

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 18, 1998**

NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, May 18, 1998 at 3:05 P.M. Present at the meeting were: Mayor Cereceda; Council Members Ray Murphy, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

Jim Overhulser of Vineyard Christian Fellowship led the Council in prayer.

IV PUBLIC COMMENT ON AGENDA ITEMS

A JACK HEYMAN

Mr. Heyman stated that he has known Lena Heyman for 50 years, and she is a dedicated and hard worker. He commends her for knowing the right thing to do and how to get it done.

B KEN HUMISTON

Mr. Humiston stated that one of the beach studies was done for the county by his company. He is here to see what the town has in mind for the future, and he will be available in case there are any questions.

C Mr. French

Mr. French seconded the nomination for Ms. Heyman

V APPROVAL OF MINUTES: APRIL 23, MAY 4, MAY 5 AND MAY 7, 1998

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the minutes be accepted as submitted. The motion passed unanimously.

VI APPOINTMENT OF COUNCIL MEMBER TO SEAT 2

Mayor Cereceda stated that she has listened to the tape of the meeting where the procedure for this appointment was set up, and she apologized if people's feelings were hurt by the procedure that was chosen. But after listening to the tape, she is positive that they have followed the procedure as agreed to by the council. Each council member has selected a person as their nominee for the vacant seat. Each candidate will have five minutes to make a presentation. The council will then vote for two people. Hopefully there will be a majority and that person then will be nominated and seconded and hopefully receive a majority of the votes.

A CANDIDATES

1. LENA HEYMAN

Ms. Heyman said she was chair of the incorporation committee, one of about 50 people who worked hard to see that incorporation would succeed on the 7th try. In November 1994 they had a successful drive to get voter signatures and presented them to the legislative delegation. She made three trips to Tallahassee to make sure the bid was successful. She went to the League of Cities and the Dept. of Treasury to ensure that the town would get immediate revenue sharing and the waiting period would be eliminated. After incorporation, she applied to work on the Local Planning Agency and has been on it since March 1996. She is the town's representative on the Domestic Violence Council and the Citizens Advisory Council of the MPO, she is on the traffic committee, and was coordinator of the LPA workshops on the Comp Plan. If appointed she will work hard for all residents, business owners and tourists. She will support the bare bones form of government at no compensation and with no new taxes, will support the Comp Plan, and will work to alleviate beach problems.

2. JOE CROKER

Dr. Croker said he has heard rumors that the appointment is a done deal and this meeting is just a formality. But the Town is not for sale. He has given 30 years of service to the community, 12 of those on the beach. In Michigan he served as team physician to a school team at no pay, two years as president of the PTA, and was later elected to the school board for 10 years, including a term as president. He was the chief negotiator for teacher contracts. He served two years as a director of the Michigan State Chiropractic Board. In 1986 he was included in Who's Who in international medicine. He is a member of the Chamber of Commerce and received the outstanding service award in 1992. In 1993 he was chairman of board, then citizen of the year. Last year he served the council on the charter review committee, and has just been appointed to the PSTF. He feels he has concern, commitment, dedication, honesty, and character. He feels he is qualified and he wants to do the job.

3. DAN HUGHES

Mr. Hughes said he was an original appointee to the LPA and has served for over two years. He also serves on the Technical Advisory Committee of the MPO. He has practiced law for 33 years, especially in the fields of banking, securities, and estate planning. He has experience as a city attorney and a prosecutor. He represented the Chicago Mass Transit District and a number of school districts and other governmental units. He has drafted zoning ordinances for several municipalities, and is also familiar with municipal fiscal matters. He was involved in the banking industry as an attorney, president and director. He presently has business interests which he operates from his home office. He takes occasional business trips to Illinois and the British West Indies, mostly for few days, which should not keep him from serving on the council. He is concerned about environmental issues. He brings a wide range of experience, particularly on LDC issues, which we must adopt soon. He will strive for objectivity just as he did on the LPA.

Mayor Cereceda thanked the other people who put their names forward. She asked the council if they had any reservation about the candidates or the process before moving forward. Each council member was given a written ballot and instructed to check two boxes and to initial the ballot. Mrs. Segal-George counted the ballots. Mayor Cereceda clarified that last Wednesday, she contacted Mr. Roosa and said that Mr. Hughes had told her that he had also been contacted by Mr. Mulholland, and she asked Mr. Roosa if it was OK for two people to choose the same candidate. He replied that her only obligation was to choose the best candidate. The perfect scenario would have been if all four council members had chosen the same person. Therefore, it was not a "done deal," but by sheer numbers there was a likelihood that the person with two nominations would win.

Mrs. Segal-George announced that the nominee is Dan Hughes.

Motion: Mr. Mulholland moved and Mayor Cereceda seconded that Mr. Hughes be elected.

Discussion: Mr. Mulholland said he had an open mind and based his decision on the facts and qualifications for the job. Mayor Cereceda said she had talked with Mr. Hughes because of the comments he made in the LPA Sandbar hearing. It is impossible to fill Ted FitzSimons' shoes, so she looked for someone who was neutral in the sense that she felt the vast majority of people would be comfortable with this person because he has been fair and reasonable and has an open mind. Mr. Reynolds said that without Lena Heyman's initiatives we wouldn't be sitting here today. He knows she will continue to work for the town. He knows very little about Dan Hughes, but has seen him at work on the LPA and has great respect for him and looks forward to working with him. **Action:** Mr. Mulholland, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion passed unanimously.

B SWEARING-IN CEREMONY

Mr. Roosa issued the oath of office to Mr. Hughes. Mr. Hughes thanked the council for the nomination and kind remarks. He reiterated the fine things said about Lena Heyman because he has worked with her on the LPA and he knows she will continue to serve the town with integrity. He also thanked the other members of the LPA and said it was a pleasure to work with them and that they have done a fine job of preparing the comprehensive plan.

VII ELECTION OF VICE MAYOR

Motion: Mr. Mulholland moved and Mr. Reynolds seconded that Mr. Murphy be nominated for Vice Mayor. Mr. Mulholland, aye; Mr. Hughes, aye; Mr. Reynolds, aye; Mayor Cereceda, aye; Mr. Murphy, aye. The motion passed unanimously.

VIII SELECTION OF NEW BANK SIGNATORIES

Mrs. Segal-George said we need to replace Mr. FitzSimons because two names are required to transfer money. Mayor Cereceda suggested Mr. Mulholland because he is the only one not up for election in November.

Motion: Mayor Cereceda moved and Mr. Reynolds seconded that Mr. Mulholland be selected. The motion passed unanimously.

The council took a break at 3:45 PM to allow Coastal Engineering to set up the room for their presentation. The meeting was called back to order at 4:00 PM.

Mayor Cereceda announced that the New Press has expressed the opinion that written ballots are not a good idea. She asked the council members to state their vote aloud. Mr. Mulholland: Dan Hughes, and Dan Hughes; Mr. Reynolds: Lena Heyman and Dan Hughes; Mr. Murphy: Joe Croker and Dan Hughes; Mayor Cereceda: Dan Hughes and Dan Hughes. She assured the public that the council has always used paper ballots and that they have always been kept and are public record. Mr. Roosa said you get a more objective result with a written ballot than with a voice vote.

XIX UPDATE BY COASTAL ENGINEERING

Michael Stephen, President of Coastal Consultants, spoke about the "Preliminary Beach Restoration and Funding Plan." The analysis summarizes the existing studies and plans, investigates methods of beachfill stabilization, talks about potential funding partners, and lists conclusions to take up with the town staff. On page 4 is a summary of the project descriptions. The current plan is from Florida DEP and involves 1.4 million cubic yards of fill on 5.4 miles of the island at a cost of \$12-13 million. He talked about the directional movement of sand which must be considered. The design needs to retain sand for the longest period of time. We will have to consider projects that other entities undertake, such as the causeway modifications at Sanibel, that would influence the island. Page 16 shows the preliminary schedule of completion. There are several alternate funding paths that can be taken. The federal process is underway but is relatively uncertain. If funds were continuously available, the project could be completed by 2002. If a state or local program kicks in, it might be completed by 2001. \$300,000 has been approved for the general evaluation report. Also underway is a hydrocyclone project or Matanzas Pass project. If sediment testing indicates that there is suitable material, it could then be separated and the fine material placed on the beach. We won't know until the report is out at the end of the month. The Town must partner with Lee County, TDC, WCIND, and Lover Key. Lee is the project sponsor for the federal and state project. He recommends the town work toward developing some kind of interlocal agreement to help clarify the roles and responsibilities of the different entities. The budget spread sheet shows that 2002 is when the \$3-4 million local cost sharing comes into play and we need be thinking about how we will have that available. He pointed out the twelve recommendations on page 20.

Mr. Reynolds asked how wide the beach should be after settling out. Mr. Stephen said each of the design plans has a different design width. He said the groin structure could be a pile cluster groin which could extend out a couple of hundred feet, or it might be off shore of the waterline and parallel with the shore which would control wave energy. The intent of the groin is to retain sand in the central part of the island and the specific length would be part of the final design plan. Sand can move north and south and that is why some people suggest the terminal groin. Rip rap might be used to build one of the terminal structures, but is not planned for anywhere along the beach. Mr. Mulholland said on the north Atlantic coast they have jetties, which causes accretion on one end and no sand on the other. They seem to be a mixed blessing. Mr. Stephens said two short terminal groins were used on the Bonita Beach project to try to keep sand from going back. Large groin fields are somewhat discouraged but sometimes in a unique circumstance they can be needed. Also a T-groin is sometimes used. As our project matures, there will be more input on what type could or should be used. Mr. Murphy asked if our ranking at 22 is good. He answered yes. Does Lovers Key have a ranking? No. Mr. Murphy thinks a cooperative effort with Lovers Key is a good idea. It was noted that the Humiston and Moore study estimated that the annual maintenance cost will be \$546,000 per year and DEP says \$120,000 per year. Mr. Stevens said he does not have a specific basis to support either one. The projects are slightly different even though they use the same amount of volume of material. The concept now is to place sand and let it move by Mother Nature and the terminal structures would keep the loss away from the ends and let sand move around in the middle.

Mayor Cereceda asked if the structures that are parallel to the beach affect boating. Mr. Stephens said if it were exposed it would have to be marked or lighted and charted. Mayor Cereceda mentioned the National Geographic article on barrier islands and the premise that it is the nature of barrier islands to change. How do you answer people who question why we should spend so much money to fight Mother Nature? Mr. Stephens said the answer depends on the location. On many barrier islands, such as the Outer Banks or at a state park, it is appropriate to let Mother Nature take her course. But if you are talking about a shoreline with millions or billions of dollars of infrastructure and a huge tax base, the fill would protect and reduce damage and loss. Mr. Gucciardo asked about the fact that \$300,000 is already earmarked for design, and at the state level \$720,000 is earmarked more or less for the same thing. Mr. Stevens said that that money is a legislative request but has not been approved. If we move high enough on the list, can we coordinate between federal and state so we don't have duplication. Normally the federal agencies will come sit with state and local agencies and will make an agreement where the local sponsor has to pay into the federal to participate in the next stage of the design. State dollars are in reserve and can be applied to that, but we will also need local matching dollars. The channel dredging project may not be a significant factor because of the multiple steps that are required, but it is not out of the picture yet.

X COUNCIL MEMBER ITEMS AND REPORTS

A DAN HUGHES

Mr. Hughes said that the LPA is in the process of working on a sign ordinance. He wondered about his ability to appear before the LPA now to have some input. Mr. Roosa said that that would be in his role as legislator and he can do that. The only problem is when it involves a quasi-judicial hearing, and he can be put in a problem situation by hearing evidence at the LPA that may not be presented at the town council.

B RAY MURPHY

Mr. Murphy said he attended the Lee County Economic Development luncheon where TICO made a presentation about bringing natural gas to southwest Florida, perhaps even to FMB. That should provide competition and lower prices and perhaps some revenue to the town in the form of a franchise agreement. He also attended a function where a local group met with a group from Gulf Shores, Alabama, who came to see how other tourist areas are operating. He thinks it is a great idea and in the future, representatives from FMB might consider doing the same thing, perhaps to Charleston, SC to see their hurricane plans and the viability of their downtown.

He said many people have questions about the Waffle House so he asked staff for a site map. It showed the property line, the roofline, the pavement line, etc. Mrs. Segal-George said a sidewalk will be redone that will come under the roofline. The project is being done according to the overlay. People can walk under shade and there will be some benches. The overlay was developed by WRT working with the Estero Island CRA. When the town came into being, it was adopted by the council as an ordinance, and the design features were adopted as part of the administrative code. The next step was to have been to engineer the plan, but the county said there was no more TIF to do the plan. So the town took it as it was and have been trying to make it work since. She said the Waffle House had appropriate zoning to build a standard box, but they came forward to try to design something different, with an interesting roofline, etc. Twice they went to the LPA to see what the LPA would like to see. Basically the LPA asked them to bring the building forward to the street. They volunteered to put in the curb and sidewalk and are trying hard to meet the spirit of the overlay. But it is all subjective. It is not an architectural design review--just whether they meet the design spirit. She said she stamps the plans when it goes under the overlay. Mr. Reynolds said he would like to see the section deleted that says buildings can go to the street all the way to Miramar. He hasn't heard any good comments about the Waffle House of the Barking Shark and he questioned if it is the look we want. Mr. Mulholland said not only did the council approve it but a lot of people sat on the CRA for 5 years and they approved it. Mr. Reynolds said it is totally at the discretion of the town manager. Mayor Cereceda said no, the council enacted the law and the town manager only administers their decision. Mr. Hughes said the Council adopted it but they delegated approval to the town manager to see if it meets design guidelines. Perhaps that burden should not be imposed on her and there should be some kind of architectural review board. Normally communities allow canopies to overhang sidewalks, but not rooflines.

Mr. Murphy asked if the plans to construct south end sidewalks was still on schedule. Mr. Gucciardo said FDOT and LDOT still plan to award a contract in July, and that design approval came

through about 2 weeks ago. Construction should start in September. We have written property owners and asked them to start removing personal property from the right of way. The project will take 3-4 months.

Mr. Murphy also noted that the landscaping is looking shabby around town hall. Mrs. Segal-George said we can ask the bank to do something.

C GARR REYNOLDS

Mr. Reynolds said the personnel manual has perks that the town manager can kick in at will without consulting the council yet no personnel evaluations are required. The evaluation of the town manager is set for June 1 and he can't be there. He asked that it be delayed until he returns on June 15. There was no objection by the council to the delay.

Regarding the Connecticut and Shell Mound cut-through, the sheriff's department has been trying to get people to slow down and they have written a number of tickets. He asked the council to cooperate with the residents and he asked the residents present not to use that shortcut. Some residents of those streets are asking to make Shell Mound a one-way street going south during season.

He also said he heard that the assistant town manager had resigned. He asked when the council will be informed and he was told that there is a memo already in the council mailboxes. He also wished that a different voting arrangement could have been worked out in the council. Someone else might have had another idea. Mayor Cereceda said she asked for input from the council. Hers was only a suggestion after having talking to Mr. Roosa. No one said they wanted to suggest another method.

D JOHN MULHOLLAND

Mr. Mulholland said that Mr. FitzSimons was the first to be elected, the first vice mayor, and the first to be re-elected. He remains a leader in community, and he thinks the Council should honor his contributions. Staff has suggested that his name be put on bricks for the pool and historic cottage and that he be given a clock similar to Councilman Isler. He asked for further suggestions.

He had an informal meeting with residents, and although only 10 people showed up, the discussion was lively and he will be working on some of the issues presented. He plans another meeting in September.

E ANITA CERECEDA

Mayor Cereceda read a letter from Bob Gaydos which thanked Mr. Mulholland for providing the opportunity to have a town forum and an exchange of information. He also thanked the town manager for attending that forum. He also thanked everyone for the cleanup effort on the beach.

She asked the council if it was OK to not to have a time limit on public comment in the public hearing on the Comp Plan. She then suggested that they set a time limit for the meeting, perhaps 10 PM, and if they are not through, continue the meeting to another date and keep continuing it until the community and council feel comfortable with Plan. She felt that people need to comment as much as they want and the council needs to discuss everything fully. It was agreed that this is too important to cut short, but that the mayor can ask people to conclude their remarks if they are becoming redundant. It was agreed to hold the meeting until 9:30 PM.

The council recessed at 5:25 for dinner and reconvened at 6:30 PM.

XI PUBLIC HEARING: TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN

The public hearing was opened.

A CHARLES GOLDEN

Mr. Golden asked about the part about water conservation, which suggests limiting lawn irrigation to 5 PM to 9 PM. His yard person feels watering should be done in the early morning hours, not late evening. Bill Spikowski said the recommendation is from the South Florida Water Management District. It is not a regulation here, and it does not bind the council. State agencies will want us to do something like this by ordinance.

B BOB BEASLEY

Mr. Beasley lives on Palermo and represents three other properties. The plan to rezone the single family residential on Santos to multi-family residential is a good plan and makes sense because that is what is there now. It does not adversely affect the residents. But rezoning to pedestrian commercial will adversely affect the residents, especially on Palermo. He requested that the council deny the request to rezone to pedestrian commercial.

C HELEN CALDWELL

Ms. Caldwell presented petitions from Donora residents regarding two lots on Donora. She urged that the two lots presently used by Red Coconut be left zoned as is. There is no access by road to Matanzas, and she asked that those lots be acquired so that there could be parking and a second entrance to this valuable recreational resource. We need to protect the natural beauty of the preserve, and it could be developed into eco-tourism, with a trail system, fragrance garden, and a walk-through to Estero Bay. Mr. Hughes asked Mr. Spikowski if those lots would be included in the Red Coconut project. Mr. Spikowski said the LPA forwarded them as low density, which is single family. He said that the lots are already vested for use for the RV park, but whether it will become part of the higher density is still an open issue.

D ELIZABETH JORDAN

Ms. Jordan lives on Donora and spoke in support of the petitions. She also spoke in support of the land use plan. She encouraged them to follow the plan and keep single family residential on quiet family streets. She said we are lucky to have Matanzas Preserve and many people do not know about it or how to use it. The only way into the preserve is the entrance by the historic cottage. The lot on Donora would give an opportunity to correct this situation. Much money is being spent to improve the preserve and many hours are being spent, but it needs to be more open to the public. Maybe it would be a good place to rebuild the stone arches.

E BARBARA KEENE

Ms. Keene handed out a map of the area around the preserve. She is hoping that during the plan for the Red Coconut, the town will try to buy an undeveloped lot from the Myers' to become a new entrance to the preserve and to provide a buffer for the homeowners. It is now used for dumpsters and storage. It is adjacent to the Matanzas Preserve. It can be seen from Estero so it would make a good entrance. Now is the time to expand the use of the park. The parking lot at the historic cottage overflows often. The Myers' have been very instrumental in working on the preserve and have allowed the county trucks to use the lot to help with reforestation. She hopes they can be talked into being willing sellers. The sale price might be under \$80,000 if it is being sold for a home. There is a sewer lift station on the front of the lot. Neighbors say the odor from escaping gas is sometimes bad, so it makes it less desirable for a home, but would still be good for an entrance. It would be a good buffer for the RV park and a good entrance to the park for their residents. The county will help with the development of the lot. The second map shows where the bike paths could go. Many people could reach the area without getting on Estero. If it is not possible to buy this lot at a reasonable price, there are other lots that might be available. Please do not give away substantial density.

F HELEN YOUNG

Ms. Young lives on Donora. She agrees about the beauty of the preserve. She saw two birds recently that have never been seen there before. It is important for us to preserve it. The lot in question was at first zoned residential, but the county commissioners awarded the use of the lot to the RV park. If there were a fire in the preserve, there would be hundreds of houses, a church, a shopping center, Bay Oaks, and a school affected. This would be the best and only way for a fire truck to get to it

G SANDI SUTER

Mrs. Suter said they will be asked to rezone Santos to pedestrian commercial. The owners are requesting it because they are looking at the back of dumpsters. A realtor has purchased one of them recently and he knew the dumpsters were there. It would be an intrusion of commercial into single family. If it is zoned commercial, they would take the dumpsters and put them behind them and that would become the view for the residents of Palermo Circle. She represents her two properties and also three other property owners on the bay and one that will be looking at the dumpsters over the canal if it is rezoned. Rezoning multi family is OK because that is what it already is.

H JOHN NAYLOR

Mr. Naylor, chairman of the Chamber, applauded the council's decision to let the process go on as long as it takes. Decisions will impact the lifelong investments of many people. The pre-disaster buildback policy is very forward thinking. Without it there would be reluctance to rebuild to current standards and that would lead to blight, which would erode the tax base. RM-2 zoning is currently where all the motels are, and providing for rebuilding at current density is important. Preserve the economic base of the town.

I CHARLES BIGELOW

Mr. Bigelow spoke regarding heights. The LPA made some changes and they addressed most of the concerns he had. He is concerned that the town preserves enough latitude that they can deal

with unusual circumstances. The only remaining issue is what is going to make the council grant a variance from the two-story height. Now it hinges on the surrounding tall buildings. Does that mean adjoining, surrounding on all sides, or near but not adjacent? If we want to provide more latitude, we could say "so surrounded by tall buildings that this height would be unreasonable." Regarding Santos Street, he was surprised that people do not know the difference between planning and zoning. The Comp plan does not rezone any piece of property. This is not a zoning hearing. He is here to talk about a plan. The Comp Plan provides some directions so that when they are faced with a rezoning request, they use the plan as guidance. It can limit you in what you can do to resolve an awkward situation, so you must be careful to define the objective, but do not limit it so that when you see a good proposal you can't accept it. He was also surprised by the anger and fear expressed in the LPA hearing. The Santos proposal is a modest request and its impact on anyone else is negligible. It opens the door for the town to solve an awkward problem. He brought pictures and maps that showed Santos in relation to the Lani Kai, the Lani Kai parking lot, Marozza's, another parking lot, the 7-Eleven, and the Beached Whale. He represents the properties behind that area where there are 6 residences. You can sit beneath one house and see Estero and the Lani Kai. The other houses see dumpsters. There is only a 20-foot road as a separation between commercial and residential and that does not provide a transition. They are asking for a mechanism to go back and address the issue as if there were new zoning. It doesn't have to stay the way it is because someone allowed it to happen one time. They are caught between the legitimate demands of the people behind them who don't want to be next to commercial. He passed out a sketch that proposes that the road easement next to Marozzas look like a way, not an alley. That would make the circle function as a unit. You could extend the decorative pavers and put in quaint streetlights and require that the dumpsters and garbage cans not be placed on the backsides of the properties. It could be a planned development of mixed uses so that the downstairs can be used for shops or offices, with the upstairs residences, and the backside can maintain its residential character. The town also needs to look at the Lani Kai parking lot and how Marozza's handles their garbage. If the parking lots go to some other use in the future, we need to get control of it now and establish rules. In this Comp Plan you can open the door so that this can be looked at in the future for a rezoning request. This is not a request to rezone now. You can do this by putting it into pedestrian commercial. It doesn't mean it will ever go commercial. In order to deal with the fear of the neighbors, you can add in 4-C-2 that you may allow limited commercial uses in the future, but in the interim, it could only be used for mixed residential, the same as the rest of the subdivision. After the Plan, if they think it is good to have a neighborhood plan for this area, the next thing they would have to do as a town is to initiate rezoning. The people who own in the area are too little to initiate rezoning, and they are asking their government to help them out of a bind. Mr. Hughes agreed it is a difficult situation and he can see that unless something happens, it could deteriorate and make matters worse for the residents of Palermo. But he also sees the Palermo residents' point about not wanting to look at the back of commercial. The sketch is only a wish and there are multiple owners, and the only way it would work is if the owners of the 6 lots would all agree. Unless it is done as a planned development, it couldn't work. Mr. Bigelow said it is only realistic as part of a redevelopment process or town-initiated rezoning. Government has to take the lead. Mr. Spikowski agreed there is probably not another place on the island like this. Mr. Bigelow said this will have profound impacts on the immediate properties, but on the whole island, it will only have a very small impact. Also they are not asking for any changes, just a crack in the door so they can take a peak. Mr. Reynolds said he is asking the council to encroach into a residential area and people don't appreciate that. Mr. Bigelow said the relationship of commercial and residential is a big issue on the beach. If this area were next to his house he would be concerned because it is a formula for decay and is not a good buffer.

J BILL VAN DUZER

Mr. Van Duzer told the story about Noah, except that six months passed without his having built the ark, because he had to get a building permit, then had to hire an engineer, get a fire sprinkler system, the neighbors complained about his building in his front yard, environmentalists wouldn't let him cut trees, etc. So God decided not to send a flood but to smite the earth with government instead.

K MIKE ROEDER

Mr. Roeder, director of planning for Humphrey and Knott, stated that he was here on behalf of the Chamber of Commerce and certain other concerned land owners and business people. He has been involved with planning here since 1978. For many years the highest densities in the county were on the beach, 30 per acre. That was reduced to 15 per acre when Lee County adopted their Lee Plan. In 1981 the LDC for that plan reduced it further to 10 per acre. In 1984 the densities were reduced to 6. It was a good idea for the town to incorporate and it is a great Plan. He handed out a letter with some of the issues

he thinks are most important. 1. Building height. You used to be able to go as high as you want as long as you increased setbacks. Last summer the town limited buildings to two stories as an interim measure. Now the Plan retains that but with an exception if you are adjacent to tall buildings. One discarded idea was to create zones with different heights allowed. This could only be done through planned development and only if the council agreed it was compatible. It would not affect vested rights to taller buildings. 2. Pre-disaster buildback. This is a good idea. Lee County has a post-disaster policy which is good, but this allows someone to take advantage of preventing blight before it happens. The only thing he suggests is adding that it may need to go higher due to flood elevations or to achieve some design. 3. Redevelopment plans for specific areas. This is a good idea and it leaves options open. But he suggested that encouraging redevelopment but also drastically reducing their density at the same time, seems too much to ask compared to what you are allowing other areas. If the town expects them to change that much, they need to provide some incentives. He knows there is a fear that DCA will not like the increased density. But a letter from DCA only means it goes to a neutral hearing and you may still prevail. 4. Concurrency. The plan does a good job trying to minimize impacts. He recommends giving more breathing room. He suggested using 1300 trips per hour to give yourself more room. If there is a moratorium, even a single family home can't be built. Also, if you reach the threshold at any one time, you must be able to recognize when that ends. They suggest after 12 months with no further problem the moratorium be lifted. He handed out some suggestions for wording these if the council agrees with his suggestions. Mr. Mulholland mentioned that on #3, the density of 25 is for an RV park. Mr. Roeder said an RV will have one household and that is standard for a condo too, although the unit might be smaller. He doesn't think they should be allowed 25 per acre of whatever they want. But a mix of hotel and motels units would give them some incentive.

L A J HOLMAN

Mr. Holman lives on Palermo. He agrees Santos is a problem, but the width of the road is important when you start doubling and tripling the density on that area. They knew full well the problems of the area when they bought there. If not, they can get their money back from the dishonest realtor. They only want to line their own pockets. If they want to improve their property they can. You give an inch, they will take a mile. The town already made an exception for them. If they put paver blocks on the area, you will still have as much traffic. You will have to clean the blocks and you will have to do that at night, and that noise will encroach on the residential areas. Some people have a major part of their money invested in their homes, and it is a major thing to them when they cannot maintain the lifestyle that they bought.

The council took a break at 8:25 PM and reconvened at 8:35 PM.

M R J WARD

Mr. Ward represents Fishtail Marina and Santini. Fishtail was purchased in 1985 with visions of change. They have dealt with permitting agencies of all kind and are just getting to fruition. New docks are going in and the marina looks new and upscale. Villa Santini is pretty much an asphalt strip center. The owners endorse the town's foresight in trying to make it more user-friendly. His client's concern is losing what has already been achieved through the years. Villa Santini is specifically mentioned in the plan and the idea is to convert it from an ordinary strip center to something more user-friendly and that will take innovation. They are worried about the height limitation. If you convert the parking area to green space, where will you park? One way around that is for the building to go up which will free up more space on the ground. They would like to work with the town in accomplishing those things. They like the wording in Mr. Spikowski's memo because it will give the town flexibility at the time when they come forward with a plan. Mr. Mulholland said the LPA has met with people from Villa Santini all along. Mr. Ward said his client just acquired Villa Santini in April so they could not address these concerns earlier.

N RAY MCKENNA

Mr. McKenna said he spent 26 years on the local planning board in New Jersey and he realizes the importance of your home as the major investment of a lifetime. He complimented the council for coming up with a plan to help save that investment. He has confidence they will try to correct the problems which the county allowed. There must be a buffer zone between commercial and residential. You may have to purchase some land. This can protect an investment better than an insurance policy.

O BEVERLY GRADY

Ms. Grady stated that she is here on behalf of Tom and Fran Myers. The Comp Plan is well prepared, but they are requesting several additional clarifications to protect the Red Coconut. Their initial concern has been allayed, that they will be allowed to stay as an RV park and allowed to rebuild it if destroyed. The town also recognizes that the site can be redeveloped at a higher density than would otherwise be allowed in that designation. They have a big investment in that place and redevelopment must be a viable option. The Myers' have retained the services of Florida Land Planning and looked at the model of Seaside development. They have developed a plan to reduce the density from 25, which would involve 150 units on the bay side and commercial on the gulf side. They believe it meets the town's goals and is a realistic redevelopment option. They request that the post-disaster buildback policy make it clear that it applies to the Red Coconut by adding the word "development" instead of just "building". Mr. Spikowski's language in the May 11 memo is acceptable.

Carron Day, president of Florida Land Planning, said the plan they are suggesting incorporates all the concepts of the Plan for the property. It is a neo-traditional model, the streets are tree-lined, and there are alleys. There is a mix of uses: cottages (adjacent to the residences on Donora), townhouses (8-10 units per building with parking underneath), lodging/residential, mixed use (around the Crescent) and beach side (small shops, restaurants, outdoor seating, marketplace, etc.). They have provided a view to the gulf for the public. They believe this plan is compatible with the adjacent uses. Mr. Mulholland said he likes the plan for the bay side but he is not too fond of the gulf side. People have asked the town to buy the lots on Donora. What would happen if the Myers considered selling that lot? It would change the mix of the uses. Ms. Grady said the two lots serve as storage and that is an important aspect in the park.

It was clarified that the density at Seaside is 9 or 15 per acre depending on how it is figured. Mr. Hughes said the two lots might be considered an easement. It would have some tax benefits if they provide a conservancy easement. Mr. Spikowski said you would want it to be a public easement, not just for conservation. Mr. Reynolds said he would like to see a more open area than just a walkway. The gulf side is about 3 acres and it seems like a good use because it is next to Anthony's and a parking lot. There would be no residential on the gulf side. Mr. Spikowski said commercial would be allowed only in the Boulevard category. He suggested we could put some money to purchase access to the preserve in the five-year schedule of capital improvements. Mr. Mulholland said now seems the best time to negotiate with the Myers for purchase of the land. Ms. Grady said they are looking for flexibility with regard to those two lots and she suggested putting in the words "should it work out" so you don't have to go through a Comp Plan amendment. You can say that that use is consistent with the Plan. Mayor Cereceda would like to see an alternate plan submitted not containing the cottages on those two lots. Mr. Roosa said what we are doing tonight is a legislative act as part of a total plan. It is appropriate to ask that the lots be designated for public use, but not to negotiate. You would not be approving this as a site plan, but as a feasible and workable plan. Mr. Murphy said it looks like they are trying to clarify their density. Mrs. Grady said this would be a pre-approved development option and they want it included as an available option. Mr. Spikowski said Red Coconut can keep doing what they are doing, and if it is destroyed, they can rebuild the same number of units. In addition they have the option of coming to the council for something between 6 and 25 units per acre. This would be a pre-approved plan and if it is accepted, they would be putting more detail in the LDC on how to do it, but it would be approving 15 per acre. They could still come in with something with more density and ask for it later. He said that within one year the town is required to change the LDC to reflect these changes and they would not have to come for rezoning to build this plan. Mayor Cereceda said the concern is if the Myers don't own that land anymore. Ms. Grady said no matter who owns it, they are still going to have to comply with the setbacks, etc that are in the LDC. Mr. Hughes asked if the council could amend the Comp Plan and eliminate this at a later date. Mr. Spikowski said yes, or you could say this is an option for so many years and then it expires. But if they approve here at 150 units, then it will be 150 units. You can say between x and 150 to provide some flexibility. Mr. Reynolds asked if this was a benefit for the town. Mr. Spikowski said that for a really well-done plan, some increased density may be desirable. Mr. Reynolds asked why we are not counting commercial units on the gulf in the density. Mr. Spikowski said they are counting all the acreage even though there is no residential on 3 acres of it, and this concerns him. This is more dense than Seaside even though he likes this plan. They are talking about 150 units on 7 acres so it is more like 20 per acre, not counting the commercial in the mixed use area. It would still be less than what is there in peak season. Mr. Reynolds said he feels that may be excessive and would create another bottleneck on Estero. Mr. Spikowski said you don't have to have this at all, but this allows something good for the town and profitable for them also. It is tough to have 6 units per acre with the price of land on FMB.

P CHERYL BARNHART

Ms. Barnhart has lived here 4 ½ months and thinks the plan is wonderful. She questioned Mr. Bigelow's statement that government could impose zoning whether the people wanted it or not. The attorney for Humphrey and Knott said that the council would have to provide incentives in order to have rezoning. She also heard that a lot of lawsuits have been threatened. She thinks they would go away. People can donate land—it doesn't have to be purchased. They get a tax break for that too. Regarding Santos, this whole island is a little thing, and if we keep on encroaching on this island, it will not be a little thing.

Mr. Roosa said there are no vested rights in existing zoning. If a zoning change is consistent with the Comp Plan, you can rezone. Ms. Grady was talking about incentives to redevelop, not to rezone. That is the same thing we did with the Times Square overlay. We made concessions if they would go along with our way of development

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the hearing be continued until Tuesday, May 19 at 6:30 PM. The motion passed unanimously.

The council recessed at 9:48 PM on May 18 and reconvened at 6:37 PM on May 19.

Q ANDREW DESALVO

Mr. DeSalvo is a realtor and developer, and is here on behalf of a client who would like to purchase a vacant lot, and who would like to see what he can do with the property now and what he can do after the new Plan. The lot is just east of Anthony's and is proposed to be low density. This lot is probably an isolated case. Mr. Spikowski's memo of May 18 states that the lot is zoned MH-2 (mobile home.) Under the existing plan, it would be rezoned TF1, to allow duplex or single family. Under the draft Comp Plan, the lot would only be able to have a single-family house. (Low density allows 4 units per acre, and they are only allowed to count the portion landward of the coastal construction line, so that uses up about half of the acreage, so only one unit would be allowed.) The proposal by Mr. Spikowski recommends changing this lot to mixed residential. In that neighborhood back to Bay View there is a lot of mixed use already. The second issue is when you subtract the recreational line, you are taking away some of the rights that wouldn't affect another landowner, so when computing density, he suggested allowing rounding up to 2 units if it computes to 1.5 or greater. He understands the recreational land concept that protects the town from people accumulating acreage and getting a higher density. But this is an isolated case and the town can't be hurt. He passed out maps to show the lot in question. In addition, it would be difficult to put a residence next to a commercial parking lot, so this lot would be a transition to the residential area. He also commended the Plan for the pre-disaster buildback provision. Many people cannot improve their property because of the 50% rule, so they are literally waiting for a disaster. Mr. Hughes agreed it would not be a lot that is desirable for single family home. Mr. Spikowski recommended changing the whole row down to Bay View to mixed residential. In the first 15 lots, it only looks like one is a single family home. They all have at least one extra unit, some more. It will allow a second unit on those lots but no more. Mr. Reynolds asked if he is suggesting closing off our beach like Sanibel? Mr. Spikowski said that this would allow people to rebuild the existing two units if they wish. Mr. Reynolds hopes this would not be a starter and go down the rest of the beach. This is the only island left where you can drive the length of the island and see the gulf most of the way. Mr. Hughes said it doesn't affect setbacks and two units are already there. Mr. Spikowski said it will not cause intensification. The rounding will only allow rounding up to 2 on lots that already have two units or are zoned for two units. Otherwise these all become non-conforming and can't be rebuilt. Mr. Reynolds said if you try to legalize everything, you ruin the island. Mr. Spikowski said they are legal today, but we would be making them illegal if we leave it the way he drew the map originally. This would change it back to making what is there legal still. It is also an option to change just the one lot. Then the rest become non-conforming and cannot be rebuilt unless knocked down in a storm. Mr. Mulholland said he agrees that the LPA never meant to penalize the beachfront owners in the quiet center. It was clarified that this only applies in areas where a second unit is already allowed.

R CARLETON RYFFEL

Mr. Ryffel is representing Whit Dupree, the owner of property Mr. DeSalvo was just talking about. There were two cottages on the property, but they were torn down because they were in such poor repair. Across the street is a 7-Eleven and the Red Coconut is catty-cornered. All lots to the south are

TFC2, which is basically duplex. Even if all the other houses were single family, it would still make sense to make this one duplex because it is next to a restaurant. The lot has 21,000 square feet and almost 25,000 when you count part of the road right of way. You only end up with 13,000 feet when you can no longer count the recreation land. He is requesting that they approve the May 18 memo. If they do this, the owner won't fight that he can no longer count the beach property, because he can still have the two units he had before.

S BEVERLY GRADY

Ms. Grady is representing the Red Coconut. Last night she heard the request about an access to the Preserve so she talked to her clients. This is a transmittal hearing of the draft. The Myers are willing to work with the town on the two lots during the time that the plan is at the DCA. Since DCA will not have any problem with the idea, when it comes back the council, you can make any changes. It would give her clients more time to compare the impacts of changing density from mobile home to their proposed plan. Mr. Spikowski said the idea of transmitting the proposal is good, but they need to add the concept of an access to the preserve. But the council still may not want to transmit the plan as proposed. Mr. Mulholland asked if what is submitted is approved by the DCA is the town committed to it? Mr. Spikowski said they can still drop it out. Mr. Hughes said Mr. Bigelow pointed out that this is not a rezoning, it is planning regarding Santos. But this situation at Red Coconut is where planning really does become zoning. In effect we are granting a de facto rezoning when we haven't had the county staff review, we haven't had a traffic study, and we haven't notified the adjoining property owners. There is a lot of merit to the proposal conceptually, but he is concerned about the density and intensity. It seems to be a way of bypassing an in-depth analysis that you would have to do in a standard process. Ms. Grady said this only applies to three areas where the town wants to encourage redevelopment. Mayor Cereceda asked what about the people at Red Coconut--aren't they going to feel displaced? We should communicate on an informal level with the adjacent property owners to see how the community would feel about it. Mr. Mulholland said the LPA has met with Santini and the Myers early on. The town wins because we get an upgrade and the owners would win because they would have fewer loopholes to jump through. So he feels they have already worked through a long process. Mr. Spikowski said the drawing in the plan today is impossible to count density. They need to say in the plan that density will be higher than 6, but what should it be because it hasn't been designed yet? The LPA decided the best thing would be to show a block or two of Victor Dover's plan so you can see better the density. The Myers decided to go ahead and do a more detailed plan for their portion. They did this plan, which is more specific and more thought out. The property owners would like to have a density number attached and DCA will insist on that too. Those are legitimate concerns about the adjoining property owners. Legally there is not a problem because we will have another hearing and we will also have hearings at the LDC stage. Ms. Grady said at least you would have the benefit of DCA's comments, and if they don't object, then it would still come back to the town. Mr. Spikowski said if you state 150 units in the plan, you can't go higher and the LDC would only set setbacks, etc. You must implement the LDC codes within one year or there could be a hearing with DCA to find out why. Mr. Reynolds said when he first heard about changing Crescent Street from 6 to 10 units per acre it scared him. Now someone is asking for 15-20 units. Where will this end? We are already in gridlock. Mr. Spikowski said whatever density you settle on, it is still much less than what is there today. If you rezone at 6, the RV's will stay there forever because it wouldn't be economically feasible to rebuild. He thinks this will be less dense and a more durable development.

T JOE CROKER

Dr. Croker said he noticed on the future land use map that we have lost a marina at FishTail. Mr. Spikowski said it is not shown separately as a marina, and the landowners have asked the same question. It is shown together with Villa Santini since they have the same owner. He has made it clear that all the marina operations will still be allowed.

U ANDY PRIEM

Mr. Priem said if we are going to put in a pre-approved development plan, it seems that there are two sides. It is an opportunity to get access to Matanzas Preserve, and they want mixed residential. Why can't you classify those two lots as recreational now, then they could continue as cottages, or the town could purchase them, and it would prevent the owners from using them for another use. He is disappointed that we did not see the entire property as recreational. It is the only place that would allow beach-to-bay recreation, green space, and conservation. They could have stayed as an RV park until the town was ready to purchase it. That opportunity is gone as soon as it goes to mixed residential. It is too late for that now, but not for those two lots. Another issue is about Bowditch Point,

which states that we want to assure continued accessibility. He doesn't think we have adequate accessibility now. The parking lot has still not gotten there from the county. That policy should be strengthened. Also the Bay Beach tennis courts should be stricken because they are gone now and are closed. He also questioned density. The Council has adopted a conversion interim of 1 and this Plan is now 3. Mr. Spikowski said that the plan says the LDC shall have a factor that would vary based on category. Mr. Priem said Red Coconut has 25:1 and they could build motels. Could they build 25 times 3? Mr. Spikowski said the LDC would have to be specific about whether the multipliers would be the same. They could have been specific in the Plan, but they decided to wait until the LDC stage. Mr. Mulholland asked what the mood of the town is to purchase land. Mr. Priem said if it had been zoned recreational, it could have stayed RV until the town's mood changed. Some say that it would hurt the town's tax base, but he doesn't think that will happen because our land values are rising and will continue to do so and the tax base will not be a problem. Maybe some philanthropic people might have thrown in some large dollars. Mr. Hughes asked about eminent domain. Zoning classification is a factor in determining the value of a particular property and its economic potential. Does a land use classification become a factor in eminent domain? Are we shooting ourselves in the foot in regards to a piece of property we may want to acquire? Mr. Roosa said if it is in a general zoning category, it shouldn't make difference. But you must also look at the current use. This will not rezone the property. He is not very comfortable with making the specific categories part of your plan. Comp Plans are usually more conceptual and less site-specific. The value will be determined by how many units you can put on property. We are encouraging the property to redevelop but that does give them value. Mrs. Segal-George said Florida is quicker to find first condemnation than some other states. By making this a park, you would be taking away value from the landowner and the court might make you pay anyway. Mr. Priem said that Mrs. Segal-George has the talent to put together a package for recreational use. He hates for us to prematurely put in a plan that would preclude the normal hearing process.

V BARB KEENE

Ms. Keene said she is concerned about the suggestion that the new Red Coconut plan be sent to the state to respond to it. She thought the purpose of the hearing was to review the Comp Plan. The one the public has been given to review has been called kind of fuzzy. That is what they reviewed, they thought that these two single family lots could be used for something, and they gathered petitions for a plan. She would be very happy to see a lovely development at Red Coconut and she thinks most people would. They had heard 6 units per acre and there are 10 acres. They assumed there would be plenty of time to study this before they would give up 15 units per acre. She thinks if most people in the area knew what was being suggested, they would be here in droves. Ms. Cereceda said this is a transmittal for review. The mechanisms to put it in place will still occur. It is a normal process for people to come forward and ask for certain things. But this is to say what we want to happen and in the fall there will be further work on it. Ms. Keene said she was led to believe that there is no way they would be allowed to get 25 units, and now we are very close to it. 150 units on 7 acres is 21 units per acre. The proposal submitted is far from what it should be. Do some homework first and don't send it. If DCA has no negative comments, it will be used as an argument against us that the state didn't object. We need to decide what the community needs, not let the state decide that 20 units is OK. They don't live here.

W CARRON DAY

Ms. Day said the property is 10 acres, some on one side of Estero and some on the other. They didn't put any of the dwelling units of the gulf side, but they could have. It shouldn't be held against them that they chose to put all of the units on one side. They could spread it out and it would still be 15 units per acre. The commercial on the gulf is light commercial. When planning this, she looked at the property as a whole, and it has always been looked at as one unit of property. If you want to put some of that residential on top of the commercial on the beach side, you can. Regarding the two lots, it is possible to have access without designating it as public land. Commercial is not considered in figuring units per acre--just as another use. It would be open air markets, restaurants, small shops, etc. Mr. Spikowski said commercial is usually measured by square footage not units. Mr. Hughes said that is true, but when calculating units per acre, you count the acres that the units are on. Ms. Day said she works often with golf course communities. Mr. Hughes said a golf course is called open space, but if it had commercial buildings on it, it would be different. Now you have the units spread on 10 acres, but they are proposing to put all the units on one side and add commercial which is more intense. Mr. Murphy said this whole issue of the Red Coconut is density and intensity. The sooner they address the number, the sooner they can move on.

The council took a break at 8:25 PM and reconvened at 8:40 PM.

Mrs. Segal-George said we could notify the property owner adjacent to Red Coconut if the council likes.

X KENNETH DEVAS

Ms. Devas lives on Donora and is also a real estate appraiser. He is puzzled by the manner in which density is calculated. How can you calculate 15 units per acre on 10 acres, then take 3 acres and put another use on it? He doesn't care where you put those units, but that land is then used.

Y ELIZABETH JORDAN

Ms. Jordan said there is confusion between planning and zoning. You should make that distinction clearly, and anything that relates to zoning should be withheld from the DCA and wait for a chance for the public to hear about it.

The public hearing was closed.

Mr. Spikowski suggested the council address the memos, the issues raised in public comments, and then the council questions.

May 8 Memo: This memo regards changes that the LPA made to the published draft.

#1 is straightforward.

#2A. This clarifies that the recreation category does not affect any owner's rights. He skipped over the discussion of building height because a later memo discusses it. C and D are both superseded by a later discussion.

#3. Level of service on roads. Too much traffic would trigger a moratorium. He recommends increasing the factor to 1300, and also Mr. Roeder recommended adding detail about when a moratorium would end. Mr. Spikowski recommended not putting the details in this. Unforeseen things happen in traffic and you don't want to tie yourself down until the LDC stage. Mr. Mulholland said he fears triggering a moratorium and there is no plan to get out of it. Mr. Spikowski said that only once in 24 months have we exceeded the 1278 level, and 1300 would give even more safety. This will give a time of 4 months out of a year, which is very lenient. DCA will want only one month. The LDC will specify the details of how to get out of the moratorium.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that 1300 be accepted with a 4-month standard. The motion passed unanimously.

#4. Capital improvement. The LPA asked if they should be involved in helping finish this. They can also add into the 5 year schedule an allocation to purchase an access along Donora, perhaps \$50,000.

Motion: Mr. Murphy moved and Mr. Hughes seconded to put in the 5-year plan an allocation of \$50,000 for access acquisition on Donora. The motion passed unanimously.

May 11 Memo: The suggestions on this memo have not gone to the LPA.

A. Regards Fish Tail being included with Santini, and gives them a comfort level that we are not trying to displace them. It only applies to this property.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that this language be included. The motion passed unanimously.

B. Building height: The LPA added the underlined parts, and the double underlined parts he is suggesting because it was not clear that in the case of pre-disaster buildback, the lower height limit may not apply. It also indicates different heights may be applied to officially designated redevelopments such as Times Square, Red Coconut, and Villa Santini.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that this language be included. The motion passed unanimously.

C. Has to do with Red Coconut – delay this discussion

D. The future land use map shows Publix as a marina. Because it has already been rezoned, the land owner is protected but the map doesn't concur. He suggested changing that part of the Mid Island Marina site to Boulevard.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the map be changed to Boulevard in this section. **Discussion:** Would this change the CPD requirement that it can only be a grocery store? No. If they want something else, they would have to come back to council. **Action:** The motion passed unanimously.

May 14 Memo:

Commercial Intensity: This is regarding the Santos Road proposal by Mr. Bigelow, which asks to change that road from Mixed Residential to Pedestrian Commercial. If the council does that, he recommends adding the underlined sentence which would explain that there would be limited retail on the ground only. Mr. Bigelow said he wanted the town to undertake rezoning, which is a bigger role. If we make the change, we need to understand that the town will probably do that. Otherwise it will expire and you've accomplished nothing except to make the Palermo residents mad.

Motion: Mr. Mulholland moved and Mr. Reynolds seconded to strike the language regarding Santos.

Discussion: Mr. Mulholland said he thinks it is commercial intrusion. Mr. Murphy said the ultimate decision would be decided by rezoning. Mr. Holman made the point about people who live in back of that area, but the other side is that 5 or 10 years from now, the council will be faced with this again. If we don't give ourselves the opportunity to do something with that unique situation, the problem won't go away, it will only get worse. To deny it out of hand now would be irresponsible. In a few years the people that are opposed now, might be asking for it. Mr. Reynolds said it is a good buffer as it is now. Mr. Hughes said at the LPA he voted that he wanted to hear more before shutting the door. The people opposing this are the abutting property owners, but 83% of the property owners are represented by Mr. Bigelow and want it changed. If the language is added, could one person come in and put something commercial in the middle of the street? Mr. Spikowski said that an office could be approved there now. With the change it would allow some retail to make it a pedestrian zone. They could come in now and ask for a CPD. Mr. Mulholland said his heart goes out to the people on Santos, but if we allow this to be commercial, we are putting the line back further and further. Mr. Spikowski said most have dwelling units on the ground floor, and this would allow them to use that unit for retail. The building has to become the buffer or it doesn't work. Mayor Cereceda said she has seen an area in St. Augustine with a similar street that is just off the main commercial street. She likes the idea of leaving the door open, but it makes her very nervous. She is afraid that it will be nickel and dimed and will end up with a house that has body piercing or tattoos under it which, would further deteriorate the area. Can you build in something where the whole street would have to become a CPD to assure that it is developed properly? Mr. Spikowski said you could say that all lots must be handles together. The other way is to not make this change at all in the Comp Plan, and then initiate planning and then amend the Plan later. That adds an extra step but doesn't commit you to something that doesn't work. Mr. Murphy said he agrees he doesn't want one lot developed and he wants limited uses. Mr. Hughes said the only way for it not to be detrimental to Palermo would be if it is done as a whole street. He can't see that any of them will spend any money to improve their residential property when they are looking at garbage cans, so you can't expect any upgrade under the present land use. Mr. Murphy said he has the best interests of Palermo at heart because the degradation of the property on Santos will be more detrimental. Mr. Spikowski said there is promise in the idea and it is worth pursuing, but he is nervous about committing to pedestrian commercial without further study and letting the town sponsor the planning. Mr. Reynolds said he is concerned that this is a bad direction for the town. It was clarified that the motion would leave the language as brought forward by the LPA. Mr. Spikowski said that the Plan could add a policy that said the town would initiate planning. If planning were successful, they would have to amend the Comp Plan. **Action:** The motion passed unanimously.

Motion: Mr. Murphy moved and Mr. Hughes seconded that they add a policy for the town to initiate planning to be paid for by the property owners. All voted in favor of the motion except Mr. Reynolds. The motion carried.

The council recessed at 9:55 PM and reconvened at 10:05 AM Thursday, May 21.

Pre-disaster Buildback Policy: The suggested language would change the word from "buildings" to "developments" to make it clear that RV space, condos, etc would all be included. It would change the word both times it is referred to. It was pointed out that the post-disaster buildback process has the same problem with words that might not include an RV or mobile home space. Policy 4-B-1 will be modified to clarify as suggested by Ms. Grady's memo of May 18. All current rules would have to be met, which means that even the mobile homes would have to be elevated.

Mr. Spikowski said that the remainder of the May 14 memo would modify the language to clarify pre-approved redevelopment options. The council needs to decide whether to include the revised drawing

submitted by Red Coconut. He thinks it would be good idea so that the review agencies and the public could see it. But they need to talk about whether to have commercial on the gulf side and they need to decide the density issue and the Plan needs to specify a density cap. If it is not specific, they will be limited to 6 per acre. The Myers' have said would be willing to replace the commercial on the gulf side with some of the residential units from the other side. They would still want 150 units on 10 acres. The mixed use with commercial would still be around the crescent, not on the gulf side. They would still have the option to come in and ask for something else, even a higher density through the planned development process. Mayor Cereceda asked about the benefit of suggested ranges of density instead of a certain number. Mr. Spikowski said that if we put a number in the code it would be a maximum, so it would mean any number up to that number. We can also set a minimum, but it doesn't have much value because land is so expensive and people are always going to go toward the maximum. Mr. Reynolds sees predetermining could be a problem in the future, like Bay Beach. You are giving property owners all the projected rights and ignoring the future rights of the majority. It should be geared to the future as future councils see it, not this council. Mr. Spikowski said even if they like the Plan as published, it would still need a number, or it will be limited to 6 per acre. Mr. Reynolds said it should be handled like Anchorage and Santos. He objects strongly to Crescent being increased to 10 per acre because that is where the bottleneck is. Perhaps that area should go to 6 or 3 units per acre. That still wouldn't restrict future councils. Mr. Spikowski said you can't increase the density higher than the Comp Plan without modifying the Comp Plan. Mayor Cereceda said we are looking out for the future and if we leave everything to future councils, why are we bothering to set this up at all. We are setting rules for the future. We accommodate neighborhoods who make requests and we have done this with other areas such as Anchorage. She believes this area is getting more flack simply because it is commercial. But the owners of Red Coconut have the same rights as Anchorage to come before the council and ask for their future to be preserved. Mr. Hughes asked Mr. Spikowski to outline their alternatives.

#1 not insert any plan by Red Coconut and stick with what is already in the Plan (but they still need to add a density cap) #2 insert the pre-approved option as submitted by the applicant #3 insert the pre-approved option as modified this morning to take the commercial off the beach. Mr. Roosa said the drawing has been modified and should be made clear before voting on it. E would be changed to B/C and E would no longer apply. On the narrative part, the last paragraph would be eliminated. The drawing itself would have to be redrawn. Mr. Murphy asked the pros and cons in the options. Mr. Spikowski said there are a lot of advantages to adding the pre-approved plan. They came in good faith and it would give the state agencies and the citizens a time to review it before final adoption. The disadvantages are that at the current level of density, it is more dense than the Seaside example that we are trying to explain it as, and that might cause resentment. Mr. Hughes said the modified proposal is an improvement in density. He likes the concept of their original drawing except for the density. If they take 7 acres and put all units there, it is 21 per acre, but this new one would be 15 per acre, which is much better but still dense. The crescent area looks like 2 or 3 acres, so the remainder is really only 4+ acres. Ms. Spikowski said he hates to see the crescent eliminated because he feels it is a benefit to the town and is a public gesture. We would have to ask the applicants if they would consider keeping commercial on the gulf side and lowering the density on the bay side. Ms. Grady said they were reacting to the request to remove the commercial on the gulf side and they have not looked at keeping the commercial on the gulf side because they really did not hear that as a request from the council. They have tried to listen to the town's goals and make it look like Seaside. Mr. Hughes asked if they would maintain the center corridor with an open view to the gulf. Yes. He asked how they think it would work to have residential abutting Anthony's restaurant. Ms. Grady said that area already has mixed uses. She thinks the design will look like one community even though it is separated by Estero. Also there is a parking lot immediately next to the restaurant as a buffer. Mayor Cereceda asked if they eliminate the commercial on the gulf, would that mean commercial is moved to the bay side? No, it would not be moved but there would still be mixed use on the gulf side. Mr. Spikowski said originally he was recommending 8-10 units per acre as the density. It was never intended to be 6 per acre. Mayor Cereceda said she would like to see a pre-approved plan with a density not to exceed 15, eliminating commercial on the gulf, and she would like to add a time limit. She asked Ms. Grady if a time limit is reasonable. Ms. Grady said the purpose was to provide an incentive so she would request no time limit. If in the future they decide to modify the Plan, they can unless there is already good faith work going on at the time. They always have the option to amend the Plan. Mayor Cereceda asked how realistic it is that a future council would come back and decide they always want a RV park there. Mr. Hughes asked if a time limit wouldn't enhance the incentive because if they don't develop within that time, they lose the option.

Ms. Grady said the ability to do the project depends on many outside factors and she hopes they would not add a time limit. They are requesting that something the council finds as a positive be protected. Mr. Roosa said there is an incentive with a time limit, and you might want to consider a time limit for all of them. That would put a burden on the property owner to come back to the council for an amendment to the Plan for an extension. Mr. Spikowski said the difference between this and Bay Beach is that was a judicial decision where we have lost all rights. But this is within our planning rights and it would not be a problem to change unless they have put out a lot of money for working on the project. He does not believe they need a time limit. Mr. Murphy agrees. Mr. Reynolds said he sees the advantages for Mr. Roosa's plan. Mr. Mulholland thanked Mr. Spikowski for putting Bay Beach in perspective but he would still go for a time limitation. Mr. Hughes said he sees some merit in the time limit, but he doesn't want to put them in a situation that won't be practical. Besides he has no problem with the Red Coconut as it is now, because it is historical. The time limit is not the key issue, but he is more concerned about the density issue. He is in favor of a pre-approved option. Mayor Cereceda asked if anyone is opposed to a pre-approved option. Mr. Reynolds said time changes and we are not doing the town a favor. You can't make changes without changing the whole Plan. The majority agreed to insert a pre-approved plan.

Motion: Mayor Cereceda moved and Mr. Murphy seconded that a cap of 15 units per acre be put on the entire 10 acres. **Discussion:** Mr. Mulholland thinks 15 is probably generous but he can go with it. Mr. Hughes said it is a vast improvement on the density of the first plan they submitted but is still very dense. We haven't had any expert witnesses that would normally tell us the affect on the municipality. The plus side is that there is more open space and less density than the RV park. Mr. Spikowski said the details would be worked out in the LDC. At that point they could lower the density but it would be problematic. There would be a public hearing at that point. Mr. Mulholland asked if they should talk about the lots on Donora. If we take those away, the density changes. Mr. Spikowski suggested that the language say 150 units on the site. On the memo they should put that the density "at no time should exceed 15 per acre." Mayor Cereceda withdrew her motion to continue the discussion.

Mr. Spikowski said there could be a note saying something about fair market acquisition for a public access, but that's about as far as he would want to go. If you change the category to recreation, you would have to change the language in the recreation element to add a third kind of land other than beach and public. He is nervous about it and doesn't think it would aid the problem. Mr. Roosa said he is concerned that when you talk about the value of property, it is related to the development of intensity. If you look at those lots at 15 per acre, you could put more than 3 units. He would like to change the density on those lots to 3 units, so we could buy them at the rate of 3 units. Mr. Spikowski said the lots already have 6 units because there are three small garage apartments in the back. Ms. Grady said it is not a good idea to designate two lots that are privately owned to recreation, which takes away their rights. You can make a note that one of their goals is to consider them for access/parking. Mr. Mulholland asked if we are locking ourselves out of any possibility for future negotiations. Mr. Roosa and Ms. Grady said no. Ms. Grady said they are on record as saying they will talk about it with the town during the transmittal process. Mr. Spikowski said the negative is now there will be 6 homes, and it could affect the value. Maybe we are not locking it out at this stage, but maybe we are in future negotiations. Mr. Hughes asked if by accepting the pre-approved plan with 6 units we are acting in the public interest by increasing the value of the property. Mr. Spikowski said the value now is not just 2 units because they have grandfathered rights as an RV use. He said we could put in the Plan a density to be established at final adoption, somewhere between 10 and 15. Mr. Hughes asked if we could make a general statement that Red Coconut would provide access to Matanzas. Mr. Spikowski said we could add a goal, but it would be more defensible if we state that we are willing to pay for it. We could add to page 3 of the May 14 memo a goal for the pre-approved option to allow public access to Matanzas through town acquisition. It could also modify the last item to say they will reduce density from 25 to "a density to be determined somewhere between 10 and 15." Ms. Grady said they would be willing to accept a density on those lots not to exceed 2 units. And they would accept the language "not to exceed 15." Mr. Spikowski said you don't want to give away huge density at the cost of two lots, which could be acquired through condemnation.

Motion: Mr. Hughes moved to add to the memo of May 14, "reduced density from the existing 25 RV/mobile homes per acre to a level between 10 and 15 units per acre to be determined at final hearing"; add an additional goal that there be a provision for accessibility to Matanzas Preserve by public acquisition; add an additional condition that the density on the two lots on the easterly portion of Donora shall not exceed the existing density of 2 units per lot; include the drawing changes suggested by Mr. Roosa; and accept the pre-approved plan as modified on the beachfront side to come closer to

the Victor Dover Plan. The motion was seconded by Mr. Mulholland. **Discussion:** It was agreed that it would be good to have a new drawing included in the plan. Mr. Murphy said he agrees with everything except the range on the density. He thinks the property owners want a hard number. Mr. Reynolds asked why we need a range. Mr. Hughes said that a "not to exceed" number creates the implication that it is being granted. A cap would still be decided in the fall. Mr. Spikowski said we could still go below it, but people tend to think that it is their choice to go below, not the government's. Mr. Hughes said if this were the end of the road, he would agree with Mr. Murphy. But the owners will have to redraw the plan and make an economic analysis. More units don't always mean more money. They may reach a better market by having fewer but larger units. If the town finds their new plan acceptable, he would set a limit then. It was clarified that the language will say the maximum cap will be set at between 10 and 15; it does not mean that they must build 10. Mr. Reynolds said he would still like to see the cap at 8-10. **Action:** Mr. Murphy, aye; Mr. Reynolds, no; Mr. Hughes, aye; Mr. Mulholland, aye; Mayor Cereceda, aye. The motion carried.

The council took a break at 11:25 AM and reconvened at 11:43 AM.

May 18 Memo: Mr. Spikowski said the issue is how density is calculated. Mr. Ryffel and Mr. DeSalvo requested a new method to look at subdivisions that are zoned duplex. This would allow the rounding up to 2 units when the computed density is greater than 1.5 units per acre and where multiple units are permitted now. Page 2 gives an analysis of other subdivisions where 2-family homes are allowed. It would allow relief to some duplex subdivisions with larger lots. Some streets would be added to the platted overlay category to allow duplex units and it would change the area on Estero from Anthony's to Bayview on the gulf side from low density to mixed residential. Mr. Mulholland asked if this would make illegal houses legal. Mr. Spikowski said he doesn't think it would have that affect, but it would keep a lot of them from becoming illegal. Mr. Hughes said he looked at the area from Anthony's to Bayview and he agrees that there are actually two homes on most lots, depending on how much land there is between the road and the beach. There is a stretch in the middle that is mostly single homes, then it changes again. It appeared there is only one other vacant lot near St. Peters Street. Mr. Spikowski said this would apply for deterioration of homes and they would not have to wait until the house are blown over. Anchorage has already been shown as a platted overlay, but this change would not allow the 4-plexes on Anchorage (there are about 4-7 of those.) We don't want to change the density to 18, but we could grandfather those 4-plex units. Mr. Reynolds asked if we are obligated to grandfather those units in. We don't want to legitimize the entire street. Mr. Spikowski said the grandfathering would be done in the LDC and he is not sure any of them were legal when they were put in.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that these changes be made. The motion passed unanimously.

Mr. Spikowski said an issue brought up by the public was Mr. Priem's suggestion about Bay Beach Tennis Club. He will update things that have been overtaken and he will fix it. He also asked the council if they wanted to put in the suggested stronger language about parking at Bowditch. Mrs. Segal-George said the last time she talked to county staff it sounded like the county is going forward with the parking lot. Mr. Mulholland said he thinks the spaces that the county is building are inadequate and they should put in slips for boats and better trolley service. Those spaces won't solve the problem but he doesn't want to give up Bowditch for parking either, he wants to put it elsewhere. Mr. Hughes said he is not opposed to some additional parking at Bowditch because the facility is underused and off site parking hasn't worked well. But he doesn't want to use a lot of acreage for parking. Mr. Mulholland said the council needs to talk about parking and make Bowditch as major issue and it should go on a future agenda. Mr. Reynolds said a park is not a park without parking, but he wouldn't like something like Lynn Hall parking at Bowditch either. If we build a parking garage off-site, we need to have continuously running trolley service. Mr. Spikowski said the policy could say to provide for the means of access, and list several means, and could add "and some on-site parking" which would indicate their support without indicating a number. Mr. Murphy said we might want to make it clear we mean regular parking, not just handicapped.

Motion: Mr. Hughes moved and Mr. Murphy seconded that a clause be added that favors additional on-site parking in addition to the existing handicapped parking. All voted in favor except Mr. Mulholland.

Mr. Reynolds talked about the Times Square plan which allows 100% buildout with no parking. He would like to see the area keep their parking spaces and keep density at 6 units per acre. He also talked about density on Crescent, Santos and Anchorage. He wonders why we want to legalize them. We don't want to penalize the people who have them, but we don't want to legalize the whole street --just grandfather them in. He sees no area on the island where density is going down. We keep trying to legalize things that are already done. He also talked about accessory apartments and asked what our plans are for code enforcement on these units. Everything should be declared legal when they meet the demanded upgrades to make them safe. Regarding the overlay which allows building out to the street all the way to Miramar, he feels that would increase density and drastically affect the look of the island. He wants to keep it confined to the Times Square area only. Regarding Santos, he said residents don't seem to be happy about the rezoning of the street in the Comp Plan just because one building was made into a four-plex. Six units per acre is enough there and he would like to keep it single family.

Mr. Hughes asked if we are legalizing any non-conforming uses. Mr. Spikowski said there are a few cases such as on Santos. Now it is single family, but there are several multiple units already there. This would allow 2 units on each property. If it is destroyed as single family, they will build back only one unit. If we increase this to 10 units per acre, they can be built back at 2 per lot. Mr. Hughes asked if Florida law allows the inspection of property being sold and if they are found in violation of codes, the deed cannot be recorded without certification. Mr. Roosa said you can only require that with commercial, not residential. Mr. Hughes said they can do that in Illinois and it has been upheld by the courts. The problem is that some inspectors inject aesthetics into it.

Mr. Mulholland spoke about item 6 on Mr. Reynolds's memo regarding the Waffle house. He said it is according to the overlay zone, which was approved by the LPA and the council. Mr. Murphy said the overlay plan went through years with the CRA before it came to us. It was the most scrutinized document ever produced. Mr. Reynolds said was written for the Times Square area and Old San Carlos and the other part was as an extension of the Plan. The people who wrote the study did not include the Estero Blvd part. It was added as an amendment to Ordinance 97-20. Mr. Spikowski said the overlay district was designed to go all the way to Pearl and the ordinance just made adjustments. Having the buildout be allowed to Miramar was an LPA suggestion. Building up to Miramar was a limitation to the rules of building out to the street. The rule about parking only applies to the one block area surrounded by the pedestrian mall. Everywhere else you are required to provide parking although perhaps less and with an off-site option. As to concern about building being allowed out to the sidewalk, this Plan does not change that but enforces it. In the LDC phase, he would like to rewrite the code because it is very hard to understand. A graphic code would be wonderful in that area. Mr. Mulholland said the Barking Shark was permitted under the old rules that you didn't have to provide parking for outside seating, just inside. Mr. Spikowski said we have since eliminated that rule and you now have to have parking for outdoor seating.

Mr. Hughes said he received a call from Ceil Spuhler, who was concerned about the Fishtail Marina area. Mr. Spikowski said the change was a revision to 4-C-4. We added some exceptions so that when we do the LDC, we don't have to adhere to 2 stories under some circumstances, including Villa Santini. Mrs. Segal-George said she thinks Mrs. Spuhler's concern is they can build that without coming back to the council. It will have to be changed at public hearing.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the Plan be transmitted. Mr. Mulholland, aye; Mr. Hughes, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried unanimously.

Mr. Spikowski said he will publish a supplement with the approved changes. After the state prepares their report, they will have to consider some additional changes. At the end, it will be adopted by ordinance. The state will also review it after adoption, but this is the major review.

XII TOWN ATTORNEY'S ITEMS

Mr. Roosa said there has been a statutory appeal filed by the Fort Myers Beach Civic Association and Regina Reynolds. He needs the authority to represent the town.

Motion: Mr. Mulholland moved and Mayor Cereceda seconded that Mr. Roosa be authorized to represent the town in this case. **Discussion:** Mr. Roosa said he will respond to the suit so the council will have his

written comments to compare with the suit. He does not perceive a conflict of interest with Mr. Reynolds voting on this issue because husbands and wives are two separate people and frequently become involved in law suits, usually divorces. **Action:** The motion passed unanimously.

XIII PUBLIC COMMENT

A JOE CROKER

Mr. Croker said if husbands and wives are separate people, please call his wife and tell her.

B ANDY PRIEM

Mr. Priem said that Villa Santini had the same kinds of concerns about whether the pre-approved plan is feasible for them. It would have been nice if they had a pre-approved plan too (and maybe Gulfview too.) He asked during the break if Gulfview and Santini Plaza came to us in the summer with a plan, would we be able to insert it then. Mr. Roosa and Mr. Spikowski said yes, but it would probably have to go back to DCA. Mr. Hughes asked if we would have to reopen the hearing. Mr. Spikowski said the Plan authorizes a pre-approved option, sets some parameters and says the details will be in the LDC. In the case of the Red Coconut, they wanted the authorizing language to be more specific and to involve them in the planning. Gulfview and Villa Santini could also do the same thing if they wished to. If they don't, and neither of them have indicated that they plan to, the LDC will contain the basic requirements. They will still have the option of coming in with something of their own as a pre-disaster buildback plan.

C BARB KEENE

Ms. Keene said she appreciates the fine job and the attention the council gave to her individually. She gave a lot of thought and attention in trying to secure the lot they would like to acquire and she hopes that can reach a positive conclusion. The compromises that have been made by the Myers and Red Coconut are not completely what they wished for, but are a big step in the right direction. Democracy does work and she looks forward the final details after it comes back from the state.

XIV ADJOURNMENT

The meeting adjourned at 12:52 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary