

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 19, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, April 19, 1999, at 6:33 P.M. Present at the meeting were: Mayor Ray Murphy, Vice-Mayor John Mulholland; Council Members Daniel Hughes, Garr Reynolds and Anita Cereceda; Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Town Attorney Richard Roosa, Hurricane Consultant Bill Zeiliff, Attorney Beverly Grady and Nettie Richardson from Lee County.

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 Reverend Thomas Snapp of St. Peter Lutheran Church.

IV. PUBLIC COMMENTS ON AGENDA ITEMS

A. FLIP HARBY

Mr. Harby expressed his concerns about the costs of projects, such as the operation and maintenance of the pool, which he felt would end up coming out of the taxpayers' wallets. He doesn't know why they weren't told about these figures a long time ago. The cost of the Mound House was another concern. He wondered about the monthly cost to the taxpayer or if it was going to be user- supported to the point of paying its own way. There have been great improvements to this island, but he didn't know they were going to cost money each month out of the taxpayers' pockets to operate. A feasibility study would give the taxpayers information as to how much a project costs -- one year, three years, ten years down the road.

B. MARILYN DAVIES

Mrs. Davies stated that her family lives in a quiet neighborhood and she would like to see McPhie Park stay the same way it has always been.

C. NORBERT DE MARS

Mr. DeMars, a 22-year resident of the Beach, noted that this is the third time that he has come before the Council and asked that we discuss the Mound House in a public forum. He has also attended advisory board meetings and asked for the same. To date, we have not had any public hearings of the issues involving the Mound House.

Mr. DeMars is somewhat dismayed to find today that we're going to consider a motion on whether or not we should proceed with a contract to purchase this property without having had a public hearing of issues. Council members should not take this action without at least giving the public an opportunity to know what is going to happen with Mound House and to comment on it. He has previously asked for a public accounting of all monies which have been spent on this project to date, as well as a forecast of how much money will be spent to support this project, and this has not happened. He feels that it is incumbent upon each Council member to do these things, in particular how taxpayer money will be spent.

They have heard rumors of all kinds of commercial enterprises which will pay for the operating expenses of this project, but in order to do that, we would have to rezone the neighborhood from residential to commercial. This Town was formulated on the premise of self-government. If it concedes to the people of the Connecticut Street neighborhood and makes this a non commercial enterprise, then the residents will have to pay for the project. Our decision will not be simple. Proceeding with the contract is a mistake. Proceeding with it now may be a fatal mistake.

D. VLADO SUFFLIAK

A resident of Connecticut Street, Mr. Suffliak said he purchased his property because it was quiet and comfortable. The Mound House is of concern. There is no proof that there is a Calusa heritage there, as there has been no archaeological digging and, therefore, he's not sure of it's historical value with respect to the Indians. Maybe they can consider the aspect of its being built by Mr. Casey as heritage. But this doesn't give us any right to make a museum or a gift shop or to have parties. He feels that the Council should work with the residents of every area of the island in a democratic way by getting their opinions. Residents saw a 30-page report at our last meeting of all kinds of things the Town is thinking of doing with the Mound House that they hadn't been aware of.

E. BILL VAN DUZER

Mr. Van Duzer advised that he had been one of the 58% of the residents who had voted against tax money being used to finance the operation and maintenance of our proposed pool. He had agreed with the Town Council when it proceeded with the pool project under the terms presented. They were told at that time that a Build-a-Pool Foundation would within a period of 3-5 years, but before the pool was built, raise approximately \$300,000 to add to the proposed revenues to cover the cost of operation and maintenance for the first three years. Most citizens agreed to go with this deal. He now has concerns about numerous items that have been reported, which are that the pool is scheduled to open in late summer and that the amount that is reported to have been raised is presently less than \$50,000. The cost for operation and maintenance in our packet lists two facilities for comparison: the Golden Gate facility, a multipurpose facility, and the San Carlos facility, which is a pool only. The Golden Gate more closely resembles what our facility will have, and the cost listed for it is more than a half million dollars a year. Under projected revenue sources in our packet, nothing is listed. But on the cover page there is a statement that revenues will generate only a very small part of the estimated cost.

The advertising for funding, according to Mr. Van Duzer, clearly indicates that the pool hours will reflect the needs of the community as a whole and there will be trained lifeguards and pool supervisors, which concerns him. Citizens should be informed if the original program presented has changed. He would like to know if the original operation and maintenance cost will be in the neighborhood of \$100,000 over the revenues generated. Will the \$300,000 be available before the pool is opened? Will the pool truly serve the needs of the community if the hours of operation are restricted to five days a week? Will the programs and activities of the pool be structured as it clearly states in the advertisement for funding? Would it not be reasonable to establish the specifications and the structure before soliciting bids rather than asking bidders to determine what we need? He believes that we should control and not be controlled.

F. MIKE CHILDS

Mr. Childs advised that he was here was to address the request for rezoning by Mr. Piascik. This request has been voted down, but Mr. Piascik is being persistent. Not one person at the meetings has said that he wants to see the zoning changed in this neighborhood. Rezoning would devalue the property and the residents want to keep the neighborhood single family.

G. SUE SCOTT

Also here to oppose the rezoning for the Piascik property, Mrs. Scott, like Mr. Childs, has attended three meetings to voice opposition to the rezoning and she wonders how many more times they will have to be here to try to keep this from happening.

H. JOHN McCARTHY

Mr. McCarthy gave a history of the property, which had been single family but which the owners now want zoned for duplex. He asked if there was a need for duplexes in this particular area that is zoned single-family residential.

I. DEAN KERKESNER

Mr. Kerkesner spoke with respect to parasailing and stated that we need enforcement. He noted that the information center in Times Square became a booking agent for parasail flights and wave runner rentals, cutting into his business. This shouldn't be going on.

Mr. Kerkesner also stated that right now the beach is eroding really rapidly and asked that we not wait too long to do something about it.

J. BETTY SIMPSON

Mrs. Simpson stated that although she serves on the LPA where they voted unanimously to deny any change in the current RS-1 zoning for the Piascik property, this evening she is addressing us as an owner of property that lies within three lots or approximately 125 feet of the subject property.

Originally there was a delightful well-maintained beach cottage on the property. The applicant had originally inherited the home and adjacent property on February 23, 1996. Later that same year he had the home moved off the property. The property was put up for sale but did not sell. There had even been talk of the Fort Myers Beach Fire Control District looking into this property. For the record, she was the fire commissioner at that time, and because she could have benefited or not benefited by such a transaction, their attorney allowed her to speak but not to vote on the subject. She did speak, vehemently opposing such a purchase in this residential neighborhood. Next, the owner requested a change in zoning to duplex. Just because a property does not sell, does this justify a change in zoning? What if the property still doesn't sell? Where does it go from there? All this could set a precedent.

Almost all homes on Fort Myers Beach are close to commercial locations. This certainly doesn't mean that those adjacent homeowners are going to come in and request zoning changes. The single-family homes that could be built on the subject property could be buffered with trees and shrubs. After all, these particular lots are 75 x 150 feet, showing the foresight of the original developer of this subdivision to allow for setbacks in buffering to protect these lots. The size of these two lots are for buffering purposes and certainly not for density purposes.

There has been a lot of testimony from the public opposing any zoning change. Mrs. Simpson said she knows of no changed conditions that would make approval of a new request appropriate. She asked that we vote to deny any zoning change to this property and keep it compatible to the existing use in this subdivision.

K. PAUL ABRAHAM

Mr. Abraham asked that we delay the assignment of contract on the Mound House for one big reason. Most of the residents from Donora to Connecticut do not know the impact of this contract or management plan that has been drawn up by Mrs. Segal-George and Mr. Arden Arrington. We had one little meeting back in December and we were asked about our concerns. They were traffic, safety, commercialization, change in zoning. Things have now exploded to the point where the plans are not reasonable: a 60-car parking lot; a 100-foot pier going out into the Back Bay with a 30-foot pad; an 8 x 150 foot floating dock on the back end. This is absurd. Where is all the traffic going to come from? Who's going to run it? This has reached the point where it's unreasonable. It's going to affect a lot of people. It's going to cost a lot of money to keep it up. A foundation is supposed to run it, supervise it and take care of all the money. It doesn't make sense to him. He asks that we let everyone be notified and have a meeting with this Council.

L. LEE CONGER

Mrs. Conger stated that Mr. DeMars had over a month ago requested that the Mound House be put on an agenda for a Town Council meeting so that we could talk about it. And to date there really has been no dialogue. There were two advisory Council meetings which were so preliminary that there wasn't really an opportunity to make any advice. Right now we have a contract before us to be signed and approved, and it's her understanding that the process is that once it's signed and approved that it gets matched with the management plan and submitted to Florida Community Trust for their approval or disapproval on April 30. Yet, there's been no public comment.

Mrs. Conger noted that there have been some real concerns about the management plan for the Mound House. There were many things in it that were well beyond what was originally supported. There are references to concessionaires, creating a whole Calusa Indian village. She feels that things in the plan need description, some response and dialogue. They are being told that the plan is not carved in stone. Then what exactly are the items in the management plan that must be provided in order for it to be eligible for the grant? Another question she has is can it be delayed one month. Does the FCT meet in May so that there can be dialogue over some of these issues? There are so many aspects of this that we really need to talk about and consider. She referred to an itemized list of concerns which she had distributed. She would like to know

what we feel is appropriate to that site.

V. PRESENTATION BY BILL ZEILIFF ON HURRICANE PLANNING

Bill Zeiliff advised that he was here as a consultant to the Town of Fort Myers Beach for this upcoming hurricane season. He advised that professionally his meteorological experience goes back to 1947. During the course of 21 years in the Navy, he spent three years as an in-flight meteorologist, looking at hurricanes eye to eye. This is his 27th hurricane season in Southwest Florida. He was the first meteorologist in television in this market and he spent 10 years with WBBH, NBC2. He spent a lot of time in Southwest Florida working with the various communities on hurricane preparation. He takes a very objective look at hurricanes and hurricane problems and is not an alarmist. It is his philosophy that the major thing with a hurricane is keeping everything in its proper perspective.

Mr. Zeiliff stated that he is not a decision maker, but merely a tool to the decision makers. He advised that despite what we might hear, Hurricane Donna in 1960 and another hurricane in 1910, which rapidly weakened, were the only two hurricanes to come on shore from the Gulf of Mexico in this century. Hurricane Donna was a category 4 hurricane when it hit Naples with 150 miles per hour winds, and when it went through the Fort Myers area, the highest winds officially recorded were 120 miles per hour. The lower end of Fort Myers Beach had high water up as much as 11 feet, yet the high water was recorded as between 4-5 feet at the upper end of the island. It's all a matter of perspective deciding the type of action that needs to be taken.

Our probability here of receiving a hurricane from offshore in any given year is 0-5%. We've had major effects from only six hurricanes in this century, but we're continually bombarded with a lot of information that gets overwhelming at times. The National Hurricane Center, the people who deal with hurricanes, covers an area that goes from Sarasota to the Florida Keys. They're not talking about Fort Myers Beach or Lee County or our little part of Southwest Florida. When Dr. Grey says it's going to be a busier than ever hurricane season, that doesn't mean a thing. When hurricanes are spoken about, it is in generalities. The media is talking about an area that is probably 120-150 miles in diameter and sensationalize whatever information they get out.

As a consultant, Mr. Zeiliff stated, he is concerned with Fort Myers Beach or whatever entity he is dealing with. He noted that last year the media kept reporting that Southwest Florida was right in the path of Hurricane Georges, but the people in Sanibel looking at it in the right perspective were 98% certain that the storm would not affect us. He, himself, advised them that the storm surge from Hurricane Andrew would be to the left of the track of the storm, that it would cross the coast near Everglades City, give or take 10 miles. When a state mandates an evacuation, of course you have to evacuate, but the destructiveness of a storm should always be kept in the proper perspective.

Council member Anita Cereceda told Mr. Zeiliff that she was happy to have him as part of the Town's hurricane preparedness, and she described the Town's minute by minute concern last year. She feels that the Town learned a great deal from that experience.

Mr. Zeiliff stated that most areas will not see the type of flooding being projected. Several years ago a flood plain was established and people who now build homes are required to build at or above that level. And it's much, much less than what the computers are showing.

Mayor Murphy asked Mr. Zeiliff to tell what he actually does as far as interpreting the data from the National Hurricane Center. Mr. Zeiliff advised that the primary data source is the National Hurricane Center and that we all get our information from them. He will receive that information plus a multitude of other meteorological information from Internet, the fastest way of communicating. He will be on a conference call with whomever we have on this end and putting the spin on the information that he feels is going to be appropriate for Fort Myers Beach. Right now he has four other clients that he's dealing with, but there's never been a conflict as far as timing goes. He'll conference call or however we wish to communicate with him.

John Gucciardo thanked Mr. Zeiliff for being here tonight and giving this presentation to the Council. He had recommended him to the Council, feeling that it would be informative and worthwhile for us to listen to him explain the role that he would be playing with us this year. He also thanked the Council for acting on the recommendation. He noted that it's comforting in one sense to be sitting down with Emergency Operations and hearing a conference call that's almost

statewide, people giving input from different counties all around the southern portion of the peninsula. At the same time it's discomfiting, because you realize that a lot of what's going on may have nothing to do with your particular concerns. This point was really driven home in the last hours of the final preparations for the evacuation at the Emergency Operations when there were probably 150 people in the bunker down there but no one from Sanibel. That was a real eye opener.

Mayor Murphy also thanked Bill Zeiliff for his presentation and told him we were happy to have him on our team.

VI. CONSENT AGENDA:

Garr Reynolds stated that he'd like to pull Item B., the financial reports.

Dan Hughes stated that he'd like to pull the minutes of March 24.

A. Approval of Minutes: March 24, 1999

Corrections and Changes to Minutes of March 24, 1999

Dan Hughes stated that in the second paragraph where he requested that two additional items be brought on the agenda, one of which was the upcoming meeting schedules and the other the town charter amendments, only the meeting schedules were reported being discussed. There had been discussion regarding whether or not the charter would have to go back to the committee, and we felt that it wasn't necessary, that we could on our own initiative initiate charter amendments. And inasmuch as there was no election this year, we really had until next year to propose it, but it should be done well in advance. Dan Hughes said his concern was that we should eliminate the runoff elections like we had last year and move that up so that if there are more than two candidates, there'd be a primary the month prior to the election and the final election would be on November 3. In this way the municipality would not incur the cost of a special election when no other elections were being held elsewhere in the County.

MOTION: Made by John Mulholland and seconded by Dan Hughes that we approve the minutes of March 22, 1999, with the correction noted. Passed unanimously.

B. Review of Financial Reports for March 1999

Councilman Garr Reynolds asked Deputy Town Manager John Gucciardo for an explanation of some items on the Town of Fort Myers Beach income statement for the first six months ending March 31. On page 1 of the general ledger from March 1 to March 31 he sees the name Joel Bellucci and wished to know who he was. Explained was that Joel was a member of Marine Resources Task Force. Why was he paid \$500? Mr. Reynolds was told that Joel had been retained to help us with the Web page and he has basically revised the entire Web page for us. Mr. Reynolds noted that Rusty Isler had done it free for three years.

Another item of concern was on page 2. Councilman Reynolds wanted to know why Bill Spikowski was paid \$10,204 for the month of March and if he were still actively involved. Town Manager Marsha Segal-George advised that there is still the land development code. Also, there is a breakout of his bill on which Mr. Reynolds can see all the items that Mr. Spikowski is working on. Garr Reynolds asked if when they were here a few weeks ago, it had cost us \$15,000. Marsha Segal-George explained that the Council had approved a contract by them to do Old San Carlos and Santos Street. The billings for the last two months are all part of that contract.

Mr. Reynolds asked what parts of the minutes the transcriber was being paid for, and Mrs. Segal-George advised him of all the different committees that she did minutes for.

Garr Reynolds said he would talk in depth with John Gucciardo later regarding the expenditures, which he feels are getting pretty hefty.

Dan Hughes wished to know why on the first page of the report we showed the entire budget for the Florida Communities Trust on the Long property in the current month. Was that because it was anticipated that it would close this month? Deputy Town Manager Gucciardo stated that actually we pretty much show that every month, because we don't have any preset

idea as to when it will close. The bottom line is that we anticipate that when it is closed, it's a lump sum.

Dan Hughes also noted that under the CRA reimbursable expense, there's a \$90,000 item in the current month, year-to-date '94 and 0 budgeted for that item. John Gucciardo advised that originally there was no budget line item for CRA other than that in the capital improvement budget. He goes into that in a little more detail in the budget summary, but the bottom line is that until we finalize the revenue stream on the now BRA, there is no offsetting revenue to cover that line item. Just the expenditures are being monitored for us at this point.

Mayor Murphy asked for a motion.

MOTION: Made by John Mulholland and seconded by Dan Hughes to accept the financial reports as presented subject to audit at the end of the year. Passed unanimously.

C. Resolution: Requesting funding for the Beach Erosion Control Program.

MOTION: Made by John Mulholland and seconded by Dan Hughes to approve the resolution requesting funding for the Beach Erosion Control Program. Passed unanimously.

VII. Administrative Agenda

A. Final Public Hearing: Amending the Parasailing Ordinance

Mayor Ray Murphy read the amendment. He asked for public comment but none was forthcoming.

Councilman Reynolds referred to the last line in Item H regarding the minimum of a 15 foot lane for the parasailers or personal watercraft to come in. He feels that needing deletion is the line "In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane." He felt that it was too nebulous and should be more specific or eliminated completely and that in an emergency situation, the captain obviously is going to come in anyway.

Town Manager Segal-George advised that the parasail captains felt very strongly about this provision and felt that there are times when they have to use discretion as coast guard licensed captains to get out of a problem caused by congestion. This was a sentence that was added by the industry and one that the captains felt very strongly about. She would suggest that if we want to amend that, that we need to at least give notice to those guys so that they have an opportunity to come in and explain to us why they think it's important.

John Mulholland felt that as the Town Manager had said, the parasail captains did feel strongly about the provision for the safety of bathers more than boats. He thinks it important that we do carry this sentence. Ray Murphy said that he agreed. He thinks they need that flexibility and he can understand their concerns.

Dan Hughes proposed a motion, explaining that this specific amendment is that parasailers must be at least 1000 feet offshore, not only when they inflate or deflate the shoot, but at all times while flying, and they must limit the length of their line to 1200 feet.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds that we adopt the ordinance as presented to the meeting this evening amending the land development code, Section D, with the parasailing ordinance. Passed unanimously.

B. First Reading: Amending the Animal Control Ordinance

Mayor Murphy read the ordinance.

The hearing has been set up for May 3.

Town Manager Segal-George asked if we wanted in part D, where we talk about an animal roaming at large, to substitute "dog" for "animal," because right now we'd have to have cats on leashes. Dan Hughes said he thought "dog" would be better, and everyone concurred that "animal" should be changed to "dog."

C. Draft Discussion: State of Emergency Ordinance

John Gucciardo stated that this was a continuation of our attempt to get ourselves geared up for hurricane season. He had advised in a memo a few months back that we will be reviewing our ordinances, resolutions and documentation to get us prepared to deal with different eventualities. John presented a draft ordinance with language that came primarily from Sanibel. It deals with the ability of the Town Manager absent the Council to take certain actions once a state of emergency is in place. On the first page under Item B. it talks about the emergency hurricane access passes. This will be modified slightly to deal with the situation that we have with the Chamber of Commerce where they have put a pass process into place, and we'll try to reflect that in the ordinance.

Dan Hughes referred to Section 3, saying that it provides that the order of priority in declaring an emergency is the Mayor, Vice Mayor, Town Council. He thinks that the Town Council was previously defined as the Town Manager. He wanted to know the distinction between that section and the authority to declare a strike time and then to order an evacuation in Section 6, which is delegated to the Town Manager, or in her absence, to the Deputy Town Manager. It was determined that in Section 3 authority was given to declare an emergency and in Section 6 authority was given to order an evacuation. Dan Hughes also asked for an explanation of "strike time." John Gucciardo explained that it had to do with projections as to when landfall might occur.

Dan Hughes felt that we should move ahead with this draft and direct the Town Attorney to put this in ordinance form. Mrs. Segal-George asked Dick Roosa if we could do this by May 3, and he said yes.

D. Budget Memo and Update

Deputy Town Manager John Gucciardo advised that they had attempted to give us a memo that summarizes as best they could where we stood after a six-month period and review. He noted that we had in front of us a review of both revenue and expenditures for the first six months. Attached to that is a 3-page computer-generated report of where the budget shows we are to date and then the actual revenues and expenditures. The last five pages are right out of the 1998-99 budget that shows the complete line items. The narrative of the summary deals on a line-by-line basis with the revenue; and then on the expenditure side, rather than doing line-by-line, highlighted are just those items that appear to be significantly different from what we had projected.

The bottom-line summary is that the revenue is actually a little bit healthier than had been projected, except in two areas. Both road and park impact fees are less than had been projected. We received a lump sum check from the County just last year for the previous year, so we really didn't have any track record going into the budget cycle and we were kind of operating a little blind. He is looking into more detail as to why our projections were up there. To a lesser extent, the interest income is a little off from where we thought it would be. Other than that, we seem to be very healthy in terms of the revenues.

On the expenditure side, it appears that most of the areas where we see a little change from what we had projected are the actual day-to-day operational expenses, things like legal ads, office supplies, printing and binding, telephone costs. As we became busier, perhaps we had underestimated some of those. The total amount of difference, though, once you add up all the changes, is fairly insignificant compared to where we thought we would be.

John Mulholland referred to Item L, WCIND enforcement grant, where it says that we received more than was expected for the time period, which may result in less enforcement money available for the upcoming summer season. He asked if that means that we spent that money, and, if we have, where can we get that money? Mr. Gucciardo stated that we had anticipated that WCIND would be paying us for the offshore patrols; and just in looking at where we thought we would be at this time of year compared to what we've already spent, we seem to be ahead of schedule. He knows that we had at one point asked for increased coverage there. Obviously, if we expend the amount of money that we anticipate from WCIND and care to keep the level of enforcement out there during the summer season, we would probably have to take

that from a different pot other than WCIND. He assumes that enforcement money can be taken out of the general fund contingency monies, of which there are still significant amounts.

Dan Hughes stated that we hadn't had anything budgeted on judgments and fines, but the attorney communicated with the County and we finally got a few thousand dollars. John Gucciardo was asked wasn't there still something open on that? Is there anything new on that? Mr. Gucciardo advised not really. It wouldn't be substantial.

Dan Hughes complimented John Gucciardo for an excellent summary and analysis, and this was echoed by the other council members.

Garr Reynolds asked John Gucciardo about the carryover on income in Item T. In the last budget we had a carryover of \$3,691,000 that actually turned out to be \$4,000,000. Mr. Gucciardo explained that we have to understand that when the budget was prepared, which was before October 1, and they were working on estimates of what approximately the last month and a half of expenditures would be, they had some line items that they anticipated they would be paying. And that's how they came up with the \$3,691,000 figure that is seen in the original budget. They actually were not in a position to determine the actual carryover until closer to December. Once the audit process went through and they cleaned up what really was accountable to the previous fiscal year and what was accountable to the new fiscal year, they were able to fine-tune that number to the point where they could determine that it's a little over \$4,000,000. We were a little healthier than we thought.

Councilman Reynolds referred to Item I, Office furniture and equipment. Expenditures yearly have been around \$30,000 and it looks like it's going to go up this year into the 40s. What type of additional equipment are we talking about? John Gucciardo stated that the original estimate was \$30,000 and this year it indicates that we've already spent a little over \$17,000. That includes office equipment for the reception area and computers. But as far as we can tell, at this point there aren't any plans for additional funds. We actually should come in under budget on that.

Item J, Results of the LPA planning, is estimated to be \$35,000 a year, Mr. Reynolds stated, and right now it's already \$23,000. Why is that going up so fast. Town Manager Segal-George advised that there are itemized bills. Right now we're using Bill Spikowski on Bay Beach issues, and you can go down the list on all the different planning issues that have either been raised by the LPA or raised by the Council. And Bill is the one who is providing those memorandums with regards to those issues.

Garr Reynolds referred to Item K. Here we have CRA, DRA reimbursable expenses. Over \$94,000 has been spent. He read "While expenses in this area were anticipated, we have not yet been able to begin the revenue flow necessary to fund the line items." Mr. Reynolds confirmed that the area in question was Old San Carlos/Crescent. He asked if we were spending regular general fund money for this. Mrs. Segal-George explained that when this was set up, there was a separate budget and there was a loan from the general fund to the CRA. The \$94,000 is expenses. That is what was spent on the plans for Times Square and Old San Carlos. The revenue for it is coming from the process that we went through to take the County CRA and make it the Town's CRA. And then there is the TIF that is collected, and we have made demand on the County for the TIF out of the County money. Those dollars then will reimburse our general fund to the tune of \$94,000. Mr. Reynolds asked if this would be done even though some of that is being spent on the new projects, and he was told yes.

Vice Mayor Mulholland said that he sees Main Street as an expenditure. What else are we doing with the money? He was told by Marsha Segal-George that when we entered into the funding with regards to the Main Street Program, it was a joint project between the Town and the Chamber of Commerce. The Town committed to a funding commitment for three years and we are in the last year of that funding commitment. That is something that the Council will have to deal with in the budget. Marsha has asked Jean Mathews for reports with regards to those activities and she has given them to her. We will be receiving reports with regards to what has been going on in Main Street, and then the whole Main Street issue will be something that will have to be discussed and dealt with during the budget.

Ray Murphy told John Gucciardo that it was a great summary and that he appreciated the update.

E. Operation and Maintenance Options on Pool

John Gucciardo stated that we had two documents in front of us. One is the memo from 3/26/99 and he had also handed out a memo put together Saturday that was a result of the Pool Foundation's meeting last Thursday night. They got some of their input about different options that we might have. At this point they have estimates based on looking at different facilities and the Foundation's experience in terms of operations. Obviously, this is something that the Town has never been involved in before nor have most of the members of the Foundation. We have been operating on a lot of assumptions that we've had and now have an opportunity to work on in more detail.

According to Mr. Gucciardo, at this point what they're looking to do since the pool is obviously under construction is to get out an advertisement asking for bid proposals from interested parties. They've already been in contact with at least two and perhaps a third interested party. John is not sure what else may be out there. The idea would be to have a generic type of ad rather than put great detail in the ad, and in this way keep some of the costs down. Interested parties would be asked to contact John, and he will provide them with a prepared one or two page statement of intent on the Town's part. John advised that the memo of 4/17 might be helpful for us now.

Mr. Gucciardo stated that the general consensus from the Foundation was that we should inform interested parties that what we're looking to do is have a combination of open time and structured time at the facility. The facility will have both the lap pool and the play pool. There are some programs that they have been able to identify which they think will be of high interest to the community, like water aerobics and competitive swimming. The reason why that's significant is because a person's interest in bidding on this will have to factor in a lot of labor time, as it is a very labor-intensive operation. However, if they know, for example, that the lap pool will be used for competitive swimming, say for two hours a day, five days a week, that's time that they may not necessarily need to have programmed in for their coverage, because typically competitive pool program operations bring in their own people to monitor the pool at that point. At the Cypress pool that the County runs, the County doesn't put any labor costs into the competitive swim program. So for the two hours that we're estimating that they would need that for five days a week, a person bidding on this can factor that in and hopefully have less of a labor cost involved.

With the play pool, Mr. Gucciardo stated, he had originally estimated that it would operate from 8:00 A.M. to 8:00 P.M. like the entire facility, and the input from the Foundation is that that may not be necessary, that the play pool might actually be more highly utilized from 10:00 A.M. to 6:00 P.M. That does conform, by the way, with Golden Gate. Again, the reason why that's significant is that the person putting together a big proposal can factor that in terms of how many people they're going to need and when they're going to need them. There has been some talk about the Town not being in a position where they can control what goes on there, but this may be just a misunderstanding. John stated that they have very definite ideas about the kinds of programs and the kinds of hours and days of availability they'd like to see. Understood, however, is that people who are in the business are probably in a better position to fine-tune this than they would be, and that's what they're hoping for after their list of criteria is reviewed.

Their assumptions about days of operation might change, Mr. Gucciardo stated, depending on what kind of a track record they develop with the community. There are a lot of unknowns out there. We need to be flexible. We need to be in a position where we can change days and hours depending on what the community tells us they want. At this point, the direction they are looking for is just to go ahead and run the ads and see what kind of response they get.

John Mulholland asked if we would be directing questions to John or would we be talking to the Foundation this evening. Ray Murphy said he thought we could just ask John. John agreed, but said that if there is any indication from the Council about the workshop or something with the Foundation, he was sure that we could set that up.

John Mulholland complimented Mr. Gucciardo for breaking down the costs very nicely in the March 26 memo. He noted that we were roughly over \$200,000 to run the pool for a year. John told him that this was really just an estimate that he was able to put together based on what he learned other facilities try to do. He has no idea what kind of response we're going to get from interested bidders. He anticipates that the figure may be higher depending on what their

experience has been. But he thinks that we've all known from the beginning that the original estimate he had heard didn't seem to hold up well when other facilities were analyzed in terms of what they were spending. The Golden Gate facility would represent the extreme high side, and John doesn't think that would be an accurate reflection of our pool either.

Assuming that the figures are correct, John Mulholland wished to know where we were getting the money for this. Mr. Gucciardo stated that his understanding of the agreement that was entered into by the Council, the Foundation and the County was that the County had agreed to set aside funds to construct the pool as long as the Town would assume responsibility for the ongoing operation and maintenance. In return, the Town entered into an agreement with the Foundation that the Foundation, which is a separate entity that has now achieved their tax-exempt status, would make an attempt to raise those operation and maintenance funds, and the target that they had set for themselves was approximately \$300,000 before the pool opened. John Gucciardo expressed his belief in the Foundation's good faith, although he does reflect in the last memo that at this point the numbers are significantly less than \$300,000. The Foundation is still attempting to raise funds and apparently will continue to attempt to raise funds in an ongoing fashion. It is his understanding that if the funds are not there, that they would then come out of the general funds account.

Councilman Reynolds advised that as he told us 3-1/2 years ago, Sanibel and Pine Island had assured him that their pools were costing about \$350,000 per year at that point. He was always contradicted by someone from the pool committee whenever he said this. Just a couple of months ago we were talking about \$260,000-\$280,000. Where is the money going to come from? It's going to come from 56% of the people who said no and also the 44% who said yes. And it's not \$280,000 any more; it's not \$300,000. It's half a million dollars now. Why build something that's going to be so flamboyant and expensive? We're talking about \$3,000,000 just to build a pool, and looking at the figures, he's surprised that it's just \$3,000,000. Electricity is going to cost \$150,000. The slide is going to be \$80,000. If it was a basic pool to give people what we talked about, Mr. Reynolds doesn't feel that people would be paying taxes on something that they very strongly voted against. He noted that the pool at Sanibel is very nice but it is expensive to operate.

Councilman Hughes said he feels that everybody up here has a concern. The Foundation's efforts to raise funds have been very disappointing to say the least. His original understanding was that the Foundation was going to be an ongoing entity and would continue to raise funds on a yearly basis to contribute to the operation and maintenance costs of this pool and not just raise \$300,000. He also shared the concerns expressed by Flip Harby and Bill Van Duzer, as well as council members Mulholland and Reynolds in terms of assuming that the Foundation is not going to make any significant contributions to the operational expenses. It's kind of like saying we hope you can give us the money, but if you don't we'll pay for it. You almost defeat your efforts to raise monies in that kind of a context. We're the only responsible party to the County, but we did have an agreement with the Foundation and they're responsible to us, but only to the extent that they're successful in raising the funds.

Dan Hughes said that some of his concerns have been ameliorated by the subsequent memo as a result of the Foundation meeting on the 15th where they recognized that there's going to have to be some tightening of the belt here. He agrees with that. He wonders if we are in a position to take bids under these circumstances when it's all up in the air. Are we seeking input from bidders for their suggestions as to when the pool should be opened, what facilities should be structured and supervised, and what should be totally open to the public versus the swim team program, etc.? John Gucciardo said he thinks we're in a position where we can be as definitive as we ever can be given that we have no track record as to what we want to accomplish and how we want to accomplish it. We are definite as to the hours we want to attempt to be open, the days we want to attempt to be open and the type of programming that we'd like to see available. Where we need their input is how to best mix those programs and then free time to make it both compatible to the needs of the community and cost effective.

Dan Hughes asked if the Town had title to the pool and he was told, no, that it has been there. It's part of the County park. If the County owns the pool, would we be adding it to our liability? John Gucciardo said that as to the liability issue, he assumes that the County would also have coverage. The second issue is physical damage, which John assumes that the County will

pass on to us as part of our operational commitment.

Anita Cereceda referred to the workshop that we had five months ago concerning the pool and how hotly it was debated as to whether or not we should move ahead with it. We discussed one very important issue: Did the Town Council of Fort Myers Beach think that a community pool was an important element to be added to our community for the future? The vote that was cast that day was yes. It alarms her that now, three years later, we debate among ourselves and second-guess ourselves as to whether or not that was a prudent decision and how we are going to pay for it.

When the pool committee made their enthusiastic presentation, Anita Cereceda said that the issue she decided in her mind was whether a community pool was an important part of our community for future generations on Fort Myers Beach. Her answer had been yes, and she had decided at that point in time that she would be willing to vote to pay for that. She had seen it as a realistic responsibility that she felt everyone had considered, but she may have made a mistake in so thinking. She would just hope that as a young community as we engage in things that are far reaching that we'll have the courage to stand by any decision that we make and find a way to do it. The core of the issue is whether it is or isn't good for the future of this community, a future that probably none of us will be a part of. And as far as cutting things from the pool, she would hate to see us nickel and dime the construction of the pool when the best pool that we can have for this community in the long run will benefit us.

Dan Hughes expressed the feeling that the first council entered into this in good faith, but that things are not as easy and as rosy as everyone thought and we have some hard realities to face here. Garr Reynolds said that he didn't hear one person say that the pool wasn't a good addition to the community. But as Dan said, we have to be hard-nosed about this.

Mayor Murphy stated that he agrees with Anita Cereceda. He has not wavered one iota since we originally discussed this. He still feels in his heart of hearts that this was the right move and continues to feel that way. He noted that on John Gucciardo's report of 3/26/99 that John says we have not addressed revenue sources since it was estimated that those revenues generate only a small part of the estimated costs. Ray Murphy told John that he would like to see those addressed, because he doesn't believe that they're that insignificant that they shouldn't be addressed. He also agrees with Anita that we can't start chopping this. We've been through a little chopping process already and that just takes away from the project. Addressing Mr. Reynolds, he stated that as far as the children's slide goes, that will probably be the major attraction for the children on this beach who utilize the pool, and they are a significant portion of the people that we're building this pool for. He would find it unconscionable to start eliminating any of these things for the kids on that pool right now.

Mayor Murphy asked John Gucciardo to address the revenues. Mr. Gucciardo stated that perhaps he should ask if we want to modify the process we had set up as the pool project moved along. What they had been doing was as issues came up, they were evaluated and input was received from the Pool Foundation and then relayed to the Council by himself as the liaison. This was done with the pool design. They are attempting to do this now with the operational costs and the estimates of what the actual dollar amounts are going to wind up to be and whoever the contractor is going to be to run the operation. The reason why he didn't touch the revenue issues is because, again, just dealing with the estimates on costs gives one a worst case scenario. Obviously any money that does come in from the operation would, he assumes, be turned back into the operation to offset some of those costs.

The next thing he would be doing with the Foundation, John stated, is asking them to give us some input on, for example, costs and structure on user fees; whether or not they wanted to go to annuals, monthly, weekly, family versus individual. There are all kinds of different combinations that are used. But the process, again, that we anticipated was that he would prepare some rough parameters, the Foundation would give him input and fine-tuning, and then he would bring it to the group. If the Council is now telling him that they would rather get involved in that up front, we could do it that way also. But he thinks the Foundation is probably in a position where they're going to look to being able to give us some input on how the revenue side of it could be structured. Concessions is another area that comes to mind and whether it would be cost effective despite the need for equipment. He had been anticipating that this would be the next project that he would ask the Foundation to address, and then at some point over the next

month or two they would bring us some input and some direction or recommendations about the revenue side.

Mayor Murphy said he thought we needed to start hearing about that. If all we're going to hear about is the gloom and doom side of it, we need to hear what we're going to be offsetting those expenses with. He thinks that's what everybody's nervous about. They just see the money that's been raised by the fundraising, but they don't see the other additional revenues that will be coming in to offset the expenses. He'd like for all of us to meet with the Foundation one time and sit down and brainstorm about additional sources. He's sure that they've explored many fundraising avenues and that other members of the Council, including himself, have too. He'd also like to encourage the Foundation to keep going, because what he's feeling right now is that there is a certain level of discouragement and a certain level of disappointment. He has not given up on them nor the prospects of fundraising and he doesn't think that the rest of us should either.

John Gucciardo stated that he has no indication that the Foundation has given up, and if the focus of his memo on just the operational costs gave the impression that the Foundation has given up on their fundraising efforts, he apologizes for it because that is certainly not the case. He asked if the Council felt that a workshop would be helpful at this point. Mayor Murphy said yes.

Dan Hughes stated that his remarks are not to be interpreted to mean that he is trying to roll back the project at all. The pool is going to be there and the amenities. That's a done deal. But what we're addressing is funding of the operation and maintenance expense, and what is extremely relevant to that is how the pool is being utilized, the hours it's being utilized, the number of employees, the number of lifeguards, is it open to the general public, are we going to have fees -- there's all of these issues.

Anita Cereceda asked John Gucciardo if the Pool Foundation had planned on the fundraising being an ongoing thing even after the pool was completed. John indicated that there may be some disagreement among members of the Pool Foundation as to what their role is going to be. Anita felt that then maybe the workshop is a good idea so that we can get some updated commitment from them or, more importantly, so that we can tell them what we expect them to do.

Dan Hughes said that he gets comments constantly regarding how the Council treated the 50% majority. People are not happy with what happened.

John Gucciardo said he assumes we'll be running the ad to get some proposals, and in the meantime he'll try to put together a summary of what our expectations are on the operational and programming end of it.

Marsha Segal-George stated that if we don't want to do a workshop and take another day, we can take one of our meetings in May and set aside thirty minutes and ask the Pool Foundation members to come and address the issue. The members approved of this idea.

John Gucciardo advised that some pretty pictures were delivered today -- color schemes and different patterns on the building itself that the engineers and architects have been able to come up with. He has them up in his office and invited everyone to come and take a look at them. He put in the front of the meeting room drawings and diagrams for everyone to look at on their way out.

F. Request for rehearing: Piascik

Attorney Beverly Grady advised that she represented Mr. and Mrs. Piascik, and she thanked us for allowing them to make this request for a rehearing. If granted, we would schedule an actual hearing date sometime in the future. This was an application for multifamily RM-2 zoning, which the Council denied by resolution. The Staff had recommended approval of rezoning to TF-1, but the application was never actually amended to that category. The request for a rehearing has been filed because it would only be for consideration of the TF-1 zoning district that would permit a single-family duplex or two-family attached. It would eliminate any consideration of the multifamily RM-2.

Attorney Grady said that the Staff's support of a rehearing and the rezoning to TF-1 should be a wakeup call to give great weight to this request for a rehearing. All of the criteria for a rezoning that the applicants are required to show us and all of the criteria for a rezoning that U.S. Board are required to look at are what will be presented to us at a hearing should we grant the rehearing request. The presentation would be factual, cogent and to the point.

Attorney Grady advised that since becoming involved in this request, she has viewed the

site, the zoning map, the Staff reports and researched the surrounding zoning and found that there were certain areas that were not presented nor recognized at the hearing. One of the most important things is that the property immediately to the north is approved since 1995 for two units. She noted that she had attached the cover sheet from that approval. There are two units that are grandfathered to the east. There is intense commercial to the west. And the car wash and the laundry are probably not going anywhere, so that needs to be recognized.

There can be no doubt that TF-1 can be a compatible use when it's located on Estero Boulevard. And they can and would establish at any hearing that we grant that this case cannot, is not and will not be a precedent for other zoning cases. If the rehearing is not granted, then the property owner can file a new application because the original application is foremost a family RM-2 and our resolution denies RM-2. An application can be filed for TF-1, and it's not prohibited by any time limit because it's a different zoning category. Staff is intimately familiar with this application and has even recommended approval of TF-1. There's no reason to deny this request for rehearing just to make the property owner pay a huge application fee for a new application for staff work that's basically already been performed.

Attorney Grady spoke of the new category that had been created with our comprehensive plan, mixed residential, and that in doing so, we recognized that this property deserved a higher density and treated it as a transition parcel. The applicants would respectfully request that we accept the Staff recommendation and that we grant this rehearing.

Anita Cereceda advised Attorney Grady that she always treats us with great respect and she appreciates that.

County Input:

County Staff was asked to speak. Nettie Richardson advised that Staff had originally recommended denial of the RM-2 zoning district. However, they did also, in the alternative, recommend that the property be rezoned to the TF-1 zoning district. Staff does conclude that the rehearing is warranted. During the previous public hearing, the applicant did not clearly demonstrate the factual information to us. Applicant did not clearly demonstrate the consistency with the Lee Plan, the fact that the property had been redesignated by the Town Council for the zoning district for what he proposed to do as well as the surrounding neighborhood. Based on those considerations, Staff agrees that a rehearing is necessary.

Anita Cereceda stated that she was trying to be sympathetic with Mr. Piascik but was having a difficult time with that. At least two times she had tried to get him to give us some facts. She also remembers Mrs. Richardson mentioning TF-1 several times, and so, at least in her mind, this was discussed during the hearing. She asked if Mr. Piascik had a right to this, or if this is a courtesy that the Town Council would extend to him. She also understands that he would have the right to come back and reapply for the TF-1 if he chose to and go through the whole application process again. Nettie Richardson advised that the land development code clearly states that the applicant must provide new evidence and they must be points of law or facts which the aggrieved party argues the Council has overlooked or misunderstood. The applicant didn't understand the full intent of the comprehensive plan, of the zoning district. It just appeared that it was more an emotional issue to him as well as it was to the surrounding neighborhood. Had he had legal representation here that day, Mrs. Richardson said, she believes that the facts could have been more clearly stated on the record for Mr. Piascik.

Attorney Dick Roosa established that the basis for granting a new hearing to the applicant was because he failed to represent to the Council all the clear facts. We were bombarded with tons of information that kind of muddled all the factual information that should have just been laid down on the line to us as the Town Council.

Dan Hughes stated that he had voted against the motion to deny and that he had to agree with Anita Cereceda that the issues are not presented in the Staff memorandum such as the Council has the authority to consider a different zoning category. Mr. Piascik had clearly stated that although he was filing for the RM-2, he was willing to reduce it to the TF-1. Dan Hughes had also pointed out that the LPA was going against the comp plan because it was mixed residential. The Council was also totally aware of that, but nevertheless the majority voted against it knowing

that the proposed use was an acceptable mixed residential use under the comp plan. He's not sure that the applicant is meeting the statutory requirements for grounds for a rehearing because those two issues were quite clear, at least in his mind at that hearing. He also feels that the applicant did an excellent job in presenting his position that day.

Garr Reynolds asked Nettie Richardson isn't there a limitation for a year when asking for a rezoning, and she replied yes. He feels that we made an intelligent decision at the hearing. He asked to make a motion.

MOTION: Made by Garr Reynolds and seconded by John Mulholland that we deny a request for a rehearing. Passed unanimously.

Regarding the legal recourse of the request, Attorney Roosa advised that the statute provides that you should make your decision on new evidence for points of law or fact which the Council has overlooked or misunderstood. He would also point out that there is no judicial review of our decision either to grant or to deny this. This is totally discretionary with the Council.

G. Town Manager Evaluation

Garr Reynolds asked that Council delay the evaluations until the next meeting since he does not have his yet.

Discussion:

Dan Hughes asked the procedure for making an evaluation. Would we be repeating what we set forth in our evaluations in an open meeting? Ray Murphy told him that this wouldn't be necessary, but we could feel free to do so if we wished. Assuming that the reviews are favorable, then it's a matter of how we act on that. In the past we have awarded bonuses based on performance. If the Council wishes to continue doing so, we will do that this evening. Anita Cereceda added that we budget an amount of money each year to allocate to all the staff and the Town Manager for merit bonuses. After speaking with the City Manager, the Mayor and the attorney of Sanibel she learned how they went about doing evaluations. Each council member there actually has a private conference with the City Manager. Then at a public meeting council members will make general comments or detailed comments if they choose. These comments will either precipitate a bonus being delivered or a bonus being denied. Garr Reynolds said he recalls that last year the procedure used was that each council member had a conference with the Town Manager.

MOTION: Made by Garr Reynolds and seconded by Dan Hughes to delay approval of the evaluation of the Town Manager until the next Council meeting. Did not pass. One yes vote from Garr Reynolds.

Ray Murphy asked if it was the Council's wish to reward our Town Manager with some sort of merit bonus this year, and if so, how much. Do we feel that the Town Manager should be awarded the same percentage as she awarded to the employees?

Anita Cereceda offered the following comments. She noted that she and Marsha Segal-George come at things from different points of view, and this has been a tremendous learning experience for herself and a very good working relationship that she thinks has benefited the Town. To her, the most valuable asset that Marsha brings to the Town Council and to the Town of Fort Myers Beach and probably to any job that she would engage in is a true sense of an entrepreneurial spirit, taking something that is very basic in nature but putting enough of a spin on it that it can work in any given situation. And, without that, Anita doesn't believe that this town would be in the position that it is in today. Had the Town in its best estimation gone forward in a very average sort of way as opposed to the way that we have gone, we wouldn't be where we are today. The revenues that we have far exceed any expectations by both the incorporation and non incorporation groups, and that has been primarily due to the expertise of Marsha Segal-George. Anita said that she also believes the greatest compliment we can pay Marsha is her selection of the staff we have, going from John to Janeen and Peggy and Ron and now Debbie. They are all a reflection of a skill that she possesses that we were very wise to recognize three

years ago. Anita also lauded Marsha's capabilities and her innate capabilities when it comes to dealing with government and with business.

Garr Reynolds stated that generally speaking he does not believe in bonuses. He believes that we are more than adequately compensating our Town Manager and the staff and that a bonus would not be in order.

Ray Murphy noted that we've had this discussion before, and that the alternative to merit bonuses are increases in pay, which has always been frowned upon.

John Mulholland commented that he felt a bonus was in order. Marsha serves as attorney on the LPA which meets once a week, and it has been documented how much money has been saved there. She has gotten grants for the Town. She puts in hours with our Marine Resources group. She got a grant to fund the Harbor Plan, which was presented to the Council at the workshop last Thursday night. She has put in many many hours in the Avatar, the Florida Cities Water System that we're currently involved in. She deserves a bonus in view of her enthusiasm, energy and the successful work that she's put forth in this Town. It would be remiss if we did not reward her.

Regarding raises, Garr Reynolds noted that the Town Manager and the staff did receive raises on October 1. Besides that, they have had a raise every year in the way of bonuses.

Ray Murphy noted that the consensus here seems to award a merit bonus to the Town Manager. He asked for a percentage and 5% was decided on.

Town Manager Marsha Segal-George explained what bonuses were awarded last year.

Anita Cereceda advised that she would make a motion to award a 5% merit bonus based on the amount that has been budgeted for this year to our Town Manager. In that motion she would also stipulate that she thinks that the Town Council should come up with a formulation so that when we go through our budget hearings there should be a certain amount of money that is established in our budget for awards of merit bonuses to our staff. Then, when we come to this point next year, we won't have this anxiety-ridden discussion about what to give or not to give our Town Manager. More importantly, that whatever the controversial issue that's on the agenda that particular night, the Town Council does not sit in front of the community and have to discuss the employment of our most valuable employee with members of the community ridiculing our decisions and our discussions, which is inappropriate and rude.

Discussion:

Anita Cereceda would like to see something in place so that the people in the community and the people that we hire know what's going to transpire.

Dan Hughes stated that it was his understanding that bonuses would be given on the staff's anniverseries of employment. He would like to see all bonuses awarded at a specific time. If a person has not yet worked for one year, he'd like to see that person's bonus prorated his first year.

Garr Reynolds felt that we do not need to predetermine whether or not to give a bonus. If a bonus is going to be given at all, it should be based on the merits of performance. He would like to see the giving of bonuses stay on the basis that they are right now so that we can discuss each bonus.

Ray Murphy said that he agreed with Councilman Reynolds that a bonus should not be predetermined. But the fact is that maybe the time should be predetermined, although not the amounts or the merits. Councilman Reynolds agreed.

MOTION: Made by Anita Cereceda and seconded by Dan Hughes to award the Town Manager as budgeted in our 1999 budget 5% of her base salary currently in effect. Passed with 4 yes votes and one nay vote from Garr Reynolds.

B R E A K

H. Assignment of Contract for the Mound House

Attorney Roosa advised that what we have here is a procedural matter. As it stands now, we have the contract, the right to buy the property. What this does is assign it back to us and to the Florida Communities Trust, who are the ones with the money. There are some additional standard provisions in this contract that are required by the Florida Communities Trust that are frequently in real estate contracts.

Dan Hughes asked for a brief explanation of the new provisions. Attorney Roosa stated that normally in an assignment of contract we wouldn't have all these provisions. Normally an assignment is just a transfer of rights of the existing contract. But this makes it meet the requirements of the Florida Communities Trust. All of our expenses for the purchase of this property are reimbursed by Florida Communities Trust.

Dan Hughes stated that there was some misunderstanding by the people who were speaking earlier that in doing this we were in effect adopting the plan. That's not the case at all and it should be clarified to the public.

According to Attorney Roosa, back in June 1998 the Town agreed to purchase the property, and we also at that time entered into a lease agreement with the Trust for Public Lands, which is a different organization. They initially signed the contract and then assigned it over to us. Now we're assigning it in order to qualify for the funding for the purchase price.

Councilman Garr Reynolds stated that at first he had been strongly against this purchase when we had been talking about buying with Town money. But when we were able to come up with the possibility of getting an actual grant, he felt it would be a real good thing to do. He'd much rather see a museum- type operation there rather than 18 condominium units. Also, that's a very good gift to the Town for that kind of money. However, until the misrepresentation in the community is cleared up (and he wonders why the promised meeting with the community hasn't come about), he'd like to know how urgent is it for us to sign that contract.

Attorney Roosa advised that it is his understanding that if we don't sign the contract now, the closing can't take place until the fall. The hearing has been scheduled for the summary judgment, which will give us clear title. And so this is a critical decision that has to be made now in order to keep the closing on track this spring. Mr. Reynolds stated that he sees nothing in the contract to that effect. Dick Roosa advised that this has to do with the management of the contract. This is what the people in Tallahassee need in order to get it before their board and get the project approved so that we'll be able to close on it. It's very important that it be done tonight. Garr Reynolds said he would have a very difficult time going for this tonight, because he believes we told the community the last time that we would meet with them and he thinks they should be met with. This is a totally residential community and they have a right for concern. We should not sign anything until those people are heard from.

Dick Roosa told Mr. Reynolds that he agreed with him that we ought to have a meeting, but that shouldn't hold up the purchase of the property. Those are two unrelated things. One has to do with the use of the property and the other has to do with the ownership interest. Mr. Reynolds felt, however, that we've had time to meet with the community and we haven't and he has a problem with signing the contract tonight.

John Mulholland stated that while he agrees with Garr Reynolds, he would say that these people certainly have a right to make their feelings heard and no one is trying to deny that. The concern seems to be with the management plan. He doesn't like everything that's in it and he further found out that it is a draft, not a final version. He could not vote for the plan that we have right now. It is his understanding that the agency in Tallahassee needs a management plan. We gave them one, but he doesn't think it's the final plan. If it is the final plan, he can't go for it although we have an awful lot to lose on this house because it's a terrific benefit for the Town. And he doesn't feel that we should invade that neighborhood with commercialism. But as Dick Roosa has pointed out, we need to get something done tonight to enable us to take title of that property.

Dan Hughes felt that Vice Mayor Mulholland had expressed his views too. And he shares with Councilman Reynolds the concern about the scope and the utilization of that property and what it's ultimately going to be, but that's not the issue here tonight. As he understands it, this is purely a procedural thing to accomplish the acquisition which this Town Council, including Garr Reynolds, voted unanimously to acquire. It has nothing to do with the ultimate uses to which that

property is going to be put. Dick Roosa told him he was correct.

Town Manager Segal-George stated that we'll have to tell her if we want a workshop. CELCAB has been trying to set up a workshop. Do we want them to do the workshop or do we want to do the workshop? Dan Hughes suggested that we do it together and have the public and the Council there. And that will deal with the management plan.

Garr Reynold reiterated his request for a delay until the residents have a chance to speak.

Reasons given for not delaying the signing were that it could delay the acquisition of the property and that it also changes the fiscal year and creates problems for potential funding. If we don't do this tonight there is no sense in having a meeting with the public, because we don't know if and when we'll ever even acquire the property.

Council member Cereceda stated that the main issue is a question of trust. There is no trust on the part of that neighborhood that the Town Council will make the appropriate decision as to how the property is utilized. But she has no intention of backing off from her decision to purchase the Mound House. Until everything is carved in stone, there is going to be drama and that drama is going to be negative. She doesn't know how to overcome the fears for a worst case scenario.

Dan Hughes advised that the management plan in and of itself cannot change a use of property anyway. The property is zoned single-family residential and would require a public hearing on the zoning to change it.

Anita Cereceda suggested that she attempt to meet with the neighborhood and make a report back to the Council on what she has found before any workshop is scheduled. Mayor Murphy stated that that sounds great. The more communication the better.

Mayor Murphy said that he was very sensitive to the concerns of the people on Connecticut, Shell Mound, Donora and all the other streets down there. The rallying cry of the Town has always been commercial intrusion into residential neighborhoods. If it's going to be more of a museum-type or archaeological enterprise, he doesn't know how great that intrusion will be, but certainly there will be some. But he also remembers that when we had the initial hearings and the pursuit of the grant money, people in the neighborhood came out in favor of this because they would rather see the property put in the hands of the community instead of developing it as a condo project. And he thinks that minutes of meetings and tapes of meetings would back that up. And so he believes that the management plan, if that's what we're voting on this evening, would go down in a big way. He also appreciates the fact that in order to get this closing going, that that is a required document for the closing. They insist on having some sort of management plan, and that has been put together and provided. Now, are we tied to the management plan? No. There will be several public hearings and meetings to discuss the ultimate use of the property, which would end up being the management plan itself. As Councilman Hughes stated earlier, we are a long way from the actual use of what this property is going to be. And as far as the commercial aspects of the property, that would certainly require a rezoning of the property, which would in fact require public hearings and those concerns would be heard again. It was never his intention to make the property into some full-blown commercial enterprise.

MOTION: Made by Garr Reynolds that the purchase of the Mound House be delayed until the community is heard.
Motion fails for lack of a second.

For the record, Anita Cereceda wished to make sure that no one feels that the motion made by Garr Reynolds implies that the community will not be heard.

MOTION: Made by Dan Hughes and seconded by John Mulholland that we authorize and direct the Mayor and Clerk of the Town of Fort Myers Beach to execute the assignment of contract presented to us tonight by our Town Council, which the Mayor has stated is a condition precedent to the acquisition of this property. Passed with four yes votes and one nay vote from Garr Reynolds.

VIII. COUNCIL MEMBERS ITEMS AND REPORTS

Vice Mayor Mulholland stated that he would just like to thank the Pilot Club for their work last Saturday on the coastal cleanup. They had some 50 people out, a lot of debris was collected and our beaches are better for it.

Dan Hughes stated that there have been some very significant events that have occurred in the last few weeks regarding some zoning matters. The good news is that the State Division of Lands has authorized the purchase of the nine acres on Mound Key. The Trust for Public Lands is funding 1.5 million to acquire Chino Island and have it added to Ding Darling. Another good thing that happened is that the Sahdev property of 1286 acres has been approved for negotiation by the Preservation 2000 program. The bad news, which has been set forth in an article by Mr. Melsek just a few days ago, is that the County Commissioners are still wending their merry way and seeming to fly in the face of the efforts of the environmentalists in our area to acquire these properties and preserve them.

The three acquisitions of Mound Key, Chino and hopefully Sahdev are very very significant, particularly Sahdev. He encourages the citizens of our community to let their feelings be known about these issues to the County Commissioners.

Garr Reynolds referred to a letter from the Palmetto community thanking the Town Council for receiving them as neighbors of the community and assisting them with their street repairs. He has met on occasion several other members and they all have mentioned this. They are aware of what we did and are appreciative.

Anita Cereceda said she thinks it would be in the Town's best interest to schedule sometime before we go on our break a workshop to discuss Main Street. We should have a real working heart-to-heart not only with Jean Mathews and with Fran, the Chamber Foundation representative, but a heart-to-heart among council members too. What we expect that program to provide the community is whether or not we want to continue that program. There are people who are depending on it one way or another, and she doesn't think it would be fair for us to keep them in limbo. If there is or isn't a desire, we need to make it very clear what we want out of it. We should try to schedule something relatively soon.

Anita Cereceda also advised that she attended her first MPO meeting on Friday and it was very interesting. She has had two meetings with Mr. Ayler, and he is trying his best to get her up to speed and educate her on all the processes that go on with the MPO. She was elected Vice Chairman and will achieve the chairmanship next year. She noted that two of the five commissioners spoke to her but three did not.

Mayor Murphy said he would just echo Vice Mayor Mulholland's comments about the Pilot Club. It was a very successful Trash Bash again. More importantly, he would like to thank all the residents of the Town that came out on that particular day and scoured the beaches up and down. A John Nolan, who was a visitor from Wisconsin, helped out along with familiar faces. This shows that there are some very decent people out there.

Also noted by Mayor Murphy was that he and Councilman Hughes were at the Uncommon Friends Foundation movie premier, and it was a terrific evening. The next big event with the Uncommon Friends is the annual meeting coming up next month, which is also a celebration of Ellie Newton's 100-year birthday. He would like to gather some pertinent information and prepare a special resolution for Ellie Newton from the Town on her birthday.

IX. TOWN APPOINTMENTS

A. Alternate appointment to the Coastal Advisory Council

John Gucciardo referred us to a copy of a letter he had drafted to Hans Wilson, the chairman of the Coastal Advisory. It had seemed to make sense to have himself named as the alternate for the Town at the Coastal Advisory because there are times when our representative can't make it and votes do come up. But upon reflection, with the technicalities associated with the Sunshine Law, it is probably inappropriate for him to be in that position. He is often in a situation where he needs to deal with other members about issues that he's either lobbying for or

pulling research out of. He would not then be in a position to do this, since most of those votes go in front of the Coastal Advisory Council before it goes to the Board of County Commissioners on a recommendation basis. For that reason, John asks that we reexamine the need for an alternate and who that alternate should be. It is not a decision that we need to make tonight. Asked if it was his opinion that we need to have an alternate, John replied that he thought one was necessary. He noted that the Coastal Advisory has amended bylaws so that each member is in a position where they can have an alternate member named for those times when the representative can't be there. So they are, in fact, going down the path of naming two people for each position.

John Mulholland stated that in view of Council member Cereceda's busy schedule, he would volunteer to take her place on the Coastal Advisory.

MOTION: Made by Ray Murphy and seconded by Anita Cereceda to appoint Vice Mayor Mulholland to the Coastal Advisory Council. Passed unanimously.

Mayor Murphy asked if there were anyone here this evening who wished to be the alternate. Council member Anita Cereceda stated that she could be the alternate.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda for Anita Cereceda to be the alternate member to the Coastal Advisory Council. Passed unanimously.

Ray Murphy congratulated Council member Cereceda for becoming an alternate member to the Coastal Advisory and also for her appointment as Vice Chair of the MPO. And he stated that we were proud of the way she represents the Town off the island.

Anita Cereceda advised Garr Reynolds that he had been thanked publicly for his services at the Coastal Advisory Council.

X. TOWN MANAGER'S ITEMS

Town Manager Segal-George advised that Dick Roosa had appeared at a hearing today on Mississippi's and she thought he might like to share with us what happened.

XI. TOWN ATTORNEY'S ITEMS

Town Attorney Roosa noted that at that hearing there was a determination of five violations and he was allowed two days to come in compliance or have a \$100 a day fine imposed. Asked for a recital of the violations, Mr. Roosa stated that the failure to have a certificate of occupancy was the most serious. Then there were two different charges on awnings -- one was the barrel awnings and the other was the middle awning. There was a violation of the development permit, because the tables in the bar were in parking spaces. They had converted the deck area into a bar. The venue was a code enforcement hearing examiner, and he can appeal the violations to the circuit court.

Dick Roosa said he wanted to cover the settlement on the GUA issue. He went to the County Commission meeting after this Council had adopted the settlement, and they rejected it unanimously. They raised two concerns. The first concern was that there was no provision for the reimbursement of their acquisition costs. The second concern was that there was no provision for payment of any of their bonds. Attorney Roosa said he was in the process of preparing an alternate, which he will bring to us when he has it in better form. It will be a settlement offer that first addresses their acquisition costs. It's his recommendation that they assign the contract back to the GUA and that the GUA assign the contract directly to the Town of Fort Myers Beach. In that way there will be just one closing. There will be no need to reimburse the acquisition costs as there won't be any.

With regard to the bond issue, Attorney Roosa said that it has always been his position that the \$3,300,000 acquisition cost of the utility system was artificially too low and that a more appropriate price for that acquisition of the system would be \$7,000,000. That number happens

to be the value that the property appraiser's office puts upon our system. Mr. Roosa went on to explain why the acquisition price had been set so low. He also advised that we would become a member of the GUA and have the same status as other local governments with regards to the acquisition. It would be in effect borrowing money at County rates by converting it to an annual payment or however they wanted it for a fixed 30-year payment, the same as if we had bought it for \$7,000,000 and had our own bond issue.

Attorney Roosa explained that the \$3,300,000 has nothing to do with anything and he told how it is generated. The \$7,000,000 more accurately reflects the value of the system. Traditionally the appraised value of property is below the market value.

Garr Reynolds noted that the charter has a provision for no longer than three years financing and he asked how we would get around that. Attorney Roosa stated that that would not be a problem and he explained that the Town would create a not-for-profit corporation that would operate the facility and the Town Council would be its director. There would be no Town revenues pledged. The only revenues pledged would be the utility system's.

Communication between the Town and the County is still going on.

Attorney Roosa also spoke of communications with Attorneys Burton and McLennon.

Asked if we would have to make a rate increase to the residents of the Town, Attorney Roosa said absolutely not. The rates would stay the same.

XII. PUBLIC COMMENT

A. OLLIE CURRAN

Mrs. Curran advised that she has been living on Connecticut Street for 24 years. She felt that the only person who heard what the majority of people wanted was Garr Reynolds. She told Anita Cereceda that if she wanted to be the liaison, she should have done that two or three weeks ago. The newspapers quoted Town Manager Segal-George as stating that she had never heard any complaints from residents, although she had met with her three times at her office and they had all met with her at the Mound House. She asks that we listen to the Fort Myers Beach people, hear what they have to say. Rezoning will hurt Connecticut Street and the whole of Fort Myers Beach. The people who want to rezone should rezone their own streets then leave the other streets alone.

B. BOB GAYDOS

Mr. Gaydos said he wished to thank the people of the Town, the Council, the staff, and especially those who decorated and made this hall so hospitable for the appreciation dinner. He thanked the caterers for the tasty food and thanked those who cleaned up after the event. It was a pleasant evening filled with caring and concerned neighbors. He offered Janeen his thanks during this secretaries week.

C. PAUL ABRAHAM

Mr. Abraham noted that signing the contract for the Mound House meant that the Beach will be buying the Mound House. A concern is that the statement has been made more than once that the minute we own the Mound House, there will be a change in the zoning and it will definitely be commercial. He was reminded that no such statement was made tonight. He would like to have a copy of tonight's meeting in writing. He's not sure whether he'll send the whole thing to Florida Communities Trust or not.

Mr. Abraham stated that he thinks we have another hot ball in our hands. We have the pool, which he has supported for the last 20 years. Now we have the Mound House which had his interest when it was planned as a nice little museum for Indian artifacts. This hasn't been proved to him. Until he's shown, he's skeptical.

Anita Cereceda brought up the word "trust," but, Mr. Abraham stated, right now he has a bad feeling and he doesn't trust anybody. We plan to have an advisory committee after the fact and a foundation that's going to try to keep this thing alive. This is why they wanted a meeting with the public from Donora to Connecticut. This meeting should have already been held.

D. VLADO SUFFLIAK

Mr. Suffliak thanked Councilman Reynolds for standing up for their community. He is really shocked that we're going to send a document that is practically a contract but in the meantime are telling people not to believe that, that it isn't true. How are they supposed to trust us when we are presenting to the Commission something that we don't believe in.?

E. NORBERT DE MARS

Mr. DeMars said he'd like to clarify something he had said earlier, which was that it would be a mistake to approve this, and to approve it without a public hearing would be a fatal mistake. He was speaking in political terms.

Secondly, most of the folks in the neighborhood have been for some kind of museum or preserving of the property. He has been against it since Day One and will always be against it. Someone recently threatened them with an 18-story condominium. That would be better than the city owning it. Tonight when we approved to go forward with this, we locked the city into funding that we haven't considered yet. If we think the pool is expensive, we should wait to see what the Mound House is going to cost. And he will say as others have said that there is no way that we can do anything with the Mound House without changing the zoning. And they all know well that we are going to change that zoning in spite of them. It's unfortunate that we've taken that step tonight. He proceeded to ask the Town Attorney if the hearing, which they understand will be on April 30 in Tallahassee, is a public hearing where they as citizens can comment on the procurement of this property. Town Attorney Roosa told him that he didn't know.

Ray Murphy told Mr. DeMars that he thought his statement that he knew what we were going to do in the future was very unfair. Mr. DeMars said that his statement wasn't meant to be malicious, and if it was taken that way, he apologizes. But it is his understanding that to use a residential property for anything other than residential use violates the residential zoning. If he's mistaken, he said, he'd be the first to admit it. Attorney Roosa advised that he will find that the acquisition of the Mound House was strongly supported by a majority of the citizens of this community, and that the entire town has a right to speak to these issues and we will hear them.

F. FRAN MYERS

Mrs. Myers said she wished to assure everyone that they are working very hard on their foundation for the pool. They are about to embark on probably the largest fund-raising programs other than the ones that they had at the Chamber many years ago that this town has ever seen. They have hired a PR person. They have 7,000 brochures sitting upstairs right now. They are very concerned about raising this money for all of us. They want it to be ongoing. It has been said that they were supposed to raise \$300,000 in the first year. They have been taking pledges for over three years. A lot of the business people, including herself, will pay the first year, the second year and then the third year. We may not have the \$300,000 the very first year, therefore, but we don't need it the very first year. She hopes that no damage has been done tonight to their fundraising campaign. They are working very hard to raise this money and she thinks they are going to. Just at the last meeting of the Kiwanis they pledged \$5,000 for three years with more to come.

Mrs. Myers stated that she had been elected Chairman at the very first meeting of the Mound House, although she wasn't there. She feels that the Mound House Committee is one of the more sensitive committees ever appointed by this town. CELCAB is certainly in communication with the neighbors and they are working very hard to make sure that it doesn't turn into a circus. She thinks that it is a great idea for the Council and CELCAB to have a workshop together. They have been trying to get one going so that they could meet with all the neighbors, but they do have an ongoing relationship there.

G. TOM MYERS

Mr. Myers advised that he is chairman of the Traffic Committee. The number one concern on the survey for the Town was traffic, and he wants everybody to know that the week after Easter, just like it is every year, the problem is resolved.

XIII. ADJOURNMENT

The meeting was adjourned at 11:01 P.M.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of April 19, 1999

1. One of the things John Gucciardo had indicated to us in the memo we got a few months back regarding the hurricane season was that we would be reviewing our ordinances, resolutions and documentation to get us prepared to deal with different eventualities, including the one that Sanibel uses in order to be in a position to act quickly and decisively when they need to. Our document is a draft of language that comes primarily from Sanibel and deals with the ability of the Town Manager in the absence of the Council to take certain actions once a state of emergency is in place. Under Item B on page 1, it talks about the emergency hurricane access passes. We'll be modifying that slightly to deal with the situation that we have with the Chamber of Commerce where they have put a pass process into place, and we'll be trying to reflect that in the ordinance also.
2. Town Manager Segal-George asked if we wanted in part D of the Animal Control Ordinance, where we talk about an animal roaming at large, to substitute "dog" for "animal," because right now we'd have to have cats on leashes. Dan Hughes said he thought "dog" would be better, and everyone concurred that "animal" should be changed to "dog."
3. Dan Hughes felt that we should move ahead with the draft of the state of emergency ordinance and direct the Town Attorney to put this in ordinance form. Mrs. Segal-George asked Dick Roosa if we could do this by May 3, and he said yes.
4. John Gucciardo said he assumes we'll be running the ad to get some proposals on the pool, and in the meantime he'll try to put together a summary of what our expectations are on the operational and programming end of it.
5. Marsha Segal-George stated that if we don't want to do a workshop and take another day, we can take one of our meetings in May and set aside thirty minutes and ask the Pool Foundation members to come and address the issue. The members approved of this idea.
6. CELCAB has been trying to set up a workshop. Dan Hughes suggested that we do it together and have the public and the Council there. And that will deal with the management plan.
7. Anita Cereceda said she thinks it would be in the Town's best interest to schedule sometime before we go on our break a workshop to discuss Main Street.
8. Mr. Paul Abraham would like to have a copy of tonight's meeting in writing.