

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 5, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, April 5, 1999, at 6:35 P.M. Present at the meeting were: Mayor Ray Murphy, Vice-Mayor John Mulholland; Council Members Daniel Hughes, Garr Reynolds and Anita Cereceda; Town Attorney Richard Roosa, Town Manager Marsha Segal-George, Assistant Town Manager Ron Himmelmann and Consultant Bill Spikowski. Also present were County staff members Jim Yaeger, J. W. French, Larry Johnson and David Owen.

Excused absences from the meeting: None.

II. PLEDGE OF ALLEGIANCE

All assembled at the meeting recited the Pledge of Allegiance.

III. INVOCATION

The invocation was given by Pastor Bob Stuckey of First Baptist Church.

IV. PUBLIC COMMENTS ON AGENDA ITEMS

A. DON PETRIE

With respect to road improvements on Palmetto and Easy Streets, Mr. Petrie noted that he had tried five or six years ago to get the cooperation of the County before becoming discouraged. At a recent meeting with Ron Himmelmann and the engineering firm selected by the Town, the cost of doing this project was disclosed. The homeowners had not expected the amount to be as great as it was. The newspaper has reported that at the Council's retreat meeting it had been announced that a policy had been developed for neighborhood improvements whereby beautification projects will be paid for by the homeowners affected, infrastructure projects will be paid for by the Town and ancillary projects will be paid for by a homeowner/Town partnership. Mr. Petrie stated that he and other homeowners feel that their street is the most unimproved one on the Island and they would appreciate any financial help that they can get.

B. BOB GAYDOS

Mr. Gaydos questioned why people living on a street would have to pay for its paving. Doesn't the Town get gas tax dollars that can only be used for transportation and roads? Have we paved any roads with this money yet? Were the people in the Times Square area where a half-mile of road was repaved required to pay for this, or did the cost get paid by all the taxpayers? Should not improvements be covered by improvement funds? This should be the Town's responsibility.

Mr. Gaydos expressed the opinion that the south end sidewalk was an abomination and the county road on Estero Boulevard is a mini roller coaster. The 2.3 million dollars paid to the contractors was overspent.

C. TIM LINSKEY

Mr. Linskey referred to the newspaper report that the Town had agreed to pay 100% for all infrastructure work needed on Fort Myers Beach. That would indicate, he feels, that the Town should pay for the drainage and road pavement on Palmetto and Easy Streets.

Mr. Linskey noted that all the streets in the Gulf Heights Subdivision were created simultaneously and all enjoy the same status as public right-of-ways. He noted the improvements that had been made to Palmetto Street in the past, which indicated that the County considered this a public, not a private right-of-way. Because of this, the homeowners of Palmetto and Easy Streets believe that they have the right, based on that intent, to have the roadway, as well as the necessary drainage improvements and the storm sewer work, completed by the Town of Fort Myers Beach. It is imperative that this road and drainage work be completed before another rainy

season. Due to severe flooding last year, they believe that another year of flooding will make this road completely impassable. If the city is unwilling to fully commit to this project, the homeowners as a very last resort are willing to commit to a portion in order to get it completed quickly before further damage or liability is sustained by the Town.

D. TOM WINTERS

Mr. Winters was given permission to speak now on a non-agenda item: the leashing of all dogs on the beach. He does agree with the intent of keeping all animals under control, but he would suggest that instead of a blanket requirement that all dogs must be leashed, to say instead that all dogs must be leashed within 30 meters or 50 meters of a stranger. That would allow responsible people who want to have fun with their dogs to have the freedom to do so when there are no people within their immediate vicinity.

V. CONSENT AGENDA:

A. Approval of Minutes: March 1, 1999, March 8, 1999, March 15, 1999, and March 18, 1999 and March 22, 1999.

Garr Reynolds asked to pull the minutes of March 1, March 8, March 15 and March 18 of Agenda Item A; the resolution in Item B, and the resolution in Item C.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds that we approve the minutes of March 22, 1999. Passed unanimously.

Corrections and Changes to Minutes of March 1, 1999

1. The first motion on page 3 was made by Dan Hughes.
2. On page 3 the motion under C. was made by Anita Cereceda and seconded by Dan Hughes.
3. On page 3, VI., B. regarding the motion to approve balance of items, change "Mayor Murphy was told that what was up for discussion" to "Mayor Murphy told that what was up for discussion."
4. On page 3, B., paragraph 2, line 3 change from "units that are remaining there now" to read "units remaining at the first location."
5. On page 3, B., paragraph 2, last sentence, change from "Mr. Reynolds was told" to read "Mr. Hughes stated."
6. On page 3, B., paragraph 3, after last sentence add: "Councilman Reynolds said that this is what he was clarifying in the first sentence."
7. On page 5, paragraph 3, indicate that Councilman Reynolds asked Bob Taylor how he came up with these construction projects.
8. On page 5, B., paragraph 3, line 4, after mention of the figures being astronomical, indicate that Councilman Reynolds asked Bob Taylor if it was possible at that point to have a reassessment, especially of the electrical contract, which was something like \$150,000. (Garr Reynolds explained that he was questioning things here because he was wondering how the County comes up with giving out projects, and this has caused us to go way over budget here. Mr. Taylor makes a statement in here that he will not go over budget because this was a guaranteed maximum price, but yet we're asking for something close to \$300,000. So evidently it wasn't a maximum price. We were asked to suggest where we could cut costs while building the pool, and one of the outstanding things was the slide for \$80,000, and then there was another item for \$70,000. It came to \$150,000, but that was kind of pushed aside. But it was asked and the answers were given.)
9. On page 6, Dan Hughes made the motion under C.
10. On page 6, D., paragraph 2 where it says "The Council member said he liked the format," substitute Dan Hughes for Council member.
11. Councilman Reynolds advised that on page 7, D., Gini Ross is mentioned and he didn't know about her.
12. On page 7, paragraph 2, line 2, Garr Reynolds stated that where it indicates a salary of \$52,000 this should be corrected to read a cost of \$52,000.

13. On page 7, paragraph 3, show that Councilman Reynolds asked the cost of the vehicle and questioned the amount of \$16,000 per year for the vehicle.

14. On page 7, F., under Questions, show that Councilman Reynolds asked how much this grant was and it was reported to be \$9,683.08.

15. On page 8, VIII., paragraph 5, show that the complaint was not just about the LPA member taking his seat at the last meeting, but that Mr. Reynolds' name tag was moved to the far end of the chambers beyond Mr. Mulholland.

16. On page 8, paragraph 6, Councilman Reynolds would like for it to be made clear that he was not resigning from the MPO but was only resigning as the Vice Chair.

17. On page 8, next to the last paragraph, show that the loitering ordinance deals with both public and private property rather than with public owner and private owner.

18. On page 9, IX., Councilman Reynolds said that he withdrew his second to the motion made by Dan that we nominate and appoint Anita Cereceda as the service representative of the MPO, because it said "with the understanding that she was assuming the position of Vice Chair of that organization." He did not think that it was proper for us to recommend that a new person go on the MPO as the Vice Chair.

19. On page 10, the motion was made by Dan Hughes and seconded by Garr Reynolds.

20. On page 10, E., paragraph 2, Garr Reynolds did not wish to say three copies but "three page reports that would include the annual budget."

MOTION: Made by Anita Cereceda and seconded by Garr Reynolds that we approve the minutes of March 1, 1999, with the corrections and changes noted. Passed unanimously.

Corrections and Changes to Minutes of March 8, 1999

1. On page 3, paragraph 2, change to show that Garr Reynolds said that the other property owners should be required to correct this water runoff so that Mr. Primeau is not required to solve everyone's water problem.

2. On page 6, next to the last paragraph, change to read "They had no intention of parking the shrimp boat in that location."

3. On page 6 near the bottom of the page regarding Dock of the Bay, Dan Hughes' recollection is that Mrs. James said that the dock of the Island Bay Marina next door went out the same distance as the one being proposed and not farther.

3. On page 9, change the wording in the motion from "Mr. Reynolds said he has trouble with visitors or residents when they want to use public property." to read "Mr. Reynolds said he has trouble with visitors or residents when they want public property given to them." (Mr. Reynolds advised that this was in reference to public land under water.)

MOTION: Made by Dan Hughes and seconded by Garr Reynolds that we approve the minutes of March 8, 1999, with the corrections and changes noted. Passed unanimously.

Corrections and Changes to Minutes of March 15, 1999

1. On page 3, in paragraph 5 where it states: "Garr Reynolds asked Marsha Segal-George if this means she would be backing off the sidewalk idea" change to show "backing off the sidewalk no setback idea."

2. On page 3, paragraph 8, after the second sentence "He would like the building better if it were scaled back" add that Councilman Reynolds stated that the building design would fit in with the planned architecture of the area.

3. On page 3, VI., Consent Agenda, Mr. Reynolds advised that every week he has indicated that he doesn't feel too good about this category because it's too easy to just let these slide by, and this should appear in the minutes.

4. On page 7, paragraph 4 where it states "He also reported that Anita Cereceda had given him the paperwork for Leadership Lee County and he'd like to apply for it this year," Councilman Reynolds feels that the cost of this program of \$1,600 should be shown.

MOTION: Made by Garr Reynolds and seconded by Dan Hughes that we approve the minutes of March 15, 1999, with the corrections and changes noted. Passed unanimously.

John Mulholland noted the time given to the minutes and asked that we try not to spend so much time on this housekeeping matter. Garr Reynolds stated that he agreed with John but feels that any councilman should feel free to bring these things up.

Corrections and Changes to Minutes of March 18, 1999

1. On page 4, in the next to last paragraph, Dan Hughes feels that he was misquoted as saying that a sign only has a life of eight years, and he would like to see this statement corrected to read that a sign only has so many years of life.

MOTION: Made by Garr Reynolds and seconded by Dan Hughes that we approve the minutes of March 18, 1999, with the correction noted. Passed unanimously.

B. Resolution: Amending Resolution 99-14 and setting a public hearing on a petition to vacate a portion of 4th Street (Lighthouse).

Town Manager Marsha Segal-George noted that this resolution has come before us at least three times and that the reason it keeps coming in front of us is because they keep asking us to reschedule the time. They are having trouble getting the applicants' information. Asked if the new date is May 3, Marsha Segal-George replied that it was.

MOTION: Made by Garr Reynolds and seconded by that we approve May 3, 1999, as the new date for a public hearing on the amendment to Resolution 99-14. Passed unanimously.

C. Resolution: Supporting Petition concerning Hurricane Shelters and Evacuation.

Town Manager Marsha Segal-George explained that this is a resolution that came our way from Sanibel and also that the Council of Civic Associations in Lee County passed this. This resolution also shows our support and Marsha prepared it at the behest of Vice Mayor Mulholland.

John Mulholland explained that he had brought the motion for this resolution forward because he thinks that it is in the best interests of the residents' safety. He thinks that it is something that the Council and the Town should approve and be part of.

Asked to explain what is being asked here, John Mulholland referred us to a resolution that is in our packets. The code of federal regulations under U. S. Army Corps of Engineers advises of the Army Corps' right to get behind anything that has to do with the safety and welfare of the people. We need more shelters and safety for our residents. Councilman Garr Reynolds stated that he had read all of this but that he had seen nothing in there that indicated they were promoting something on the Island. Marsha Segal-George stated that it was for the entire county, adding that it's basically asking the Corps as they are reviewing all the work that they're doing in South Lee County to be aware of the deficiencies with regards to hurricane shelters and also the difficulties that we have right now with evacuation.

MOTION: Made by John Mulholland and seconded by Anita Cereceda to support a petition concerning hurricane shelters and evacuation. Passed unanimously.

VI. Administrative Agenda

A. Public Hearing: Proposed settlement with Lee County for water service

Town Attorney Richard Roosa gave a little background of how we got to where we are

today. Avatar Properties determined that they would be willing to sell all of their utility systems that they have in the State of Florida. That included several counties, and so certain promoters, through some agreement with Avatar to purchase the system, created the GUA -- the Government Utility Authority. GUA entered into an interlocal agreement with Lee County and Lee County agreed to purchase through their own bonding provisions those assets in Lee County that currently belong to Avatar. In Attorney Roosa's opinion, it was probably an oversight on the part of GUA that they didn't recognize that part of the water distribution system that's being sold by Avatar is in the Town of Fort Myers Beach. And so, when they went through the process and it was brought to their attention, they took the position that they did not have to deal with the Town of Fort Myers Beach contrary to the expressed provisions of their agreement. They persuaded the County to the same effect that if they went under the provision of Chapter 125, that they did not have to negotiate with the Town.

Attorney Roosa described how a purchase price for this utility system was arrived at. The problem of their not dealing with the Town of Fort Myers Beach became magnified when the County, on its own, decided to break out through a system of issuing two bonds -- an A bond and a B bond -- the facilities that were within the boundaries of the Town of Fort Myers Beach. When they did this, they then contacted the GUA. The GUA is run by these developers, one of which has done all the mathematics calculations that have to do with the purchase price, and they came up with a price for the A bond and the B bond. In Attorney Roosa's opinion, had it initially been the right of the Town to purchase this system, the allocation of cost would be different from what has resulted. He explained how he came to this conclusion and he passed out copies of a chart showing how the GUA determined the acquisition price for the Town of Fort Myers Beach. He pointed out inconsistencies in numbers.

Attorney Roosa noted that there is a contract agreement with Avatar Properties to continue the operation of facilities for fourteen months, and the annualization of that agreement is represented by \$112,000 for operations and \$168,300 for customer service and billing. When those are subtracted, you come out with a net operating of the utility of about \$297,000. Every utility is required to have an R&R fund deposit of 5% of the previous year, which was \$71,000. Subtracted out this comes to net available of \$224,000, which would support the purchase price of \$3,500,000. When there is a provision for an allowance in there, that changes to \$215,000 and supports a purchase price of 3.3 million dollars.

The concept used for acquisition of the system is that once they made provision for all of the expenses, whatever was left over was an annual payment on a bond issue and some interest rate is converted over into a purchase price.

Attorney Roosa passed around another handout with the heading Fort Myers Beach Estimated Bulk Service Water Rate Calculation, which he said was for the general purpose of validating the \$2.71 cost per 1000 gallons of water. He pointed out a discrepancy in this figure when compared to a calculation of figures given on the previous handout. He advised that when dealing with numbers, it's not impossible for them to be as much as 10% off. The argument would be, well, you have six months time to get in and review all this information and during that time you can build up a comfort, because you will then have the accurate numbers. But he would say that if the GUA had put us in as a partner during the beginning, we would not be under those time constraints. That information would be provided to us at the time they determined the price and we wouldn't be where we are today. What we're trying to do is patch up a problem with a great many unanswered questions.

Attorney Roosa also advised that if the water were sold to the Town at the Gateway price, then the Town would have additional revenue sufficient enough in his rough calculation to support a bond issue of \$7,000,000, another \$4,000,000. At the courthouse he checked the taxes that are being paid by Florida Cities Water and the value of the property as they saw it. The appraised value of the real estate is \$731,000. The appraised value of the tangible personal property, such as pipes, fittings, meters, is \$6,436,000. When added together, the appraised price of the assets within the Town of Fort Myers Beach for which Avatar Properties is paying taxes is \$7,100,000. If we were to use the Gateway figure of \$2.18, we would come up with a purchase price of about \$7,000,000.

It is still the Government Utility Authority's position that they're not obligated to deal with the Town of Fort Myers Beach, that we have no standing and that the County is the proper

governmental authority. And we should understand that it is the Government Utility Authority and the promoters behind that that are really operating this whole system. If this had been done properly in the first place, if the Town had been treated as the local government authority, Avatar Properties would still get the same \$136,000,000 for the Lee County portion, but the portion that would be purchased by the County would be around \$130,000,000, and the portion bought by Fort Myers Beach would have been \$6,000,000. Put them together and you get the same \$136,000,000. So that Avatar Properties has no problem one way or another, but it has to do with the allocation. We are locked in now because the GUA's experts made a computation and determined that certain costs should be added to the \$2.18. In effect, what they did was take surplus revenues from Fort Myers Beach and shift them over to the County. The GUA overlooked the fact that we are a municipality.

Once you take this revenue and transfer it to the County by an increase in the per gallon rate, that's a forever situation. Not only does it apply to this year's volume of water, but that same rate applies to the volume of water used ten years from now with appropriate increases for inflation. The bottom line is that you more than compensate, because more of the surplus that belongs to the Town is being shifted to the County, and this is something that doesn't correct itself by time but only becomes magnified. It is a critical issue.

Attorney Roosa advised that he has provided us with the original agreement and that he recommended acceptance of it only because they were looking at the legal aspect of it and not the numbers. But when the numbers became available and questions were raised, they realized that it wasn't anywhere near what it had been purported to be. He feels that the remainder of the settlement agreement is satisfactory. It is Mr. Roosa's recommendation that we accept the offer of settlement with the provision that our rates would be the same as those of Gateway.

Questions for Attorney Roosa:

Vice Mayor Mulholland thanked Attorney Roosa for his explanation and stated that he appreciated his tenacity in following this through. He was skeptical, however, about this information and wished to know more about the hearing. Attorney Roosa told him that as he perceived it, at the hearing it was represented that each would support its own bond issue. But what is misleading is that implied in that is that we have an equitable relationship with the bond issues which he doesn't think exists. All the work on the computations is being done by the GUA.

Mr. Mulholland stated that we're in a contest with the County, and the GUA looks like they're the rule setters, the referees. It sounds like they're very close to the County's way of thinking. Attorney Roosa said he thinks it's the other way around, that the County adopted the GUA figures, and they did it because it was presented to them in a way that inferred this will cost you nothing; you can own and operate the utilities system because what we'll do is use your numbers, your current rate that you have within the County. We'll make the computations and we'll tell you what the purchase price will be and the system will pay for itself. After 30 years or however long the bond issue goes on, the public will own the facility. The numbers made sense to the County and they accepted it. Perhaps the County was remiss because they could have at that time said, wait a minute, what about the Town of Fort Myers Beach? We'll be buying their system. But the GUA have put hours of labor into making sure that this bond issue is proper, and in his opinion, they messed up. And when they found out they messed up, they tried to cover it up or at least smooth it over by saying well, you don't have to do that.

Attorney Roosa also advised that a homeowner across the bridge just outside of the Town of Fort Myers Beach can buy water for \$2.12 for the first 6,000 gallons. But the cost over the bridge is \$2.71. To him, this is an inequality that he cannot justify.

Garr Reynolds stated that it seems that the County doesn't want to consider the 2.8 gas tax as part of this situation. The .8 that they're allowing for the gas tax is added on to the 2.8, which we presently get anyway. He doesn't know why the 2.8 should be any part of this deal. It should be dropped out totally. It's tying us in to the 2.8 for eternity and he doesn't think that's justifiable. Whereas if we went with the .8 because we're taking over a 7-mile road, that would be an entity within itself. Since they're not recognizing our rights on the present established gas tax, why should it even be in the agreement? Mr. Roosa advised that the County didn't want it in the agreement. He added that if we were just looking at the takeover of Estero Boulevard in and of itself without having any relationship to the water system, the sewer system and the whole water

supply situation, they would be required to give us that additional adjustment to our gas tax, because we'd be adding those miles. We're not really gaining anything in this agreement by incorporating this into the agreement that we wouldn't gain if we were just dealing with the County in terms of the specific issue of the takeover or the non-takeover of Estero Boulevard.

Council member Anita Cereceda felt that the acquisition of Estero Boulevard and the increase in gas tax should be two separate issues.

Mayor Ray Murphy said that to summarize, Attorney Roosa's recommendation is to go forward with this settlement offer that he has prepared with the provision that the bulk rate that we would enter into would be \$2.18 per 1000 gallons with the credit of 54 cents per 1000 gallons. Mr. Roosa agreed to this summation and stated that it was the same as the Gateway service agreement.

Anita Cereceda noted that all the County people were here and they were assuming that we were going to make some sort of agreement this evening that would presumably be presented to the County Commissioners tomorrow morning that they would either approve or deny. Were we not to come to an agreement, what would happen tomorrow morning? Attorney Roosa stated that he would imagine nothing would happen tomorrow morning because the commissioners would not have an agreement to act on. Or they might have an alternative agreement. Anita Cereceda stated that her concern was that we were presenting something to the commissioners as opposed to them presenting something to us to accept. It defies our very suit against them. They're supposed to be asking us. We're not supposed to be asking them. So what we're going to do tomorrow is ask them again will you take this, or will you give this to us. John Mulholland suggested asking the County staff members present what they were going to do.

Garr Reynolds asked Mr. Roosa if he saw any advantage to keeping the 2.8 gas tax in this issue. It's a separate issue and it hasn't worked out. If we could pull that out, he thinks it would be advantageous to the Town. Anita Cereceda felt that instead of taking the gas tax out completely she would ask for something. Marsha Segal-George stated that she didn't feel that there was anything in the agreement that precluded us from continuing to ask on that point. She did not feel as Councilman Reynolds did that we were losing our right to keep requesting this equalization. Attorney Roosa stated that Marsha Segal-George may be right about there being nothing in the agreement that precluded us from continuing to ask on that point, but said he'd be a little concerned about that. He would be a lot happier to expressly add in the clause regarding recognition of our acquisition of Estero language to the effect that this doesn't foreclose us from any further negotiation in regard to continuing the dialogue that she has been having with the County regarding a fair allocation of gas tax revenues. This just gives us something that by statute we're entitled to as a matter of right. Mrs. Segal-George did feel that his clause made it better. Mr. Roosa was told by Mayor Murphy that he could add that to his language.

County Staff Input:

Jim Yeager, County Attorney, advised that County staff was here representing Lee County on the public hearing on the settlement with the Town for the water service. He proceeded to introduce the other staff members: J. W. French, Larry Johnson and David Owen, who he stated have been before us previously. His own last official appearance before us was on February 1 when we first really started talking in public session about the Florida Cities Waters acquisition and the Town's lawsuit. At that hearing he had noted that it would be in everyone's best interest to try and work out the issues and to mutually resolve the matter. He thinks that since that time everyone on both sides had made an honest attempt to try to resolve the matter. They were back here tonight in a last effort to try and settle the outstanding issues in the litigation. Since the trial, they have worked with Mr. Roosa on the points before us. Aside from the changing of the bulk water rate, they think that the matter presents a fair resolution for both sides. But like any settlement agreement, it's compromised on both sides and there is no assessment of whose position was right or wrong.

Mr. Yeager asked Larry Johnson to come up and discuss the County's analysis of the 2.71. In addition to a letter to the Town Manager, he knows that he has discussed it with the city attorney and he has also discussed it with Mr. Burton, a consultant. Mr. Yeager pointed out that the County is offering to allow us to purchase for 3.3 million dollars. He would respectfully request that the Town adopt the settlement that was proposed by the County.

Attorney Roosa told Mr. Yeager that we have in our package as an attachment a draft of the agreement for sale and purchase of the portable water between the Town and Florida Cities Water dated March 10. He asked the status of this agreement and if it had been executed. Mr. Yeager told him that it had not been executed and would be discussed by the Board of County Commissioners tomorrow. Asked if there were a possibility that this agreement could be modified, Mr. Yeager advised that he didn't think it would be modified.

Anita Cereceda asked Mr. Yeager if this meant that it would not serve us to propose any change to that rate. Mr. Yeager responded that this was our decision, that they would be discussing whatever we send to the County Commission tomorrow. But his understanding is that Staff is not going to recommend a change in the water rate. He will let Mr. Johnson discuss an analysis of it and why they cannot recommend a lesser rate. We're at the point where the County either has to have the issue settled or we proceed, one way or the other.

Anita Cereceda asked what would happen if the Town and the County are unable to come to an agreement. Mr. Yeager responded that it could go one of two ways, either with a settlement or going forward without a settlement and continuing to litigate the matter. Obviously, that's a call for the Board of County Commissioners. A third option is that the County walks away from the deal.

Council member Anita Cereceda then asked if the Town maintains its suit against the County and the County goes ahead with bond insurance, could she assume that the insurance would then be more expensive for the County and consequently for all the members of the County, including the residents of Fort Myers Beach for this deal to take place? Mr. Yeager indicated that this would happen.

Larry Johnson stated that he was the director of the Environmental Services Department for Lee County and Lee County's representative on the Government Utility Authority. He explained that the Government Utility Authority is a membership of four county governments with board members appointed by those county governments. In his letter of April 2 to the Town Manager, Mr. Johnson provided financial information regarding the bulk service water rate and he explained how the rate of \$2.71 per 1000 gallons was arrived at. The calculation presented to us by Mr. Roosa was one that he did as essentially a check calculation to just get a feel whether or not that was reasonable. We are basically looking at a retail rate of \$3.35 per his admittedly preliminary calculation versus what they are proposing as the wholesale rate of 2.71. That's a substantial discount.

It was discussed that a retail customer in Lee County would pay \$2.18, while the Town would pay \$2.71. Mr. Johnson feels that there is a slight misunderstanding, because those residential customers would pay a fixed monthly service fee of \$5.95. And if they were using 6000 gallons per month, their total rate, including the \$5.95 figure plus the \$2.18 per 1000, which is a variable cost, would be \$3.17 per 1000 gallons as their average retail rate compared to the \$2.71. Councilman Hughes stated that \$2.71 is only what the Town pays for the bulk rate. That isn't what we would be billing our customers. We have the administrative cost in addition to that. The cost of \$2.71 is from the County to the Town, it's not what the Town is charging our customers. Mr. Johnson said he understood this, but the implication was that the Town was being charged more than the residential customer, and that is not the case.

Questions from Town Council members:

Asked by Vice Mayor Mulholland if he agreed with Councilman Hughes' remarks, Larry Johnson responded yes. The way the pricing was established, it indicated that there are additional expenses. Again, the Town would have the opportunity to either use the existing Florida Cities rates or Lee County's rates, or whatever rates the Council might establish. Basically, what they are saying is that they are asking the Town, since we have indicated an interest in purchasing a system, to purchase it on the same basis as the rest of the Lee County system. They are not changing anything. They believe that that's a fair proposal and is a way of resolving that part of the issue if we wish. We would have six months to do the due diligence and the financial analysis that we would need to determine whether we chose to complete that purchase or not. Even in the event that we did not complete the purchase of the utility, we would still receive as part of this settlement the County's agreement for a 3% revenue sharing, which they have maintained as part of this settlement.

Asked what else he is including to come up with \$2.71 in our rate, Mr. Johnson replied that the \$2.71 was just the wholesale rate that the Town would be charged based on the metered amount of water that came into the Town. The only additional charge for that would just be the cost of routine maintenance on those meters. Asked what other costs would appear on that bill, Mr. Johnson responded that that would be up to the Town.

Mr. Mulholland asked about the Gateway system. Mr. Johnson advised that the County had entered into a bulk water service agreement with Gateway approximately ten years ago. The current rate is \$2.18 and a discount gets it in the range of approximately \$1.60 per 1000 gallons. That rate is an old rate. It does not take into account fixed charges which the County basically pays, nor does it take into account the fact that there is a charge per equivalent residential unit. In about 1993, the rate structure was changed so that instead of being based on meter size, particularly for residential units, it is now based on an equivalent residential unit. This is the analysis that Mr. Johnson went through earlier and that was passed out to us. That means that an equivalent residential unit is charged a fixed charge as well as the variable charge of \$2.18 per 100 gallons. This would not represent what we do today. Separate from that, we are looking at the Florida Cities system as it is being acquired. That is the system that is providing the Town water now and is the system that will continue to provide water. So we are establishing a wholesale rate or bulk service rate based on the cost relative to the Florida Cities water supply system. John Mulholland stated he understands now that we would not be getting the same treatment as Gateway because it's based on different criteria.

Vice Mayor Mulholland also asked for an explanation of why the Town would be responsible for the bonds. Mr. Johnson said that if the Town were to purchase this portion of the utility, we would be responsible for obtaining the debt service and paying for it on the 3.3 million-dollar purchase price. Also, the wholesale bulk service rate includes the cost of providing the Town with a wholesale water supply, and one of the costs of that system is the cost of debt service related to the water treatment facilities and the well fields which are within Lee County and is a Lee County utility debt. There would not be any responsibility of the Town for payment of the Lee County debt service. The only responsibility is through paying the \$2.71 bulk service rate.

Mr. Mulholland asked for a clarification of the term allocation. Mr. Johnson explained that allocation, as it was used relative to the analysis that was done in Table A of the attachments provided to us, is essentially separating the costs for different parts of the Florida Cities system. Mr. Mulholland stated that it seems that they're going outside the Town's jurisdiction to get some of these numbers.

Mr. Johnson stated that that was correct, because the water supply for the Town is outside of its jurisdiction and so they are establishing what the cost of that water supply would be based on the cost outside of the Town.

Anita Cereceda referred to the County's not wishing to give us the same gas tax allocation as that of the City of Sanibel. She stated that Mr. Johnson is also telling us that the same situation is true with the Gateway water facility. We are never able to enter into those same types of agreements as other people have managed to enter into with the County, and we never seem to be able to rise to the level of being treated the same as other entities that are within the County. She wished to know why this is. Mr. Johnson explained that as he has said, the agreement with Gateway was almost ten years ago, and the time and the rate structure is significantly different now than it was at that time. Also, they have entered into negotiations or settlement discussions with the Town's staff and they are proposing a purchase price as part of this system of 3.3 million dollars, which he thinks is very favorable to the Town, compared to the assets that were presented by Mr. Roosa. If the Town Council were to enter into this settlement agreement, other towns may look at this as being one of those times when we did a very good job of negotiation and entered into a favorable agreement. Anita Cereceda stated that the 3.3 million-dollar purchase price was not something that the Town of Fort Myers Beach asked for. And the directive to break the agreement into part A and part B was not at the Town's initiative, but rather at his initiative in order to seek bond insurance and whatever else to eliminate the threat of our lawsuit. Asked if this was true, Mr. Johnson said yes.

Anita Cereceda also brought up the fact that Mr. Johnson had said that the Town would

have to pay for the way that the County was going to get us the water. And the only way that the County can supply us the water is by acquiring the system and the Town would have to pay for the County acquiring the system. And the way that we will pay that is by paying \$2.71. So in essence are we not paying the cost of acquiring the system by paying that rate? Mr. Johnson explained that the cost of the acquisition would be paid by all of the customers throughout Lee County as well as in the Town of Fort Myers Beach that are served by the existing Florida Cities utility. Ms. Cereceda asked if all of Lee County will be paying \$2.71 for bulk water. Told that they would be paying that same allocation, she asked how this was so. Mr. Johnson repeated the rate structure he had given for residents outside of the Town and those within the Town of Fort Myers Beach.

Larry Johnson was asked by Dan Hughes what the debt service would be for the series B bond issue that the Town would incur. Mr. Johnson's response was that the debt service was estimated at about \$215,349 per year and that would depend on the type of interest rate that the Town was able to obtain versus what the County was able to obtain. Dan Hughes felt that we would be back to having to charge our customers what the Lee County rate structure would be in order to amortize this and based on their wholesale cost of \$2.71. Mr. Johnson stated that when we amortize the Florida Cities rates versus the Lee County Utility rates, both of them generate close to the same revenue within about 3%. Potentially the Town Council could use the Florida Cities rate structure and adjust it by 3% and be able to generate the same amount of revenue.

Larry Johnson was asked if Gateway has been annexed to the City of Fort Myers. His reply was that a portion of the development has been annexed -- the portion that has not been developed with any houses. The remainder is still within the unincorporated portion of the town.

Discussion by Town Council:

Addressing Town Attorney Dick Roosa, Vice Mayor John Mulholland asked if what the County was proposing now was sufficient for us to consider. He was told no.

Dan Hughes expressed concern about the settlement agreement. He noted that at this point we do not have an inventory of the portable water system and asked what kind of record we have of what infrastructure we're actually acquiring. The records are less than perfect. Dick Roosa advised that we have no records of what we're buying, except that we know that whatever those assets are, they were valued at \$7,000,000 by the property appraiser. There exists a complete inventory of what the County has. When the County acquires it, they would transfer it over to us. We don't have the staff to generate that document. What it amounts to is all of the assets of Avatar that are in the Town of Fort Myers Beach. Town Manager Marsha Segal-George advised that the difficulty is that there are certain numbers that are locked into the settlement agreement, and at the end of six months we could find that those numbers are bad numbers. Like Dick has said, the numbers keep changing. The numbers are coming from the County or they're coming from Florida Cities and being analyzed by their experts, and at this point we're at their mercy with regards to numbers. There are figures on maintenance and billing and an agreement to have Florida Cities continue to do that for a year or 14 months, and that's all we know. And we don't know if that's what it is costing them or if that's what they want to charge us.

Dan Hughes noted that in the last sentence of the first paragraph of the settlement agreement it reads that the system has been conveyed to the County, and he noted that the system has not been conveyed to the County by Florida Cities Waters. Dick Roosa advised that this is because the sequence will be that the County will purchase it and we will purchase it from the County.

Dan Hughes noted that the purchase price is \$3,300,000 plus the County's financing costs. He asked what those costs are and why we were assuming them. Attorney Roosa advised that initially the County was attempting to lend the money to the Town. Under those circumstances, there would be a handling cost involved. We would buy the system at the same price the County paid, plus whatever costs were allocated to that purchase. The way the County is financing its purchase, it's pledging the revenues of the entire County system. They can't, then, transfer the bonds over, because the lender would have a different security. The lender in our case will be limited to the revenues of that system. Larry Johnson stated that the \$3,300,000 is related to the utility system in the Town, but the way they were issuing the bonds is that if the County issues the

bonds for Series D, they will have the full backing of the whole Lee County Utility system, and that's one of the reasons we're able to finance it at a lower cost.

Dan Hughes asked if there was any reason to have the phrase "plus the County's financing costs" in paragraph two on page two, and was told no. He suggested deleting the phrase.

With respect to paragraph six regarding the six months due diligence, Dan Hughes advised that he had a problem with the vagueness of the phrase "If the Town demonstrates that it cannot purchase the system." How do we demonstrate that and to whom do we demonstrate that? Wouldn't it be better if that read "if the Town determines in its discretion"? David Owen introduced himself at this point and advised that he had worked with Dick Roosa in developing the language for this agreement. What they are looking for, he advised, is a non arbitrary standard for the Town to make a decision with respect to the purchase of the system. If the Town demonstrates or determines that it cannot buy the system, then the County is ready, willing and able to. In other words, if we find that we can buy the system and then choose not to buy it and want to take the 3% fee, then he thinks that's kind of contrary to what the request from the Town was initially. They do agree, however, that within that six-month period of due diligence that if we find that the Town cannot make it work, then the County will continue to operate the system and pay us 3%. He explained that "demonstrates" is just a term wherein we make a determination and they get to see it.

Asked was what if the numbers after the due diligence period show that yes, the Town can purchase but the resulting rate that we would need to charge is so exorbitant that we determine that it's not in the best interest of our residents to purchase? Anita Cereceda suggested changing the language. John Mulholland suggested putting in the language "If the Town Council determines that it will not purchase the system..."

In paragraph eight, the next to the last line, there is a reference to a billing system available to us on a contract basis. Dick Roosa advised that there is now a contract with Florida Cities Water, because the water bill includes the sewer bill. If we take over the system we will be sending out the water bills and we'll agree on a negotiated basis to also consolidate those bills.

With respect to the operation and maintenance of Estero Boulevard, Dick Roosa advised that the consensus of opinion at the retreat was in favor of taking it over. What would be our cost of maintaining it? How much does the County spend to maintain Estero Boulevard? Mrs. Segal-George stated we had gotten an estimate from the County on what they had spent in the last 12-month period, which was \$22,000. Asked if any major contracts were pending that we would have to assume if we did this, the reply was none. Any major improvements needed? None.

Dan Hughes asked who is Point Sienna, Inc.? The reply was that they are part of Avatar.

Anita Cereceda told Marsha Segal-George and Dick Roosa that the work they have done on the agreement has been tremendous and that the community will owe them a tremendous debt of gratitude. She felt, however, that the issue of Estero Boulevard and the gas tax should be separated completely. It should just be that we are acquiring Estero Boulevard with the state allocated gas tax associated with it. Our original negotiating point was gas tax allocation. Estero Boulevard wasn't in there nor the utility. All the things that have been put in here at this point are circumventing the two major things that we started out with: our consent and gas tax. The other things are wonderful, but the gas tax allocation has not changed at all. If they're going to tell us no, because they're going to tell us no with the Gateway, she'd just as soon they tell us no also because we're asking for an increase in the allocation of the gas tax.

John Mulholland reiterated the fact that he'd like to see some numbers before consenting to the agreement. Ray Murphy noted that there is provision for a due diligence period during which we may be able to attain a lot of those figures. With regards to gas tax money and Estero Boulevard, he agrees that this is no more than a push. All we're doing is taking over Estero Boulevard and taking what is rightfully ours anyhow, which still leaves us an inequity as far as the gas tax goes. However, he still thinks that we have all agreed that it's in the interest of the Town to acquire Estero Boulevard, take it over, and he hopes that this will stay a part of the agreement. With regards to the settlement as a whole, he thinks that some of the issues that Councilman Hughes has brought up sort of tightens it up a little bit. When it gets right down to it, the bottom line is the bulk rate. In his opinion, to make this deal work best for the Town, we're going to have to get a rate that will make this work. That rate, in his mind, is the rate that Gateway is paying. He can't see it working the other way until we have some more financial data to further analyze

the deal. It would be his recommendation to insert in our offer for the commissioners' review to consider that same bulk rate that is being afforded to the community of Gateway.

Clarification was asked for regarding the interim period mentioned in paragraph 5. Is it to be understood that under the Lee County system as opposed to the Avatar rate system that there is a potential for some rate customers to actually see a lowering of rates? Correct was replied. Then suggested was to change the language to say that the County agrees not to raise existing rates.

Noted was that after 24 months if the Town hasn't closed the deal then the County has the option of putting us on the existing comprehensive County rate whether it's up or down.

Mayor Murphy called for a motion.

Discussion:

Ray Murphy advised that the reason we're trying to settle this is to spare the Town the expense of a lengthy litigation. He felt that we were beyond being concerned with the fact that the County is not coming to us apologizing, admitting or asking for permission. He felt that the point had been made. We're just offering to settle tonight and that doesn't mean that it's going to settle. If it doesn't settle and we do end up in court, then he thinks that the point will be made throughout the state that it was, in fact, the Town of Fort Myers Beach that brought this forward.

John Mulholland stated he agreed with the Mayor that we are at a point now to go forward.

Anita Cereceda feels that we are trailblazers who have set an example for Bonita Springs and for other communities that will follow in our footsteps. And until the County recognizes the autonomy of those communities, be they incorporated or otherwise, situations like this will arise over and over again. Dollars and cents are not as important as the fact that the issue of our autonomy has not been established. It continues to be disregarded by the County Commissioners, who ignore the fact that Fort Myers Beach represents a substantial part of their constituency. And not only are we part of their constituency, but we have our own constituency. Ray Murphy stated that he thinks we're all in agreement with the respect she is talking about.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds that we approve the stipulated settlement agreement between the Town of Fort Myers Beach, Lee County and the Florida Government Utility Authority as presented to this meeting with the changes that were discussed in paragraph 2, paragraph 6, paragraph 9 as shown on the revised sheet, which is \$2.18 per 1000 gallons and a credit of 54 cents, and paragraph 15 to make it clear that we're not prejudicing our right to pursue further negotiations on the gas tax issue. We will adopt the resolution that was presented to us to accept the attached settlement agreement as modified at this meeting. Passed unanimously.

B. Report on Old San Carlos/Crescent/Santos by Bill Spikowski

Bill Spikowski stated that the Old San Carlos and Santos plans were discussed on February 25 and the LPA was asked to make a recommendation regarding what action to take on those two studies. Bill and Victor Dover are scheduled to do this tonight. The LPA on March 16 did endorse both of the studies in two separate motions as the Town's preferred direction on the redevelopment of the areas that are covered. Mr. Spikowski said he is not suggesting to us that our motion be anything other than what the LPA did. We do not need a comprehensive plan amendment, because these studies basically further the direction that we've already laid out in the formal plan. This is just a greater level of detail. But endorsement by the Council is needed so that a lot of actions can go ahead.

Mr. Spikowski gave two examples of the kind of work that he felt would be of interest to us. One had to do with the Estero Boulevard medians and the other with the trash compactor. Victor Dover's office has prepared a couple of sketches of how the trash compactor building on the Santos plan can be done and how the same kind of thing could work in Times Square and be a real asset to the area. Town Manager Marsha Segal-George stated that she'd like to move forward on at least looking at this possibility so that we have a location where the merchants can

take their own garbage. This project and also the Estero Boulevard medians that we talked about are one of the reasons she wanted Bill Spikowski to come to the LPA. They'd like to get going on this to see how much they can get done out of season for next year. They are trying to do some temporary fixes right now, and probably at our next meeting will talk about what we're going to do with garbage as we go out of season. The amount of garbage that comes out of Times Square is incredible, and the next time the merchants come and tell you that they're not making any money, she'd like to present us with the trash that is generated.

Bill Spikowski explained the sketches of the trash compactor buildings to everyone.

A left-hand turn from Estero Boulevard to Center Street then on to Fifth Avenue was discussed, and Mr. Spikowski said he was not recommending that we close it off. It would cause a real hardship for a lot of people from the north end of the Island. It's something that we might choose to do on a trial basis for a couple of weeks during the tourist system. A trash compactor building on Estero Boulevard could work with or without that left turn. Council member Anita Cereceda advised that the left turn remaining open is of great importance to the owner of Wings. Garr Reynolds didn't feel that the left turn would cause too much inconvenience. A motion was proposed to endorse the Old San Carlos/Crescent proposals

Discussion:

Bill Spikowski asked if the motion would help the garbage situation at Times Square, and he replied absolutely. We're not making a final decision this evening, just giving a general endorsement of the plans.

Garr Reynolds stated that he had a problem with the Old San Carlos/Crescent development. Five projects as far as he can determine were approved under one permit and there is no on-site parking in that location for some of the areas. He has a problem any time that we allow a congested area to continue to expand in density and not have adequate space to handle the cars that will be served by those establishments. He does not believe that there's enough space in that area to continue to enlarge and increase density. He does like the idea of improving the situation, but there seems to be no restriction on the amount of density that we're allowing to go in there. For that reason, he opposes the project.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to endorse the Old San Carlos/Crescent proposals that have been discussed prior to today. Passed with one no vote from Garr Reynolds.

Bill Spikowski noted that when the LPA discussed the Santos/Palermo report, their motion also endorsed that report, but they discussed a couple of the questions that were raised. They also endorsed the Town-sponsored rezoning concept in their motion. Also, in their second motion they suggested that the improvements in the Palermo neighborhoods -- the street trees, the Gateway monument -- be a cost-share between the property owners and the Council. Mrs. Segal-George stated that it was just the monument. The street trees are an established Town plan. Asked if he needed action on these two items, Bill said that as to the Santos, he guesses he does. He is working on the land development code for us, and if we want it to be Town-initiated, he needs to do that. If we want to let the landowners do it, he won't do any work on it. Mrs. Segal-George explained that the reason the LPA wanted the Town to initiate it was because they felt they would have more control in the process and how it would be prepared and presented. If the landowners did it, they might bring something in that we might react to. Mayor Ray Murphy asked for a motion.

Discussion:

Garr Reynolds asked what zoning we were looking for. He was told that it would be either a residential planned development or it would be a new zoning district that would carry out the concept of the study that any commercial area would be very low-scale offices and no restaurants and no retail. Councilman Reynolds asked if we would have to have a petition and present a case to ourselves. Bill Spikowski replied that if we go the residential planned development route, that is exactly what we'd have to do. If we do it as a conventional zoning district, it could be done as part of a land development code when we adopt (inaudible). The state laws changed a year or

two ago as to what happens when a town initiates zoning of property. And now, depending on the number of acres, there is a very different procedure.

Garr Reynolds felt that the Town should give direction here. He hopes in the process that we will keep in mind that the people behind those properties are very concerned about over-expansion. He hopes that we will honor their privacy and their concerns. Bill Spikowski advised that the reason the LPA wanted to do it this way was because they thought that this would be the best way to accomplish that rather than reacting to a proposal that only had Santos on it. This would have the bigger picture in mind.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda that the Town would initiate a land development code hearing on Santos. Passed unanimously.

Bill Spikowski stated that the question of whether we would cost-share the public improvements, like the Gateway monument, was probably discussed at our retreat. Ray Murphy acknowledged that we did discuss this at the retreat and he doesn't think we'd be paying for this or even sharing it. Bill Spikowski stated that the presumption on a situation like this would be no town funds. Dan Hughes felt that if a community feels strongly about a project like this and gets their plan together and come to us, presumably we could go in that direction because it could be an enhancement. A motion was asked for.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to endorse the overall Santos/Palermo study by the Council. Passed unanimously.

C. Discussion of Palmetto Street paving.

Assistant Town Manager Ron Himmelmann stated that he had been working on this project since he started with the Town and that it was going real smoothly until they had their meeting with the engineers. When the residents saw the bill, they thought it was a little too high. So the first thing that the Council has to decide tonight is if it's going to take responsibility for paving the road. If the Council decides that it's not going to take responsibility, the citizens would like to know if it would consider paying for a share of it. He referred the Council to memos and articles we had been given. Town Manager Segal-George said that Ron's memo was an attempt to try and give us some historical perspective on what has happened in the past, how the County treated the road, and basically giving us some background information on where our recommendations in the past came from.

John Mulholland asked Ron Himmelmann if the \$73,700 was the total cost figure. Ron told him that's the high estimate but it could come in as low as \$60,000. Mrs. Segal-George noted that we have not gone to bid on this project and so all we have is an engineer's estimate of what it could be.

Garr Reynolds advised that he would like to add a little more history. The County paved that entire street and put in sewers except for that one section, and the reason they didn't do the rest of that street was it wasn't exactly closed off. There was no paving done even though there was a sewer line through there. The rest of Palmetto is not a dedicated street, but they did that because the fact of the matter was people had been living there for quite a while. And there is a five-year rule that if this road goes without repairs and the County comes in and does anything to it, after five years it becomes the County's responsibility anyway. That community supported this Town concept and he's sure they didn't think about that at the time, but most people think that a municipality should take care of the streets. It's about time that we decide that we are going to take care of our citizens. If we're going to be real hard-nosed about this and play some real hard-ball with them, he thinks we should go back to the County and see what they got by with ... not paying impact fees. Let's go back and assess them for whatever they should have paid. They haven't really ... their responsibilities, because they have been paying their taxes just like we have ever since they bought their homes there. They've been faced with this ruddy road and floods which came up fifteen inches on his tires when Mr. Reynolds drove through there. He would ask the Council to accept our responsibility as a municipality and get these jobs done.

Discussion:

John Mulholland stated that he agreed with Councilman Reynolds up to a point. He doesn't think it's the Town's responsibility to pay 100%, but he does think that the Town should in this case make part of the payments.

Dan Hughes told Mr. Reynolds that he would have to totally disagree with him. He thinks that we have absolutely no right or authority to use our taxpayers' funds to improve an unimproved street without assessing the property owners. He has never seen a town do that. What we'd be doing is enhancing the value of those properties by improving their road. When the residents bought their homes, maybe they paid \$100,000. If they'd had an improved road, maybe they would have paid \$103,000. Now we're going to improve their street and maybe they'll have a house for sale worth \$200,000. When the appraiser comes around and sees that it's an unimproved road, that's going to have a negative impact on the appraised value of that house. As soon as we improve the road, all the taxpayers of this Town will be paying to enhance the value of the properties on that street. There is some public benefit to this, but the issue here is whether or not you can use general corporate tax funds to enhance the properties of a specific property. There is an opinion in here by the County that says it's illegal. He's not disagreeing totally with Councilman Mulholland, because he thinks we could establish that there is a public benefit here, but it's certainly not 100% of the enhancement that we would be doing there. There is also a misunderstanding by the people who spoke earlier regarding what came out of that retreat. It wasn't a policy position that was created that this is the type of infrastructure that would be paid for out of general tax funds. He finds it amazing that we would say that we'll pay 100% for this when these people all along were willing to pay for the cost of this until they found out how much it cost. He stated that he didn't know how we decide what a public benefit is. We have a statutory procedure whereby the Board of Adjustments makes this determination. If the property owners don't like the determination they have judicial relief.

Garr Reynolds stated that Mr. Hughes said it would be illegal and the County said it would be illegal. He advised that he had wanted the Town to pay for the paving three years ago. Those people are desperate. They would like to have a street down there. To get that they were willing to even pay for the whole project, but it's running much more money than they had anticipated. And they are willing at this point to share in that cost. He said he is still saying that that is a municipal responsibility and we should do it.

MOTION: Made by Garr Reynolds and seconded by Dan Hughes that the Town accept 100% of the responsibility of doing the paving and drainage and whatever else it takes to bring Palmetto Street and any other street in this Town up to standard. Motion opposed with one aye vote.

Asked was if it was feasible to think that the Town could pay some portion of this cost. Anita Cereceda said it could be done but asked what that portion would be. Mr. Hughes stated that he didn't think that was something we could decide here tonight. In the assessment process, you go and get the bid and it comes back to the Council. The Council with the bid then makes a determination as to the portion that the Town will pay. Once the Council has determined what the assessment will be, then the property owners can come in and address their particular assessment. Mayor Murphy said it would be his recommendation to get bids and then we can make a determination at a later date. Anita Cereceda said she felt that the cost of the project should not be relative to what we view as our public responsibility. John Mulholland stated that he thinks we agree that we should do this on a case-by-case basis, and now that he's been told that it's legal to be done he would like to make a motion.

MOTION: Made by John Mulholland and seconded by Dan Hughes that the Council considers paying up to 25% of this project. There were only two aye votes from John Mulholland and Dan Hughes and motion did not pass.

Discussion:

Garr Reynolds stated he would like to encourage Council to pay at least 50%. It's a safety thing for the Town. Fire trucks have to go down there. It's certainly an enhancement project. He would like for us to think seriously about this because these are tax paying citizens.

Anita Cereceda said she was going to agree with Councilman Reynolds. We should consider paying up to 50% as opposed to 25%.

MOTION: Made by Ray Murphy and seconded by Dan Hughes that the project be put out to bid and that the Town Council consider paying up to 50% of this project, but with no obligation on the part of the Town Council to pay 50% of the project. There were three aye votes from Anita Cereceda, John Mulholland and Garr Reynolds and two nay votes from Ray Murphy and Dan Hughes.

Discussion:

Dan Hughes proposed a hypothetical scenario involving streets A and B. A row of houses, each costing \$100,000 were put on Street A. The contractor also followed the subdivision regulations and put in a street along with amenities and drainage which cost another \$10,000. He then sold the houses for \$110,000 each. On Street B the contractor built houses for \$100,000 but no street. These houses were sold for \$100,000. Now the people on Street B want the Town to put their street in because the developer didn't do it. And they want all of the taxpayers in the community to do this. Dan said he thinks this sets a terrible precedent. Anita Cereceda said she agreed with him. And it has been talked about from the very first days of our town being a town. We agreed at our workshop that we would review these cases on a case-by-case basis. She is not saying with her motion that she is establishing any precedent in the Town, but rather she is looking at Palmetto Street as an individual case and is taking into consideration the history and the turmoil that those people who live on that street have endured.

Garr Reynolds told Dan Hughes that he should know that some of the homes on Palmetto Street are thirty years old or older.

Dan Hughes stated that talk about taxes is another negative. It cuts two ways. When they get the street, their taxes will go up. The houses on Street A are paying more taxes than those on Street B.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes that the Town Council will pay 50% of the improvements on Palmetto Street. Passed unanimously.

D. First Public Hearing: Amending the Parasailing Ordinance

Mayor Murphy read aloud the ordinance. Town Manager Segal-George advised that there was a resolution attached from the LPA, who also had to hold a public hearing on this ordinance, and their changes are in that resolution. Section 2J has a change that makes it clearer.

Attorney Roosa asked if the Council approved those changes. If so, he will incorporate them in the ordinance for the next hearing.

Dan Hughes asked why the parasailing ordinance was in the land development code. Mrs. Segal-George explained that this was because a judge had so decided.

The second public hearing will be on April 19.

E. Resolution: Bonita Incorporation Limits

Mayor Murphy read aloud the resolution, which included excluding the islands north of Big Hickory Pass, Big Hickory Island, Long Key, Black Island and Lovers Key from the corporate limits of the proposed municipality.

Discussion:

Councilman Reynolds asked why we were having the exclusions. Do we want to reveal the possibility that we would want at a later time that it becomes part of Fort Myers Beach? Dan

Hughes stated that he thinks the Whereas clauses explain why. It's because of the low density.

Anita Cereceda said she didn't like the idea of our dictating to Bonita Springs where they should draw their limits without some communication between us and them, or without some communication with the people who live on these islands as to whether or not they are included. Mayor Murphy said he personally had some discussions with Mr. Al Brenner, who's the head of the incorporation committee down there regarding this subject. This was brought forward to the Council at our retreat. They are somewhat aware of the way we feel about this. Anita Cereceda said that the way we feel is irrelevant. What about the people who live on those islands? Mr. Murphy said he thinks that this is actually giving them the choice. If the proposed city of Bonita Springs were to go along with this concept that would in

fact gives the people on Black Island and Lovers Key the option. Without this, assuming that this is approved by the Legislature and approved by their vote in November, they don't have a choice.

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to approve this resolution. Passed unanimously.

F. Draft discussion: Amending the Animal Control Ordinance

Noted was that the changes are the ones that Vice Mayor Mulholland asked us to bring forward. One has to do with the elimination of the ability to have V.O.I.C.E. control and the second has to do with additional language.

Discussion:

Anita Cereceda said she felt that whatever we do, we're going to get people who hate it and people who love it. It's a no-win situation.

Dan Hughes stated that there's a third group, and he referred to Tom Winters, who would prefer seeing dogs unrestrained when not close to people.

Garr Reynolds advised he has read negative things in the newspaper. No one is more of a dog lover than he is, but he liked his dog so much that he wouldn't dare turn it loose to run the streets and perhaps get killed. Dogs shouldn't be allowed to roam. They really should be controlled for their safety and for people's safety.

MOTION: Made by Ray Murphy and seconded by Garr Reynolds to approve this resolution. Passed unanimously.

Anita Cereceda at this point advised that she does not support the resolution for Bonita Springs. However, the vote has already been made.

G. Evaluation of Town Manager

John Mulholland stated that he believes it's the Council's duty to individually evaluate its Town Manager each year and find out what kind of a job we think she is doing. Suggested was coming back with our evaluations on May 15. Marsha Segal-George reminded us that last year each of us did an evaluation that was placed in her file and then a vote was held. Mr. Mulholland stated he would suggest that we follow this same procedure. The 5% performance bonus, which is in the budget, was mentioned.

Garr Reynolds wished to know if everyone got a raise and a new salary schedule as of November of 1998. Mrs. Segal-George pointed out that this was done on October 1.

Garr Reynolds felt that the evaluations should be turned in the second week in May. Anita Cereceda felt that the evaluations should somehow be linked to an anniversary date of employment. It didn't seem fair to her that since the other employees have already been evaluated and have received their merit bonuses that we postpone the Town Manager's evaluation and potential bonus. We should set an annual date for the Town Manager's evaluation and a bonus either awarded or not awarded, and it should correspond with all staff members. Mrs. Segal-George advised that she had come to the Town in the middle of February

and was here three years this last February. The staff evaluations were done in March. Ms. Cereceda would like for evaluations to be done by the last meeting of March with or without bonuses. By our next meeting we should turn in our evaluations. Garr Reynolds objected, saying that his evaluation would not be done by that time.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to have our evaluations of the Town Manager ready by our next meeting. Passed with one nay vote from Garr Reynolds.

VII. COUNCIL MEMBERS ITEMS AND REPORTS

Anita Cereceda noted that since our last meeting we have had our day in court, and she commended Ray Murphy for doing an excellent job in representing the Town on the stand in front of Judge Rosen. She told Attorney Roosa that he had done the most excellent job, that he exemplified the spirit of our incorporation and she was very proud to have him representing us.

Garr Reynolds advised that the original CRA came about because the County Manager requested that we form a CRA here on the Island ... Money was held back for the CRA by the County for their 7 or 8 projects and held back from the entire Island in the form of TIF funds for four or five years. At that time the money was held back because we had a real bad situation on the Island with respect to rundown property. Traffic was given as the reason for a CRA on the Island and the CRA members planned to use this money to improve the traffic situation. But about that time, the Town came into being, which created a problem. Marsha Segal-George and John interceded and got the money. The County told us that if we did not use that money ... that they were going to use it someplace else in the County. They could have done this because they had raised it as County money and held it back even though it came from everybody on the Island. So we were able to get that money to be used, but not for the roads as we had planned. The blighted traffic situation was not touched, but instead Ray Judah convinced everyone that we should use it to improve Times Square. The money came from all the citizens on the Island and it was held back for that purpose. And the \$700,000 was supposed to have been used down at the lower end of the Island to build sidewalks. Ray Judah was promised that he would get money to finish that project down there, money that would come from everyone on this Island. Are there any bad thoughts about where the money went? Absolutely not. It's a fine project. But, Councilman Reynolds stated, he is just trying to get into perspective that the money came from everyone on the Island. Everyone should know this, and if anyone doubts him, they should talk with the CRA's present leader over in the County and with Ray Judah.

Anita Cereceda disputed some of Mr. Reynold's remarks. She advised that Fran Myers had not been on the CRA as he had stated. She also noted that at the workshop he had said that the Town had spent all of the CRA's money in Times Square, and that her comment to him had been that this Town has expended no monies other than maintenance. Those monies were collected in a TIF -- Tax Increment Fund -- by the County over a course of years, and it was this Town Council's decision in conjunction with the Estero Island CRA as to what portions of the project would be eliminated, and that included the south end sidewalks when the bids came in for the CRA project. And he was one of the members of our original Council who made those decisions. She has not left him in any lies about this. She is very well aware of how the CRA came into effect. Perhaps he is unaware that our Town Manager was the initiator of the CRAs for the County. Dan Hughes stated that he thinks we are discussing something historical here that is not at issue before the Town Council and he doesn't feel that it should be pursued any further. Garr Reynolds reiterated his statement that the money for this project came from every citizen on this Island.

John Mulholland stated that in his packet he had a copy of a letter about a Canadian tourist that was attacked by dogs down at the south end of the Island, and he described the circumstances. The dogs had been running loose on the Beach, but the tourist was assured that the dogs had had their rabies vaccination and were under house quarantine. The larger issues, Mr. Mulholland felt, goes back to dogs on the beach and enforcement. He wished to know what we were doing about things like this. Why should we have a dog ordinance if we have no

enforcement? John Gucciardo advised that he had not seen the letter but would take a copy of it and look at it with Animal Control and get him a memo. Councilman Mulholland was also told that the Lee County Health Department also does some injury prevention, so we should try to get these speakers. Other suggestions were made as well.

Dan Hughes commented on the live shelling band and feared that the Marine Fisheries Commission would not act on it before they disbanded, which turned out to be the case. He felt it was unfortunate that it would not be put into place. Ms. Segal-George stated that we could have it put into effect for next season. Mr. Hughes also questioned the status on the Bowditch parking and was told that nothing new had surfaced. He also questioned the anti-littering ordinance from the County Manager's office. Mr. Gucciardo stated that the Public Safety Task Force would be discussing the ordinance at their next meeting.

Ray Murphy stated that he had received a nice letter from the Department of Community Affairs complimenting the Town on the Comprehensive Plan.

VII. PUBLIC COMMENT

Joe Mazurkiewicz

Mr. Mazurkiewicz stated that the town is a fine example of Government Lite in our ability to build reserves. As former mayor of Cape Coral and being successful in negotiating a very attractive gas tax share from the county, he stated that they didn't do it by themselves, they went with the rest of the cities collectively together. He felt that if the Town did that, they would have better a chance of getting recognition from the County. The other comment Mr. Mazurkiewicz made was on assessments: there is a relationship on Florida Statuettes that the improvement to the property has to increase the value of the property equal to what the payment is. If the improvement to the road doesn't enhance the value to the property more than the assessment, you can't charge them the whole amount.

IV. ADJOURNMENT

The meeting was adjourned at 11:00 P.M.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of April 5, 1999

1. May 3, 1999, is set as the new date for a public hearing on the amendment to Resolution 99-14, a petition to vacate a portion of 4th Street (Lighthouse).
2. Have our evaluations of the Town Manager ready by our next meeting.