

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 19, 2000
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The meeting of June 19, 2000 was opened by Mayor Daniel Hughes at 3:02 p.m.

Council members present at the meeting: Terry Cain, Anita Cereceda, Daniel Hughes, Ray Murphy and Garr Reynolds.

Member absent from meeting: None.

Town Staff present: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo. Pam Houck and Town Attorney Richard Roosa.

Also present: Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance.

III. INVOCATION

The invocation was given by the Reverend Jeanne Davis of the Beach United Methodist Church.

IV. PUBLIC COMMENT ON AGENDA ITEMS

V. CONSENT AGENDA

A. Review of Financial Reports -- May 2000

MOTION: Moved by Ray Murphy and seconded by Terry Cain to approve the financials of the Consent Agenda. Passed unanimously.

B. Interlocal: Street Maintenance, Third Amendment

Garr Reynolds asked if Lee County would be doing any of the drainage projects. He was told by Town Manager Segal-George that we had to go elsewhere for help as Lee County had said the work would be too complicated for the county crews.

MOTION: Moved by Anita Cereceda and seconded by Garr Reynolds to authorize the execution of the third amendment to the interlocal agreement for municipal street maintenance. Passed unanimously.

VI. ADMINISTRATIVE AGENDA

A. Public Hearing: Jerry Sawyer & Olivia A. Sawyer. Case Number ADM2000-00005.

A variance request to allow a living area to remain below minimum flood elevation. This property is located at 101 Anchorage Road.

Applicant's Representative:

Attorney Terry Lennick advised that most of the houses on Anchorage Street have the bottom built in just as his client has. His client has used his bottom floor residentially since 1990. He is in a flood-control area but is not enrolled in the flood insurance program and has no plans to

enroll in it.

Client is seeking a variance to Sections 6-409 and 6-443. They are seeking a variance from the regulations so as to permit them to maintain what has been there for nine or ten years. The area is less than 300 ft.

Robert Hutchinson explained had the applicant had unknowingly converted the interior into an accessory apartment and has been using it as such since then, which appears to be normal for the neighborhood. Mr. Hutchinson discussed the 11 criteria specified in the ordinance. It is not felt that the applicant will have any effect on the Town's flood insurance program since he is not enrolled in it.

Mayor Hughes asked Mr. Hutchinson how he could say that the applicant's lack of enrollment in the Town's flood insurance program would have no effect on said program. Mr. Hutchinson's reply was that that same code allowed for variance situations.

Attorney Lennick said he doubted that FEMA would pull any insurance based upon this one case. If they do, he would be glad to help defend the city against something like that. It's a minor variance, a small variance, and he asks that we grant the variance today.

Mayor Hughes noted that we have also in our ordinances and in state law a requirement that we have certain criteria to meet to grant a variation and he asked if these 11 requirements superimposed here were additional and supplemental requirements. Attorney Roosa said they would be additional and the resolution that's prepared for the Council considers the standard requirements for the granting of a variance from the Land Use Development Regulations. Mayor Hughes further ascertained that in other words these 11 requirements are in addition to our normal requirements for granting any variation, which include extraordinary circumstances and not the minimum variance, would not be injurious and are not of a general or recurrent nature.

Attorney Lennick pointed out that on the first page of the resolution there are two general requirements for a variance and that on the second page there are all the 11 requirements contained in G. These 11 requirements are more restrictive and apply specifically to this type of variance.

Robert Hutchinson was called upon to give evidence that applicant is complying with the two requirements set forth in his narrative. He advised that to the best of their knowledge they are complying with that section: not creating any public nuisance; not causing fraud or victimization of the public, and they believe with the exception of the section requiring them to construct at a certain elevation that they're not in conflict with any other elevation. In addition, the lot is so small or has such unusual characteristics that prescribed standards cannot be met without some relief to allow reasonable use of the property, and in this case they have tried to demonstrate that a reasonable use of the property is like that of every other lot in this subdivision. Mayor Hughes pointed out that this was a single family residence and not a duplex. Mr. Lennick stated that it could have the use of a duplex and that they could not get a straight answer from FEMA with regards to this particular variance. He felt that we wouldn't lose anything by granting this variance.

Applicant Input:

Jerry Sawyer advised his first request was for a variance to approve the apartment under his house at 101 Anchorage Street. His second request we've heard before and they wondered why the Town is enforcing a law even before it came into existence December 31, 1995. He noted that the comp plan refers to the complications caused by accessory apartments when the landlords do not live on site, and they do live on site and have maintained their property carefully. They question the legitimacy of any complaint of their property and an anonymous, complaint-driven system. If the Council denies their request today, their's will probably be the lone single family dwelling on Anchorage Street.

County Input:

A. Charlie Edwards of the Lee County Building Department advised he was a person charged with the responsibility of bringing appeal cases and variance cases to the Board of Adjustments and Appeals for Lee County. He is here today to represent the Town of Fort Myers Beach under the same guidelines as Lee County uses for flood variance requests. He read Section 646 of the flood ordinance to us which referred to an exception to the variance in cases of exceptional hardship. He noted that the Town Council takes the place of the Board of Adjustments and Appeals. The applicants have a lot that will provide what they had intended to put on their property. What they have done is gone back in and done a remodeling down below flood elevation. This house was elevated on stilts to comply with the requirements of the regulation. It had legal walls installed down below flood elevation which were break-away walls and perfectly legal by code. What was not legal was to use this area for anything other than parking a car or storage or entry into the building. Those are the only uses that the regulations will permit whether the house is single family, duplex, multi-family or even high risers and they are both federal and local requirements. By constructing down below an area that is used for something other than what is allowed by the regulations makes it an illegal building.

Councilman Reynolds asked Mr. Edwards if he knew of any other living units on the island that would fit into this category. Mr. Edwards referred the question to Pam Houck.

Town Input:

Pam Houck, Service Delivery Coordinator for the Town of Fort Myers Beach, advised that in the past few months working with the Town and with our enforcement officers she has had the opportunity to visit several of the sites where these illegal units have been put in. She has not been to the applicant's site. She has a list of approximately 25 illegal units, most of which are ground floor units and most have been abated by removal of the unit. Ms. Houck passed the list out.

Ms. Houck said that the site plan shows there is ample area to put a second unit on this home in compliance with flood elevations. She does not believe that Mr. Edwards nor the applicant have exhibited that this is minimum use of the property. In our packets is a letter to the Sawyers from John Gucciardo and some information on FEMA.

Mayor Hughes asked Ms. Houck if to her knowledge there were any apartments that were illegal but have been permitted, to which she replied no.

Councilman Reynolds felt that the list of illegal apartments was too small.

Town Manager Segal-George advised there was another list of illegal apartments, and since the Council made the change in the accessory apartments about four years ago, we have a list of apartments that were illegal prior to that change that are now registered with the Town as lawful units as long as they are owner occupied.

Vice Mayor Murphy asked Pam Houck to restate for the Council how a mother-in-law apartment became legitimized. Her reply was owner occupied, built prior to 1987 and if it existed prior to 1962. They will not go on the illegal apartments list.

Councilman Reynolds asked for a list of these apartments. Councilwoman Cereceda said she was very uncomfortable with giving out a list of apartments not connected to the Sawyer case.

Mr. Lennick asked Pam Houck wasn't it true that no one has sought a variance from the FEMA regulations, and she responded yes. Mr. Lennick also ascertained that she couldn't tell which units had been constructed prior to the alleged violations. He felt that the fact that the owners of the units on the list did not seek a variance should not be used against the applicants. Councilwoman Cereceda was told that the names on the list were a matter of public record. She felt, however, that as this was a quasi judicial hearing the only testimony that was permitted was that which was pertinent and relevant to the particular case at hand and that this was not pertinent.

John Gucciardo advised that as Deputy Town manager one of his functions is to serve as the community ratings service coordinator. The community ratings is a service provided by the ISO, the Insurance Service Organization that acts as an agent for FEMA. One of their functions is ensure compliance with the regulations relative to NFIP, the National Flood Insurance Program. They've had an opportunity to communicate with the ISO through the Community Rating Service Organization and also with FEMA directly on not only generalities but as to this specific issue on the Sawyers request. In our packets are copies of a letter dated October 21 from himself to the Sawyers relative to those correspondences. These were in response to correspondence that that Sawyers had attempted to have with FEMA. There is also a copy of a letter dated November 18 from Brad Law, the mitigation division representative for FEMA.

Mr. Gucciardo has copied for us some pages from the FEMA Web site. He is not aware that the fact that the Sawyers do not have and do not intend to have flood insurance on their property would have any impact on our ability to maintain our standing in the NFIP. FEMA is very specific in indicating that what they look to is not the individual but the community and how the community responds to its obligation under the NFIP. We've heard that there would be no repercussions from FEMA and he would not be comfortable in making that guaranty as his experience has been just the opposite. FEMA and their agents have indicated to him that they are most serious about a community's ability to maintain its obligations and they look very closely at these types of actions by the elected officials. Under the CRS a community comes under a recertification process, and on an annual basis we are reevaluated to ensure that we have been maintaining our standard. He could guaranty that according to FEMA's stated regulations, communities that do not live up to their obligations can be placed on probation, can be placed on suspension and that those two sanctions carry very serious repercussions both with the community and for the individual policyholders.

In response to an inquiry by Vice Mayor Murphy, John Gucciardo stated that he knows that FEMA is very concerned with any variance that we grant with regard to the development of the flood zone. His concern is that a variance granted under these kinds of conditions would set a precedent whereby it would be more difficult in the future to say no.

Asked by Councilman Reynolds if he knew of any problems created by a municipality under the FEMA rules. Mr. Gucciardo said he knew that the Keys in Monroe County because of their history with illegal apartments is under sanction right now.

Bob Stewart, the Town's representative for development services, stated that he doesn't know that FEMA particularly rates or grades the variances that we grant. Staff's difficulty in making a recommendation for or against this variance had to do with the demonstration of a hardship and those things that make a variance request unique and why those should be granted. If we recommend this variance, how could we not recommend for any others just like it?

Stated was that FEMA considers trends -- the totality of what's going on in that community before they make a decision. They don't consider one individual variance. Bob Stewart advised that FEMA is looking at whether or not you're doing what you're supposed to be doing in your FEMA program. If you can justify this one variance and show that there won't be others like it, it perhaps would have no effect.

Charlie Edwards was asked by Mayor Hughes his view as to whether there was or was not a hardship in this case. Mr. Edwards stated he thinks that's our job. He is not here to determine if the applicants have a hardship or not. He is here to help us understand what the code is to the best of his ability and to present the case to us. Councilwoman Cereceda told him that was an excellent answer.

At this point Mayor Hughes asked if there were any ex parte communications with regards to this quasi judicial hearing. Councilwoman Cain and Vice Mayor Murphy both admitted to a meeting with the Sawyers. Councilman Reynolds said that he did not talk to the Sawyers but he looked over the situation at their home. Councilwoman Cereceda said she'd had a meeting with the Sawyers this afternoon. She has spoken with them on the phone several times. In the course

of all of this she has received letters from the public which are a matter of public record. Bill Van Duzer's letter appeared in the Beach Observer. Mayor Hughes asked if we had to disclose receiving letters if they weren't part of a dialogue and was told no. He advised he had spoken to the applicant on the phone.

Public Input:

None.

Mayor Hughes put a question to Bill Spikowski, planning consultant. He asked if there was anything in the Land Development Code, Chapter 6, that deals specifically with this case, as it exists or as it may be amended that would have any further bearing on this matter in his opinion. Mr. Spikowski said the code wouldn't make it any easier or harder for us to issue this variance.

Bob Stewart said the variance he had asked us to approve was for a small building. FEMA does allow garages at the ground level. Everything in the building was going to be wet flood proof, meaning that the building is designed for water to go into the building and nothing inside will be damaged. Also there is no living space below flood elevation.

It was noted that there were 42 signed petitions in our packets.

Councilmembers Input:

Councilwoman Cereceda noted that Bob Stewart had been the turning point in her decision making when he said this was a hardship knowingly created by the property owner. She believes that we would establish some precedent or some legal opening for others to appeal who would be in the same situation as the Sawyers. We spent three years constructing our comprehensive land use plan that was awarded a special citation by the state for its quality and she believes we came up with a reasonable accommodation in our plan.

Councilwoman Cain said she had apprehensions when the word "trend" came up. She wouldn't want to see this become a trend, basically because of FEMA, and she doesn't think anyone can say what FEMA would or wouldn't do.

Mayor Hughes stated that this was a difficult case and the applicants have done a good job in presenting what they have done. The defense that other people are doing the same thing is not how the Town Council can address these issues. We have to address them on a specific basis and we're mandated by state law as well as by local ordinance that they must comply with the various requirements. While he tends to agree with applicants to a great extent on the specific 11 items under the relief they refer to here under section 6-446, he thinks there is overriding language that they really haven't addressed and an exceptional hardship will result from compliance with these requirements. As pointed out by Councilwoman Cereceda the hardship was self created and he has a great deal of difficulty in ever granting a variation in a case for something that was done illegally whether intentionally or not. He is not implying that this was an intentional illegal act on their part, but the fact of the matter is it was illegally constructed and to him that's the most significant fact in this case.

Councilman Reynolds read a statement into the record indicating that this case was before us today because of a complaint made by a renter to a councilmember. In part the statement read that the renter had been serving as a babysitter to the applicants. She had been evicted by court order because she refused to pay her rent. Code Enforcement Officer Dave Crabtree came to the Sawyer home to inspect their property and discovered that a living unit had been put in their home some time ago without a permit. The Sawyers objected, feeling this was selective enforcement as there are many such living units throughout the island. When they raised an objection, a second property was suddenly inspected and they were ordered to remove a second living unit. They are in deep trouble because an evicted tenant who refused to pay rent became angry and "squealed" on them. Councilman Reynolds asked if this was the way we want our

Town to operate. Shouldn't the Town have an official policy dealing with enforcement of illegal living units in the community? If the Town were to follow the Land Development Code, a large percentage of the illegal living units existing today would be removed. However, the Land Development Code is not being enforced. The present so-called process is said to be complaint driven. Unless a present verbal policy has recently been changed, you do not have to identify yourself and you do not have to be a voter. Or you could be ignored. After all there is no record of the call or paperwork. Last week all council members received in their office mail an anonymous ill-tempered letter regarding the Sawyers and their unit situation. Councilman Reynolds said he declares this type of enforcement to be downright unAmerican. He asks us what has happened to due process and equal treatment. Illegal living units are not the issue here because they exist all over the community. Are permits being issued today for ground level enclosures that become living units now or will later? Who knows about this? If the Town Manager knows, he would like for the council members to be informed in writing. It is not our job as council members to inspect these situations. That is left to the Town Manager and Code Enforcement. Selective and perhaps punitive code enforcement is why he is supporting this couple. Councilman Reynolds went on to declare that there should be a fair policy of equal code enforcement so that bias and personality conflicts will not be the rule. He would like for this agenda item to be tabled indefinitely or that we vote our approval of the requested variance.

Vice Mayor Murphy wished to know what council member was complained to. Councilman Reynolds said he didn't feel that naming the council member was pertinent but did admit that rumor had it that the member was Ray Murphy. Mayor Hughes said it was the obligation of a council member to report the complaint once it was made.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain that the variance request be denied.

Mayor Hughes asked Attorney Roosa if item c. of the Resolution, whether or not the variance is or is not the minimum variance, relevant at all. Attorney Roosa said it's a finding that the Council has to make. Mayor Hughes said it was his understanding that if approving a variance, it must have met all the criteria and could be denied on any one of the criteria. Councilwoman Cereceda said she agreed with him and didn't find a problem in striking c. from the motion. There isn't a variance that will relieve the applicants in this particular situation. Councilman Reynolds said he objects to striking any of the criteria and that we should vote on them as they came to us.

MOTION: Moved by Garr Reynolds and seconded by to table the motion moved by Anita Cereceda. Motion fails for lack of a second.

The motion for a resolution is approved on a vote of 4-1, which in effect denies the request for a variation.

Council was told by Terry Lennick that in order to get away from complaint-driven issues, they would like Council to direct Mr. Stewart to investigate all of Anchorage Street because they believe we're going to find a significant number of violations of the same condition as his client. Mayor Hughes said he was in accord with this and staff is so directed.

B R E A K -- 4:55 P.M. - 5:10 P.M.

B. Public Hearing: Amendment to Land Development Code, Chapter 6.

As read into the record by Mayor Hughes. This is an order repealing Chapter 6 and establishing a new Chapter 6.

Bill Spikowski, planning consultant, noted that the memo provided to us of June 9 describes the major changes to the ordinance. The newest part is the property maintenance code and Fort Myers Beach has not had one before. There have been a total of four LPA hearings on this chapter. The second article is building codes, mostly highly technical changes, many of which are simply the same changes that Lee County has already made to their code since our incorporation. A change in Article II now spells out what minor repairs can be done without a building permit. Article III is the Coastal Construction Code which is required by state law although it's rather obsolete and irrelevant. The last article is Flood Plain Regulations and they implement provisions of our new comprehensive plan and how we would deal with the regulations.

Mayor Hughes asked Mr. Spikowski if he had gotten any feedback from Pat White, Assistant County Attorney, to his letter of February 16. Mr. Spikowski advised he had gotten no response to this letter but that he did not anticipate that there would be any problems regarding the changes outlined in the letter due to the level of cooperation. Mayor Hughes stated that he thinks the changes he has come across so far were very well drafted.

Public Input:

None.

Public Hearing is continued to June 29 at 6:30 p.m.

C. Public Hearing: Amendment to Land Development Code, Chapter 2.

Vice Mayor Murphy read the ordinance into the record.

Bill Spikowski noted that the important changes in this chapter were in the concurrency section. It explains a little more who does what and when. It will be a streamlined system compared to the system that we've been under for quite a few years.

What is now Article IV. is impact fees, basically a combination of four separate ordinances into one article. The substantive changes are now going with the county's new fire impact fees that they adopted this past year and are in effect in other parts of the Fort Myers Beach fire district but will not be in effect here in the Town until we adopt them into our code. And also adopting the county's new road impact fees which they have adopted and are said to take effect on July 1. This will maintain the same impact fee schedule based on the same data analysis that the county has developed through their contract with Dunkin & Associates. The only other change is that road impact fees have been renamed transportation impact fees which allows them to be used not strictly for roads. You can build a sidewalk while building a road but cannot put in the sidewalk later.

Article V. is the code enforcement hearing examiner. We still contract with Lee County for their hearing examiner for code enforcement purposes. This has worked quite well. It's reasonably expedient, it's cost effective.

Bill Spikowski explained how transportation costs are arrived at.

Mr. Spikowski stated that the entire cost of building new parks is allocated to the residential section.

Advised was that condominiums fall under the category of multiple family buildings.

We do not allow mobile homes so there's no fee for that.

Mr. Spikowski advised that he won't be here on the 29th.

This hearing will be continued to June 29 at 6:30 p.m.

Public Input:

None.

D. Public Hearing: Solid Waste Ordinance

Mayor Hughes read the ordinance into the record.

Deputy Town Manager Gucciardo stated that two contracts with the county were agreed to at our last meeting. One has to do with the collection and hauling of solid waste within the jurisdiction of the Town. The other has to do with the financing arrangement for the disposal facility. We chose to go with the MSBU and this ordinance then allows the MSBU to be put into effect and take effect within the jurisdiction of the Town by the county. We chose 10-year terms for these contracts.

Public Input:

None.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the ordinance. Passed unanimously.

E. Beach and Dune Ordinance: Council Vote.

Mayor Murphy reminded us that because of many revisions we had asked to be presented with a clean draft of the ordinance. Attorney Roosa acknowledged that one had been prepared.

Councilwoman Cereceda complimented Mayor Hughes in the way he dealt with this ordinance at our last meeting.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain that approval be given to the Town of Fort Myers Beach Beach and Dune Ordinance in memory of John Mulholland for his work and dedication.

Discussion:

Councilwoman Terry Cain pointed to an error in the revised ordinance. In definition of beach it should read mean low water line and not mean high water line.

On page 4 the question arose if there should be a permit with or without a fee. Town Manager Segal-George said she would do it without a fee.

In 8A Mayor Hughes suggested changing the wording to read "The use is permitted (1) with the approval of DEP and (2) on filing with the Town Manager.

Councilwoman Cereceda felt that the compliance question was only discussed relative to #2. Putting it at the end of the section would make it relevant to 1, 2 and 3. Decided was to move it up to #2 and have it only apply to #2.

Town Manager Segal-George asked to have "permit" taken out and this was done.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain that approval be given to the Town of Fort Myers Beach Beach and Dune Ordinance with the changes just discussed in memory of John Mulholland for his work and dedication. Passed unanimously.

F. Update by Pool Foundation.

Kitty Taylor, president of Build-A-Pool Foundation, advised that as far as she's personally concerned, the memorandum that's in our package was designed to "speak for itself." They're looking for our answers, not hers. There are a couple of items that have come up in the

Foundation in which there is agreement with Foundation members. She doesn't want to get into petty, Mickey Mouse details at this point, but one of the things that has been very strongly suggested is that the pool hours be extended earlier, particularly for the more mature adult-type swimmers and for those people that heavy sun at 10:00 a.m. is more than they can do. These hours may have to be outside the "regularly open hours," but that's been one of the requests they've had over the whole time pretty much universally -- that there be a chance for people to come to the pool earlier than 10:00 in the morning, particularly in the summer.

The other consensus agreed upon is that the management company, whoever it is, be more mindful of the local conditions. For instance, the school year and the meetings that are held after school is dismissed are just nice meetings to have but they don't accomplish anything at that point. Otherwise, she'd be happy to say "Duh, I don't know."

Anita Cereceda: Under direction on the memo here it talks about the charitable status, whatever, blah, blah, and it says "It cannot be granted or maintained by an organization for the sole purpose of raising money and the volunteers believe the Foundation was always intended to serve as an advisory board." Maybe this question is for Mr. Roosa. If we make the Pool Foundation an advisory board, then would they not be governed by the Sunshine Law and won't they have to have minutes and all of that stuff? (Mr. Roosa replied yes.) Do you really want that?

Kitty Taylor: Well, when the letter as originally written was scrupulously added the word "board" came out ... where that was put. And I really think that the position is we want to do what -- not necessarily come under the Sunshine Law -- but we want whatever is necessary to maintain that charitable status, which we cannot if we're looked upon as a fund raising organization period. That won't fly. So there has to be some input from the Foundation other than fund raising. It just has to carry that characteristic. It could be structured like through a liaison as opposed to an actual advisory. I don't know the technicalities of that. But we can't maintain the status if all we're doing is raising money.

Dan Hughes: You're a 501C3 entity and you have your IRS ruling?

Kitty Taylor: Yes, sir, and it took a considerable amount of effort and a great deal of paperwork to get that established, and we felt very very proud of ourselves because we did it on the first submission to IRS, and that is almost unheard of. And we did it in the original submission showing that we were going to make recommendations for programming -- that we weren't just going to, as I have sarcastically put it, stand on a corner with a tin cup.

Anita Cereceda: And you have done that.

Kitty Taylor: Yes we have.

Anita Cereceda: So what I'm wondering is what would have to change to keep your status.

Kitty Taylor: I believe, well not what I believe so much as I said the memo tends to speak for itself, but we believe that there has to be some feedback from the Council in the form of recognition of these things. We can talk about them but if we're not doing them, then it isn't going to go anywhere, Anita.

Ray Murphy: Does the Foundation as it exists today -- do the members wish to continue raising money?

Kitty Taylor: I believe that the majority of our board does. I know for myself personally See you at the Pool? was what sold me on the idea, and I have some very strong feelings. I will say that in the original makeup one of the horrors that we talked about among ourselves was that the worst possible -- no matter what else we did -- the worst possible was nobody swimming in the pool. Man, that's death right there. What we are experiencing at the pool is so much more participation in the form of people going. I had a very very nice story told to me this week about a person who was against the pool. Absolutely stone cold against it. Their grandson loves it. So times have really changed with a lot of people.

Anita Cereceda: Well, I tell you that I for one value whatever remarks and input you guys give us. I don't know if you want to be asked for comments. Is that what you're saying? Do you

want us to tell you things we want to hear about, or do you want to just when something comes up bring forward your recommendation to us?

Kitty Taylor: That would work or the acknowledgment of the recommendations brought forward. It's just somewhere there has to be something to show that the Foundation is an effective organization for the purpose of promoting the pool and not just for the money.

Terry Cain: This is food for thought. Maybe you could bring a report of requests or an update like once a month to one of our meetings.

Kitty Taylor: This is what we are working toward being able to do and that's what we would like. I'd continue the record so that there's something there. That was the concern -- that we don't want to lose what we've got by falling into the tin cup on the corner status.

Garr Reynolds: If I understand what you're saying, Kitty, it is that you are making reference to the last sentence under Mission. You want to be recognized by Council as officially submitting to them for their consideration planning, designing and setting costs for operating the facility.

Kitty Taylor: That was the original mission statement and that's where we have to stay if we're going to maintain the status. Obviously the design's done. When IRS approved this it was still in design, etc.

Dick Roosa: Setting policy for operating is the key language here now.

Garr Reynolds: So you want to add more than just that? Is that what you're saying?

Kitty Taylor: Don't want to add anything, just want to maintain the input for policy or operations -- whatever.

Garr Reynolds: You have been an advisory group for Council, have you not? That's the way that I was looking at it.

Kitty Taylor: I don't think -- and this is not the Council's problem -- I don't think that we have fully functioned in the way that we should have. And a part of the reason for this memo is that we need to -- formal is what we need.

Garr Reynolds: Would the Mound House committee be a similar type request?

Kitty Taylor: Well they operate under the Sunshine Law I understand and we really don't want to go that formal.

Anita Cereceda: I guess a good example would be me bringing up the request from Swim Florida or equipment. Now what perhaps would have been a better avenue for me to do would have been to come to the Pool Foundation, run it by you all, you say yep, this is a good idea, move ahead or whatever and then I could have come before the Council saying I've discussed this with the Pool Foundation, they agree with the recommendation. Maybe protocol is a better word to use. Another group looking at something before it comes to us.

Kitty Taylor: And it also gives me something to say when -- and it's not just me there are also other members of the Foundation. People call us and make comments and so forth. You know, the point at which you say, Well, gee, we meet next month -- so we met. Do you follow me? It's got to go somewhere.

Dan Hughes: There was a time problem in your particular case.

Anita Cereceda: I also apologize if you guys felt like that was a step on anybody's toes or anything.

Kitty Taylor: I think it's just a good example. It's not like it's a step, but it's an example. It would serve our function.

Dan Hughes: John Gucciardo, would you care to give us suggestions or comments?

John Gucciardo: No, at this point I think that the position of the Foundation has been pretty clear and I think that the responses from the Council indicate that you're willing to work with them along those lines. Absent any crunch in scheduling, which occasionally does happen, I don't see any problem in going forward on that basis from what I've heard here.

Dan Hughes: Terry?

Terry Cain: When are your meetings?

Kitty Taylor: We meet the third Thursday of each month.

Terry Cain: So we could have a report to us on the first Monday. We would just put them on the agenda.

Kitty Taylor: Okay. That keeps the record straight.

Terry Cain: Personally, I'd love to have the input to know what you all are doing.

Dick Roosa: Mr. Mayor, this is a gray area that we're in here and it has to do with the initiative of change. If there's a procedure where prior to taking action on something on the pool that it's processed through the Pool Foundation, they become a de facto public agency. Whether or not you appoint them, if you give them the responsibilities of an advisory board, they are an advisory board and they would be subject --

Kitty Taylor: Mr. Roosa, I'd like to interrupt you at this point and say that that is neither the goal nor the intention, and if it is necessary for semantics to simply say that once a month the Pool Foundation will make a report to the Council, this in no way says that anything coming to the Council will have to have been through the Foundation.

Dick Roosa: That's my point exactly. You've grasped the idea completely. That as long as the initiative is upon the Build-A-Pool Foundation, the fact that you give them special recognition because of who they are and what their purpose is, it would not put them under the cloak of government in Sunshine. But if you give specific charge to them, then it would put them under government in Sunshine and all the people would have a right to input rather than just the Build-A-Pool Foundation.

Kitty Taylor: I think this is swapped from gray to zebra and I think we're okay.

Dick Roosa: Well, I think that every member on the Council has expressed appreciation for your input and the desire that we continue to receive input and suggestions. Perhaps this should be some sort of written -- Do we need anything to clarify this in writing, something that should be expressed?

John Gucciardo: Frankly, I thought I would get minutes of this meeting.

Dick Roosa: No, you see it should come from the Build-A-Pool Foundation. And as long as it's input from the Council from them, that's just like any other -- like a condominium association or a business.

Kitty Taylor: Can't they write us a thank you letter?

Dan Hughes: She wants acknowledgment. Well, okay, so we can from time to time acknowledge their suggestion and let them know whether we did or did not act upon it. I guess that's all we can say here. I just was wondering what -- what I'm getting at here I guess is saying that they come up with a specific request for direction and we're not giving them anything in writing except some conversation here. Do we need anything in writing on this?

John Gucciardo: I thought I would frankly just get copies of the minutes of this meeting and present them at their next meeting for their consideration.

Dan Hughes: Are the council members satisfied with that, leaving it at that point? (Yep.) Any further suggestions? Kitty, is that all right?

Kitty Taylor: I'll take it back to the Foundation when I get the minutes.

Dan Hughes: Well, thank you, and John will give you copies of this to take to the board.

G. Palmetto/Easy Street Change Order

Pam Houck advised this is a request for a \$6, 130.32 change to the contract amount. Minimized is what the items are and a cost list has been attached to the memo. The engineer Bill Morris of Morris & DePew is here to answer any questions we might have.

Mayor Hughes asked Dick Roosa if this automatically increases the assessment when we get the change order. Attorney Roosa said, yes, unless we choose to spend money from some other source.

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the change order. Passed unanimously.

H. Update on Lenell Road Sidewalks

Pam Houck advised that Mr. Morris has given her a cost estimate of approximately \$35,000, which entails approximately 1,800 linear feet of sidewalk along the north side of Lenell. She has attached his itemized report to that. If Council desires, she'll move forward with this project over the summer.

Mayor Hughes ascertained that we're going with the 5 feet recommended by DePew. We'll have to go out for bid for an engineer.

Town Manager Segal-George said we'll also have to form an assessment district and so this will come back to the Council. If we go ahead with engineering in advance of holding that hearing, there's always the possibility that those folks might come forward and tell us they don't think it's a good idea.

Councilman Reynolds said he believes they want those sidewalks.

Mayor Hughes asked Mr. Morris for a time table on this project. Bill Morris said 2-4 weeks from notice of proceeding for the survey work of the right-of-way and then go to preliminary engineering design probably in the next 3-4 weeks. From notice of proceed to construction would be maybe 2-2-1/2 months.

Town Manager Segal-George stated that if we can get the engineering work done this summer and we do our assessments at our first meeting in August then we'd be ready to go to bid for construction perhaps in September. It would be no sooner than November/December to lay down concrete.

Vice Mayor Ray Murphy ascertained that the \$35,000 would be the fee for the total package.

In answer to Councilwoman Cereceda's question regarding how much of the \$35,000 we would be spending on engineering, she was told probably about 15-20% of that number.

Vice Mayor Ray Murphy stated that there is a consensus that the neighborhood needs and wants this so he thinks our risk for moving forward is pretty small.

Discussed was whether or not to make a bike path on Lenell. The cost would be roughly \$7,000 more. Councilwoman Cereceda felt it should be done.

Carry landscaping to Lenell also.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to approve the engineering and design stage on Lenell. Passed unanimously.

I. Lewis Street Update

Pam Houck noted that we have a contract with Morris & DePew. They intend to start their field work and data collection in the next two weeks. Simultaneously she will be working on the MSBU. Hopefully they'll have a bid ready to come back to us by the end of the summer.

B R E A K

The meeting reconvened at 7:00 p.m. We had a quorum with Councilmembers Hughes, Cain and Reynolds present. Councilwoman Cereceda and Vice Mayor Murphy also joined the members a bit later.

J. Fourth of July -- designation of area for exemption from open container prohibition.

Town Manager Segal-George said this only pertains to the Times Square area.

Mayor Hughes said what we're doing is designating Times Square as an area within Section 2F of Ordinance 99-15 for the 4th of July only.

MOTION: Moved by Ray Murphy and seconded by Terry Cain to designate Times Square as an exempted area under Section 5F of Ordinance 99-15. Passed unanimously.

K. Request to advertise for Mound House Director

Town Manager Segal-George noted that in our packets we have a memo from her that outlines what happened at the last CELCAB meeting. The only real issue is salary and she explained what we have in the budget at this time for a director's salary and operational costs. CELCAB wants to do the selection process in their meeting. All of it will be done in public.

Mayor Hughes felt it would be preferable to give a salary range. Decided on was a sliding scale from \$25,000 - \$35,000.

Terry Cain suggested we include transcripts of bachelor's and master's degree work.

Deputy Town Manager Gucciardo spoke regarding TIF funds. What needs to be resolved is establishing a base year and what to do about the money that was not allocated in the previous Phase I project.

Another meeting will be set up with the board of county commissioners.

L. Discussion of CRA

M. Update of Times Square issues: Farmers Market, Garbage

Pam Houck advised she took the interest expressed in having a Farmer's Market to the Advisory Council and they agreed it's a good idea and recommended that we start it in the fall at the bay end, probably around Matanzas. John Richard volunteered to work with Shawn Holiday who has given a proposal and will coordinate the activities.

Times Square would like to try this for three months on a trial basis. Council felt this was a great idea. Councilwoman Cereceda questioned the cost for hiring Shawn Holiday.

MOTION: Moved by Anita Cereceda and seconded by Terry Cain that the the issues regarding the Farmer's Market in Times Square be tabled until our next meeting. Passed unanimously.

Pam Houck reported that the trash compactors are not working as we had anticipated and we are in the process of working with the manufacturer and the person we leased them from to have them removed. Over the summer we'll come up with a plan for next year.

We have refused to pay for the compactors, which is putting our credit rating in jeopardy.

Pam Houck stated we've had a report from Shawn Holiday on the street performances which have been very successful. They will add Wednesday nights to the performances.

N. Discussion of Water Utility.

Deputy Town Manager Gucciardo advised that staff is hoping they will be able to bring us three different items at our first meeting in August: The draft of the settlement agreement between the Town and the County; scheduling a public hearing; a status report on the due diligence responsibilities.

O. LPA Vacancy: We have received the following names for consideration of the one vacant seat. (a) Carleton Ryffel, (b) Jane Plummer, (c) Ann Alsop, (d) Becky Bodnar.

These candidates were ranked from 1-4 with 1 being the highest.

Jane Plummer was selected for the LPA vacancy.

VII. COUNCIL MEMBER ITEMS AND REPORTS

Councilwoman Cereceda reported on the MPO meeting on Friday. For her the highlight of the meeting was information regarding monies available for ferries. John will look into this in his spare time. She also questioned Mr. Roosa regarding Mr. Lennick's request that we go to homes on Anchorage Street to check for compliance. He advised that they only inspected homes when complaints are received against them. Mrs. Cereceda also stated that the Swim Florida group would like to have the Council's permission to do fund raising for their team in the Times Square area on the 4th of July by selling glow necklaces. She felt they could wear their Swim Florida shirts while doing so. They hope to raise \$500 for training equipment and paddles as well as storage for them. Town Manager Segal-George advised that we have not allowed this in the Square. When she was contacted about it she said that the Council would have to authorize it.

Councilwoman Terry Cain advised that the Army Corp of Engineers is having another meeting for public input on June 27 at 6:30 p.m. at the South County Regional Library on Three Oaks Parkway in Estero. They will give a synopsis of what happened at their last meeting.

Mayor Hughes reported there was a meeting tonight of the Caloosahatchee River Watch Group. Public invited.

Vice Mayor Murphy reported being invited to FGCU on Thursday, June 8, by Dr. Merwin. He had a forum set up entitled Friends of Civic Engagement. He is trying to get members of the community more involved in civic activities, primarily the younger people. An interesting group was in attendance. At the SW Florida Regional Planning Council meeting on Thursday it was the first time a DRI was turned down. The whole issue was water. It has been determined that they can't provide enough water to it.

Mayor Hughes reported on a call he had received regarding a Beach resident who is legally blind and needs employment. He also talked with Tom Myers who feels that the Traffic Committee should be an actual agency of the Town. He let him know that becoming an agency would put them under the Sunshine Law. Councilwoman Cereceda advised that since she can't get to those meetings, someone else should become a liaison to the committee. She wondered if it couldn't be a subcommittee of our Public Safety Group and so did Councilman Reynolds. Mrs. Segal-George said it would still be under Sunshine and call for minutes and agendas. Half of her time right now is taken up with committees. There are already two more committees to be picked up.

Garr Reynolds volunteered to be the pro tem representative to the Traffic Committee.

Vice Mayor Murphy reminded everyone that this Sunday is Taste of the Beach.

VIII. TOWN MANAGER'S ITEMS

A. Discussion of Special Event Permits

Town Manager Segal-George advised that the ordinance on special events was not being used in a way that she ever contemplated it being use. We have situations where certain businesses that are using special events permits on a constant basis which would appear to enlarge their business. Restroom facilities become a problem. Port-a-lets are no longer allowed. Parking poses another problem. She plans to have people make their requests way in advance of an event so that she has time to go to the sheriff's department to coordinate the activities that are planned. The ordinance requires people to make their requests 21 days in advance, but people have not been honoring it. Her recommendation is to amend the ordinance and only allow six special events per business a year. People who want to have events during season (February through April) should request those January 1. Dick Roosa would have to prepare an ordinance. No one had an objection to Attorney Roosa drafting a new ordinance.

Bowditch will be in front of the board of county commissioners tomorrow for a decision and it was her understanding that Attorney Roosa is going to appear at the meeting and reiterate

the position that Council took with regards to parking, which is that the Town should be making the decision.

We have received two grants for the Mound House, one for the historic structures and one for archaeological assessment. These were received when we thought we were going to close a lot faster than we did and we could not move on either one of those grants until we closed. The difficulty we have is that these two grants are from the Division of Historical Resources. They do not have the ability to extend the times of their grants and if we can't use all of our money by the end of June, which we can't, then they will lose money. They are asking us to take the archaeological assessment grant, which is a \$20,000 grant, and give up those dollars because we can't complete it in their time frame and go back in line in August. They believe we will get those dollars again under the same rationale that we got them the last time and we should hold on to our grant for the historical structures which we believe we can accomplish this summer. There is no way we can get those projects done. What they're willing to do is to give us an extension until the end of September to get the historic structures project done. Her recommendation is to resubmit on the archaeological assessment grant in August

MOTION: Moved by Dan Hughes and seconded by Anita Cereceda to give staff authority to withdraw on the archaeological assessment grant and to proceed with the historic structures grant. Passed unanimously.

IX. TOWN ATTORNEY'S ITEMS

None.

X. APPROVAL OF MINUTES: MAY 8, 2000 and MAY 15, 2000

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the minutes of May 8 and May 15, 2000.

Corrections or changes to Minutes:

1. On page 1, Section V., change "10 floor" to read "10 foot."

MOTION: Moved by Ray Murphy and seconded by Anita Cereceda to approve the minutes of May 8 and May 15, 2000, with the correction noted. Passed unanimously.

XI. PUBLIC COMMENT

None.

Councilman Garr Reynolds referred to a letter received from Murray Carslake, owner of the Beach Pub. He felt that Council gave the situation thorough consideration and felt that no matter what you do you can't satisfy everyone. Mayor Hughes agreed.

XII. ADJOURNMENT

The meeting was adjourned at 8:24 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for Action June 19, 2000

1. Public hearing on the amendment to Land Development Code, Chapter 6, is continued to June 29 at 6:30 p.m.
2. Public hearing on the amendment to Land Development Code, Chapter 2, is continued to June 29 at 6:30 p.m.
3. Morris & DePew ntends to start their field work and data collection in the next two weeks. Hopefully they'll have a bid ready to come back to us by the end of the summer. Simultaneously Pam Houck will be working on the MSBU.
4. Decided on for a Mound House director's salary was a sliding scale from \$25,000 - \$35,000.
5. Regarding TIF funds, what needs to be resolved is establishing a base year and what to do about the money that was not allocated in the previous Phase I project. Another meeting will be set up with the board of county commissioners.
6. The Advisory Council agreed it's a good idea to have a farmer's market and recommended that we start it in the fall at the bay end, probably around Matanzas. John Richard volunteered to work with Shawn Holiday who has given a proposal and will coordinate the activities. Times Square would like to try this for three months on a trial basis.
7. Regarding Water Utility, Deputy Town Manager Gucciardo advised that staff is hoping they will be able to bring us three different items at our first meeting in August: The draft of the settlement agreement between the Town and the County; scheduling a public hearing; a status report on the due diligence responsibilities.
8. Jane Plummer was selected for the LPA vacancy.
9. Staff given authority to withdraw on the archaeological assessment grant and to proceed with the historic structures grant.