

**FORT MYERS BEACH
TOWN COUNCIL MEETING
JUNE 29, 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 29, 1998 at 3:04 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

Mr. Mulholland led the Council in prayer.

IV PUBLIC COMMENT ON AGENDA ITEMS

A Bob Gaydos

Mr. Gaydos spoke on council salary compensation. Mr. Gaydos was not in favor of compensation and was concerned about filing fees for young people.

B Arden Arrington

Mr. Arrington spoke of artist Clyde Butcher who came to draw attention to Mound Key to preserve the island for the future. Mr. Arrington spoke with Mr. Butcher regarding the Town's commitment to work with the state and county to preserve them. Mr. Butcher wanted to present the picture of the North American Champion Black Mangrove to the Town Council in recognition of their hard work in preservation.

V APPROVAL OF MINUTES: JUNE 15, 1998 and June 18, 1998

In regards to the minutes of June 15, 1998, Mr. Hughes brought up the discussion that was held regarding the 4th of July Town contribution. He was questioning whether the motion stated that the amount was not to exceed \$12,500? He realized that Mr. Murphy asked for an accounting. Mr. Reynolds stated that it was discussed but it was not part of the motion. Mr. Murphy stated that Mr. Gucciardo asked if they would like to change the motion and he declined. It was decided that the minutes are correct. Mr. Hughes asked if we needed to amend the motion for the lesser amount that they are now requesting. Mr. Gucciardo informed the Council that it was not necessary.

Motion to approve: Made by Mr. Mulholland, seconded by Mr. Murphy. The motion carried unanimously.

VI REVIEW OF FINANCIAL REPORTS FOR MAY

No discussion or comments were made.

VII COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy offered congratulations on the Taste of the Beach to the Observer and Chamber of Commerce for a wonderful event. Mr. Murphy offered to be the Town's delegate to the Florida Cities conference in August again this year.

Motion to approve: Mr. Hughes moved to have Mr. Murphy be the delegate to Florida League of Cities conference. Mr. Mulholland seconded and the motion carried unanimously.

B GARR REYNOLDS

Mr. Reynolds was glad that the Council was moving forward on an ordinance for Little Estero tide pool and was hoping the Town would have the procedures available to enforce. He also had questions regarding the Bogdanski duplex violation that had been abated. He had information that it is now in compliance and asked if this meant that this was now operating as a duplex rental. Town Manager

Marsha Segal-George responded that it is now operating as duplex. Mr. Reynolds also had questions regarding the movie theater issue. Mr. Hughes said he met with the special master, and stated that he thought the item was going to be discussed under Town Attorney items. Mr. Reynolds also complimented the Local Planning Agency and the committee headed by Ron Kidder on the sign ordinance that they have been working on.

C DAN HUGHES

Mr. Hughes had no items to bring forth.

D JOHN MULHOLLAND

Mr. Mulholland reported on the positive meeting with Michael Stevens of Coastal Engineering, who will be developing the Harbor Plan. He estimated that they would have the cost and schedules by the next Council meeting in August. The MRTF is very enthusiastic on this first step. Mr. Mulholland also requested that the town attorney bring items forward to be placed on the agenda so that the citizens of the town will have more information, for example, the letter of complaint of the LPA members. Mr. Mulholland also stated that he represents the Agency on Bay Management and they issued several pages of principles. He would like to make sure that the Council and MRTF review these pages and make it available to citizens.

E ANITA CERECEDA

Mayor Cereceda reported that she received a call from Vicki Massey at Bay Oaks requesting that the Council participate in Crosswalk Awareness Day. She also asked if the Council would be interested in sponsoring lunch for the children participating.

Motion to approve: Mayor Cereceda made a motion to approve an expenditure of \$250 for purchase of lunch for Crosswalk Awareness participants. Mr. Murphy seconded. Mr. Hughes asked that the cost of the lunch not exceed \$250. Mayor Cereceda amended the motion. Motion carried unanimously.

VIII DISCUSSION OF ACCESS PROBLEMS CREATED BY THE MOSS MARINE SETTLEMENT

Mr. Ed Cusick of Snug Harbor spoke regarding the access problems and the letters that Council members had received regarding the negative impact on those most effected: business and residences, more specifically, Marina Village. Marina Village is a time share condominium with weekly turnover, with mostly families. His goal is to right a wrong. He was confident that council was unaware of their problems, and there are some facts that he would like to point out. A letter from Michael Ketchmark, General Manager of Marina Village, was received reiterating safety for residents in that area. They are referring to the part in the settlement that restricts coming and going of traffic to the Big M Casino over the Snug Harbor easement exclusively. The easement was never intended for that type of use: it is used as a parking lot and also, unfortunately, as a playground. The Marina Village Clubhouse is in the parking lot where they have social gatherings. It was never a problem with a few boats or cars using the easement. When you take hundreds of cars using an easement which was not intended to be a street, there is potential for disaster. As the cars come down Old San Carlos, they take a left and see a wide easement and they speed up. There are many hidden walkways that are landscaped in that area. There have been a couple of near misses and they are afraid that someone is going to get seriously injured. The ideal situation would be to not allow the access of traffic to the Big M boat, but Mr. Cusick realizes that Moss Marina has certain rights. Mr. Cusick and Mr. Ketchmark are proposing an amendment to the settlement that would let traffic come in on Third Street and out over their easement. Third Street is intended for traffic but the easement is not. Secondly, people tend to go slower in a perceived residential area. Third, when the cars leave, they all leave at once and traffic tends to move slower because of the line of cars and traffic is more manageable than when coming in. The incoming traffic has the property owners scared. Mr. Cusick reminded the Council that when the issue first came up, a Council member declared that the Council was charged with protecting the safety of citizens. In an effort to right the wrong, Mr. Cusick, Mr. Ketchmark, Michael Reeves of the Sea Kruz and Richard Williamson, the General Manager of Moss Marine, propose that Moss Marina use its best effort, through advertising, brochures and reservations on the phone instructing customers to use Third Street as entrance, and the use of easement for outgoing traffic. Snug Harbor agrees to allow Moss Marina use of this easement for this purpose but does not expressly give up any of its rights regarding the easement. Moss Marina employees will be on the property to slow cars and Moss Marina employees will hold erect signs stating "Slow-Children at Play". Mr. Reynolds asked Mr. Cusick what the width of easement was and Mr. Cusick replied that it is 40 feet. The original intent for the easement was for large boats and delivery vehicles. It was never intended for this volume of traffic. Mr. Reynolds asked

if Mr. Freeland was in agreement and Mr. Cusick assured Mr. Reynolds that Mr. Freeland is concerned and agrees. Mr. Freeland's attorney, Richard Williamson was present and assured that Mr. Freeland was agreeable to this decision. Mr. Cusick stated that they would like to have this changed as soon as possible. Mr. Mulholland stated that he agreed that the Council did do something that wasn't safe and he would like to go ahead with this. Mr. Hughes asked Mr. Roosa if the judgement has been entered and how complicated it would be to modify. Mr. Roosa believed that the Town and defendant could modify the judgement and it wouldn't be difficult to get it approved for modification. The reasoning behind the original order was that there are two parcels: one parcel immediately behind the condo was restricted in a prior development order to access only parcel through that easement. The parcel behind residential property is of commercial use and this proposal would require commercial traffic to go through a residential area. It was the Council's reasoning at the time of drafting this order, that since the Marina is for commercial use and since the parcel nearest the Snug Harbor parcel is already limited access to that easement, it would seem reasonable to use this easement. Mr. Roosa's only concern is that the Council may cause problems through the residential area by redirecting this traffic. Mr. Cusick stated that he was not aware of any problems until the settlement was reached; it was orderly, it was safe, there were no complaints from the residents and it worked very well.

Motion: Mr. Hughes moved to accept the recommendations as proposed by Mr. Cusick and recommended directing the town attorney to draft an amendment to the compromise and settlement agreement between the Town, George Freeland and Southgate Motors to incorporate the proposed settlement. Seconded by Mr. Ray Murphy. Motion carried unanimously.

Mr. Hughes would like an exhibit of this easement as part of the agreement. The original agreement assumes that the Council is not doing anything on behalf of the community that is in dirigation of any other parties that have rights and interests, because the Council can't modify private rights by governmental action. Attorney Roosa stated that the council should be aware that the validity of that easement issue was raised in our lawsuit. In his opinion, of the two parcels, the one immediately adjacent to Snug Harbor does have a proper easement, but the second parcel, the parcel behind the residential area, does not have a proper easement. Mr. Hughes inquired as to whether the Council was allowing a person to go across an easement that isn't provided for. Mr. Roosa said yes, that is his legal opinion. Mr. Hughes stated that the parcel behind the residential area that was titled to Mr. Freeland has an easement to Mr. Freeland. The parcel to the Southgate Motors property, behind Snug Harbor, has an easement to the property, and there is a difference between the easement to an individual and the easement to the property. With regard to customers that use the Southgate Motors property, they have a valid easement, but Mr. Roosa felt he couldn't represent to the Council that the other property has a valid easement. Mr. Mulholland had questions regarding safety. Mr. Roosa stated that he didn't have a problem drafting the consent without an easement, it wasn't his recommendation to add the easement. That easement is limited to a specific parcel. Mayor Cereceda stated that Mr. Freeland and Mr. Cusick are most aware of what actually is transpiring there and they have made their request to the Council and we have approved. Mr. Roosa stated that if Snug Harbor is agreeing to this, it shouldn't be a problem, but he wouldn't want to rely on existing easements. Mr. Cusick stated that they would need to see the language before they agree to anything, they do not like this arrangement, but they are agreeing to it because they don't want someone to be injured because of legality. Mr. Hughes stated that the motion that was passed supports his position, but the Council cannot create rights or obligations against parcels that don't exist between the parties. Mr. Cusick stated that he hopes that the interested parties will be included in the discussions this time. Mr. Mulholland wanted to reiterate the fact that the Council is working for safety and that Mr. Roosa was going to pursue the changes and involve the necessary parties. Mr. Cusick stated that they are taking this as permission to go ahead and proceed with safety.

IX PUBLIC HEARING: RESOLUTION CHANGING THE AREA OF THE TOWN OF FORT MYERS BEACH COMMUNITY REDEVELOPMENT AGENCY AND ADOPTING THE DOWNTOWN REDEVELOPMENT PLAN

Mayor Cereceda read the titles. The public hearing was opened. There being no public comment, the public hearing was closed.

Mr. Roosa stated that the original CRA included the entirety of Estero Island, and what has been proposed is that it should be reduced to what is now referred to as the Downtown Redevelopment Area.

This should be roughly described as the parcels lying bay to gulf, bounded on the north by Lynn Hall Park to the commercial area across the street from Lynn Hall Park and the north side of Old San Carlos, and on the south, by the canal, south of Crescent from the bay to Estero Boulevard and the area extending southward along both sides of Estero Boulevard to Pearl Street. Parcels are listed in the package that becomes part of the resolution.

Motion: Mr. Murphy moved and Mr. Mulholland seconded, to approve the resolution changing the area of the CRA and adopting the Redevelopment Plan.

Discussion: Mr. Reynolds would like to strike out of section one "from the bay to Estero and the area extending southward along both sides of Estero Boulevard to Pearl Street". Mr. Reynolds is haunted by an image of the future if all buildings are drawn out to Estero Boulevard and he could not support an ordinance that would do that. He would like to keep the vision plan only to the Times Square area, Crescent Street, Old San Carlos and Lynn Hall Park. Mayor Cereceda stated that the area was always included in the plan and has always included Pearl Street. Mr. Reynolds stated that he would like it taken out. Mr. Hughes commented that it would take extensive modification of the DRA plan as now presented. If we delete the section at Crescent, we are adopting a whole new plan. Mr. Reynolds stated that the plan is not concrete. Mr. Hughes stated that the changes that Mr. Reynolds is suggesting would involve a lot of detail, deleting a lot of material from the plan. Mrs. Segal-George also mentioned that the council would also have to amend the overlay plan. Mr. Reynolds stated that we have a lot of people walking and riding bikes in that area. With the current two buildings, a bike can not even pass through there; we are taking space away from the visitors. He envisions that that the area will become more crowded as time goes by. Eventually there will be no parking because of expansion of business from lot line to lot line and to the right of way. We are losing a lot of space where people walk. Mayor Cereceda stated that this plan has been in the works for eight years prior to the Town's incorporation. It would be incredibly irresponsible for the Council to change something that has been discussed in the community for this long. If you mark out the line stating that this only pertains to the Crescent Street and Times Square triangle, you are eliminating any hopes for those businesses and people who have participated in constructing this plan. Mr. Reynolds stated that this ordinance was done in 1997. Mayor Cereceda clarified that this is part of the Estero Island Community Redevelopment Project that was prior to the town becoming a town. It was not done by Council, it was done five years prior and the Council accepted it from the Estero Island CRA. Mr. Reynolds referenced back to work done that did not mention Pearl Street, stating that that was added more recently in an ordinance. He also stated that it was done only a year ago. Mr. Reynolds would also like the second one needs to have "along Estero Boulevard" also corrected. Mr. Hughes had questions pertaining to the map; he suggested that the map be incorporated into the resolution. He required inquired whether the old configurations of the streets still show on the new map and questioned whether they were dedicated roadways. For example, Old San Carlos still shows running all the way to the beach, and the island around Times Square/Estero Boulevard going all the way up to Old San Carlos is showing as a street. Mr. Roosa stated that the map was made by the property appraiser's office and their office maps are developed by plats and they may have been subsequently vacated, but it would show on the map. Mr. Hughes questioned whether or not the town owned the roadway that goes around Times Square. Mr. Gucciardo answered that the area is closed to vehicle traffic, but has not been vacated. Mr. Hughes also inquired if the restaurants using public roadways needed to insure the town. Mr. Gucciardo said that they are issued licenses, and part of the license is insurance coverage for the town. Mr. Hughes would like to add to the conditions of blight that exist in Times Square similar language that is mentioned in District Four relating to unsightly proliferation of signs. In District 2 (Times Square), there is reference to unsightly hazardous overhead facilities and in District 4 (Estero Boulevard) the phrase should include both unsightly proliferation of signs and overhead wires. Mrs. Segal-George stated that the Town already has underground utilities. Mr. Hughes would like it to include signs. Mr. Roosa would like the Council to adopt the concept of the plan and the proposal to correct problems and move forward. Ms. Cunningham stated that in reference to the utilities that have been undergrounded, the Times Square area that is referred to the conditions of blight also cover those that remain to be addressed outside of the area of immediate improvement. That was the reasoning why overhead utilities should be included; extensive documentation for files is available and this can be added to it. As the Council approves the plan, you can provide a list of changes that can be made. After Council approves the plan, it will be reprinted with final changes and made available to the public. Mayor Cereceda suggested that Council proceed with the changes. Mr. Roosa stated that if there were any changes that Council wanted to make, they should be made at this time.

Motion: Mr. Hughes moved to amend the motion to include changes made to page thirteen regarding signs, and would like to add the items mentioned by Ms. Cunningham in her memo dated July 25. The motion was seconded by Mr. Murphy.

Discussion: Mr. Murphy congratulated Ms. Cunningham on her work. Mr. Reynolds had questions regarding page sixteen, regarding district 4, extending the project down to Pearl Street. The part of the plan that he objects to is the part that allows the buildings to build out to the street. He would like to see this eliminated. Mr. Reynolds read from the booklet regarding the conditions of blight. He didn't think that because an area doesn't have a sidewalk, it should be considered an area of blight. He agreed with all of the other areas of beautification, but had a definite disagreement with the extension of buildings to the street. Ms. Cunningham stated that by simply including this area, you are not automatically approving a design concept. The Town is just including them in the boundaries so that the various tools of redevelopment can be used in this area to leverage the types of changes the town wants to see. Ms. Cunningham referenced the Town's Comprehensive Plan that are applicable in these areas and if the Comprehensive Plan calls for something, then those issues need to be addressed and decided as to how the will be translated to the streetscape. The redevelopment plan itself and your taking action on it doesn't require that buildings be constructed in a certain configuration. By approving this plan, Council is not automatically approving buildings out to the street; that is a design concept and the Town has considerable latitude within this plan to come up with the design concepts that they would like to see implemented in this area. Ms. Cunningham stated that they are trying to bring into place a plan that is a guideline. If you exclude the area, you do not have the opportunity that the tools of redevelopment provide. There are conditions of blight that are aesthetically unpleasing or dangerous in regards to hurricanes and such. This is not to focus on structure, but on the street conditions that the public sector can affect. The definition of blight is a statutory definition; it is a negative word, but we need to refer to it in this document because the statutes require that you find conditions of blight in order to justify the use of the tools of redevelopment. The statutes do define blight specifically. The definition is not meant to offend property owners by taking pictures, the photos are to depict conditions that the public sector can affect on the street. Mr. Reynolds stated that this a design for the future for this area, and while it does not demand that you change your building, it strongly suggests that if you do change your building you do it this way. Mr. Reynolds stated that he realizes that this is not an implementation plan. Mr. Mulholland inquired as to if anything proposed is contrary to the CRA overlay plan or the Comprehensive Plan. Ms. Cunningham stated that this is a deliberate attempt to work with what has already been done. Mr. Reynolds encouraged Council not to vote on this until they were able to review that this is an added extension of the original plan.

Motion: An amendment to incorporate into the Downtown Redevelopment Plan as submitted and as referred to section 2 of the ordinance, the change on page 13, the reference to unsightly proliferation of signs similar to the section 4 area and to incorporate all of the proposed changes submitted with Carol Cunningham's memorandum to the Town Council dated June 25th, and to amend section 1 of the proposed resolution to incorporate by reference the future land use draft on the theory that a picture is worth a thousand words.

Discussion: None

Opposed by Mr. Reynolds. The motion carried.

Discussion on the original motion to approve the resolution: Opposed by Mr. Reynolds. The motion carried.

The Council adjourned as the Town Council and reconvened as the Town of Fort Myers Beach Community Redevelopment Agency.

X TOWN OF FORT MYERS BEACH COMMUNITY REDEVELOPMENT AGENCY
A. RESOLUTION AUTHORIZING THE ISSUANCE OF \$500,000
REDEVELOPMENT REVENUE BONDS

Mr. Roosa stated that the Town had retained the service of David Cardwell to assist in the reorganization of a CRA. When the resolution was sent to Mr. Cardwell, he thought that the resolution had far too much information and not enough information. Too much in the description on the bond issuance itself and not enough of the terms of the findings that we needed. The new Resolution has nothing new in it, but what is

new is the provision to include authorizing the validation of the bonds. There are a lot of specifics that have to do with the note that was issued that will be in some subsequent resolution when we go to the time of sale. We make those decisions later on. Mr. Roosa read the new title of the resolution. Mr. Roosa explained that the most significant change in the resolution is in section 2, findings and determination.

Motion: Mr. Mulholland moved to approve and was seconded by Mr. Murphy. Mr. Reynolds opposed. The motion carried.

Discussion: Mr. Hughes asked how the bonds would be marketed. Mr. Roosa stated that the bonds are not to be marketed, it is intended to be a loan between town and CRA.

The Council reconvened as the Town Council.

XI FIRST READING: ORDINANCE ESTABLISHING COMPENSATION FOR THE TOWN COUNCIL

Mayor Cereceda read the titles.

Mr. Roosa stated that the Council needs to decide what section two of the ordinance shall be before it is brought to public hearing. Mayor Cereceda asked what the Town Council thinks the compensation should be. Mr. Reynolds suggested \$100/month. Mr. Mulholland stated that since he voted against compensation he would not participate in naming any numbers. Mr. Murphy suggested the original range offered by Ms. Cereceda of \$8,000 – \$12,000. Mr. Murphy stated that there was also discussion of additional compensation for mayor that many municipalities will do, even structured as our own, not as strong mayor, but as elected mayor from council. Mr. Murphy thought that that is reasonable. He realizes that the mayor puts in a lot more time than the rest of the Council. He stated that Marco Island's mayor makes \$1,500 more than council members. Mayor Cereceda stated that she didn't bring the matter of additional compensation for the mayor, because she initiated the ordinance and she is currently the mayor. It is an honor for her to serve as mayor, but she didn't realize that there were so many hours needed. Mr. Murphy stated that he does a lot of extra things as a Council member, as does Mr. Mulholland and the committees he serves on. Mayor Cereceda's hopes were that whoever sits as mayor hopefully will continue to be active as she is. Mr. Hughes stated that he also agrees that the mayor's salary be more than the Councilman's salaries. Mr. Murphy suggested \$8,000 per Council member with no additional salary for mayor. Mr. Hughes suggested \$7,200 per council member and \$8,400 for mayor.

Motion: Mr. Hughes made the motion to approve \$7,200 per Council member and \$8,400 for the mayor. Seconded by Mr. Murphy. Opposed by Mr. Mulholland and Mr. Reynolds.

Mr. Roosa amended the ordinance that was brought to council to now read that all council members except the mayor be paid \$600 per month and the mayor to be paid \$700 per month. Public hearing was set for August 31st at 6:30 p.m.

Discussion: Mr. Reynolds stated that the Town is paying Mr. Dover \$130 per hour, Mr. Spikowski is being paid \$85 per hour, and Ms. Cunningham is being paid \$75 per hour and any other help they have will make \$30-50 per hour; even though he is not in favor of council being compensated, he does not think this amount is out of line.

XII FIRST READING: ORDINANCE AUTHORIZING THE PURCHASE OF 8LL4 (MOUND HOUSE)

Mayor Cereceda read the titles. Public hearing was set for August 31 at 6:30 p.m.

Mr. Roosa stated that some changes to the contract and a more recent copy will be given before the meeting. The first proposal was very favorable for the town because it was prepared by the representatives of the town and when it got to the seller, they thought it was going to be net to the seller. In a normal real estate transaction, the seller pays title insurance and the stamps on the deed, etc. and they don't want to do that. Since it was still under the appraised value, the Town has agreed to those changes. Don Morrow, from the Trust for Public Lands, was also present. Mayor Cereceda thanked Mr. Morrow for all of the work that he has been doing on behalf of the Town. Mr. Morrow stated that sale has been going on since March of 1996 and he believes that we are finally getting close to an end. He has been talking between

lawyers, and thinks with documents the Town currently has, as amended, they have the answer. The Long estate has agreed to go forward.

Mr. Hughes asked if there any contingencies that could occur, such as a lapse of time, that could cause us to purchase the land and the grant has lapsed. Mr. Morrow stated that he didn't think so, the Florida Communities Trust grants lapses on a regular basis, but the Town has the opportunity to extend it if you are working in good faith and we have explained the situation. All of the really important things seem to be in order and will be taken care of during the due diligence period. These are mundane things: survey, environmental audit, termite reports, and are things we should be working on. Mrs. Segal-George stated that the Town currently has two appraisals and a review appraisal that was done by FCT and the survey work has been done and the title work has been substantially completed. Mr. Morrow stated that we have been awarded the grant. Mr. Hughes stated that neither the contract nor the lease are executed documents. Mr. Morrow stated that these documents will be executed by the Florida Trust for Public Lands and the Long Estate. There will be an assignment and the Trust for Public Lands will assign its rights in these documents to the Town of Fort Myers Beach. Mr. Hughes wondered if the Town would be in a strange position in accepting a contract and lease that hasn't been executed. Mr. Roosa stated that they can't assign an assignment until they have a contract. The Town will hold the assignment until the others are signed. Mrs. Segal-George wanted to comment that the quest for the Mound House started early on in the life of the Town at a time when we really didn't have the time to work on it. Ted FitzSimons convinced Mrs. Segal-George that we needed to do something to save it and the council has been very supportive. Mrs. Segal-George stated she has never tried to acquire property that has taken so long. Mr. Mulholland congratulated Mrs. Segal-George for her continued efforts on behalf of the Mound House purchase. Mr. Hughes questioned whether the wording must read purchase of 8LL4. He would like to change it read "authorizing the purchase of the Mound House with 8LL4 in parenthesis. Mr. Roosa stated that the "Mound House" has no legal significance and he would put "commonly referred to as the Mound House". Mr. Hughes also questioned whether the section authorizing the purchase say more than "make the deposit", he wondered wasn't the Town authorizing the Town Manager to enter into executing the assignment and contract of the lease. It seems as if the deposit is a supplemental step and first you accept the contract and the lease. When referring to the deposit, the wording states that the Town Manager is directed to make the additional deposit required under the attached contract. Mr. Hughes thinks it should make reference to the authority to execute the acceptance of the contract and the lease which includes making the additional deposit on the contract and to take such other action and make any payments required to consummate the purchase of the Mound House. Mr. Roosa changed the item to read "the Town Manager is authorized and directed to make the additional deposit required on the attached contract, execute the contract and consummate the purchase".

XIII RESOLUTION APPROVING THE LEASE OF 8LL4 (MOUND HOUSE)

Mayor Cereceda read the titles. Public hearing was set for August 31st at 6:30 p.m.

Mr. Roosa commented that the lease is the same and only the contract has been changed. The provision authorizes the Town Manager to execute the lease when it has been properly executed and assigned over to the town and take possession at that time. Then, that lease is subject to the contract itself, which we will have a sixty-day period to make our determination. If at the end of that sixty-day period, we determine that we don't want to buy the Mound House, then we have to give up possession under the lease. If we purchase the Mound House, after the public hearing on the 31st, we would then continue under the term of the lease. The lease will start when it is signed by all of the parties and signed by the Town.

Motion: Made by Mr. Mulholland, seconded by Mr. Murphy. Passed unanimously.

Discussion: Mr. Hughes wondered if the Town, as a municipality, would be exempt from sales and use taxes. Mr. Roosa responded that if it turns out that the Town is exempt, then the Town won't have to pay sales tax, but we have to have the burden before we could qualify for an exemption. If the land owner pays the sales tax, then there would be no exemption, but by contract, we accept that burden and then we may qualify. Mr. Roosa also stated that this would be covered under our Florida League of Cities insurance policy.

A. OLD BUSINESS

A. REPORT OF THE SPECIAL COUNSEL

Mr. James Scarmozzino completed his report on Lena Heyman and Johanna Campbell, members of the LPA. What he attempted to do in his report was indicate his findings of fact that he has developed on this investigation and the applicable law that applies to these matters. The initial issue concerns conversations that Ms. Campbell had with a private citizen, Al Van Horn. The second matter deals with conversations that Lena Heyman had with Jennifer Kaestner, a private citizen, after a vote was taken at the LPA. The issue before the special counsel was: was there any violation of any type of code of ethics or standard of conduct that is applicable to the members of the LPA through Chapter 15? Chapter 15 states that a LPA member will forfeit their office if they violate any standard of conduct or code of ethics established by law for public officials. They are public officials according to the Statutes that are applicable here. There are two Statutes that are applicable: there is a code of ethics for public employees and there is an adoption of the sunshine law, adopted in 1996, that resolution adopted some section verbatim from the Sunshine Act of Florida Statutes. In reviewing the facts, Mr. Scarmozzino didn't think there was much dispute in the facts. Mrs. Kaestner wrote a version of events that she perceived concerning her conversations with Mrs. Heyman and her conversations with Mr. Van Horn. Mr. Scarmozzino spoke with Mr. Van Horn by telephone, and had spoken with Mrs. Kaestner about their conversations. Both Mrs. Heyman and Ms. Campbell have attorneys and Mr. Scarmozzino has had extensive conversations with their attorneys concerning their client's versions of the events that happened in this particular issue. Basically, Mr. Van Horn agrees with everything Mrs. Kaestner said. The facts are that the vote before the LPA on the SandBar proposal was to occur on March 31st, 1998. There was a vote on that day. On March 30th, the day before the vote, Mr. Van Horn decided to contact various LPA members to render his opinion on this SandBar proposal. He indicated to Mr. Scarmozzino that he did contact various members of the LPA and that he definitely spoke with Ms. Campbell and was 99% sure he spoke with Mrs. Heyman. When Mr. Van Horn contacted Mrs. Heyman and Ms. Campbell, he indicated that he was opposed to this project and that he was interested in finding out any information he could get about what private citizens were interested in this proposal and could he contact these individuals to register his opinion and possibly persuade people to agree to his particular proposal. The critical question in that conversation was when Mr. Van Horn contacted these members, specifically Ms. Campbell and Mrs. Heyman, was there any conversation voicing their opinions on what they are voting for and did they try to influence Mr. Van Horn about what his opinions were and did they register any opinions at all to Mr. Van Horn. If they did, that would be improper and a violation. It should be noted that in the Code of Ethics that apply to Ms. Campbell and Mrs. Heyman the main thing that is talked about is bribes -- conflicts of interest where the LPA member has an interest in the project. This is a narrow issue here because there is no allegation that Mrs. Heyman or Ms. Campbell had any financial interest in the project, no one is alleging that they improperly influenced their votes. It is really a situation when Mr. Van Horn contacted Ms. Campbell to get a list of people he could contact to find out what was going to happen with this project. In fact, that is what he did and one of the people was Mrs. Kaestner. He does say that Ms. Campbell gave him Mrs. Kaestner's name as someone he could contact. Mrs. Kaestner's and Mr. Van Horn's conversations do coincide. Mrs. Kaestner makes an allegation that Mr. Horn was prompted by Ms. Campbell to make the call. Mr. Van Horn adamantly denies that Ms. Campbell made any opinions as to what she thought about the project and it wasn't her idea to contact Mrs. Kaestner, all she did was give him the names of people she had heard from and suggested that they might be people he could contact. Based on those facts, Mr. Scarmozzino could not see any violation of the Code of Ethics. It raises another issue, based upon his investigation, that the Town Council, by resolution, has incorporated certain sections of Chapter 286 concerning ex parte communications. In order to prompt conversations with members of the Town and the LPA, a resolution has been passed that says that Council Members can have ex parte communications, however, Council Members have a duty to disclose these parties prior to the vote. What the Town needs to decide is whether each time the Council votes on something that they need to disclose and make it a record of who they spoke with, what was the nature of the conversation, and what the substance of these conversations were. There is no dispute that Mrs. Heyman or Ms. Campbell indicated about these ex parte communications with Mr. Van Horn. Initially, Mr. Scarmozzino wasn't focusing on that aspect of it, he was focusing on the influence as it related to Mrs. Kaestner. Mr. Scarmozzino thinks that it is too unweildly that every time before you take a vote, that if you have these procedures that people can render their opinions, they have to specifically state who made the call, what the

substance of the call was and what their opinions were. If you look at the chronology of the events as it pertains to Mrs. Heyman, there is no disputing the facts. The vote was taken on March 31st, and at that hearing Mrs. Kaestner and Mr. Van Horn testified and the rezoning for the Sandbar was approved. On April 20th, the matter was brought before Town Council and the Town Council approved. In between those two dates, Mrs. Heyman had a conversation with Mrs. Kaestner. Mrs. Heyman had already cast her vote opposing the project. After that vote was taken, she then contacted Mrs. Kaestner to try to indicate to Mrs. Kaestner what her views were specifically about the SandBar proposal. The issue is once a LPA member has voted, do they have the right to voice their opinion? Mr. Scarmozzino couldn't find anything that said Mrs. Heyman couldn't come to the Town Council and testify to what her views are. It would be unusual, but as a private citizen she could render an opinion. The question is whether she can voice her opinions to private citizens once her vote is completed. Mr. Scarmozzino could not find any statute that addresses that particular issue, but Mr. Scarmozzino believes that the Council would be treading on shaky ground concerning first amendment privileges if they plan to restrict someone once they complete their vote. Mr. Scarmozzino believes that the murky issue is the ex parte communication issue. Mr. Scarmozzino doesn't believe that the spirit and the intent of the resolution was to prohibit and have someone lose their term on the LPA because they didn't reveal an inconsequential conversation that probably happens on a regular basis. Under the spirit of that resolution, technically both Ms. Campbell and Mrs. Heyman had a duty to reveal that they had the contacts before the vote. In reference to ethical violations under the code of ethics, Mr. Scarmozzino didn't find anything that specifically applies to this type of conduct and recommended that the Council take no further action on these issues. In regards to ex parte communications, Mr. Scarmozzino feels it would be unfair to single out these two individuals based for something that is not specifically delineated which ex parte communications you have to reveal and what is the extent of what you have to reveal. Mr. Murphy inquired in regards to ex parte communications and the investigation into those, was that something that was normally done at the LPA hearings. Mr. Scarmozzino didn't have any knowledge whether in past LPA hearings that these disclosures were done in a regular basis. Mr. Hughes recalls the only time in his tenure in the LPA was when Mr. Bigelow, at the Publix hearing, specifically questioned the LPA members at the commencement of the petitioners case as to whether or not they had any ex parte communications. Mr. Hughes remembered that virtually ever member on the LPA responded that they had received telephone calls opinions. Mr. Bigelow than asked the LPA if that would prejudice their ability to render an objective petition on the matter, and all of the members said no, of course not. That is the only time that Mr. Hughes believes that any statement was made as part of the record that there were ex parte communications. Mr. Scarmozzino stated that there was a dispute between one of the attorneys, the attorney was under the misapprehension that this particular statute only applied to legislative type functions, and Mr. Scarmozzino told the attorney that he was incorrect. Mr. Murphy wondered if in two years if there were any ex parte communications disclosed by the LPA. Mr. Mulholland stated that as a former chair, communications are disclosed. Mr. Murphy questioned whether over the course of those years, that the LPA members knew specifically that they were to come forward with these ex parte communications, the same way as the Council. Mr. Scarmozzino's question was that looking in a broader sense, what is the degree of the disclosure? The members didn't do anything, the question is when I raised the issue with the council about the numbers you can call to register your opinions, Mr. Scarmozzino wasn't sure if the Council can be that diligent that they can remember every specific call. Mr. Hughes wondered if a telephone call to a Council member or a LPA that wasn't really answered, that you only had a message, only dialogue, is that an ex parte communication. Mr. Roosa stated that a call, even if it hadn't been answered, or a letter stating a view, is ex parte communication. It does specifically say that the substance of any ex parte communication with a local public official which relates to quasi judicial action pending before the official. Mrs. Segal-George stated that she had discussed in length ex parte communications and the need to disclose because there had been rumblings as to what needed to be done in reference to ex parte communications. Mr. Roosa stated that they understand the technicalities of the law in regards to ex parte communications, particularly unilateral conversations that are left on a phone message, the failure to disclose is not of the stature of an ex parte communication such as visiting the site and talking to the neighbors or having lunch with the property owner and discussing the case or any separate fact finding ex parte communication. What we have is a technical violation and it is something that should be discouraged and we need to remind everyone of the need to disclose even those brief conversations to the best of their recollection. What is relevant is the quality involved in the exparte communication. The mere contact and inquiry in regards to others who might be either for or against a project, and the fact that was not disclosed, I don't think raises itself of the statute of what would be a reversible error. If the property owner challenged

the decision of the LPA, then the issue would be what occurred, what was the conversation, what sort of facts were related and were those facts brought out at the hearing. Mr. Roosa stated that this is a very close technical violation and he would caution against it. Mr. Roosa stated the Council and LPA need to disclose as many names as they can. Mr. Roosa did not believe it to the magnitude of serious error worthy of further investigation or hearing. It was Mr. Roosa's recommendation to the Council to adopt the findings of the Special Counsel and to make a specific finding of no violation for Lena Heyman and Johanna Campbell.

Motion: To approve Mr. Roosa's recommendation was made by Mr. Reynolds, seconded by Mr. Hughes. The motion carried unanimously.

Discussion: Mr. Reynolds thanked Mr. Scarmozzino for his complete report. Mr. Reynolds stated that he wasn't surprised at the outcome, he was sure that there was a misunderstanding in what transpired. Mr. Reynolds thought Mr. Scarmozzino did a very good job of explaining the differences of opinions. Mr. Reynolds believes that the Town has two credible LPA members that tried to do the right thing, but somehow gave the appearance that something wasn't right. Mr. Reynolds stated that it is very easy to say something that can be misconstrued and Mr. Roosa has advised the Council on the Sunshine Law. In trying to live by it, sometimes it is very difficult to even talk to your neighbors about an issue, you have to be very careful about what you do and say, and even after the fact, we are very hesitant to say anything and don't want to say a lot because it may come back to us. Mr. Reynolds feels very good about the report and the outcome. Mr. Mulholland stated that he was very much relieved with the findings. He has worked with these two people and had accomplished quite a bit and he was very concerned when this came up. Mr. Mulholland also commended Mrs. Kaestner for coming forward and having the courage to follow through. Mr. Murphy also thanked Mrs. Kaestner for coming forward. Mr. Murphy stated that the Council doesn't want to discourage people to speak their mind in matters such as this. There are a lot of gray areas in this line of work. The Council encourages people to step forward and volunteer their time to help develop the town; if it weren't for these volunteers, he didn't know where we would be without their time. Yet, on the other hand, while we encourage everyone to help in these various capacities, they must also realize that they will be under scrutiny from various watchdog groups, and the Council as well. Mr. Murphy stated that with this first experience behind us, everyone is now on notice that there are people out here watching what we do, and if we are going to volunteer, or have people volunteer to serve, that they should well understand this before they give up themselves. Mr. Hughes seconded what has been said about Mrs. Kaestner. Mr. Hughes stated that although there were no sanctions imposed, he believes that something beneficial is coming out of this and that is a clear awareness of what your obligations and duties are. He suggested that a copy of the report should be submitted to the LPA and other committees to which this is relevant. Mr. Hughes also suggested that perhaps the Council take a closer look, as recommended in paragraph sixteen of the report, and revisit the Town's resolution on ex parte communications and maybe put on the agenda next fall. He believes its bad enough to have litigation on the merits, there have been cases where parties have file suit against the municipality alleging ex parte communications and the courts have reversed zoning cases by reason of those. This causes a lot of expense for the municipalities and wholly apart against what the merits may have been. What can be an innocent remark, or discussion, could have some very serious consequences along those lines. Mr. Reynolds made a comment to the public stating when you are talking to a Council Members, and the public feels that that Council Member is crossing the Sunshine Law, he hopes that citizens would tell the Council Member because he feels that the public should know by now that, that is not our intent. It is very difficult sometimes, because it makes it difficult for Council Members to communicate with the public.

The council took a break at 5:32 p.m. and reconvened at 5:52 p.m.

XV CONTRACTS

A. SPIKOWSKI AND ASSOCIATES

Mrs. Segal-George requested that the contracts for Spikowski and Associates and Lawler's Lawn Maintenance be brought back before the Council in October. With regards to Mr. Spikowski's contract, the contract that was entered into with him for the Comp Plan took it to the time that the Comp Plan was submitted to Tallahassee. As the Comp Plan comes back and the initial work and the renegotiations that

needs to be done, as well as preparing for the final hearing in front of the Council, those will all be new hours outside of the contract. Another part of the contract is the Land Development Code. Mr. Spikowski has discussed this with the LPA and has already created a plan on how to attack the Land Development Code. We have one year to redo the Land Development Code from the time it was submitted to Tallahassee. There is a plan to do considerable work this summer that will be then presented to the LPA when they come back in September. Mrs. Segal-George is proposing to pay Mr. Spikowski on an hourly basis for the work he does this summer, both on the Comp Plan negotiations with Tallahassee and on the Land Development Code. Mrs. Segal-George would then bring a contract to the Council in October. All of the work is in the Budget, it hadn't transformed itself into a contract addendum. Mr. Hughes inquired if this would be at the \$85 per hour rate, and Mrs. Segal-George stated yes, it is additional work under his existing professional services agreement and there is a cap on it. Mrs. Segal-George didn't want to keep using the funds without coming to the Council and asking for permission to pay him for the work.

Motion: Mr. Hughes moved to approve the Town Manager's memorandum dated June 24th for the additional work of Mr. Spikowski. Seconded by Mr. Mulholland. The motion carried unanimously.

Discussion: Mr. Reynolds inquired as if the Town Manager had explored drawing other people in to work on it because it seemed to him that it was getting out of hand with the price increase to \$85 per hour from \$75 per hour. It seemed to Mr. Reynolds that a contract over the summer could be negotiated more reasonably if you worked on a contract that stated a certain amount of money involved. Mrs. Segal-George reiterated what two projects need to be done and has given a price as to what has to be done. In regards to the Land Development Code, it is a really big job and Mr. Spikowski knows the Comp Plan and it has to conform with the Comp Plan, so she has not contemplated going out to bid and bringing in some other person in to the mix who doesn't have the familiarity with the Comp Plan. Part of the Land Development Code will have Victor Dover doing the graphics, but that will be part of the contract will be brought forward in October. Mr. Spikowski has done a lot of code and ordinance drafting and Mrs. Segal-George thinks he does a good job. Mr. Reynolds inquired as to if Mr. Dover would be included in this contract? Mrs. Segal-George stated not at this time. Mr. Reynolds questioned why Mr. Dover deserves \$135 per hour. Mrs. Segal-George stated that she is only asking for Mr. Spikowski's hourly wage at this time. She has included his old contract as an example. Mr. Mulholland agreed with the Town Manager that it doesn't make sense to contract out to anyone else at this time, with the fine work that Mr. Spikowski does and the familiarity he has with the Comp Plan. It seems like a reasonable step to do.

B. LAWLER'S LAWN MAINTENANCE

Mrs. Segal-George stated that Mr. Lawler's contract expired and she would like to bring a new contract in October that will include Times Square and the Mound House. Mrs. Segal-George would like to extend this contract as they currently are until she is able to renegotiate this contract in October.

Motion: Mr. Murphy moved to approve the extension of Mr. Lawler's contract. Seconded by Mr. Mulholland. The motion carried unanimously.

Discussion: Mr. Hughes questioned whether the staff was satisfied with Mr. Lawler's service. Mrs. Segal-George stated yes. Mr. Hughes thinks there is a lot of trash around the trees and pavers. Mrs. Segal-George stated that they have had powerwashing in the evening. She stated that there is a problem with the maintenance of the pavers. The pavers need to be powerwashed with hot water and we need to do it at a time not to disturb the business owners. The Town has plans to seal the pavers to prolong the pavers. Mr. Reynolds stated that he has heard problems of an old beat up taxi that pulls into the Square to wait for another fare and questioned whether any problems with oil from cars in the Square had been reported. Mr. Lawler stated that he wasn't aware of a problem.

XIV. OLD BUSINESS (CONTINUED)

B. PROPOSAL FOR PLANNING SERVICES FOR OLD SAN CARLOS/CRESCENT STREET

Mrs. Segal-George stated that this is a proposal from Victor Dover and Bill Spikowski to do a more detailed plan for Old San Carlos and Crescent. One of the big problems that Mrs. Segal-George has had in the overlay area is with the Wallace Roberts Todd plan that we inherited does not have the necessary detail in a lot of ways. Right now there is tremendous development pressure on Old San Carlos and we have gotten a bid from FPL in regards to undergrounded utilities. The merchants in that area want to proceed very quickly, but we don't have a very complete plan in regards to how we put together landscaping,

sidewalks, where sidewalks should go, should we do on street parking, etc. and is WRT's concept to have parking behind the building. There is a number of those kinds of issues with regards to Old San Carlos and Crescent and Mrs. Segal-George doesn't have the proper detail to recommend anything or similarly, after the Council has the design review committee, as far as them having the necessary information to be able to make certain decisions. It has been a big problem for the Town. Early on there was a feeling that we took WRT study even though we knew phase two was to have it basically further engineered and designed and that we would do the best we could to start with. We have currently reached a point where everyone wants more than just doing the best we can, and to do that we will need to have a better detailed plan to show people what can be done on those two streets. That is what the genesis on this proposal is. The LPA submitted a resolution with regards to their transmittal of the request for the design review committee, they also transmitted a request to do this kind of work. Mrs. Segal-George stated that the funding source for this proposal would be from the CRA and it is shown in the CRA budget. Mr. Reynolds inquired where was the money coming from. Mrs. Segal-George stated that this would come from the CRA budget, from the TIF. Mr. Reynolds referred to the page that stated extra reimbursement for additional work that they may become involved in. The statement read \$175 an hour for Mr. Dover and \$130 for Mr. Spikowski, \$100 per hour for staff designers and \$75 and \$35 per hour for the clerk. This figures out to be about \$500 per hour, and if they work eight hours, it can be quite expensive. Mrs. Segal-George stated that that is for additional work if the Council asks for it. Those dollars are dollars we paid Mr. Dover for his work on the Comp Plan. Mr. Hughes questioned that under the original contract, Mr. Dover was receiving \$130 per hour. His rates are raised by 35%. Mr. Hughes stated that this is quite a discrepancy. Mrs. Segal-George stated that she had not negotiated this contract; this is their proposal. Mayor Cereceda stated that this is actually breaking it out to \$175 per hour for Mr. Dover and his partner. \$130 is for the other gentlemen and Mr. Spikowski. Mr. Reynolds stated that initially we are obligating ourselves to \$84,000, plus the \$6100 which brings it to around \$90,000. This \$515 per hour is in addition to other things that need to be done. Mrs. Segal-George stated that she would ask them to honor the same hourly rates as in the original contract. Mr. Hughes questioned whether these sections would even apply or can they all be done within the retainer. Mrs. Segal-George stated that this is not like the contract we had on the Comp Plan, it is very different. Mr. Hughes suggested that Mrs. Segal-George inquire as to the fees set forth, what hourly rates he has billed into the \$83,000. If it is the same as is what is on the earlier page, he would like to see the increase compared to COLA. Mr. Murphy stated that he would echo the sentiments made by Mr. Hughes. He believes that we have been pretty good clients. Mrs. Segal-George questioned if they are agreeable to the same rates as in the previous contract, and if those are the rates that are being calculated to determine the items in the payment schedule, is this proposal acceptable to Council? Mr. Hughes stated yes, it would be to him. Mrs. Segal-George stated that she will bring this back to the Council at the end of August with the items cleared up.

A. PEDESTRIAN OVERPASS

Mayor Cereceda stated that according to documents from Mr. Weibe, he cancelled his agreement with Mr. Fowler. Mrs. Segal-George stated that we had a public/private partnership with them and we no longer have a private piece to it. Basically, in talking with Mr. Fowler, he is agreeable to terminating the contract at this time. The Town has not received any work or bills for the work from Mr. Fowler. In addition, there is a letter from Mr. Weibe giving Bill Van Duzer power of attorney to represent him in this matter. Mr. Van Duzer is willing to supply the preliminary work at no cost, and Mr. Van Duzer would like to address the council as to this matter. There are two parts to this: one, the Council needs to cancel the contract with Mr. Fowler and the second part would be to talk with Mr. Van Duzer and hear what he has to say in regards to Mr. Weibe. Mayor Cereceda asked if the Council has a motion to cancel the contract, would there be any liability to the Town? Mr. Roosa stated it would be better if Mr. Fowler came forward to cancel the contract. In Mr. Fowler's June 24th letter, he stated he would go either way the Council wanted. Based upon that, the Town could accept his agreement to cancel.

Motion to cancel the agreement: Made by Mr. Murphy and seconded by Mr. Mulholland. The motion carried unanimously.

Discussion: Mr. Hughes questioned if under the contract there was any money owed? Mr. Roosa stated that it was a 50/50 deal, so if there were any services, we agreed to pay half. Mrs. Segal-George stated that no work or bill has been presented to date. Mr. Van Duzer brought forward information regarding engineering and architectural work on a new pedestrian overpass. He has put together a ballpark figure on what this would cost. It is a fairly easy thing to do, but there are a lot of things that need to be considered. The engineering firm Mr. Van Duzer worked for is familiar with this type of project. It is

basically using the Seafarer's Mall side with an overpass over the roadway as the walkway is now positioned and to the island between the parking lot, West Coast Surf Shop and the trolley stop. We would need to work out the ownership of the plat of ground. There were other discussions of making it a two- or three-tiered walkway, but they were costly. There would be handicapped elevator on both sides and it would be completely covered to avoid any incidents. There would be a stairway that would wrap around the elevator on the Gulf side and the elevator on the Seafarer's side would probably be provided by Mr. Weibe. The engineer has discussed several ways to do this. Tubular steel framework would be used and it would be done in three sections, spanning sixty-two feet and it can be done in a single span three section unit and then it would be improved to look comparable to the drawing. It is very simple. Total cost would be between \$400,000 and \$500,000. Mr. Mulholland asked if that was including the land acquisition. Mrs. Segal-George believes that the easement is town property, but she is checking into it. Mr. Van Duzer had only worked on this project for a week and a lot of work would need to be done on it. If the Town moved on it, property acquisition would need to be taken into consideration. Mr. Mulholland questioned if anyone else would share in the cost and Mr. Van Duzer stated that Mr. Weibe has agreed to share in the cost. Mr. Weibe has another project he is interested in which would require an elevator so he would be willing to pay for that on the existing landing at Seafarer's. Mr. Reynolds asked if you were walking down the sidewalk, and wanted to cross, would there be stairs? Mr. Van Duzer stated that there would be stairs at both sides, and an elevator at Seafarer's and there are existing stairs and pedestrians would walk across a couple decks. Mr. Reynolds questioned whether it would be possible to have stairs from street level. Mr. Van Duzer stated that Mr. Weibe is hoping for additional business by having people come up the stairs to his shops. If Council were to take that away, Mr. Van Duzer is not sure that Mr. Weibe would be interested in losing this extra business. Mr. Hughes questioned what Mr. Weibe's obligation was under the former contract. Mayor Cereceda stated that the Town agreed to pay 50% for the feasibility study, and after reviewing the materials to see if it was in fact feasible, we would decide where to go from there. Mr. Weibe would then be a partner with the Town in the actual construction of the overpass, but not necessarily 50/50. Mr. Mulholland asked Mr. Van Duzer if it was feasible and if these are ballpark figures that the Council can think about. Mr. Van Duzer stated that it is feasible, but the Council needs to decide if the use is worth it. Mr. Van Duzer looked at all of the items that needed to be considered and there are a multitude of problems that need to be considered: existing underground utilities, access agreements that would have to be issued, etc. The engineering and the construction costs are not a difficult thing to do. Mr. Mulholland agrees with the scope and magnitude of the study, and the dollars concerned, and that the Council should review it again in August. Mr. Mulholland asked the staff to see what additional information can be gathered. Mr. Van Duzer stated that the Council needs to decide whether they want to go forward, basically the same things that were discussed with Mr. Fowler. The difference is that now you have a picture and a ballpark figure. Mr. Mulholland stated that the Council needed more information. Mayor Cereceda asked that this item be placed on the agenda to enter into a contract with Mr. Weibe and Mr. Van Duzer. Mr. Murphy stated that our original contract with Mr. Fowler was for a specific amount and what Mr. Van Duzer is saying is that the building of it is feasible, and with that in mind we have to hear more about it and decide if this is the route we want to take. The town has saved money on the feasibility study. Mr. Murphy questioned whether we were going to accomplish the goal we have in mind to eliminate the traffic light and the pedestrian crosswalk. Mr. Hughes wondered if there is not something that can be done over the summer to move this along. Mayor Cereceda asked if there was a way for us to show some direction that we are still interested in pursuing this. Mrs. Segal-George asked Mr. Van Duzer if he had actual designs and Mr. Van Duzer stated that he has a rough form, and the engineering work was done gratis. If the Council wants an engineering firm to go ahead, the Council will have to spend money to pay them to do the work. Mr. Van Duzer thought it was more reasonable to have some kind of price and have someone do the basic work which has already been done at no cost to the Town. Mr. Hughes asked if the Town could agree to pay 50%, provided Mr. Weibe contributed 50%? Mrs. Segal-George asked Mr. Van Duzer if a survey had been done and Mr. Van Duzer answered that they would need to do survey. Mrs. Segal-George stated that the Council can authorize a survey. Mr. Reynolds corrected a figure that stated the Town gave a contract for a feasibility study for \$5,100 and that the Council didn't include the extra \$4,000 that Mr. Fowler was including. Mr. Fowler was working with \$5,100. Mrs. Segal-George stated that beyond the survey engineering would be needed to go to the construction phase to go to bid. Mayor Cereceda inquired as to the timeline. Mr. Van Duzer stated that it would take sixty to ninety days. Mayor Cereceda stated that the first time the Council could look at it would be in August because we would want to move forward and not start construction in season. Mr. Murphy stated that it would take sixty to ninety days just for the

engineering drawings. Mr. Van Duzer told the Council that it would take approximately eight months for bid and land acquisition. Mr. Roosa suggested that one of the things that the Council will need is a survey and that is public property. Mrs. Segal-George said that a survey had been done down where the Barking Shark and around the back of Norm Primeau's property, but she didn't believe it extended down to the opening of the Square and where the bus stop is. Mr. Roosa stated that the survey is going to be a critical instrument and something that the Town is going to need for design purposes and also for the determination of land acquisition. Another concern that Mr. Roosa has is that the Council has indicated a desire that the traffic light and crosswalk be eliminated, if that's true, the Town needs to have a design that will facilitate the public from going back and forth. It may mean something different than going through the existing facility. There should be an opportunity for more public input, either through the CRA, LPA or other business organization in Times Square to give their comments on the impact it will have on the businesses and there may be another source of funds. Mr. Roosa's suggestion is to go ahead and survey the property. That is a positive action on the Council showing the desire for the facility and it is something that can be useful to the Town. Mayor Cereceda directed Mrs. Segal-George to have it surveyed. Mrs. Segal-George stated that the Town has asked for the information, as well as legal descriptions, but we have been unable to receive the information from the County. Mr. Van Duzer stated that Mr. Fowler may have already done the survey, the Town could check and pay him for it. Mr. Mulholland questioned that we are going under the assumption that the pedestrian overpass is a good thing and it will help traffic flow. He stated that he supported it very strongly and tried to move it along, but Mr. Mulholland thinks that as a group we should decide if we want to go forward and decide if this is the route we want to follow. He is having second thoughts about the project and needs to review the information. Mr. Reynolds stated that he agreed with Mr. Mulholland's feelings and he didn't know how the Council could possibly enter into a project for crossing a street without having stairs at the street level. He asked Mr. Van Duzer about the possibility of using I-beams with concrete on them and would that add to the cost. Mr. Van Duzer stated that tubular steel are used in Atlanta, they are not very attractive, but there are ways to fix them. Mr. Murphy stated that he needed to know if everyone is still interested in proceeding in this project. If this is a worthy thing to explore in the hopes that it will reduce traffic, and we are in agreement, then the Council should pursue this. He stated that he does think this is a necessary thing to pursue. Mr. Reynolds does not agree necessarily, if the Council is going to ignore the part of pedestrians crossing and not having stairs, he thinks it is out of line. Mr. Hughes stated that he had reservations at the time it was brought to the LPA and he has several concerns which included cost and aesthetics. The others that he has seen haven't been very attractive, but he is impressed with this drawing. The other concern he had was that people will still run across the street and not utilize it. Something will be needed to bar people from darting across the street because it is a bad corner, it is not visible and if traffic is going quite fast and someone decides to dart across the street, it could be a dangerous situation. Mr. Hughes is in favor of moving ahead with this project. Mr. Mulholland stated that he doesn't have the enthusiasm that this would help things. He feels this is a large commitment and public safety is another issue. The Council has not had information from the Public Safety Task Force or have not had public hearings. Mr. Mulholland is for moving forward, but not as enthusiastically as before. Mr. Murphy stated that there is not one sure fix with traffic, but there could be a combination of many things and this would be one piece of that. This would be one way to start. It will be an ongoing thing, but we need to try things. The Council can't sit back and not do anything; he believes the Council should further explore and continue on this path.

Motion: To approve a survey of the area which will be valuable information for the Town no matter what the Council decision is, and move the issue of the Pedestrian Overpass to the Public Safety Task Force and have them report back to the council in August, assuming there is not a survey by the Fowler Company. Moved by Mr. Mulholland, seconded by Mr. Hughes. Motion carried unanimously.

Discussion: Mr. Reynolds didn't mind moving ahead as long as there is no commitment.

B. REMAINING CHARTER ISSUES

Mrs. Segal-George stated that staff had placed all of the minutes that they could find that discussed the charter issues, but the reality of the situation is that we have to decide if there are specific items to be sent to referendum. After this election, the Town won't have another election for two years, Council may want to reconvene the Charter Commission, or appoint a new Charter Commission, and have them review the remaining Charter issues and basically start again. There has been an attempt to keep going over these items from the public hearings and the Charter Commission and there really isn't enough time to reach any decisions. Mr. Mulholland agreed with the Town Manager, he is not satisfied that all

recommendations by the Charter Commission have been taken care of, or properly looked at, so it is his opinion that the Charter Review Commission be reconvened. Mr. Gucciardo stated that if there was anything pressing on this, it needed to be handled before the August 1st deadline for the election. Mayor Cereceda stated that if there was something really pressing, we would have done it for the next election. Mrs. Segal-George stated that it could go to referendum next year if the Town was willing to pay the extra fee for our own election. Mr. Roosa stated that if it turned out to be an issue of such importance, the Council could make that decision at that time. The alternative would then be to set it for the following year. Mr. Gucciardo stated that he didn't mean to indicate that it wasn't a good idea; just the mechanics of reconvening the Charter Review Commission before a November election would be confusing to the residents.

Motion: To reconvene the Charter Review Commission in the fall. Made by Mr. Mulholland. Seconded by Mr. Reynolds. Carried unanimously.

XV. NEW BUSINESS

A. REQUEST FOR CULTURAL EVENTS FUNDS FOR MAINSTREET

Jean Mathew reported that one of things the Main Street program does is to try to support historic preservation of houses, building, sites, etc. So far the program hasn't done anything to support any of the historic areas of the island. She has put together an old fashioned ice cream social and she is asking for funds for this project. Ms. Mathew has received donations of the machines for the ice cream. She has put together a gross estimate for this project and is hoping for \$2,685 for the ice cream social, at the maximum. She is asking for front money and the money would be reimbursed to the town. She is hoping to get people to come to the historic cottage. Mrs. Segal-George stated that there are funds available for this request. Ms. Mathew also requested \$800 for the community theatre to do something before Council meets again. It may be that that amount may not be used and would be returned to the Town. There will also be a string quartet at Villa Santini in August.

Motion: To approve the advance the funds to Main Street set forth as stated on the memo: \$2685 for the ice cream social, \$800 for the community theatre group, and \$2500 for the string concert, subject to reimbursement. Made by Mr. Hughes, seconded by Mr. Reynolds. Motion carried unanimously.

Discussion: Mr. Mulholland commended Ms. Mathew on her work and fine efforts. Mr. Murphy also wished Ms. Mathew success on the events.

B. KIDS INTERVENTION PROGRAM

Dick Tafel, Minister of New Church of Southwest Florida wanted to share information on the Kids Intervention Program. He also introduced the Church President, Sandy Schoefield. This program has been developed because they have seen the need for such a program and this has been endorsed by many agencies as well as to what the Council is doing. The Church is a new congregation on the beach. The program came about when Reverend Tafel drove with the Sheriff's Department one evening. Reverend Tafel told the story of a 12-year old girl hiding in the bushes. The beach has a lot of attractions, but a youngster alone at night is a disaster waiting to happen. When the parent picked up the girl, she stated that she didn't "know if she should let her come home". The deputy and Reverend Tafel were shocked and the mother agreed to take the child home. Several other incidents like this occurred while riding with deputies. One of the members of our church donated money for children to be used in emergency situations. From that the idea of the intervention program grew. The Congregation voted to pursue getting information on how best to proceed. Reverend Tafel contacted Beach school, Bonita Middle School, Cypress Lake High School, and Bay Oaks, as well as the fire department, the sheriff's office and the Lee County Juvenile Justice Department. Sandy Schoefield and Reverend Tafel have been working on how best to pursue and implement this program. They were advised by the Lee County Juvenile Justice Department not to become part of their group, but to form their group, and still be part of their board. This group makes recommendations such as the Juvenile Justice Assessment Center, to push cooperation among the various agencies and coordinate and endorse programs. Reverend Tafel's group has been working on this for eight months of work and they look forward to having this operation up within the next few months. The program entails trained people being available 24 hours a day to listen to a young person, be an advocate, intervene when asked and be a friend to a young person in need. They are currently in the process of creating a pamphlet and business cards giving pager and message line numbers. Children would be taken to the substation and then given the opportunity to call a program member and listen to both the child and

parents side of the problem. We would then follow up with them to see how they are doing. The last piece of the plan calls for an advisory board to be made up of as many groups as possible. The purpose is to share information on how this program may become more effective and provide support to the schools, the sheriff's department and other organizations. Mr. Hughes stated that it sounds like a great program and wished the Church good luck.

C. VIRTUAL ARCHAEO-ECO TRAIL

Mrs. Segal-George stated that this will be placed on the web page and it will consist of twenty pages of archaeological and ecological information that is going to center around the map included in the packet that will give information as to the sites on the island. It is very important to the Town because we have done a lot of talking about marketing and attracting people who are interested in preserving our resources. This trail gives us something visual to use in grant writing, it will allow us to show hoteliers and merchandisers in regards to the future of the island. The budget needed is \$2000 for web page mechanics and \$2000 for text writing of the twenty pages. It will be a collaboration between Joel Belucci, Arden Arrington , Terry Cain and Eve Haverfield, members of the Marine Resources Task Force.

Motion: To approve the virtual archaeo-eco trail budget by Mr. Mulholland, seconded by Mayor Cereceda. The motion carried unanimously.

D. PARASAIL LETTER

Mrs. Segal-George stated that a meeting was held a few months ago to discuss what has been happening with parasail operators. We had some people who attended who had expertise in the field from other places. They have come up with a few items that they thought would make the parasail situation safer. They have put themselves further offshore. The Council will have to ultimately amend the ordinance. The operators wanted to show the Council in advance that in a sense they were policing themselves. Bill Perry stated that after the meeting, the group agreed on 1000 feet offshore for all parasail activity. The FAA sent a newsletter stating that anything flying above 500 feet would be on a tagged line, anything 500 feet or under would be fine and the operators decided to put that in the letter. The way they fly, it is usually at a 40 degree angle. The manufacturer stated that they would still be under 500 feet limit. Mr. Mulholland questioned how many operators there are and Mr. Perry stated that there are five and Ted Primich needs to sign the letter. There is one operator who did not show at the meeting, so they felt that he wasn't interested. Mr. Hughes commends people in commercial enterprise for imposing voluntary restrictions on themselves that exceed the current ordinances. Mr. Roosa was directed to come forth with a new ordinance amending the current one incorporating the changes.

XVI. TOWN APPOINTMENTS

A. LPA VACANCY

Mayor Cereceda nominated Mr. Bonkowski and was seconded by Mr. Mulholland. The motion carried unanimously.

XVII. TOWN MANAGER'S ITEMS AND REPORTS

A. MOUND HOUSE OPERATION

Mrs. Segal-George is asking to be able to use Arden Arrington on an hourly basis at \$35 per hour, up to \$5,000 maximum to maintain operation of the Mound House. After the purchase is complete, she will bring a contract forward.

Motion: To approve the Town Manager's request was made by Mr. Mulholland and seconded by Mr. Murphy. The motion passed unanimously.

B. LETTER FROM MR. WEIBE

Mrs. Segal-George stated that Mr. Weibe would like to build a restaurant under the Seafarer's Mall. Under the overlay ordinance, Mrs. Segal-George has the authority to approve it administratively. Mr. Weibe is arranging for parking off-site. He is talking about major parking (103 spaces) and he has entered into agreement with Mr. Richard to use the Old Kentucky Fried Chicken place as the parking lot for this restaurant. Mr. Van Duzer was present to discuss this with the Council because he is involved in this with Mr. Weibe. Mrs. Segal-George wanted to bring this forward to the Council because of the scope and

magnitude of this 150 seat restaurant. The zoning is appropriate for a restaurant assuming he has sufficient parking. Mr. Weibe would need to provide signage to show where his parking is. The closest he could get for parking would be something on Old San Carlos. Mrs. Segal-George's inclination would be if they can provide parking, it would okay. There have been issues raised about the overlay and about parking. This is an example of absent a more detailed plan, she has no reason to believe that Mr. Richard's lot couldn't be used for parking. The key issue Mrs. Segal-George has is that if the parking would cease to exist, the restaurant would need to be closed or the owner would need to secure alternate parking. Mr. Van Duzer stated that this a simple thing to do; Mr. Weibe would like to develop the underground to a restaurant and also to use the rooftop for dining. They have opted into the CRA plan. A third of this required parking is credited because they have opted into the plan. Mr. Weibe has authorized this restaurant and put it in for permitting and the work would be completed by first of December. Approval is needed from the Council. Mr. Weibe would provide off-site parking in that area and there is talk that they may be able to do valet parking. Mrs. Segal-George and Mr. Van Duzer both agreed that it was important for the Council to hear the plans before moving forward. If all of the criteria needed from the staff and building department is met, Mr. Van Duzer thinks it can go forward. Mr. Weibe realizes that if he loses the parking, he would lose the restaurant. Mr. Reynolds inquired as to the number of parking spaces needed, and Mr. Van Duzer stated that he believes 103 spaces would be required. Mrs. Segal-George has a parking calculation for Dusseldorf's and the stores that may be in error. The restaurant is in the 69 or plus spaces. The existing shopping center is short three parking spaces. Mrs. Segal-George did not want to approve administratively without direction from the Council. Because of the magnitude of this request she felt that Council should be aware and to see if Council had a strong desire not for this to happen. Mr. Mulholland and Mayor Cereceda stated that they didn't have a problem with this proposal. Mr. Hughes stated that he didn't have a problem with it either, but asked what is demanded in the way of firm of documentation to verify and establish the availability of off-site parking. Mrs. Segal-George stated that she wanted a signed agreement between Mr. Weibe and Mr. Richard. The part that disturbs Mrs. Segal-George is still the big picture. It is very difficult when you don't have any type of detailed plan and to keep things moving. There has been a lot of discussion regarding parking. Mr. Hughes suggested a restricted covenant stating that it can only be utilized as the availability of parking for that principal use. Mr. Roosa stated that it is more important that there be a document recorded by the owner of the restaurant stating that they will provide these spaces rather than a document from the parking facility. Mrs. Segal-George stated one of things that she was concerned with was if a plan came forward from Mr. Richard to develop his property. Mr. Roosa suggested making the restaurant owner provide parking somewhere, not specifically at Mr. Richard's parking. Mr. Reynolds stated that he thought it was good that Mrs. Segal-George brought this before Council. Mr. Murphy questioned whether negotiations were under way with restaurateurs, and Mr. Van Duzer stated that they had been discussing several ideas.

C. BEACH RENOURISHMENT PROJECT

Mr. Gucciardo stated that the Council received a draft of letter under Mrs. Segal-George's signature to Don Stillwell, at the recommendation of the Coastal Advisory Council putting into motion the agreements talked about after hearing from Coastal Engineering, allowing the County to go forward as the local sponsor for the beach renourishment project and funding. It states that the Town would still like the County to operate in that capacity and to begin negotiations with the state for the agreement for the funding. It also lays out a set of criteria for what we would be looking in a beach renourishment plan. Between now and August, there may be documentation between county and town that this is going forward. Mr. Mulholland questioned whether there would be any problems with the Harbor Management Plan and this letter and Mr. Gucciardo stated that there is no conflict between the two.

D. PLAYWORKS

Mr. Gucciardo also brought forward a letter regarding Playworks, behind Beach Elementary School. The Public Safety Task Force is bringing forth a recommendation to light Playworks because of a possible unsafe condition there at night. The street lighting committee also looked at it and made the same recommendation. There are dollars available in the budget for this project so normally it wouldn't be brought forward to the Council, but because it is in the school board property, we have to request an Interlocal agreement with school board to send contractors out and then maintain those lights. They are hoping to act on this very quickly.

XVIII. TOWN ATTORNEY'S ITEMS

A. VERIFIED COMPLAINT REGARDING PUBLIX

Mr. Roosa stated that the Council had been provided a copy of Resolution 98-11 which determines that it is in compliance with the Comprehensive Plan that it was prepared between he and the applicant's attorney to outline the reasoning behind Council's decision and approval. Mr. Roosa recommends adopting of that Resolution.

Motion: To approve the resolution was made by Mr. Murphy. Seconded by Mr. Mulholland. Opposed by Mr. Reynolds.

Discussion: Mr. Hughes stated that this again brought up the issue that he wasn't on the Town Council during discussion, but had to vote. Mr. Hughes is assuming that this Resolution is not necessary, but that it is something that Mr. Roosa would like done. He stated that he spoke with Mr. Roosa who told him that even though he wasn't present when the results were present, he still had to vote. Mr. Hughes has a concern that the Council is developing a list of items that may give the litigants an opportunity to attack. Mr. Roosa stated that in both cases, he prepared the Resolution so he thinks it is reasonable to believe that the Resolution would support the Town's position and not be detrimental to the Town. He stated that if you want to support your prior position, it would be reasonable to adopt your attorney's Resolution. Mr. Roosa stated that it will become evidence in court proceedings. Mr. Hughes stated that even though he wasn't a participant, he still has the same concerns. There have been things that have been brought to his attention since the LPA hearing that are of public record. There are two things that Mr. Hughes wanted to comment on. The first is before the Town Council meeting there was significantly different input from the community that at the LPA. Secondly, the Town is now a defendant in litigation. This resolution is going to pass, in his position, regardless of his vote. It is in the best interest of the community for him to adopt the wishes of this Council. Mr. Hughes feels a unanimous vote will be more effective in court. Mr. Reynolds stated that he didn't see any reason to reinforce the Council's position in this Resolution.

Mr. Mulholland reiterated that in his early comments, he requested the Town Attorney that items that he is bringing forward be included on the Agenda so that the citizens can be aware of what is going to be discussed at the meeting. Mr. Roosa stated that he would try to bring items forward, unfortunately these are usually last minute items.

B. SANDBAR

Mr. Roosa stated that he prepared a memorandum to explain what in the past had been the county's approach to this type of litigation and what his intent was on how to handle this litigation. The Sandbar filed a verified complaint and it came before the Town Council, and at that time Council elected to take no action and after thirty days, they were authorized and did file a lawsuit. Mr. Roosa accepted service of that. There is a memo that explains that these type of actions address consistency with our Comprehensive Plan. Before the Council can approve any application, they must make a determination and the applicant must establish consistency with the Comprehensive Plan, then the burden shifts over to the Town and at that stage they are entitled to approval unless by competent substantial evidence there is determent to the Town and then the Town is authorized to deny that approval. Since the applicant has the initial burden of compliance with the Comprehensive Plan, and since these actions are all issues regarding compliance with the Comprehensive Plan, the County has taken the position that the applicant should take the major portion of the burden of defending the action. The plaintiff has the initial burden of showing that the Town did not comply with the Plan. Once they have crossed that threshold, then it is the Town and the property owners obligation to establish that they did comply. The proper burden is on the property owner. The Town Council's, and all of the members of the Town, only desire is that the actions of the Town should be consistent with the Plan. If the Court finds that the Council has taken actions that are inconsistent with the Plan, the Town hasn't lost; the property owner is at risk and has lost. The Town has won because the action of the Town is consistent with the Plan. Since we are in a position where if we prevail and it is found that the property owner should be available to develop the property, we haven't won. And if we lose, and the property owner shouldn't be able to develop, we haven't really lost. We are involved in this litigation because it is our responsibility to enforce the plan, and it is the courts responsibility to see to it that we do that. The real party of interest is the property owner. The County has always had the position that the main responsibility for defending those actions would be that of the property owner. That would mean that if there are expert witnesses that have to be called, they would have to pay for them. If there are any

expenses that would be required in litigation, they would provide them and if they failed to do so, and they don't prevail, then the Town would be in the same position in either event and the court will rule that the property owner should not have been issued the permit or approval. It has worked well with the County and it is Mr. Roosa's recommendation that the Town follow the same procedure. It is not to say that we will not give full legal support. There are two defendants in the case: the Town and the property owner, and between the two, the burden of defending the case is with the property owner. Mr. Roosa stated that the only reason it wouldn't be approved is because it is inconsistent with the plan and that is the goal of the Council: consistency with the plan. Mr. Mulholland stated that the applicant acted only when we said it was okay to do. Mr. Roosa stated that the reason the Council said it was okay was because the applicant stated that it was consistent with the plan and that was the burden of the applicant. The issue is not approval or denial, that was a decision Council made. The issue is consistency with the plan, because the Council has made a decision stating that it is consistent with the plan, and therefore, Council went ahead and approved it. The property owner still has the burden to prove it. Mr. Roosa stated that the Town doesn't have an interest in following out and pursuing the Council's decision, but the primary interest and the burden has been with the property owner, and it is his recommendation that we put the burden of defending this on the property owner where it was from the beginning and where the real party of interest is involved. Mr. Murphy stated that he thinks that it is proper. Mr. Roosa stated that he has not heard from the SandBar as of yet. Mr. Hughes stated that this is standard procedure. Mr. Roosa stated that he intended to file an answer and any defenses that are available and he will file a motion to dismiss if he thinks it is appropriate.

C. KOLPECKY HEARING

Mr. Roosa reported on the Kolpecky hearing, also known as the Lemon Twist woman. She was a vendor on the beach and was cited with an ordinance violation. We went to a hearing in the county court and she was found not guilty and further in the order, the court ruled that the defendant had a proper and valid county license which allowed for her to conduct business on the Beach. The Council authorized him to file a motion for rehearing. At the rehearing, it was presented to the court where the ordinance states that by having this license she had the right to use rights of way of all roads, streets and highways under the County's jurisdiction. The court found that the sandy beach on Fort Myers Beach fits under the category of rights of way of all roads, streets and highways under the County's jurisdiction. Mr. Roosa is asking authority to file an appeal if the Town Manager feels it is appropriate. The reason he mentions this is because the occupation license will expire in October and it may be that we should wait to pursue. Mr. Roosa stated that he would like the Council to authorize an appeal after speaking with the Town Manager, that would allow for him to pursue it without him having to wait for the Council to reconvene. Mr. Hughes asked the name of the judge and was informed that it was Judge Voltz. He also asked if this was a criminal proceeding, why wasn't the state attorney prosecuting the case. Mr. Roosa explained that the code enforcement officer prosecuted the case. Under our Florida Statutes, the code enforcement officer has the authority to issue a citation for violation of county ordinance which is handled through the criminal court or to the code enforcement board which is handled by the county administrator code enforcement. It is an option depending upon the discretion of the code enforcement officer. When a code enforcement officer exercises that option, the officer then takes it to county court and it was heard in county court, with no attorney representing the Town, just the code enforcement officer. Mr. Hughes was confused as to why an attorney wasn't present. Mr. Roosa stated that for county ordinances, it hasn't been done that way. County ordinances are enforced through the code enforcement officer. Mr. Hughes questioned what the length of time to file a notice of appeal was. Mr. Roosa stated that the Town had fifteen days. Mrs. Segal-George stated that she needed to speak with Mr. Roosa regarding this because she had been told that the business is out of business. The vending license was tied to her to business location and we need to find out if she has moved anyplace else on the beach. Mr. Roosa suggested that the Council authorize the Town Manager to make the decision in your absence.

Motion: To approve Mr. Roosa's suggestion that the Town Manager make the decision to proceed in the absence of the Council by Mayor Cereceda. Seconded by Mr. Hughes. There being no discussion, the motion passed unanimously.

D. MOVIE THEATRE

Mr. Roosa reminded the council that the movie theater was filed under statutory proceedings where there is a special master appointed. One of the first roles of the special master is that of a mediator. There was a

meeting here at Town Hall and there was a substantial modification of that plan. It is still in development stage, but it may well be able to worked out without a need for further hearing and if so, it will be brought back to the Council the first meeting in September. If possible the proposal was that all access to the property would be off of Estero Boulevard, from the center of the property. Mr. Hughes stated that if they have to have access, and only one could be on Estero Boulevard, there would be in no event an access on Egret since there is a residential property immediately across the street, where as on Curlew, the cars would come out and be facing the Charlie Brown parking lot. It is premature to discuss and will be brought back in September.

XIX. PUBLIC HEARING: RESOLUTION DESIGNATING AREA OF PROHIBITED WATER ACTIVITY

Mayor Cereceda read the titles. The public hearing was opened. Ilene Barnett from the Marine Resources Task Force stated that it was brought to their attention that there had been jetskis operating and launching from the lagoon at the Little Estero critical wildlife area. They recognized that this wasn't an area appropriate for any type of motorized vessels. The Marine Resources Task Force doesn't prefer the method of asking for a ban on activity, but in this case it seems appropriate. Ms. Barnett sent a letter to the Town Council dated May 28th stating that the Marine Resources Task Force supported this ban on motorized vessels, but not a ban on recreational vessels that do not have motors such as canoes and kayaks. The reason for this is that the critical wildlife area is a special resource; it is one of fifteen wildlife areas in the entire state of Florida. It attracts many species of wintering shore birds and the lagoon is very important for the feeding and nesting habitat. With motorized vessels coming in and out, it disturbs these protective species of birds. One method of protection that exists right now is the Florida Gaming and Fresh Water Fish Commission having designated the beach area as a critical wildlife area during nesting season. They stake out certain parts of the beach where the nests are most abundant so that people will recognize those and they are actually prohibited by law to trespass in these areas. However, motorized vessels in the lagoon can cause a great deal of damage that's recognized by the Game and Fish Commission, but they do not have the authority to create any kind of ban of that sort. There has been discussion with them. They recommend that we move this Resolution forward, but at the state level, they can't do anything about it. Mr. Mulholland stated that it is important to prohibit activity in this tidal lagoon, it is a very sensitive area and Ms. Barnett stated it very well, and we need to act on it as quickly as possible.

Motion: To approve the Resolution designating the area of prohibited water activity made by Mr. Mulholland and seconded by Mr. Hughes. Passed unanimously.

Discussion: Mr. Reynolds stated that he appreciates Ms. Barnett taking time to bring this to the Council's attention. Mr. Hughes reminded Mr. Mulholland that he was going to have the MRTF examine the issue of possible prohibited water activity in other areas, including the back bay. Mr. Mulholland stated that it had been brought forward at the last MRTF meeting.

XX. PUBLIC HEARING: ORDINANCE AMENDING ORDINANCE 97-19 (1997-1998 BUDGET)

Mayor Cereceda read the titles. The public hearing was opened. There being no public comment, the public hearing was closed.

Mr. Gucciardo stated that this is a clean up amendment from last year's operating budget and the new numbers were given. As of tonight's action, there will be two additional changes to the numbers. The first is the road impact fees. They were estimated at about \$375,000 and the check was actually for \$380,289, which will add to that line item and the carry over figure for next year. The second item is that, with Council approval, \$10,000 will be taken out of the contingency reserve and added back into the Cultural Events and Special Events line. There have been a lot of requests in the last couple of meetings, and Mr. Gucciardo didn't want to put the Council in the position where they have overspent on one of those line items. Mr. Reynolds commented that he would like to delete the Town Manager from the ability to transfer funds between accounts. He would like it to be done by Council.

Motion: To delete that responsibility from the Town Manager and make it the responsibility of the Council. There being no second, the motion failed.

Mr. Reynolds stated that he could not support this ordinance. Mr. Hughes questioned the definition of a department. He wondered why administrative costs would be considered a department. Mr. Gucciardo stated that the Town doesn't have traditional departments, it is really an accounting category. Mr. Hughes addressed Mr. Reynolds motion and said it was his opinion that it is customary for the Town Manager to oversee these responsibilities. He suggested that perhaps there be a dollar limitation to alleviate his concerns. Mr. Roosa stated that he checked the charter which states that any time during the fiscal year, the Town Manager may transfer any unencumbered appropriations among programs within a department, office, agency or a program provided by Interlocal agreement and upon written request by the Town Manager, the Council may by Resolution transfer between funds, any unencumbered appropriations from one department, office, agency or program provided by Interlocal agreement to another. Mr. Gucciardo pointed out that as a practical matter it is not something that has ever been done. Staff gives Council a breakdown of the Financials at every meeting that show what dollar amounts are left in each line item. The only occasion that he could see where the Town Manager would move funds is the example he is giving where staff doesn't want to put Council in a position where they have overspent. Mr. Hughes suggested that the ordinance be changed to make it consistent with the charter language. Mr. Roosa stated that he would change the ordinance to make it consistent with the charter. Mr. Hughes stated that in section three, there is a word missing. After review, Mr. Roosa stated he would make the change to read "having adopted".

Motion: To approve the Ordinance Amending the Budget with the above listed changes by Mr. Hughes. Seconded by Mr. Mulholland. The motion passed unanimously.

XXI. 1998/1999 BUDGET

BUDGET MESSAGE

Mrs. Segal-George stated that she was delivering the message early because of summer break. The only thing required at this time is to set the tentative millage, which is being recommended as the same as when the town came into being. She stated that previously the Council placed the budget on every agenda until it was finalized for discussion. The budget will be printed and made available at Town Hall. Mr. Gucciardo stated that the budget hearings may be set for the first and second week of September. The budget is more complicated this year and will include a Capital Budget that Council will be receiving at the end of August. There will be an Operating Budget, a Capital Budget and a CRA Budget.

Motion: To set the tentative millage rate at 1.0961 for third consecutive year was moved by Mr. Mulholland and seconded by Mr. Murphy. The motion passed unanimously.

XXII. PUBLIC COMMENT

A. Dr. Joe Croker

Dr. Croker requested that for the citizens of Fort Myers Beach, the Council has either shorter agendas or softer cushions.

B. Ray Mertens

Mr. Mertens stated that when he applied for the Rusty Pelican Restaurant, he paid \$1500 to go through the public hearing process. The ruling was against him and it went to a mediator where they agreed that he would open with liquor. The Town Council voted it down, and it went to a lawsuit. The judge ruled that he had a right to the restaurant and a full liquor license. Because Mr. Mertens spent a lot of money getting to where he was, he doesn't have the funds to do the remodeling. Now that he has the funds to do the remodeling, he can't because of the Publix lawsuit. What he is asking for is to buy a liquor license, open the restaurant with a full liquor license as is. He will agree to stay with 51/49 rule. He is not trying to open a bar, he wants to open the restaurant. The problem he has is that the County requires him to pay an additional \$1000 to go through the process, which the judge has already stated he was entitled to. He doesn't think it is fair for him to pay the \$1000, or to wait until another lawsuit is settled. He is asking for an interim deal where he is willing to buy the license, and is willing to operate under that license until everything else is done. At that time, he will build a 151 seat restaurant if he is still there and it will go back to the SRX. He will take the license and market the license. He is trying to open now with full liquor license and has been waiting for two years. Mayor Cereceda stated that this is public comment, not public request and asked Mrs. Segal-George if there was something she could do to help Mr. Mertens. Mayor

Cereceda asked Mr. Mertens what the Council could do to help. Mr. Mertens didn't understand how Mrs. Segal-George couldn't sign his zoning papers administratively that says he could have a liquor license. The County zoning department is saying that in the ruling it stated 4COPSRX/ 150 seats, and they would like him to go through the whole procedure again. He doesn't want to have to wait for the Publix lawsuit to get moving with his restaurant. Mrs. Segal-George stated that she wasn't sure if she could do that administratively, she would have to check. The County has a separate procedure applicants go through for 150 seats, stating that it has to be at least 51% food. Technically, Mr. Mertens did not go through that procedure because he asked for a 150-seat restaurant when he started. Mrs. Segal-George agreed to check to see if she could do this administratively.

Motion: Made by Mr. Hughes to give the Town Manager authority to execute the necessary documents to facilitate Mr. Mertens' liquor license that was approved by the court. Any such action for the Town Manager to be taken in accordance with the decision of the court and that it is a temporary measure until such time that Mr. Mertens' can comply with the court order. Seconded by Mr. Murphy. Opposed by Mr. Reynolds. The motion carried.

Discussion: Mrs. Segal-George asked for clarification on the motion. She stated that the liquor license that Mr. Mertens received from the court is 150 seat, SRX. The 150 seat SRX triggers the state laws with regards to liquor licensing and they do the inspection. When it is under 150 seats, then it is addressed by the Town in regards to food and alcohol percentages and the state does not regulate. The concern has been that restaurants that are approved in that category end up becoming bars. For clarification on the motion, Council is really not trying to give him what the court gave him; he's asking for something less than the court gave him, under different regulations and on a temporary basis. Mr. Reynolds stated that he didn't think the Council could do this on an impromptu basis. He believed that it should go to public hearing. Mayor Cereceda stated that this does not need to go to public hearing.

C. JOHN NAYLOR

Mr. Naylor stated that he thinks the overpass is a neat way to perhaps speed up traffic going off the bridge. As the Public Safety Committee becomes involved in this, the Council needs to remember that it is the only access off the island for everyone on the north end of island. The way the traffic is routed now, there is a blind curve and without the curve and the VOICE volunteers, the speed will be about 35 to 40 miles per hour and with steady traffic there will be a very difficult time getting onto the bridge. Serious accidents may occur.

XXIII. ADJOURNMENT

The meeting adjourned at 8:44 p.m.

Respectfully submitted,

Janeen Paulauskis
Recording Secretary

From the minutes of August 31, 1998

V APPROVAL OF MINUTES: JUNE 29, 1998

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the minutes be approved.

Discussion: Mr. Hughes said that on page 3 regarding the Moss Marine settlement, the word should be "derogation." On page 5, the motion on the DRA was amended and the word "draft" should be "map." On page 7 at the top, the first line regarding the Mound House, the word should be changed from "cause" to "require". On page 18, in the second paragraph regarding Publix, it should read that "he wasn't on the town council at the time of the decision". He was on the LPA at that time. Mr. Reynolds said that on page 4, it sounds like he said to eliminate the section at Crescent Street. What he said was to delete the part from Times Square down to Pearl Street. He did not mention eliminating Crescent. On page 6 above item XII it says "not think" when he meant "does think". He thinks any

amount is out of line. The recording secretary was directed to check the tapes for these changes.

Action: The minutes were approved pending checking the tapes for these corrections.

(After listening to the tapes again, the recording secretary for that meeting determined that the corrections made by Mr. Hughes are correct. Regarding Crescent Street, the correction made by Mr. Reynolds is correct. Regarding council compensation, Mr. Reynolds made comments after the vote was taken which should read: "Mr. Reynolds stated that even though he is not for council being paid, he doesn't think anyone is going to be overpaid with \$600-700 per month. He further stated that it may be a good place to put the money, he just doesn't happen to agree on it. He stated that there is money available on our island to do it, if one was to study the town's income and budget, one would see that the town does have the money to spend. Mr. Reynolds stated that it is certainly not out of line.")