. Segal-George said the whole LDC is being changed. She doesn't know the difference in the definition between roadside stand and farm produce stand. But that will all be cleaned up in the new LDC.

XI DRAFT ORDINANCE: AMENDING THE OPEN ALCOHOLIC BEVERAGE CONTAINER ORDINANCE

Mayor Cereceda read the titles. First reading will be October 19.

Mr. Roosa explained that a reference in our ordinance applied to the wrong section (definitions). The county court has ruled that there is no violation of definitions so there can be no violation. He also passed out an emergency ordinance. Adopting the emergency ordinance will keep our ordinance in force until final public hearing of the regular ordinance. (The emergency ordinance gives us 60 days.)

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

XII RESOLUTION SUPPORTING AMENDMENT 5 (CONSERVATION AMENDMENT)

Mrs. Segal-George said that we have been asked to support this resolution since we have received a grant from the Florida Communities Trust. Without this, the money would not have been available for us to receive the grant.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the resolution be adopted. **Discussion:** Mr. Hughes said in addition there should be some publicity about this amendment. Let the electorate know about it because it is important. Mayor Cereceda said she would make sure it gets some coverage.

Action: The motion carried unanimously.

XIII OLD BUSINESS

A CONTRACT WITH LAWLER'S LAWN MAINTENANCE

Mrs. Segal-George said that the memo explains the differences between last year's and this year's contract. Mr. Reynolds asked about the amount for mowing the Mound House. It was clarified that it is not included in the contract amount. Mr. Reynolds asked if the merchants are contributing toward the maintenance of Times Square. Mrs. Segal-George said they will be as soon as the MSBU is put into place. The council will be deciding the percentage of how much the town will pay and how much the merchants will pay. Mr. Reynolds said he has a problem with the whole island supporting this one business location. Mrs. Segal-George said that when the council voted to close the square, we prevented a number of merchants from having any way to remove their garbage. Mr. Reynolds asked, when Old San Carlos and Crescent are improved, if maintenance there will be a part of this contract also. Mrs. Segal-George said that that will have to be negotiated in a new contract. The area down to the Lani Kai only gets maintenance on the sidewalk and the palms. Mr. Hughes asked about the Mound House maintenance. He asked if part of the contract could be severed if he does a good job on one part and not a good job on another part. Mrs. Segal-George said yes. Mr. Hughes said he would like to see a statement in the boilerplate contract that these people are independent contractors and not employees of the town. Also in section 2 (Contractor's Personnel), it provides that they shall maintain workers comp and liability insurance for each of their employees. In Section 11 (Liability) it provides public liability insurance in an amount and with an insurer acceptable to the owner. Normally we should require a similar provision under his workers comp and liability coverage, that that insurance be in an amount and with an insurer acceptable to the owner. There were no objections to the changes being made to the contract. Mr. Reynolds said we started out at \$26,000 and it is now \$42,000 plus for maintenance. Mrs. Segal-George said the increase is because Times Square is maintenance-intensive. The work specifications have been increased, such as sealant to help prevent staining of the pavers. When the square doesn't look good or clean, we get calls from the residents. The increase is because of the increase in number of hours required. There was no increase in the hourly wage. Mr. Reynolds said the coverage is good by Mr. Lawler, but he is concerned about where the money is coming from. The parking meter funds should go into the general fund to be used as needed. Mrs. Segal-George said the council directed the parking meter money in that direction but it could be changed if they wished. Mayor Cereceda said Mr. Lawler is very dedicated to the town and is a very hard worker. During the hurricane preparation he helped out in getting Times Square and the Mound House secured. He is very conscientious. She said when the town agreed to take over the Times Square area, they basically agreed to create a park. It created incredible burdens for the merchants in the area. We were able to come up with some agreements to be able to go ahead with the project. Everyone is thrilled with the project. It put a facelift on the community and it is not strictly for the businesses in the community. We are not subsidizing private businesses. The money that was spent to create the area, was money that was collected before we became a town. We have created an area that every single person on the island can enjoy. Mr. Murphy echoed the Mayor's sentiments. A lot of the money that is collected is used to offset the expenses incurred. The majority of the work Mr. Lawler is doing is on public (town) property. This is not a big benefit to the merchants except in the improvement of the whole area. It has also been the impetus for improvement outside of the area. Mr. Mulholland said if you do an analysis of the budget, the only dollars spent are money for the maintenance. All other dollars are for the benefit of the residents. Mr. Reynolds said he is not talking down Times Square. He is very proud of the project. But we are spending taxpayer money there. In the future the cost will be shared, but he does not look for the money that has already been paid for maintenance to be paid back.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the contract be approved with the changes suggested by Mr. Hughes. All voted in favor of the motion except Mr. Reynolds. The motion carried.

B DO THE RIGHT THING PROGRAM

Mrs. Segal-George said she needs to know if we want to continue with the joint participation in the program as we did last year with the Chamber. Mayor Cereceda said it is a tremendous program and one of our beach students has been honored at their annual banquet. There was no objection to continuing with the same amount that we contributed last year. Mr. Hughes said he has a concern about the general policy. This would come out of community services. Is that the intent that it would be available for local not-for-profit and charitable organizations? Mrs. Segal-George said that the money is spent at the council's discretion by request. We have also sponsored the high school graduation party. Mr.

Hughes said that he is on some foundations and they have criteria that people who are seeking money must meet. There should be some sort of coherent policy about how community services money should be distributed. Mr. Mulholland said it is a good idea and asked if Mr. Hughes could help in establishing those criteria. Mr. Hughes agreed to work on something for the council to consider. All the requests are from worthy causes, but we have to be careful as a municipality about giving tax funds to charitable entities.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the town continue in the program at the same level as last year. The motion passed unanimously.

XIV TOWN MANAGER'S ITEMS AND REPORTS

Mrs. Segal-George said that her office and the fire department have been working for months to get the Sanbar secured. They have now agreed to board it up and also to secure the pool. The fire department was very helpful. They wrote a series of violations that helped convince them to board up.

Mr. Hughes asked about the memo from Mr. Gucciardo about hurricane operations. Mrs. Segal-George said she has a list also and they will compile them into another list and probably have a workshop on the subject.

XV TOWN ATTORNEY'S ITEMS

A PRIMEAU LITIGATION VS LEE COUNTY

Mr. Roosa said not long after the completion of the Times Square project, Mr. Primeau filed a lawsuit against Lee County (inverse condemnation action), saying that the county built a trolley stop and roadway on his property and took the property without compensation. The county takes the position that they have a license to do what they did. They had asked the Primeaus for an easement, but they wouldn't give one, but they agreed to give them a license. The license had conditions. But it was never presented to the county commission or the town council. Despite that the county went ahead with the project. Their position is that they had an oral agreement, or through some equitable doctrine such as estoppel that they partially performed and therefore were justified. It seems to Mr. Roosa that based on the complaint, there is a legitimate claim for damages. The mediation agreement provided for compensation and also the moving of the trolley stop and the providing of 3 spaces on the town right of way or the payment of \$15,000 for the parking spaces. Both those issues are clearly within the jurisdiction of the town because it is town property. When the county turned it over to the town, they turned over the trolley stop. The contractor's documentation includes a blueprint which was turned over to us. They turned over to us the pavers on the road right of way also. Tom Wright, the assistant county attorney, has asked that the council authorize those three spaces on public right of way to save the county \$15,000 and also that they approve the moving of the trolley stop. The alternative place is closer to the water and down Estero a short way. The result would be to move the bollards forward so it would impact the traffic flow. Mrs. Segal-George said the circular turn-in would also be reclaimed by Mr. Primeau and that would affect the access to the Top O Mast. Mr. Mulholland said the county has the burden, yet they are asking us for 3 additional parking places. We already gave Mr. Primeau some parking spaces because he allowed the CRA project to go through. Now he is asking us to move the trolley stop. Why are we in a no-win situation? Mr. Roosa said that the county is just asking as an accommodation. But they are not offering anything in exchange. Mr. Mulholland said he understands that the agreement calls for \$55,000 in damages plus attorney's fee or he will take his land back. Mr. Roosa said the land will belong to the public. Mr. Primeau has asked the court to determine that a taking has occurred. Once the Court has agreed that a taking has occurred, then it is just a question of compensation. Right now it is private land subject to an oral license. When we took it, we understood that all the easements had been acquired. This one fell through. The county CRA dropped the ball. Mayor Cereceda asked if the county commissioners have the authority to make that settlement. Mr. Roosa said it is his position that they have the authority to pay, but not to grant parking spaces on our right of way or to move the trolley stop. Mayor Cereceda said we need to communicate that to them. Mrs. Segal-George said this was supposed to go before the county commissioners tomorrow but Mr. Roosa asked them to postpone. They postponed one week. In one week they will hear their county attorneys present this to the commissioners and ask them to agree to it. Mr. Hughes said it seems we are being pressured by the county to bail them out when they messed up. He is confused about who has title to what. Where does Mr. Primeau's fee title begin and end, what is public right of way, where is the area of the license agreement that is in controversy? How will this affect our chance to have a pedestrian overpass or will it cost more to build because of this? He does not feel comfortable agreeing to what the county is asking. Mr. Roosa said those are legitimate issues. It is not just a matter of moving the trolley stop

because it is part of a total plan. He will prepare a letter to the county commissioners stating that with regard to their paying compensation, we have no concern. But the movement of the trolley stop and the granting parking spaces is another issue. Mr. Hughes said accessibility to the Top O Mast is also a concern. They have already lost the street in front and they have asked for signs, etc. Mrs. Segal-George said there would be interesting liability if they cut off access to that parking lot. Mr. Reynolds asked if that area is a 50-foot right of way. Mr. Roosa said he was not sure. Mr. Reynolds said you can't claim public right of way. Mr. Roosa said they are claiming a triangular piece of land in front of the trolley stop and it is pretty well assured that Mr. Primeau owns that land. Mr. Roosa will draft the letter and be at the commission meeting to make sure they understand our position.

XVI PUBLIC COMMENT

A SANDI SUTER

Mrs. Suter said that the residents have gone without sidewalks on the south end because the funds were diverted to Times Square. She understands the sidewalks will be coming later this year due to a federal grant.

She directed her next comment to Mr. Mulholland. She said there is a blatant attempt to malign the Civic Association. In the September Council meeting, Mr. Mulholland read his letter to the Association, yet he only paraphrased the Civic Association letter to him and perpetrated a false image of the Association. The Civic Association has no responsibility to print any statement from anyone they do not choose to. They are a private organization and mail issues only to their membership. In October they will endorse Cherie Smith, Garr Reynolds, Lena Heyman and Lorrie Wolf. Mr. Murphy objected that Mrs. Suter was out of line because this is not a political forum. Ms. Suter said they have every right to endorse whomever they please. That was carefully explained in the letter that was not read tonight, but was paraphrased. The membership list is confidential and will not be distributed. They have been publicly labeled as irresponsible. They have printed the truth for years and have been the only source of total truth for many of their citizens. In light of his misrepresentations of the Association, she challenged him to read the letter.

Mr. Mulholland read the letter that was dated October 1 responding to his letter of September 17. It stated that they would not be giving him the membership list. It stated that they are not a PAC, but a private organization. Although they have not yet publicly endorsed candidates, it is their intention to do so. As a private organization mailing only to their own membership, they can endorse candidates without becoming a PAC. They have advised their attorney that Mr. Mulholland is distributing the Tidelines without the permission of their directors. It also said it appears he is trying to intimidate the Civic Association with his demand to respond within 5 days. As always, any member of the Civic Association can submit a letter for approval and publication. It also said that if the Civic Association no longer expresses his views, it would be more honorable for him to resign. They said that to remain a member so he can harass and monitor them, appears to be unethical.

Mr. Hughes said there is inconsistency between what Mrs. Suter said and the letter said about being a private organization and that their newsletter is only for the benefit of their members. In the minutes of September 21, Mr. Reynolds stated that the newsletter is an attempt to keep the public informed and he doesn't see anything wrong with it. Those minutes were read and approved without change.

B JANE CUNNINGHAM

Ms. Cunningham is a permanent resident of Harbor Pointe. She noticed the similarity of the concerns about the Primeau case with the building restrictions at Bay Beach. The county has been making decisions on unclear or ambiguous information, then throwing it to the town council to straighten out. She asked if it is OK to copy a letter to the council that she has received. Mr. Roosa said it is OK with the writer's permission only.

She also asked, regarding the Lawler contract, at what time the percentages would be decided. She asked if it is correct that up until then, the town is paying the full amount.

C LENA HEYMAN

Ms. Heyman asked about the 60-day emergency ordinance regarding alcoholic beverages. She asked if there is anything in there where the town could declare that alcohol will not be served in case of an emergency such as they did on Sanibel during the hurricane. Mayor Cereceda said that this is only to keep our ordinance in effect until we can fix a technicality in our ordinance. She said that the type of event she is talking about was mentioned in the memo from Mr. Gucciardo and that this would be addressed later.

D BETTY CRAWFISS

Ms. Crawfiss thanked Mrs. Segal-George for keeping the town's utilities going during the storm.

Mr. Murphy said Mrs. Suter sneaked in her slate of candidates during public comment. He finds that improper. He would like to have that stricken from the minutes. Mayor Cereceda suggested that since it is important to keep the minutes reflective of the meeting, if there is no objection, they will have a policy that the podium will not be used for political endorsements. Mr. Reynolds said he agrees only if a council member does not initiate the problem. Mayor Cereceda said that Mr. Mulholland did not initiate a political endorsement, he initiated a response to a letter. Mr. Reynolds said we should not give a rebuttal to public comments. Mr. Hughes said you can't tell an elected official that they can't respond to something.

XVII ADJOURNMENT

The meeting adjourned at 8:24 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary.

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 2, 1998**

NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, November 2, 1998 at 6:35 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Pastor Tom Snapp of St. Peter Lutheran.

IV PUBLIC COMMENT ON AGENDA ITEMS

There were no public comments on the agenda.

V APPROVAL OF MINUTES: OCTOBER 15, 1998 AND OCTOBER 19, 1998

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the minutes of October 15 be approved as submitted. The motion passed unanimously.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the minutes of October 19 be approved. **Discussion:** Mr. Hughes said that on page 4, item D, 4th line down, it should read "Mr. Mulholland has". Four lines further down, it should read "help in mailing" instead of "meeting". Near the end of the paragraph, after the word "absolute" should be added the word "defense", and the phrase should read "that there was slander, that there is an absolute defense in law to slander, and that is truth." In the following paragraph, three lines from the bottom the first word should be "where" instead of "were." **Action:** The minutes were approved unanimously as corrected.

VI COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy said Monofilament Madness was a great event. They had a lot of fun and accomplished much. He thanked everyone who came out to help clean up the back bay.

B GARR REYNOLDS

Mr. Reynolds commented that the Halloween event at Bay Oaks was also a very good event.

C DAN HUGHES

Mr. Hughes asked Mr. Roosa if he will be addressing the status of Moss Marine during his comments. Mr. Roosa replied that he will not, as there is nothing new. Mr. Hughes asked if he will be addressing the Primeau case. Mr. Roosa said that there will be a meeting on Thursday on that case.

Mr. Hughes asked if he could attend the meeting of the Southwest Florida League of Cities. He was told that he could attend. He also mentioned that their directory contains the name of the old assistant town manager and should be changed. He asked if there is any follow-up on the Campbell situation adjacent to Lani Kai. Mr. Gucciardo said that the next day code enforcement talked with the two property owners, with Lani Kai and with Rick Klontz of Lee County Solid Waste. Mr. Hughes thanked Mr. Gucciardo for the excellent summary on our investment situation. It gave a lot of information and made some recommendations. He asked if that would be put on a future agenda. Mr. Gucciardo said there is no timetable and they were not necessarily going to put it on the agenda. He is still in the process of getting some feedback from other participants in the League of Cities program. Mr. Hughes said our investment policy is set by charter and by ordinance. Can Mr. Gucciardo make changes in investments without town

council action? Mr. Gucciardo said he believes you can, but they have not done that in the past. He said the memo was looking for input from the council. He has also given it to Mr. Roosa for comment.

D JOHN MULHOLLAND

Mr. Mulholland agreed that the investment memo was excellent, but he requested that it be put on the agenda in the near future so they can discuss the options. Mr. Mulholland said that Estero Bay, the jewel of our town, received a good cleaning on Sunday. Terry Cain worked very hard to organize the cleanup and he thanked her. Approximately 175 people took part, 125 lunches were served, and just under 5000 pounds of marine debris was bound and disposed of. Also three derelict boats were found and disposed of. He thanked Mrs. Cain and all who volunteered.

He said that he regretted having to bring up the next matter, but he feels it is of utmost importance. On Thursday, he and his wife mailed their resignation from the Civic Association. That afternoon they received a special election edition of the Tidelines. On the front page was a copy of a letter addressed to the state Commission on Ethics signed by Ted FitzSimons. It contained charges against Mr. Mulholland that were without merit. He said he was bringing it before his colleagues because the "Town mayor" was also mentioned and it also mentions "at least three sitting council persons." Mr. Reynolds objected that he thought the council agreed not to bring up anything political. Mayor Cereceda said this is not political because it involves charges made against Councilman Mulholland. Mr. Mulholland read from the letter: "According to the October 19 meeting, at least three sitting council persons participated in the distribution of the referenced letter [that Mr. Mulholland mailed out] but supposedly never discussed its contents but all three had read the document." So three members of the Council are under question to the Commission on Ethics. He thinks this is bad for the Town and council and everyone concerned. The Commission on Ethics takes violations very seriously-- you can be removed from office, fined or jailed. He is sorry we have come to this level. Mr. Roosa has advised him that Mr. FitzSimons may have committed a misdemeanor in the first degree. Florida Law 775.082 says that "any person who willfully discloses or permits to be disclosed his or her intention to file a complaint, the existence or content of a complaint which has been filed with the commission, or any document, action or proceeding in connection with the confidential preliminary investigation of the commission, before such complaint, document, action or proceedings becomes a public record, as provided herein, commits a misdemeanor of the first degree." The Civic Association may also be guilty of a conspiracy, which is also a misdemeanor. He takes no joy in telling them this. He asked that people let this come to an end. Let the Council get back to the urgent business of the town. He will volunteer to talk to the membership of the Civic Association if they would invite him, if it would help clear things up.

E ANITA CERECEDA

Mayor Cereceda echoed the comments about the Back Bay cleanup. It took the cooperation of many different groups, including the Pilot Club, and the Leadership Lee County class. The personal watercraft and parasail vendors practically shut down their businesses while they volunteered their machines and gas. They picked up tons of trash. The effort was a good indication of how much we value our back bay. She suggested that we do it more than once a year, perhaps quarterly.

VII PUBLIC HEARING: ORDINANCE AMENDING THE OPEN ALCOHOLIC BEVERAGE CONTAINER ORDINANCE

Mayor Cereceda reminded the public that this is just a technicality to correct a minor error in the ordinance. She read the titles and opened the public hearing. Mr. Roosa clarified that in the original ordinance, the paragraph that imposed the penalty was a penalty on the definition paragraph. This amendment removes the definition from being a violation and puts it in the correct place. There being no comment, the public hearing was closed.

Mr. Hughes said that this is just changing a section number, but under our procedures, it had to go before the council three times. Isn't there some way to amend technicalities without this whole procedure? Mr. Roosa said that this ordinance imposes a criminal penalty so it must be done this way even though it seems like a technicality. Otherwise we could have amended it more easily.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the ordinance be accepted. Mr. Murphy, aye; Mr. Reynolds, aye; Mr. Hughes, aye; Mr. Mulholland, aye; Mayor Cereceda, aye. The motion carried unanimously.

VIII NEW BUSINESS

A REQUEST TO HOLD SWIM LESSONS AT MOUND HOUSE

Mrs. Segal-George said that Kay Sager Vogel approached her about wanting to offer swim lessons at the Mound House. The Town is keeping up the pool anyway and will continue to until we decide what will happen to the pool. This would allow the residents to take advantage of Red Cross programs that we do not currently have on the island. Mrs. Vogel said we have not had Red Cross lessons open to the public. Her husband is also a Certified Water safety Instructor. She said the pool is not heated so it will not be suitable for lessons in the winter. Adults who do not know how to swim are usually too embarrassed to have lessons at the condos. The other program she will offer is Basic Community Water Safety. It is virtually for anybody, and you do not have to have any aquatic skills. It covers many aspects of water safety including bug bites, snake bites, CPR, first aid, etc. That class is mainly classroom, so it is optional to enter the water. Most sessions could be held in the Mound House if that is agreeable. Mayor Cereceda asked about liability. Mrs. Segal-George said the house and the town are covered already and that the Red Cross assumes some liability. She said that we can work out the details, but first she needed to know if the town would even be interested in this before she explored it further. It is true that there would be some liability if something happened there. Mr. Hughes said he thinks that our public liability policy would probably be sufficient without a rider. Mr. Reynolds felt that any extra activity there would have to be cleared with the insurance company. He asked Mrs. Vogel if she has done swimming instruction at the condos. A lot of them have heated pools and they might be interested. She said she does private lessons there, but they are not willing to bring in the public because of liability. Mr. Murphy asked how Arden Arrington feels about it. Mrs. Segal-George said we can work around the schedule there because there is not much activity there yet--mostly just writing grants and the Christmas program. She thinks it would be good to have something happen there that would be of value while we are in the planning stages. Mr. Mulholland asked if the town will make any money to offset the cost of maintenance on the pool. Mrs. Vogel said the cost to the residents would be the same as is charged by Lee County, and that the Red Cross takes 20% of that. A portion will go to the Build-A-Pool Foundation, but she doesn't know how much because she doesn't know how much response she will get to the lessons. Mrs. Segal-George said that we are maintaining the pool now anyway. She would talk with Mrs. Vogel about the exact costs. It is costing us about \$70 per month to maintain the pool. Mr. Murphy said it seems that the majority of the lessons will be classroom work this winter. Mrs. Vogel said that with the cooler nights, the temperature of the water will not be suitable for children soon. Mayor Cereceda asked how she would get her customers. Mr. Vogel said she would advertise in the Observer and Bulletin. Mr. Hughes said it is an excellent program and should be encouraged.

Motion: Mr. Hughes moved and Mr. Murphy seconded that Mrs. Vogel be allowed to offer lessons at the Mound House. **Discussion:** Mr. Reynolds said he thinks it is a good idea but he is worried about the liability. He also thinks some money should go toward the operation of the pool. **Amended**

Motion: Mr. Hughes said he would like the project approved subject that it will not go into effect until we have a formal outline or agreement setting forth precisely when lessons would commence, what would be the cost, what portion would go to the Pool Foundation, etc. Mr. Murphy agreed to the amended motion. **Discussion:** Mrs. Vogel said the amount she would give to the Foundation would depend on how many students she would have. She would be willing to have a formal proposal, but it needs to be advertised first. Mr. Murphy also wanted to know when the agreement would end. Mrs. Vogel said that probably November is the only month she will be able to use the pool, but the other program could go on all winter. Mr. Murphy said he was speaking more about a termination clause in case we didn't want her giving lessons there any more. Mr. Hughes had no objection to getting the project started and not waiting for another meeting, but he wants it to be a clear-cut proposal. Mrs. Segal-George said she understood it would only be through December. If they want it to continue further, they could add the formal proposal. Mr. Hughes withdrew his previous motions.

Motion: Mr. Hughes moved that the council approve the commencement of the Red Cross program through the end of the calendar year in accordance with the proposal set forth in the memo with the additional proviso that our current insurance is adequate and would not require any additional insurance. Mr. Murphy seconded the motion. The motion carried unanimously.

B PUBLIC SAFETY TASK FORCE SURVEY

Mr. Gucciardo said the Council has been provided with the final version of the survey. It is not just an exercise of rereading--they would like the council to fill it out and return to him. The Task Force members will be out at the polling places on Tuesday to give them out to all the voters. They have also

made a mailing to all the absentee voters and the survey will be available around the island with convenient drop-off boxes. A criminal justice class will compile them and put the information in a usable form.

IX TOWN APPOINTMENTS: CHARTER REVIEW MEMBERS

Mr. Gucciardo said that all of the original charter review members have agreed to serve again: Andy Priem, Joe Croker, Ilene Barnett, David Smith, and Dan Parker.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the original members be appointed to the new commission. **Discussion:** Mr. Hughes said he thinks that something as important as an amendment to the charter should be a larger group. Mr. Mulholland disagreed. He said that the work that the original five members put out was incredible and that they also had input from the Chamber review committee. What they produced was good. The problem was that the council did not get all the changes made that they suggested. Mr. Reynolds agreed. He feels that they are very well-versed on the charter and they gave a good report. Mr. Murphy said we are back because of few outstanding items. He thinks these people have a good handle on those issues. But he thinks there will be a time in the future when we will want to consider more far-reaching changes than these small items. When it comes time for that, he agrees that the more people on the committee to bring fresh ideas, the better. Mr. Gucciardo said he assumes they will follow their previous procedure, which will be to have numerous public meetings with public input. Then everything will come back to the council with an opportunity for public input then. Mayor Cereceda said she would like to see a larger group, but this would help eliminate as much confusion as possible. **Action:** The motion carried unanimously.

X TOWN MANAGER'S ITEMS

Mr. Gucciardo said that he has prepared a grant application that grew out of our preparations for Hurricane Georges. During the hurricane, the staff discovered a number of concerns, one of which was that we were probably vulnerable in case of power outage on the island. There was a lot of information that went through Town Hall that would not be able to go through Town Hall if the power went out. This grant is due on November 9. If funded, the grant will allow permanent generators at Town Hall and the Mound House. One of the criteria for grading the grant application is commitment by elected officials to participate in this. The bulk of the money we are asking for is from the state for the two generators as well as to have them installed. Our in-kind match is a commitment on the part of the Council to direct staff to participate in the grant administration, overseeing the construction project, and hiring on a contract basis labor to keep the generators maintained throughout the year so they will stay usable if and when an emergency occurs. The grant is for \$36,000 for equipment, but the entire grant package is about \$42,000, with our in-kind being about \$6000. The only cash outlay from the town would be the advertising for the bid process for the contract for the generators.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the staff be directed to participate in the grant administration. **Action:** The motion carried unanimously.

XI TOWN ATTORNEY'S ITEMS

Mr. Roosa reported that he and Mrs. Segal-George will meet with Mr. Primeau and his attorney and the county attorney on Thursday. This meeting comes out of the county commission meeting where they said that all the parties should get together.

XII PUBLIC COMMENT

A BILL PERRY

Mr. Perry wanted to thank the council, staff, and the jet ski and parasail vendors, Mid Island Marina, and Fish Tale Marina and Terry Cain for the successful back bay cleanup.

B RAY MERTENS

Mr. Mertens said that during the election process, it has appeared to him that our staff is in jeopardy annually. He feels that when you have good people, you should do something to put their lives at ease and consider a longer-term contract so they aren't subject to whim. They have family and bills and careers. He questioned how long he would stay himself under these circumstances. If it is OK with the charter, he would like to see that change. They could still be removed for cause, but as a citizen, he doesn't want them to worry about retribution if the wrong person or the right person wins. Political hacks don't work. We need to protect good people.

XIII ADJOURNMENT

The meeting was adjourned at 7:25 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 9, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, November 9, 1998 at 9:04 A.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III PUBLIC COMMENTS

A BILL VAN DUZER

Mr. Van Duzer said he has read Mr. Spikowski's memo regarding the Red Coconut property. He thinks many of the things in that memo are incorrect about the density. The LPA considered this before it went to DCA, and they said they wanted a cap of 10-15 units. Now the LPA has voted unanimously to approve redevelopment at 15 units. Now the council is being offered information the LPA did not get and he thinks it is incorrect. For these reasons he does not believe this information should be used. The Myers' have offered to the town a lot of information on a plan that they could live with. They are agreeable to cutting their density from 25 to 15. What he is asking is that the Council be reasonable with their request. He would like them to give fair and just consideration.

B JOHANNA CAMPBELL

Ms. Campbell spoke about the Piascik property. She was not at the LPA the day they discussed it. In Mr. Spikowski's memo it says that the vote was unanimous, but the vote was really 4 to 2. This area has been requested to be changed to Mixed Residential, but this is in the low density and quiet zone. She asked the Council to think of something else for rezoning, perhaps multi-residential, to eliminate any commercial activities. Just because there is commercial in the area, she doesn't think everything should go commercial. Perhaps the owner of the car wash would agree to limit the hours of operation. She wants to make sure the units are residential duplexes and not duplexes for commercial use. Think of the future. This owner says he hasn't been able to sell this property for a couple of years and that is why he is asking for change. Would that apply to other properties, just because they cannot sell?

C TOM PIASCIK

Mr. Piascik said the property has been in his family for about 35 years. It is his inheritance from his grandparents. He owns two other properties on the beach and his wife teaches at the Beach School, so they are both vested in the community. He has tried to sell the property and has listened to every comment and suggestion. But if anyone is going to do anything with that property, it needs to be duplexes. The community wants it to remain residential and he does not want it for commercial either. But duplexes would make it financially feasibility. The people who would live in the duplex would accept the commercial next door. He sees no way to make it commercial.

IV RESOLUTION: CERTIFYING THE RESULTS OF THE ELECTION

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the resolution be adopted.

Discussion: Mr. Murphy said that someone asked him how it felt to be a lame duck (because of our charter limitations.) He stated that he has no intention of being a lame duck. He has many things he wants to do and work for in the upcoming years. **Action:** The motion carried unanimously.

V PUBLIC HEARING: BRYAN W. DUPREE 98-06-228.01Z

Andrew De Salvo was sworn in for the applicant. Mr. De Salvo said that he spoke during the Comp Plan hearings about this property. This is the property next to the Beach Light Grill. The LPA has voted unanimously to recommend rezoning from MH-2 to TF-1. They also recommended that the town change the land use category to Mixed Residential. If we don't change the land use category, then by

approving this zoning, it won't allow this property to be developed as a duplex. He asked the council to remember that in the original comp plan hearings the council agreed with this change. He also clarified the LPA resolution, because this zoning also allows for single family home. He does not think it means that his client could not put a single family house on the property, that he has to put a duplex on it. He wants a maximum of two units.

Nettie Richardson of Lee County Development Services was sworn in. She stated that this property is 0.47 acres. This property and another one to the west was originally zoned TP, then converted to MH-2, which is mobile home. In 1981 the other MH2 parcel was rezoned to CT, but this lot was left behind. Across Estero is Eucalyptus Park, which allows single family and duplex. This rezoning would allow him to have the same type of housing as to the east and north. This zoning fits the lot dimensions. RS1 would also fit but would restrict it to single family only. TFC zoning also fits same size lot, but it is not available to property owners—it can only be initiated by the council. It is in the Urban land use category. It is consistent with Policy 1.1.4, Policy 2.2.1 and Policy 5.1.5. Policy 80.1.2 would not allow a mobile home to be built on the property. Staff recommends approval because the property is surrounded by existing residential uses and it is consistent with policies. At the LPA hearing, they recommended approval with the condition that only a duplex can be built on the site, but staff also wants to clarify that a single family home could be built on this site as well.

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

Mr. Hughes said he has no problem with the zoning change, just as the LPA recommended, because the current zoning is totally inappropriate.

Motion: Mr. Hughes moved adoption of the resolution with the added language in the condition: “conventionally built duplex, two-family and single family dwelling unit.” Mr. Murphy seconded. The motion carried unanimously.

VI DISCUSSION OF FINAL RESPONSE TO DCA ON COMPREHENSIVE PLAN CHANGES

Mr. Spikowski stated that the council heard the initial response to the DCA two months ago. Since then he has met with key DCA officials and has taken the nearly-completed final version before the LPA, where they made some changes. But some final information was not available to the LPA. Originally he thought there were 7 or 8 major issues, but now that he has talked with DCA, he does not believe they are all major. Some small changes to concurrency and road level of service will probably satisfy DCA concerns without changing the original Comp Plan in any way. But there are still six issues that he wants to go over. They all affect land use and provide controls that may or may not be positive to the community.

1. Objection 9 regarding Mixed Use: DCA wants some measure to limit the amount of commercial in that category. On page 4-37, there is a chart that describes the three categories that allow both commercial and residential uses. In Mixed Residential, commercial (mostly motels) makes up 8.5 % of land area in that category. The proposed cap is 12%. What is important is what kind of commercial, how it is built, how it is designed and the impact on the community. We can make decisions on commercial use through the land development code. This cap would allow reasonable growth, but if these caps are reached, it would mean a plan amendment before any commercial development could be approved.
2. Objection 10 regarding platted overlays: It was applied to some additional neighborhoods at the council transmittal hearing, which would raise the density in some neighborhoods that are zoned duplex to 10. The LPA was concerned that the language would legalize existing duplexes but also allow the construction of new ones. He has changed the language so it would protect existing duplexes and second units only and would not allow new ones. The neighborhoods now zoned duplex that are in the platted overlay would be rezoned to single family with language that says that existing second units are not only grandfathered in, but the owner can tear them down and build two units again.
3. Objection 10 regarding Red Coconut and Gulf View Colony: Mr. Van Duzer said some information was not available to the LPA and that is true. The LPA recommended unanimously that the density be set at 15. Last year at the hearing, the council was not sure whether it would be 10 or 12 or 15. But now they must make the decision finally in December but should make it tentatively today so DCA can make a comment. He suggested at least 10 but perhaps up to 12 if they want to maintain the Seaside character. The owners of the Red Coconut are asking for 15.

4. Objection 12 regarding motel densities: In the current LDC we have eliminated the density multiplier on an interim basis. We wanted to set those multipliers in the new LDC, but DCA hates that and insists on some cap in the Plan. He proposes no lower than 1:1 and no higher than 3:1 and it will be set in the LDC by neighborhood. They may or may not accept this at DCA but it would preserve the council's flexibility.
5. Objection 13 regarding commercial intensities: Our land use categories all have a residential cap of 4 or 6 or 10 units per acre. We had said the commercial intensity standards would be in the LDC, but DCA wants a commercial intensity cap in the Plan. Mr. Spikowski said he finds this counterproductive to the community, because the cap must be the highest that you would ever under any circumstances want. He suggested a cap for the most intense you would want, but tried to make it clear that this is an absolute cap and that much more restrictive caps will be in LDC.
6. Objection 45 regarding wetlands: DCA acknowledged that we are doing what we can to protect wetlands, but we have no separation requirement between new development and the wetlands. The best he can determine is that a 75' separation between impervious surfaces and wetlands will allow filtration of runoff before it reaches the wetlands. He added that in Policy 4-C-12 but it is clear that it can't apply in the areas that are already platted areas. It can't apply in many areas on the island, perhaps only at Bay Beach and other areas that don't have detailed development plans yet.

Mr. Spikowski said that his intention is to send the proposed changes to DCA and they have promised to go over it in detail and have another meeting to tell us about anything they can't live with, so we can find out before adoption in December. We will have to decide if there is anything worth fighting over in litigation.

Regarding #1, Mr. Hughes asked whether that includes motels and churches. Mr. Spikowski said it does and also government uses, but not road rights of way. They are clearly not residential, so they are put in with commercial. Mr. Spikowski said that the 12% cap would allow 20.1 acres more to be developed commercially. He arrived at that figure by looking at some of the things that are already approved that will use up some of that acreage. The figure is too gross to be useful, but DCA requires something that would force us to reexamine the Plan if we ever reached that number. The number could be 10% or 14%, but he chose to recommend 12%. Many of the motels were built on multi-family zoned land back when it was legal. Mr. Reynolds asked in Mixed Residential, if there is not a high-rise there already, could you come back and build a high rise there? Mr. Spikowski said that if you have a piece of property with four residential units on it and the Plan allows you to build eight, and you came back and tore the four down and built eight on the same land, there would be no additional land consumed so it wouldn't affect this computation. But if you took in a vacant lot next door as part of your project, that acreage is now non-residential and would have to be subtracted from the 20 acres allowed here. Mr. Reynolds said that would allow a motel next to a residential home. Mr. Spikowski said that the rest of the Plan and LDC would address that kind of decision about whether that is OK. This is just a gross tabulation of how much new commercial development is being built. It doesn't address particular parcels on whether they should rezone to allow a motel. Mr. Reynolds said if the ratio is 3:1, then a motel could increase their units. Mr. Spikowski said it would be possible if you said in the LDC that you wanted the multiplier to be 3:1. This cap will not help the council make good decisions for the community--other parts of the Plan will do that. Mayor Cereceda asked how much previously-approved commercial development will come out of that 20 acres. Mr. Spikowski said that most previously-approved plans are for additional residential development, such as in Bay Beach. There are very few commercial acres other than a little bit in Bay Beach and a couple of development orders that were granted years ago. Most of Bay Beach is residential so it is not a factor. Bay Beach is in the Mixed Residential category and they had proposed some commercial use, but they were vague about it and he doesn't know what or if it is allowable. But if it is permitted under zoning and it approved, it would come out of this cap. Mr. Reynolds said Mixed Residential is a frightening concept. Mr. Hughes said you still have underlying zoning within the Mixed Residential. It would require the council's approval before rezoning.

Motion: Mr. Murphy moved that Policy 4-B-4 be approved as presented by Mr. Spikowski. Mr. Hughes seconded the motion. All voted in favor of the motion except Mr. Reynolds. The motion carried.

Regarding #2-- platted overlay: The new policy 4-B-11 states that the platted overlay will allow 10 units per acre but only in the Pedestrian Commercial area for affordable units consistent with the core area plan. In other categories it applies only to recognized existing dwelling units that were built legally but which would be non-conforming under a density cap of six units per acre. These are usually duplexes or accessory apartments. Mrs. Segal-George asked if we have to do something with the Dupree property now. Mr. Spikowski said that this does not apply in the strip that includes DuPree, because those lots are larger and deeper. They would be allowed a second unit and still stay within 6 units per acre. The way he has it worded it now, the strip past Anthony's would be 6 units per acre but they could have a second unit unless in the LDC they want to change that downward. Most of them already have two units today, but the Dupree lot is currently vacant.

Motion: Mr. Murphy moved approval of Policy 4-B-11. Mr. Hughes seconded the motion.

Discussion: Mr. Hughes said this legitimizes second units, but what if the unit is nonconforming but doesn't meet minimum building code standards? Does this have an adverse impact on the ability of code enforcement to require modifications or elimination of something that is not up to habitable standards? Mr. Spikowski said that the standard building code only applies when you are building. It won't allow you to retroactively enforce. Then there is the basic housing code standard, and that wouldn't change. The Town can't go in to force changes any more than they do today. If something was built illegally without inspections, it will still not be legal. Mr. Reynolds said he still reads it as 10 units per acre. Mr. Spikowski said that applies to Crescent. Mr. Reynolds said that area is a bottleneck already and this would further increase density in a dense area. He wants to leave it at 6 per acre at that location. **Action:** All voted in favor of the motion except Mr. Reynolds. The motion carried.

Regarding #3 – Red Coconut and Gulf View (Policy 4-F-2): Mr. Spikowski said that the only question is the density cap. He needs to get a number from the council and then hear from DCA whether they will accept it. Mr. Mulholland asked about the apparent confusion that Mr. Van Duzer spoke about. Mr. Spikowski said that when the LPA reviewed this document, it was incomplete on commercial and density at Seaside. He has since contacted the developer of Seaside, but the LPA did not have that information. He is not sure what errors Mr. Van Duzer was talking about—he went to a great deal of work to get this information and he hopes there are no errors. Mr. Van Duzer clarified that Mr. Spikowski is showing 759 units at Seaside, but he believes there are 909. (He believes that Mr. Spikowski counted the 75 triplexes as single units.) That increases the units per acre to 12.45. That does not include the 134 motel units or the library, post office, offices etc. which would affect density too. Mr. Spikowski took off 4 acres for that amount of commercial activity, which seems too slight. There are over 35 units per acre in commercial in those four acres. His major point is that Mr. Spikowski says that this is closely related to what we have on Fort Myers Beach, but he does not think so. That was new development and this is redevelopment.

Mr. Spikowski said that he got the 75 triplexes off their development order but it is possible that it is in error. There is much more commercial at Seaside. The current Red Coconut does not have any commercial on the beach side. In deleting the 4 acres at Seaside, he has just deleted the part that is just commercial and considered the rest that is mixed use. His main concern is that the drawing on the front page of the Comp Plan was drawn to illustrate a Seaside-type development, and if they approve something different for Red Coconut, it will not look the same with the extra intensity. Mr. Spikowski said that we sent off to DCA the lowest cap at 10 and the highest cap at 15, but now DCA said we have to be specific.

Beverly Grady, representing Tom and Fran Myers of the Red Coconut, said it is very unusual for a particular parcel to be highlighted in a Comp Plan. The Myers' have met with Mr. Spikowski and hired Carron Day and herself. They have worked with the town to make their goals work. The goal is an opportunity of development and an incentive. It is still an option in the Plan for the Red Coconut to stay historically as it has been. The goal is to offer an alternative for redevelopment. Carron Day said she has worked with the Myers' to help them react to the development proposals included in the Plan and come up with something more realistic. She has limited her study to the property owned by the Myers. She looked at the town's policies and what the town wanted to see, such as open space, parking, etc. She did not look at density first. She looked at Seaside. This property is much smaller than Seaside. Seaside is 75 acres and this one is less than 10. The plan includes a crescent with retail around, the same grid pattern, tree-lined streets, and a view to the gulf. In the last hearings, they modified the site concept plan to eliminate all commercial on the beach, decreased the density on two lots currently used for storage, and shifted the mix

of uses along Donora so that more single family homes will be near the existing single family homes on Donora. This is similar to the center part of Seaside, because that is all the acres they have to work with. They have single family lots, the crescent, multi-family buildings, and some multi-family over commercial. If they had more acres, they would come in with a lower density. Ms. Grady pointed out that redevelopment is not easy. It is more expensive, so a major factor is economics. They are making it a low-rise plan consistent with the town's vision, and have reduced the density from the existing 25 to 15. They received the unanimous recommendation of the LPA for a density of 15 per acre. The final approval will be in December, but she urged them to approve this today. Mr. Reynolds asked when this would be built. Ms. Grady said it is a concept and the idea springs from the town's planner. They have responded with time and money, but they did not initiate it. Government cannot design someone else's land, so the Myers have worked with the town to make it viable. Mr. Reynolds said he wants the Plan, but they need to have a plan to begin. He is concerned it will become a Bay Beach down the line. Mr. Hughes said that when Policy 4-F-2 was adopted by the LPA, there were three areas the LPA thought should adopt specific redevelopment plans. The property owners in those areas did not seek it so we have no proposed plans from those other two areas. They are major areas of concern. There is more to it than just density. It was not a petition by any property owner. The LPA felt it was desirable in case they should choose to redevelop. Mr. Mulholland said he was chair of the LPA at the time and sat in on the meetings with Red Coconut and they worked hard to come up with a plan. Mr. Hughes said that one of the DCA objections was about increasing population concentration. He said that Mr. Spikowski has tried to address that by looking at the overall density and not just this specific property. There are major decreases in other categories (such as the low density area and recreation.) There have been some compensatory adjustments to reduce density away from the coastal high hazard areas.

Motion: Mr. Murphy moved that the density cap for Red Coconut/Gulf View be approved at 15 per acre as submitted by the Red Coconut and unanimously recommended by the LPA. Mr. Hughes seconded the motion. **Discussion:** Mr. Hughes pointed out that we are really reducing density from the current 27 to 15 per acre. Mr. Reynolds reminded the council that density has been 6 units per acre in the county for many years, and now we have gone to 10 under certain circumstances, and now we are going to 15 in this area. That's growing by leaps and bounds. He suggested 10 per acre, but would consider 12. After December we can't change our mind and it becomes an obligation to this private development. Mr. Spikowski said that is true except to go through the plan amendment process. The LDC will have to be changed to reflect the change. Fifteen would be the maximum, but the LDC could say lower than 15. Mr. Reynolds said that we have a problem coming up at Bay Beach and they only have 9.75 per acre. That is a double standard. We are giving the owner the option 15 or anything less than that, but we cannot change our mind. Mr. Spikowski said that 15 is only for this redevelopment concept that meets very stringent guidelines, and it cannot become a high rise. Mr. Murphy reminded Mr. Reynolds that this whole process was town-initiated. It is not an increase in density—it will go from 27 to 15, which is a reduction. Mr. Hughes said it is clearly a reduction particularly in peak periods. Mr. Reynolds said those 27 units are RV units which is different. **Action:** All voted in favor of the motion except Mr. Reynolds. The motion carried.

The council took a break at 10:37 AM and reconvened at 10:50 AM.

Regarding #4 – Multipliers: Mr. Spikowski said this is a very wide range, and will make the multiplier not lower than one or higher than 3. This does not give anyone the right to build a motel where there wasn't one before. They would still need commercial zoning. If they were built before, they can rebuild but not expand. Mr. Murphy asked why he chose the high of 3. Mr. Spikowski said that the old code had a high of 3 and that is what the county currently allows.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the changes to Policy 4-C-6 be approved as outlined by Mr. Spikowski. The motion carried unanimously.

Regarding #5 – Commercial Intensities: Mr. Spikowski said these standards are very high and they will rarely if ever want to go that high on the LDC. If every parcel must provide its maximum parking on its own lot, so much of the lot has to be used for parking that you can't get a very high ratio of floor area divided by acreage. The only time it might go this high is when there is shared parking on some off-site location. In some areas of the town, that is a desirable development pattern and this accommodates that.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the changes to Policy 4-C-2 be accepted.
Discussion: Mr. Hughes said that here we are saying that there are ranges, yet in redevelopment we had to be specific. Mr. Spikowski said that 2.5 would apply to Pedestrian Commercial category and the 1.5 would apply to other categories, so it is precise. It is the ratio of square footage of the building divided by the footage of lot. If the ratio is over 1.0, it means the building is as big as the lot, which typically means it is a 2-story building. These are absolute caps. **Action:** The motion carried unanimously.

Regarding #6--Wetland Buffers: Mr. Spikowski said the suggestion for 75 feet is not from DCA but is supportable based on scientific studies. It can't apply on most of Fort Myers Beach because often the lots are only 100' wide and abut next to wetlands. It doesn't apply to previously-approved development if they can't be reasonably modified to comply.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the changes to Policy 4-C-12 be approved.
Discussion: Mr. Mulholland asked if this is referring to a development order that is grandfathered or in the works. Mr. Spikowski said if a development order was issued 3 years ago and there is no way to fit the same development on the site while meeting this requirement, it will not apply. But if there is a way to redesign the development, it must be done. Mr. Hughes asked how you could administratively challenge whether it could be reasonably modified if they are already permitted and won't be coming back for anything. He said it would put the onus on the staff to look at previous development orders to see if they abut the wetlands. Then there would be the issue of what is reasonable. Mr. Spikowski said there is an appeal process if there is a dispute. Mr. Murphy asked if we have identified any areas where this could happen. Mr. Spikowski said that on Chapel Street there is a development order for a condo, but there is no way that that site can be made to comply. **Action:** The motion carried unanimously.

Mr. Spikowski said there are two changes to the future land use map. One is the Piascik property and the vote was 4-2 at the LPA to approve, and also the Mound House property, which cannot stay in the Low Density area. It can be in the Recreation category.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that we accept the recommendation to change the future land use for the Mound House from Low Density to Recreation. The motion carried unanimously.

Regarding the Piascik recommendation, Mr. Hughes asked for a clarification on the LPA vote. Mrs. Segal-George said that Rod Vayo and Johanna Campbell were absent. Lena Heyman and Betty Simpson voted no, and Linda Beasley abstained. Four members voted yes so the vote was 4-2 with one abstention. Mr. Spikowski said that the underlying zoning is Single Family. Mr. Hughes clarified that if we change it in the Comp Plan to Mixed Residential, they would still have to have a public hearing to rezone unless we rezone it in the LDC. Either way it would require a public hearing. Mr. Spikowski said we will have a category that allows a second unit in Mixed Residential where the density allows. It will not allow a triplex. Mr. Mulholland said this looks like commercial intrusion. He has trouble with selective enforcement of commercial intrusion by the LPA. Mr. Murphy disagreed. We are not rezoning it today. We are just reclassifying it. Mr. Spikowski said we are setting it up so it could be rezoned. If you don't make the change in the Plan, you would not be allowed to rezone. Mr. Murphy said if we deny this out of hand today, it closes the door on any future possibility. He doesn't know if that is best for the town or not, but if it comes back to us in a public hearing, we would have a better idea of what the property owner planned to do and what the neighbors thought. Then we would address whether this was commercial intrusion. Mr. Reynolds agrees with Mr. Mulholland that it is intrusion. Why must it be Mixed Residential? Why not TF-1? He doesn't even see the point because the people on the other side don't feel good about seeing duplexes there. It is a single family location. Mr. Hughes said we don't have the option to change to TF-1 here. We are changing the category of the Comp Plan, not the zoning. This still will not change the underlying zoning from single family. This is not a zoning hearing. Mixed Residential will allow the property owner to at some future time petition to rezone, and two-family would be a valid category within Mixed Residential. Mayor Cereceda asked why Mr. Mulholland felt it was commercial intrusion. Mr. Mulholland asked if a duplex by definition isn't commercial. Mr. Hughes said that in traditional zoning, multi-family use is residential use, not commercial. Mr. Reynolds said that explanation doesn't change the fact that it would go into Mixed Residential, which means that that owner could come back and request whatever they wish, and they could request commercial. That is a residential community,

and it should be kept that way. Mr. Hughes said commercial is retail, etc. Duplex is not commercial. Even if you have a single family home and rent it, it does not become commercial. It is still residential. He totally agrees that it should remain residential. But he would never build a single family home there. Mr. Murphy said this came up with Sanbar and Mr. Reynolds considered that commercial intrusion into a neighborhood. Now he is intimating that a duplex would be commercial. But Mr. Reynolds owns a duplex. Mr. Reynolds agreed that his home is MR2 and was built as a duplex. Mr. Murphy asked if Mr. Reynolds considers his duplex a commercial intrusion. Mr. Reynolds said it was built that way originally. Mr. Mulholland said a yes vote will give the applicant an opportunity at some future date to come forward with a request. If this is not done, he couldn't come forward without the council amending the Comp Plan. David Smith of the LPA wanted to clear some things up from the LPA meeting. The two lots across the street have a Century 21, a laundromat and a car wash with extended hours. He looked at it as a buffer between commercial and residential on the other side. Under the draft future land use, duplexes are considered residential units as long as they are not rented less than one week. He does not want to see this land go commercial, but he felt like it would be a buffer. He would not buy it as a single family, but as a duplex he might. Mrs. Segal-George said the LPA had problems with this issue also. There is a continuing confusion between land use categories and zoning. People fear that if the land use category is changed, someone has received something, which they have not. Mr. Hughes asked if Mr. Spikowski would prepare for the council and the LPA a chart showing the underlying zoning that would be permissible under each land use category. Mr. Reynolds said that after we identify a land use for a certain location or lot, then under that use, it opens up to about 4 or 5 categories that they can come back and request. They can request commercial. There is nothing to say that there will be a buffer there. Mr. Spikowski said that is correct. Various zoning categories could be requested but they would be limited by the Comp Plan. The only kind of commercial they could request would be office or motel and he can't believe the council would allow that. There could not be a retail store in Mixed Residential. Mr. Reynolds asked if it stays residential, couldn't Mr. Piascik come back and request TF-1? Mr. Spikowski said we don't have anything that would allow only TF-1 and nothing else. Mr. Mulholland said in view of the evidence, he would remove his objection. But he has a philosophical difference about commercial intrusion. Times Square and the Red Coconut are big and we concentrate on them. But Mr. Piascik's property is a small property and shouldn't be elevated to that level. Mayor Cereceda said it should be part of the Comp Plan, because what we are attempting to do is eliminate the possibility in the future of having to change the Comp Plan.

Motion: Mr. Murphy moved to approve the LPA's recommendation to approve Mr. Piascik's request for Mixed Residential. Mr. Hughes seconded the motion. **Discussion:** Mr. Hughes agreed with Mr. Smith that it is not an appropriate place for a single family home, and traditionally a multi-family category is used as a buffer between commercial and single family. It would enhance the area. Mayor Cereceda said she agrees with Mr. Smith also. Mr. Reynolds said he has no problem with the two duplexes, but he would rather it be declared residential and later on changed. **Action:** All voted in favor of the motion except Mr. Reynolds. The motion carried.

Mr. Hughes said that part of the problem is that the car wash and laundry are open 18 and 24 hours per day. Can we adopt ordinances that would limit hours of operation?

Mr. Spikowski asked the Council if they were comfortable with this being sent to DCA for preliminary comments. Mr. Reynolds said he has objected to a number of things, so he can't go along.

Motion: Mr. Murphy moved to forward the changes to DCA for comment. Mr. Mulholland seconded the motion. All voted in favor except Mr. Reynolds.

Mr. Hughes emphasized that no property was rezoned and no density was changed. There is some potential for that in the future time, but not without public hearings before the council. He also pointed out that in each case they supported the recommendation of the LPA. Mr. Reynolds said we also established that they are committed to the things they approved here and which will likely not be changed between now and December. So even though it is not zoning, it is land use which sets the direction for future zoning.

VII PUBLIC COMMENT

There was no public comment

VIII ADJOURNMENT

The meeting adjourned at 11:35 AM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 21, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, December 21, 1998 at 6:31 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; Assistant Town Manager Ron Himmelmann; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Pastor Bob Stuckey, First Baptist Church of Fort Myers Beach.

IV PUBLIC COMMENT ON AGENDA ITEMS

A FRANK SCHILLING

Mr. Schilling congratulated the LPA and Council for their work on the Comp Plan, but he has two concerns. He passed out information from the South Beach Group, which he said represents over 900 units. They have banded together about their beach, which is getting larger. They are unanimously opposed to Objective 5A, where the enhancement of coastal resources can be measured by restoration of sand dunes. They are also opposed to Objective 6E, which would work toward a naturally-appearing beach. They have made presentations to the LPA and to the MRTF. They want the language softened, but instead it has been hardened. Another concern is the \$13 million problem of beach erosion in the middle of the island. There is no policy in place that will address that specifically. Their group requests that the council either strike the language he referred to or table this matter and hold extensive workshops on these problems. They need to settle this amicably.

B BONNIE FEDDER

Ms. Fedder passed out a letter by members of the South Beach Condominium Group. It was signed by 425 people and by some commercial properties and by 403 visitors and tourists. They want the beach to stay as it is now.

Mr. Hughes pointed out that the information Mr. Schilling and Ms. Fedder passed out would not be in the public record because it was not presented during the public hearing.

V RESOLUTION: SETTING A PUBLIC HEARING FOR PETITION TO VACATE

Mrs. Segal-George clarified that this is the same resolution as was passed last week but it was necessary to change the date.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the resolution be adopted. **Discussion:** Mr. Hughes said he thinks this means we have a public hearing on two different dates unless we rescind the former resolution. Mr. Roosa said that could be added to paragraph one. Mr. Murphy amended his motion to include that language. Mr. Mulholland agreed to the amendment. **Action:** The motion passed unanimously.

VI PUBLIC HEARING: RESOLUTION TO CONSIDER RESTRICTING TRAFFIC ON A PORTION OF SHELL MOUND ROAD

Mrs. Segal-George said that all residents on Shell Mound and all the side streets received notices by mail. Mayor Cereceda read the memo by Mr. Himmelmann for the public. It said that the county traffic engineer has said that Shell Mound was not engineered for a one-way street. Drivers going south may have a false sense of security if all the traffic is going one way and they may speed more. He said bicycles would have to follow the same rules as cars and only go south. He said that it would require voluntary compliance unless you post a deputy there. He also noted that you would need so many signs that it may

result in sign pollution. He suggested instead that we put up a physical barricade across Shell Mound between Madison and Washington. This would not change the traffic pattern as drastically. Mrs. Segal-George noted that the postmaster has said that if the road is changed to one way, all mailboxes would have to be moved to one side. Mr. Murphy noted that the mailboxes would only have to be moved if it is one way, not if you use the barricade.

The public hearing was opened.

A FELDON BRIGGS

Mr. Briggs stated that he lives on Connecticut Street. What they are trying to do is punish some for the wrongs of a few. Some people will speed down that street, but when he wants to go to the store or off-island, he doesn't want to pull out on Estero and sit for 45 minutes. If you want to slow down traffic, put up speed signs and occasionally post a deputy.

B OLLIE CURRAN

Ms. Curran lives on Connecticut. She said the change will affect everyone, but any way to make the road safe for all the children is worth it. She is for speed bumps, which can be wide and low. She also said they need to do something about the corner of Shell Mound and Connecticut because that is very dangerous. She is not much for closing the street but she will suffer for safety.

C BETTY HOFFMAN

Mrs. Hoffman said it is dangerous on Shell Mound and all the cross streets. But she does not think that one way or barricades is the answer. Perhaps we need more stop signs. Bicycles need to obey the stop signs too. She is able to get to 7-11 without getting on Estero, and that helps the traffic problem. She said it is a year round problem, not just seasonal.

D ELIE SULLIVAN

Ms. Sullivan presented a petition with over one hundred signatures asking the Council not to make Shell Mound one way. Many of the signers live in that area. To take that avenue away from the people who live back there is not fair. It is not fair to punish everyone for the speeding of a few. Put a deputy there. People won't get a ticket for speeding more than once. Put it in the paper and tell the locals that they are going to lose it if they abuse it.

E RICHARD BEDORE

Mr. Bedore said he lives on the corner of Shell Mound and Jefferson and it gets worse every year. If the council defeats this and does nothing to slow the people down, it will be on their heads that someone will get hurt or killed.

F TOM SZYPERSKI

Mr. Szyperski said he uses Shell Mound and takes a neighbor to church on Connecticut. But if he has to get back on Estero to get home, he will think again about it. You can put up signs for 15 mph and spot check for speed. You won't get caught twice if the fine is big enough.

G CLIFTON GILD

Mr. Gild said it is drastic to try the barricade or one way on the first year. He recommended putting up warnings that it will be changed next year. Put up "slow--children" signs and lower speed limits. It saves the locals 15-20 minutes a day and it is not fair to take that away from them.

H JENNIFER KAESTNER

Ms. Kaestner said this issue came up so quickly and she felt that it could be dealt with by citizen groups such as the PSTF, not at the last minute so near the holidays. No one is saying they don't sympathize with the danger and potential for tragedy. She would like the council to give back to the committees the job that they have been created for. She attended the community policing seminar, which is a good example of lots of people getting together to talk about solutions and come up with a recommendation.

I RAY TROZZO

Mr. Trozzo said he lives at Andre Mar and Estero and he does not think that the locals are the real problem. He sees construction crews trying to start the shortcut at Andre Mar and using the sidewalk. It is unsafe. He approves of the one way idea, but he sees that the neighbors are not. It is a decision of convenience or safety.

J RICH CONGER

Mr. Conger lives on Connecticut and said that the problem is caused by motorcycles and trucks and cars and spring breakers. Newspaper notices are not going to reach them. They come flying around that corner on Connecticut. They have taken out mailboxes and even a girl on a bicycle. We need to put up speed bumps on the sidewalk to keep the motorcycles from using the sidewalk as a road. It is

dangerous when people come down the sidewalk. The problem happens whenever the traffic is backed up whether it is afternoon or evening. He feels something needs to be done to keep people off the sidewalk perhaps by using posts. He is not sure if speed bumps would work on a regular road. Posting an officer will help if you keep nailing them. We may need to put spring breakers in jail overnight because they may not be able to pay the fine.

K LINDA SCOLIK

Ms. Scolik lives on Voorhis and Shell Mound. She uses Shell Mound when the traffic is backed up. Does that mean she can't use it either when the traffic is backed up? Sometimes it takes an hour to get from the church to 7-11. She said Saturday night gets kind of loud and noisy with motorcycles and sometimes they destroy her mailbox.

L NEIL SPAGNOLA

Mr. Spagnola said he bought his house 8 years ago and he has only seen a patrol car once or twice. Why not have them patrol two or three times a day to eliminate a lot of problems? The town should concentrate more on patrol and issuing a lot of tickets. If the town advertises, it will just get more traffic. He is against the one way idea.

M CHARLENE RADERY

Ms. Redery lives on Shell Mound and she uses it to get to 7-11 too, but she doesn't have to. It is so dangerous that something needs to be done. She can't believe people would not want a one way street. If they lived there they would. Perhaps stop signs would work, but if you don't have patrols she is not sure that would work. Some people will scoot around just to save two blocks if you use a barricade. Even people from England know where the shortcut is. Maybe patrolling, together with a 15 mph speed limit, would help.

N ROGER ROMEREZ

Mr. Romerez said he is in favor of the one way idea. It is only a seasonal problem—there is no problem now. But there will be during Christmas week then again after the third week of January. The problem is all day long as long as the traffic is backed up.

The public hearing was closed.

Mr. Murphy clarified that this was not something the council dreamed up. It was brought to them by the residents of the neighborhood. It is apparent that the majority is not in favor of the one way solution. But he feels they have to have to do something. When he hears about a girl being dragged under a car, it is incumbent to come up with a solution to protect people. He feels that lowering the speed limit and the suggestion about poles in the sidewalk sounds like a good idea, and he is in favor of enforcement. He asked Mr. Roosa what sort of maximum fine could be set there—he would be in favor of a huge one of \$250 or \$500. Enforcement is the biggest deterrent. He disagreed that this needs to go to a committee. This problem is of a magnitude that people may be killed and they need to act on it and not get bogged down in a committee. Mr. Reynolds said this is not a new subject. Last year it was brought to their attention but by the time they decided something had to be done, season was over. In the fall when it came up again he encouraged them to go to their neighbors and approach the council. He did not suggest the one way idea. The people are concerned and he does not think they care whether they go with one way or a barrier. They just want something done for safety this season. Unless the council makes a decision now, it won't be in place by the middle of January. It will inconvenience some people, but safety is more important for three months. Mr. Mulholland agreed with lowering the speed limits and enforcing them. He does not think that one way is feasible. It is a safety and convenience issue, but safety outweighs. It is a good idea to handle this type of thing with community policing, but they don't have time this year. They have to take action. Mr. Himmelman said that the barricade would totally block traffic in both directions but would allow pedestrians and bicycles to go through. He said the town could get signs or barricade in about 2 weeks.

Motion: Mr. Murphy moved denial of the resolution and Mr. Mulholland seconded. All voted in favor of the denial except Mr. Reynolds. The motion carried.

Mr. Hughes asked about lowering the speed limit. Mrs. Segal-George said we do not need permission from anyone to lower the speed limit on our roads. Mr. Gucciardo said we may not have the flexibility to do the posts on Estero because of handicap accessibility and also because it is a county road. Mr. Hughes asked if we could put a guard rail on Estero in front of the church. Mrs. Segal-George said would have to ask permission but we could try. We can do what we want on Connecticut or Shell Mound. She suggested lowering the speed limit and putting in a 3-way stop on the corner of Connecticut and Shell Mound and see if it works. Mr. Mulholland agreed. Mr. Murphy said that without teeth to enforce, it is meaningless. Mr.

Roosa said fines are set by state statute and have to be uniform throughout the town except for school zones. The fine for running a stop sign is substantial already. Mr. Murphy asked if you could have a higher fine if you had a slow children sign. Mr. Roosa said no, that that is just a caution sign. Mr. Roosa said he feels that the patrol is core level service. Mr. Gucciardo said we cannot be sure that it would not incur extra costs, but that is OK if that is what the council wants. Mr. Reynolds said it doesn't matter what the solution is as long as we make it effective. He thinks a barrier would work. He has no objection to 15 mph and stepped up enforcement, but without enforcement it won't work.

Motion: Mr. Murphy moved to make the roads 15 mph where necessary, to look into posts or a shield on Estero at Connecticut, to add a three-way stop at Shell Mound and Connecticut, to look into stepped up patrols, and to follow up with the neighborhoods to monitor to see whether it is working or not. Mr. Hughes seconded. **Discussion:** Mr. Mulholland still has problems with barriers on the sidewalk and would hate to hold up the whole thing because of that. Mr. Murphy said that in the future if we have a more active role on Estero and have landscaping, that will be an additional deterrent to people on the sidewalks. Mr. Hughes said the motion was not specific on where the 15 mph would be. Did he mean Connecticut to Shell Mound, and Shell Mound to Donora? Mr. Murphy said yes. **Action:** The motion carried unanimously.

VII PUBLIC HEARING: ORDINANCE ADOPTING THE FORT MYERS BEACH COMPREHENSIVE PLAN

Mayor Cereceda read the titles.

She thanked Mr. Spikowski for involving the community all the way with this. People rode trolleys down the island and drew on tables with their ideas. The efforts were greatly appreciated.

Mr. Spikowski talked about the final changes. Since November 9, there are three changes to the future land use. The map has been modified to reflect the changes. He now has estimates of peak season population and a section on public schools and locations, which is a new law. The capital improvements element has been revised to reflect what was passed in the budget. (Each year the council will need to do a plan amendment after passing the budget to keep this element current.) Also he has added some housing data that substantiates the affordable housing efforts. In chapter 15 there is a new sentence that will be controversial. It addresses the two cases that are in litigation. In addition there are four small last minute changes. We needed to add a blurb saying that DCA helped fund the plan. Also some of the existing land use needed to be changed. Policy 4F-2 (Times Square Area) needed to be reworded to clarify that the ideas of the Estero Island CRA plan have been incorporated in the plan. DCA has asked for an additional map and table to illustrate the housing element.

Mr. Mulholland asked about storm water management--if that would be controlled through the land development code. Mr. Spikowski said yes. Mr. Mulholland said he is worried about a lapse on storm water management in Estero Bay. Mr. Spikowski said that what will go in the LDC will affect new development, but a lot of our current problems are from old development and that has to be addressed in a different way. The LDC will only help when a property gets redeveloped. The Stormwater Master Plan (a 3-year project) is our effort to go back and fix things that are fixable.

Mr. Reynolds asked why we are turning so many neighborhoods into Mixed Residential which can mean businesses. Mr. Spikowski said that the streets that are single family will stay single family. The ones with a mix of duplexes and motels and hotels will go to Mixed Residential. The plan does not forbid that you can put offices and motels in Mixed Residential. Mr. Reynolds pointed out an area along the middle of the island that is mostly single family and duplexes. He thinks they will go commercial eventually if they are changed to Mixed Residential because it will allow almost any kind of business. Mr. Spikowski said the Mixed Residential follows the existing zoning boundary. They are zoned for duplex and multi-family today. If it is changed to the Low Density category, it would down-zone all of them to single family. In the LDC they may want to do that in some individual areas. If it is zoned duplex today and is in Mixed Residential, you can't put in offices or motels tomorrow. They could ask for that zoning and the council could give it to them if they think it is the right thing to do, but you could never put retail in that area. Mr. Reynolds said he is concerned when you take a whole neighborhood and change it to allow businesses. He also had a concern that by changing these to Mixed Residential it will increase the multi-family average above the 17.2 per acre that it is now. Mr. Spikowski said Mixed Residential is capped at 6 units per acre. Buildings will generally be limited to two stories above flood elevation and exceptions will be in designated redevelopment areas in buildback situations only. It is far more restrictive than anything today.

The public hearing was opened.

A FRANK SCHILLING

Mr. Schilling stated that he is submitting as a part of the public hearing all of the previously-mentioned documentation of the vote of the 425 members of the south beach area. They are unanimously against the sand dunes, etc. that have been proposed. They have a beach that is excellent and well cared for, and the turtles are fine. Technical reports say that dunes do not solve the problem. Their beach is accreting and does not need change like some other areas. The specific things they want stricken are on objective 5A where they have underlined the sections they want removed. The other area is objective 6E where they want certain language removed. Mrs. Segal-George said that the MRTF is working on a comprehensive coastal ordinance that will address these issues and the regulatory language will be in that. They will be holding workshops and public hearings in March 1999. Mr. Schilling said he is concerned about policies and objectives which say that this is the direction we shall go. The MRTF will be guided by what is in the policy. If the Comp Plan says this is the way we are going, they will have to follow it. Mr. Spikowski said it does set the general direction and they tried to be specific enough to set the direction but not the regulations. When you go toward a naturally-occurring beach, it doesn't say whether it will be in one year or in 20. But if you don't want to go that way at all, then they need to do that now. Mrs. Segal-George said without an ordinance to enforce, nothing will be done. Mr. Spikowski said there are some statements that are specific and absolute such as requiring certain indigenous plants, etc. But much of the plan is general policy and direction. Mr. Murphy asked if we take on the renourishment project, would the agencies that are contributing to the cost require sand dunes be constructed? Mr. Spikowski said they are more concerned about whether there is public access when they fund something. As to dunes, that is more in terms of permitting. They will look to see if it does everything it can to protect the beach once it is funded. Mr. Murphy said we do need restoration in the middle of the island, but down where the beach is wide, it doesn't need restoration, so would the requirements for the middle part of the island apply to them? Mr. Schilling said he included in his package 7 studies on the beach and all are consistent and say that sand dunes won't fix the problem anyway. They will have to control the wave action.

B STEVE HARTSELL

Mr. Hartsell, of Pavese Garner, said he represents the owners of Fish Tale Marina. First he wanted a clarification. They have an approved CPD on the property. In chapter 15 he wants to make sure CPDs are consistent with the plan. Tables 4-6 and 4-33 appear to be outdated. It is a summary of permissible land uses. He has spoken with Mr. Spikowski and he said he labeled the table to indicate that it may change or may have changed. He wanted to have it on record that they are not limited by the table. Regarding Villa Santini, objective 3C proposes the Mainstreet concept and 3C1 states the town's desire to work out a private/public process to work with the owner to adopt a plan to implement 3C1 and 2. They look forward to working with the town in that. Figure 11 on page 4-29 seems to lay out a specific plan. They want to be sure that they are not locked into the pictures and conceptual drawings and that they just represent one possibility. He has addressed a letter on both issues to be put into the record. Mr. Spikowski said that figure 11 is in a part of the plan that is not being adopted into law. Only the policies, goals and objectives are actually being adopted. Policies 3C1 and 3C2 are specific. The LDC will help make that happen. The plan is clear that the regulations do not preclude the landowner from proposing something of his own. They have that option but it will be more cumbersome for them to go through the zoning process. Regarding Table 4-6, the information is as of July and is not in the adopted part of the plan. It is not controlling on anybody. They needed that information to determine water, sewer and road capacity.

C KITTY TAYLOR

Ms. Taylor, speaking on behalf of Stardial, said that they have two concerns at Bay Beach. The remaining properties 10 and 17 on the master concept plan are labeled on the map as Mixed Residential. While that is consistent with hotel, offices and bank, they are concerned that it does not adequately reflect the commercial uses of retail, personal services and restaurant that are permitted. They are also concerned that it does not clarify the vested status at least to the extent that the council has agreed. She requested that the appropriate changes be made to avoid any confusion.

D MICHAEL CICCARONE

Mr. Ciccarone said his comments reflect the litigation cases that his clients are involved in. One is the Mid Island Marina case and the other is the Sanbar case. Both cases have in common that in the most recent addition to the materials in chapter 15, the underlined language appears to be an attempt to vest development that is inconsistent with both the old and the new plan. If they choose to adopt this

language instead of the alternate language that he is suggesting, the town will incur their first comprehensive plan consistency challenge. The Mid Island Marina case has an additional issue. They can't tell how to interpret the concurrency provision. How would it be measured? It also has significant implications if it can't be measured, then either the town will never be able to deny anyone development regardless of traffic on Estero, or no one will be able to build anything because they won't be able to pass the burden of proof. In the context of Mid Island, it presents a potential issue and his clients are considering filing against the comprehensive plan. They also do not see sufficient data to warrant change it to Boulevard. If the town wishes to adopt the alternate language, they will not have a challenge in the Sanbar case or Mid Island Marina. He said he can't promise on the other issue except there may not be a challenge if it can be solved in the circuit court. The Council had talked about settling the Pasev case by agreeing on some density that might be better than permitted under the plan but not as much as what is requested and Mr. Pasev is studying that possibility. If the council adopts the language in the draft it will drag Mr. Pasev into the challenge too. Mr. Spikowski said that changing the Mid Island from Marina to Boulevard was based on a council decision based on that zoning case. They heard testimony for and against, they heard from the neighbors and from the general community and made their decision based on that and he made the corresponding change in the plan. He believes there is enough data to support that. Mr. Roosa agreed. As to traffic concurrency, if the question is whether there is some simple formula, of course not. Concurrency cannot answer our tough problems because you are constantly evaluating humans who change their patterns constantly. But is it more precise and measurable than most others in the state. It is based on 24-hour-a-day data at Donora for 3 or 4 years. What can't be measured is how people going to Publix will change their habits. It is not the fault of the concurrency system. The level of service of 1300 trips applies to all of Estero, and that is the capacity. There is no standard he could propose that is better. Regarding litigation, Mr. Roosa will address those. Mr. Roosa said both have been filed because they allege the action of the council is inconsistent with the transition plan (the Lee Plan.) It is possible that an action that is inconsistent with the Lee plan may be consistent with our new plan. Both property owners are committed to their projects. If the court rules they are not consistent with the Lee Plan, they would reapply under our new Plan. When that happens we will be back where we were. He must assume the council would approve them again and there will be another lawsuit and this time the issue will be is it inconsistent with the new plan. There is no guarantee whether we will have challenges and whether DCA may set it for administrative hearing. There is always an opportunity for negotiation and settlement. He has discussed the language with Mr. Spikowski and he suggests adopting Mr. Spikowski's language.

E CHARLES BIGELOW

Mr. Bigelow represents Mr. Figuerado in the Publix case. It was Mr. Figuerado's hope and Publix's hope that by Thanksgiving of this year the Publix would be opened. It has not occurred because the council's decision was challenged with being inconsistent with the transition plan. When the case was presented to the council, the decision was whether a Publix at that location was in the best interests of Fort Myers Beach. The council voted and approved it. The question tonight is whether they intend to invalidate that decision. Do they intend to render that zoning inconsistent with this plan? Or do they want that development to be consistent with the plan? If they want the project to go forward, then adopt the language proposed by Mr. Spikowski. If they intend to change their mind and set up a barrier, then adopt Mr. Ciccarone's language and tell Publix that they've changed their mind so they won't waste any more time and money. If they still believe it is in the best interests of the town, then they should do everything they can to make it clear that this plan permits that development.

The public hearing was closed.

Mayor Cereceda asked Charles Gauthier from the Department of Community Affairs what he thinks of the Plan. Mr. Gauthier said he likes it – it is very easy to read and understand. He likes the geographic themes. It can be implemented easily. Mayor Cereceda asked if there is anything about the plan that he thinks will not serve us well in the future or any advice that needs to be looked into. Mr. Gauthier said he would go to Mr. Ciccarone's requested policy language, because he thinks that saying any previous zoning approval is determined to be consistent is a contorted way to approach it. If this case goes to court and the judge says it is inconsistent, it is now is consistent in this Plan. It seems to open a realm based on illegal actions by the town council. But he is not an attorney; he is a planner. The town has to be prepared to change the plan from time to time. State law evolves and there are new opportunities. Mayor Cereceda said there has been great debate that our Comp Plan will be stone tablets. She appreciates his saying that there are times that changes will be needed. Mr. Gauthier said that there is something before the state legislature now regarding the transportation concurrency that will probably speak to our situation.

The point is to do the planning so you don't create a moratorium. Every year we will have to update our capital improvements plan. He does not see some things changing such as the coastal high hazard area. In their review of the plan in May, they had some sweeping objections, which were mostly on vagueness. They want it specific and measurable. He feels that they are comfortable with the big themes. He is only uncomfortable with the phrase about being deemed consistent on pending litigation. Mr. Bigelow said he is not sure Mr. Gauthier has a clear understanding. The two cases were decided while the town was in the process of adopting the plan. They want to adopt a Plan that would permit one or both of those to go forward. What they are trying to accomplish is to tell the DCA and the court that they know what they decided and what they say tonight cannot be construed that those were bad decisions. If you don't say it this way, how do you propose to say it? Mr. Gauthier suggested perhaps the insurance would be to designate the property Boulevard, which would support this particular use. Mr. Bigelow said there needs to be a way to say it tonight that doesn't put them through having to come back. They don't want to be surprised. Mr. Gauthier said perhaps there is a policy that can be included in the future land use element that would recognize those zoning resolutions and assign those uses to this particular site.

The council took a break at 9:05 PM and reconvened at 9:25 PM.

Mr. Spikowski said that they discussed the language on 15-2 in the break, and he feels that by deleting some words, they can accomplish the same goal and eliminate some of the negative language. In the underlined section #5, put a semi colon after "incorporation" and eliminate the rest of the paragraph.

Mr. Reynolds asked Mr. Gauthier if it concerned him that they seem to be turning everything along the Gulf to increased units. Mr. Gauthier said that in the data and analysis supporting the Plan, there is a good demonstration that there is not a net increase of density so they are satisfied. He has to defer to Mr. Spikowski about the individual areas and distinctions. Mr. Reynolds said he is concerned about someone living in a residential area and suddenly it is Mixed Residential. He sees it spreading over the entire island and he sees that as more density. Mr. Hughes said Mr. Reynolds is unfairly characterizing Mixed Residential. Mr. Reynolds asked how the DCA feels about wetproofing buildings built to the ground. If we build our buildings so they are occupied on the ground level and also above, doesn't that create a problem with increased density? Mr. Gauthier said he is not familiar with that.

Mr. Spikowski said Kitty Taylor is right about Bay Beach. The Plan doesn't do anything to resolve the problems. She asked for an additional section in Chapter 15 that would guarantee their vested rights. There are a couple of sections in 15-2 that are relevant already. #4 already says that the planned development zoning approvals which have not been vacated by the developer are deemed consistent with the new plan. Also there is section on how the town will deal with other circumstances where development expectation may conflict with the Plan but where the judicially-defined principle of equitable estoppel may override. That is specifically designed for Bay Beach. He doesn't know what else they can add that will make things better and not more confusing. It will be more specific in the rezoning action this summer.

Mayor Cereceda asked Mr. Spikowski about the letter from Mr. Ebelini on Pink Porpoise that talks about 815 Estero becoming Recreation. Mr. Spikowski said this is a case where they transferred density across the street, and in the zoning resolution it is clear that the private development rights are gone on that land. That is now shown as Recreation, which includes all government uses. This validates the town's zoning decision in a definite way.

Regarding Mr. Schilling's comments, if the council doesn't want to go toward a more natural beach, they should say so now. The language used to be far pushier, and that is why it is more vague now. He believes that it is still the intent of the council and the LPA and the task force. As to where the restoration of dunes would take place, or if they would take place at their end of the beach, there is nothing that mandates that if it does not make sense in the implementation phase that it has to be done. Do they want to validate that dunes are good for protection and also for habitat? He realizes that dunes alone will not solve all the problems in the center part of the island. He encouraged the council to keep the restoration of sand dunes as a general policy without saying they have to be done everywhere. Regarding 6E (the gradual move to a more natural beach), he said the LPA and MRTF were very strong on this issue. Mr. Murphy asked if it would be possible, regarding sand dunes, to add some language to the effect of "where it makes sense" or "where required as a measure of beach restoration." This would recognize that it doesn't really apply to an area that doesn't need protection. Mr. Spikowski said that DCA was concerned because our plan didn't say how we would test the success. They wanted more specifics. The language is not a

mandate, just a direction they would like to see and a way to measure. In five years we may not have made any sand dunes, but it is still a measure of what we have accomplished. Mr. Murphy asked about 6E. To a lot of people that means Sanibel's beach where you don't touch anything on the beach by ordinance. We have a lot of fairly natural areas on the beach, but we also have areas that are groomed and maintained and a lot of people have become accustomed to that and that is why they live there. Some people don't care for the Sanibel kind of beach. Personally he is not in favor of going toward a naturally appearing beach. The majority of our beaches do function pretty naturally already. This is a little too strong for him in that area of the beach, but he doesn't know how you can not apply it island-wide. Mr. Spikowski said if they like the specific policies but are uncomfortable with the tone, that can be addressed. We are not aiming to be like Sanibel, just to avoid over-development. Mr. Murphy said some people have DEP permits to groom the beach. Does that go over our ordinance? Mr. Spikowski said DEP has reviewed this plan. They wanted us to forbid box blades, but their permits already do not allow it. Since DEP licenses that, we left it out of our plan. Mr. Hughes said he shares some of the concerns with 6E. Can it be worded in the second sentence to change "will" to "may" so it is not a mandatory goal. Mr. Spikowski said you can change that if it better captures where the council is. He also said that in 5A they could strike "sand dunes" and just have two measurable objectives. Mr. Hughes and Mr. Murphy said that sounded like a good middle ground without taking away the environmental concerns.

Motion: Mr. Hughes moved that the words "will be a noticeable transition" be changed to "may be a noticeable transition" in Objective 6E; and that the words "and restoration of sand dunes" in Objective 5A be stricken. Mr. Murphy seconded the motion. **Discussion:** Mayor Cereceda said she is worried about sand dunes because she looks at them differently. The dunes are where you are talking about grooming. Mr. Hughes said this language puts the onus on the town because if we don't start making sand dunes, we are not meeting the objective. He is not opposed to sand dunes, just making it an objective that we must use for measurement. Mr. Murphy said he is not against sand dunes—they did them 15 years ago at his place. He thinks when it is time for the sand dunes, they will tell us when and where to put them as part of the renourishment project. Mr. Mulholland said the MRTF has spent many hours talking to the south beach group. He thought they had a good understanding and they weren't opposed to sand dunes. This was a surprise. He thinks we need dunes as part of our beach and he has problems with eliminating them. Mr. Hughes suggested adding a qualifying clause such as "restoration of sand dunes in specific areas where it is feasible and consistent with the ecology of the area." Mr. Mulholland said he doesn't think that works. Mrs. Segal-George reminded the council that a key part of Gullwing is maintaining the natural dune system that has formed there and protecting and encouraging it. It is part of their landscaping plan and hopefully will be an example to the other condos in the area on how it can work and still have an attractive beach. Mr. Hughes said "restoration" means restoring something that previously existed. Mayor Cereceda said they did previously exist. Mr. Hughes said he has been here for 25 years and there have been no sand dunes. His condo likes the way the beach is and they don't want a sand dune. No one can remember a dune in that particular area. Mr. Mulholland said that if we want to renourish the beach, they will have to have some provision for sand dunes. Mr. Hughes said he is not opposed to sand dunes but we have a lot of people who are. We have a stack of petitions and he is trying to address it. Mr. Spikowski said to look in the policy themselves-- in 6-3E it says "wherever sand dunes have been destroyed." That is an affirmative commitment. Mr. Mulholland said he doesn't think we can say we will put sand dunes in certain areas and not in others. Mr. Murphy said you don't have to insist on a dune system where it is not really required. If they require it in order to have renourishment project, then you put it in. Mr. Reynolds said he agrees that you cannot have renourishment without a dune system. If you have a wide beach, then he sees no need for it. He lives where they are losing sand, so they started a dune. High tides no longer take away their sand. Mayor Cereceda said she is willing to go with "may" instead of "will" but she is not willing to get rid of the dune language. Mr. Murphy suggested we separate the two into separate motions. Mr. Hughes withdrew his motion and Mr. Murphy agreed.

Motion: Mr. Hughes moved that the words "will be a noticeable transition" be changed to "may be a noticeable transition" in Objective 6E. Mr. Murphy seconded the motion. The motion carried unanimously.

Motion: Mayor Cereceda moved adoption of the Comp Plan. Mr. Murphy seconded the motion.

Discussion: Mr. Reynolds complimented Mr. Spikowski on a fine job, but he doesn't like some of the

directions it is taking. He can't go with the change to the area around Crescent Street. There is a whole area from the firehouse to Sterling or Lazy Way that has gone to Mixed Residential which means that anything can pop up there at increased density which we do not need. All those duplexes can be enlarged. We have to think about our road capacity. Mr. Murphy thanked Mr. Spikowski for all his work and the LPA and the council also. He is on the Southwest Florida Regional Planning Council. Commissioner Manning wanted the backing of the Planning Council in opposition to the federal government getting involved in our planning. It was passed unanimously. We put all this work into our Comp Plan and now the federal government is coming down and we want to stand up for comp planning on a local level with local participation.

Mr. Mulholland echoed in thanking Mr. Spikowski and Victor Dover and the LPA and council. It is quite an accomplishment. Mr. Hughes expressed admiration for the work of Mr. Spikowski and his colleagues. He has been involved with comp plans before and he would say Mr. Spikowski is one of the most knowledgeable planners he has worked with. He appreciated Mr. Reynolds' concerns but he thinks it is regrettable we are not going to have a unanimous vote after all the public hearings. His primary concern seems to be his fears about Mixed Residential and they are not really founded. That designation is for mixed housing, mobile home, etc. and only lower-impact commercial that has to be sensitive to the nearby residential areas and comply with design concepts. Mayor Cereceda thanked Mrs. Segal-George and Mr. Gucciardo for their wisdom three years ago when they said this is what we need to spend our money on. Mr. Hughes also thanked Mrs. Segal-George for her work as the attorney for the LPA. Mr. Spikowski asked Mayor Cereceda to clarify that in adopting the ordinance we are also adopting the previous motion regarding Objective 6E; the change in 15-2 #5 that eliminates the rest of the sentence after "incorporation"; the changes dated December 21, 1998 and also the minor changes on the memo dated 12/21/98. Mayor Cereceda and Mr. Murphy clarified that those were all understood to be part of the motion. **Action:** Mr. Murphy, aye; Mr. Reynolds, no; Mr. Hughes, aye; Mr. Mulholland, aye; Mayor Cereceda, aye. The motion carried.

VIII COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy noted that the council will be having their inauguration on January 4 and will also be reorganizing the council. He said that he wanted to go on record as saying he would like to be the mayor in the coming year. He has served well and thinks it is his turn. He is ready and able.

B GARR REYNOLDS

Mr. Reynolds said he would like to be the vice mayor.

He offered the council an apology and a correction that came out in the minutes of the Chamber Traffic Committee. After the meeting he asked someone how he felt about his resigning from the traffic committee, and then he said he needed to talk it over with council. But it came out as a P.S. to the meeting that he had asked to be removed from the committee. He has been on the committee for 2.5 years and he feels it is adequately represented by the town without his being on it. He is so busy that he feels it is a waste of his time. Mr. Gucciardo is there most of the time for the staff and we have six other members from the town on the committee. He would rather not continue on the committee.

He talked about dogs on the beach. He feels we need to work on that ordinance. We need to make it clear it is allowable, or take the signs down that say no dogs are allowed.

On committee assignments, he has asked to be appointed to the regional water authority.

C DAN HUGHES

Mr. Hughes stated that he has no interest in being the mayor or vice mayor.

He asked Mr. Roosa if he will comment on the Primeau case. Mr. Roosa said he felt it would be best to wait until the next meeting to discuss that.

He said the south end sidewalk job (which is not under supervision of the town) is perhaps the worst looking job he has seen. He asked if we can bring that to the attention of someone. Mr. Gucciardo said we have had various concerns including safety concerns. We have been involved almost daily and he has another meeting with them tomorrow. He said there will be handrails, and he hopes they will be put now since the ledge is already there.

D JOHN MULHOLLAND

Mr. Mulholland said he attended the community policing seminar for two days last week. It can be good for our town. It brings affected people together to work toward a solution.

Regarding the memo on the traffic signal at Times Square, he stated his support and agreed we should spend some money to move the traffic.

He agrees about dogs on the beach and will support any initiative toward working on that.

E ANITA CERECEDA

Mayor Cereceda asked if there will be a council liaison with the Mound House. If so, she would like to serve. Mrs. Segal-George said that is up to the council.

Mayor Cereceda said Mr. Murphy has waited a long time to be mayor, and it has been the greatest honor of her life to have served for three years as mayor, but she will be glad to support his bid for mayor.

IX TOWN MANAGER'S ITEMS AND REPORTS

John Gucciardo said the council has received an invitation to a legal seminar on Sanibel. They are asking for a response by January 4.

X TOWN ATTORNEY'S ITEMS

Mr. Roosa said that he has received a fax from Mark Ebelini. He advised that on December 3 Stardial's engineers submitted a revised surface water plan. Unfortunately the district will not be able to start reviewing it until late December. They will keep us posted.

XI PUBLIC COMMENT

A TERRENCE GRIFFIN

Mr. Griffin said he just moved to the beach a few months ago, but he plans to stay a long time. He is here after the fact, but the issue he has is the zoning in the Mid Island Marina area which has opened the door for a Publix. He lives in the building that overlooks the Publix site. There will be traffic. It will draw people to his back yard. They will have air conditioned trucks. They will have a heat exchanger. He has no objection to the owner developing the land and making money. But this use is not amenable to that neighborhood. He asked them to please rezone so he won't have to worry about another Publix coming in. Mr. Hughes asked if he knew when he bought his property that Publix was coming in. He said yes. He knew it was already rezoned, but he asked them to reconsider.

B FRANK SCHILLING

Mr. Schilling thanked the Council for hearing their concerns. He also thanked Mr. Reynolds and Mr. Hughes and Vice Mayor Murphy for not wanting to force sand dunes in areas where they are not needed.

XII ADJOURNMENT

The meeting adjourned at 10:50 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

Regular Town Council Meeting December 6, 2010

Consumption on Premises (COP) Policy Interpretation

Terry Stewart: We have put together a motion, and I'd like to read that motion now: Motion to determine that the Land Development code is the more appropriate place to identify more specific permissible uses. Then direct staff to prepare a Land Development Code Amendment or Amendments, to identify COP in the Environmentally Critical Zoning District as a permitted ancillary use to an adjacent approved COP use. Thank you.

Councilmember Mandel: I'd like to move the motion.

Councilmember List: I'd like to Second it.

Mayor Kiker: Okay, we have a motion and a second. I think it's important that we take public input, and I know that Rochelle Kay is here, as representative of the LPA. If I could ask you to.....

Rochelle Kay. The first concern I had when I saw the blue sheet to begin with is that the requested motion is to, in order to complete the LPA process from our point of view was complete. When we passed 2009-24, in the review process wefinding....inconsistent with the Town's comprehensive plan. ...etc. As far as we're concerned we don't understand why the action is needed at all because the LPA review process is completed from the LPA's point of view.

Mayor Kiker: So you have some specific questions that you'd like answered. (*discussion regarding the LPA meeting when resolution 2009-24 was adopted*).

Terry Stewart responded to questions regarding continuing use, and whether the COP use is under the pervue of the council and Ms. Kay stated she did not understand why this was necessary as the LPA process is complete.

Attorney Miller: The LPA review process is only a portion of it. In the land use codes it says, and I'm reading from page 5, 8. C . Legislative Interpretations. Town Council. Upon receiving the recommendations of the Local Planning Agency, the Town council shall render a final decision as to the correct interpretation to be applied. So that is what is before them today. The LPA made its interpretation, but the town council, according to your land use regulations, is the final authority, so they make that decision. So that's the answer to the one question.

(Terry Stewart, discussed the council not accepting the LPAs recommendation, and formalizing its stance on that particular item, not by-passing the LPA , but actually following through on the procedure and process that is set forth in the code)

Rochelle Kay: Does this come back to the LPA again, or is this the final...

Attorney Miller: Well, let me address that, because now, if the council were to decide to direct staff to come up with land use regulations, those would go back to the LPA for review and a recommendation to council before council adopts them. There are many ways it could be handled; as a special exception, I mean you could have a provision where if it's going to be a special exception use, the LPA could be the final authority, or where the LPA would merely be recommending and the final would go back to council for a final decision on whether to grant a special exception to any particular business. So today we would get direction on how council wants it handled.

Rochelle Kay: ... OK. Thank you for that, and I'll leave it up to council for, whatever.

(Mayor Kiker called further public comment: Carleton Ryffel, and Chris Schaab)

Mayor Kiker: We're going to close public comment. Ms. Miller, was there anything you wanted to discuss on this issue?

Attorney Miller: Well, does the council all understand the difference between a special exception use and a permitted use? If something is a special exception use, it gives you the ability to control conditions, that a use may not be appropriate ..side by side, one place it may be appropriate, and one place it may not, but if it had conditions on it as to hours of operation, buffering, and things of that type. If you have it as 'one size fits all' and try to do it as a permitted use, it may not work as well as a special exception use where you can look at the individual facts of that case and determine, that, in order to permit it, it should have the following conditions and a special exception allows you to do that.

Mayor Kiker: would that mean that, would you agree with Carleton in terms of whether it should be a special exception or the permitted ancill...

Attorney Miller: Well, it's really a policy decision for the council. Now currently, outside of the EC zoning district, if you want COP with your business, the only time I believe it's a special exception is if, for example, you're within 500 feet of a religious facility, or school or day care. Otherwise, it's a permitted use. Now I know, from dealing with private clients elsewhere, in fact, I have an issue right now with Lee County – it's more restrictive than a lot of instances and it's a special exception use regardless of whether it's within 500 feet . But it's a policy decision on how restrictive council wants to be.

Council member Babcock: Can I request a point of order? What you are bringing up is legitimate. If you want to talk about all these details, we'll be here until 5:00 talking about it. The direction I heard from town council is that we want it to be top down, and not bottom up. And I agree with that. And I think that this is the issue that the LPA brought to us today I think that's some of the issue I heard at other public comment. This motion is not right, and the reason it's not right is because it isn't addressing the primary policy issue that needs to be decided first. That was the recommendation of staff. This motion does not do that. The first question that should be asked, is, in fact, the response that we got from the LPA. The original intent of our comp plan said that we would not expand alcohol sales to the beach. And that's how our land development code is translated. The comp plan is the policy setting direction. That's the top down. The bottom up is the land development code that says how we are going to do

that. Our current code says no expansion of alcohol on the beach. The LPA came to us with an interpretation of the comp plan that said the same thing. It seems to me the response that town council has to make today to the LPA is do we support, or not support, the expansion of alcohol to the beach. Either answer drives the need to go forward with an assessment of changes for the land development code . You've offered six things that we've never talked about before as potential options. They may not be all the options. I can think of a couple others. To force us to make a decision – which I don't think is a policy decision – I think it's an implementation decision that goes through a very rigorous process with hearings in the LPA and comes back with hearings with the town council and will be months away, when in fact it could be a different council sitting here than there is now it would be wrong for us to imply what the right decision is when in fact what we're really being asked to do is say are we willing to change the way the comp plan has been interpreted in the past to say we will consider extending alcohol sales to the beach. I think that, this motion to me is absolutely wrong. I can't support it not because, I certainly don't, I certainly agree with the fact that the right place to make these decisions is in the land development code, which is what this motion says, but I don't agree with jumping to the answer until you've had the hearings with all legal considerations put in there, to have staff look into every potential option, and to get public comment in a hearing process that's testimony. I am very uncomfortable with where this is taking us, and I believe that's what the LPA is saying to us today. They asked a simple question: Does this council still support the previous direction of previous councils to not extend alcohol use and sale to the beach. And that's what we ought to be discussing today.

Mayor Kiker: Okay. And I'm not sure how to treat that as a point of order. I think that what we got was an argument against the motion, and so, having said that, I guess we're going to continue to allow others to comment on the motion, in all fairness to the rest of the folks. Did you have anything you wanted to say, Mr. Stewart, or do you want us to continue, here?

Terry Stewart: I'll hold any comments.

Mayor Kiker: Ms. List?

Council Member List: Maybe I misunderstood the motion. I thought the motion was to determine that the land development code is the more appropriate place to identify more specific permissible uses.

Council Member Babcock: That's a no-brainer. That's already given....

Council Member List: Is that not the motion?

Mayor Kiker: Excuse me...

Council Member Babcock: It's a silly motion because you're stating a fact.

Council Member List: Okay, well hold on one second. From where I'm sitting, what happened was the LPA told the council what the policy is, and this is the policy... this is the interpretation that the LPA gave us, without us ever having any input or discussion about what the policy may or may not be. So I, my understanding is that this is a remedy for the LPA's establishing policy. Because that is how personally,

just personally, I was impacted by the LPA's recommendation , that they'd taken it upon themselves to decide that that would be the policy direction before, like the cart before the horse . So to me, this motion sets that back to right and as far as directing staff, Tom, you made a very good point about that but I didn't think that that aspect was part of the motion. So I'm just commenting on what I thought I was seconding was the motion to determine that the land development code is the more appropriate place to identify more specific permissible uses. It is, except that isn't what happened.

Mayor Kiker: Okay, hang on a second...we'll be here forever. So, I want to be real specific with you, here, Tom, so we don't make any mistakes, but you had a point of order, and I want to address that in terms of this motion, without whether you agree with the motion or not. What is the point of order? What is the process issue that you're objecting to?

Council Member Babcock: The process is that we're acting as if this is a land use legislative hearing, and it's not.

Mayor Kiker: Alright.

Council Member Babcock: We're being asked to make decisions to changes in the land development code, recommendations we're making, I think they go well beyond a policy. This is making an implementation decision.

Mayor Kiker: I understand the point of order, and I'm going to ask Ms. Miller if she'd comment on it.

Attorney Miller: Let me go back to the wording of the LPA's resolution of a year ago, said: Now therefore be it resolved that the LPA recommends that the town council of the Town of Fort Myers Beach does restrict further expansion of on-premises consumption of alcoholic beverages on the gulf beaches within the Town of Fort Myers Beach. I think that what's intended to say, is, that that's the interpretation – you don't need to go any further – the land use plan prohibits (you or use). So, my recollection was, I don't know whether it was the last meeting, or the meeting before, the town council actually voted to reject that interpretation.

Council Member Babcock: We discussed it in a work session. We never voted. That was what today was supposed to be for – we never voted.

Terry Stewart: There was not a vote. There was a consensus of opinion among the Council to direct staff to take a particular action, which we have done.

Attorney Miller: So actually, if you would be more comfortable with it, you could have initially a vote that you reject the interpretation by the LPA and don't interpret the land use plan as prohibiting in all instances, COP on the beach, but then, I think what staff was trying to say, here, was, don't amend the land use plan, to specify that it is a permitted use. That isn't typically where you would do that. You would have provisions in your land development code that would give the parameters for when the COP would be permitted in the EC zoning district.

Council Member Babcock: I don't want to put words in your mouth, but I think what you meant was Comp Plan, not Land Use Plan.

Attorney Miller: No, no, I meant Land...the Comp Plan is the policy vehicle. The specifics of how that policy is implemented is the land development code. So, if you're going to interpret the land use plan as not prohibiting consumption on premises in the EC zoning district, then I think staff's recommendation is, don't amend the land use plan, it is – I don't want to say vague – that it is general enough to interpret it that way, but the specifics of how you go about regulating that as a use would be land development code regulations and staff would need direction on that on how council wants it treated.

Mayor Kiker: Okay, so what I'd like to do is, if I may, so, what you're saying is, that we missed a step, and that is, whether we accept or reject the LPA. So, is that correct, and would that satisfy you?

Council Member Babcock: Yes, it would...

Mayor Kiker: Okay, so what are we ...I'm going to ask the motion maker if he would remove his motion...

Council Member Mandel: As motion maker, then let the motion begin by saying that the council rejects LPA recommendation to council

Attorney Miller: And we also, according to the land use plan, have to put that in a res... we have to do a resolution, so we'd do that by resolution.

Mayor Kiker: We reject the LPAs interpretation and that COP is a permissible use in the recreation future land use category. Is that the correct motion?

Attorney Miller Actually, it's more that it's not prohibited by the land use plan.

Mayor Kiker: Okay, so it's reject the interpretation and interpret that it is permissible – COP is permissible.

Attorney Miller: Yeah, but not permissible in the sense that, not a special exception, not...

Mayor Kiker: Just trying to get the motion so that we can get the first step done, so that we can go to the second step, so, if that's not it...

Attorney Miller: I think that the motion would be that there is nothing in the land use plan that prohibits COP in the EC zoning district.

Mayor Kiker: Is that your motion?

Council Member Mandel: Sure.

Walter Fluegel: It's the EC Zoning District Recreation Land Use.

Mayor Kiker: Okay, so is that your motion?

Council Member Mandel: Yeah.

Council Member List: What is your motion?

Council Member Mandel: Basically, it's in the short form, is to reject....

Attorney Miller: Reject the LPA's interpretation that it's prohibited in the recreation land use .

Council Member List: okay, second..

Mayor Kiker: Okay, we have a motion and a second. Any comments, questions,..

Council Member Babcock: I'd just like a clarification ... Walter, you used interchangeably the words EC Zone , environmentally critical, recreational zoning, data data dah, ...are they identical?

Walter Fluegel: They may not be in all instances, there may be some areas where you have recreation land use and you may have some other zoning, but, along the beach they are co-terminous.

Council Member Babcock: Then, I want to make sure what the motion actually states: was the intent of the LPA, which, they made reference only to expanding alcohol on the beach and so, I would like to see that translated to any place in the EC zone, not in the recreational land use.

Attorney Miller: Well, they're two different things: recreational land use is the land use category, that's the underlying thing. EC is a zoning district, it's not in the Comp Plan..

Council Member Babcock: I understand – what I'm saying is, that, what the LPA said, was, expansion to the beach and what I think the intention there, was, not the recreation land use category, but, the EC zone. And I say that, because, the current interpretation of the comp plan as translated in the land development code is very specific about what uses are allowed in that area, and it does not include alcohol.

Mayor Kiker: Okay, we need to figure something out here, 'cause we've spent 30 minutes trying to put a motion together and we've gotta cut it out...

Attorney Miller: Well, there's confusion between land use, and zoning, which is a common thing.

Mayor Kiker: Okay . So – what is the correct verbiage for the motion? Please.

Attorney Miller: The beach is recreation land use, correct?

Walter Fluegel: I would honestly just leave it at reject the LPA's interpretation...

Terry Stewart: Let's answer the question. And the question was, is the beach within a recreation land use ..

Walter Fluegel: Yes it is.

Terry Stewart : Okay. Therefore, the EC is another derivative off of the recreational land use..

Walter Fluegel: It is the zoning category.

Terry Stewart: Thank you.

Mayor Kiker: Okay. Would someone please help with the motion.

Attorney Miller: Maybe if we do the motion the way the LPA..

Mayor Kiker: I actually read that to you..

Attorney Miller: So it would be to reject the LPA's recommendation that on-premises consumption of alcoholic beverages on the gulf beaches within the Town of Fort Myers Beach is restricted. Reject that.

Council Member Mandel. Correct.

Mayor Kiker: Do you have a problem with that motion?

Council Member Babcock: No. I think that's the right motion.

Council Member Mandel: I made it..

Mayor Kiker: Would you like to change your motion to do that? Is there a second to that...?

Council Member List: and I change my second to that...

Mayor Kiker: Alright, good. Is there any other comments?

Council Member Babcock: Well yes, I mean, now that we have the right motion on the table, I have to say that I won't support it, because in my opinion, the interpretation of the comp plan has always been, and clearly is today, and is reinforced by the LPA, to not expand alcohol sales to the EC zone or the beach.

Mayor Kiker: Okay. Is there any other comments?

Vice Mayor Raymond: Yes...Let's take a vote.

Mayor Kiker: We have to do this one, first, so, if there's not other comments, questions, concerns, I'm going to call to order .. all those in favor? Aye.... Opposed?

Council Member Babcock: Nay

Mayor Kiker: Motion carries, 4-1.

Council Member List: Mr. Mayor? I'd like to make a motion that we, I'm not sure of the exact, correct word, that we, I would like to move this off into the ozone for awhile the discussion about whether it's going to be ancillary or special exception.. That discussion I would like to move to put that forward into the future. Even if it's a work session, I don't care, but I'd like to not have that discussion right now.

Council member Mandel: I think I still have a motion... I'd like to put back on the table the motion as suggested by Mr. Stewart and if there is any one thing I would tweak to it, for clarification, where some of you have gone, is that, it would not include the environmentally sensitive parts of the beach. Or would that be done by staff later?

Terry Stewart: if you do that, then you can't serve on the beach. Environmentally critical areas, that's the beach. The whole beach is an environmentally critical area.

Council Member Mandel: As opposed to the parts that the State's running ...

Terry Stewart: That's correct. It's all environmentally critical.

Council Member Mandel. Leave the motion the way it is; we'll take care of it..

Mayor Kiker: Let me interject something here if I can.

Council Member Babcock: Was that a motion by Jo?

Mayor Kiker: yeah... Let me interject, here, that whether or not the process is being followed properly, is it correct that we make a motion like this, or should we, as Ms. List said, go in to a different process depending on where this lands. Is that kind of the decision we're making here?

Terry Stewart: Yes. It is clear to me, that if this Council has a policy as it appeared to be clear to me at the last work shop meeting, that if you have a policy that you are headed in, then you need to direct staff to craft language that would accomplish that. Because what we present to the LPA will be driven based on that policy decision. The LPA can take the work that staff has done, make any comments or recommendations on that that they choose to do so, but I do not want to invest or waste my staff's time, in putting together something that this council does not feel that it is going to be able to accomplish at the end of the day, and while I respect the concern of what a future council might do, I can't be driven by what a future council might do. I have to be directed by what council, today, is going to do.

Mayor Kiker: Kind of what I'm hearing here, is, if we were to instruct staff to go down this motion, that rather than going straight from staff to the LPA, I'm almost hearing that we would like to review it, first before it goes to the LPA, and make sure that we're all on the same page because I'm telling you, that every time I have this conversation with someone, it changes. It changes in interpretation, it changes the results, so I'm, I'm looking for a happy medium, it's like what you were doing, that if this motion carries, we'd ask that it be brought back to the council, either in a work session or a meeting before it goes to the LPA, and I can tell by, that you're biting your lip and bleeding to death that you didn't like that, so go ahead.

Terry Stewart: It's not a matter of not liking it, Mr. Mayor, it's a matter of what we're trying to accomplish, and that is simply this: Council will make a general policy directive to staff. Staff would

craft that – put it together. If the Council, at that time, felt that staff had not in general, accomplished what it wanted to do then you can certainly call for a meeting to bring it back. But to put that step automatically in there, I think is...

Mayor Kiker: And how would we know – how would we identify that that step needs to happen?

Terry Stewart: Because staff would provide you with the drafts of what we would be recommending to the LPA, and in the end, at the end of the process, you have the right to make judgments and decisions about what you want to see there to begin with.

Mayor Kiker: Is everybody OK with that process?

Council Member Babcock. No. No, I'm not. And that's because you're trying to embellish a process that already exists. We made a policy decision today. That policy decision was, that a majority of this town council believes that you can interpret the comp plan to allow alcohol to be sold on the beach. I think we're trying to jump in to the implementation and quite frankly, I take exception that we have to have another meeting to hash this out before it goes to the LPA. We have a process that's very clear. That is, you use, when you're going to make a change in the land development code, which is what we just agreed to consider, that it goes through a hearing process and it starts with the LPA. I think, Walter, you've made a great list of potential opportunities. It's not complete, I think there are other things that could be considered by anybody, and I'm assuming that when you start rehashing all the COP rules you're not just going to deal with issues on the beach, because I know that when it went to the LPA there were discussion about what 's the impact on noise, what's the impact on hours? So there's many decisions, as you go back and review the land development code changes now with the policy direction that needs to be considered. And I'm all about being concerned about taking up staff and legal time, as well, but it seems to me the first step is to collect all the potential options and changes that you could make to the land development code, and then have the discussion because quite honestly, I want to hear the legal opinions for each one of these opportunities, I want to hear the staff's input on each one of these, and most of all, I want to hear public comment. I mean, that's how we do things in a hearing process. So why don't we use the hearing process? I mean I honestly think to spend the next town council meeting or in a joint with the LPA, we're going to hassle with the same subjects and not be able to make a decision . I want to put all the issues on the table and take a vote. Win or lose.

Mayor Kiker: Ms. List.

Council Member List: And the reason I was asking to push this to another discussion is that it sounds to me like we don't have, well, maybe I'm wrong, but it sounds like we don't have full consensus as to whether it should be , what it should be, you know, special exception, permitted ancillary use, specific primary COP, I mean I'm not sure that we can ask the staff to prepare something until we know what we want them to compare. And that's why I was asking if we could possibly throw that discussion on an agenda for another meeting rather than this one.

Mayor Kiker. Gotcha. One more, we're done. Yes sir.

Council Member Mandel. I was on the LPA when this happened, and, there was no direction from council. We spent a lot of time, we spent a lot of money with consultants and attorneys and then, in the end, here, in this first motion we did this morning, we undid it and basically wasted all that time and town money because there was no direction from council. I feel more comfortable supporting the motion that was suggested by staff, and letting staff and the attorney draft something that's going to be reviewed by the LPA and ultimately council at least there is a direction, and the LPA is not going to be surprised to find out what the Council's opinion is. So, I would certainly like to put the motion back on the table and let staff and the town attorney and the LPA work on this.

Mayor Kiker: If I understand correctly, we have a motion on the table; do we have a second? Yes or no, did you remove your second?

Council Member List: Well,

Mayor Kiker: Do we have a second or not? Yes or No?

Council Member List: I can't...

Mayor Kiker: Would anyone else like to second that? And let's put on the record that Ms. List removed her second.

Vice Mayor Raymond: Can you roll back what your motion is?

Council Member Mandel: My motion is to accept the motion as presented by Mr. Stewart.

Mayor Kiker: this one? The one that's written? (on the blue sheet 2010-152)

Vice Mayor Raymond: I don't have a problem with it.

Mayor Kiker: Do you want to second it, or not? Okay, we have a second. Now. Is there any other comments, questions, or concerns?

Council Member Babcock: yeah. My comment is, that I somehow thought the original motion was removed, because we voted on another motion in between. It wasn't a secondary motion at all.

Mayor Kiker: Okay, you know what? Before...Time out. We get silly with all of this, and I'm not going to let it happen. Okay? I'm just going to start over and take it from the beginning. We've removed all the motions. We had a motion to reject, and we did, we voted, and it's done. Okay. We now had another motion that came from Mr. Mandel that you removed your second on, and it was the original motion. I am asking if anyone wants to second it- yes or no.

Vice Mayor Raymond. Second

Mayor Kiker: Okay. We have a second by the Vice Mayor. Now. In terms of process, does anyone want to make any comments, questions or concerns at this point in time?

Council Member List: By voting in favor of this, this would create the opportunity – the process of discussion of this subject, correct? This is going to officially open discussion of this subject? You know, in the correct process?

Mayor Kiker: Mr. Stewart

Walter Fluegel: I believe this gives staff fair direction in a policy we can take and go back and work with this approach.

Council Member List: And so, then, it's not a done deal – we're going in the correct process.

Attorney Miller: The way I read this is that it would be a permitted ancillary use to an adjacent approved COP use. So basically, it would be treating these the same way that the adjacent COP use is treated, i.e., if it is within 500 feet of a school or whatever it's a special exception.

Mayor Kiker: So, it does, in essence tailor itself after the exception process.

Attorney Miller: As Walter said, it does give us enough to craft.

Mayor Kiker: Any other comments or questions? Vice Mayor, do you have any comments or questions?

Vice Mayor Raymond: We say we want more folks to come in? this is an advertised meeting on COP. I don't see a ton of people waiting out there, so I think we've had our comment.

Mayor Kiker: Alright, and, Mr. Babcock.

Council Member Babcock: Advertising it on the door at town hall isn't adequate and that's what a hearing is for. A hearing actually gets advertised in the paper...

Mayor Kiker: Okay, do you have any comments on the motion?

Council Member Babcock: Yes, I have a comment, or question, actually. You're getting what I think is inaccurate direction by this motion so I can't support it. I just want to know, you've got a good list of options to discuss – there may be more by the quote policy direction that is being provided by council today so does that mean that all the rest of them disappear or are we going to talk about every one of them?

Walter Fluegel: Well, this just gives us an overall policy approach..

Terry Stewart: Time out. Excuse me. I think we ought to answer the question that's been asked. Based upon the motion that was made, we have a specific thing that we're directed to do and that is to prepare a recommended set of changes to the land development code, tailored around that specific ancillary use issue. Now, if the LPA, in its wisdom, believes that other things need to be discussed, they can do that.

Council Member Babcock: And the LPA gets their direction from staff, so that's why I'm asking . This is a great list for the LPA and others to discuss. I'm asking will all of these be considered?

Terry Stewart: I can't tell you that, because I don't know what the LPA's going to do. I know what staff is going to do; staff is going to do exactly what the town council instructs us to do. And I'm not trying to be argumentative, I just think this whole discussion is a bit unusual in that either staff gets directed by council to do a specific thing, and we're going to go do it and the LPA can undertake whatever discussion it chooses. I don't quite understand why we're having this discussion.

Council Member Babcock: I am being argumentative. And the reason why is because we're not providing policy direction anymore. We're providing implementation direction and that's beyond what we were asked to do. And that's why I want to see every potential option discussed by the LPA on a subject that's been so important to everybody, and for us to say how it should be implemented in my mind is wrong and so you can all make your own minds, but I can tell you I cannot support this motion.

Terry Stewart: Mr. Mayor may I ...

Mayor Kiker: You know what, I'm gonna, cuz I have not made a – had any discussion, but I'm going to. Actually, I couldn't disagree with you more, because I think every option ever possible was discussed for the last year and we paid \$14,000.00 for this huge document and it absolutely took us nowhere. And so, the whole point of this is, let's be a little bit more specific, let's focus – there's no one here that says if a better idea comes along we don't explore it together and go through this thing. But to sit there and discuss and put out every possible variable one more time we might as well all sit and read that \$14,000.00 document together and it's crazy. So, I thought the whole idea was to prevent that, be specific, have some focus, enter in to a process, it has allowed some public comment, it will allow more public comment with the LPA and it will allow comment with this board again, so, there's lots of public comment, I'm not worried about us not getting any, and so I think that looking at every variable up front is crazy. Might as well just forget the whole thing and not do it, or any other subject for that matter, so, I'm in favor of this thing, to move it forward, so, let's go. That's me. So, is there any other comment by council?

Council Member Babcock: Yeah, I want to vehemently agree. Yeah, we are going to have an opportunity to look at all of these. You show me one place – any minutes – anything that's ever discussed the six options that showed up on this blue sheet today, and the answer is no. So for us to provide a direction and tell me that we've discussed this in detail is not right.

Mayor Kiker: Okay. Is there any other comments, questions, or concerns? Okay we have a motion on the table and I'm going to call to order all those in favor? (ayes) Nay?

Council Member Babcock: Nay

Mayor Kiker: Motion carries 4-1.



Michelle Mayher

Town Clerk