

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
SEPTEMBER 13, 1999  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

Mayor Ray Murphy opened the meeting on Monday, September 13, 1999, at 6:37 P.M.

Council members present at the meeting were: Mayor Ray Murphy, Vice-Mayor John Mulholland, Daniel Hughes, Garr Reynolds and Anita Cereceda.

**Town Staff present** were Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Assistant Town Manager Ron Himmelmann and Town Attorney Richard Roosa.

Also present: Bruce Rankin of Wilson-Miller.

**II. PLEDGE OF ALLEGIANCE AND INVOCATION**

All assembled at the meeting recited the Pledge of Allegiance and the invocation was given by Reverend Snapp.

**III. INVOCATION BY REVEREND TOM SNAPP**

**IV. PUBLIC COMMENT**

**A. VIRGINIA DICKSON**

Mrs. Dickson advised that she has owned property at 61 Miramar for 28 years but has never resided on it. She plans to relocate here, however, and has taken pictures of the property over the last few weeks. She stated that she could not get into her property at times if she did not own a utility vehicle, and she passed out pictures to demonstrate. Someone put plants near her property line and they have overgrown to her side. She would like to see the growth cut back by whoever is responsible for the overgrowth.

**B. BOB BARBER**

Mr. Barber stated that he had property on the north end of the island at 725 Matanzas Court. He can't see where there would be any benefit to the Beach to put parking down at Bowditch Point and feels that it would only further congest the parking situation. And if the go ahead were given for 70 additional parking spaces, there would be more before it's all done. He would urge the Council to reconsider its position as to the parking and to go on record with the County that they are opposed to it.

**C. CHRIS PATTON**

Mrs. Patton lives at 153 Primo Drive. They have had serious problems with flooding, which occurs when the rainwater comes down Estero Boulevard past the Beached Whale and into Primo Drive where there is a dip in the road. Their house becomes flooded. They need help on that road.

**D. JOHN McLEAN**

Mr. McLean also complained about the flooding of Primo Drive. He stated that it takes two days before a person can walk on the street after a rainfall.

**E. CURTIS WALLS**

Mr. Walls advised of problems with drainage in the front of his house at 154 Anchorage Street and to the rear. There is a 15-foot drainage easement that runs from between St. Peter's and Anchorage all the way to the Back Bay. In 1991 he had Lee County come out with heavy equipment and they cleaned the drainage ditch, but there has been no maintenance of the ditch since then. The County did install two catch basins and a 12-inch pvc pipe to the right rear of his property, which cost him \$1,200. Now there are some people on St. Peter's Street who think that this drainage easement is their property. There is encroachment on the easement. He would like to know if Council members could walk this easement with him so that he could show them how great the problem is. Clearing up this problem would help not just him but would be of benefit to all the people on Anchorage Street and St. Peters.

Mr. Walls advised that he has a 12-18 inch pipe that comes under St. Peters Street and over to the back of his property. It carries all the run-off water from St. Peters Street. He has built a little berm to keep the water from coming back to his house. Two weeks ago he heard Bill Spikowski say that no one should have to accept run-off from their neighbors, but he has put up with this for nine years. John Gucciardo and Ron

Himmelman have been working with him but he doesn't know what progress has been made. He would appreciate having something done because with three inches of rain, he has water up to his garage door.

**V. PROCLAMATION ON INDUSTRY APPRECIATION WEEK**

Mayor Ray Murphy read the proclamation which noted that the existing and future industries of Lee County are a key element to the prosperity and quality of life for all citizens.

"Now, Therefore, I, Raymond P. Murphy, Mayor of the Town of Fort Myers Beach, do hereby proclaim the week of September 20 - September 24, 1999 as Industry Appreciation Week in the Town of Fort Myers Beach and urge that all citizens salute industry and their employees for their important contribution to our community."

Councilwoman Anita Cereceda asked if anyone was going to the luncheon and Mayor Murphy said he hoped that we could fill up our table.

**VI. PROCLAMATION ON LAW ENFORCEMENT APPRECIATION DAY**

Mayor Ray Murphy read aloud the proclamation which paid tribute to law enforcement officers.

"Now, Therefore, I, Raymond P. Murphy, Mayor of the Town of Fort Myers Beach, do hereby take great pleasure in honoring all law enforcement officers for their outstanding services.

"Be It Further Resolved that I do hereby proclaim September 29, 1999, as Law Enforcement Appreciation Day and ask all citizens to join us in honoring these law enforcement officers and to assist them by exercising responsible citizenship."

Mayor Murphy advised that he had had the opportunity on Saturday night this weekend to ride with one of the officers all night long, which gave him an even greater appreciation of what they do.

**VII. PRESENTATION BY THE PILOT CLUB ON BEACH CLEANUP DAY**

Laurie Wolf stated that she just wanted to ask Council members and all present here to remember that Saturday, September 18, is Beach Cleanup Day. They will be assembling at the Beach Elementary School parking lot at 9:00 a.m., rain or shine. Cleanup will last until noon and will be followed by pizza and pepsi. They would like a lot of participation.

**VIII. PRESENTATION BY CARLETON RYFFEL ON PARKING AT BOWDITCH POINT**

Mr. Ryffel advised that he is requesting this Town Council to ask the Board of County Commissioners to delay any further action on the construction of parking lots at Bowditch Park for one year. The reason is that there are indications that some potential projects in the area could address the needed parking without the need to put it directly in the park.

Mr. Ryffel outlined some of the projects he had heard about:

1. The parking garage, which he understands will be before the LPA by November.
2. Parking across from the Pink Purpose, which is presently under construction.
3. Developers in the San Carlos Boulevard area subscribe to the Old San Carlos plan, which calls for on-street parking, parking behind new buildings, and the possibility of linking parking lots in that area.

Mr. Ryffel noted that there is also the potential parking that could be freed up if the Sea Kruz decided not to return.

His position, Mr. Ryffel said, is that restoring parking at Bowditch will lead to traffic congestion, not only in the north end but in the Times Square area as well by people who do not find a parking space and then have to hunt for the space elsewhere. This congestion could negatively impact the overall circulation system of the Island and the redevelopment efforts in the Times Square and Old San Carlos areas.

Dan Hughes asked for information on the status of the legal proceeding pending with the North Beach Residents Association. Carleton Ryffel replied that the County has issued development orders to construct that parking lot. There is still currently a lawsuit and, as far as he knows, there is no court date for that. They are saying basically that the zoning on Bowditch Park is improper for what they're doing and that if the County proceeds with building that park, they do so at their own risk. The court could make them remove it if they find it improper.

Mr. Ryffel urged that we control what happens on this Island rather than the County.

Asked for an update on the Wiebe matter, Town Manager Marsha Segal-George advised that she had talked with Mr. Wiebe last week. He has a CPD that's coming forward. He has asked to reserve space on the LPA agenda for November and if this is done, it will come before the Council in December. Mrs. Segal-George said she thinks there's at least one landowner on Old San Carlos who is coming very close to

coming forward with plans for his property -- a liner building at the street with parking behind in compliance with our plan. The plan also provides for parking on Old San Carlos when it is redone.

Asked by Mayor Murphy if Mr. Wiebe's plan included the parking garage, Mrs. Segal-George said it was her understanding that it does and also Helmrich Plaza.

Councilman Dan Hughes stated that he feels that a deferral would be appropriate and he made a motion to this effect.

**Discussion:**

Councilman Garr Reynolds asked Mr. Ryffel how he would feel about letting the people of the Island make a decision regarding parking at Bowditch Point. Mr. Ryffel said that he thinks we're all elected to represent the townspeople and he thinks that is the proper forum. In other words, the Council should make that decision. Garr Reynolds advised that the County Commissioners have confirmed this three times and this is the third time it has gone back to the Council. He asked Mr. Ryffel why he felt that the rest of the people on the Island should not have that opportunity.

Mr. Ryffel stated that he thinks we have some very good visions for this Island and it's part of our comprehensive plan. Allowing that to go forward is going to undo all of the good things that are in our comprehensive plan. Traffic is the biggest problem on this Island. That park was supposed to be trolley access only. We all agreed to that and that's the only reason that park is there. If we want to undo all our visions, we should allow the parking down there. He said that he trusted our judgment.

Mr. Reynolds referred to a letter from Larry Raimondi and said that the one thing that he agreed to in Mr. Raimondi's letter was that those trucks should not be allowed to park on the corner of San Carlos and Estero Boulevard. He disagreed with the part of the letter that stated that there shouldn't be parking at Bowditch or people will visit. Mr. Reynolds said that the park is for off-Island people too.

Mr. Ryffel stood by his statement that the park was trolley accessed only. Cars do not belong there. Garr Reynolds felt that the majority of people should rule.

Councilwoman Anita Cereceda asked Marsha Segal-George what would a request like this to the County Commission do to the status of the existing permits. Are they good to go today? She was told that they were and Mrs. Segal-George also advised that she thought it was five years on permits.

Ms. Cereceda said that she has supported parking at Bowditch Point in the past and she is seconding the motion after doing a substantial amount of research on the discussions within our immediate community and discussions at the County Commission level going back to the '70s. The spirit that was intended to be fulfilled at Bowditch Point was "that it remain a pristine jewel in the crown of Lee County" -- an exact quote from County Commission records. The only other places that something like Bowditch Point exists in our area are at Lighthouse Point on Sanibel and Southeast Plantation. She advised that she is supporting a delay in the implementation of the parking plan for Bowditch Point because she would like to support its preservation as a pristine jewel in the crown of Lee County's environment and not because she is opposed to parking.

Vice Mayor Mulholland stated that originally when parking at Bowditch Point came up he voted against it. Since he voted that way he's been well aware that many people on this island would like to visit the Point, he and his family included, and they would like to go there by car. Without parking, they can't do that. He is, therefore, rethinking his position.

Councilman Hughes said that in support of his motion he would like to emphasize that the vote we're about to take is not whether we will or will not have parking at Bowditch Park. His motion is to request the County to defer the commencement of work. As pointed out by Mr. Ryffel, once parking is there, it's there forever and the character of the park has been changed. He also has mixed feelings about whether there should be parking there, and he would feel very badly for the people at the north end of the Island if this Town approves a large municipal parking facility four blocks away that could serve that facility.

**MOTION:** Made by Dan Hughes and seconded by Anita Cereceda that the Town Council request that the County Commissioners defer commencement of construction of additional parking at Bowditch Point until such time as the Town of Fort Myers Beach has had an opportunity to act on the Wiebe CPD and other pending matters that would have a very significant bearing on the total parking availability in the area. All in favor.

**IX. CONSENT AGENDA**

**A. RESOLUTIONS: ACCEPTING THE DEED TO THE SWIMMING POOL FACILITY**

**B. INTERLOCALS AND AGREEMENTS: LEE COUNTY COMMUNITY DEVELOPMENT**

Both items, A and B, tape was inaudible, both were accepted per minutes taken during meeting.

**X. ADMINISTRATIVE AGENDA**

**A. DISCUSSION OF PERSONAL WATERCRAFT LICENSE HOLDERS**

Comments inaudible on tape. Referred to LPA by Council.

**B. DISCUSSION OF DRAINAGE ISSUES – TWO MEMORANDUMS**

Marsha Segal-George stated that in the council packets were 2 memos from Ron Himmelmann discussing drainage problems on the beach. The 1<sup>st</sup> memo discussed the contract work with Ron Edenfield to do drainage repair for the Town. The second memo listed major drainage projects for the Town Council's consideration.

Garr Reynolds complimented Assistant Town Manager Ron Himmelmann for his work in this matter.

Ron Himmelmann was asked by Anita Cereceda what kind of encroachment exists on the Anchorage/St. Peter's deal. Mr. Himmelmann noted that there is a lot of vegetation and someone has built a pool and a deck over the drainage easements, which was permitted according to Code Enforcement. Asked if it was a dedicated easement, Mr. Himmelmann advised that there was a dedicated drainage easement between the back of the lots of St. Peters and Anchorage. He believes that the pool owner has already been asked to have his pool moved.

Garr Reynolds noted that there is a big tree growing almost out into the middle of the drainage and that's going to clog it up totally.

Mayor Ray Murphy stated that people are suffering because of the drainage problems. He thinks that we should prioritize these and do as many as we can a year. He asked if we had something in the budget already for this capital improvement. Mrs. Segal-George said we didn't, but we have pretty hefty reserves that we're carrying in the capital budget that could be allocated to this.

Councilwoman Anita Cereceda stated that she would be prepared after our budget workshop on Thursday to bring forth a policy decision with a budgeted amount and a procedure that we would follow for prioritizing improvement. And perhaps we could even get more defined information as to costs that might be included in these projects. She's just imagining what the chaos would be to try to prioritize it. Prioritization would be a lot simpler if we have a policy in place saying this is how we're going to do it.

Ron Himmelmann advised that we'll have to keep in mind that the drainage systems on this island have been very badly neglected for the past 20, 30 and 40 years, if not more. When the residents see the Town taking proactive steps, they are going to start bringing forward some more drainage problems. Basically the whole island could use a good revamping and possibly a drainage maintenance schedule set up to have periodic cleaning of all the ditches instead of waiting until we get complaints.

Councilman Reynolds would not care to have prioritization.

Drainage will be discussed at the workshop.

Councilman Reynolds advised that if an owner will require us to remove his tree if necessary, then that owner should be charged for the whole job.

Councilman Hughes stated that easements have to be accepted by the Council by vote, and if the Town is to accept an easement, we ought to have a title opinion.

**MOTION:** Made by Dan Hughes and seconded by John Mulholland that the Town does not expend any public funds to improve, install or construct any infrastructure without the existence of an easement or the granting prior to the commencement of construction of an easement from the property owner subject to verification of their clear title and right to do so.

Mrs. Segal-George asked if Dick Roosa could perhaps draft a policy with regards to easements and what would be required and who would bear the costs, something that would give us some direction as to what we would require from property owners. Attorney Roosa said that maybe we could hold up on the motion until we had that. We could do it by resolution.

Councilman Hughes said he would withdraw his motion and make another motion, this was seconded by John Mulholland.

**MOTION:** Made by Dan Hughes and seconded by John Mulholland to request and direct the Town Attorney to prepare a resolution establishing a policy by the Town that no public works, infrastructure, etc., be done on private properties; that there must be an easement dedicated for the specific purpose of that project. Passed unanimously.

### **C. DISCUSSION OF CONTRACT WITH WILSON-MILLER**

Town Manager Marsha Segal-George advised Mayor Ray Murphy that in front of him were two documents: one a contract with Wilson-Miller and one a supplemental authorization -- two very separate documents. Bruce Rankin is here from Wilson-Miller to answer any questions with regards to the documents.

Councilwoman Anita Cereceda expressed her satisfaction with the firm of Wilson-Miller. She asked Mr. Rankin about the utility tax in the Town's budget that is dedicated to Wilson-Miller's streetscape project for the Town. She asked if the firm had not stated they would advise us of creative ways to finance this project. She would like for one of the firm's members to attend one of our budget workshops. Mr. Rankin said that one of the specific line items is strategic planning that recommends the implementation of project phasing and financing. Under that task it would be appropriate for one of their people to be present at the budget workshop that is coming up.

The end product of the design charette, Mr. Rankin advised Councilman Dan Hughes, would be the plan that the community envisioned. A companion plan would be to show what they could do within the Lee County design criteria, pushing it as far as possible based on all the criteria they had gotten out of the charette. Dan Hughes asked if the Town acquired Estero Boulevard, would this eliminate that option, and he was told yes. It would also save the Town money.

Town Manager Segal-George noted that we have not pursued taking Estero Boulevard from the County until we get cost allocations on beach renourishment.

Bruce Rankin stated he was advised that the economic analysis should be done for the October 15 meeting of the Coastal Advisory Council and so he is hoping to have the study available to us some time around them.

Mr. Rankin advised that once we get the master plan, we will know what is going to be done the full length of Estero Boulevard. That plan will include a phasing strategy, a funding strategy and how we're going to get it built. Next will be the detail design phase. When it goes into construction, they can work with us in a variety of ways. The construction will be done by an outside contractor and Wilson-Miller will have an engineer monitor its work. They will need a point of contact with the Town.

Councilman Garr Reynolds ascertained that when Wilson-Miller comes up with its two master plans -- one as envisioned by the Town and the other based on the County -- at that point they will have an estimated cost of the entire project. Bruce Rankin "definitely".

Vice Mayor John Mulholland asked if it were possible to do part of the project and then wait a year before resuming it, or is that an expensive alternative. Mr. Rankin advised that momentum is critical in getting a supportable plan. He thinks we would lose some vital continuity, particularly in the community being able to evaluate the final draft plan. He would not advise a delay on the initial planning part. Once we get this plan, we can then take it a block at a time if we wanted to.

Councilwoman Anita Cereceda made a motion.

Discussion:

Mr. Rankin suggested that we pull out the cost of doing the Lee County standard plan and make the contract for the base amount. They will then identify for us what it would cost to add that back in.

**MOTION:** Made by Anita Cereceda and seconded by Dan Hughes that we accept the proposal for professional services from Wilson-Miller for the Estero Boulevard streetscape master plan, as well as the supplemental authorization for the alternative analysis for Center Street at Fifth Avenue and the Fifth Street intersection improvement. Passed unanimously.

### **D. DRAFT ON THE PANHANDLING ORDINANCE**

Issue brought to PSTF by a Deputy, would assist them to perform their job. The first reading on this

ordinance has been set for September 27, 1999.

**B R E A K -- 8:00 P.M. - 8:37 P.M.**

**XI. SECOND PUBLIC HEARING: SIGN ORDINANCE**

This ordinance, Ordinance 99-11, was read by Mayor Ray Murphy.

Comments of Nick Campo

Mr. Campo is from Naples, Florida. He is partner and general manager of the Marco Movie Theaters, the owners and operators of the Marco Movie Beach Theater, which they hope to be opening sometime in the next three months here on Fort Myers Beach.

They are looking for a larger sign. Their sign on Marco Island is 10'x12' with 8" letters. They feel it is important to have a larger sign because they did a survey and 17% (or one in five) of the people on Marco Island advised they had learned about the schedule of the movies from the marquee. The marquee is something that residents and visitors use, and Estero is highly trafficked and needs a sign that's easily read.

Mayor Murphy said he agreed with Mr. Campo that the sign should be large enough to read.

Councilwoman Anita Cereceda said that as far as she's concerned, we have debated the sign subject to death and she would not request the LPA to change their decision as to size. However, there is the option of requesting a variance for the sign ordinance. Mr. Campo advised that they are under a time restraint.

Garr Reynolds would like to see this sent back to the LPA because of their experience and knowledge of the subject.

Dan Hughes said he would disagree with Councilwoman Cereceda and Councilman Reynolds on this. The LPA did not specifically deal with marquee signs. We don't have to accept an ordinance from the LPA every time we get a referral from them. Otherwise, we would totally reject an ordinance or totally accept an ordinance. He would be in favor of something larger than 32 sq. ft.

Mayor Murphy noted that the theater owners are proposing a sign of 120 sq. ft.

Public Comments:

**A. Betty Simpson**

Mrs. Simpson is Vice Chairman of the LPA. She stated that under Permanent Signs in Commercial Areas, Section 30-153, it does say that we can have a 64 sq. ft. identification sign.

Discussion by Council:

Vice Mayor Mulholland said he would suggest 64 sq. ft.

Attorney Roosa suggested a category F. for motion picture theaters.

Mrs. Segal-George said that it seemed that the best way to handle this is to let Dick Roosa write the section and then bring it back to us at our next meeting.

Vice Mayor Mulholland made a motion:

**MOTION:** Made by John Mulholland and seconded by Anita Cereceda that the Town Attorney be directed to write a section for a theater marquee to be presented at our next scheduled meeting and to continue this public hearing at that time. Passed with four aye votes and one nay vote from Dan Hughes.

Councilwoman Anita Cereceda made a motion for a size limitation of 64 sq. ft.

Discussion:

Garr Reynolds said he felt the 64 sq. ft. is going to be a little bit small. He would like to see at least 80 sq. ft.

**MOTION:** Made by Anita Cereceda and seconded by John Mulholland that in the information that Attorney Roosa drafts for our consideration at the continued public hearing of the sign ordinance, that that information include a size limitation of 64 sq. ft. as discussed previously by Vice Mayor Mulholland

of an illuminated sign.

**MOTION:** Made by Dan Hughes and seconded by Ray Murphy to table Anita Cereceda's motion. Passed with 4 aye votes and two nay votes from Anita Cereceda and John Mulholland.

**MOTION:** Made by Ray Murphy and seconded by Garr Reynolds to reopen John Mulholland's motion to continue the public hearing. Passed with 3 aye votes and 2 nay votes from Anita Cereceda and John Mulholland.

**Public Comment:**

None.

Mayor Murphy said that there being no public comment, the public hearing is closed.

Dan Hughes made a motion to adopt Ordinance 99-11 in its entirety with the provision added that it should not exceed 80 sq. ft.

Discussion:

Attorney Reynolds asked if Councilman Hughes was limiting this motion to a marquee sign.

Mr. Hughes stated it would be for a movie theater sign only.

John Mulholland asked why 80 sq. ft. and Mr. Hughes replied it was because Mr. Reynolds had suggested that 64 sq. ft. was not large enough and he agreed with him. He also felt that 80 sq. ft. would be appropriate

Garr Reynolds stated he had suggested 80 sq. ft. so that people driving by could see the sign comfortably and safely.

**MOTION:** Made by Dan Hughes and seconded by Ray Murphy that the Town Council adopt Ordinance 99-11 in its entirety as presented to us by the LPA and as the subject of these public hearings, with the exception that a provision be added to allow a sign for a theater marquee not to exceed 80 sq. ft. that may be illuminated. Passed with 3 aye votes and 2 nay votes from John Mulholland and Anita Cereceda.

**XII. FIRST PUBLIC HEARING: 1999-2000 BUDGET**

Public Comments:

**A. Chris Schaab**

Asked by Mr. Schaab was if it was in the budget for the Sheriff's Department to be patrolling the waters of Fort Myers Beach and, also, if it's in the budget to include the officers that are on land and who should take responsibility for some of the stuff that is going on on the water. And what is that budget?

Deputy Town Manager John Gucciardo advised that water enforcement by deputies is included under the service cost centers and budgeted at \$40,000. Enforcement by deputies on the land is included as part of the normal scope of services. The tentative millage rate that we had indicated we would adopt of 1.0961 exceeds the rollback rate by 5.25%.

Discussion by Council:

Garr Reynolds said he noted that the budget for the County Planning went from \$88,000 to \$132,000 and he believes that this was because of adding one enforcement officer. He did a search last year and he still feels that an extra person on Code Enforcement isn't warranted. There is another item on the budget requesting a sixth person, which Mr. Reynolds said he doesn't feel we need. Mr. Rankin only needs a point person, someone he can communicate with at Town Hall. So we're not talking about a big involvement there.

Mayor Murphy advised that there is also a resolution here from the LPA on the capital improvements projects budget. Town Manager Segal-George explained that the comp plan requires that the LPA review the CIP every year, and they did do that and this is the resolution that they passed. Ray Murphy advised

that they also mentioned that they'd like to look at all the alternatives, such as the utility tax and raising the millage and assessments, with a particularly strong look at the millage increase instead of the imposition of the utility tax.

Town Manager Segal-George said she thinks that Jody Hester was the one who raised that at the LPA, and her concern was that the utility tax would have a greater impact on the year-round residents. Marsha Segal-George said that what she had shared with the LPA and what she told the Council when she initially delivered the budget is that she threw those ideas out and we have not done any kind of real research on it and we didn't want to until we had some direction from the Council. The LPA would like for further work to be done to determine how the utility tax affects seasonal and year-round residents versus other possibilities. Mayor Murphy said he wondered if other communities have looked at that very question -- utility taxes as opposed to increase in millages. Most other have it, according to Town Manager Segal-George. We're one of the few that don't.

Dan Hughes stated that most municipalities have adopted the utility tax because they can then say that they didn't raise their millage rate. He said he didn't like the utility tax. An increase in millage or a general obligation bond issue that is paid for out of general corporate revenues would be an ad valorem tax deductible for federal income tax purposes, while a utility tax is not.

Garr Reynolds said he thinks the charter says three-year financing. How are we getting around that? Where is the 8 million dollars coming from? This 5% utility tax will not pay that. It's estimated to be a half million dollars a year and that's not going to do it. Mayor Murphy stated that in the budget message from the Town Manager, she said that the total would probably be approximately \$800,000, \$500,000 of which she anticipated coming from the utility tax and \$300,000 from the transportation funds.

Garr Reynolds also asked what the 1% or 5% utility tax would be equivalent to on the property tax. Mrs. Segal-George said it would be a 40% raise in the millage.

Garr Reynolds said he had suggested at our retreat that we shouldn't try to do all the five major projects at one time. We should do two at a time and then we could probably cover that with our present income. He was told that two is all we're doing -- the Estero Boulevard streetscaping and the beach renourishment project.

Anita Cereceda said that she is a supporter of the utility tax. She is looking for a way to equitably pay for two major projects that she thinks this town needs and deserves and wants. She would like to see the streetscape project move forward. She will vote for the utility tax unless someone comes up with some other way to pay for this.

She is also going to support the Deputy Town Manager pay increase, Ms. Cereceda stated. She will support the sixth person and will support the reallocation or definition about Ron's position which she believes needs to be redefined. She will be looking to initiate discussion that will center around the cultural event line item, because this is going to end up being the lump of what Main Street is going to be for the Town.

Vice Mayor Mulholland said that while he respects the resolution of the LPA, he does not like the utility tax or the millage rate increase. What he would like to do is increase the tourist tax. At the workshop he will acknowledge that he is looking for some other source of income.

John Gucciardo said that just for the record we will be going forward with the 1.0961 millage rate and the budget numbers that we've got here for now.

### **XIII. COUNCIL MEMBERS ITEMS AND REPORTS**

Councilwoman Anita Cereceda said that the Bicycle Pedestrian Committee, a subcommittee of the MPO that she has been appointed to, is meeting on Tuesday mornings at 9:00 a.m. Tomorrow morning they will be discussing future meeting dates and they may change their time schedule. If they don't she wishes to give advance notice that she will be unable to attend those meetings because she has a class at FGCU. Somebody else may need to take that position.

Anita Cereceda said she has spoken with Mr. Jacobi, Mr. Eberle and Mr. Melsek about the article that appeared in Friday's News-Press regarding the Mound House. There's not much inclination to give the News-Press the benefit of the doubt regarding what may be misstatements in their articles, but she is extending it to them at this time solely because she was asked to by Mr. Eberle. She advised Mr. Eberle that she would be making a report to the Council this evening. He had no problem with this and he asked to review the tapes of the meeting and told her that he would resolve the situation. She will be delivering copies of the tapes to his office tomorrow morning. She advised that we had copies of her comments.

Anita Cereceda also said that she had asked if there was going to be coverage of our meetings by the

News-Press or if this was just simply an ongoing investigation of the Mound House story. Replied was that Mr. Melsek is covering for Maribel Wadsworth who is on leave and that no one had been sent to cover our meeting tonight.

Garr Reynolds stated that he felt that the Tourist Development Council should give us money for the beach renourishment project. John Gucciardo advised that they already give one out of three pennies they collect toward beach projects. So far they've contributed \$825,000 per year for the last four years, a portion of which is dedicated to our project.

Mr. Reynolds said he had read the News-Press article on the Mound House and felt that they gave a very accurate accounting of the situation. And since that time, Marsha Segal-George has put out two memos to correct two of those situations. Mr. Reynolds also spoke about what he perceived as Arden Arrington's role.

Dan Hughes stated that he agreed with Anita Cereceda that there were a number of misstatements in the articles on the Mound House, including the headline itself -- "Beach Rejects Mound House Director's Plan." He voiced his opinion that we neither rejected nor approved a plan. We made it clear that almost everybody stated that the great bulk of the plan was very acceptable and we suggested some changes. Also misleading was the headline in the other article "Mound Huse Under Fire." The whole cast of both of those articles was slanted.

On Wednesday night the Task Force will be having their meeting on the hurricane and Dan Hughes said he is hoping that a number of the public will attend.

Mr. Hughes asked if we had heard anything more about the relocation of the Sheriff's station. John Gucciardo advised that based on their last conversations with County staff, the information that they first received indicating that the County would be ending their support for the substation is not accurate. Now the County plans to continue the Lynn Hall substation and to continue its subsidy.

Dan Hughes advised that he and Ray Murphy had stopped in when the organization formerly known as the Marine Fisheries Commission was holding a meeting here. Months ago they'd been requested to ban live shelling on the Beach and the request to approve the ordinance will be on their agenda at their next commission meeting.

Referring to the Mound House, Mr. Hughes spoke of Marsha Segal-George's letter to Ann Perry requesting an extension from October 31, 1999 until January 31, 2000 because of the litigation pending against Mr. Thomas in the federal court. He feels that it might be appropriate that we intervene in that proceeding and asked Attorney Roosa for his opinion. Mr. Roosa said that he shared with Mr. Hughes the concern that this delay could result in our losing an opportunity to purchase the property. He had talked with Mr. Merchant today and there is a pending motion for summary judgment in the state court, not the federal court. The judge has allowed for the answering of some interrogatories that are part of the discovery process prior to ruling on the summary judgment. Mr. Roosa said he was a little concerned that a motion to intervene might cause delay in the proceeding. However, if the Council wishes, he would be willing to meet with Mr. Merchant and find out what sort of role would be appropriate. He could review the file and then determine whether it would be proper for us to intervene. The Mayor and the Town Manager felt he should meet with Mr. Merchant and Mr. Roosa said he would and then let us know what action would be taken.

Referring to the joint workshop of the Council and CELCAB, John Mulholland said that this meeting was a very positive one and he did not find any negativity among the residents who had attended. He would like to work with any of the residents regarding the Mound House. There was an excellent presentation by CELCAB and he applauds Councilwoman Anita Cereceda for her efforts in this.

Vice Mayor Mulholland also referred to Sunday's News-Press article on the Mound House and stated there were fifteen statements that were either false or misleading. He doesn't know what we can do, but he doesn't like to sit quietly by and see people libeled when there's no wrongdoing here.

Mayor Ray Murphy cautioned everyone to keep an eye to Hurricane Floyd although the latest predictions were that it wouldn't touch down here. He thanked Bob Gaydos and the Public Safety Task Force for a good job in advertising the hurricane preparedness seminar set for Wednesday, which he plans to attend.

Mayor Murphy also referred to a problem that was brought forward by a Mr. and Mrs. Sawyer to the Town Manager. Their concerns are detailed in a packet distributed to councilmembers.

#### **XIV. TOWN APPOINTMENTS**

None.

**XV. TOWN MANAGER ITEMS**

Deputy Town Manager John Gucciardo advised that as of 5:30 p.m., projections had Hurricane Floyd turning away from our coastline. If the models bear out, the closest it will come to Southwest Florida is 170-190 miles, and based on these projections we're looking at less than tropical force winds.

**XVI. TOWN ATTORNEY ITEMS**

Attorney Richard Roosa advised that a week ago he and the Mayor went to a hearing on the 3.5 million dollar bond validation. There were five different errors that were identified in the process. The judge asked each of the parties to submit memorandums of law, both on failure to join indispensable party and failure to state a cause of action, and those are due tomorrow. Mr. Roosa said that he would expect that within a week from tomorrow we will probably have an answer on that bond validation. He fully expects that this particular hearing will fail because there are so many things wrong with it. But the real issue is how it fails. One of the arguments that he is making is that the GUA, the Government Utility Authority that had the option to buy all of the Florida Avatar properties for \$226,000,000, still has the option to buy the Town of Fort Myers Beach system. If they do, then the next step would be in our GUA lawsuit, which is still pending, to get them to sign that right over to the Town of Fort Myers Beach. It's looking good for the Town.

Mayor Murphy stated that it was an interesting court appearance and he was named one of the parties.

**XVII. PUBLIC COMMENT**

**A. HOWARD FRIEDEN**

Mr. Frieden identified himself as an attorney who represents two of the businesses that would be affected by the compactor to be constructed on Fort Myers Beach. He asked if it was in the budget and was told by Town Manager Segal-George that it was in capital improvements under Times Square.

Mr. Frieden's clients are Dennis Holland and Mr. Anglund. Mr. Holland has indicated to him that he had never heard of this project until 10 days to two weeks ago and that he is against the construction of the compactor in the designated location. Mr. Frieden has been meeting with the Town Manager and the planning people to see if aspects of the plan could be changed or if the compactor could be relocated elsewhere in the city or even off the island.

**B. CHRIS SCHAAB**

Mr. Schaab stated he had just heard today about the letter regarding some of the jetski fellows who would like to have the cap lowered. He would like Council to know that there are safety problems now that he doesn't feel can wait for a year or two to be addressed by the LPA. He knows of people working for owners who think nothing of getting on a jetski, breaking the no-wake zone, planing off even with no life jackets and within 10 feet of swimmers. He has counted this happening twelve times in the last four days. He is also tired of watching guys leaving a line of fuel from their fuel tanks without even looking behind them. Mr. Schaab detailed other safety violations as well and said he felt they needed to be addressed. The Sheriff's Department has told him that on land they can't do anything.

**C. JOHANNA CAMPBELL**

Mrs. Campbell expressed her disappointment in seeing us change the size ordinance to accommodate the new theater going in. We don't need an 80 sq. ft. sign. She thinks that 64 sq. ft. is sufficient for that theater.

As for the utility tax to help pay for beach renourishment and the streetscaping of the boulevard, she hopes that we will think of that, but nobody seems to be blinking their eyes about the over \$300,000 that we're going to be paying for the pool operation and maintenance. We should put this on the utility tax and give the streetscape program the \$300,000 a year for the next couple of years so that we can finally get it on this island.

Dan Hughes stated that it was too bad that Mrs. Campbell didn't speak up at the public hearing.

Councilman Hughes asked if we were going to deal with the Sawyer situation. Anita Cereceda stated that this was not an agenda item. Mayor Murphy noted that public hearing has been closed and apologized to Mr. Sawyer that he could not speak now. Garr Reynolds asked if it could be put on the next agenda. Mayor Murphy said his sole intention in getting the matter to us was because he had told Mr. Sawyer that he would. Town Manager Segal-George said that the only way she knew of to solve their problem was to 1) change the land development code to allow a duplex to have a mother-in-law apartment, or 2) to rezone their property even though it does not meet the requirements to rezone to a triplex. Attorney Roosa said he

agreed with this. It can't be dealt with administratively. It has to be a legislative change or a rezoning. He understands that they're seeking not only to have a mother-in-law apartment in a duplex, but in a duplex in which they do not reside. Mrs. Segal-George said she and Bill Spikowski had looked at the size of the Sawyer property to determine if it met the requirements to rezone to allow them to have a triplex, and it does not. Garr Reynolds felt that this was a situation that the Council should discuss and it should be put on our next agenda so that the Sawyers can tell their story. He wouldn't call it a mother-in-law apartment; it's just three units. Councilwoman Cereceda said that to put it on the agenda would be telling them that we can take some action to remedy their situation, and we can't.

**IX. ADJOURNMENT**

The meeting was adjourned at 10:25 p.m.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary

**Items for action from the meeting of September 13, 1999**

1. Saturday, September 18, is Beach Cleanup Day. Participants will assemble at the Beach
2. The Mayor proclaimed the week of September 20 - September 24, 1999 as Industry Appreciation
3. September 29, 1999, was proclaimed as Law Enforcement Appreciation Day.
4. The first reading for the Panhandling Ordinance is set for September 27, 1999.
5. Motion made that the Town Attorney be directed to write a section for a theater marquee and that

Element

Week in

the publ

## **M E M O**

Kindly remember to include an agenda with the tapes.  
Very little of the Panhandling discussion was recorded.  
The motion on page 4 was not voted on. Tape 1 ended in the middle of side 2 after the break was taken.