

**TOWN COUNCIL MEETING  
MAY 17, 1999  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

Mayor Ray Murphy opened the meeting on Monday, May 17, 1999, at 3:30 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, Assistant Town Manager Ron Himmelmann and Town Attorney Richard Roosa. Also present were Wayne Daltry, Bill Spikowski, Build A Pool Foundation Members: Kitty Taylor, Rusty Isler, Deborah McIntire, Gretchen Johnson; Beverly Grady and Bill Van Duzer.

**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 the Reverend Dick Tafel.

**IV. PUBLIC COMMENTS ON AGENDA ITEMS**

**A. MARTIN YORK**

Mr. York is with The Beach Pier Side Grill. He advised that when they came into Times Square, they didn't have the opportunity to make a decision on how they were going to have their trash collected. It was already set up in Lynn Hall Park, and their employees moved the trash there at no charge. It was at the Town's decision that the street was closed. They would like the trash location moved from it's present location back to where it was prior to the move. Trash collection, he feels, should be at the Town's expense, or they should be able to go to other entities to see if they can get monies, possibly tourist development dollars. If they are successful in getting the trash location removed from where it's currently being dumped down by the Dockside Sports Pub on Crescent and First, he would personally be in charge of it.

**B. CODY CONNOR  
VINCENZA WARE**

Mr. Connor advised that they represented Vincenza's Art Shack in Times Square, a new business. He asked the definition of MSBU. Town Manager Segal-George explained that it meant Municipal Services Benefit Unit. Mr. Connor expressed the opinion that the entire business community on the Beach benefits by the presence of the Times Square redevelopment, and for this reason every business in the community should participate in the cost of maintenance for Times Square. In fact, they have to put up with things there that the rest of the community doesn't have to put up with. He has three bags of garbage that he picked up Sunday. Eighty percent of it belongs to DQ. He would like for the Town Council to adjust the burden of expenses equally among all the benefactors of the beautiful redevelopment and move forward the Town's business license tax base for general revenue and stop putting the burden on only the people who are specifically in Times Square. The size of business activity, the type of business, business activity by volume, product and service impact on the business, social and ecological environment are considerations that have to be defined before there can be a fair payment for what we are all benefiting from.

Vincenza Ware stated that they are a small retail business that does not generate any significant amount of trash. They want to survive in Times Square and if this is required, it may end up only for food services, which are the ones that make the bulk of the trash anyway.

**C. BILL WHITAKER**

Mr. Whitaker said he would first like to thank Ron for coming up with the idea of providing all of the merchants with additional trash cans and for putting in the corner of the park a receptacle for extra cans. He thinks these two steps may be a solution to a lot of the problems that we face in Times Square. He'd also like to thank Ed, who supplied him with numerous statistics and has been cooperative in working with

them and trying to come up with a solution for this problem. He would thank our Mayor, who was kind enough to meet with all the merchants on Friday and discuss the problem in great detail with them. He thinks that out of that meeting came some very productive ideas.

Mr. Whitaker stated that Ed provided them with the list of the statistics for the first twelve days of May, which showed with one exception that the number of additional garbage cans they have in hand right now would be adequate to allow one garbage pick up a day rather than the three or four pick ups that they now have. Ed can come in either late evening or early morning and collect all of the garbage cans at one time and take them to the trash compactor. In discussions with him, he indicated that this would take probably anywhere from 1-1/2 - 3 hours per day to do this. The other option that they discussed with Howard at Kimmins was for them to make a daily pick up of all their garbage at curbside down in the area of Citrolas. However, there turned out to be drawbacks they hadn't initially thought of and which Mr. Whitaker named. But, he said, there is some appeal and attraction for the Town getting out of the garbage business and Kimmins, which is now waste management, taking over that responsibility for us by coming around early each morning and picking up all of their garbage at one time. Howard was invited to bring cost estimates to this meeting tonight, but it isn't certain yet whether he will come.

If, in fact, Ed only spends 1-1/2 - 3 hours a day, and if we choose the maximum time that it would take him to empty on the one pick up a day, that's three hours a day. And if you take the cost considerations of \$10 per hour, which is what he is paid, times the 365 days, the garbage cost would drop to \$5,475 per person for the Town and for the merchants if split 50-50. Mr. Whitaker broke the figures down even further for Dairy Queen and the Pier Side, which he said produce 57% of all the garbage on the Square. He felt that potentially it would not cost us anything with the Town taking up 50% of our total cost associated with garbage pick up.

With respect to the maintenance fee, Mr. Whitaker said he was in favor of the Town contributing as much revenue as is collected in the Times Square towards the maintenance of the Square, because he feels it's a town asset, a Lee County tourist attraction and it's money well spent.

#### **D. JOHN LALLO**

Mr. Lallo said that Bill kind of summed up what Mayor Murphy did for them on Friday, and he told Ray Murphy that they appreciated his meeting with them. He does not feel that his restaurant needs to be paying any extra for garbage since their rights were taken away from them and that the Town should help them out now. His employees can go to the end of the street, but they cannot cross the street because his Worker's Comp would drop him instantly. He doesn't know what to do at this point because he can't afford to have his garbage taken out of the Square by Ed at a cost of \$226 per month. He is paying Kimmins \$200 a month to take it from under the bridge to the dump.

People who have tables in the street generate roughly \$15,000 a year for the Town, Mr. Lallo said. They were put in Category 1 just because they're in Times Square. It is his feeling that if they're already helping the Town generate \$15,000 of the \$26,000 that they're going to be giving towards the MSBU, that maybe they should be considered in the lower category.

#### **V. DISCUSSION OF THE CORP RE-STUDY: WAYNE DALTRY**

Mr. Daltry, who is the executive director of the Southwest Florida Regional Planning Council which encompasses our five-county area, stated that the city and its hinterlands constitute a region, but we have an interest that goes way beyond our city. The restoration of the Everglades is an initiative that's a joint federal/state initiative that began because of lawsuits over the degradation of Everglades National Park in Florida Bay. And that degradation caused the federal government and the state government to focus in on their definition of the Everglades region, which is the boundary of the South Florida Water Management District. Fort Myers Beach, thereby, became part of the Everglades.

Discussion of the Everglades got to be how water was going to change its flow. About this time last year, Mr. Daltry advised, he was appointed to a committee called the Restoration of the Everglades Working Group representing the whole area west of the Broward/Dade/Palm Beach County line. The subject came up of the Corps of Engineers re-study of the Central and Southern Flood Control District, which is now the South Florida Water Management District and the entity that owns all the canals that we drive over when in Broward, Dade and Palm Beach Counties. They also own a canal called C-43, aka the Caloosahatchee River, from the Franklin Locks eastward. Their mission was to find out 1) Is the Central and Southern Flood Control District meeting the water supply needs of its region? 2) Is it meeting the flood control needs of its region? and 3) Is it adequately serving as a good steward of the natural resources of its region?

The Central and Southern Flood Control District ends at the Franklin Locks when going east and the Southern Flood Control District ends at the beach going west. Anything within the jurisdiction of the South Florida Water Management District is within their permit and budgeting authority, and if your tax bill has a line that says South Florida Water Management District, you are part of this restore the Everglades initiative.

When the re-study was undertaken, it was to assess an era of droughts and floods. The initial drafts of the study really ended at the west bank of Lake Okeechobee. The study found that it did not have all the water needed to supply the Everglades or Dade, Broward and Palm Beach Counties. There was insufficient water to meet the flood control needs of the Lake Okeechobee area when there are heavy rains. It did not have the water necessary for citrus and sugar cane. It could not be all things to all people. There was too much drought.

Then someone discovered that all of the Caloosahatchee River is part of the Central and Southern Flood Control District and an addendum to the study that was underway was patched in. It was decided that the Caloosahatchee had more water than was needed. An environmental assessment of the estuary of the Caloosahatchee was taken, after which it was decided that there was adequate water from the Caloosahatchee and, in fact, there was a surplus. If they stopped the flow of the river overall and redirected some of the flow into the Everglades, they could reduce the river flow by 54% and it would be okay for the estuary. That report came out in the middle of October. It gave the wake-up call that Southwest Florida was a rural hinterland for urban areas on the east coast and that there was adequate water to be moved from the Caloosahatchee River to the east coast to meet their water supply needs.

The Everglades restoration has gotten to be important for Fort Myers Beach, because it presumes water is a resource, rainfall is a resource that is to be allocated according to a mathematical model. Mr. Daltry said he now believes that the re-study recognizes that they have been too hasty for this side of the state. There are three proposals that are important for the city to participate in. The first activity underway is the Caloosahatchee River Advisory Committee in which he thinks the city has representation. This committee has been developing a water supply plan for the Caloosahatchee River basin. The study committee has become recognized as the vehicle by which the core re-study, in which they propose to funnel a billion dollars to restore the Everglades, will recognize the water supply needs of Southwest Florida. That study will also assess the full estuary. Then there is the National Estuary Program in which the city participates. This is a program sponsored by the Environmental Protection Agency that was established in this area three years ago and covers the coastal communities of lower Sarasota County, all of Charlotte County, all of Lee County, the upper reaches of the Peace River and the reaches of the Caloosahatchee River. That program is being recognized by the Corps of Engineers and the South Florida Water Management as an entity with whom they have to coordinate. The third entity that has not yet been created is what they call the Southwest Florida feasibility study, which is to incorporate the Town of Fort Myers Beach in its entirety into the planning forecast, the water supply needs, the water quality impacts and the overall growth estimates for the Southwest Florida feasibility study component of the re-study, all of which is under the umbrella of restoring the Everglades as defined by the South Florida Water Management District boundary.

Mr. Daltry said that they are recognizing that there may not be surplus water on the western side of the state to go to the eastern side of the state. In fact, for restored Everglades in our area, it may require all the rain that lands in Southwest Florida to be in Southwest Florida. The reality is that when we do undertake a true environmental assessment of our coast, it is a separate basin and they're going to have to do their re-study. The program is going to be underway for a long time. Institutional participation is going to be necessary for the Town's interest to be fully recognized by all the other parties as they undertake their planning efforts.

Also noted by Wayne Daltry is that Florida is in a program of promoting transportation. Transportation investments in economic development, if you haven't watched it closely, becomes a game of follow the money. All areas have the same tax rate, but some areas get more tax investment than others. Southwest Florida, staunch Republic stronghold that it is, wasn't getting support. A coalition is being formed and invitations have been sent out to participate in a workshop. The workshop's purpose is to identify the importance of transportation investments in the region's economic future and the importance of the region's economy for the State of Florida. The forum is June 30 at Harborside. If at that forum the region's participants conclude that nothing needs to be done or should be done, Mr. Daltry said that he can assure us that this area will continue to be a tax donor to the State of Florida and the federal government. It is our mission at that forum to demonstrate that we deserve for Florida's own future better treatment than

we've got, and it's our mission to show that we can work together in a sustained alliance to pursue a number of points. He doesn't know what those points are yet; the forum is supposed to bring them up. If we can't agree on three or five points at that forum that the whole region can support, then we'll continue to be a donor area. Hundreds of people have already indicated interest in participating. Fifty agreed to help work on setting up the forum. Our hinterland, stated Mr. Daltry, clearly extends to our major transportation facilities.

Questions and Comments from the Council:

Dan Hughes remarked that he was aware that a study was ongoing but unaware as to the effect it might have. He advised that Terry Cain had brought this to the attention of the other directors of the Estero Bay Buddies Foundation at our meeting of May 4. He commended Terry Cain and the Mayor for bringing Mr. Daltry here. Dan Hughes felt that Mr. Daltry's cover letter to Porter Goss was extremely enlightening. He also thanked Terry Cain for the other documents she had submitted to us and for suggesting that our Mayor should consider writing a letter to the Corps of Engineers. Dan Hughes felt that we should go a little further than just the letter and say that the Town Council, hopefully unanimously, endorse this and request that Mr. Goss communicate with them.

Wayne Daltry advised that the official comment period on the redrafted environmental impact statement ends May 24, so our letter will be timely. It recognizes not pursuing funding capital construction until the studies are done, and if those studies justify something besides those projects, they are to redraft that part of the study. Of course they recognize now that there is a serious concern on our side of the state with their presumption that water supplies are so generous over here that their studies drought budget is only met by redirection of the Caloosahatchee River.

Vice Mayor Mulholland thanked Mr. Daltry for coming and Terry Cain for her efforts. He said he had read with some alarm the proposal to cut the water flow in the Caloosahatchee down to roughly 50%. In his estimation, that will give us more problems with agricultural runoffs now being less diluted with the reduced water flow than it currently is, and we have problems now. He would hope this Council could draft a letter.

Mr. Daltry said that the Corps recognizes that they had been deficient in their water quality work on the re-study. The point that Mr. Mulholland had raised about water quality degradation in reduced river flow is a serious one that was not even recognized in the re-study. The re-study does reduce the over-drainage of the dry season, but another point of concern is the flushing and dilution that should occur in the upland areas by allowing heavy rainfalls to prevent all that accumulated muck from getting into the estuary at one fell swoop.

Councilman Reynolds stated he didn't know how many people know how easily this could have slipped by without them knowing about it. He told Mr. Daltry that when he read his letter to Porter Goss it was the first time that he realized the gravity of their plans. We all owe a deep gratitude to him in catching this and pursuing it.

Mayor Murphy thanked Wayne Daltry for coming down today. He advised he'd had the pleasure of serving with Mr. Daltry here on the local level and also on our policy board on the State level. When they go to the State meetings, he's recognized as the dean of executive directors throughout the state. Mayor Murphy said that we're very fortunate to have Wayne Daltry from our area. He's as tenacious up on the State level as he is on the local level and so we're very well represented.

Council member Cereceda asked Mr. Daltry if there was anything other than the letter that he thought we could do. Mr. Daltry replied that the letter is our official entry. If they're following through the way they stated and have honorable intent, participating on all those committees that exist and the ones we've formed will be necessary for the Town to ensure having its points represented. He can try and represent his region, but only the Town can truly represent our needs. His efforts are to make sure that these committees always have a slot for us, Naples, Cape Coral and try where we can to have a common voice on shared issues. And clearly, being someone else's hinterland is a shared issue.

Dan Hughes said he'd like to make a motion.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that the letter to the U. S. Army Corps of Engineers be put in the form of a resolution; that the Town Council adopt the substance of this letter as the Whereas clauses; that the resolution itself be that

the Fort Myers Beach Marine Resources Task Force be included in the data base and that this resolution be signed by the Mayor and submitted to the U. S. Army Corps of Engineers. Passed unanimously.

## **VI. DISCUSSION OF MSBU FOR MAINTENANCE AND GARBAGE AND DISCUSSION OF COMPACTOR AND BUILDING**

Stated was that as we know the County has gotten out of the garbage business and we had to take it over. We had to invest some money and lease some equipment. We have to decide if we're going to make the County pay and how we're going to make them pay. There are different ways we can go about it.

Town Manager Segal-George stated that they had tried to take the minutes from the workshops, particularly with regards to maintenance, and come up with some way of bringing additional merchants into the mix as the Council had asked them to do. They had looked for a simple way to try and include everyone and come up with some framework for dividing folks into classes and then basing percentages on the classes. They also felt it was simpler and cleaner to do it per business rather than try and do front foots and those kinds of things, since that seemed to engender a lot of concern and complaints during the workshops. She, John and Ron have worked very hard with regards to these two issues to come up with something that works the best way they know how to make it work. They want us to decide what we want to do.

Mayor Murphy stated that we'd all like to put this behind us and move on and hopefully we'll be able to come to some sort of resolution today.

Anita Cereceda advised that she's had several people ask her in the last couple of days whether or not she's going to vote on these issues. No one has said whether they're asking her because they want her to vote or they don't want her to vote. She asked Attorney Roosa if he felt she had a conflict here (as a business operator) and, if he felt that she did, could she still participate in the conversation. Attorney Roosa told her that she didn't have a conflict. It's not unusual for a discussion to come before a Town Council that applies to a certain area of the Island, but that would not disqualify a resident or a business operator in that area because they're presumed to consider what's best for the town and there's no direct financial benefit. But there is direct financial cost, Ms. Cereceda stated. It's a cost, Dick Roosa advised, that's not directed only to her but is shared by others, and she is part of a class.

### Maintenance of the Times Square area:

Anita Cereceda expressed the opinion that the maintenance fees for the Times Square area are fair and reasonable, although they might be burdensome for the smallest businesses, such as Vincenza's Art Shack and perhaps The Pier Peddler, her family's business.

Vice Mayor Mulholland said that at the workshop, Dan Hughes had proposed something that he thought was very fair: that the Town would pick up 60% of the maintenance costs in the Times Square area. He would go along with this.

Dan Hughes said he thought we had this pretty well worked out at that workshop. The figures are a little bit different now in terms of the merchant portion. He's happy with the categories and the total percentages for each category: the 60-40 Town versus merchant. Then you take the merchant and split it up 50% Times Square, 15% adjacent, 25% across the street on the pavers sidewalks and 10% across bringing it down to the Lani Kai. But he does have a problem that somebody with only 200 square feet would be paying the same percentage as everybody else.

Mayor Murphy said that it sounds like there's two people so far on the Council that seem to be finding a little inequity concerning that one particular business. Maybe that business could be dropped down to a Category 3 type situation.

Marsha Segal-George suggested taking a business that's 200 feet or less down to Category 4. Everyone felt this was fine, but they would have to recalculate the percentages.

### Garbage Costs:

Mayor Murphy advised that a proposal had been presented by the Town staff and Mr. Whitaker regarding an alternative if things can be worked out with Kimmins whereby there would be one pick up a day. Town Manger Segal-George stated that she knew Mr. Whitaker and others are waiting on information that they don't have yet. We could continue this discussion to June 7, as she really feels that until we have that information and can evaluate the costs, it would be hard to compare. Ray Murphy said that would be

fine with him, but that would be it. We are going to have a resolution of it by then.

Anita Cereceda asked if there was any reason why we don't have those answers now. Ray Murphy said both he and Mr. Whitaker made calls to Kimmins but haven't heard back from them yet. But there are a couple of points that need to be addressed, like who's paying for what and what is the overall benefit going to be to these people at the end.

Ms. Cereceda asked if there had been any discussion of how that curbside pick up would be handled during season. Right now she's sure it would be adequate, but she doesn't feel that it would work the weeks of Thanksgiving, Christmas and February 15 next year. There would simply be too much trash. Her other question is whether there was any discussion of what would happen when we start generating complaints about how the trash is being handled on the curbside. Mayor Murphy admitted that there wasn't too much discussion at the workshop regarding seasonal pick up. Everyone seemed pretty comfortable that this would work in the interim. But we can wait and get the numbers back from Kimmins and see what their proposals are and then we can make a determination at the next meeting.

Marsha Segal-George advised there had been no mention in the proposal with regards to cardboard. Ray Murphy felt that there had been some discussion of it, but didn't recall what was said. He will probably meet with Kimmins and bring forward all that information.

Contract proposal for design and construction drawings for the new compactor building and compactor:

Town Manager Segal-George said that the last time Bill Spikowski was here, we saw a picture of what the building would look like. This is the only thing, she feels, that could help us in season with any of the other proposals. We're trying to put this on a very tight timeline that would give us a compactor in a building by Thanksgiving. We have the actual contract proposal from Dover in our packets and it indicates the price for design and construction documents necessary for bidding.

Dan Hughes said that it was his understanding that because this agreement is under \$120,000 that we don't have to go through competitive negotiations.

Anita Cereceda asked if the compactor had to be in a specific location. She was told that it would still be built but that they were looking at a specific site because they had no other options. Bill Spikowski said that certain things were very specific. The building itself is a multipurpose building to fit into that corner. The architectural style is designed for a prominent corner site.

Councilman Reynolds said he realized that the compactor will hold a lot more trash. He asked how many times a week it would have to be emptied. He was told by Bill Spikowski that the original plan with Kimmins was to have a container large enough to serve all the Times Square businesses and be emptied only every eight days. The compactor is emptied by disconnecting the container, hauling it directly to the incinerator and then hauling it back. Mr. Reynolds asked if the cost of emptying the larger container compared to removing smaller containers would be about the same, and he was told yes.

Vice Mayor Mulholland asked if the eight-day estimate for pick up of the compactor container was based on peak season or regular season. Bill Spikowski said he would find out for us. Mr. Mulholland also asked how bad the smell would be around that area. Bill Spikowski replied that the dumpster is always going to smell no matter what. Compactors are completely self-contained and that makes a big difference in keeping odors down. A key factor when going to a compactor is how the trash is going to be handled there. One of the best ideas would be similar to what was discussed today where the merchants would contract directly with one person or the Town would contract with one person to actually carry the cans across the street. That person would not only be paid to do the hauling, but also paid to keep the area clean.

Dan Hughes asked who activates the compactor. He was told that it was hydraulically controlled and nobody needs to lift the cans into the dumpsters the way the County has been doing for the last few years. If we contract with one person to do it, that would be the only person with the key to the equipment.

If we were to construct a pavilion, a compactor building, restrooms and a storage facility, what is this going to cost? Dan Hughes wished to know. Bill Spikowski said that they had a rough figure of about \$105,000 - \$110,000 depending on the soil conditions, the quality of the building and the finish. In order to get it operational by Thanksgiving, the compactor portion would probably have to be built first or maybe the whole shell could be built, but that would be the only part finished. Dan asked who owns the compactor. Mr. Spikowski replied that normally they're leased. You can purchase it or you can lease it. It's not included in the \$105,000. The one that Kimmins uses is the best in the industry.

Anita Cereceda said she'd like to see some discussion between now and the next meeting. If we're going to be looking at centralized collection and one person dealing with it when the compactor comes on line, why aren't we looking at that now?

Garr Reynolds said his biggest concern is that this is not going to solve the problem, because there are going to be additional costs now just for carrying the cans across the street to the compactor. So we really haven't done anything except shorten the distance of carrying and moving all that trash and garbage. Ray Murphy stated we must remember that we'd be eliminating at least three pick ups a week of the dumpsters down underneath the bridge. And we're reducing the other pick up to once every 7-8 days.

John Mulholland advised Garr Reynolds that the beautiful part of the compactor is that it doesn't have an odor if you get the garbage in, and it might be a cost effective solution that is attractive to the merchants.

Ray Murphy asked if the direction then would be consider this proposal at the next meeting in conjunction with the other discussion on the garbage. Marsha Segal-George advised that we could postpone this, but we have no prayer of meeting Thanksgiving. We'll be going into season dealing with either our garbage plan or the alternate garbage plan.

Dan Hughes made a motion.

**Discussion:**

Dan Hughes was asked what plan he was proposing by this motion. His reply was that he was proposing the approval of the agreement to provide professional services for the design and construction of the pavilion, the compactor, the restroom and the storage facility.

Anita Cereceda admitted to having had lengthy conversations with Tim Englund, who owns Wings. She knows that Bill has as well, and Mr. Englund has deep deep reservations about a trash compactor being there and especially about the public restroom aspect of it. Mrs. Segal-George stated that at this point all we're talking about is doing the building and the trash compactor and not putting in the other auxiliary options.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that we approve this agreement to provide professional services for the design and construction of the pavilion, the compactor, the restroom and the storage facility and authorize its execution by the Town Clerk subject to its review as to form and legality by the Town Attorney if he has not yet done so. Passed with one nay vote.

**VII. PRESENTATION BY THE FORT MYERS BEACH BUILD A POOL FOUNDATION**

Kitty Taylor was identified as president of the Build a Pool Foundation. She introduced Rusty Isler, former Councilman.

Mr. Isler thanked the Council for the opportunity to be involved with the Pool Committee over the last two years. He has watched all the phases of the program: design, construction, funding and now staffing and programming, and he spoke of the diversity of people in the Foundation, all with one aim. He stated that he wanted to encourage the Council to continue to work with Lee County and our citizens to ensure the success of this cooperative venture.

Deborah McIntire, Treasurer, was called on to speak regarding the Foundation's current financial state. She advised that total funds raised to date, not including outstanding pledges, is \$59,985. Total cash on hand in the bank is \$48,256. The amount of outstanding pledges is about \$18,500, including Kiwanis donations, and the Chamber Foundation recently pledged \$2,500.

Deborah McIntire was asked questions by the Councilmen, including whether they would be an ongoing fundraising organization after the pool is built. Ms. McIntire said that she believed so.

Gretchen Johnson was introduced. She stated that they hoped to have a 4x6 sign on the street somewhere so that the public can see that they are getting this money in and then contribute more.

Kitty Taylor spoke about where they've been and where they are going. Referring to their brochure, she said we can see that what we now have is a truly comprehensive aquatic center designed to provide a multiplicity of activities for all age groups in the community. Children's activities were described. She said that they fully intend to solicit as much public input as can be made available within their planning time framework. They are on a fast track and have individually pledged the time to accomplish this under a deadline. Completion date was originally set for the year 2001 and they are more than a year ahead of schedule. Since April 1999 they have been recognized by the IRS as an organization to which contributions would be tax deductible. Ms. Taylor listed all planned fundraising events. They plan to build a wall of thanks listing donor names and will have a plunge party to celebrate it.

Questions and Comments by Council members:

Ms. Taylor was asked by Vice Mayor Mulholland if she had any comments on the operation and maintenance of the pool. She advised that they did not want to make a recommendation to the Town Council about programming until such time as they have confidence in the data they are relying upon.

John Gucciardo stated that the Foundation felt it would be really helpful for them to have public hearings along the lines of the ones that they had when the design element was going on.

Garr Reynolds said that one evening John had discussed with the Council a possible budget overrun and had asked them what they felt could be cut out and still get the job done for a specified figure. Was anything cut out, or has a place been found to get the additional funds? John explained that what he was looking to do was to give us the entire construction budget as it was worked out in final detail by the contractor. The contractor went through a pretty laborious process with his subcontractor to get to those numbers. What it showed was that \$1.7 million, which the County had indicated would be available, would go into construction. On the fifth page of a five-page document was a group of seven different groupings of add-ons coming in under that \$1.7 million figure. There were some items that we discussed with the Foundation and also with the Council as to whether or not they could live without them. Basically, with some trimming, some cutting back on some of the aesthetics, we are within about \$50,000 of the total \$1.7 million getting everything that was left in the pool. Of course, there's some contingency money there. We really won't know until much closer to the end of construction as to what items we may need to look at now. We've made inquiries of sponsors to put in such bubble items as big colored umbrellas.

Anita Cereceda asked John Gucciardo if there was a final construction document that exists now that shows what is going to be constructed, including getting us close to \$50,000, and she was told absolutely. John said he had also received the final version of the construction timeline so we can see different phases of construction. What they propose now is about a mid-September completion.

Anita Cereceda said she was going to make a suggestion then for a workshop where we can talk openly about what the costs are going to be. She was advised by Kitty Taylor that the Foundation was meeting on May 20 if she would like to join them. But Anita's concern is that what is going to come back to the Council is a recommendation to approve. There's not going to be any interaction with us prior to that. She thinks that the Town Council needs to initiate a public workshop that is advertised to the community for us to offer some direction as to what we believe the programming should be. We are not giving direction. They are giving us direction to approve, and that concerns her at this late date when basically we have six weeks before John and Marsha will bring us a draft budget with how much money is going to be allocated. Our direction to the Pool Foundation has been extremely limited.

Ray Murphy feels that we have given direction to the Pool Foundation, which is like any other advisory committee that we have on the Beach. They gather information and bring it back to us and then we make decisions. He thinks they've been involved in the process long enough now that they should have a lot better handle on it than we do, and we're anxiously waiting to hear all this information.

### **VIII. Selection of Estero Boulevard Streetscape Designer**

Mayor Murphy asked to move this item from the Administrative Agenda to VIII. on the agenda so that the engineers who were here tonight would not have to wait unnecessarily before being heard. He said he had also asked if there was a statute that we should be following and learned that there was. In summary, the statute says that the agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services.

In order of preference, the firms were Wilson-Miller, CPH and Kimley Horn.

**MOTION:** Made by Anita Cereceda and seconded by John Mulholland to approve the firm of Wilson-Miller as the project designer for the Estero Boulevard Streetscape Project for the Town of Fort Myers Beach. Passed unanimously.

Mayor Murphy and other council members praised all three firms for giving wonderful presentations.

**IX. CONSENT AGENDA:**

**A. Approval of Minutes: April 15, 1999 and April 19, 1999**

Garr Reynolds asked to pull the approval of Minutes of April 19, 1999.

**Corrections and Changes to Minutes of April 19, 1999**

1. On page 6, VI. B., paragraph 1, line 5, change "Why was he paid \$500?" to read "Why was he paid \$5,000?"
2. On page 6, VI., B., paragraph 6, line 2, change "year to date '94" to read "year-to-date \$94,000." On line 5, change "BRA" to "CRA."
3. On page 7, A., paragraph 4, line 2, change "deflate the shoot" to read "deflate the chute."
4. On page 10, paragraph 2, line 2, change "\$350,000" to read "250,000." On line 5, change sentence beginning "And it's not \$280,000 any more" to read "Regarding total pool cost, it will exceed maybe \$280,000 or more. It's not \$250,000 any more that we talked about, but now it's about \$300,000."
5. On page 10, paragraph 2, line 9, change "Mr. Reynolds doesn't feel that people would be paying taxes" to read "Mr. Reynolds doesn't feel that people should be paying taxes."
6. On page 19, XI., paragraph 1, line 1, show that Attorney Roosa was referring to the Mississippi with reference to a determination of five violations.

**MOTION:** Made by Garr Reynolds and seconded by Dan Hughes that we approve the minutes of April 19, 1999, with the changes and corrections noted. Passed unanimously.

**B. Review of Financial Reports for April**

Councilman Reynolds praised John Gucciardo for doing an exceptionally good job on the budget. He has answers almost at his fingertips. You know right away that he's very aware of what he's talking about. He thanked John for answering his questions.

Mr. Reynolds said he is asked by the public where the Mound House money is, and that John Gucciardo clarified for him the other day that it is still with Community Trust even though we're carrying it in every year and out every year.

**MOTION:** Made by John Mulholland and seconded by Anita Cereceda that we approve the balance of the Consent Agenda. Passed unanimously.

**X. OLD BUSINESS**

**A. Public Hearing: Continued from 5/3/99: Request to Vacate Fourth Street (Lighthouse)**

Applicant Input:

Beverly Grady introduced herself as representing the Kolars in their request for a vacation. She advised that a 1949 plat dedicated the streets on that plat to the public but that the Town, as a local government, does not own Fourth Street. The adjoining landowner has the fee simple ownership.

Dedication gives the public an easement. It is a limited property right, but it is subject to that easement on the plat for use as a road or street and the Kolars own that portion that has been requested in the vacation. This is an easement for a street and you can't use an easement for a different purpose. The proposition as they understand it is that the Town wants to convert it into a parking lot. A parking lot is a separate use from that of a street or a road in the Town's own regulations. A parking lot has a separate section, a separate design criteria. Bill Spikowski's memo from January proposes it being a shared parking lot. In his memo he said that the parking spaces could be metered or leased to private users for a monthly fee. Bill Spikowski has looked at the plan more closely recently and he was kind enough to provide the applicants a sketch this afternoon showing how this could operate as a parking lot. There is no sidewalk because you don't need to have sidewalks in parking lots.

In 1978, it was determined that there was no public purpose to the remaining Fourth Street segment on the north side of the bridge, because with the complete loss of its dedicated use by the imposition of the

Matanzas Pass Bridge, you could no longer have Fourth Street function as a road or a street. So that portion of Fourth Street, north of the bridge, has been vacated. No one will ever be able to use the remaining remnant of Fourth Street as a road or a street. There is nowhere to go. The only place to go is to the Kolars, who already own that. It's like a driveway at this point. The piece that's left is just a remnant of its former self.

No one from the public uses Fourth Street as a road or street today. In fact, they haven't for twenty years, ever since the bridge was built. And no one is proposing today that the Town use it as a road or street because it's only a remnant and its use as a roadway is impossible. A review of the file shows that there are letters of support of a vacation by the Florida Department of Transportation, the Public Works Department of Lee County, the Department of Transportation of Lee County and Development Services. In the design that Bill will show us tonight he has used the design criteria from the Town's code for designing a parking lot and to charge money for parking, and even potentially lease it.

The applicants would ask us to look from a legal standpoint at what the test is for granting a vacation. The first question is is the right-of-way needed at this time or will it be needed in the future as a road? Ms. Grady stated that they would respectfully submit that the answer is no. Do you need this now or in the future as a street? Again, the answer is no. The second question that must be asked is if the right-of-way is actually vacated and closed, will anybody be denied ingress or egress to the private property as a result? The answer to that is no. What benefit can be shown with the vacation? What they would say to us is that the owner has gone to great expense and commitment in order to implement the Town's master plan as shown as San Carlos. None of it is going to be a perfect replica of Bill Spikowski's and Victor Dover's conceptual drawing, but as they can show us tonight, it is going to go a long way to meeting and furthering that intent. The Town has been very successful through the renovation by the Town and the CRA to the Times Square. That improvement has now been expanded to the San Carlos/Crescent Street area and the Kolars want to be part of that opportunity. They respectfully submit that the reassembly of these two parcels will be a vast improvement over keeping the two parcels separated by a parking lot.

Currently there is parking on Fourth Street, Fifth Avenue and Third Street where vehicles sit, some on private property and some on the right-of-way. It has already been designed that with the redevelopment on site and the vacation on Fourth Street, all of the private parking for Lighthouse Resort will be on the private property. This means that a right-of-way sufficient to handle parking will be freed up on Fifth Avenue and is estimated by Bill Spikowski to have 12 spaces. Eight spaces are estimated for Third Street. A new parcel on the corner of Fifth Avenue that is either owned by the Town or the County should provide four additional new spaces, and they are willing to provide access in their curb cut. Therefore, there is parking available for 72 spaces, including where vehicles park over public space as well as private space. Through the CPD process, the design allows for a total of 112 spaces. Eighty-eight of those spaces are the private parking spaces located within the boundaries of the Lighthouse Resort and are solely to serve its use. With the vacation, it would be a far greater public benefit to provide the additional 24 spaces referred to above.

Bill Van Duzer was called upon to show where the increased number of spaces would be after the Kolars redesign their resort. Questions and comments were made by Council members after the presentation.

Beverly Grady advised that Mr. Kolar's redesign of his property is predicated completely on the vacation of Fourth Street. Before pouring money and time into his project, he would have to know if Fourth Street can be vacated.

Garr Reynolds felt that it was incorrect to consider Fourth Street a parking lot any more than any of the other accesses along the beach would be considered to be parking lots.

Dan Hughes ascertained that the proposed development with the new buildings, wholly apart from the 24 parking spaces, would be self-sufficient in terms of meeting all of our land code requirements for off-street parking. He also ascertained that there would be no additional burden on the public rights-of-way, public streets and public parking areas as a result of the new development.

Bill Spikowski said he wished to make the point that streets are more than just driving somewhere. They are for access to property, for walking to get somewhere, for parking in urban areas, for utilities. He noted that five feet on each side of Fourth Street have the noses of cars parked across them and, therefore, the spaces as currently configured aren't totally public. At the previous meeting when it was learned that there was a redevelopment plan, that opened some other options that hadn't been considered before. He described these options.

Mr. Spikowski asked if we wanted the redevelopment that we've glimpsed tonight. If we do want it and approve it, can they afford to build it? The reason why he is suggesting that we don't approve it is because there is a severe shortage of parking in the business core of our Town. The time-honored, traditional and excellent way of providing that is on-street parking. This site is already being used for that and with proper signage and maybe a redesign if the adjoining property owners don't want to cooperate, it can still provide a substantial number of spaces at an extremely low cost compared to all the other possibilities, such as parking garages. The Old San Carlos plan that we have endorsed shows how it can turn into a more intense plan if parking garages are provided.

Anita Cereceda said she'd like the record to reflect that her concerns are not whether or not Fourth Street will be a parking lot. It's the overall redevelopment of that core commercial area that this community has been talking about for the last ten years and the recirculation of traffic, the redevelopment of that whole area, not any particular parcel. And Fourth Street in her mind is something that the Town may need to ensure that the development occurs.

Attorney Roosa told Bill Spikowski that his renderings and drawings on this document differed from the original petition in terms of what he's asking to be vacated and he pointed out the differences to him. He said that the legal description that was published does not include that triangular area on the plat, so that if you were to adopt the resolution to vacate that road, it would not include that triangle.

#### Public Comments:

##### **A. Dr. Joe Croker**

Dr. Croker ascertained that the triangle in the Spikowski plan had been eliminated and if the street is not vacated, we would end up with 19 parking spaces. This would be less than ideal, because there is no sidewalk availability and people who park would have to walk down the road, which could be a safety problem. And if we go by what Bill Van Duzer explained, we would end up with 24 parking spaces in a different area. So as he sees this, if the property is vacated, a potential physical health hazard would be eliminated and at the same time five additional parking places would be gained.

Councilman Hughes told Joe Croker that he was partly right, but the Spikowski plan wouldn't change. This is a public right-of-way that could be used for public parking. Joe Croker stated that even going that route, we would then end up with the 21 parking spaces that the original plan provides, which would be less than "safe" or ideal, versus the 24 spaces under the Spikowski plan, so the Town would have a net gain of three spaces without a potential safety problem which could be to the Town's benefit somewhere down the road.

##### **B. Mike Klein**

A resident of the Town, Mr. Klein said that he was as confused as everyone else. He asked if the additional half dozen spaces that can be obtained by putting in another curb cut are on Town property and being counted as providing additional parking. He was told that they weren't counted along with the additional parking.

##### **C. Bill Whitaker**

Mr. Whitaker stated that, as we know, he is a merchant in the area and he is very concerned about how the area is developed. He would like to know what is the best use we can hope for out of that property. Mr. Spikowski has presented a plan that he thinks is a very positive step forward for our area and it is hard for him to conceive how we can come up with a bigger and better use and utilization of that parcel of land. He doesn't think the Town is going to be hurt by the parking plans that they have proposed. He can't help but think that when we look at the big picture, we're not going to put all the big picture together in one fell swoop. It's going to be done parcel by parcel and developer by developer. And this is a seed that potentially could spur who knows what in that immediate area, much as the seeds have been planted on the other side of the bridge in the Times Square area and all they have developed. Having said all that, he doesn't think the street should be vacated unless there was some binding agreement that the plans presented here tonight would be fulfilled. He thinks that the two almost have to in some way be legally tied together other than just vacating for what potentially might happen in the future. But from a merchant's standpoint, he thinks that's a tremendous start on that side of the bridge.

Mayor Murphy asked if anyone wished to declare any ex parte communications. Vice Mayor Mulholland stated that he had received a two- or three-page memo from Bill Van Duzer the other day that pertained to this subject. Councilman Hughes said he had received the same memo. Mayor Murphy

advised that he too had received the same memo and that he hadn't spoken with anyone or received anything else. Councilman Reynolds said he had received the same memo and had talked with Mr. Kolar, Sr. Council member Cereceda is already on record regarding her disclosure.

Ray Murphy said that our history to date has been more along the lines of easements, etc. This has significantly more of an impact. And for anyone to make light of this and say that this is a no-brainer for us has a short memory, because the Town itself came into being on this very issue.

Kitty Taylor stated that if the Town Council is in favor of what they presented as the CPD concept, they could continue this to our next meeting and in the interim work with our Town Attorney on a development agreement that would tie the vacation in with the representations that they have made about the additional parking.

Ray Murphy said that now we have three choices before us: a) to vacate, b) to deny the vacation, or c) which according to Attorney Roosa would be to continue the public hearing at the next meeting. Dan Hughes made a motion to continue this matter to our next meeting. He noted that the legal description could be amended after the hearing has commenced and if not, it could be addressed with the Council's approval at the time of the CPD.

#### Discussion:

Vice Mayor Mulholland said that he didn't think the question is that little triangle. He knows it's a point that has to be resolved, but he doesn't think that's the overall question here tonight. He doesn't think the question is doesn't the development look good. They have some beautiful drawings and they had eloquent people here to tell us about it. The question is very simple. Does this Council want to give away 10,000 square feet of taxpayers' money by giving up 19 or 21 parking spaces, depending on whose version you look at, to pick up 24 spaces, a net gain of 5 or 6 spaces. Remember that the bridge was there when the Lighthouse was built. Fourth Street existed. The development also said that it goes along with our vision, and he thinks it was pointed out that the vision that it goes along with is contingent with garages being built. Mr. Mulholland said that he could never support this motion.

Councilman Reynolds said he heard some nos when it was mentioned that Fourth Street was there when the Lighthouse was built. If we look at the 1949 chart we will see that Fourth Street definitely was there, so that shouldn't even be disputed. It was a connector street at that time. Getting back to some of the other points that were made, such as it is going to be a safety hazard because there are no sidewalks, if you drive in either direction off of Estero Boulevard you find there are no sidewalks and there are no turnarounds. Yet people travel these streets every day and live on them.

Fourth Street is public property, Councilman Reynolds said. Once you give it away it's gone for eternity. He believes that Bill Spikowski had one of the best suggestions that we've ever heard. If at all possible, if it is so important that this development wants to get all their buildings together and rebuild them, just allot the same amount of space down by Third Street and then let them go ahead and develop. That would put all their projects together and would work. Otherwise, he doesn't see how we can possibly vacate this in a congested area that's just screaming for parking spaces. The plans the applicants offered are very good, there's no question about that. But he is saying let's do not vacate that space but instead let's negotiate a movement in another location so that we will have those 20 or 30 spaces. That would be doing something to help this development and at the same we will be keeping our ... with the public.

Dan Hughes indicated that as he understood it, this agreement would not be effective until an acceptable CPD was approved by the Town. Attorney Roosa said that our action will become effective when we take that action. We publish a notice in the paper then this document is recorded and that road is vacated. But what we could put in the development order is a timetable for development of that site. Dan Hughes said that he understood Ms. Grady to indicate that there would be some kind of agreement in which vacation could be conditioned. According to Attorney Roosa, what it will say basically is that the property currently serves a public purpose of providing parking spaces and that these parking spaces will be provided within a certain period of time, and also in the development order we could have the future locations of the buildings.

Town Manager Segal-George explained that they would have to go through a formal procedure to get the CPD. Before then, it would go to a development order unless, according to Attorney Roosa, you could have a condition that said it's not effective until the development order is proved.

Dan Hughes said that the essence of his motion is to continue this with the request that we be given a document to look at, and we'll have to deal with it when we look at it.

**MOTION:** Made by Dan Hughes and seconded by Ray Murphy that we continue this matter to the next meeting to give the petitioner and our attorney an opportunity to draft a document for us to review that would tie in, as stated by petitioner, a development order on this as a condition of the vacation. Motion defeated.

A second motion was made by Garr Reynolds to deny the vacation request.

**Discussion:**

Anita Cereceda said that this proposal is too confusing to her and is the reason she is seconding this motion. It's not confusing in what the Kolars want to do with the property, but she doesn't know how she can justify a vote to vacate to the people she represents with too many contingencies. Moreover, her comments about the big picture scheme of things pertain more to simply parking and that Crescent Street corridor. She realizes her decision has to be based solely on the presentation that's being made here today, and it is. Her concerns are larger than parking. She would love to see that property redeveloped and redesigned and that vision realized. But in good conscience at this particular juncture in time she cannot vote to vacate that property.

Vice Mayor Mulholland remarked that at the first meeting he had asked what's in it for the Town, and several speakers had taken him to task for that. But he could easily go for this development if there was something that the Town would get in return for giving up 10,000 square feet. He would have to support the rejection based on what was not presented.

Mayor Murphy said that from what he understands, the criteria for a vacation is not what the benefit could be to the Town or what could be extracted from the Town but is if what's being vacated is no longer of public benefit to the Town. Attorney Roosa confirmed this statement.

Addressing Anita Cereceda, Dan Hughes stated that she had said she couldn't support a motion to vacate. He advised that there is no motion to vacate and there never was a motion to grant a vacation. His motion was simply to keep this matter alive, and the Mayor has pointed out that we have three alternatives. We can grant the petition to vacate, and it's clear that no one on the Council would do that without at least some conditions. So that's not a viable alternative. The second alternative is to totally deny it. That is the motion that's now before us. A third alternative is to continue this matter, to see what conditions can possibly be legally presented to us, and then give us an opportunity to take another look at it. There is no guarantee that it will pass. But he thinks that to just shut this off now after all the discussion and everything we've had would be an unfortunate waste of time.

Attorney Roosa said he thought that what we could do is vacate the property to allow for the continued public parking on the road until such time as a development order is approved and adequate provision to relocate that parking made as part of the development order. Dan Hughes said this was exactly what he was seeking, and it's only if that can be done that he would begin to consider vacating it at this time. How do they tell a land planner or builder to draft a plan if they don't know whether that street is going to be there or not be there.

If this fails, what would be the process for the Kolars reapplying? Anita Cereceda wished to know. Dick Roosa stated that many times a request for a development order and a request for a vacation are processed at the same time, each contingent on the other. You would vote on the vacation first and if that passes, then you get a development order. But their concern would be the substantial expense to reapply.

Mayor Murphy advised that his second of the prior motion was in no ways an endorsement of vacation. It was simply to further explore this to see if, in fact, there may be a net gain to the Town.

**MOTION:** Made by Garr Reynolds and seconded by Anita Cereceda that we deny the vacation request. Passed with two nay votes.

**B R E A K**

**XI. ADMINISTRATIVE AGENDA**

**A. Public Hearing: State of Emergency Ordinance**

Mayor Murphy read aloud the ordinance.

Public Comments: None.

**MOTION:** Made by Anita Cereceda and seconded by Garr Reynolds that we approve the ordinance. Passed unanimously.

**B. First Reading: Littering Ordinance**

Mayor Murphy read aloud the ordinance.

Discussion:

Garr Reynolds indicated that at the last meeting when we voted on this ordinance, he voted nay because he thought the issue was encouraging people to report litterers. But he wants us to know that he does strongly support a littering ordinance.

The ordinance was set for public hearing on June 7 at 6:30 p.m.

**C. Selection of Estero Boulevard Streetscape Designer**

Covered under VIII above.

**D. Discussion of Event Funding for Main Street**

This item has been moved to June 7.

**XII. COUNCIL MEMBERS ITEMS AND REPORTS**

Vice Mayor Mulholland felt that Arden Arrington's memo on the Mound House dated May 13 was informative, open and honest and he thanks him for the information. He thinks that as director of the Mound House, Mr. Arrington should continue to stay involved and keep the Council informed along with Councilwoman Cereceda.

Mr. Mulholland stated that the Public Safety Task Force had proposed a left turn restriction at Times Square, and he proposes a motion that the left turn into Fifth Street at the traffic light be restricted for a three-month trial period commencing with the month of October and continuing through the month of December 1999. He suggested placing some sort of barrier at the site of the left turn that allowed emergency vehicles to pass through but prevented cars from turning there. At the end of the three-month trial period, a public hearing would be held to determine the feasibility of continuing the left turn ban.

Anita Cereceda said she would second the motion strictly for discussion. She advised that they had talked about this at the Chamber Traffic meeting recently, and she would have no problem at all supporting that. She would ask him, though, to consider asking that it be put as an agenda item for our next meeting just so that it is publicly noticed. John Mulholland told Councilwoman Cereceda that he certainly bowed to her wisdom and thinks that's a good idea. He asked instead that this be made an agenda item for our next meeting, and this will be done.

Dan Hughes asked Councilman Mulholland why he preferred deferring the restriction until September instead of starting it this summer. Mr. Mulholland said it was just because he felt those months would be more meaningful and would not be crowded like at the height of season.

John Mulholland also advised he had met with the Regional Harbor Board as chairman of the Marine Resources Task Force, along with Town Attorney Roosa and Town Manager Martha Segal-George. It turned out to be a productive meeting. He felt that Will White, President of B.A.I.L. and a member of the Harbor Board, and all the other participants were very positive. They made some good comments and they volunteered to help Marine Resources. Pat Riley is going to help them on the lease. Will White is going to help them look for something called the honey dipper -- a boat that goes around taking the sewage from the boats that are anchored. They agreed to have a subcommittee. In our packets is a magazine that they put out. Mr. Mulholland expressed his pleasure that this meeting went so well compared to the tumultuous workshop meeting, and he said that Marsha Segal-George did a lot to throw cold water on any potential flareups.

Dan Hughes discussed a letter he had received from the president and director of the Privateer Condominium with respect to their stand against the movie complex. They wish to hear from us regarding what action will be taken. The letter was addressed to the Town. Dan said he would draft a response to this letter.

Dan Hughes asked Marsha Segal-George if she'd had any response from Mary Gibbs on the request for an interpretation of the zoning regulations on Bay Beach. Town Manager Segal-George told him that has been set for June 14 at 9:00 a.m., when land use cases are normally held. Mr. Hughes said that a copy of that was sent to the plaintiff's attorney, whereupon they filed a motion for a case management hearing that is scheduled for June 7 at 9:30. His guess is that the court's going to say let's find out what the Council has to say and then they can bring it back to the court who will find out if they're right. It's a special master type situation. To avoid a long trial, the judge can turn over part of it to the Council.

Garr Reynolds said he felt that Arden Arrington did an exceptionally good job in explaining the whole problem but that he disagreed with the statement that the community received the information it had all along. According to the entire community, their concern was that they had not gotten any information.

Anita Cereceda stated that Arden Arrington has done a tremendous amount of work to answer a lot of the concerns that were raised. She taped the meeting she had and feels it helped him understand a bit better what some of the concerns were, and he's gone above and beyond the call of duty to address everything. Wednesday there is a CELCAB meeting and she'd like to know from the Council if there is any reservation about moving forward with this. She'd like to represent to CELCAB that we're moving forward slowly but surely and that everything that happens there will require Council approval. She also feels that each of us should give some serious thought to how that project should proceed and then clearly define as a Council what our vision for that historical and archaeological preservation is. Until we do that, there is going to be disruption in the community over it. She asked if there was any hesitation on anyone's part to move forward.

Garr Reynolds said that his stand hadn't changed on that. He is very much against doing anything until the people in the community have their say. He doesn't feel that Councilwoman Cereceda's position as representative is sufficient. She's one person. They're having trouble with CELCAB and communications within the community. Their perception was that Arden Arrington was presenting a plan that was carved in stone and was going through no matter what happened, and if they hadn't heard about it and shown up, it would then have been finalized. He told them and also Arden that as director, yes, he should formulate the plans, but he should not carve them in stone. He should give his recommendations to CELCAB and to Marsha as Town Manager, and that they should look at those plans and approve them or not approve them, and then those plans should come before the Town Council. Mr. Reynolds said he told Arden that in this way he would be doing his job as director and not only formulating plans, but also initiating those plans once they had been approved through the proper people.

Anita Cereceda said that she would suggest to Mr. Reynolds that we are the policy makers and it should be our policy that the CELCAB and Arden and anyone else implement plans. That is what she believes is the missing link in every organization that we have other than MRTF and the LPA that have very clear visions as opposed to Public Safety, the Pool Foundation or the Mound House. She thinks this is why we have problems arise in those groups. There is no clear direction from the Council as to what they're supposed to be doing.

John Mulholland said he thought that Anita Cereceda and Arden Arrington should meet with the six or seven families on Connecticut Street who are opposed. He would hope that we could get all of those people with us and have the Mound House as a facility that would not turn the property into a commercial entity that would be obnoxious to them. But he still thinks it has great value to the Town, to the district, to school children. It's an opportunity that the Town has that he would hate to see missed.

Dan Hughes stated that both the pool and the Mound House involve physical assets: the acquisition of brick, stone and land. And that presents some unique problems for us. Secondly, while he thinks it's extremely important to have a line of communication with the people who live on Connecticut, he would like to emphasize that the Mound House is an asset of our entire community and it's owned by the Town and belongs to the people of this Town, a lot of whom have a little different view about what is going to be the function of the Mound House than the people on Connecticut Street would like. We must hear from the entire community before the Town Council can make an appropriate decision and not just from the people on Connecticut Street.

Garr Reynolds stated that in Arden Arrington's letter he shared information that they are not cutting the mangroves, but they were cutting Brazilian peppers, etc. The people should have known that almost

immediately rather than learn that almost two months later. Ms. Cereceda said they were told at the time, but that this was irrelevant to her at this time. She just needs to present to CELCAB whether or not the Council is still behind the project.

Councilwoman Cereceda also spoke about the Traffic meeting that she had attended for the Chamber of Commerce. She noted that there was a need for the Council to take some position based on advice given by the Public Safety Task Force.

The open container law was also of concern to Councilwoman Cereceda, which she said was randomly enforced. She has received messages from people who were very upset about the amount of drinking that went on during the boat parade. She thinks that we need to have a clear policy about what our law is or isn't. As it stands right now it is illegal, but that doesn't seem to matter when we have a celebration. She asked Attorney Roosa if we can not have an enforcement of a law during an event. His reply was no. Police officers have the discretion on enforcement and they're to use their judgment even though the Council passes an ordinance that directs them that they will cite everybody who has an open container. Anita Cereceda expressed her dislike of this and stated that then we are going to have a mixed message.

Town Manager Segal-George felt that an open container situation like we have on New Year's Eve was very different from people drinking on floats in a parade with children watching.

Mayor Murphy said he didn't think it sent the right message for people on boats in a parade to be drinking, but that people watching the parade from their establishments was a totally different situation.

Vice Mayor Mulholland said he didn't see drinking on his boat or on any of the other boats in the parade. The crews and navigators that he met impressed him as very serious, clean-cut people focused on racing and they were not drinking. Some council members did observe drinking, however.

Councilman Reynolds advised that he has received calls regarding the theater situation. Concern was expressed regarding the noise that would result if it goes in and also traffic problems. Two complaints that have come to him was that cars are cutting across two lanes of traffic in order to go north. He said he'd like to hear from Council regarding this matter.

#### Mayor's Report:

Mayor Murphy advised that on Tuesday, May 4, he went to a reception for the Horizon Council that was a fundraiser for getting the word out for all the recruiting that they do. The Horizon Council looks for a donation from the cities every year. Pat O'Rourke from the Horizon Council told him that all the other cities each contribute \$2,500 for Industry Appreciation Week and he was hoping that the Town would also make a contribution whether at that level or lower.

On Thursday, May 6, Mayor Murphy completed his course in Conflict Resolution at Florida Gulf Coast University and found it to be very educational. He is now qualified to resolve disputes.

On Sunday, May 9, he attended the rally over at the Lee County Sports Complex concerning getting Lee County to support mentoring in the schools by having employers let their employees sit for a half hour a month in the schools with the kids. They're looking to the governments to set an example for the business community to see if we can get some participation in the schools. He is in favor of this, and he'd like to discuss this again in the near future. Asked by Anita Cereceda if they were looking at us monetarily, Mayor Murphy told her not so much monetarily but it would be us permitting our employees to spend a half hour or so a month in the schools with the children, whether it's their own children or not.

This past Friday, Mayor Murphy attended the Lincoln Day Dinner with his wife Kelly. He was able to meet our new governor and chat about issues that affect municipalities. The governor was very receptive and his door is open.

This Wednesday the Do the Right Thing Program is going to be at 2:00 p.m. in the Lee County Commission Chambers. Mayor Murphy has been informed that one of the recipients this month is going to be from the Beach school.

The START Foundation has sent us a letter. START is Solutions to Avoid Red Tide, Inc. Their letter informs us of everything that they have been doing and asks for our participation.

Councilman Hughes stated that in general he has a concern about using taxpayer's money to give to a specific charitable entity that the Town Council feels is a good charity even though taxpayers may not or would prefer to give money to a different charity. He feels that we need a policy on this. Marsha Segal-George said she didn't believe we've ever given money to charity.

Mayor Murphy said he'd received notice from the Chamber of Commerce Foundation that on Memorial Day they are going to have a ceremony to erect a bronze plaque at the base of the flag pole in

Lynn Hall Park in recognition of past civic leaders on Fort Myers Beach.

A letter has been received from Ed Cusick of Snug Harbor, which Mayor Murphy read aloud. Mr. Cusick felt that the boat races were a huge success and he thanked the Council for their support. He enclosed a letter that he had written to the News-Press.

Another letter received by the Mayor was from Richard Diamond, Chairman of the Lee County Charter Review. They have gotten to the section where they are going to start reviewing the relationships with the cities. The letter advises that the next meeting of the Lee County Charter Review Advisory Committee will focus on the relationship between the County government and the municipalities of Lee County. An invitation has been extended to the Mayor or his representative to address the committee. Mayor Murphy has asked Town Manager Segal-George to prepare a memorandum listing issues that we have with the County. He will attend the meeting and relay the concerns and will be happy to pass along any other concerns that anyone has.

### **XIII. TOWN MANAGER'S ITEMS**

#### **A. Discussion on Estero Boulevard Repairs**

Deputy Town Manager Gucciardo advised that we had in our packets a series of letters dating back to October 1998. Actual conversations started with the County in August 1998 regarding the series of dips in Estero Boulevard that run from about the Lani Kai up to the curve in the road. The problem had manifested itself after the one-year warranty time. Attached to the latest is letter are three estimates of what repairs would cost. The County has taken the position that since we assumed the maintenance responsibility of the Times Square project that payment of those repairs would be ours. John said that frankly he's not convinced that that's a maintenance item. Even their last letter talks about questionable drainage design as having led to those failures. But his recommendation would still be to assume that responsibility in order to get the work done. Again, the three bids run from about \$13,000 to \$15,000. They are with companies that we have some track record with. If the Council does want the Town to assume the financial responsibility, would we want them to bid these out independently and monitor the work or allow LeeDOT to go ahead and do the work and just provide payment?

Dan Hughes asked about Gulf Paving. John Gucciardo explained that Gulf Paving was the subcontractor under Wright Construction.

Dan Hughes also asked if the situation has worsened since his letter to Gulf Paving last October and John told him not appreciably. His recommendation would be to just get the job done. Dan Hughes said he would then move to accept the lowest bidder -- Apec for \$12,114. John said he needed to point out that this would be a little bit different from some of the other situations that we've run into. In this case if we do follow his recommendation, we at least have the leverage of being the ones to sign the check at the end and he's convinced we'd have a little more responsiveness to our concerns if there are problems.

Discussion:

Dan Hughes said that the County then would be the contracting party and we would just be the funding party. But they're asking us to decide which bid to accept. Ray Murphy stated that that would come out of our transportation fund.

John Mulholland asked if we do accept this project, would any kind of precedent be set here for the rest of Estero as far as the County goes? Mr. Gucciardo told him that they're basing their position on the fact that we modified a resolution that we passed early on indicating that because of the Times Square project itself in that area, they would only go ahead with building the project if we would assume responsibility. But it doesn't really affect the rest of Estero Boulevard.

In response to a question from Councilman Reynolds, John Gucciardo explained that the original CRA plan had sidewalks and drainage on both sides of Estero Boulevard that never got built. But they put in infrastructure, so that if at some point we put sidewalks on what would be the bay side, infrastructure would be there. And that's exactly where all those dips have occurred. Mr. Reynolds asked if they were going to dig down and compact that sand before they redo it. John said that as he understands it what they have determined is that the compaction may have been faulty but it has settled to a point to where it shouldn't settle any more. What they're planning on doing is just scraping that area, patching those areas, and then regrading the top. Garr Reynolds said he can tell us right now that we'll be doing it again in about a year and a half or less. That has not compacted enough, because over the last three months it has really gone down. Mr. Gucciardo stated that the engineers from DOT tell him that it has not significantly changed.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that we approve the expenditure to make the necessary repairs to Estero Boulevard. Passed unanimously.

Town Manager Segal-George stated that we continue to get copied on the cases coming in front of the Lee County Hearing Examiners and the County continues to have cases in front of them which they're subsequently approving with regards to increased development off of Summerlin. We have never taken a position on these cases. Some of us remember that Summerlin was supposed to be a limited access road. There really is no evacuation plan other than Summerlin, nor does she think that for the next fifty years is there an alternate evacuation road plan for this part of the County. She thought she would bring this to our attention and see if it's something we're interested in taking a position on or having Dick Roosa work on getting some kind of agreement with the County so that we can at least have a voice, because it's happening with great regularity now. Anita Cereceda agreed. Ms. Segal-George asked if we wanted to put in the record that the Council is against this. John Mulholland said he thought we should. Garr Reynolds said he had brought the matter before the MPO several times and that he now believes they're in a receptive mood, because for the first time John Manning and John Albion made favorable comments on it. In fact, Manning was quoted in the paper as saying that something needed to be done.

Town Manager Segal-George asked if we'd also like for Dick Roosa to talk to the County about getting input just like Sanibel has been getting, and she was told yes by all the council members.

#### **XIV. TOWN ATTORNEY'S ITEMS**

##### **A. Discussion of Florida Cities Water lawsuit**

Town Attorney Roosa stated that with regards to the GUA utility acquisition, the engineer is still in the process of making a determination of what would be the computed countywide bulk rate for water. We can't go any further on that litigation until we get that answer.

We have a copy tonight of an emergency resolution of the Town of Fort Myers Beach, and this is a forum that would be used when a hurricane comes. The first thing that happens is that the National Hurricane Center would determine that Lee County is in the watch area. Second, the Governor would issue some executive orders recognizing the hurricane. To adopt this resolution, we would need a quorum of the Council and if for some reason we don't have a quorum, the Mayor would be authorized to adopt the resolution. The line of authorization goes from the Mayor, to the Vice Mayor, to another council member, to the Town Manager.

#### **XV. PUBLIC COMMENT**

None.

#### **XVI. ADJOURNMENT**

The meeting was adjourned at 9:37 P.M.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary

### **Items for action from the meeting of May 17, 1999**

1. All areas have the same tax rate, but some areas get more tax investment than others. Southwest Florida wasn't getting support. A coalition is being formed and invitations have been sent out to participate in a workshop. The workshop's purpose is to identify the importance of transportation investments in the region's economic future and the importance of the region's economy for the State of Florida. The forum is June 30 at Harborside. It is our mission at that forum to demonstrate that we deserve for Florida's own future better treatment than we've got, and it's our mission to show that we can work together in a sustained alliance to pursue a number of points.
2. Mayor Murphy advised that a proposal had been presented regarding an alternative if things can be worked out with Kimmins whereby there would be one pick up a day. Town Manger Segal-George stated that she knew Mr. Whitaker and others are waiting on information that they don't have yet. We could continue this discussion to June 7.
3. The littering ordinance was set for public hearing on June 7 at 6:30 p.m.
4. Discussion of event funding for Main Street has been moved to June 7.
5. Mr. Mulholland would like to put on the agenda for our next meeting a proposal for a left turn restriction at Times Square commencing with the month of October and continuing through the month of December 1999.
6. A hearing on zoning regulations on Bay Beach has been set for June 14 at 9:00 a.m. The plaintiff's attorney has filed a motion for a case management hearing that is scheduled for June 7 at 9:30.
7. Pat O'Rourke from the Horizon Council told Mayor Murphy that all the cities contribute \$2,500 for Industry Appreciation Week and he was hoping that the Town would also make a contribution whether at that level or lower.
8. On Sunday, May 9, Mayor Murphy attended the rally over at the Lee County Sports Complex concerning getting Lee County to support mentoring in the schools by having employers let their employees sit for a half hour a month in the schools with the kids. They're looking to the governments to set an example for the business community to see if we can get some participation in the schools. He is in favor of this and he'd like to discuss this again in the near future.
9. The START Foundation has sent us a letter informing us of everything that they have been doing and asking for our participation. START is Solutions to Avoid Red Tide, Inc.
10. The next meeting of the Lee County Charter Review Advisory Committee will focus on the relationship between the County government and the municipalities of Lee County. An invitation has been extended to the Mayor or his representative to address the committee. Mayor Murphy has asked Town Manager Segal-George to prepare a memorandum listing issues that we have with the County. He will attend the meeting and relay the concerns and will be happy to pass along any other concerns that anyone has.