FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 18, 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 18, 1999, at 6:33 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: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo and Attorney Richard Roosa..

II. PLEDGE OF ALLEGIANCE

Mayor Murphy asked the school children at the meeting to lead us in the recitation of the Pledge of Allegiance.

III. INVOCATION

The Reverend Scoop Keesel, Deacon from the Church of the Ascension gave the invocation and Mayor Murphy also read an invocation written by Fifth Grader Lydia Franz.

IV. PRESENTATION TO BEACH ELEMENTARY CONTEST WINNERS

Mayor Murphy explained that this week we had a poster contest depicting "My Fort Myers Beach." It was themed by the Florida League of Cities and was held all over the state.

Winners of the contest from the Kindergarten to the Fifth Grade were read into the record.

Best of Show was Fifth Grader Lydia Franz.

Certificates for the Town of Fort Myers Beach were presented to the Beach Elementary's Media Center. Accepting those were the principal of the school, Judy Michalski, and Sara Keller from the Media Center. The names of the winners were read into the record.

Pictures were taken.

V. PUBLIC COMMENT ON AGENDA ITEMS

A. DR. JOE CROKER

Dr. Croker advised that he had recently been appointed to the Board of the Chamber of Commerce and to function on their behalf as their liaison to the Council. He has functioned in this capacity in the past, and there was apparently throughout the community some misunderstanding. He is addressing us tonight to put on the record just what he is and what he is going to be doing. As a conduit from the Chamber and their board of directors, he will be bringing to us items that they have a position on, for or against or neutral That is the extent of his capacity. That is the extent of his authority. When he previously held this position, he was accused of being a lackey and other things for the Chamber and not having a mind of his own. There will be times when he will bring to us a direction from the board of the Chamber that may not necessarily be in accordance with his personal thinking, but he is not allowed to make that part of his address to us. But he will be here as Joe Croker telling us of his own personal feelings. He wants people to know that he is not the voice of the Chamber of Commerce, he is only relaying the intentions of the Chamber of Commerce. And, hopefully, in those areas where we have concern that we need to bring something back to the Chamber for verification or whatever, the conduit can work both ways.

VI. CONSENT AGENDA

A. Approval of Minutes: September 13, September 16 and September 20, 1999

Councilman Garr Reynolds asked to pull the minutes of September 13 and 16 and the minutes of July 1.

Councilman Dan Hughes asked to pull the minutes of September 20.

Corrections and changes to minutes of September 13, 1999:

1. On page 3 in the first paragraph under Discussion, the sentence reading "He asked Mr. Ryffel why he felt that the rest of the people on the Island should not have that opportunity." should be continued to read "should not have that opportunity to visit Bowditch Point."
2. On page 3 in the third paragraph under Discussion, the last sentence should be changed from "Mr. Reynolds said that the park is for off-island people too." to read "Mr. Reynolds said that this is a Lee County Park that is for all of Lee County."
3. On page 4, show that the motion passed with one dissenting vote from Garr Reynolds.
4. On page 7, show that the motion by Dan Hughes and seconded by Ray Murphy passed with 3 and not 4 aye votes and 2 nay votes.
5. On page 5, in the third paragraph from the bottom of the page beginning with "Mr. Reynolds said that he had read," in the last sentence rather than stating that Mr. Reynolds also spoke about what he perceived as Arden Arrington's role," Mr. Reynolds would have preferred to have had his complete statement quoted.
6. On page 10 in the last paragraph it states that "Mayor Murphy also referred to a problem that was brought forward by a Mr. and Mrs. Sawyer. His concerns are detailed in a packet distributed to councilmembers." Mr. Reynolds feels that more detail should have been given regarding this problem.

Corrections and changes to minutes of September 16, 1999:

1. On page 4 in the last sentence of the third paragraph where it says "He has very mixed feelings about taking the Board off the hook," Mr. Reynolds said what he had stated was that as a former teacher and educator for over 30 years, he can appreciate their problem.
2. On page 5, paragraph E., the second sentence should read "He asked if it was possible to put a small fan high on the wall with a hole for ventilation so that air could circulate out the top."
3. On page 6 in the paragraph beginning "Councilman Garr Reynolds said that the other day he had asked how much money it would take to add to the millage to get the equivalent amount," Councilman Reynolds said that his point clarified that a 5% utility tax would be the equivalent of a .5 mill property tax.
4. On page 7 in the paragraph beginning "Councilman Garr Reynolds felt that the Town has been pretty loose with money," in the second sentence where $1,000,000 is shown it should read $4,500,000. In sentence 4 change "Then start spending money on it" to read "before we spend money." The concept here is let's not spend money on a road that does not belong to the town.
5. On page 10 insert in the remarks under V. A., that Mr. Reynolds said that "a dump is a dump, even if it is made in a beautiful setting in Times Square."

Corrections and changes to minutes of July 1, 1999:

Town Manager Marsha Segal-George advised that the only reason we're reviewing these minutes is because of the Bay Beach issue.

1. Mr. Reynolds said that he didn't feel that he had approved the first motion on page 5 since he cast a dissenting vote for it.

Corrections and changes to minutes of September 20, 1999:

Councilman Hughes stated that his request to modify these minutes relates to the adoption of the resolution on page 5 wherein we were approving the variance in the case of Earl Ewing and Althea Gonya. Anita Cereceda made a motion to approve this and then he stated that we should follow the proposed resolution that the staff had presented and set forth some changes that had to be made in that because there are always some alternatives in those resolutions that are or are not, do or do not, etc. The Vice Mayor stated that the motion was now amended, and then he had a further question on one of the conditions -- the vegetation in the front -- because the County staff had declared the front to be the front of the beach access. What the LPA was

talking about was not removing vegetation there, but moving vegetation on the beach side of the property, which in the particular case of this lot was not the front. So we changed that. And that's the background for getting down to the motion itself, which was made by Anita and seconded by Garr that we approve the request for a variance and accept the approval and resolution of the Local Planning Agency.

His recollection is of approving the resolution presented by the staff as modified by that preceding discussion and not approving the resolution of the Local Planning Agency because we changed it. At a prior meeting some months ago, it was brought up that we adopt the resolution with the following modifications and that the resolution should be attached to the minutes. If we read from the bottom of page 4 through that motion, you're not sure exactly what we adopted, and that's why he feels we should stick with those staff resolutions, modify them, and they should become the official resolution as adopted by the Town Council. And he believes that is what we intended to do that evening and not just accepting the approval and resolution of the Local Planning Agency. Mayor Murphy said that we will check on that. He also thinks that the resolution should be attached to the minutes so that we don't have a problem with this. He was told by Anita Cereceda and by Mayor Murphy that they didn't have a problem with it.

Councilman Hughes said that it's probably not a major thing in this particular case, but he can see a situation where there's some later controversy about what happened and maybe even somebody attacking what occurred. And, when we pull the minutes, we're not going to look too good here, because we don't have the findings, we don't have the resolution, we talk about changing it and then we approve what the LPA adopted.

Vice Mayor Mulholland asked Councilman Hughes if he's saying that the tape is wrong and that he didn't understand his comments. Dan Hughes said that the tape is wrong and he's broadening the comment to bring up the point that he made at a previous meeting that what we adopt is the resolution as presented by the Staff and not a motion just to approve. Mr. Mulholland said that he didn't have a problem with that, but he did have a problem with him saying that the tape was wrong. The tape is a record of what we are saying now. Dan Hughes said well, let's say the tape is right, and he asked Mr. Roosa how do we make this right. He thinks this is an important point and it should be resolved. If a neighbor comes in here now and has 30 days to object to the adoption of our approval of this variation, and the record goes before a hearing officer, what did we adopt? You tell me what we adopted, any of you.

Well one thing we would have, Attorney Roosa stated, would be the resolution itself, which is signed by the Mayor and the Clerk. Mr. Hughes stated that if the minutes don't say that we approved that resolution, which is exactly his point, the resolution that the Mayor signed, then we don't have the Town Council saying that we adopted that resolution. Mr. Roosa said that he agreed that that would create a problem, but that he still thinks the resolution would prevail over the minutes in that instance.

One thing that we might do, according to Mr. Roosa, is something that the County does, and that is they number the resolutions prior to their adoption. They do it by months, so that all the resolutions adopted in October would start with 99-10-1. And if the resolution is not adopted, it still keeps that number but is not approved. That would also make it easier for the Council, especially in zoning resolutions, to just say I move the adoption of Resolution 99-10-1 with the following modifications. He said that he thinks these minutes are incorrect, number one, but he thinks we've got to be careful on that and in the future like we got two variations this month and we approved resolutions and that's what we approved. We adopt the resolutions. It would make for a more complete record. But you need to remember that a resolution is nothing more than a written motion. Every motion you make is in effect a resolution, the only difference being that they're presented to you in advance and already in written form so it's easier for you to make the motion, unlike an ordinance that requires a special adoption procedure. The resolution becomes a part of the minutes and he thinks it would be good to have it included with the minutes. He also thinks we might consider, and he doesn't know what problems that might create, a numbering system where we would include the month as well as the sequential designation.

Town Manager Segal-George stated that she could make this real simple. We'll start putting the resolutions with the minutes. She doesn't know if we need numbering systems or anything, because we don't have that many. We'll start with the minutes of October 11 when we had those cases. Ray Murphy said he thinks that would eliminate a lot of confusion.

Councilman Hughes said his concern is that in this particular case we have a motion that makes absolutely no reference to any resolution. In our files upstairs is a resolution signed by the Mayor saying this resolution was unanimously adopted, but if you look at the minutes, there's no reference to it.

Mayor Murphy indicated that he would not mind if we eliminated the numbering. Garr Reynolds said he noticed that the Local Planning Agency had a number that they could reference, so he would think that we would have a number also. He believes that Mr. Roosa's point is well taken. Whether a resolution passes or not is almost immaterial here. We need a record to show that. And if it comes with a number, it will be filed accordingly. And like a motion, whether it gets a second to pass or not, it should be recorded. Dan Hughes explained that the number was given at the time a resolution is adopted. He said he didn't have a problem with not having the number there as long as the resolution when adopted is made a part of the record somehow in the minutes of meeting.

Mayor Murphy asked for a motion to approve the minutes of September 13, September 16, September 20 and July 1.

> **MOTION**: Made by Dan Hughes and seconded by Ray Murphy to approve the minutes of September 13, September 16, September 20 and July 1. Passed unanimously.

B. Reclarification of Minutes of July 1, 1999 (pertaining to Bay Beach resolution)

Mayor Murphy said that he agreed with the Town Manager regarding a review of the July 1 minutes, and that if there is nothing to add, change or dispute about the Bay Beach issue, then we are going to move on.

C. Review of Financial Reports for September, 1999

D. Proclamations: Florida City Government Week and Vision Awareness Month

> **MOTION**: Made by Anita Cereceda and seconded by John Mulholland that Item C, Review of Financial Reports for September, 1999, and Item D, Proclamations: Florida City Government Week and Vision Awareness Month of the Consent Agenda be approved. Passed unanimously.

VII. ADMINISTRATIVE AGENDA

A. Attorney Howard Freidin representing adjoining landowner on the trash compactor

Howard Freidin advised that since he was here last, he had met with the manufacturer of the equipment, and with Bill Spikowski in order to firm up what kind of equipment they were talking about. The manufacturer had indicated he had some alternative suggestions that they should look at. Mr. Freidin also contacted the County and spoke with Mr. Lindsey Sampson, who is head of Waste Environmental Services for the County. Mr. Sampson indicated to him that there were some other alternatives that he would like for them to look at, including smaller garbage trucks.

Deputy Town Manager John Gucciardo advised he felt an obligation to clarify something for the Town Manager before they go forward. It was his understanding that these other issues were not supposed to be the subject of tonight's discussion, but rather that Mr. Freidin was supposed to bring back the details of his clients' proposed agreement with the Town as to funding for and maintenance of the alternative that they proposed at the last meeting, i.e., details on landscaping, payment, terms of the agreement. Councilman Hughes was particularly concerned about termination dates and things like that. Ray Murphy asked Mr. Freidin if he had come prepared to answer those questions.

Mr. Freidin said that they are still willing to make a financial contribution, but as a result of these meetings, they wanted to present to the Council the fact that they have learned some things that the city has never looked at before, such as a dumpster on tire wheels that could be moved. After listening to the merchants last week, it seemed to them that the merchants didn't

want the dumpster in Center Street. If they can come up with a solution that meets the needs of the Council and meets the needs of the Times Square people, that's what they ought to be aiming for. Mr. Sampson from the County indicated that he is in the process of bidding the contract now and that he would be willing to try and meet the needs of Times Square in the new solid waste contract. He also indicated that he would talk with Kimmins about meeting our needs right now in terms of what we're trying to accomplish. And
Mr. Sampson told him that he had not spoken directly with anyone from the city on this subject.

Mr. Freidin said they think that the placement of a compactor after talking with all these people would be both a waste of money and the wrong solution. He thinks there's a better solution that's just a few moments away.

Councilwoman Cereceda said that part of what we were supposed to look at is what Mr. Freidin had to offer and we also postponed this because we wanted to give Mr. Spikowski a chance to meet with the contractors. We may be beating a dead horse here.

Councilman Reynolds said he thought we should listen to Mr. Freidin and the company with open ears, because he has offered some very constructive things and possibilities here that have not been explored. He doesn't believe that anybody is going to be happy with the huge building there. He doesn't believe they're going to be happy with that compactor there, because it is going to be the garbage collection point of the most busy, tourist-oriented place on the Island. This might be one of the better suggestions that we've heard yet.

Mayor Murphy asked Mr. Freidin if he is saying that he has forsaken the compactor choice. Mr. Freidin said that what he is trying to say is that he needs more time, that he thinks, and again with their financial contribution, that they can come up with something that is better if he has a few more days. A meeting with Mr. Sampson and Mr. Buell with Kimmins was canceled on Friday because of the hurricane. He has brought to Mr. Sampson plans for Times Square which he did not previously have and he has told him that he is willing to help. People have told him they do not want the compactor on Center Street, and the garbage people, the people from Marathon, think there are other alternatives that need to be explored. He has come up with people who are willing to help; he needs a short additional time in order to present something further to the Council beyond just paying for the installaiton of a compactor in that spot. Mr. Englim is still willing to make a financial contribution to the city. They just don't believe that that's the best thing at the moment.

Bill Spikowski made his presentation. He advised that they have closed on bids for the building discussed previously. They had just two bidders. The low bid was $351,000 for the entire project, and the higher bid was $424,000. This was quite a bit higher than their budget for the project. One of the bidders also did not bid each of the alternatives. This puts us in somewhat of a pickle, because if we were to choose to go with one of those alternatives, our low bidder is non responsive.

There were so few bidders, Mr. Spikowski explained, because the plans were fast-tracked to all the bidders and were not complete and were supplemented about 10 days later, which shortened their time to bid. There also is a severe penalty of $200 a day if this job is not completed on time, very tight deadlines and a busy market place.

Discussed with the bidders were ways it would cost less to build. Mr. Spikowski, although both bidders suggested ways to cut costs, doesn't have the sense at this point that it would save us enough money so that we would want to go ahead. They have 60 days from the bid closing to accept or reject or to negotiate with the bidders. They have no recommendations for us to do any of those actions tonight.

Other options in trying to save money on the existing design are to look at one that has fewer functions or one that is less expensive to build. Mr. Spikowski showed a concept that has been attached to his memo. He said we need not take any action on the bids tonight, but this would be a good time to voice our opinions regarding what we want to do.

The architects have been asked to think about a building that could fit in that key spot but be much less expensive than the bids received, and they're working on that now. They are also getting background checks on both contractors to make sure that we don't have any problems there.

Vice Mayor Mulholland thought the bids were outrageously high. John Mulholland suggested that Mr. Spikowski look further.

Seventy days have been set to get the compactor room completed and an extra 20 days to complete the rest of the building.

Alternatives for the placement of the compactor were discussed: under the bridge, an off-island location, a lot in the industrial area of San Carlos Island. Also, let the merchants carry out their own trash and garbage as they did before the street was closed off. Take it to Fifth Street or near Old San Carlos for early pick up.

Garr Reynolds is solidly against $351,000 up to $424,000 that's presently estimated on those premises. He thinks that Mr. Freidin and the owners are correct in feeling that their business would be mostly cut off from view by traffic coming onto the Island from near the base of the bridge. However, our view is not protected so it doesn't really mean anything except that it's not a good thing to do. Who will pay this cost? Our own taxpayers? Some of it he understands is a grant, but he doesn't know if it all is. He hasn't heard and if he has, he's forgotten. It seems that the piecemeal approach to renewal in this area is painting us into a corner and the expense is killing us. He asked Mr. Spikowski if he would comment on this.

Of publicly owned property, Mr. Spikowski said, they first tried to get the County to allow them to build a small building in Lynn Hall Park and they were told absolutely not. Other public properties in the area are the Center Street right-of-way, the new piece of land they just arranged to acquire from the Lighthouse on the side of the bridge, and then the land under the bridge itself. The Lighthouse land is right next to residential and not considered feasible. There is only one location under the bridge where a compactor could work, and that's the compactor that's rolled off the truck whose height is 23 feet; and it could go down there where the existing dumpsters are next to the Dockside Inn. It's on state-owned land. It would be a piece of industrial machinery that would smell and be noisy. It's not a great solution, but it physically could work there, and they discussed that again with the compactor representative this past week.

On the San Carlos location there is industrial land that probably could be leased for a trash compactor. When you do that you are trading the lower initial cost, because the land value is lower, for a very high operating cost going back and forth many times, every day, seven days a week, year after year. That's a huge problem with that solution; it would inflate your front end costs but reduce your back end costs.

As far as merchants carrying their own trash, that could be done with any location. The problem is if that's not done very neatly, it's going to be a mess. The concept here was to go with a Town contractor who not only would operate the facility, but would also haul the trash. He would have every incentive not to spill a thing, and then if something were spilled, to clean it up immediately.

They're trying their best to do this in a unified way, and that's one of the reasons behind this particular design suggestion. He wouldn't call it piecemeal. It's about as coordinated an effort as they can possibly make.

There is a grant that would pay for part of the cost. There are some funds in our Downtown Redevelopment Authority and there are assessments against the owners. There are a variety of funding sources and, obviously, depending on what the cost is, you have to find a way to apportion that fairly. He can't tell us at the moment what that would be. At the moment we don't have the amount of money and no inclination to spend the amount if we had it sitting around. So he guesses that means we need to find a way to do it less expensively, even if it doesn't serve all the functions that we hope it to.

Councilman Reynolds told Mr. Spikowski that he alluded to carrying bags out and that there would be leaking. He thought that everyone was required to use a garbage can. Mr. Spikowski advised that right now the Times Square merchants have a 95 gallon rolling cart and they typically would put the garbage in bags and toss them into that cart. But when you get ten of those bags in the cart smashing each other down, the bags don't always hold.

Councilman Hughes expressed his disappointment. At the October 4 meeting, Anita Cereceda suggested we try to proceed on both fronts, go ahead with the bids. Mr. Freidin submitted something to us in writing that evening, but we requested him to submit a more detailed statement and have that available prior to our agenda for this meeting. And he would just note parenthetically that his client, Mr. Englim, at the last meeting expressed concern about our delaying it. Now we have been proceeding on two fronts and both fronts have totally collapsed and we're nowhere. The bids are almost totally excessive, as Mr. Mulholland has

properly pointed out, and totally unacceptable unless we radically alter the building specifications. And Mr. Freidin is apparently taking a new direction. Mr. Hughes said he thought it was quite clear that the test that he was suggesting and the conditions he was willing to agree to related itself to that specific site, and he asked that question and the response was yes, it's on this site, we're testing this site. Mr. Hughes stated that now we're not testing anything and we're nowhere. But he's not opposed to giving him more time. We can't go ahead with these bids anyway.

Anita Cereceda also had questions. She asked Marsha Segal-George what the status of trash would be as they approach season now without a compactor or a house or anything else. Marsha Segal-George said we'll have to figure out how we're going to get through season, because the plan we have in place right now was never designed to take us through season. These bids didn't come in until Thursday and we were busy on Friday, so we don't have an alternate plan. Bill Spikowski said there were a number of interim things that we can do, such as rent a compactor.

Councilwoman Cereceda made a motion.

Discussion:

Vice Mayor Mulholland said he agreed with Councilman Hughes that we're losing time. He recalls that last year we spent a lot of the Town's money on hauling garbage and he doesn't think this Town should be in the business of hauling garbage. He thinks we have ample time to do something else, and by waiting and looking and talking we don't seem to accomplish anything. He's getting impatient and would like us to move forward and he's very concerned.

Mayor Murphy said he shared John Mulholland's frustration. There are other things he'd rather be talking about than trash. He still feels that we are getting closer and he feels that they have gotten the extra time they've been looking for by default, if that's the case; but, regardless, we're going to hear more about this.

> **MOTION**: Made by Anita Cereceda and seconded by Dan Hughes that we table this discussion until Staff has appropriate information for us to move forward in one way or another. Passed unanimously.

Anita Cereceda stated that Mr. Spikowski has a very exciting and positive item he'd like to share with us this evening.

Mr. Spikowski said he got a call this morning from the Florida Planning and Zoning Association, and it was advance notice that later next week they are going to be awarding the Town of Fort Myers Beach their outstanding Public Report Award for the year for our comprehensive plan. Clapping followed this announcement.

Anita Cereceda stated that she had said earlier that that's the best compliment that the Town has gotten in four years.

B. First Reading: Ordinance on Homestead Exemption for persons 65 and older

Mayor Murphy read the ordinance to the Council. Town Manager Segal-George advised that the public hearing will be on November 1 at 6:30 p.m.

Mayor Murphy said that this ordinance has been made available to us by way of a Florida statute. He read a letter to the editor in the Fort Myers News-Press in which the writer questioned the County Commissioners why they would not act on this opportunity that has been made available. Ray Murphy said he has been very tempted to write a letter himself to the News-Press saying that the Town of Fort Myers Beach is, in fact, acting on this. Deputy Town Manager John Gucciardo said they are planning a press release that becomes official at the next meeting.

C. Discussion of CELCAB recommendations for holiday use

Town Manager Marsha Segal-George said it was her understanding that the Council wanted to have more discussions with regards to holiday use of the Mound House. In the interim since the last meeting, we have not been given the use of the parking lot at the Baptist Church on the corner, but we do have the use of a lot on Connecticut Street where we could park cars. The plan for those three evenings right now would be that we would try and direct as much traffic as

we can to that Connecticut Street lot and would allow the handicapped to go on down to the Mound House and park. So we would have parking going on in two locations.

Fran Myers, Mrs. Segal-George said, was going to be contacting the churches on the Island with regards to their Christmas choirs, but she has no information for us as to which choir has agreed. She does know that on December 5 the Pilot Club is going to be doing their Luminaria. On the 8th there is the possibility of choirs performing at the Mound House, and on the 11th Santa is coming to the Mound House, by boat she believes, and making an early appearance. And that's basically what's planned at this point.

Vice Mayor Mulholland said he thought that at the last meeting we approved the CELCAB proposal by Elizabeth Jordan. He appreciates the update by the Town Manager on the status, but he thought we were clear on what was going on for the holiday. Mayor Murphy said he didn't think we did. He thinks we approved Mrs. Jordan's broader policy recommendations. Marsha Segal-George said that Mrs. Jordan's policy was for interim use, and then there was Ceel Spuhler's policy on the docents. And from what she understands, we discussed the holiday use but said that we wanted it to come back with an update on parking and plans. We also tried to get use of the City of Fort Myers electric trams, but we weren't successful with that either. But right now we're going to park as many cars as we can away from the remainder of Connecticut Street so that the cars aren't going all the way to the end to park.

The docents will be beginning their program on Wednesday.

Asked how many cars the lot can hold, Mrs. Segal-George said we can park about 50. The Mound House can park quite a few, too, but we're trying to keep as many cars as possible from driving down the street to the Mound House to be sensitive to the neighbors' concern about traffic. The major objection to the neighbors last year was parking on the street, although it's not against the law to park on the street.

On the 5th, besides the Luminaria, the House will be open and decorated for visitors.

Councilwoman Cereceda said she has gotten several people calling, excited about the docent program beginning. She thinks it's going to be very important for us to get feedback from the greater community of the island and not just that one street.

VIII. COUNCIL MEMBER ITEMS AND REPORTS

Vice Mayor Mulholland said he'd first like to applaud the Beach Elementary school children and their art work, their involvement and their willingness to come and share with the Council and the Town. He would encourage the Town staff to maybe involve the Council more if they could. It was a very happy occasion.

John Mulholland said that the Back Bay cleanup with be this Sunday, the 24th, and he hopes all the Council will be there. He hopes that others will participate as well. There will be a good luncheon. Anyone having an interest in attending should call Terry Cain. Mrs. Cain as the coordinator, has done this for the last two years and is a very hardworking and wonderful person.

Mr. Mulholland said he was very happy to see the response of the Town Staff to Hurricane Irene. The Council met with them in session several times and they were ready with the facts and with the equipment. He applauds their efforts.

Councilman Hughes recollected the student council days they had up North and suggested this was something that we might do.

Referring to a letter in our file from Ray Judah subsequent to our requesting the County to defer action on the parking situation at Bowditch, Mr. Hughes wished to know if there had been any further response from the County.

Councilman Reynolds stated that it has been pretty heartwarming to see all the posters of the youngsters. He has been closely associated with children like these for over 30 years. He said the rewards are there personally and valuewise. He hears about teachers being overpaid, but he doesn't think that a good teacher can ever be overpaid, and he saw a lot of them in his day. And like in any profession, you see people that you wish had never been teachers. But it is certainly heartwarming to see all these youngsters' work here with a goal in mind showing what our Town might be like.

At the last Council meeting on October 11 Councilman Reynolds said, he made the statement that he thought that Chairman Murphy was allowing others to speak freely, while other members like himself have to sit, sit and sit while others jump in and start talking. When he

attempts to jump in, he told Mayor Murphy, he generally intercedes. Even when he gets his attention, he ignores him while allowing others to speak. He may not agree, but this is how he feels.

Addressing Mayor Murphy, Councilman Reynolds told him: "You interrupt me when I'm speaking; you interrupt me when I attempt to jump in as the others do; you call me down by saying 'Don't interrupt, Mr. Reynolds.' However, you do not do the same with other members. The taped records will speak for themselves on this. I will remind you that I have the same rights to speak as all the other members and I have the right to equal time. I have the right to present different ideas and points of view. Even when I was trying to explain this to you at the last Council meeting, two council members interrupted me and you said nothing to them. You admonished me but not them. You are too busy trying to alibi your stance after attempting to rectify the problem. I am embarrassed, very embarrassed by this lack of decorum. And, Mr. Chairman, the most frequent, and I think the most flagrant violation that you allow is permitting members to speak one, two, three and more times before other members are given a chance to speak, and especially me.

"A couple of members speak on and on," Councilman Reynolds continued, "while the rest of us just sit and wait patiently. I refer you to Roberts Rules of Order, Section 34, Article 5 on decorum: 'No one may be allowed to speak a second time on a question until every member who wants to speak has done so.' Now that this has been brought to your attention, Mr. Chairman, I appeal to you 1) to strive to have equal input among councilmembers; 2) I request that you enforce Roberts Rules of Order and do not allow other members to interrupt, contradict, condemn other individual members for their ideas, at least during presentation. Roberts Rules of Order, Article 5, Section 36 says, 'Don't be personal and critical of those of your members. In other words, it's not the person but the measure that is the subject of debate.' Too often, Mr. Chairman, maybe because my views differ from other members, I am pounced upon as if a new idea offends someone and, consequently, some members seem to find it necessary to defend each other and attack me. My thought is that all of us are here to represent the public and not here to fight among each other because our views may be different than another's. 3) I respect every member's presence on Council. I respect their ideas, or at least I have the patience and respect to sit quietly and hear them out. I want that respect shared around and stop this personal attack, especially on me. We should be here for the benefit of this Town and not for our individual egos. Please can we not come up with our own ideas, our own approaches, etc., rather than personally attacking another member, like me, for example. I would thank you to think about that. 4) Regarding conflicts of interest, Article 6, Section 38, Roberts Rules of Order, I quote: 'Members cannot vote on the questions that affect them personally. A sense of etiquette would stop most people from exercising the right unless their vote was necessary to change the outcome.' I have no trouble living and abiding by that statement. I hope that all of us can.

"As a closing statement, Mr. Chairman, I believe in the Roberts Rules of Order and I request that every effort be made to follow it more closely. Again, I thank you. And, Mr. Chairman, this interrupting that happens on Council has become so common that I really don't think you're allowing this to happen on purpose. I think it's something that this Council has become used to and that you have become used to and I don't think you're doing it purposely.

"And I have another comment. At the last Council meeting it was questioned whether a council- member should vote on the compactor that serves Times Square since the family owns the store and the member works there. Roosa said it was okay, and I respect the legal opinion. However, because of my experience regarding a similar matter, I cautioned a councilmember that after I had voted on that project that Chairman Murphy had later issued a complaint ... that he thought I had a conflict. This council- member thanked another council member for looking out for that member. Actually, I wish that that member had recognized at that time the fact that I was suggesting this for that same reason, for their protection. Another council member indicated that my situation was different, but I had complained about the sun and sky being affected by Sandbar project. I countered that I had made no such statement. The councilman did refer the matter over to Councilman Murphy. Mr. Murphy did not comment. For the record, I do not recall ever making a statement regarding the sun and sky affecting the project near my home. If I made such a statement to Council, I would like to hear that in our taped recordings. If it is there, I owe each of you an apology. And I simply do not recall ever making that statement.

"And I've already made a comment about the compactor, and the biggest thing -- I have received a couple of calls on this and wanted to know who is going to pay for it. And I said well, I guess maybe the taxpayers are going to have to pick up some of it, I don't know, that's the reason I asked Mr. Spikowski, that's why I did tonight. And the comments were 'Well, nobody pays for carrying my garbage out' and all this. In other words, they didn't like the idea. And when they heard the cost of that building, they were flabbergasted to say the least.

"And on another item, Fort Myers Beach v. Maune, I don't know how you pronounce that, Mr. Roosa. Would you explain about the motion to suspend the imposition of fine for three months? What is this about? I don't recall seeing any material on this. Were you coming to that later, or do you want to do it now?"

Attorney Roosa said he could do it now. He explained that that was a code enforcement action and it involved a violation that was caused by the tenant. We cited the property owner. The landlord owner had filed an eviction action against the tenant. That had not been placed on the Calendar. So at the time of the hearing, the property owner was represented by an attorney, who said as soon as they got possession of the property they would correct the problem. And, of course, code enforcement is for compliance, not a revenue seeking body. So at the time he thought that the hearing officer understood that we were going to stay the action until the resolution by the Court. But apparently that wasn't the case. The order was issued without his knowledge and so he filed a motion to stay the fine because that's what we had agreed to at the hearing. And subsequently the hearing examiner has issued an order to grant the stay.

Councilman Reynolds said "Very good, thank you, I was just wondering what that was. Now we all know."

"Now the next item," Councilman Reynolds said, "is Monofilament Madness by Lee County. I want to ask Councilman Mulholland if Fort Myers Beach is participating in this, as I believe I heard at the last meeting." Vice Mayor Mulholland advised that we were participating. Council voted to give the organizer, Terry Cain, $1,000 to help the effort of the Back Back cleanup. The university is involved, and there are a lot of other people outside the Town involved and they're coming down to our Bay to help clean it up.

Councilman Reynolds said "Since I sold my boat of course I can't ... the Back Bay and do that. But do you have boaters who are going out that would welcome someone to assist?"

Vice Mayor Mulholland told Councilman Reynolds absolutely, and he would make sure that he got on a boat or whatever he wanted to do.

Councilman Reynolds said he appreciated that, and if he had other riders he might be able to pick somebody who can move around that wouldn't put somebody in danger.

Councilman Reynolds said he had another item. "I just want to mention that I'm very happy that Ceel Spuhler's docent program is coming together and is about ready to begin. It's really neat. I have a question to ask of staff, I guess, on this one. We received a letter, a pretty strong letter about Flamingo and the Gulf accesses being so filthy and dirty and all this type of thing. I just wonder if anybody has looked at this situation." Town Manager Segal-George responded that they were going to look at it and she didn't know if they had gotten to it yet. Councilman Reynolds said that there was no date on it and that he had received it on October 1 addressed to Mr. Mayor.

Councilman Reynolds said "That's all my comments, Mr. Mayor, and thank you very much."

Councilwoman Cereceda stated that she would like to make a public request to the Town Manager. She would like information at our next meeting on the cost of having a court reporter at our Town Council meetings in order to give us verbatim reports of our meetings, because she doesn't want to sit through 45 minutes every single meeting on the minutes. She is wondering what the cost would be as opposed to the cost of what it is costing Lorraine to do it. It would alleviate Janeen from having to be at the meetings. Somebody could come in, take it down, and we would get five or how many copies necessary to be distributed at the meeting, and then we would have two verbatim records of the thing. And she certainly doesn't mean any disrespect to the councilmen who are concerned about the minutes and their correctness. She would just like to know what the cost of that could possibly be.

Councilwoman Cereceda said that secondly, she would like to report to us that she has met several times with Bonita Springs Incorporation Committees, and they're in their final weeks of

trying to push through incorporation. The Town of Fort Myers Beach has been very supportive of them, not telling them they should or shouldn't, but simply lending whatever support we're able to. They are promoting Government Light, and she would just like to ask the Council to please pay attention to the Bonita Banner and the Bonita edition of the News-Press if they are by chance able to get it. Because there is a lot of misinformation being talked about the Town of Fort Myers Beach in those papers. For example, Mr. DeSalvo, Andy DeSalvo -- she thinks we all might remember him, as he's appeared before us a couple of times -- made a statement in today's paper that Government Light was an oxymoron, and he used the Council's compensation to prove his point. Councilwoman Cereceda said that he clearly is misinformed and that she, herself, is going to be speaking with him directly, as well as writing a column to answer his column in the Bonita edition of the News-Press. And she just would ask us to do the same, because she thinks that Fort Myers Beach stands as an example to how government can work effectively and efficiently. We've set a trend in the state. We're being recognized for our comp plan. And she thinks that we need to be examples for our neighbors and the best way to do that is to give out good information.

The other information Councilwoman Cereceda said that she would like to give us is that there is a gentleman who is very interested in doing a water taxi. Of course all of this would be at his expense. He's moving forward with it. Today she spoke with John Richard and asked him if he would mind if she brought this up at the Council tonight. What he was looking for was a drop-off place in Times Square. She talked to John about it and told him she was excited about the notion just to have somebody try it, and John is going to be talking to him about the possibility of using the bayou at his motel. So she thinks this is a very exciting thing that's going to be happening.

Ms. Cereceda said that she is the guest speaker at the Civic Association meeting tomorrow night.

She also said she has a request of the Council, and she actually needs a decision from us and she apologizes for it being so late. October 28 is Environment Day and the Town of Fort Myers Beach is the sponsor of Environment Day. We are going to have a panel of speakers here, and our Leadership Lee County class for this year that the Mayor is a member of and which both she and John went through is going to be present to talk about environment in Lee County and our stewardship -- we're all in this. John is going to be hosting the panel and it's going to be a very interesting day. Part of the tour is a boat tour of the Back Bay which Terry Cain is going to be leading. And all of that is secure. But what she would like the availability of, if possible, and if we say no, that's fine too, but if it's possible for her to work it out logistically, she would like to take them to the Mound House, even if it's just for half an hour. There would be approximately 45 people, which falls into the number limit of a school class; but these are not second, third, fourth graders. These are grown people. So she just wanted some input from us as to whether or not we'd be comfortable with that or not comfortable with it. Mayor Murphy stated no problem here. Anita Cereceda said that it would be on a Thursday afternoon. Everyone would be here and so she could carpool the group down there so that maybe there would be, say, ten cars that would go to the Mound House and everyone would be there for about, like she said, a half hour or 45 minutes.

Garr Reynolds told Councilwoman Cereceda that he wasn't sure that he understands about her speaker situation. Are they going to come here? Anita Cereceda replied that all she is asking for is to be able to take the class to the Mound House. Garr Reynolds said he understands that. That's no problem. He thinks it's a good idea. But you're not finalized on what you're going to do with the speakers. Anita Cereceda told him that that was all set up and that the panel discussion will be here at Town Hall. Garr Reynolds asked her if there was any time on that yet, to which she replied yes. It's going to be from 12:00 to 3:00 p.m., but you can't come because it's only for the Leadership Lee County class. Garr Reynolds thanked her for clearing this up. All the Councilmembers said that they had no objection to the panel discussion being held at Town Hall or the visit to the Mound House.

Mayor Murphy stated that last Monday, October 11, we may have heard on the news that Congressman Porter Goss and Governor Bush were here for the Town meeting at the Barbara B. Mann Hall on drugs in our community. The Town of Fort Myers Beach was well represented. Vice Mayor Mulholland, Councilwoman Cereceda and he were in attendance, along with other

people in the community. It was an enlightening evening and we'll see where it goes from there. The week prior to that, the Beach lost a good friend, John Wendell, who was here in business for years. He owned and operated the Gulf Store Restaurant in the cottage. John fought cancer for about three years and died way too young and left behind his wife Cathy and two young daughters. Mayor Murphy said he went to John's funeral and it was well represented by Fort Myers Beach. We would have been very proud of all the Beach people who were there.

On the thirteenth, Mayor Murphy said, he met with the Horizon Council as our representative. They had a reception for the president of the new Florida Gulf Coast University, President Merwin, which was at Sanibel Harbor Resort. This gentleman had big shoes to fill with President McTarnaghan leaving, but his first impressions of him are that he is a solid man and he's already come out with some great ideas about what he is going to do with the university and he thinks we all look forward to his tenure here at the university.

Mayor Murphy advised that Mayor Grady came down to look at our swimming pool, because he's going to be building a pool in Fort Myers. Mayor Murphy said he thought it was kind of nice that he would come down and look at ours so he could take suggestions back. And as Marsha said, we did talk about different things with the Mayor. We were trying to get some of those electric trams from him that we could use here on the Beach. We thought he was going to have some surplus trams, but it turned out that he, in fact, refurbished those and he's going to use those. So we gave it a shot but we didn't get any.

Mayor Murphy said that as all of us know, this past Friday we were under the gun again with a hurricane. Irene looked like she was going to bear right down on us for a long time. He just wants us to know that on Thursday the Town did convene in an emergency meeting and we have an ordinance already in place, which is a special ordinance that gives special powers to the Town Manager, etc., etc. We enacted that part of the ordinance and also passed a state of emergency resolution. So the Town, in fact, was under a state of emergency for the impending hurricane. That doesn't always get out, but that was, in fact, what happened. And, given the severity of it, if it were to happen again he presumes that the same thing would happen. He wants to commend the staff, who did an excellent job in their preparations for the hurricane. And as he says, for awhile it did look like it was coming straight at us, but, again, we were very well prepared for that and, again, he thanks us all very much.

IX. TOWN MANAGER'S ITEMS

Deputy Town Manager John Gucciardo said that this is just a reminder for the Council that in preparation for the pool opening, the timetable so far looks like the contract will be turning over the project to the County on this Friday, October 22. The County Commissioners are scheduled to release the property to the Town from the County on November 2. We're looking for an opening somewhere around that week, and right now the tentative schedule for a ribbon cutting ceremony with ourselves and the Board of County Commissioners and the Pool Foundation present would be Saturday, November 13, at 3:00 p.m. He asked that we check our schedules, and if there's a conflict there, they will see if they can do some rearranging. But right now that seems to be the date that most people can make. They will keep us posted as the date gets closer.

X TOWN ATTORNEY'S ITEMS

Attorney Roosa said that at our direction he went and reviewed the Mound House litigation against Mr. Thomas, who had taken possession of the property and is now incarcerated in federal prison. He has reviewed the records and discussed it with the attorney and he is satisfied that the attorney is working his best efforts and doing everything that's possible to accelerate the litigation. There was a hearing this morning. He attended that hearing and Mr. Thomas attended through the telephone from his prison cell, he guesses, and he requested that he be allowed an extension of time and the court granted a 45-day extension of time. There is a hearing that is set for December, and it would be anticipated that that hearing would be based on a summary judgment and we hope that we can have this matter finally resolved in December.

Attorney Roosa said that the other thing he wants to bring up is some good news. We remember when he talked to us about Robert Donald, whom we approved his representing us in

the appeal, and at the time he said that he would also like to get an attorney in Tallahassee to represent us. He has been able to do so. His name is John R. Branick and he's with Osley and McMillan, which is a very large law firm with offices in Tallahassee. He is a very well-respected appellate lawyer, having served as a justice on the District Court of Appeals. He comes with very high credentials and Mr. Roosa has talked with him personally. He was excited about representing us in the case. Mr. Roosa told him that we were a small municipality with a very limited budget, and he has agreed to work for us for $175 an hour. Mr. Roosa said he explained to him that his primary function would be oral arguments before the Supreme Court. He knows all of the justices on the Florida Supreme Court. Mr. Roosa mentioned to him that we were on an accelerated calendar, that once the notice of appeal is filed, we have 20 days under the rules to file our appellate brief. He said that should be no problem, that he can get an extension on the 20-day time period. Mr. Roosa said he thinks we've hit the button on a man who can do well to represent us and he's excited about it. There are no conflicts with his law firm, which is almost impossible to find. And so he would ask that the Council approve him as co-counsel on the appeal.

Dan Hughes said that he would so move. He has read this resume and it's very impressive, particularly in the area of appellate litigation.

Discussion:

Councilman Reynolds asked Attorney Roosa if Mr. Branick has given him a ballpark figure. Mr. Roosa said no, but of course one of the things will be that he will have to review all the records and have the background information in anticipation of the possibility for oral argument. And if we get to the oral argument situation, then he would expect that we take more time. He also said that we can use his services for as little time or as much time as we felt necessary. Mr. Roosa said he expects that Robert Donald will do the bulk of the appellate work. Of course, one of the reasons will be that he will be able to work with him as far as getting the records from the trial court and everything, and that we'll use him sparingly. But if we are fortunate enough to get to oral arguments, he thinks it will be a very important move that we have that type of representation. Mr. Roosa stated that he was very excited when he found out that Mr. Branick had no conflicts.

Vice Mayor Mulholland told Attorney Roosa that he had mentioned the Mound House. A resident had given him a copy of a current issue of a newsletter, and in it an editorial alleged that there were some illegal activities associated with the Mound House. He'd like to ask him again publicly if he knows about any activities that are illegal about the Mound House. Mr. Roosa advised that of course Mr. Thomas presented a fraudulent deed that he used for the acquisition of the Mound House. Although he has not personally admitted it to be fraudulent, the other witnesses have identified it as a fraudulent deed. And the court at one time had ruled that it was such, and then the court reversed itself because they didn't feel that it was proper at that time. But the reason that Mr. Thomas is in prison is for illegal activities.

> **MOTION**: Made by Dan Hughes and seconded by John Mulholland that we retain John R. Branick as co-counsel on the appeal in the litigation case. Passed unanimously.

Vice Mayor Mulholland said he was wondering if in addition to Mr. Thomas' activities that he's in jail for, if Mr. Roosa knew of anything else that is illegal or possibly illegal and is going on at the Mound House. Mr. Roosa said no.

Mayor Murphy asked how Mr. Thomas was, and Mr. Roosa replied that apparently he's quite well. He has a strong voice. He's being well cared for. He's fed regularly and given adequate exercise. He has an air-conditioned cell, television.

Asked by Garr Reynolds if Mr. Thomas had access to a good law library, Mr. Roosa said Westlaw; he's on the Internet.

XI. PUBLIC COMMENT

A. TIM ENGLIM

Regarding the compactor, Tim Englim referred to Councilman Hughes' comment that they seemed to be waffling or backing out of some sort of offer that they had made. But they didn't really waffle in terms of the spirit of what they were trying to offer, just in the substance of what it was. When things hit the newspapers, he was inundated with calls from local merchants. Brian Scanlon suggested they do a petition that he plans to show us, and it was pretty surprising what the results were.

He first spoke to Mrs. Segal-George a few months ago about this and she explained the Town's position and they explained theirs. If they can come up with solutions that she thinks will solve the Town's problem, he asked, would she be willing to bring them forward to the Council, and she said yes. He believed her then, he believes her now. And since then they have literally inundated her office with suggestions, ideas. They have been working full time on this. In no way does that mean to him that they don't feel that the staff has done their homework. They're certain that they have. Staff has said of the 75%-85% of the things brought to them that they had already looked at that and it didn't work. But they still have to keep on trying and trying and trying to the point of absolute annoyance, and they feel that they just especially killed Mr. Spikowski. Bill Spikowski has gone on different sites with them. He's looked at different places with them. The building doesn't need to be built in that place. They kind of made it clear up front that they didn't want to see it there. Mr. Englim said he was under the earlier impression that the merchants wanted it to be there and found out later that wasn't the truth. He has a lot of self-interest in not having it built there. He doesn't think there's anything wrong with that self-interest and it may be to the Town's self-interest that it's not built there.

He really likes the overlay plan. He really likes the streetscape plan and thinks its very beautiful. He understands Mr. Spikowski's concern for that being a centerpiece to it. It's his personal opinion that it's more like putting the tail where the head should be. He thinks a lot of these things can still take place. They've had incredible input back and forth with Staff. They've just been great. It probably doesn't take more than twenty minutes to get a phone call back from Mrs. Segal-George. It doesn't take any time to get Mr. Spikowski -- we drag him all over the place. They work very very hard with them, and they hope it didn't come across in any way tonight that they're not having that kind of interaction. He personally feels that Staff has been really good to them, they've kept their word and done what they've been asked to do. They don't always agree on things but they keep trying.

XII. ADJOURNMENT

The meeting was adjourned at 8:39 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary

Items for action from the meeting of October 18, 1999

1. Town Manager Segal-George said that starting with the minutes of October 11 when we had those cases, we'll put the resolutions with the minutes. She doesn't know if we need numbering systems or anything, because we don't have that many.

2. Town Manager Segal-George advised that the public hearing the Ordinance on Homestead Exemption for persons 65 and older will be on November 1 at 6:30 p.m.

3. October 28 is Environment Day and the Town of Fort Myers Beach is the sponsor. There will be a panel of speakers here, and our Leadership Lee County class for this year is going to be present to talk about environment in Lee County and our stewardship. It's going to be from 12:00 to 3:00 p.m.

4. John Mulholland said that the Back Bay cleanup with be this Sunday, the 24th, and he hopes all the Council will be there.

5. Deputy Town Manager John Gucciardo said that in preparation for the pool opening, the timetable so far looks like the contract will be turning over the project to the County on this Friday, October 22. The County Commissioners are scheduled to release the property to the Town from the County on November 2. We're looking for an opening somewhere around that week, and right now the tentative schedule for a ribbon cutting ceremony with ourselves and the Board of County Commissioners and the Pool Foundation present would be Saturday, November 13, at 3:00 p.m.