

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 1, 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, June 1, 1998 at 6:35 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes and John Mulholland; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

Excused from the meeting: Councilman Garr Reynolds.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by The Reverend Jeanne Davis of Beach United Methodist.

IV PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

V APPROVAL OF MINUTES: MAY 18, 1998 AND MAY 2, 1998

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

VI REVIEW OF FINANCIAL REPORTS FOR APRIL

There were no questions or comments about the financial reports.

VII AWARDING OF CERTIFICATE OF COMPLETION TO COUNCILMAN JOHN MULHOLLAND

Mayor Cereceda read the certificate awarded to Mr. Mulholland for completing 18 hours of study at the Institute of Elected Municipal Officials. Mr. Mulholland said it was a good course and he recommended it to the other council members.

VIII PRESENTATION ON NEW SIGNAGE FOR ESTERO AND OLD SAN CARLOS

Ed Cusick, on behalf of the Chamber of Commerce Traffic Committee, said the committee has been trying to come up with ways to minimize the congestion and confusion, particularly for visitors to the island. Bob Register of FDOT was also in attendance to answer any questions. Mr. Cusick said when he first came to the island, he didn't realize until he got to the Mucky Duck that he wasn't on San Carlos Blvd. anymore. At the traffic committee they discussed how to differentiate San Carlos Blvd. from what we know as Old San Carlos and from Estero Blvd. They decided that a lot of people were referring to Old San Carlos, but that wasn't the official name. They got all the owners on the road to agree to the official change, and the signs are in place now. The Dept of Transportation has a sign called the "advanced signal sign," but the committee decided they wanted an "advance street name" sign. It will let people know if they stay with the flow of traffic they will be leaving San Carlos and getting on Estero Blvd. South and if they turn right they will be on Estero Blvd North or they can get to Old San Carlos. He handed out a letter from FDOT showing their permission for the idea, and he asked the council if they are interested in placing the sign. An overhead sign on the bridge will cost \$15,200. A ground-mounted sign in the state right of way beside Winds will cost \$2420. A local sign maker has given an estimate of \$1886 for the ground sign. He proposed this sign be a private/public venture. He can get the rest from fellow businessmen if the town will come up with half. Mr. Mulholland asked if he had talked to TDC about getting funds since this would be mostly for tourists. Mr. Cusick said that he had not because it is also for people here on business. The sign could probably be up within the next 60 days, but at least by next season.

Motion: Mr. Hughes moved and Mr. Murphy seconded that the \$1886 sign be approved at a town cost of one half. The motion carried unanimously.

IX UPDATE ON SOLID WASTE

Lindsey Sampson with Lee County Environmental Services said that according to the interlocal agreement with Lee County, the Solid Waste Dept. will annually review solid waste and prepare the rate structure for the coming year. Overall the rates will be less than they are currently. There will be a 3% increase in the disposal fee, and the collection cost will go up slightly because it is based on a built-in consumer price index. The average residential bill will go down about \$10 per year, which is a 5% decrease. They are proposing to include the garbage bill as a separate line item on the property tax bill. It will save about \$6 per year by not sending a separate quarterly bill. The commissioners will be acting on that proposal at public hearings in July and August. The Town's residential cost will be \$182.54 which is slightly lower than the average of \$185.00 countywide. He also presented statistics on how much of the solid waste comes from Ft. Myers Beach, how the solid waste bill is broken down, how the solid waste bill compares to other average household bills, and an explanation of how business assessments are figured (based on square footage and how the property is used.) Mr. Hughes asked if it would help if the town council passed a resolution supporting the new billing procedure. Mr. Sampson said it would be OK but he does not feel it is necessary because the commissioners are probably in favor of it already.

X COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy said he met with representative from Lincoln Properties and went over the grounds. He agreed that lots of things need to be done and he will propose them to the bank. The parking lot needs to be resurfaced and they need new landscaping.

B DAN HUGHES

Mr. Hughes had no items to bring before the Council.

C JOHN MULHOLLAND

Mr. Mulholland said the sheriff's department gave an outstanding report to the council and the Public Safety Task Force. The good discussion indicates that the PSTF will be an effective group. He said he has been nominated to apply for the Leadership Lee County program. The cost is \$1200, and will involve 14 weeks of intensive work sessions each Thursday. He asked the council for approval of the cost of that program. Mayor Cereceda said she attended last year and it was perhaps the best experience \$1200 could buy. She learned much about the airport, the medical facilities, county government, city governments, and the environment. The more educated a council member can be, the more they are a service to the community. In addition it will strengthen our ties with local business leaders. She is serving on the steering committee for the program because she believes very strongly in the program.

Motion: Mayor Cereceda moved and Mr. Murphy seconded that \$1200 be approved for Mr. Mulholland to attend this course. The motion passed unanimously.

Mr. Mulholland asked Mr. Roosa about the complaint from the Civic Association and Regina Reynolds. He asked if it is a conflict for him to keep his membership in that organization, because they may be using dues money to pay for the legal fees. Mr. Roosa said that it does not constitute a conflict when you are just a member of an organization.

Mr. Hughes said the PSTF workshop was on the same day that a young man in Oregon killed his parents and some students. There have been a series of tragedies in the country recently caused by guns in schools. He is sure those communities did not know they had a problem with guns in their schools, and he would like it to be a goal of the task force to do whatever they can to educate our local school officials in regard to these kinds of gun tragedies.

D ANITA CERECEDA

Mayor Cereceda talked about compensation for the town council. This will be a major election year for the council because 4 seats will be up for election and there could potentially be 4 new members. When the council took a vote for the pool, Harry Gottlieb spoke up and said what you need to do is look at what you want the future of your community to be, even if you are not in it. She wants to look at the face of this town council in the future. We are in period of change and evolution. She thinks it will change from what the people who formed the community had in mind. In order to continue to move in a positive direction, we need to include as many people as possible and the council cannot be an exclusive group, which it is now. The only two employed people on the council are self-employed and therefore

have more flexibility and privilege than her peers. Somebody like her needs to be on the council and there are not a lot of people who have the privilege to serve. There needs to be some money set aside to guarantee the opportunity to participate and to offset the expenses. She requested that it be placed on the agenda for discussion at the next meeting. She doesn't want a council of only rich retired people deciding the future of the town. Mr. Mulholland asked what compensation would be enough to make a difference. If we can't afford to make it worthwhile, why bother. But if we make it enough to be worthwhile, then it would be too expensive and he would be against it. Mayor Cereceda said she thinks \$8-10,000. Council members could waive the compensation if they preferred.

XI FIRST READING: ORDINANCE CLARIFYING PROVISIONS OF THE TOWN CHARTER

Mayor Cereceda read the titles. Mr. Roosa said that this covers the recommendations as reflected in the minutes of the town council workshop. It may or may not cover all the recommendations of the two study groups. Mr. Gucciardo said he knows that the chamber committee and the council committee made other recommendations that don't show up in this ordinance, but maybe they didn't come up in the minutes of the meeting. For example, he believes there was unanimity among those groups that the new council members be seated right after the election, not after Jan. 1. Mr. Roosa said that would take a referendum to change and wouldn't be included in this ordinance which only includes administrative changes, not those that must be approved by ballot. He said that the council determined the ones they wanted to go to referendum (single member districts, bonding, and the utility tax). The council can decide on others now if they want, but that is all the former council determined. Mr. Murphy suggested that we review again if anything else needs to go to ordinance and if anything more substantive needs to go to referendum. The public hearing was set for June 15.

XII RESOLUTION SUBMITTING TWO PROJECTS FOR FUNDING BY LEE COUNTY BOATER'S IMPROVEMENT FUND

Mrs. Segal-George said that Lee County receives money from fees that boaters pay. The county has about \$1.5 million. We are recommending two projects for funding. The first is for the harbor planning consultant at \$25,000 (the MRTF has advertised and are now interviewing applicants) and a system of public docks at the Mound House, under the bridge, and at Bowditch for \$45,000. These docks would also help with a private-sector water taxi.

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the resolution be approved. The motion passed unanimously.

XIII RESOLUTION ESTABLISHING THE TOWN COUNCIL AS THE GOVERNING BOARD OF THE ESTERO ISLAND CRA

Mr. Roosa handed out a new copy of the resolution with some changes.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the resolution be adopted. The motion passed unanimously.

XIV RESOLUTION CHANGING THE NAME OF THE ESTERO ISLAND CRA TO THE TOWN OF FORT MYERS BEACH CRA; APPROVING THE BYLAWS OF THE PLANNING COMMITTEE; AND NAMING THE INTERIM MEMBERS

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the resolution be adopted. The motion passed unanimously.

Mrs. Segal-George asked Mr. Roosa if it was OK that more than one member of the interim committee are also on the LPA. Mr. Roosa said the committee is subject to government in the sunshine just like the LPA and there is no problem with being on both. Mayor Cereceda read the names of the persons on the interim committee.

**XV NEW BUSINESS
A MOSS MARINE**

Mr. Roosa said he met with Mr. Lenick, the attorney for Moss Marine. He had previously submitted the documentation to our county planning department who have reviewed it. There are two letters in the file. The first one is a recommendation for certain conditions for the approval of the development order and the other is from Mary Gibbs and determines the amount of the impact fees to be

paid. The conditions were later modified to allow for traffic to be directed through the easement and not requiring the blockade of the road except during the evening upon return of the boat after 9 PM. The consensus of staff was approval, but Ms. Gibbs would not change the letter without the town's consent to the change regarding blockading. The problem with blockading is if traffic goes down the residential street and finds the blockade, then they have to turn around and go back and they cause double traffic. Signs should help this problem. In his opinion, if they had made this application the first time and agreed to these conditions, this would have been approved. No special treatment is being given to Moss Marine and they are paying all fees required. This will accomplish what was intended by the lawsuit (that they comply with the laws of the town.) If the council adopts the terms in his memo, Ms. Gibbs will rewrite the letter and it will be incorporated in the settlement agreement. Mr. Hughes asked about the documentation that cites Mr. Freeland's corporation, Southgate Motors, Inc. as co-owner. Mr. Roosa said there are two parcels. One is owned by Mr. Freeland in his individual name and the other is owned by the corporation. Mr. Hughes asked if Mr. Roosa was comfortable with the fact that the corporation is not a party to the litigation and is only a party to the settlement agreement. Wouldn't it be better to have a stipulation that the corporation agrees to become a party to be subject to the judgement order? Mr. Roosa said he wouldn't object but he doesn't think it is necessary because the parcel that is subject to the litigation is the one in Mr. Freeland's name and was only included because of the need for the parking area. The development order will apply to both parcels. Mr. Hughes said his concern is that in the event they don't comply, would you have the same sanctions against the corporation if they are not a party to the litigation. Mr. Roosa said we would be seeking relief through code enforcement, not the courts. Mr. Hughes pointed out that in paragraph 2 on page 2, the word should be "respectively". He also said that in paragraph 4 of the settlement agreement, it says that Mr. Freeland shall have to pay impact fees, but it doesn't say to whom or when. Mr. Roosa said it is implied they will be paid to the county and it will work its way down to the town after they collect it through our interlocal agreement. Mr. Roosa will add that and also that it will be paid at the issuance of development order. He said we are not settling a lawsuit, which we will later be enforcing. We are issuing a development order as part of the settlement of a lawsuit. Mr. Hughes said he would like the court to sanction any non-compliance. Mr. Lenick spoke with his client and agreed, for purpose of settling and the judgement, that they will agree to be party defendant. Everywhere that it says George Freeland, it will say George Freeland and Southgate Motors. They also agreed to pay the impact fees upon the issuance of the development order. Mr. Roosa said we will ask Mary Gibbs to consolidate both letters based on the council's decision on the conditions and it will become a new exhibit A. Mr. Lenick said all egress at all times will be through Snug Harbor. Mayor Cereceda asked if the 4COP liquor license is for the marina or the boat. Mr. Lenick said there is already a license for beer and wine for the ship store. This license that is being requested ends in SPX which is only for the ship. Mr. Hughes said it should be specific to that vessel. Mr. Lenick said in the liquor application they will add "currently called the Big M Casino" if they wish. Mrs. Segal-George asked if the entire agreement is boat specific. Mr. Lenick said it would be tied to a 400-passenger ship. If this ship left and another 400-passenger one came in, it would still be valid. They could not bring in an additional ship. Mayor Cereceda said she is concerned that if the boat is 100' long and has a capacity for 400 passengers, they can bring in a 400' boat that still holds 400 passenger. Mr. Lenick said a 400'boat could come in as long as it fits in the leased space and it only holds 400 passengers. Mr. Hughes asked if they would accept language for "a passenger cruise ship not to exceed 400 passengers." It was generally agreed that was already there, but Mr. Lenick said it could added. Mr. Roosa said the capacity is determined by the Coast Guard. If they say it is a 400-passenger ship, they could bring it in, but they would have to get a new liquor license because that license will be boat-specific.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the settlement be approved with the noted changes (stipulate the corporation is added as party defendant; payment made to Lee County at time of development order.) The motion passed unanimously.

The Council took a break at 8:00 and reconvened at 8:15 PM.

B MPO TRAFFIC STUDY

Mr. Gucciardo asked if the council agrees in concept to a joint county/town/Sanibel plan to front the money for the study, which will be reimbursed in 2001-2. Our share will be \$30,000 to study the origins and destinations of our traffic. Mr. Mulholland said the proposed study seems very expensive and he is not convinced it will do anything for us. Mr. Gucciardo said the study will enable us to narrow the focus about who is in the cars, where they are going, and how long they will be here. The issue is

whether our problems are caused by tourists, day-trippers, seasonals, or the workforce. That hasn't been addressed in previous studies. If we can find that out, we can allocate percentages for the cure. He agrees \$90,000 seems high, but the benefit is that it will be reimbursed down the line. Mr. Hughes said it is a D&O study (destination and origin) and once we get that, Lee County and/or the state might be willing to put up digital devices telling people that it will take x minutes or hours to go a certain distance. Hopefully that will dissuade some people from coming this way. Mr. Gucciardo said we are not to talking about cures or outcomes, just who is out there. Then the various agencies can see about solutions. As far as he knows, Sanibel is moving to approve. He said it will involve an interlocal agreement with the MPO, and we will be involved in the choice of the consultant. The money would come out of our gas tax money until it is reimbursed. Mayor Cereceda asked if the Chamber Traffic Committee has talked about this study. Mr. Gucciardo said he does not believe they have, but Mr. Reynolds is the representative to that committee and he is a proponent of it. Mrs. Segal-George said this issue comes up when they go to the TDC for funding, particularly about trolleys. The TDC doesn't think our problems are caused by tourists, but seasonals. The study is definitely a value, but the question is if the cost is too high.

Motion: Mr. Mulholland moved and Mayor Cereceda seconded that this study be approved as a reimbursable expenditure. The motion passed unanimously.

XVI NEW BUSINESS

A BLANKET FISHING LICENSE FOR PIER

Mayor Cereceda said she talked with Steve Goodbread who owns the store on the pier about this idea because she heard that Naples has it. He offered to split the expense with the town, which would cover anyone fishing on the pier. Mr. Murphy said Florida residents don't have to have a license for fishing off a structure, so this is more of a tourist item than a town item. He thinks the TDC may be interested in addressing in this in the future.

Motion: Mayor Cereceda moved and Mr. Murphy seconded that half the cost of the fishing license and snook stamp be approved. The motion passed unanimously.

B SCOPE OF SERVICES – LOCAL MITIGATION STRATEGY

Mr. Gucciardo said that Florida DCA has programs statewide where counties are mandated to get more involved in the mitigation of the impacts of flooding. They are encouraging municipalities to join in. Lee County has a grant for about \$150,000 and we have been asked to join in. Each of cities has gotten a grant of \$15,000 to go toward the study. It also increases our rating for NFIP. This is draft of agreement. If the council approves it in concept, the final document can be executed by the Town Manager.

Motion: Mr. Murphy moved and Mr. Hughes seconded that the concept be approved. The motion passed unanimously.

XVII TOWN APPOINTMENTS

A LPA VACANCY

Mrs. Segal-George asked if the council wants to fill the vacancy, and if so, we will need to advertise for applicants. The LPA will be on vacation in July and August. The council agreed they would like to fill it. The staff was directed to advertise for applications to be received by June 24, so that the council can choose a replacement on 29th.

XVIII TOWN MANAGER'S ITEMS AND REPORTS

Mr. Gucciardo said the MRTF passed a resolution encouraging the council to change the vessel control ordinance as it applies to the bay at Little Estero Island. People have been launching boats and jet skis in that area and it is a very sensitive area. He handed out a copy of their resolution as well as letter to the Florida Game and Fresh Water Fish Commission asking them to enforce any regulations that might already be in place. The vessel control ordinance can designate areas of prohibited or restricted activity. Mr. Murphy asked how it would be enforced and if signs would be posted. Mr. Gucciardo said if the council agrees they will look at different ways of enforcement. They would like to stay away from signs if possible.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that the town attorney be directed to draft an amendment to the vessel control ordinance that addresses the problem caused by motorized vessels within the Little Estero Island critical wildlife area and declare it to be an area of prohibited water

activity and also that the town attorney present any other amendments or suggestions that might be related to this. The motion passed unanimously.

Mr. Gucciardo said occasionally the town is asked to grant extensions on permits. The Pink Shell recently sold and they have had two previous extensions for 90 days. The new owners have asked for another extension because it is still in the takeover stage. He does not believe that is an unreasonable request.

XIX TOWN ATTORNEY'S ITEMS

A BOGDANSKI CODE CASE

Mr. Roosa referred to a letter from Mr. Bogdanski's attorneys. Mr. Bogdanski feels he is being treated unfairly by the town. Mr. Roosa does not believe it is to the town's advantage to further litigate the matter. They understand the requirement to continue using the building as a duplex, but they want assurances that they will be treated like any other property owner. He does not want to expose the town to further litigation that will accomplish nothing. Regarding the locks on the inside doors, he does not object to locks that are unkeyed. (They would like a button lock from the inside.) They also stated that they have already placed an ad and they cannot pull it in time, but Mr. Roosa said he felt that their disclosure showed good faith. He would recommend that we accept the agreement without acknowledging that we have been harassing them. He has no problem with the inspection schedule, which is the same as we would do for any other property owner. Mr. Hughes said he thinks we should only agree if all conditions set forth in the hearing examiner's order have been met by June 17 and we have the opportunity to inspect, and the agreement will not take place unless they are in compliance at that time. Mr. Roosa said we are giving up nothing by consenting. Mr. Bogdanski is giving up his right of appeal. If he does not comply he will be in violation of the enforcement board and will be fined. Mr. Hughes said he does not like the fact that we must have Mr. Uhle's consent to inspect. Mr. Roosa said his willingness to allow us to inspect those cards is more than code enforcement officers feel they have now. It was agreed to strike "or with my consent." Mr. Hughes said it should be spelled out what the inspection intervals are. Mr. Roosa suggested monthly.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that the letter be accepted with the mentioned changes. The motion passed unanimously.

Mr. Roosa referred to his memo regarding two members of the LPA and a letter from a citizen. He felt that there is sufficient information that the council should take action for investigation. There are two ways: the town council could hold a hearing itself, or the council could have a hearing examiner prepare a finding of fact and a proposed order, which would be submitted to the council for approval. He has talked to Diana Parker and she has indicated she would be available. It would probably be held at the county court house, although it could be held here. Mr. Mulholland said he feels it would be fairer to have a special hearing examiner. Mr. Roosa said he feels it is in the best interest of the council to have a hearing examiner because it makes the hearing more objective and allows the hearing officer to make recommendations for them to consider more like an appellate court. He said the council would also need to hire a special counsel. He is the town attorney and is here to advise the town council. Therefore he could not bring these charges because then the council would have no attorney when it came back to the council for review. Another attorney would present the case to the hearing examiner. If we can't get the Lee County hearing examiner for some reason, we could get another attorney. They would prepare a proposed order for the council's review. The council can take evidence at the hearing and wouldn't necessarily be limited to the hearing examiner's report. The Town does not have the power of subpoena so we couldn't subpoena witness, they would have to testify voluntarily, they would be under oath, and they would be subject to cross examination. It would be an open hearing. The hearing examiner does not have the right to subpoena either because they would be acting in place of the town council. The Council could decide whether to act on the hearing examiners' suggestions or hold their own hearing. Mr. Hughes said this is a serious matter and we are talking about making it more serious. It will be an expense on the part of town and the parties in question. Mr. Roosa said it might cost about \$2000 for the hearing examiner and maybe \$3-4000 for the special counsel. The LPA members would have to retain their own counsel. Mr. Mulholland said he likes the objectivity of a special hearing examiner. Mr. Hughes asked for clarification on the date of the LPA action on the Sandbar (March 31.) He said he has trouble with the two cases being lumped together. In the case of Johanna Campbell, she is alleged to have encouraged people to come to a

hearing the day before the hearing. Lena Heyman's phone call was 2 weeks after the hearing, so she no longer played any quasi-judicial role. Mr. Roosa said that is significant and there are other facts that would have to be uncovered through the hearing process, but what is of concern is that someone in a judicial position might have taken on the role of an advocate. That is sufficient to raise the question of when that change occurred. It is still a question for the council to decide if that is appropriate and if that will give fairness to the hearings at the LPA. The action is evidence of a predisposition to be an advocate even at the hearing. The hearing examiner would have to determine that through facts. He agrees that one case is much weaker, but there are sufficient questions based on the letter itself to require a hearing. Mr. Mulholland suggested that Mr. Roosa be authorized to select a special counsel to pursue this matter either before the town council or a hearing examiner. Mr. Hughes asked if it shouldn't be worded that we would retain a special counsel to look into it and report back to the council on whether to proceed to a hearing. Mr. Roosa said he wouldn't have a problem except for the time factor. He is anxious that this be resolved before the summer recess. Mr. Hughes said he is uncomfortable about a motion to go immediately to a hearing based on one letter without some additional evidence or the persons involved having the ability to respond. Mayor Cereceda said the two-step process would be for Mr. Roosa to acquire a counsel to investigate this. That person could report back to the council at the June 15 meeting on whether to proceed to a hearing. Mr. Roosa said we must give 14 days notice unless they waive notice, so it could not come back to the council until after recess. Mr. Hughes said he doesn't think he has enough evidence to vote to go ahead with a hearing at this point. He would like it looked into further by a special counsel before proceeding. Mr. Mulholland said he doesn't think it is fair to keep the people involved hanging over the summer. Mr. Murphy said this letter is all we are going on at this point. If it is the only evidence to be presented, it won't take a special master long to find out if this is true or not. He would like to get this over with before recess. Mayor Cereceda suggested we schedule the hearing in the latter part of June, and hire a special counsel to make a recommendation to the council on June 15 and if the council decides to go forward, the hearing would already be scheduled, and we could cancel the hearing if we decide not to go forward with it.

Motion: Mayor Cereceda moved that the council authorize Mr. Roosa to acquire outside counsel, schedule a date with the hearing examiner, and to have special counsel return at the June 15 meeting with a recommendation on whether or not to proceed with the hearing. There being no second, the motion failed.

Mr. Murphy said the council appointed the LPA members, and they have to decide whether they have or have not fulfilled their duties under our ordinances. It is a waste of money to spend that much money on a hearing examiner. The council members are elected to make the big decisions.

Motion: Mr. Murphy moved and Mr. Hughes seconded to schedule a hearing before the council at Town Hall on the afternoon of June 22 and to hire outside counsel to report back to the council on the 15th on whether to proceed with the hearing. **Discussion:** Mr. Mulholland said he is still concerned about objectivity. Mr. Murphy said the council will have to decide finally anyway. Mr. Mulholland said that is true but at least the hearing examiner would have a recommendation. Mrs. Segal-George asked if the special counsel will make an oral report. Mr. Roosa said he will report if there is sufficient evidence to have the hearing and if so, who the respondents should be. Mrs. Segal-George asked if the council will be able to ask questions of the special counsel. Mr. Roosa said the problem is that the special counsel will need to bring out some facts that discloses all the information, not just from one letter. Whether he will be able to get all those facts will depend on the willingness of the respondents. It will be a difficult task for the special counsel to develop much of a case. There will be no opportunity for discovery or to require witnesses to appear. The main advantage will be that the council will get another opinion on whether there is a need for a hearing. Mr. Hughes asked if we will need a bill of particulars at the time of the notice. Mr. Roosa said the notice will have to be more specific than just that a hearing is set for a certain date. He thinks the allegation will be that the two members were not impartial hearing officers at the time they served on the LPA. Mr. Mulholland said two people on the council have served for about two years with those people. Is it assumed that they are objective and can rule on this issue? Mr. Roosa said yes, even if it were another council member, they would be expected to rule. **Action:** The motion passed unanimously.

Mrs. Segal-George raised the issue of the special master on the movie theater. There is a preliminary hearing coming up. Should a council person go to the special master hearing with the town attorney instead of the town manager? She feels that she has no value at the hearing because they are

looking for her to offer some kind of compromise or options and she doesn't feel she has that kind of authority. The hearings might be more valuable than they have been in the past if a council person is involved. The council generally agreed that was a good idea. Mr. Murphy recommended that Mr. Hughes go to the preliminary hearing at 10 AM on June 25 at town hall. Mr. Hughes agreed to serve.

XX PUBLIC COMMENT

A TOM MYERS

Mr. Myers said that the council may not be aware that the CRA did a traffic study. Why reinvent the wheel? WRT did the study in the height of season, mid-season and low season.

B ANDY PRIEM

Mr. Priem said we are in new territory and it troubles him. A letter was sent and a recommendation has been made by Mr. Roosa. Will it be made available to the public? Mr. Roosa said it is public record. Mr. Priem said that if we have to respond to every citizen's letter without looking into the merits first, we are on troubled ground.

C RAY MERTENS

Mr. Mertens fears the cumulative effect of what one letter can cost the community. If someone found fault with every hearing, it could cost us \$15,000 each time. Maybe we are doing this too quickly. We need to consider the price tag. Once you are on trial, it is hard to ever be innocent again. Slow down in the interest of finance and fairness to the two people. Next time we receive a letter, will they decide to go through the same process again? Will that be fair to the next person?

Mr. Roosa said we need to set a time for the meeting on June 22 . The council agreed on 3:00 PM.

XXI ADJOURNMENT

The meeting was adjourned at 9:45 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary