

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
JUNE 15, 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 15, 1998 at 6:32 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ray Murphy; Council Members Daniel Hughes, 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**

Father Thomas Goggin of Church of the Ascension led the Council in prayer.

**IV PUBLIC COMMENT ON AGENDA ITEMS**

**A TERRY LENICK**

Mr. Lenick said he is representing Johanna Campbell, regarding the independent investigation that is being done. He realizes the quasi-judicial hearing is not today but he felt it was important for the council to understand the allegations. Ms. Kaestner's letter stated that Mr. Van Horn called her and said that Ms. Campbell gave him her name after he asked for names of people who live in the SanBar area. Mr. Van Horn has never been spoken to by anyone about this to ask him what happened. On June 3, after the council suspended Ms. Campbell without notice or due process hearing, he wrote a letter to the council. Mayor Cereceda clarified that Ms. Campbell has not been suspended and there has been no action taken. Furthermore, this will not be discussed today, because the investigator has not conducted his investigation yet. Mr. Lenick still wanted to be on the record and he quoted from a letter from Mr. Van Horn that said he contacted several of the LPA members and asked for names of SanBar neighbors to extend his contacts. The letter never stated that Ms. Campbell ever used him as an agent. Mr. Lenick told the council members that they could be in the same position as Ms. Campbell because it only takes one person to start a charge of probable cause of bias, and that is an atrocity. At the very least, the person charged needs to be contacted, and the council needs to be contacted. Regarding the other lady that was charged, the alleged contact was made after the decision was reached and she was no longer a neutral, unbiased decision-maker. Even though he is not representing her, he believes that after the LPA has made their decision, she is free to do anything. He believes that if you don't look at this closely from probable cause, you are caving in to a situation where it looks like because the council was sued by the Civic Association, they are going after them. The probable cause is not there. Mr. Hughes stated that the letter was not addressed to the mayor or town council; it was addressed to the town attorney who responded to it, and the town has not made any decision on probable cause. Mr. Mulholland said the only letter from Mr. Van Horn was in the paper; it did not come to the council or to Mr. Roosa.

**B SANDI SUTER**

Ms. Suter echoed Mr. Lenick. Her feelings about Ms. Heyman are that the decision had already been made and she had the right to express her opinion. As for Ms. Campbell, she doesn't know of anyone more fair, who would listen to all sides before making a decision.

**C JOHN NAYLOR**

Mr. Naylor, chairman of the Greater FMB Chamber of Commerce, spoke about possible compensation for the council. This issue came before the chamber board, and they voted unanimously to support it. Time constraints could be alleviated, and it would open the opportunity to more people with diversity. He also commended the staff, particularly Mrs. Segal-George and Mr. Gucciardo, on how they have kept the chamber in the loop. They have not always agreed, but the dialog is open and positive and ongoing.

**D FRAN MYERS**

Ms. Myers gave her own evaluation of the town manager. She has watched Mrs. Segal-George since she was county manager from 1988-1991. Her accomplishments are many: the Twins stadium, the refurbishing of Lynn Hall Park, the library in Bonita, the Caloosahatchie River State Park, the swimming pools in Bonita and San Carlos, the Colonial extension, the 6-laning of Daniels, the Cape Coral bridge and landscaping, 4-laning of College Parkway, the Blind Pass bridge, the work at Turner Beach, the Captiva renourishment project, the Bonita Beach access, and the restoration of the Lee County courthouse. For our island, there has been the writing of the jet ski and parasail ordinance, our new turtle protection, the saving of the CRA project at Times Square, the new Comp Plan, writing of the watercraft ordinance, the balanced budget, no new taxes, the million dollar grant for the Mound House, the \$200,000 state tourism grant, the Mainstreet grant, and the taking over of the street lighting district without raising the millage. She was responsible for the lifeguards on the beach when she was county manager, and it would be wonderful to have them back. She also got the air conditioning at Bay Oaks and the lights for the ball fields. The purchase of Bowditch Park was done while she was county manager, and she has helped the pool foundation tremendously. It is important for newcomers to realize how lucky we are to have her and that she has done a marvelous job.

**E BILL VAN DUZER**

Mr. Van Duzer said ditto to what Ms. Myers said. The last couple of years he has worked closely with her on the LPA. She is always considerate of their needs and problems, and has handled things with dispatch. He is impressed with the amount of time she gives to the town. She loves Fort Myers Beach and what we are doing here.

He also spoke on council compensation. Not only does the council not get any pay, they don't even get reimbursed for many of their expenses. It is important for the future for people who might want to run but can't afford to. We are bare bones, but there comes a point when you have to pay some of the expenses.

**V APPROVAL OF MINUTES: JUNE 1, 1998**

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

**VI PRESENTATION TO COUNCILMAN HUGHES FROM LPA**

Betty Simpson said many people did not know Mr. Hughes before he was selected to the LPA. He has vast experience and knowledge, and they were fortunate to have it and will miss it. But their loss is the town council's gain. She read the plaque thanking him for being a member of the first LPA. Roxie Smith said she was very impressed with Mr. Hughes' knowledge, expertise and fair decision-making. Mr. Hughes thanked the LPA for their remarks. He enjoyed working with them.

**VII PRESENTATION FROM SHERIFF'S DEPARTMENT**

Fran Myers presented a plaque from the sheriff's department for the Do The Right Thing Program. The Town and the Chamber foundation are partners in the program. The town has had two awardees this year: Jason Padilla and Dillon Kaestner. Dillon has been selected to represent the beach for the yearly award.

**VIII REQUEST FOR FUNDS FROM FORT MYERS BEACH 4<sup>TH</sup> OF JULY COMMITTEE**

Joanne Semmer, Bill Semmer, Shirley Semmer, and David James said this is the 11<sup>th</sup> year they have been doing fire works. It is a community event, and is supported by the community. They do not allow outside vendors, because the merchants on the beach help pay for the fireworks. To raise money they have held cookouts and bake sales. They receive money from the off shore races, Sea Kruz, American Legion, Bay Beach Golf Tournament, and Taste of the Beach. They are hoping the town can help out too, which would allow them to make it bigger and better. About 35,000 people attend and that benefits the merchants. It costs about \$25,000 to put on, and they are asking for at least \$12,500. The town has given their sanctioning and support, but they have never asked the town for money before. This year they will have some extra cost such as the fire department (who used to volunteer) and they are also adding a couple of extra deputies. Mr. Gucciardo said that community service, special events and cultural events all have some money available.

**Motion:** Mr. Murphy moved and Mr. Mulholland seconded that the town support the event with \$12,500 and that the town receive a thorough accounting after the event. **Discussion:** Mr. Reynolds

suggested starting out at \$5-7,000 the first time. Mr. Hughes asked if they have approached the chamber, since 35,000 people come to the event. Mr. Semmer said they support it through the Taste of the Beach. Mr. Gucciardo suggested 50% of total cost not to exceed \$12,500, so if they bring in more donations, it will cost the town less. Mr. Semmer said he has extra shells that he will throw in if they receive more money. Shirley Semmer said some of the fundraisers bring in a lot of money if the weather is good, but almost nothing if they weather is bad. It all depends on how many people participate in the events. It varies from year to year. **Action:** The motion carried unanimously.

### **VIII COUNCIL MEMBER ITEMS AND REPORTS**

#### **A RAY MURPHY**

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

#### **B GARR REYNOLDS**

Mr. Reynolds said the Council seemed to work pretty fast to convict a colleague. Has anyone taken the time to talk to Mr. Van Horn? None of us are perfect and sometimes statements are misinterpreted. He has known these two people a number of years and they are credible. Let's get the facts first.

Regarding SanBar, perhaps the council would like to revisit that before going into court battle.

He said the preliminary Bay Oaks survey results were interesting, and maybe the numbers will encourage the county to continue to contribute to Bay Oaks.

He hoped that Moss Marine and Sea Kruz and Snug Harbor could be included in any further discussions on the settlement to avoid another lawsuit.

He expressed his dismay at accusations within the council from other council members. At the last meeting he was accused of being anti-business because he opposed increasing housing density from 6 to 15. He wants each council member to respect each other's views.

Regarding the Bay Beach development, he hopes the council will read carefully the memo from Mr. Spikowski. Regarding airplane patterns, he thanked Dave Smith and Tom Merrill for their follow up visit and informative letter. The suggested 3000' height over the island seems a big improvement. The new book put out on the Times Square overlay district by Carol Cunningham is good, but he still wonders why so much interest is put on the businesses in Times Square? Are we ever going to get any help for the remainder of the island?

#### **C DAN HUGHES**

Mr. Hughes also wished to thank Dave Smith and Tom Merrill on the airport situation. He also said that since the Moss Marine settlement agreement, they have received correspondence from Sea Kruz, Marina Village and Resort Restaurants. They have a major concern regarding the easement for traffic. He wondered if there is any other answer to the situation, because he believes they have some legitimate concerns. Mrs. Segal-George said she has spoken to each of the parties. They are all going to meet together and crystallize their concerns and talk with Mr. Freeland to look at some possibilities. They will come back to the council with some suggestions as a group. Mr. Roosa said he does not think the council will want to modify the agreement because the other solution is to put it through a clearly residential area. This is a commercial easement going through a commercial area. Perhaps we need someone from the county traffic engineering department to look over the situation.

He also mentioned the article in the New Press that another county has prohibited watercraft near the shore. He would like to see us broaden the scope in the back bay. Mr. Mulholland said the MRTF has already asked for banning boats from the Little Estero Island area. They are also working on the watercraft ordinance. Mr. FitzSimons had proposed an ordinance to ban all watercraft. That did not pass, but it went to the MRTF and they are looking at some changes, perhaps moving the no wake zone out to 1000 feet. They will come back to council with recommendations for more stringent rules, larger buoys, etc. They will continue to meet through the summer so it will probably be before the council in September.

Mr. Hughes asked about the theater hearing that he is supposed to go to. Will he receive any direction from the town council on what direction he should go? Mr. Roosa said they will try to work on a compromise that hopefully Mr. Hughes can recommend to the council. If not, Mr. Hughes will just be there as a representative of the town. It was suggested that Mr. Hughes review the minutes of the hearing so he can see where the objections of the council lay. Mr. Reynolds asked why the whole council could not be there. Mr. Roosa said the special master makes no presentation, he listens. There is a requirement that there be a representative from the town. Mr. Reynolds feels like it should be a staff person rather than a council member. He doesn't see how one person can represent the five of them. Mr. Hughes said he does

not look at his role as adversarial, but information gathering, unless they present something outrageous. No decision will be made. The town council will still make it.

**D JOHN MULHOLLAND**

Mr. Mulholland said that many members of the MRTF (and others) helped at the Lovers Key dedication by giving information on the town. He also thanked Mr. Smith and Mr. Merrill for their work with the airport. He thanked Mr. Spikowski for the Bay Beach memo and asked the staff to schedule workshops with the LPA in September on what rights the town may or may not have regarding Bay Beach. He also mentioned that Dr. Croker had talked to him about lighting at the Playworks area and what the council could do to expedite it because it is a safety concern. Regarding Moss Marine, he said he is glad that the parties are getting together to try to work this problem out. He also mentioned a letter from Attorney Hubbard requesting data for Lena Heyman and he asked if that had been done. Mr. Roosa said he sent a complete package.

**E ANITA CERECEDA**

Mayor Cereceda asked Mrs. Segal-George for a report each month on projects such as Pink Porpoise/ Edison Beach, etc. Mrs. Segal-George said she will create a list, but she asked the council to let her know if she is not hitting the projects they want to hear about.

She suggested that everyone come to Times Square some Saturday night. The CRA funds have made a great improvement. People sit on benches and visit and are using it like an old-fashioned downtown. Last weekend people were lined up all the way down the pier watching the sunset.

**IX PUBLIC HEARING ON ORDINANCE CLARIFYING THE CHARTER**

Mayor Cereceda read the titles. The public hearing was opened. There being no comment, the public hearing was closed. Mr. Mulholland said he spent time with Mr. Gucciardo discussing the charter review and changes. It appears that some of the requests of the two review committees have not been taken care of yet. Mr. Roosa said these are the ones that the council agreed should be changed. Mr. Gucciardo said he went over the minutes and it still looks like there are some missing. Mr. Roosa said to identify them and be specific and he will make the changes. Mr. Reynolds suggested the committee be reconvened and look over this again. Mayor Cereceda asked if it is possible to go ahead with these changes or if they should withdraw it and do them all at once. Mr. Roosa said we can adopt these and if there are any more, they can do another ordinance. Mr. Reynolds said it would be nice to do everything at once. Mr. Roosa emphasized that this will become an explanation of the charter, not a change in the charter. It takes a referendum to change the charter.

**Motion:** Mr. Reynolds moved that the council delay until they can make more additions or corrections. The motion failed for lack of a second.

**Motion:** Mr. Murphy moved approval of the ordinance. Mr. Hughes seconded. Mr. Mulholland, aye; Mr. Hughes, aye; Mr. Reynolds, no; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

Mr. Gucciardo said if the council wants any referendum questions on the ballot, they must move on it before July 1. Questions 10, 11, 13 and 21 were potential referendum questions. Mr. Roosa said they would have to introduce that ordinance tonight in order to have it adopted by June 29. Mr. Mulholland said #10 in the minutes says that candidates would take office right away, but it was never done. It was explained that the council decided in a later meeting not to put that question to referendum.

**X RESOLUTION: DETERMINING BUDGET EXCESS AND AUTHORIZING BUDGET ORDINANCE AMENDMENT.**

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

**XI FIRST READING: ORDINANCE AMENDING THE BUDGET**

Mayor Cereceda read the titles. Public hearing was set for June 29.

The Council took a 10 minutes break.

**XII OLD BUSINESS**

**A RESULTS OF EVALUATION OF TOWN MANAGER**

Mayor Cereceda said she talked with Wally Kane of Sanibel. Their procedure is that each council member fills out a form and then meets with the town manager one-on-one and goes over it.

Then the town manager makes a presentation to the council on improvements that can be made, what kind of projects will be worked on for the future and responds to the evaluations. During the budget process hearings, there is a discussion on whether to award a pay increase or reevaluate the contract. Mr. Mulholland said the evaluation is public record whether it is read here or upstairs. Mr. Reynolds said he called Mr. Roosa about this to see if he could come up with some other way other than airing their dirty laundry in public. He also asked if they could have an executive session to do this, but Mr. Roosa did not think that was appropriate. He fears it could be embarrassing if the evaluations are done publicly. Mr. Roosa said they are public record and will ultimately become public anyway, but they can meet and discuss with the town manager individually if they want. Mr. Hughes said he thought it is unfortunate that this cannot be done in executive session. But since it can't, he likes the idea of each member meeting with her individually and dealing with compensation at the next meeting when they work on the budget. Mayor Cereceda said it was her understanding that there is money in the budget this year if they want to give her a bonus, but a raise would need to come from next year's budget. Mr. Mulholland suggested they turn in their evaluation tonight, or set up a schedule to meet with the town manager. At the next meeting, she can give a general report on the consensus of council. Mayor Cereceda suggested that they discuss the evaluations in general now, then if they desire to give Mrs. Segal-George a bonus, they can do that this evening. Then they can schedule appointments to go over them individually in detail later. Mr. Hughes said if your evaluation is good, you would vote for a bonus. You don't need to give an evaluation except in private discussion. Mrs. Segal-George said that all employees were evaluated and they are on file. They all received a five-percent merit bonus in April that was not added to their base salary. The money for the bonuses was in the budget and she gave the council a memo on the subject. She said last year the council gave her a bonus, and there is money in the budget for up to a 5% bonus. There has been no change in her contract since it was executed. Any change would come up in the budget process.

**Motion:** Mr. Mulholland moved and Mr. Murphy seconded that a 5% bonus be awarded to the town manager, not to be added to the base salary. **Discussion:** Mr. Reynolds said that at an earlier meeting he objected to parts of the personnel manual. There are all kinds of perks and bonuses that could be executed administratively. He felt that those should come before council. He encouraged the council to look at that manual again. Mr. Hughes clarified if the motion was for the town manager's salary only or the LPA salary also. Mr. Mulholland said he intended both figures and Mr. Murphy agreed. **Action:** Mr. Mulholland, Mr. Murphy, Mr. Hughes, and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion carried.

## **B REPORT FROM SPECIAL COUNSEL ON LPA MEMBER INVESTIGATION**

James Scarmozzino, of Webb & Scarmozzino, said he has been appointed to be the special counsel to investigate the matter of the two members of the LPA. He has spoken with Mr. Lenick and Jacqueline Hubbard, the attorneys for the two parties. He pointed out that preliminarily there are thorny issues involved: first amendment constitutional questions and ethical violations of the code of ethics. He was not aware of the Van Horn correspondence, but it has now been provided to him. He wants to see if there are facts to support any violations. He suggested June 29 to make a recommendation to the council. One question is what is the burden of proof. We are using the standard of "probable cause to believe", which in a criminal case is "reasonable cause". It was clarified that Mr. Scarmozzino will give a report on whether there is probably cause on the 29<sup>th</sup>, and if there is, the council will schedule a hearing. It was pointed out that one of the defendants is out of the state and will not be back until September. Mr. Mulholland asked Mr. Roosa about the letter in the Observer questioning if the council has acted responsibly and if the citizens' rights to be heard under the Florida Sunshine law been seriously abused. Mr. Roosa said he has not read the article. Mrs. Segal-George said she thinks the issue was because it was brought up under attorney's items and was not on the agenda. Mr. Roosa said any action taken at a public meeting is not a violation of sunshine. The council took action to initiate an investigation. There is no need for public input until the conclusion of the investigation.

## **XIII NEW BUSINESS**

### **A RESOLUTION FROM THE LPA REGARDING OLD SAN CARLOS AND CRESCENT ST.**

Mrs. Segal-George said there is no action necessary by the council on this. She will bring forward a proposal to hire a consultant to design an Old San Carlos plan on June 29.

**B RESOLUTION FROM THE LPA REQUESTING AN AMENDMENT TO THE OVERLAY ORDINANCE TO CREATE A DESIGN REVIEW COMMITTEE**

Mrs. Segal-George said she copied the council on a memo from Bill Spikowski because there are a number of different ways they can consider going.

**Motion:** Mr. Hughes moved that the town attorney be directed to prepare an ordinance to establish a design review committee to relieve the town manager of the burden of reviewing building plans. Mr. Mulholland seconded the motion. **Discussion:** Mr. Murphy said he agreed in concept and that Mr. Spikowski had 3 or 4 variations. Mr. Roosa said we can create committees by resolution or ordinance. A resolution is usually for short-term specific assignments and an ordinance for permanent committees. Mr. Hughes said he would like it drafted so that the committee has jurisdiction over the entire island regarding CPDs and commercial developments, not just the Times Square overlay. Mr. Roosa said perhaps we could put in a provision where we could assign by resolution specific areas as time goes on, but initially it would be the Times Square area. The problem is that the composition of members is recommended to be from the overlay district. Their interests might be different than another group for other areas. Mrs. Segal-George pointed out that if someone applies for a CPD, it has to come to the council. Do they want it to not go to the council but to a design review committee? Mr. Hughes said he thinks the committee would only play a role after the approval of the CPD and not as a condition of pre-approval. One of the conditions of approval would be that the architectural aspect must be approved by the committee. That creates a problem of subjectivity, but the courts have upheld them. Mr. Roosa said it depends upon their authority--whether it is for approval or for recommendations for changes. That gets into a land use regulation, which is a special ordinance. Mrs. Segal-George said the Times Square area is different, and the design review would be prior to their plans being stamped, but in a CPD it would be after the council has granted the rezoning approval. Mr. Roosa said there are no established design guidelines except in the Times Square area. He said he would talk with Mr. Spikowski to get his input on how it could be expanded to the whole island. **Action:** The motion passed unanimously.

**C DISCUSSION OF COUNCIL COMPENSATION**

Mayor Cereceda said the Florida League of Cities helped with the information about compensation at other cities. Mr. Mulholland said we don't need comparisons with other cities because this town is unique and Government Lite is successful. Other towns compensate but he doesn't think it applies to us. He would rather see expense funds rather than a salary. Mayor Cereceda said currently you can get expenses reimbursed, but no one does except when they go to a large convention. Perhaps she has been remiss in not keeping track of mileage and meals, etc. Compensation is not an adequate word. There is no compensation for someone choosing to serve, nor is there an adequate number. It is a subsidy to anyone who is willing to forgo a large part of their life to serve. Mr. Roosa clarified that there is a provision in the charter already allowing them to establish compensation and it would not need a charter amendment. Mr. Hughes said his experience is that compensation is usually done on a per-meeting basis, not on a monthly or annual salary. Mr. Roosa said there are a lot of in-between meetings and preparation for meetings. Mr. Reynolds said he talked with many of the mayors in the area and he doesn't recall any of them saying they run for the money. Sanibel has done well for themselves and they have not asked for any compensation. Most people run because they are dedicated and want to do something for the community. The council has expense money available, and you can keep a record and be reimbursed. When the incorporation committee convinced the town to incorporate, they told them we would do it with no compensation. Mayor Cereceda said the money is not so someone will do it for the pay. This council serves as employees of the town. Sanibel has hundreds of employees and so do the other cities. We need to compensate the council or hire more employees. She also noted that no one has approached her and said they are opposed to it, and no one spoke against it in public comment.

**Motion:** Mayor Cereceda moved and Mr. Murphy seconded that compensation be established for the council. **Discussion:** Mr. Murphy said we are so different than Sanibel that we can't be compared. Fort Myers Beach has retirees, young families, and working people. The framers of our charter excluded a lot of those people, and this would open it up to include anyone who may have felt disenfranchised by our charter. If people don't need the compensation, they can give it back to the town or give it to charity. Mr. Mulholland said compensation goes against the theory of government lite where a few people do a lot of work. You are not offering enough to make it worth while as compensation. You do it for the joy or opportunity of helping the town. Mr. Murphy said it can only make up the difference in what a person might lose if they have to attend a meeting instead of working.

Mayor Cereceda said someone may have to provide a babysitter or caretaker in order to free up their time for a meeting. Mr. Hughes asked if they establish compensation, could it be amended or repealed at any time by the current or future council? It was clarified that it can, except a council cannot increase the compensation during their term of office. **Action:** Mayor Cereceda, Mr. Murphy, and Mr. Hughes voted for the motion. Mr. Reynolds and Mr. Mulholland were opposed. The motion carried.

Mr. Hughes noted that if you waive the compensation, it may be taxable income anyway because you were legally entitled to receive it. If you are going to be taxed anyway, you might want to give it to charity. It was agreed that the council will decide the actual amount on the 29<sup>th</sup> during first reading.

#### **D APPOINTMENT TO REGIONAL WATER SUPPLY AUTHORITY**

Mrs. Segal-George said that this group has offered us an appointment and that Councilman Reynolds has expressed an interest.

**Motion:** Mr. Mulholland moved and Mr. Murphy seconded that Mr. Reynolds be appointed to this board. The motion passed unanimously.

#### **E SELECTION OF HARBOR ACTION PLAN CONSULTANT**

Mrs. Segal-George said the MRTF appointed a subcommittee who interviewed the applicants and unanimously recommended Coastal Engineering be selected. The Council can accept their recommendation or they can choose to hold interviews themselves.

**Motion:** Mr. Mulholland moved and Mr. Murphy seconded that the Council accept the MRTF recommendation. **Discussion:** It was clarified that the MRTF will come back with a contract and a cost. Florida law says that price cannot be discussed with engineers in the interview stage. Mrs. Segal-George said that if they can't do the job for the budgeted amount, they will not see a contract. **Action:** The motion passed unanimously.

### **XIV TOWN MANAGER'S ITEMS AND REPORTS**

#### **A FLORIDA LEAGUE OF CITIES MEETING**

Mrs. Segal-George said that FLC will be holding their annual convention on August 13-15 in Miami. The staff needs to know who is planning to attend. Mayor Cereceda, Mr. Murphy, and Mr. Mulholland expressed an interest. Mr. Hughes said he would like to attend also, but he needed to know if the meeting in August could be moved from the 17<sup>th</sup> to the 31<sup>st</sup>. The council agreed. Mr. Gucciardo said he won't know if that is a problem with the budget but he doesn't think it will be. The staff will let the council know if there is a conflict.

Mr. Gucciardo said that the agenda for the 29<sup>th</sup> is getting very full and we may need to start it early. He asked the council to let the staff know if they have a problem with moving it to 3:00 PM.

### **XV TOWN ATTORNEY'S ITEMS**

#### **A RESPONSE OF COMPLAINT OF CIVIC ASSOCIATION ON SANBAR**

Mr. Roosa spoke about the verified complaint filed by the Civic Association. He reminded the council of the procedure that council must consider on a rezoning matter. The Florida Supreme court has said that when a property owner applies for rezoning, it is their responsibility to put on competent substantial evidence to show compliance with the comp plan. Then it is the responsibility of anyone who would oppose the zoning to put on substantial evidence that it is not appropriate to grant the rezoning. Consistency with the comp plan (which is the Lee Plan now) is the threshold question for every action the council takes. So the first question is if the applicant met that requirement, and then the council must decide if there was evidence presented that would negate their position or justify the rezoning. In the past we have had applicants who have made their presentation and the council ruled against them. They filed action in the court and the court determined that they did meet compliance with the comp plan and then the burden shifts to the town and the courts have found that there was not substantial evidence to justify denial. In this case, there is a statute that allows affected persons to file a complaint and allege that the council did not have competent, substantial evidence before it to make that determination. All the issues boil down to the concept of neighborhood, which is a difficult concept and is not defined in out land use regulations. The applicant presented evidence analyzing the neighborhood. In order to assist the council in making their decision on whether to reconsider this case, he prepared a resolution. He has met with the county staff and gone over the complaint and evidence, and they feel there is sufficient justification based the concept of neighborhood to establish that the applicant met his obligation of

compliance with the comp plan. He summarized those in the resolution. Under our current land use and development regulations, they had twelve units lawfully existing. Under the Lee Plan, the concept of pre-existing non-conforming use is not of ultimate compliance, but is "existing only" and that category has all the legal rights as if they were properly zoned. So regardless of the density factor, they had a vested right for 12 units. Mr. Hughes said he agreed, but in effect they abandoned the use. Generally in a non-conforming use, abandonment constitutes a loss of the pre-existing non-conforming use. Mr. Roosa said that would be true in conventional zoning, but he doesn't think that applies in the Lee Plan because of the concept of Existing Only, which means that the rules apply to everyone except if you violated those rules at the time they were adopted then you can continue forever to violate those rules. Existing Only is valid zoning--it not a non-conforming use. Also the property is urban community which allows for residential and commercial. The neighborhood is predominantly tourist rental by use, therefore it is compatible with existing uses. Although the zoning category has changed, the use of the property has not changed and in fact it is more restricted than its past use because they lost the use of the tiki hut and the jet ski business. Mr. Hughes asked if it shouldn't be noted in the resolution that the use is more restricted. Mr. Roosa also said the other issue was the height of the building and the applicant presented testimony that within 200 feet there is a building of greater height, and the only deviation required was 15'. If it is the council's intent to not reconsider, he asked them to adopt the resolution stating that it was consistent with the comp plan.

**Motion:** Mr. Murphy moved the resolution as amended by Mr. Hughes regarding the loss of uses. Mr. Mulholland seconded the motion. **Discussion:** Mr. Hughes asked why it is necessary to adopt this resolution. Mr. Roosa said it is not, but it shows that you considered the issues that were raised by the complaint. All you have to do is reaffirm your prior resolution. But this shows their reasoning based on the record. Mr. Hughes expressed the fear that this resolution makes it look like there was something that the council missed the first time and they are trying to plug a gap with this resolution. Mr. Roosa said these were part of the testimony that day; it is not new information. Mr. Hughes asked if he was required to vote since he wasn't at the meeting that made these findings. Mr. Roosa said he is still bound to represent the council and he must vote. Mr. Reynolds asked if this resolution is pertinent now, why wasn't it then? Mr. Roosa said Florida law does not require you to make specific findings when you adopt zoning. This is only for convenience to help the council, but you still have to decide whether you are going to reconsider or not. The thirty days will be up on June 20. Mr. Mulholland asked if we are doing anything wrong by having Mr. Reynolds vote on this issue. Mr. Roosa said no. Mr. Hughes said he prefers that we withdraw the motion, and by not taking any action, you are not voting to reconsider. He is concerned this creates another body of language that could be subject to interpretation. If it is not necessary, he would prefer not doing it. He is also concerned if everything that we want to say is covered. Also he has trouble voting on something that he was not there for. Mr. Murphy said he is willing to withdraw the motion. Mr. Mulholland agreed to withdraw the motion. No action was taken.

## **B REPRESENTATION ON PUBLIX COMPLAINT**

Mr. Roosa said that the town has received a verified complaint filed by three citizens regarding the Publix case. He needs authority from the council to represent the town.

**Motion:** Mr. Murphy moved and Mr. Hughes seconded that Mr. Roosa be authorized to represent the town. The motion passed unanimously.

Mr. Roosa also reported that there had been a hearing on the Ganim-Tarick case today. The Court ruled that the rules of the appellate court will apply and that the special master's recommendation will not be part of the record. He will file a response based on that.

## **XVI PUBLIC COMMENT**

### **A JOE CROKER**

Mr. Croker said he is vice-chair of the PSTF. They are concerned about the lighting at Playworks. The people who clean up there are finding beer and whisky bottles. Because of the poor lighting there it is a safety issue. He understands that the lighting committee will be doing something permanent about it because of the pool. But the PSTF is concerned about expediency. He asked if the town can put up a temporary pole with a temporary meter like they do at construction sites until a permanent solution can be done.

**XVI ADJOURNMENT**

The meeting adjourned at 10:05 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary