FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 4, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

Vice Mayor John Mulholland opened the meeting on Monday, October 4, 1999, at 6:31 P.M.

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

Town Staff present: Deputy Town Manager John Gucciardo and Town Attorney Richard Roosa.

Also present: Attorney Howard Freidin and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled at the meeting recited the Pledge of Allegiance.

III. INVOCATION

The invocation was given by Vice Mayor John Mulholland.

IV. PUBLIC COMMENT ON AGENDA ITEMS

A. BRIAN SCANLON

Mr. Scanlon spoke on the trash compactor. He said that years ago we had decided that the Times Square area was not the place for the compactor, and it just doesn't make a whole lot of sense to put it right there near people. He would like for it to be under the bridge. A truck may not be able to turn right and left under the bridge but it can get underneath it to empty a compactor and then return. Our least valuable piece of property is under that bridge. He does believe that if a compactor does go in Times Square, testing it out first makes good sense before building a $300,000 building for it.

B. JOHN LALLO

Mr. Lallo of Pete's Time Out also spoke on the trash compactor. He said that he thinks Mr. Englim came up with a good alternative regarding testing the compactor first to see if it will work. He feels for Mr. Englim, as his garbage will be going into the compactor. The best solution is to keep it under the bridge. He asks that we please listen to Tim Englim.

V. PROCLAMATIONS OF SPINAL AWARENESS MONTH

Mayor Ray Murphy read the proclamation. He advised that Dr. Joe Croker, a chiropractor was here with us this evening and he asked him if he had anything to add.

Dr. Croker stated that it has long been a known fact that with true health there is a definite relationship between structure and function. Altered structure leads to altered function, which will ultimately create symptoms that lead to disease processes. To merely treat the symptom without addressing the underlying cause of what is creating the symptom does nothing to improve the status of health of the individual. It was probably

this relationship between structure and function that led Hippocrates, who is the father of medicine, to make the following statement: "Look well to the spine for the cause of disease." Dr. Croker stressed the importance of adjusting the spine vertebra when they go out of place, thus preventing serious complications and even death. Only the practitioners of the chiropractic division of medicine still adjust the spine, with a few exceptions in the osteopathic division of medicine. Chiropractic is that division of the healing arts that deals with the nervous system, its relationship to the spine and its interrelationship with other body systems. Thomas Edison has been credited with saying the doctors of the future will use fewer medications and look to the spine for the cause of diseases in man.

Dr. Croker advised that it is because of proclamations such as the one presented tonight that the general public can become informed and as a result enjoy better health and a better quality of life. He therefore thanks the Council for issuing that proclamation on behalf of himself and the members of his profession.

VI. CONSENT AGENDA

A. Approval of Minutes: August 30, 1999 and September 8, 1999

A motion was made by John Mulholland to approve the minutes of August 30, 1999 and it was seconded by Anita Cereceda. Dan Hughes advised he would like to pull these minutes and Anita Cereceda therefore removed her second to the motion.

Corrections and changes to Minutes of August 30, 1999

1. Dan Hughes noted that on page 7 the motion was made by himself and shows no second. He was advised by John Mulholland that he had seconded the motion. Mr. Hughes stated that the motion should be changed to read "to set a hearing on the vacation of Fourth Street on September 29, 1999, at
9:00 a.m."

2. On page 9, the first motion that was made by Anita Cereceda was seconded by Dan Hughes.

> **MOTION**: Made by Ray Murphy and seconded by Anita Cereceda to approve the minutes of August 30, 1999, with the corrections noted. Passed unanimously.
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> **MOTION**: Made by Anita Cereceda and seconded by Dan Hughes to approve the minutes of September 8, 1999. Passed unanimously.

VII. ADMINISTRATIVE AGENDA

A. Attorney Howard Freidin representing adjoining landowners on the Trash Compactor

Attorney Freidin identified himself as representing Dennis Holland, Trustee, and the owner of the Winds Building, Mr. Englim, who is here tonight.

Mr. Freidin referred to the specific proposals he had been asked by Council at last week's meeting to allow the installation of a compactor that would be landscaped in the Center Street location at the cost of the adjoining landowners. This would allow the Times Square merchants to continue to place garbage in that location on a test basis for a

period of time to be determined and terminated by the Council. He has written on behalf of the adjoining property owners a letter to the Town Manager and is presenting a written proposal of their financial obligations.

They have met with the Jones Design firm, the people who are doing work on the swimming pool, to come up with a design that his clients believe would be an appropriate masking of the trash compactor to make it as attractive as possible. He has spoken to the people at Kimmins, who have indicated that an 8-yard vertical compactor would be appropriate and sufficient for their use. They recommended a second vertical compactor for any overflow on Saturday afternoons when there is no pick up. A location for two 8-yard compactors has been designed. He has discussed with Mr. Spikowski the difficulty of loading such a compactor because it has a higher hole to put the garbage in. This led to another suggestion for a compactor that was 17 feet rather than 30 feet, which is believed able to hold more garbage as it has a greater compaction facility. They will put the compactor in whatever location Bill Spikowski recommends. The president of Florida Industrial Equipment has agreed to meet with him and Mr. Spikowski here on Wednesday of this week and go on site before anything is purchased to make sure that Mr. Spikowski has a handle on what the garbage situation is. It was his opinion that perhaps the number of pulls that we're making now under the bridge are in excess of what we actually need, because they come and haul the dumpsters without determining whether they're full or not. He believes they can save us money in designing a compactor that will work for our situation.

Mr. Freidin said he had discussed with Attorney Roosa that the mechanics would be for his clients to enter into a contract subject to the Council's approval in which they would provide the money for the compactor to the Town on a monthly basis and that the Town would actually be the operator of this piece of equipment.

Mayor Murphy read the letter from the law firm of Freidin & Pollack addressed to Town Manager Marsha Segal-George into the record.

Questions from Council:

John Mulholland asked Mr. Freidin for more details about the landscaping. Mr. Freidin said that the Jones Company gave him a sketch on which particular plants were identified and their cost, and he proceeded to pass this around.

His clients, Mr. Freidin said, would pay the leasing cost, the installation -- the hard costs. The loading and unloading is still up to the city.

Garr Reynolds asked how the compactor would be accessed. Mr. Freidin said it would depend on the kind of compactor we used. They are trying to figure out a way to save the Town money. There is a tipster piece of equipment that goes with the 30-foot unit and one that goes with the 17-foot unit. In the vertical compactor there is no tipster. We would choose the compactor that makes the most economic sense in terms of dumping fees. The compactor will be locked by key when not in use.

Dan Hughes said his concern is what exactly are we testing here. What Mr. Freidin proposes is not going to be the same size or height as the proposed building. It's not going to be enclosed in an air-conditioned building and the odor factor cannot be tested the same as if we had a building. It will test, in his opinion, the logistics of the location, the accessibility of the merchants to the site and the accessibility of the trucks and trash vehicles to the site and getting in and out of Center Street. It will test the capacity and

capability of the compactors and it will test some of the economics of it in terms of the cost to the municipality. But at the end of six months and we either like it or don't like it, what have we really tested? What conclusions can we make at that point? Mr. Freidin said that we wouldn't have lost anything, as the clients are willing to pay for the compactor. But he understands from Bill Spikowski that the air conditioning was a redundancy in sealed units. The smell that comes from them is when you open the door. The air conditioning will make no difference when you open the door to load the compactor. Most of the compactor people that they spoke to did not believe that air conditioning was a critical item.

Mr. Freidin said that they would like to see what they could do without building the building on this location, and in consideration of that, they are trying to show to the Council that it can be done without the need for spending considerable money for the air-conditioned building. It will also give them more flexibility. Both he and Mr. Spikowski are very familiar with vertical compactors and there may be other alternatives that may not have fit into a building or other sizes or numbers of units. One of the problems here is that Kimmins does not pick up on Sunday, and when they take the unit, there's nothing there to put the garbage in. If they had two smaller compactors, like the people from Florida Equipment are suggesting, there would always be one there.

Mr. Freidin said he has spoken to the City of Jacksonville Beach, who have sent him photographs. They have an area not too dissimilar to Times Square where they have put in the compactor units and gotten rid of the dumpsters. And they are very happy with the compactors.

Dan Hughes said that it would seem to him that the primary concern of Mr. Freidin's clients is the bulk of the building. Mr. Freidin said he thought the building was too big and that if they do everything they can to make the compactor, which is only 6 or 7 feet high work in this location and it doesn't work, then they have the option of moving on to a second location.

Dan Hughes said it was quite important that we find a place to garage the municipal vehicle. And it would seem to him that the merchants in the area would welcome having public restrooms near their establishments. Mr. Freidin said they think they can find another location for the garage. They could perhaps even park the truck under the bridge. As to the bathrooms, there is no crosswalk there and until the master plan was put into place, it probably wouldn't be terribly used.

Anita Cereceda said that the bottom line is whether the trash problem can be dealt with without the building. And if it can be, do we want a building in that particular location? How big do we want that building to be and what do we want it to accommodate? A concern was that this test would be sabotaged by buying trash to put there. Tim Englim, however, said that it was in his best interest to make sure that the trash compactor is clean, is efficient, and is working so that he can live with it. She'd like to know if we could move ahead as timing is critical. On Wednesday, Bill Spikowski has a pre-construction bid meeting with all the contractors that are going to bid on this project. She wouldn't want him to go into that meeting representing the Town without a clear idea about the project. We don't know what the time schedule would be for construction of the building; we don't know what the building will cost; we don't know how big, in fact, the building could be, and we won't know any of those things until Bill meets with the contractors. How can we move ahead in both directions and keep as many

options open to us as possible?

John Mulholland told Mr. Freidin that he had thought after his last presentation that he wanted the compactor to fail at this location. Tonight he's getting a different insight into what he's saying and believes he wants to work with us and make it work. He thinks the alternatives that he is presenting to us tonight are very good. But timing is very crucial. Mr. Freidin said that the contract bids are due on October 24, and then there's a 70-day construction period. If we have to put up the building, it would be cheaper if we gave the contractors a longer period in which to build it. If we started now, there would be substantial construction going on, perhaps into January or even February, and this would definitely affect Mr. Englim's building.

Mayor Murphy felt that the real test of the compactor would be in the hot months after next spring. He said he'd like to hear from Mr. Spikowski.

Bill Spikowski referred to his meeting with the contractors on Wednesday morning. He said that if we decide that we don't want to build this building, he would have to act in good faith and tell them so. He would like to come back to us at our next meeting on October 18 with a recommendation of a low bidder and presentation of the alternatives. We're bidding the project with five separate alternatives, which Mr. Spikowski described.

So much has to fall in place with a project like this, Mr. Spikowski said. If we drop it for six months, we have to start over as it's a government project. He went into detail about the building itself and noted that it would be in an incredibly prominent corner from both directions and should be attractive visually. Mayor Murphy ascertained that in Mr. Spikowski's professional opinion we should go the route of the building.

Garr Reynolds asked if the contractors were bidding on the assumption that they would immediately begin construction. Bill Spikowski told him yes and that they would finish it within 70 days. Of the six contractors who have picked up the plans, four have called to say that if they had an extra 30 or 50 days they would be sure it would be done on time and could save us money and that they would like that option in the bid.

Mr. Reynolds expressed his dislike for putting a compactor building in the most active part of town. He would encourage seeing how the compactor works out without any structures and keeping it as it is if it does work out. Mr. Spikowski said that there is a place under the bridge where a compactor could be put with access by a truck. It is near the Dockside Inn dumpsters, but we don't own the land although we have permission to park cars there. He believes that we could get a lease from Florida DOT to put a compactor there because it's removable but he can't imagine them letting us put a building there. He would not like to see the compactor on Center Street without a building around it.

Bill Spikowski displayed a drawing that shows what the building would look like without the tower in front. He said that if the compactor works through the summer surrounded by trees, he doesn't know why we'd take it away, but is that really the way we want to handle garbage in this very urban place?

Anita Cereceda said she would suggest that we move ahead with both plans and be straight up with the contractors about other possibilities that may arise.

John Mulholland told Bill Spikowski he'd like to hear any other reservations he might have about the compactor. He'd also like to know what he would consider a reasonable time period for the test. Bill Spikowski said that not only do you have the compactor out in the direct Florida sun, but you also have less waste being generated at

that time of year so it stays in the compactor longer. If we talk about the test going through next summer and fall, we're going to be back to the worst season of the year without the building built or rushing the contractors to build it in 70 days when it really requires 120 days.

Mayor Murphy asked if anyone was prepared this evening to decide which way we should go on the compactor. Garr Reynolds felt we should have the test done. Dan Hughes said that he didn't see any real problem in delaying this another few weeks. We should proceed with the bidding process because we'll get a specific handle on the cost. It's conceivable that the bids could come in so outrageously high that that could alter our total position in this matter. He would also ask that Mr. Freidin on behalf of his clients submit something to us well in advance of the October 18 meeting that would elaborate on the letter that he wrote tonight and specifically provide that if the Town agreed to put in a compactor on a temporary basis, that it can be terminated unilaterally and at the sole discretion of the Town Council at any time for whatever reason. We could still decide to build the building at any time. John Mulholland said that he could go along with that very easily. He agrees to proceed with the bidding process and to get a definition from Mr. Freidin as to exactly what they are proposing. And we should be prepared to define by October 18 how long this test period is going to be.

Remarks by Tim Englim:

Alluding to the fact that the bid process might be delayed and the construction might be delayed, Mr. Englim said that would take us through the end of the season and so there wouldn't be a test of anything. We'd have the same problem that we had last season. And he can just see the nightmare of the construction of a building starting two, three or four weeks late, and the next thing is that we're into June with the building not even built yet. He thanked Anita for her character reference.

B. Discussion of driveway size and consolidation of substandard lots

Bill Spikowski said he had put together two memos for us with a little background information. On the driveway issue he suggests that we can under the new land development code put some maximum driveway width standards. We'll be better off dealing with parking on beach accesses using a small public works project where we could actually install parking there as long as we're not blocking all access to the adjoining owners. If we'd like to handle this some other way, he would like to know tonight either for input into the land development code that he's working on for us or, if the change we're thinking of is really major, a comprehensive plan change. Dan Hughes said he'd like to have this matter referred to the LPA. He'd like to see the consolidation of substandard lots go through the process of an amendment to our comp plan as well as the land development code.

> **MOTION**: Made by Dan Hughes and seconded by Anita Cereceda that we refer to the LPA the issue of establishing minimum and maximum sized widths for driveway entrances on access roads, something that would need to be incorporated into the land development code. Passed unanimously.

MOTION: Made by Dan Hughes and seconded by Garr Reynolds that we adopt the last paragraph of Bill Spikowski's memorandum where he he says if the Council wishes to change the current regulations, it should direct the re-examination of the provisions of the comp plan during the first cycle of plan amendments, which will get underway in January. Passed unanimously.

C. Draft: Ordinance on Homestead Exemption for persons 65 and older

Mayor Murphy said that when he read this this afternoon, his first thought was what the loss to us would be. Then he thought that the loss to us would be so minimal while the gain to someone in this position would be so much more to them. So he's all in favor of this and if there are no objections, he'd like to refer it for a first reading.

Dan Hughes said he was also in favor of it, but said that although the ordinance is well drafted and it follows as it has to the enabling legislation, the state statute, he does find the state statute kind of vague and not totally applicable to a lot of situations and he predicts some serious problems in administering this. It talks about legal equitable title. What about people in trust? Who has the equitable title, the trustee of a living trust, etc.? It refers to property with right of survivorship. It doesn't address property that's in tenants in common. He wonders what experience anybody has had with this. It's a brand new statute and he thinks it's going to need some fixing.

Garr Reynolds said his concern is that we don't know what effect this is going to have on our tax laws. It would be interesting to know that before we pass an ordinance.

Dan Hughes said that in most states that have this, it's statewide. It doesn't require a town or village or city to adopt an ordinance to implement it. It's not a local option deal as in Florida.

Mayor Murphy said that we'll bring this back again, and he asked John Gucciardo to put any information together that he can about what effect it could possibly have on our revenues.

D. Discussion of Sign Ordinance change in Sec. 30-153 permanent signs in commercial areas.

Dan Hughes stated that we had had an animated discussion on procedure at our last meeting. Mr. Campo had solved the whole situation for us by getting up and saying he was agreeable to the reduction in his sign from 80 feet to 64 feet. Now we have to send this back to the LPA.

MOTION: Made by John Mulholland and seconded by Garr Reynolds that we send the sign ordinance change in Sec. 30-153 back to the LPA. Passed unanimously.

E. Approval of concerts at Villa Santini

John Mulholland said he certainly approved of the concerts when Jean Mathews did them and he is very happy to see that Marty Hartung, Fish Tale Marina and Santini will cover one-third each. That means that the Town's obligation will be reduced a third. He would only ask that the Town money be accounted for. Mayor Murphy said that he agreed and he thought that the concerts were a very worthy operation. He stated that

Marty has done a bang up job on this and he's all in favor of continuing with this program.

Anita Cereceda noted that the Town had given $1,000 last time but we did not have documentation on what the money went for. Also noted by Ms. Cereceda was that we had established a policy where we would share in hard cash costs up to 50% and we don't have a hard cash cost here. In the letter, Dan Hughes advised, it is stated that the Town of Fort Myers Beach will pay approximately one third. So are we giving them $1,000 no matter what they spend or are we agreeing to exactly one third? Anita Cereceda said that's what we don't know. She is happy to approve this; however, she would like for an itemized budget to be presented to us.

Garr Reynolds said that if we can allot $1,000 for each performance, then he thinks we're doing a lot better than what our guidelines tell us we could do. And since this is basically one owner who's covering the costs of the additional amount beyond $1,000, he's not really having much trouble with whether they give us an accounting or not.

> **MOTION**: Made by Anita Cereceda and seconded by Garr Reynolds that we approve the expenditure of $1,000 per concert for the six concerts as laid out in Marty Hartung's request to us for the Villa Santini concerts. That total would be $6,000 provided that it is 50% or less than the hard dollar costs of their actual budget. Passed unanimously.

F. Recommendation from CELCAB on:

1. Interim uses

Anita Cereceda reported on the recent CELCAB meeting wherein interim uses of the Mound House were discussed. John Mulholland stated that he objected to recommendations for a policy on the use by community organizations in Elizabeth Jordan's memo, which to him seems to go against the spirit of the third item in Marsha Segal-George's memo with regards to holiday uses of the property. Ms. Cereceda said that Elizabeth Jordan is speaking of public and private use and not use by community organizations.

Fran Myers, Chairperson of CELCAB, attempted to clear things up. She said that they did try to differentiate between public use and organizational type use.

The size of a busload was discussed with reference to policy 2.

> **MOTION**: Made by Anita Cereceda and seconded by Garr Reynolds that we approve the interim policies and procedures as adopted by the CELCAB and recommended to the Fort Myers Beach Town Council the change in policy 2 from 20 to 45. Passed unanimously.

2. Docent program

Anita Cereceda advised that Ceel Spuhler of CELCAB has worked tremendously hard in putting this together. She has impressed all her fellow committee members with how much time and energy she has spent on it. It is the only thing that has met with no resistance.

Ceel Spuhler was called upon to speak about the docent program. She advised that her docents were very excited about this program. They will meet again on Thursday

and she will give them an outline at that time, because there is history from 1898 and wonderful stories as well as pictures. They would hope that we would approve them opening Wednesday, October 20, and again on Saturday, October 23 from 12:00 p.m. to 2:00 p.m. They have talked with the people at the Historical Society and the Historic Cottage is also open on Wednesday and Saturday, making it possible to refer visitors from one house to the other.

Making reservations had been discussed, but Mrs. Spuhler stated that she is hoping that until they get off the ground that people could just come. She would put a public service announcement in the Observer that the House would be open and all are welcome. She is hoping they get a lot of people, including young people, right at the beginning so that the word spreads.

Mrs. Spuhler said that the committee definitely doesn't want to rush people through. This is one of the few museums where you can sit on the furniture.

Mayor Murphy told Mrs. Spuhler that he agreed with her and thinks the reservation word is a downer. If she finds out the crowds are too big, she can always pull back. He asked if the docents would be wearing uniforms and she said they were thinking of getting T-shirts with Mound House printed on them and to also have them for sale.

3. Holiday use

Anita Cereceda reported that Lee Conger of the Connecticut Street neighborhood has asked that no music be allowed outside of the Mound House during Open House. The committee seemed to agree to it. The proposal for holiday activities was discussed and dates given.

Mayor Murphy stated that he had enjoyed the concerts last year very much and found them to be very low key. If the objection was the music, then that was ridiculous. If the objection was the traffic that went down the street, that could be addressed.

Garr Reynolds said he didn't think there could be any objection to church choirs and it would be a shame if we couldn't invite them in to sing.

Fran Myers advised that on the last night of Open House last year, Chapel-by-the-Sea had a lot of people at the House and they were parked on both sides of the road all the way down, and this was mainly what Lee Conger's objection was. Reverend Stuckey will be approached to find out if we can use his parking lot for cars. Another lot was purchased recently by a community person who might let us park cars there as well.

Dan Hughes felt that the event last year was very well done and very well received. He's not sure, however, that it's a valid assumption that the service clubs will be willing to decorate the house for just three nights. Fran Myers advised that the decorations would be for all of December.

Mayor Murphy said that parking arrangements could be explored so that we can move forward with some concerts. Anita Cereceda said she would see what she could put together and bring it back to our next meeting.

> **MOTION**: Made by Anita Cereceda and seconded by John Mulholland that the docent program begin October 20 and not require reservations unless it proves necessary, and that it operate on Wednesdays and Saturdays from 12:00 p.m. to 2:00 p.m.

VIII. PUBLIC HEARING: PANHANDLE ORDINANCE

Mayor Murphy read the ordinance.

Public Comment:
None.

MOTION: Made by John Mulholland and seconded by Dan Hughes that the panhandle ordinance be accepted. Passed unanimously.

IX COUNCIL MEMBER ITEMS AND REPORTS

Anita Cereceda said she would suggest that to expedite our meetings a little bit we not go through the rigmarole of proclamations unless someone is here to receive one.

Ms. Cereceda also stated that New Years Eve plans are moving ahead quite well. She noted that we have never adopted a legal logo or emblem for the Town. She would like to see us make a concerted effort to either adopt the one that's on our stationery as our formal emblem or have a contest to choose another one.

Garr Reynolds spoke regarding receiving communications about unlicensed and uncertified architects operating in Lee and Collier Counties, and he would like to encourage staff to check anyone who is doing this because of the safety factor. It especially applies to commercial contracting in buildings.

Mr. Reynolds said in reading Ed Cusick's letter regarding the Sky Bridge, he wondered if something was happening that Council doesn't know about.

Mr. Reynolds referred to the lady from Cape Coral who had to pay $90.00 to retrieve her son's car that had been towed from the Primeau parking lot where he had paid $50.00. Mr. Primeau wrote the lady a letter of apology and sent her a $90.00 check to reimburse her for her expenses. Mr. Reynolds said that he thinks this indicates a good businessman and also a gentleman and he had thanked Mr. Primeau for handling the situation the way he did. His feelings were echoed by Vice Mayor Mulholland.

The Town Manager has hired a sixth employee, Mr. Reynolds stated. He would say again for the record that he does not approve of hiring another employee, but this disapproval should not reflect unfavorably on the person hired, Pam Houck, who just recently retired from the County. She is a fine person and no doubt will do a fine job for the Town and she has his best wishes.

Mr. Reynolds said that it seemed to him that the final judgment handed down from Judge Rosman on the Avatar purchase is pretty final and in his opinion there is no use in pursuing this any further.

Regarding the trash compactor, Mr. Reynolds stated that Times Square is no place to collect trash and garbage. He hopes that the compactor will be put under the bridge rather than having a building for the compactor built. No matter how much the building will be decorated, it's still going to be a dump.

Dan Hughes referred to a letter from Congressman Porter Goss advising us of a Town Hall meeting on Monday, October 11, on drug usage. He feels that this is a very important issue.

Regarding a letter received from the American Institute of Architects and newspaper articles, Dan Hughes said that reference was made to the numerous cases of unlicensed activity in the Southwest Florida area along with allegations that our State

Attorney is not prosecuting offenders, which D'Allessandro has denied. The Institute advised that this can be stopped at the local level with cooperation from local governmental agencies. John Gucciardo was asked for suggestions. Mr. Hughes said he thinks we should check this out and if it is an issue, we should bring it to the attention of the State Attorney's office and respond to the American Institute of Architects, Southwest Florida Chapter, that we have looked into it. Garr Reynolds stated that one of the things said in the letter was that the government could do something about it by checking licenses and certifications.

Vice Mayor Mulholland advised he had been working with the residents of the Coconut Street beach access and had met with Mr. Taylor of Lee County and the contractor last week. It was an excellent meeting, and he's happy to report that Mr. Taylor and the contractor said that they would do the job and do it to the residents' satisfaction.

Mr. Mulholland said he applauded the hiring by our Town Manager Pam Houck to be a member of our staff. Pam Houck is hard working and intelligent, knows her facts, and he thinks she'll be a fine addition to our Town staff.

The Mayor, Mr. Mulholland reported, got a letter from Betty Flynn with concerns about the condition of the beaches in specific areas. He would like to see someone who the Mayor might designate follow up on Mrs. Flynn's letter dated October 1.

Mr. Mulholland said that we have rightfully turned down the request of the Partners in Education of the Beach Elementary School for subsidizing the educational process here on the Beach, but he's in favor of helping the children. He asked Attorney Roosa if it would be proper legally to make a donation to the school. Attorney Roosa said that he thinks we should make any financial arrangements to the school through the school board. It should be done by interlocal agreement. But he would caution against taking taxpayers' money from the city and paying it over to another taxing entity. If we look at our tax bill, we'll see that the school board collects a substantial part of our tax money. John Mulholland said he would withdraw his idea of helping the school.

Mayor Murphy said he'd like to get on the record publicly to congratulate John Gucciardo for the work that he did with FEMA and our flood insurance. He knows that Mr. Gucciardo put a lot of hard work into this and the results are definitely positive and he appreciates it.

X. TOWN APPOINTMENTS

A. CAC of the MPO

Mayor Murphy said that this is one of those very popular positions that we advertise from time to time. What he has gathered is that Harry Gottlieb has been called on his attendance record because of his absence during the summer. Mr. Gottlieb does not want to resign, he'd rather be fired, but we need to look for a replacement. There haven't been any volunteers, so if it's okay with the Council, we should re-advertise this and see if there's anyone who can get excited about this. The Council concurred with this suggestion.

XI. TOWN MANAGER'S ITEMS

A. Update on the Pool

John Gucciardo distributed a status update included in the Council packets on the

pool.

Dan Hughes stated he had a question on the Pool Foundation. He has noticed that the passes are going to be payable to the Foundation. Now will the Foundation actually be receiving all income and paying all expenses relating to the pool? John Gucciardo explained that the Foundation would be sending applications and fees to Town Hall. Dan Hughes said that it just seemed that selling the family pass is different than raising money as a charitable contribution. That's operating income versus a charitable contribution and not what he contemplated to be a function of the Foundation.

Copy of Letter from Bob Taylor , Construction Project Manager, working at access point and the original plan at the Coda Access, 2 small seawalls to be placed there. This plan was originally designed with seawall in mind, field inspection was favorable and received approval from Eve with Turtle Time, but unfortunately the plans were rejected in Tallahassee by Division of Beach and Costal System. Bob Taylor has written a draft letter for a request to re-look at this situation. Bob is interested in knowing weather the Council would support the request or not. John Gucciardo stated that he would pass this request on Council from Bob. John stated he would have liked to bring this issue to MRTF for their input, however, Bob Taylor was probably surprised with the rejection of the plans. Bob Taylor is now scrambling to undo what he sees as potential damage to the ultimate plan for the access.

Vice Mayor Mulholland said that Mr. Taylor was the same person he was speaking to who mentioned problems he was having with Florida DEP. Eve Haverfield was involved and Mr. Mulholland said he thought that with that agreement, Mr. Taylor had a good shot at getting approval.

Dan Hughes said that he was not opposed to this and that the staff should write a letter in support of it.

Garr Reynolds advised that when those two walls were built 25 years ago, they were connected all the way across that access. The people in the community went bananas and they went back to perhaps the DEP and also the county commissioners and had that center section removed. The reason was because there were more retirees living in that area at the time and they objected to having their access to the Gulf cut off. And so the County he believes took that sea wall out. The same persons who really objected at that time still live there and they're about 84 and 85 years of age. They walk to that beach daily and are one of the few couples that he sees still bathing in the Gulf. He doesn't know how they feel about it at this point, but he's a little disappointed that none of the neighbors there have been asked.

John Mulholland said he was at the Coconut Street access discussing the drainage, and at that time they mentioned in passing their experience at the Coda.

Garr Reynolds said he was just wondering how they would make access for handicapped at that location if they did that. How would these people who live down there get to the Gulf? Ray Murphy said what they do is build boardwalks on top of the sea wall. Garr Reynolds said they can't do that there as the tide comes up half way of the access. That's the only beach area that they have right now.

XII. TOWN ATTORNEY'S ITEMS

Attorney Roosa advised that first off, with regard to the court's ruling, he agrees we lost, but he doesn't agree that we should have lost. He thinks that in the instance of bond validations, they are unique and their appellate review is that they go directly to the Supreme Court rather than going to the Second District Court of Appeal. It is his recommendation that we appeal the Circuit Court's opinion for two significant reasons. There were five errors that he identified in the bond validation, but the significant ones are the Government Utilities Authority's assignment of the right to purchase the system to the County, which in accordance with their charter required that they offer it to the municipality first. And that charter was approved by the County. He thinks it's significant that they violated their charter in their assignment to the County.

Also significant, according to Mr. Roosa, is that the Court expressly ruled that their action does not violate Article VIII., Sec. 4, of the Florida Constitution. That provision quite frankly says that a municipality is responsible for providing municipal services to its area and the County must have its consent prior to providing those services. He thinks that's a very important municipal concern, and he fully expects that the Florida League of Cities will file a amicus brief in this action because it is a significant issue statewide as to the rights of a municipality versus a charter county. He certainly wants to win in any appeal that we take to the Florida Supreme Court and it would be his recommendation for the Town to hire an appellate attorney. He would recommend Haller Sandrich for this duty. She is a shareholder with Fowler, White, Gillen, Bogg, Villareal and Banker, which is a substantial law firm in Estero with their main office in Tampa, Florida.

The problem, however, comes with a conflict of interest. They have resolved their conflict of interest with everyone except that there are four bonding brokerage houses that would be selling the $3,000,000. They have had dealings with these bond brokerage houses as clients in the past, but nothing to do with this particular issue however. When Haller Sandrich went to check with the four of them, two of them signed off right away and the other two are giving a little bit of run around. As of this morning she could not agree to represent us because there's still this outstanding question. If we can't get her, he would recommend that we appeal that decision because of those two very serious errors in the bond validation.

Mayor Murphy asked Mr. Roosa if we were going first to the DCA in Lakeland, Florida. Mr. Roosa told him we would go straight to the Supreme Court and he explained why. Understood is that the County will not be able to sell these bonds while an appeal is pending.

Vice Mayor Mulholland asked if we win, would we get any reimbursement for fees and other expenses, and he was told that we wouldn't. However, we will get the opportunity to purchase the utility system and Mr. Roosa believes that this will provide two advantages to the Town of Fort Myers Beach. First it will allow for this Council to control rates, which means we will not have to follow the rate increases of the County. Secondly, he believes that the utility system will produce revenue for this Town.

Dan Hughes asked if this ruling barred our ability to negotiate further with the County on acquiring this system. Dick Roosa said he believes that the County staff made a serious mistake and that mistake will ultimately cost the County money because of the way they made their calculations. In his opinion, the staff will never recommend our

purchasing the system except under their terms. Dan Hughes asked how much he thought it would cost us to appeal, and he was told $15,000-$20,000. Mr. Hughes also asked if Haller Sandrich had reviewed this at all and if she felt there was some merit to our position.

Mr. Roosa said she has reviewed it and is very excited about the opportunity to represent us, and someone with her experience wouldn't want to lose. He has provided her with a copy of the opinion and his memo.

It was ascertained that we have until the 23rd of October to file notice of appeal.

Anita Cereceda said she believes we should appeal this and we should put the County on notice immediately that we are going to appeal it. And we should appeal it not based on how much it's going to cost or whether or not we get to buy the water system, but based on the fact that the County has now been given judicial authority locally to disregard our autonomy. It is a case the Florida League of Cities should not only file an amicus to, but should be incredibly interested in seeing us succeed in.

Discussion:

Garr Reynolds said that as a layman he has read all of the papers that have come through. They made reference to a change in the Florida Constitution of 1968. They also talked about charter governments that totally turned around the Florida Constitution in relation to County/municipality relationships. It seems to him that there is no chance that this will be turned around. He thinks that it's time to give up. He would like to see this stopped at this point.

Vice Mayor Mulholland said that he was in agreement with the two points the Town Attorney made regarding the right of the Town to govern itself and the violation of the charter. And he is in agreement with the motion as proposed by Councilwoman Cereceda. He thinks that it is important for us to go forward because we do have to maintain the right to govern ourselves.

Attorney Roosa said he thinks the only reason we have this lawsuit today is because somebody made a mistake, and in the process of doing so, they wouldn't admit it early on. Had they done so, this lawsuit never would have occurred, and Mr. Roosa explained why.

Dan Hughes said he is voting for the motion and that once we file the appeal, we should perhaps utilize that situation to attempt to reopen negotiations with the County. He noted that the Town wasn't operating water and sewer services before; a private company was and now a county is, and he thinks there are some broad implications to this. Even if we do lose this, he would not regard this as a total loss of our governmental powers vis-a-vis the County. You have to keep it within the context of this particular issue and the statutory and constitutional provisions it specifically relates to.

Mayor Murphy said that he, too, is going to support the motion for the reasons that Councilwoman Cereceda, Vice Mayor Mulholland and Councilman Hughes have brought forward. We're in no position to negotiate as we stand right now. If we reenter into this appeal, then we're in a position. He doesn't hold much out for that because he's of a mind these days that it's the County's position just to beat us into the sand. But he's always optimistic and he hopes that will change.

Garr Reynolds told Attorney Roosa that he respected his opinion very much, but he still has the feeling that we're beating a dead horse and going nowhere. But out of respect

for Attorney Roosa's strong desire to follow this, he thinks we should go in there with full support and he will go along with it for that reason.

> **MOTION**: Made by Anita Cereceda and seconded by Ray Murphy that we authorize the Town Attorney to proceed with an appeal to the Supreme Court to Judge Rosman's decision. Passed unanimously.

Attorney Roosa said he would like Council's permission to bring forward the hiring of Haller Sandrich to represent us in this appeal at our next meeting. He would be able at that time to tell us whether or not she would be able to represent us.

XIII. PUBLIC COMMENT

A. DR. JOE CROKER

Dr. Croker said he noticed black top in front of the theater in order to provide the centerline. He also noticed that they had blacktopped the beach access at Sterling, as well as the one at Dakota. The one at Dakota has beautiful curving on it which he thinks really accents the access. And somewhere further down the island there is an access that was done six or seven months ago that is now all paved and has the curving in the parking area that is absolutely gorgeous. He wonders if the other accesses that do not have this will be retrofitted with curving. Garr Reynolds advised he had talked with Bob Taylor about the project and he told him they were doing it at certain locations. Mayor Murphy said that we would look into it.

Regarding the compactor, Dr. Croker said he had seen the drawing tonight of the building that is being proposed and it is going to be a gorgeous structure. The location chosen for it will be highly visible and he might find himself explaining to a visitor who asks what it is that it's our city dump. Dr. Croker said he always thought that they put the outhouse behind the house and not in front.

XIII. ADJOURNMENT

The meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of October 4, 1999

1. Bill Spikowski referred to his meeting with the contractors on Wednesday morning. He said that if we decide that we don't want to build the contractor building, he would have to act in good faith and tell them so. He would like to come back to us at our next meeting on October 18 with a recommendation of a low bidder and presentation of the alternatives.

2. With respect to the Homestead exemption for persons 65 years of age and older, Mayor Murphy said that we'll bring this back again, and he asked John Gucciardo to put any information together that he can about what effect it could possibly have on our revenues.

3. Mayor Murphy said that parking arrangements could be explored with respect to holiday activities at the Mound House so that we can move forward with some concerts. Anita Cereceda said she would see what she could put together and bring it back to our next meeting.

4. Anita Cereceda noted that we have never adopted a legal logo or emblem for the Town. She would like to see us make a concerted effort to either adopt the one that's on our stationery as our formal emblem or have a contest to choose another one.

5. Attorney Roosa said he would like Council's permission to bring forward the hiring of Haller Sandrich to represent us in this appeal at our next meeting. He would be able at that time to tell us whether or not she would be able to represent us.

6. Dr. Croker said he noticed that some beach accesses had attractive curving in the blacktop while others didn't. He wonders if the accesses that do not have this will be retrofitted with curving. Mayor Murphy said that we would look into it.

7. The Mayor, Mr. Mulholland reported, got a letter from Betty Flynn with concerns about the condition of the beaches in specific areas. He would like to see someone who the Mayor might designate follow up on Mrs. Flynn's letter dated October 1.

8. Mayor Murphy said that that the CAC of the MPO is one of those very popular positions that we advertise from time to time. We need to look for a replacement. There haven't been any volunteers, so if it's okay with the Council, we should re-advertise this and see if there's anyone who can get excited about this. The Council concurred with this suggestion.

9. A motion was made and passed that we authorize the Town Attorney to proceed with an appeal to the Supreme Court to Judge Rosman's decision.