

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 3, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

Mayor Ray Murphy opened the meeting on Monday, May 3, 1999, at 6:34 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. Also present were Commander Bob Cowans of the San Carlos Bay Power Squadron; Bob Beasley of the Fort Myers Beach Offshore Grand Prix Races; Attorney Tom Hart; Walter McCarthy, Director of Development Services, Lee County; Bob Spikowski.

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 Richard Palmer of St. Raphael's Episcopal Church.

IV. PROCLAMATION: NATIONAL SAFE BOATING WEEK

Vice Mayor John Mulholland asked Commander Bob Cowans and the members of the San Carlos Bay Power Squadron to join him as he read the Proclamation, which declared May 22-28, 1999, as National Safe Boating Week in the Town of Fort Myers Beach as the start of the year-round effort to promote safe boating. Their theme this year is wear your life jacket; boat smart from the start. The Proclamation has been signed by Vice Mayor Mulholland. Commander Bob Cowans spoke on behalf of the San Carlos Bay Power Squadron and a picture was taken of the whole group, including Councilman Garr Reynolds, who is also a member of the Squadron.

V. PROCLAMATION: NATIONAL EMS WEEK

Mayor Murphy read the proclamation to those assembled and declared that he does hereby proclaim May 16-22, 1999, as Emergency Medical Services Week in the Town of Fort Myers Beach and urges all of our citizens to recognize the individuals who have made a difference in our community.

Council member Anita Cereceda disclosed that she has had three experiences where the EMS responded. She hopes that if anything ever happens to her that it will be them who respond, as she has never seen such a level of compassion and professionalism.

VI. PUBLIC COMMENTS ON AGENDA ITEMS

A. FLIP HARBY

Mr. Harby, Chairman of the Public Safety Task Force, advised that the PSTF wished to convey to the Council and Town staff their thanks for the Appreciation Dinner held on April 8. He noted that volunteerism is a great thing and they all enjoy doing what they do, which is a reward in itself, but they found it very satisfying to have the Town government show their appreciation in the venue of a dinner.

VII. PRESENTATION BY BOB BEASLEY ON THE OFFSHORE GRAND PRIX RACES

Mr. Beasley said he wanted to bring the council members up to date on what will be their fifth year running the Fort Myers Beach Offshore Grand Prix. They are a 501C3 nonprofit Florida organization and all of their net proceeds go to the Shriners Children's Hospitals. To date they have given approximately \$69,000, which, all things considered and the tremendous expense of

putting the event on, the Shriners have been very happy with.

Council members each have a driver's packet, ours to keep. It basically contains all the information, dates and times where things are happening. On Thursday, the bridge will close at approximately 6:30 p.m. The parade will start at 7:00 p.m. and end at about 8:00 p.m. It is Bob Beasley's understanding that Jean Foster Mathews with Main Street is planning a little entertainment in the Times Square area, and they have agreed to park two boats up there. The rest of the boats will immediately go over the bridge to Fort Myers to get them off the island.

Friday night they will have a block party in downtown Fort Myers and racing on Saturday and Sunday. The races will begin at 1:00 p.m. on both Saturday and Sunday and they will last approximately two and a half hours.

All of the government permits are in place. The insurance is paid, although we probably won't get all of our certificates until the middle of next week or the first of next week. But Missy Ross with American Specialty Insurance has been asked to fax a copy of the one for the Town by Friday or Monday showing that the Town is an additional insured, and Mr. Beasley will bring it in along with their permit fee.

Mr. Beasley advised that things are looking very promising and that they are expecting a lot of boats. He described the types of boats that will participate in the race.

They would like for everyone to participate in their parade and ride in a race boat. They will find a boat for each one of us. They would also like to have our blessing on this event.

Mr. Beasley said he would ask the Council tonight if there was a possibility that we would help them out with some of the law enforcement costs and the ambulances that they need to provide. Two weeks ago they found out that TNN was going to broadcast this race to 81,000,000 viewers throughout the U. S. for the first time. However, TNN informed them that they needed approximately three more helicopters. Reggie Fountain has been kind enough to donate one of his choppers and Drambuie on Ice is also donating one. They are trying to come up with the funds for a third. They would like to have some of the funds that may be available for special events, if any. They need \$5,000, but would be grateful for anything that the Town could possibly help them with.

Vice Mayor Mulholland told Mr. Beasley that he would ask his colleagues on the Council to see if we can't come up with some way to help him with these expenses, at least in part, as he feels he is doing a good work.

Council member Cereceda congratulated Mr. Beasley and his organization for running the races with a level of integrity and for having done a tremendous job.

Deputy Town Manager John Gucciardo advised he felt that there were sufficient funds available under Special Events and also under Times Square Security to meet the needs of the Grand Prix Races.

Councilman Garr Reynolds said that he felt we would receive a \$5,000 value many times over and so he hopes we would give Mr. Beasley the assistance needed.

Mr. Beasley also drew our attention to the top front page of our packets where it is indicated that they were voted the number one event in Lee County by the readers of Gulf Coast Life magazine. They outdid the Edison Festival Pageant and all the other events in the County.

Anita Cereceda asked if the broadcast of TNN would be live. Mr. Beasley stated that the race would be aired by two different companies with TNN being the largest. TNN is taking a motor sport that doesn't have a lot of recognition and will try to move it into the NASCAR class. The first airing on TNN will be in October. They will be doing 26 weeks of boat racing starting with their's being the national kickoff. Speed Vision will also be doing this. It airs approximately 10-14 times every year. There will also be writers here from Race Boat International, Hot Boat magazine, Power Boat magazine, Vapor Trails, and other boating magazines.

Mayor Murphy also congratulated Bob Beasley for his work in the past and wished him the best this year.

Dan Hughes reminded everyone that this was the only evening we could vote on the allocation of funds.

Garr Reynolds stated that the only problem he had is the impromptu voting of funds out before people have a chance to respond. But he would overlook it since our next meeting isn't until after the event. A motion was made to give \$5,000 to Bob Beasley or his committee.

Discussion:

Town Attorney Richard Roosa suggested an amendment to the motion that the Town would pay directly to the sheriff and fire department up to \$5,000 for their services.

MOTION: Made by John Mulholland and seconded by Anita Cereceda that the Town would pay directly to the sheriff and fire department up to \$5,000 for their services during the Grand Prix boat races. Passed unanimously.

Bob Beasley thanked the Town on behalf of his committee and the Shriners.

VIII. CONSENT AGENDA:

Garr Reynolds asked to pull the approval of Minutes of April 6, 1999.

A. Approval of Minutes: April 6, 1999

Corrections and Changes to Minutes:

1. Under VI. C., Discussion of Palmetto Street paving, Garr Reynolds would like the statement starting "The County paved the entire street and put in sewers" corrected to read "The County paved the street over half way and put in sewers to Lazy Way."
2. Dan Hughes would like to make a correction in the paragraph before the motion on the same page. There is a sentence that starts "There is some public benefit to this ..." Where it reads "to enhance the properties of a specific property" change to read "to enhance the values of a specific property."
3. With respect to Palmetto Street paving, after the motion made by Ray Murphy and seconded by Dan Hughes the ayes and nays have been reversed. Indicate that there were 2 aye votes. Also indicate that when Dan Hughes seconded the motion, he did so for purposes of discussion.
4. Under VII., Council Members Items and Reports, Dan Hughes advised that he was talking about the sidewalks down in the south end and he would like to add that there was ISTE A money that was appropriated to finish that project this year.
5. Anita Cereceda pointed out that also under VII., the name Judge Rosen should be corrected to read Judge J. Rosman.
6. Dan Hughes advised that on the last page where it is indicated that he questioned the anti-littering ordinance, this should read that he questioned the status of the anti-littering ordinance.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds that we approve the minutes of April 6, 1999, with the changes and corrections noted. Passed unanimously.

John Mulholland stated that he would like to see all changes to Council minutes be put in writing by the council persons proposing such changes and that these changes just be attached to the minutes to save time.

Discussion:

Dan Hughes felt that to put minor changes in writing would be unduly burdensome. We have to keep in mind that these minutes are not verbatim and they are only the interpretation of the person who is typing them. No two people would do them the same way, and he feels we are entitled to make these changes. John Mulholland pointed out that these are not the official records. The tapes are the official records. Dan Hughes said that was true, but the public doesn't listen to the tapes. A lot of people get these minutes on e-mail and they look at the copies that are available. They should make sense and they should be correct. He thinks that it's worth the 5-10 and even 15 minutes that we spend.

Garr Reynolds told Dan Hughes that he agreed with him wholeheartedly. The person who

did the minutes this time did just what he was talking about. They made the corrections from the tapes for the next minutes, which he feels is the appropriate way to do it. He really has no strong objections to doing it, he just thinks it's kind of redundant because we'll be saying the same thing here in Council anyway. And the fact that we have them written down, we'll just simply read them. He certainly wouldn't hand them in. He felt that it would be simpler and more to the point to just say what we feel the corrections should be. As far as the 5-10 minutes, if we can get through this in 5-10 minutes, he thinks that's about as speedy as anything we will probably do the entire night. And as Councilman Hughes has brought out, most people read this from the Web site and that's where they're going to see the corrections. Dan Hughes stated that he, too, meant to say Web site and not e-mail.

Ray Murphy stated that his only comment would be that that's fine if we're going to correct obvious mistakes, but he doesn't think we should be using the time to edit the minutes -- what we meant to say or what we're trying to say -- that sort of thing.

Anita Cereceda said that was basically her reason for seconding the motion. She thought that Vice Mayor Mulholland's idea was a good one. It seems to her that more than correcting mistakes is inserting intentions, and she doesn't believe that that is what this time is for.

Garr Reynolds advised that last time he did have a number of corrections. He had them written down so it would be no problem at all for him to give a copy, but he doesn't really think this is the way we should go. He felt, however, that whoever typed up the corrections evidently took them from the notes and that they did an exceptionally good job.

MOTION: Made by John Mulholland and seconded by Anita Cereceda that all changes to Council minutes be put in writing by the council persons proposing such changes and that these changes just be attached to the minutes to save time. Passed with two nay votes.

IX. Administrative Agenda

A. Public Hearing: Amending the Animal Control Ordinance

Mayor Murphy read aloud the amendment to Chapter 21, Section 3.

No comments were forthcoming from the public.

Council member Cereceda said she had a comment on the whole dog-on-the-beach thing. This may be fine and well and what the Town actually wants, but what bothers her is when somebody calls her up and says there is someone on the beach with a dog, what can I do about it? How are we going to enforce it? She thinks what we really need to be discussing is if we're going to increase the current level of control within the Town limits in order to be able to properly enforce something like this. If we are, great. If we aren't, this is giving someone a false impression.

Garr Reynolds stated that he sees a lot of dogs going on and off the beach. He feels real proud of the dog owners because he has not seen one dog running by itself. People have seen this in the paper. It shows that they do want to cooperate and they are keeping their dogs on a leash. He has not, however, seen anyone carrying a pooper scooper or a bag.

Vice Mayor Mulholland stated that the Public Safety Task Force summary sheet which was done by John Gucciardo points out that there were a remarkable number of write-in suggestions expressing concern about dogs on the beach. He feels that we should listen to our Citizens Advisory Board and the Public Safety Task Force and take their advice in this case.

Addressing Town Attorney Roosa, Mayor Murphy asked if all this does is address the roaming-at-large issue of the ordinance that was already in place. Dick Roosa stated that there was an additional paragraph that has to do with nuisance animals. Any person owning, harboring or in charge of any dog who allows such dog to defecate on a public beach right-of-way or other public property, or on any private property without the permission of the owner of the property, shall immediately remove or cause to remove such feces deposited by such animal and immediately dispose of the same in a sanitary manner. During the time that the dog is on the leash, the person shall carry the necessary equipment to remove such feces in a safe and sanitary manner.

Dan Hughes referred to the last sentence quoted by Attorney Roosa: "During the time that the dog is on the leash the person shall carry the necessary equipment to remove such feces,"

and he asked if this didn't create an ironic situation that if your dog is not on a leash, you don't have to have a pooper scooper. Dick Roosa stated that what's intended here is if you have a dog on a leash, that you would be prepared to address that concern. Roaming-at-large requires that if you're going to walk your dog on the beach, that the dog is to be on a leash.

Mayor Murphy asked for a motion.

Dan Hughes said he was going to vote in favor of adopting the ordinance, but he has very mixed feelings about it. He thinks that we're depriving people who are responsible of the opportunity of playing with their dogs in the water, as he did with his before he died. He thought that Mr. Winters had some good suggestions regarding the requirement that the dog had to be near a person. But he's gotten a lot of comment about this and thinks that the public predominantly wants a leash and pooper scooper ordinance.

Council member Anita Cereceda said that she agreed with Councilman Hughes. She thinks that the public does want an ordinance, but more than an ordinance they want something to be done about it. She thinks they would prefer no ordinance and something being done than an ordinance and nothing being done. She understands that it was a very high priority on the Public Safety Task Force survey, but would dare say that what is more of an issue here is what the Town is going to do about the situation. And enacting an ordinance isn't actually doing anything more than creating an ordinance. What will happen tomorrow when a dog decides to do its business in the right-of-way? Are we going to call the Sheriff's Department and say go arrest the cocker spaniel and whoever the owner is? And that in essence is what we should do if we enact this ordinance.

John Gucciardo was asked if just one animal control officer was assigned to the Beach. John stated that there is one whose area includes the Beach, but not exclusively the Beach. And Animal Control has been fairly responsive since the County has taken over. We have already communicated to them that we're going down this path and they didn't seem to have a problem with it.

Mayor Murphy asked if Animal Control would in fact be part of the enforcement. According to John, as a practical matter calling somebody to check out a matter is usually after the fact and probably not the most practical way to go about enforcement. There are other options that we might be able to develop over time.

Mayor Murphy stated that he seemed to recall Gene Fichter in here one evening discussing how he wanted to be the beach patrol guy for this very problem. He advised Mr. Gucciardo that he might want to give him a call and see if he's still interested. Garr Reynolds advised that Mr. Fichter had passed.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds to pass the animal control ordinance. Motion passes with 4 aye votes and one nay vote from Anita Cereceda.

B. Public Hearing: Request to vacate Fourth Street (Lighthouse)

Attorney Tom Hart advised that he was here on behalf of the Lighthouse Island Resort and the Kolar family. He stated that Fourth Street is a public street that splits the property of the Lighthouse Island Resort. In recent years, the Messrs. Kolar and the Lighthouse Island Resort have acquired all the property on both sides of Fourth Street. They have done a nice job of improving their facility. They came to him last year because of their concern about a public street right in the middle of their resort. They have to use that street for parking at each of their cottages, as well as to get access to the rear of their resort, but they would like to preclude the public from using the street. Mr. Hart passed around photographs of the roadway.

They began this process with the County, have sent letters to the neighbors, and they have asked for letters of no objection from all of the utilities, the Lee County DOT and the state DOT. They have received letters of no objection from each of those parties. They have been required to give easements to Lee County Utilities for a sewer line under that roadway, and these easements would go into effect if this vacation is granted. They have prepared an easement for

the Florida Power and Light aerial lines, as well as the Media One aerial lines that are above the street.

They would like to make this driveway look like a private driveway. The Kolar family has put their own money into fixing up that area and he believes them to be a benefit to the Beach. Our comprehensive plan has discussed the possibility of some additional buildings being constructed in that area. Mr. Kolar has entertained the idea that he would remodel the entire resort and build some kind of resort over parking with no additional units if our comprehensive plan permits it and if we would permit the development order that he would possibly bring to us at some time in the future. Their original intention was that this would just be a private roadway, and it still may be the only request. But they have thought about modernizing their resort since our plan has changed.

Attorney Hart said he had just learned tonight of a memo to the Council saying that this would be a good street for parking. The problem with that, even though it's public, is that there is no good way to turn cars around if this were used as a parking area. This street dead-ends into the abutment of the bridge. There is never going to be an access there. It does not go to the water. In addition, the various parcels owned by the Kolar family will be accessed, and so it doesn't make a very good parking arrangement.

They would very much appreciate our entertaining this concept, and Attorney Hart said he'd be happy to answer any questions.

Comments and Questions from Council:

Councilman Reynolds said he thought there was a letter indicating that one of the County departments, perhaps the County Utilities, did not particularly approve. But whether they approved or not is almost immaterial because that's a Town of Fort Myers Beach responsibility. And Mr. Reynolds stated that he didn't think we needed a whole lot of guidance from the County regarding what we do within our Town. He said that he had read with tongue in cheek all the papers they had gotten from all the different departments. Mayor Murphy told Garr Reynolds that actually there were two reservations voiced, one from Media One and one from FP&L. Everything else was in the affirmative.

Dan Hughes stated he wasn't clear in his mind who was getting easements. He asked which utilities were in the property in question. Tom Hart advised that Lee County Utilities has a sewer line in that area and they would get an easement. The easement has been drafted and provided to the County. Florida Cities Water has a portable water line in that driveway and that easement has also been drafted and provided to the County and now to us. Media One has aerial facilities, which he supposes is a cable, above the ground and the easement that they have requested has been provided. Florida Power & Light has aerial facilities and that easement has been provided as well. Attorney Hart said that to his knowledge, all of those parties are satisfied with those easements, and to his knowledge those are all the easements.

Dan Hughes asked wouldn't the presence of all those easements effectively preclude putting a building on the ground? And wouldn't it increase the intensity of the use of the property by reason of the fact that they would not feasibly be able to build over the easements, at least the underground easements? Tom Hart stated that was correct as to all of the easements unless they were to release them, and they would not release them unless alternate facilities could be provided. And frankly, that was not their intention, but he did not want to come here and tell us that they hadn't more recently thought of the possibility of building on that easement and mislead us.

Applicant Input:

Tom Kolar from the Lighthouse Resort advised that they have had plans for quite a while to try to vacate 4th Street. It's not a very healthy environment for families in the area since a lot of cars come down there not knowing if it's parking space or not. As Tom Hart said earlier, they would like to do something in the future on. In the Times Square overlay it shows where they have placed several buildings near that road, and they would do underground parking with buildings above. They would not add more rental units, just try to remove some of the older buildings that you can only put so much money and time into. They're trying to bring back some new growth into their hotel.

Comments and Questions from Council:

Anita Cereceda expressed her feeling that Tom Kolar would do a good job with whatever he plans to do, because he has done a tremendous job with all the redevelopment. If anybody has spurred something down there, he certainly has. And he is the exact kind of person that we are looking for to take that leadership role in the redevelopment of Crescent Street and Old San Carlos. What really makes her nervous is eliminating any kind of option that the Town may need at some point in the future. The redevelopment of Crescent Street and Old San Carlos has not really begun, and his was done prior to the Town's initiative for anything else to occur. She would hate to give away any kind of resource that may be crucial or even a negotiating tool for the Town's initiative to get things moving.

Mr. Kolar advised that they are trying to progress into doing their new plans as soon as possible. Without having a good feeling that the street will be secure and safe for his people, it's sort of hard for him to go so far into overboard debt to provide the kind of lodging that he thinks the people of Times Square need. There really aren't that many places available in their area.

Vice Mayor Mulholland advised he hadn't heard anything regarding what the Town would get out of this. He gets very nervous when he talks about vacating streets. Four years ago the County did that, and look what happened. We incorporated. Mr. Kolar said he felt his case was a little different. They already own both sides of the road and have been there so long. They have existing cottages that look good from the outside and from the inside. Our market is changing dramatically and in the Times Square area we do not have the proper lodgings to take care of families. The Town could put parking meters out there and get a few extra spaces, but their doing underground parking is also going to help out with the parking issue. They're not thinking in terms of 10 or 15-story condos. Everything they have is three stories or two stories.

County Input:

Walter McCarthy, Director of Development Services for Lee County, confirmed that the qualified objections that were raised by the utility companies have been mitigated by the preparation of easements to cover their concerns. So there are no objections from the utility companies or from Lee County. Of course that does not preclude this board from using its judgment, and it's solely our prerogative to determine whether we choose to vacate or not.

Comments and Questions from Council:

Addressing Attorney Tom Hart, Dan Hughes stated that Florida Power & Light asks for an exclusive easement granted for the existing facilities. But Media One also has aerial rights there. How can they comply with that? Attorney Hart said that his understanding is that they wanted an easement for what they have. Their lines are above Media One's lines and are exclusive. Another line couldn't be put in there. But it's not exclusive as to the whole column all the way down to the road. If they wanted it to be exclusive, they don't have that now. They recognize that everybody else uses that same right-of-way for easements for their utilities.

Bill Spikowski stated that what the Kolar family has done in that area is really wonderful and it helped the beginning of a lot more improvements in that area. He agrees with Mr. Hart that Fourth Street is very cramped for parking and it doesn't have an adequate turn around at the end, one of several problems that it has for a parking lot. But the purpose of his memo was to caution us against agreeing to the vacation, because once we do that, that's forever. We have given away public property that we can't get back unless we purchase it back.

Mr. Spikowski said that one of the possibilities that he suggested, and he is sure there are others, is that if that little parking area were 60 feet wide instead of 50 it would be much more usable for everybody. That can only happen if the Lighthouse and the Town work together. One arrangement is that there be a joint agreement where the five feet on each side of Fourth Street be combined with the Town right-of-way and some designated portion of those spaces are marked Lighthouse Only in recognition of their contribution toward that parking solution. And other parking spaces could either be leased to the Lighthouse or could be metered, public parking, or whatever. It's also possible that a land swap could be arranged that would provide an

equivalent amount of public parking at a location that's less disadvantageous for the Lighthouse and actually better for the public that shouldn't go down that street without a good turnaround. Even with this restriction, it's a very successful and attractive 30-space parking space right now that's 80% or 90% on public land. When people go down it and don't see parking meters and signs, they turn around and leave rather than risk getting towed. They don't get any advantage from it and it's more traffic on the Lighthouse Resort area. It's not great for anybody the way it is now, but Mr. Spikowski feels that it would be worse if we were to just vacate it without exploring other possibilities for making this work for everybody.

Anita Cereceda noted that the CRA project has done exactly what it was designed to do, and that is eliminate blighted conditions in our commercial hub. And it has changed the face of the clientele that we have there, upscaled the average tourist and created a tremendous demand for family services and accommodations. That is something that the Town and every entity involved with us has been actively pursuing in the marketing of Fort Myers Beach, if you will. She again praised the Kolar family, but told John Mulholland she shared his concern regarding how the Town would benefit. Addressing Bill Spikowski, she asked how we could create a working situation where Tom Kolar is able to move ahead and continue his leadership role in the redevelopment of that area essential for our redevelopment plans, and at the same time protect the Town's interest and the community sentiment, which will be outraged if nothing else, at the headline of the Town Council vacating a street.

Bill Spikowski said that he hoped that if we decide to turn down the vacation, that we don't do it in the sense of this is the end of the subject. The Old San Carlos study shows a plan that would use only the 50-foot right-of-way for parking, going from the 30 parking spaces there now down to 20. So by not having the cooperation of the Lighthouse, there is a net loss of 10 spaces and it's not a good plan. However, he thinks that it may be better to have more parking on Fifth for the public and more parking for the Lighthouse on Fourth. His recommendation is just to turn down this deal, not turn down a joint arrangement of some kind.

Councilman Reynolds told Bill Spikowski that we don't have that much public property anyway on the Island, and once you sell it it's gone forever from the public use, as he has indicated. He would pick the Kolars over anyone else on the Island to receive a piece of public property that would be beneficial to their area. The Kolars are very fine people. But he would hope that we would pursue some of Bill Spikowski's suggestions if the Town benefits in some way. That is a very demanding parking area and certainly we need those spaces. His suggestion of maybe widening the street a little bit and sharing with the Kolars so that they get some parking spaces is great, but we need to keep our public property. Mr. Reynolds said he thinks that none of us have forgotten how badly we were hurt when the County totally rejected our pleas and went ahead with giving away property. But out of bad things come good things, and the good thing was that finally people said, Well, we would like to do our own thing, and that's what we're trying to do. And he would hope that we would not make the same mistake that the County Commissioners made.

Dan Hughes acknowledged that he shared a lot of what's been said here tonight. He doesn't really feel that this is quite the same situation as the Diamondhead situation. They both involve vacating streets but are radically different in terms of their ultimate effect on intensity and density. Tom Kolar talked this evening about constructing something above ground level. Could we retain the fee and convey aerial rights if he came in with some sort of project along those lines? Mr. Hughes was told by Attorney Roosa that first off, procedurally, we should have a public hearing before the Council decides how it wants to rule on this particular case. Since there is a great deal of expense and time getting this vacation to the Town Council, we might want to continue it to a day certain to allow for the exploration of alternatives to be brought back to us for consideration. That, of course, would be after we had the public hearing. Then we retain jurisdiction and we still have the authority to vacate this property if we should so choose.

John Mulholland asked if we were going to have a public hearing and Mayor Murphy told him that we were. Mr. Mulholland then suggested that the Council hire Bill Spikowski to work with the Kolars to see what arrangements could be made to make it beneficial for them and for the Town. Mayor Murphy felt that this wasn't a bad idea, but said he would leave the decision to the Council. If we would like to continue this and have the parties get together and discuss this some more, that's all right with him. Dan Hughes also felt that this was a good idea and that we should

continue the matter. He was not clear procedurally, however, on what the options were this evening. Mayor Murphy said he'd like to hear from the public before we close this off. There might be some ideas out there. We can decide afterwards if we wish to continue, but in all fairness to the applicants, he agrees with Attorney Roosa that there should be a date certain. This has been going on for months and months and months now and it has been continued, if he is correct, not because of us but because of the applicant. A few more weeks probably wouldn't be too bad.

Public Input:

A. Bill Van Duzer

Mr. Van Duzer said he needed to make it clear before saying anything that Mr. Kolar is a client of his and that they have discussed this matter on numerous occasions. He feels that prior to a public hearing, the Council has already made up its mind, but he is going to try to tell us what he thinks is an easy and a reasonable way to look at this situation.

Mr. Van Duzer stated that the roadway was 50 feet wide and it is in the overlay area. And according to that overlay area and the vision that we've had, we can build right up to the road right-of-way if we're going to do construction in that area. Mr. Spikowski has alluded to the fact that maybe there could be a trade-off wherein we would consider vacating part of this area if they could gather up another 10 feet in another area, but he thinks this is a ridiculous way of looking at it since we already have an overlay that says that you can build out to the right-of-way line.

He has been working with Mr. Kolar for some time, Mr. Van Duzer advised, about the reconstruction of his entire facility; and realizing that parking is a problem there, he's gone into a design phase and they are presently working on a CPD for the entire platted area. Fourth Street is a dead-end street that goes through the center of his facility only. If we wanted to use it for parking and put metered parking on it, we must understand that somebody going down there to park would have to turn around in the road to get out. There is only one exit. Bill Van Duzer said he feels it's a very poor alternative to consider parking in that area.

Mr. Van Duzer said a comment was made regarding what the Town would get out of it. Certainly it becomes taxable land. But since it's not a feasible alternative to use it for parking, he can see little value in it for the Town. On the other hand, Mr. Kolar does own the property on both sides of the road, he does have pools on both sides of the road and he caters to the family client, which is very evident in his facility.

As commented tonight, people go down Fourth Street thinking they're going to find a parking spot, and not finding one, turn around at the end of the road on the Kolar property and come back out again. This doubles the number of people going down that road. He would ask us to consider those things. It's a danger as it exists and it can be corrected. It's not a feasible parking area because it's not large enough by our design with our vision. Mr. Kolar, on the other hand, is trying to determine what he can do with the total piece of property. He'd like to redesign his entire unit and has considered a CPD that he can use over the next 5-10 years to rebuild that entire facility that Mr. Van Duzer just rebuilt for him about 3-4 years ago. He's been threatened that he is going to lose his parking on Fourth and Fifth Street. Realizing that, he's trying to take action along with the vision that we've given the people of this Town, and this is a very key part to it. Bill Van Duzer would ask us, therefore, to give consideration to the value that the Town will receive. It will do away with the danger that we have; it's going to make that land into taxable property rather than a piece of property that the Town owns and has to maintain; it's going to allow Mr. Kolar to use the vision that we put forth to him.

B. Joe Grant

Mr. Grant is a resident of Crescent Street and lives just opposite Fourth Street. He has been looking at the Kolar property now for eleven years and he sees nothing but good coming from that family. As has been said, the street is a dead-end one leading into a bridge. It's not a piece of highway leading into the Gulf of Mexico. He can understand Tom Kolar's concern, because he acquired the property on Third Street and now he has a public right-of-way splitting his property. From what he's already observed, the property has done nothing but enhance this area. If you look at the Kolar property right now, the Town has already benefited by what he has done compared to what some others have done in this area. He has met Tom Kolar and Mr. Hart and they are very professional.

Mr. Grant remarked on the way cars must turn around on the Kolar property and the fact that you see derelicts back up in there. From his viewpoint, vacating the property will do nothing but good for this community. He has a stack of photographs he'd like us to look at that he took during Sunday walks or drives. He indicated littering on the street.

Mr. Kolar, Joe Grant advised, bought a lot of old property and made it look pretty temporarily. But he is practically going to demolish that whole area and rebuild and put parking underneath. With a few more palm trees and a little more grassy area, we'll see a concerned property owner doing betterment and creating more revenue for this Town.

Comments and Questions from Council:

Councilman Reynolds stated that everyone says that there's no turnaround on Fourth Street, but he doesn't know of any public access that has a turnaround. We should remember that it's a 50-foot wide street, so there is always room for people to turn around.

Councilman Hughes said that the resolution states in the last Whereas clause that the petitioner's request is in accordance with Florida Statutes Chapter 336, and he asked Mr. Roosa what the criteria were under that Statute. Attorney Roosa replied that when you vacate property, it's not for consideration nor is it based on an exchange of one property for another. It's based upon the fact that it no longer serves a public purpose. The obvious public purpose of a roadway is ingress and egress to property. In this instance, the property owner is the only one who benefits by ingress and egress because it's a dead-end street that goes into a bridge. But we have identified another public purpose for this road and that is public parking. It has been used for public parking so if we vacated it, the Town would no longer have that public parking.

Garr Reynolds asked Attorney Roosa if it was possible for the property to be put up for sale by the Town, and he was told no. Mr. Reynolds said he had asked the question because someone had expressed interest in buying it.

Mayor Murphy stated that while plans are being put together for a CPD, maybe we could just go along as we are; and when the plans are put together, then we could take another look at this. In the meantime, if not mistaken, Mr. Murphy thinks that things are changing down there as we speak as far as the parking garage and the different alternatives for parking. It's an ongoing dynamic that's happening simultaneously with this request. He agrees with all the statements made earlier regarding the improvements that the Kolars have made with the property over the years, which have been terrific. He also agrees with Mr. Van Duzer's statements about the encouragement in the overlay district and that it has been our plan down in that area. But a part of him also agrees with the other statements that have been made regarding the vacation of public property, particularly comments just made about the fact that it still does serve a public purpose. Mayor Murphy feels that something could be worked out here. There are other alternatives rather than an out-and-out vacation. And of course the vacation combined with something else, a swap or something, may be a bigger benefit to the Town than what we're experiencing right now and he'd be willing to explore this further.

Vice Mayor Mulholland noted that two members of the public had taken issue with a statement he had made regarding having Bill Spikowski discuss this matter with the Lighthouse Corporation. He still likes his idea and thinks we're all talking about finding an arrangement. We like the people involved here, even though on his part there is a reservation about giving something away. He's still hoping that we can work toward an arrangement. Mayor Murphy advised that if the Council wishes to put Bill Spikowski and the Lighthouse people together to talk about other options, that's fine with him. Town Manager Segal-George noted that Dick Roosa had said that we'd have to continue it to a date certain. Mayor Murphy indicated that we could do that.

Anita Cereceda wished to know if there was a time frame on the CPD. Tom Kolar was called upon and he stated he had hired a consultant with whom he has been working for several months. He noted that if we do bargain with parking here and parking there, part of the problem would be the quality of life that he can give to his people. He does not know how safe he would feel parking his car next to a spot that was metered parking. More to the question, Mr. Kolar said he didn't have an actual date for when his plan would be completed. The consultant did assure him that it would be very quick. Asked if he had any drawings yet, Mr. Kolar replied that he did. Mayor Murphy then suggested to him that what he could do would be to sit down with Bill

Spikowski and just look at the working plans and see if there are any other alternatives or options and put the council members at ease that all the possibilities have been explored before we just give an out and out vacation. Their ultimate plan, Mr. Kolar revealed, is to have a large family bread and breakfast where kids can come down to a common area and have lunch, no dinner, and make it what Times Square needs. It's not a Ramada nor a Howard Johnson, which don't offer those types of family elements. There are a few places on the island that do, but they're so overpriced that a lot of families can't afford to stay there.

Mayor Murphy asked Tom Kolar how soon we might see his plans. Dick Roosa advised that we would have to continue the hearing to a date certain and Marsha Segal-George suggested June 21.

Mr. Kolar stated that time is always a problem and that they had only so many days between now and their next coming season to start Phase I of this project. Mrs. Segal-George advised that the Council would be going on vacation soon. Mr. Kolar said he could probably have something by May 17 and Ray Murphy felt that Bill Spikowski could sit down with him between now and then. The two of them could put their heads together and see if anything can be worked out and then come back and report to the Council. We would continue the hearing that night and see where we go from there. Mr. Kolar agreed to this.

MOTION: Made by Dan Hughes and seconded by Anita Cereceda that we continue the public hearing on the request to vacate Fourth Street to our next meeting on May 17. Passed unanimously.

Mayor Murphy stated that the forms that are submitted for the vacation process are still on County stationery and the petition to vacate mentions the County throughout. He wished to know if we shouldn't change these documents to reflect the Town. Marsha Segal-George advised that some parts have been changed and some haven't.

C. First Reading: State of Emergency Ordinance

Mayor Murphy read the ordinance aloud.

Town Manager Segal-George advised that this ordinance will be set for public hearing on May 17 at 6:30 p.m.

D. Draft: Littering Ordinance

John Gucciardo pointed out that littering ranked very high on the Public Safety Task Force survey. He stated that what we had here was a copy of the County's draft of the ordinance and a recommendation from Public Safety that we basically follow the lead the County has taken in trying to come up with an anti-littering ordinance that would be consistent countywide, and they've also had contacts with the other cities along those lines. The Public Safety Task Force has reviewed the draft and has found it to be compatible with what they perceive to be the interest of the public. The one change they recommend if we are going to go forward with this is that we eliminate Section 13, a citizen involvement clause. Otherwise, they had a very favorable response to the ordinance itself. The ordinance would be enforced by Code Enforcement.

Section 13 was discussed further. Attorney Roosa's concern was that it was misleading to the public because it indicates that reporting a violation to a sheriff would lead to the issuance of a citation, when actually this will not occur. Garr Reynolds said that he did not feel that there was anything wrong with trying to get people to call in violations. He did object however to the giving of awards and having people furnish their names.

The Council agreed with the Public Safety Task Force that we should have an anti-littering ordinance on the books. Most council members were in favor of striking Section 13. The ordinance will be set for a reading on May 17 at 6:30 p.m.

E. Discussion on adding an additional Code Enforcement Officer

Town Manager Segal-George advised that this item had been in front of us once before. She provided us with a range of prices for leasing a small car or truck. The County would be doing this. A small truck is \$250 a month and a small car is \$260 a month.

Councilman Garr Reynolds said he went through the work that our enforcement officer is doing here on a monthly basis. He sees absolutely no need for another code enforcement officer. Vice Mayor Mulholland stated that he, too, has been observing Mr. Crabtree and his activities, and he would say that he's a very busy man and that the Town benefits a great deal from his activities. Mr. Mulholland feels that an additional code enforcement officer is needed as we have a lot of violations happening on our streets that Mr. Crabtree just can't cover.

Councilman Reynolds expressed concern for someone having to pay for a variance in a particular situation. Town Manager Segal-George advised that all of the fees that the County collects from us go to pay for all of the other permitting that they do. That's what pays for Mr. McCarthy to come tonight, or when Pam and Nettie come, and the staff reports that are prepared on all of our rezonings or development orders, or any of the other types of land use work that the County does for us. Attorney Roosa stated that the concerns that Councilman Reynolds had of someone having to obtain a variance and having to pay a lot for it is a different issue from what we're facing here. Perhaps some of the fees are too high and perhaps we can take a look at that in the appropriate venue, but the question here is whether or not we need an additional code enforcement person and whether it will be beneficial to the community as a whole. He personally thinks there is a need for additional code enforcement personnel. There are a lot of violations existing on this island that are not being addressed. And the fact that there isn't a big history in the office in terms of what Dave Crabtree is investigating may be due to the fact that there is only the one guy.

John Mulholland made a motion that we add a second code enforcement officer as outlined in the memo that we got from staff.

Discussion:

John Mulholland stated that he didn't doubt Councilman Reynold's sincerity in what he has said. He, himself, feels that we need more code enforcement officers and Councilman Reynolds does not. It's just the way we perceive something. He thinks that if we go into this interlocal, we can always stop it if after a period of time we don't need it. Mayor Murphy agreed with him.

Garr Reynolds remarked that the cost for a new enforcement officer seemed to him to be a tremendous amount of money for a position that wasn't needed through eternity. We had a part-time person here. Now we want two full-time people. Mayor Murphy said that he suspects the reason we didn't have them with the County was because the County didn't want to incur the extra cost. Now that we are our own town and, as said earlier, this is a complaint-driven operation, our own residents are telling us that there is a need. He has not checked the files that Councilman Reynolds mentioned, but he would guess that if there was an additional code enforcement officer in place that those files would double. He thinks there is plenty of work out there for the people and, as John Mulholland has stated, we're not locked into this. This is not a forever thing. Our interlocals with the County are renewed annually and we would be able to take a look at those again in the next fiscal year.

Attorney Roosa gave a history of code enforcement. Up until the late 70s we had municipal judges to enforce our ordinances. Cape Coral was one of the first municipalities to have a code enforcement board. Now we have hearing officers that hear code enforcement violations. He noted that it is the only practical method for enforcing codes. It has worked great throughout the State of Florida, and the issue is one of compliance. The old municipal courts were generally a source of revenue. Code Enforcement does not address revenue directly. What they want is compliance. If you look in terms of convictions, you don't really get the effectiveness of code enforcement, because when there is a violation found, many times people comply immediately and there will never be a conviction and there will never even be a charge. He finds code enforcement officers to be very professional and conscientious. He thinks it will show up in the appearance of the Town if we add code enforcement officers because they will be able to obtain compliance early on and without the need for expensive hearings. He would encourage the Council to add another code enforcement officer.

Mayor Murphy wished to know if we wished to contemplate a vehicle in the motion, and it was decided to include the lease of a truck in the motion.

Garr Reynolds reiterated his statement that he didn't feel we needed an additional code enforcement officer.

MOTION: Made by John Mulholland and seconded by Anita Cereceda that we add a second code enforcement officer and have a truck lease agreement, as outlined in the memo that we got from staff. Passed with four yea votes and one nay vote from Garr Reynolds.

F. Streetscape Designer selection

Town Manager Segal-George referred us to a memorandum in our packets. The actual request for proposals came in front of the Council with regards to the scope of what was in it and the Council approved that scope. On that basis we advertised and received qualifications from ten firms. Then, again, at Council's direction, we created an interview panel made up of the folks that the Council had approved. The panel actually interviewed six of the ten firms over two days for in excess of six hours, and we have a list of these very reputable firms. The presentations were excellent. The firms were very interested in doing the streetscape project. They all came up with some very interesting and creative ideas to try and give us a different look of how Estero Boulevard could be. When the firms were ranked, Wilson Miller came in first, Kimley Horn & Associates was second, and CPH Engineers finished third. The interview panel recommends that the Council award the streetscaping design of Estero Boulevard to Wilson Miller. By the same token, the Council could choose to interview the top three or six of them or how many others we may wish.

Mayor Murphy said that on behalf of the Council he would like to thank all the members of the panel that conducted these interviews. He's sure it was very time-consuming, but on the other hand he is sure that it was also very interesting. It was noted that we have the option of either approving the recommendation of the panel or interviewing all six firms again or a smaller group, such as the top three.

Councilman Reynolds said he'd like to know who the panel members were. Town Manager Segal-George advised that we had approved the panel members, who were the chairmen of all of the subcommittees as well as Councilwoman Cereceda and herself.

Town Manager Segal-George indicated that for devising the plan there will be a charette kind of system where it will be advertised and people will come in and discuss how they will see different things in different parts of Estero Boulevard. Councilman Reynolds wished to know if this would be done even before we entertain the idea of taking over Estero Boulevard. Mrs. Segal-George advised that the Council had approved the scope of the advertisement, which had two options in it. One was to offer a design with regards to the Town taking Estero Boulevard and another option was with regards to the County having Estero Boulevard. Councilman Reynolds said that he believed his push at that time was let's entertain the idea of trying to get Estero Boulevard as ours but first see how much money we would receive annually so that we would be in a shape to cover the cost and maintenance of that road. And then, once we get those factors, we were to pursue the different directions and plans of what we would do. Mr. Reynolds was told that this is a project that was approved in the capital improvement plan of the Town of Fort Myers' budget last fall. And every step forward on this project has come in front of the Council and has moved forward with the Council's approval. Mr. Reynolds asked if we were proceeding even though we didn't have any idea at this time of taking over Estero Boulevard. Mrs. Segal-George stated that in the agreement that we considered with regards to the utility issues of the County, one point that was really not controverted was that the County is willing to give us Estero Boulevard and they're willing to pay us for it. We also had determined that in the last couple of years they had never spent more than \$22,000 for maintenance. All of those things have been determined.

Vice Mayor Mulholland said that he agreed with the remarks of the Town Manager that the history of the project has gone that way and it has come before the Council. It is something that we knew about and he thought we were all enthusiastically behind it. He would like to have the Council consider interviewing the three top bidders selected by the interview panel. In view of the scope and the magnitude of this and the amount of money involved, he thinks that we the Council owe it to the Town to be a little bit closer to it. Mayor Murphy clarified that the firms weren't bidders but were submitting their qualifications. John Mulholland made a motion to interview the

three top firms selected by the interview panel.

Discussion:

Dan Hughes stated that considering the long-range effect of this and the scope of it, he thinks that the Council should interview only the top three firms. He also thinks that prior to the interviews we should receive copies of the analogous material that the other two supplied.

Garr Reynolds said that he respects the judgment of the panel members, who have done a lot of work already, and they have narrowed the candidates down to the one they feel is best representative of the work we want done. He would encourage Council to accept Wilson Miller as the group has represented to us. We'd be duplicating efforts and creating more problems for those folks who would have to come down and redo all that. Mayor Murphy felt that they would be happy to come down.

Anita Cereceda said it wasn't what she had expected. She thought she was going to see some plans, and then as she was educated more in the process of how government goes about selecting a contracting firm, she wondered how much it would cost. Evidently that is discussed after a selection. She felt that the enthusiasm from all of the groups was tremendous. One gentleman said that a project like this doesn't come along but once in a lifetime. And it will be a once-in-a-lifetime project for the Town of Fort Myers Beach. There is certainly a benefit for everyone looking at these three companies. They are all very different. They all have something very valid to offer. They agreed with each other's selections, which was interesting. The selections made were based on the presentations that were made, obviously. But it is a project of tremendous magnitude and tremendous impact, and it will be a lifetime thing for the Island. To minimize its importance in any way is a mistake, and if this is how the Council would feel most comfortable, she certainly wouldn't feel slighted or sidestepped. But she feels very comfortable in the selection she made and would ask to be excused from the meetings. Councilwoman Cereceda also expressed her appreciation for being allowed to participate on that selection committee.

Councilman Reynolds stated that he would like for each of the candidates to give an approximate amount of what the project that they are proposing will cost. He was told that this could not be done under Florida law until a selection is made.

MOTION: Made by John Mulholland and seconded by Dan Hughes that we interview the three top firms selected by the interview panel. Passed with 4 yea votes and one nay vote from Garr Reynolds.

Town Manager Segal-George asked for a date for the interviews. Anita Cereceda suggested postponing the interviews to May 24 so that it could be advertised and as many people as possible could come and listen to the presentations. Mayor Murphy said he was going to be out of town on the 24th and he'd hate to miss it. It was decided to have the candidates back on the 17th at a workshop meeting.

X. COUNCIL MEMBERS ITEMS AND REPORTS

Vice Mayor Mulholland referred to his letter to Dan Haggerty and a copy of the findings of Town Attorney Dick Roosa. On Friday, April 23, he met with Arden Arrington and Dan Haggerty for approximately 45 minutes to discuss possible ethics violations committed by Arden Arrington while serving on the Marine Resources or as director of the Mound House. While he disagreed with Dan Haggerty, he promised to forward all the documentation he had given him to the Town Attorney. On Monday, April 26, he had the staff fax approximately 21 pages of documentation to the Town Attorney. On Wednesday, the 28th, he received a reply from Mr. Roosa declaring that "It is my determination that a prohibited conflict of interest does not exist." On Thursday he sent a letter to Mr. Haggerty, which was copied to the Council and to all of the Marine Resources people stating he was very relieved that no conflict was found by the Town Attorney. Today, Monday, May 3, he was advised by the Town staff that Mr. Haggerty had requested all Marine Resources documentation be turned over to him. Mr. Mulholland said that he has asked the staff to keep a record of their time devoted to this latest request. He has also requested Mr. Roosa to give him

the amount of time that he has spent on this request. It appears to him that Marine Resources is under investigation or under a cloud, and he's sort of disappointed about that.

Dan Hughes wished to know if the Town Attorney would comment on the ruling in Star Dial on the motion to dismiss. Attorney Roosa said that he hadn't planned to, but that he can. Dan Hughes said he personally feels that at some point the Town Council should have a meeting with the Town Attorney and our special counsel regarding this matter and get a feeling of where we're going and what the issues are here. He advised he was not greatly shattered by the ruling, because it means we're going ahead with the merits and that ultimately that was going to occur at any rate. If our motion to dismiss had been granted, they would at some future time refile; and he personally doesn't think that this will ever get resolved except by a judicial ruling on the issue of vested rights. And he feels a little left out of the loop of what is going on. Attorney Roosa said that they will be coming to the Council. He just doesn't want to get it out of sequence right now. There is really no role for the Council to play at this time. An answer and affirmative defenses are being prepared, but as part of that process, there are some issues that need to be brought to the Council. And that will be done through the regular procedures and will give direction to our attorneys as to how we want to defend this case.

Dan Hughes asked if anything was developing on the parking garage at Seafarers. He was told by the Town Manager that the parking has to be in place before a restaurant can be opened and there are, therefore, a lot of reasons to move quickly. Mr. Hughes said it seemed to him that there is a clear interrelationship here with the parking at Bowditch and the Lighthouse and the timing is going to be critical. He wished to know the next step in terms Bowditch, in terms of the County. Mrs. Segal-George told him that the development order was issued and unless the Council chooses to do something about that, there is nothing else. The County can proceed to put the parking in Bowditch unless a lawsuit is filed to stop that from happening or if the Council gets involved in it in some way. Mr. Hughes referred to the intervention of the litigation by the North Beach Association and asked if it was correct that they would have to proceed with their litigation if we do nothing. He was told yes. He then asked for the County's timetable, and Mrs. Segal-George said she thinks they're waiting to be stopped but that she hadn't spoken to them directly on that point for a while. Also advised was that the County had very definite plans about the use of parts of Bowditch for the channel dredge project as a spoil site, and the indications were that that would probably go forward because that's on a pretty definite timetable with the Army Corps of Engineers and the parking issue would not go in conflict with that. However, as Marsha has said, they weren't so concerned about that because they anticipated that the parking issue would not be able to go forward because of the litigation.

Anita Cereceda noted that as Marsha Segal-George had said, Mr. Wiebe is in negotiations with Mr. Helmrich and that is progressing. It is Mr. Wiebe's intention if all goes well that he will have the project completed by the year's end. She doesn't know if this is realistic, but that is what he's shooting for.

John Mulholland wondered if the Council shouldn't address the parking problem. Attorney Roosa said that if we have a downtown parking garage, that will certainly have a bearing on the situation and the traffic pattern. Ray Murphy noted that this option was not available to us when this was initially discussed. Going through his mind during the petition to vacate was that if the garage were to be built and Mr. Kolar wanted that property down there and wanted to buy parking spaces, these are the kinds of options that Mr. Spikowski can explore. And he supposed that it would also have some bearing on Bowditch to a degree.

Dan Hughes asked for the status on Florida Cities Waters. He was told by Attorney Roosa that we are awaiting for a report from the engineer and he should have it tomorrow afternoon. It is his intent to prepare another proposed settlement agreement, but he doesn't have all the numbers yet. It will probably be on the 17th. Dan Hughes noted that in the last settlement, the takeover of Estero Boulevard was made a part of that and some people thought that it shouldn't have been. But it did create an opportunity to go ahead with that, and his reading of the Council was that it seemed to be a pretty favorable thing to the municipality in light of the economics plus the control and all these other things. He asked if Estero Boulevard would still be an aspect of the new proposed settlement agreement. Attorney Roosa said that it wouldn't have to be. We could make that as two separate agreements. Dan Hughes said he would personally feel that we should go ahead and proceed with that and Ray Murphy said that he agreed. Dick Roosa said he

would go ahead with both proposals in separate documents.

Garr Reynolds reported on a letter he had received from Raimundi, who he believes had come here two years ago threatening lawsuits. He doesn't think that we can abide by those types of threats when we have something that we need to do for the benefit of the entire community and, in fact, the County, because Bowditch is a County park. He does hope that after all the talks we have the 78 or 79 parking spaces that are indicated. He would feel more comfortable if it were 150. There are 17 acres and so we should be able to allot at least an acre to parking up there.

Mr. Reynolds said he hopes that the giving away of public property is an absolute no. The only adequate suggestion was made by Bill Spikowski, which was to add five feet on each side of Fourth Street for the parking area and give or share some of that with the present owners on each side.

Councilman Reynolds stated that he has also read Dan Haggerty's letter. He thinks that Arden Arrington would be a treasure to the Town if we can get him to stay in the directorship of the Mound House. He doesn't know where we'd find somebody to replace him. But at the same time he thinks it's wrong that Mr. Arrington has the privilege of advertising his business on the Town's Internet with his phone number. That has to be a conflict. And if we're going to keep Arden in that position, there has to be some decision made that that doesn't happen. Because if you allow one private enterprise to advertise, then you're going to have tell others. He wishes that somehow Arden would work as a director over there and propose programs and present them to Marsha or to the committee, and then back off and let them make the decisions on what programs they want to have there. As the director, he would be the enforcer, the initiator, and Mr. Reynolds said that he sees that as the role of the director. He should not be caught in a crossfire like this.

Also stated by Mr. Reynolds was that it bothers him deeply when he walks out on the beach in the early morning and sees people with bags of shells. He wonders where they're getting them from since you don't see many shells out there. They come in with bagloads of the fighting conch. We're supposed to have a two-shell limit. He wonders if somehow before the guys go off duty they could drive one of the electric vehicles down the beach at the break of day and ask those people to let them see their bags. They have really taken all the live shells off the beach. Town Manager Segal-George advised that their request for a ban on live shelling is at the State Marine Fisheries, and the State Marine Fisheries Committee is going through a total reorganization, and that's what delaying it. The problem we have is that the ban on two live shells is almost unenforceable, because does it mean two of different varieties, does it mean two altogether, is it two per family member per different varieties? There's just no definition in that law and so there's really no way to enforce it. We post signs and then if we see anybody taking live shells off the beach, those people can be cited. Otherwise there is no way to enforce it. Councilman Reynolds suggested advertising in the media. Also, when he goes to yard sales he sees where people have gotten these fighting conch and you can see if they're live shells or not and they paint them and attempt to make little figurines and things out of them. These shells are being misused for no purpose and most of them go into a trash can. Dan Hughes asked how Sanibel enforced the taking of live shells. They have a total ban. Mrs. Segal-George replied that they have code enforcement and police officers over there and they do a very good job in enforcing the total ban. And it's easier to enforce a total ban than trying to decide who has what.

Anita Cereceda reported on her meeting with the residents of Connecticut Street and the Shell Mound area. There were about 30 people here on Friday night at 6:30 p.m., and she felt it was a good session. She has taped the meeting and she will also write up a memo that she will distribute to us.

Council member Cereceda feels that the major issue concerning the residents is an issue of trust. They feel misled, they feel deceived. They're very leery of the Town Council's intentions. They're not sure that the Town Council really has intentions. They're convinced that the project is being spearheaded only by Marsha and Arden and they have that same feeling about Ted FitzSimons.

An informal poll revealed that half the group felt relatively comfortable with the idea of a passive museum rather than a full-blown gift store type museum. The other half wanted the Town Council to back out of the deal completely. Anita felt that the fears stem not so much from

what the Council's plans might be for that property, but from the management plan that was proposed as part of the application to the Florida Communities Trust. She asked them if the management plan were amended with something that said projects only approved by the Town Council, if that would ease some of their fears. But in rereading the management plan, she saw that this is said time and time again. Their fears may stem from the fact that she had told Mr. DeMars that the property would be administratively rezoned. She assured them that rezoning was not something that could happen administratively, but rather required public hearings, and Mr. DeMars had made the comment that we all know what good that does. Maybe we have not communicated well enough with one another as to what our direction is with the Mound House to protect our two employees that are really taking a lot of heat on this. That could be alleviated or even eliminated if our direction were clearer as to what the future of the Mound House would be.

As far as the conflicts with Arden Arrington, Anita said, Mr. Haggerty was at the meeting and showed her Arden's Web site, which he said he had gotten from the Town's Web page. At home after the meeting, Anita said she actually pulled up the Web site, and Arden's Web site comes up as a hyperlink underneath photographs. It isn't a blatant advertisement. It isn't that he is self-promoting, but the photographs are at the courtesy of the Calusa Coast Outfitters. When you hit Calusa Coast Outfitters, you could click to take you to their Web site. But it doesn't just automatically come up. She would have to disagree, therefore, that Arden is advertising on the Web site. It was the feeling, however, of a person who had looked at it that since it came up, it was somehow either condoned or represented by the Town, and that concerned her a bit. She feels, though, that a lot of the anxiety that's been created over what Arden is or is not doing can be remedied. She also thinks that some things that have happened were due to overzealousness or excitement about a project that truly will have a tremendous impact in our community.

Anita Cereceda said she felt a lot of responsibility for the problems that exist there right now, because she felt she had not given clear enough definition to either Arden or Marsha or any other staff member or the Council as to what she thinks the Mound House should or shouldn't be in the future. She feels that is a discussion we need to engage in quickly in order to preserve and keep that project on track and at the same time squelch all of the fears that exist in that neighborhood. The fears are very real and she believes that a good deal of them are unnecessary. She said she asked people at the meeting how they felt they could be kept better informed, but she didn't really get any suggestions from anyone other than to communicate about what's going to happen. The only way to do that would be to talk about it more often. Maybe when we have large projects or big issues before us, we could recap regularly what the status is on them. Maybe the newspapers could write more about them, or even the Council talking about these issues might help. But there is definitely an issue of trust in that community and a hostility towards our staff, which worries her greatly.

Ms. Cereceda also reported on comments made by different participants at the meeting. She found it to be a very interesting group. She would like to continue the open discussion with that neighborhood and she hopes that the Council will see fit to discuss the future of the Mound House and how we should proceed in order to allay some of the fears in the community as to what is going on there.

Mayor Murphy congratulated Anita Cereceda for her report and told her he thinks she is to be commended for speaking to everybody.

Vice Mayor Mulholland noted that a council member had taken exception to Mr. Roosa's ruling about a conflict of interest, but is now saying that Mr. Arrington should watch his activities as far as being a director and that we want to keep him. Mr. Mulholland felt that the councilman was thereby implying that there is a conflict in Marine Resources. He is chairman of Marine Resources, Mr. Mulholland stated, and they work very hard not to have a conflict. They work in the Sunshine, and if mistakes are made, he will take the blame for them. He quoted statements made to him by Attorney Roosa that cleared Marine Resources of any conflict of interest and he expressed his displeasure for any remarks that imply that integrity is lacking in Marine Resources.

Councilman Reynolds advised Mr. Mulholland that he had made no indication or reference to MRTF.

Mayor Murphy reported on his activities for the last couple of weeks:

On Tuesday, April 20, he attended a Service Association meeting and spoke about the Mound House and the pool. On April 21 he celebrated his birthday and his anniversary. On April

23 he attended his Horizon Council meeting. On April 24 he went to the Uncommon Friends high tea and poetry at the Beach school, which was also a celebration of Ellie Newton's coming 100th birthday. One hundred kids from all over the County submitted poetry which was published in a book, and they read their poems to Ellie Newton. He attended a fundraiser for the Fireworks Committee and that evening visited with the Fort Myers Beach Yacht Club. On April 27 he met with Joel Bellucci at the Mound House. Joel is completing his Web site at the arco tour and as Mayor, he did a brief introduction to it. This was his first experience in cyberspace and very interesting.

On April 30, Chairman Judah invited Mayor Murphy down to the courthouse where he was having a press conference on the courthouse steps. This press conference came about as a result of the shootings out in Colorado. Parents had gotten together and said that the kids in our schools needed more mentoring; more people were needed to come in and get involved with the children at schools. Their idea is to encourage employers throughout Lee County to give their employees a certain amount of time off each month to spend in school with either their children or, if they don't have children, with other people's children in some sort of a mentoring role. As a result of this press conference, on Sunday, May 9 -- Mothers Day -- they're having a rally at the Lee County Sports Complex at 2:00 p.m. to try and solicit more people to get involved with this. Anyone who attends that rally may also stay in the stadium and attend the Miracle game afterwards free of charge.

Upcoming Scheduling:

John Gucciardo stated he had two items of concern. It looks like the meeting on May 17 may need to start a little early, and this will be looked at tomorrow's staff meeting and they'll get word back to us as soon as possible.

Responding to a memo from Councilman Hughes about the June and July schedule, John noted that there was an indication that a meeting was being moved from July 5 back a week to June 28. It was his understanding, however, that there would be a meeting on Thursday, July 1 and not on June 28. The July 1 date was confirmed by Dan Hughes

XI. TOWN MANAGER'S ITEMS

Marsha Segal-George advised that in June we will have four meetings: two Council meetings, a land use meeting with two cases on the 14th of June and a workshop on June 17.

XII. TOWN ATTORNEY'S ITEMS

Dick Roosa advised he had nothing to report.

XIII. PUBLIC COMMENT

A. CARLETON RYFFEL

Mr. Ryffel said he had noticed from his porch this evening a very noisy swamp buggy coming down the gulf side. He knows that there is a ban on airboats in the Back Bay and he wondered if this couldn't be extended to the gulf side.

Regarding the Bowditch discussion and a parking garage, Mr. Ryffel said he wished we would write a letter to Don Stilwell and ask him to put off any construction of parking at that park for a year. With the possibility of a parking garage coming in and the damage to the circulation system that putting parking down at Bowditch is going to do, we're closing off so many of our opportunities. There has never been parking there. Why not wait, say, a year and give a chance for this parking garage to come through. If it does, it's going to solve a whole lot of problems. If it doesn't, we can go back and say well, go ahead and do what you're going to do. We have the control over this as Town Council. If we don't do it, the congestion problems will be tremendous. And the way that's going to interact with any streetscape ideas we have from the Lynne Hall Park area to the Back Bay and then down Estero Boulevard is going to be compromised. We should hold off until we see if a garage is going to make a difference.

B. JOE CROKER

Mr. Croker said he wanted to thank us for the litter ordinance that we passed tonight. He also thanks us for the extra code enforcement person, which will go a long way in helping with the litter ordinance. However, after listening to what Mr. Roosa said, a dilemma has been created in his mind. If a dog does not do his business on a code enforcement officer, nothing can be done about it. So he guesses we can take home with us tonight the consolation of knowing that we have taken the teeth out of the pooper scooper.

XIV. ADJOURNMENT

The meeting was adjourned at 9:58 P.M.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of May 3, 1999

1. The Fort Myers Beach Offshore Grand Prix will start on Thursday, May 13. The bridge will close at approximately 6:30 p.m. and the parade will start at 7:00 p.m. and end at about 8:00 p.m. Friday night there will be a block party in downtown Fort Myers and racing on Saturday and Sunday. The races will begin at 1:00 p.m. on both Saturday and Sunday and they will last approximately two and a half hours. By unanimous vote the Town will pay directly to the sheriff and fire department up to \$5,000 for their services during the Grand Prix boat races.
2. May 16-22, 1999, is proclaimed as Emergency Medical Services Week in the Town of Fort Myers Beach.
3. Motion passed that we continue the public hearing on the request to vacate Fourth Street to our next meeting on May 17.
4. The Council agreed with the Public Safety Task Force that we should have an anti-littering ordinance on the books. Most council members were in favor of striking Section 13. The ordinance will be set for a reading on May 17 at 6:30 p.m.
5. Motion passed that we interview the three top firms selected by the interview panel. It was decided to have the candidates back on the 17th at a workshop meeting.
6. May 22-28, 1999, is declared as National Safe Boating Week in the Town of Fort Myers Beach.
7. Motion was passed with two nay votes that all changes to Council minutes will be put in writing by the council persons proposing such changes and that these changes will just be attached to the minutes to save time.
8. Motion passed that we add a second code enforcement officer and a have a truck lease agreement, as outlined in the memo that we got from staff.