

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
AUGUST 31, 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, August 31, 1998 at 6:30 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**

The Council was led in prayer by The Reverend Dick Taffel of The New Church.

**IV PUBLIC COMMENT ON AGENDA ITEMS**

**A BILL WOLF**

Mr. Wolf read a letter sent by Tom and Jackie Swing who live in the Snug Harbor area. The Swings were against the action taken by the council at the last meeting to allow casino traffic through their neighborhood. They feel that the council did not understand the situation and were under the impression that they had to make the change because of an emergency. They feel that Snug Harbor is a commercial area and the traffic should go through there, not through their residential street.

**B BUNNY CLAYTON**

Ms. Clayton is a resident on Third Street. She feels they are disenfranchised because of business interests. They were not informed that traffic would be rerouted onto their street. Moss Marina's access is supposed to be through Snug Harbor, which is a commercial access, not their street, which is residential. The traffic through their neighborhood is an intrusion. She also questioned whether golf carts are legal on town streets because the casino boat employees are using them to transport signs, etc.

**C SANDI SUTER**

Ms. Suter said she has also read the letter by the Swings. She knows the council was led to believe that there was an extreme emergency about the safety of children at Snug Harbor. But they were misled. It is not a playground and the children are not using the clubhouse. Hundreds of cars and trucks are now using an 18' wide residential street and someone is going to get killed.

**D MICHAEL KETCHMAR**

Mr. Ketchmar is the manager of Marina Village at Snug Harbor Condominiums. It is an unsafe area with the pool and picnic area and children crossing. There are usually 15-25 children in residence during the summer. He knows it is an easement and he knows about the safety situation on Third Street. But people are not used to entering the easement and looking both ways. He has seen several near misses. He suggested the Council come see the area. It is a blind area that cannot be corrected and he does not have a solution to make it safer.

**E ED CUSICK**

Mr. Cusick is an owner of Snug Harbor. He spoke about a letter to the editor that was uninformed and incorrect. The parking lot is not a playground, but you can't get anywhere without walking across the parking lot. It is unsafe and dangerous. He read a letter that he wrote to the council. He said it is a no-win situation. On June 29, they reached an agreement which he feels is reasonable, but some people are still unhappy. Legally he can prevent any use of the easement. He does not want to sue the town but this is a matter of law. They tried to be good neighbors and offer a compromise, which was accepted by the Town.

**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.")*

## **VI REVIEW OF FINANCIAL REPORTS FOR JUNE AND JULY**

Mr. Reynolds asked questions about several invoices. There were no further questions from the council.

## **VII PRESENTATION OF CERTIFICATES OF RECOGNITION: SWIM FLORIDA**

Kitty Taylor, chairman of the Pool Committee presented T-shirts and the council presented certificates to the Swim Florida Team. A shirt was also given to Jennifer Kaestner thanking her for her efforts as "team mom."

## **VIII PROCLAMATION: CHILDHOOD CANCER & BLOOD DISORDER AWARENESS MONTH**

Mayor Cereceda read a proclamation naming September 1998 as Childhood Cancer & Blood Disorder Awareness Month on Fort Myers Beach. Klair Snellbaker accepted the proclamation. She said that the Candelighters organization helps families of children with childhood cancers. They will have an art project on display at Healthpark during this time.

## **IX COUNCIL MEMBER ITEMS AND REPORTS**

### **A RAY MURPHY**

Mr. Murphy saw some reflective signs at the FLC convention that can be used at crosswalks. He will pass the information on to the Public Safety Task Force.

He would like to propose a project called Operation Coconut Plantation. He would like to start a coconut grove behind the Red Coconut. One hundred trees will be donated to start it, but eventually they would like to use our own coconuts to grow our own and hopefully line Estero Blvd. with them. That way we would have a perpetual supply when one dies or is blown down. People from the east coast are coming here and harvesting our coconuts and taking them back to grow. We should do that ourselves. We could also offer them to our own residents at a low cost. The use of the area for planting would be donated, and the buckets for growing and the labor will be donated. They need a truckload of good black topsoil. He asked the council if they would be interested in helping with that cost.

**Motion:** Mr. Murphy moved that the council support the project with a donation of \$2000 for the purchase of topsoil. Mr. Hughes seconded the motion. **Discussion:** Mr. Reynolds would like to see the idea discussed tonight and then voted on at the next meeting. It wasn't on the agenda and there may be some public comments that should be heard. Since this is not time sensitive, Mr. Murphy and Mr. Hughes agreed to withdraw the motion. It will be put on the agenda for the next meeting.

### **B GARR REYNOLDS**

Mr. Reynolds said he attended the Do the Right Thing banquet honoring 12 children, including Dillon Kaestner from the town, and it was good to see good children being honored.

He passed out a memo regarding the jet ski rental business at the Sand Piper. He reported to the Town Manager in August of 1997 that the rental business at the Sand Piper had ceased operations and there had not been any activity there since July 1996. He feels the town should be fair to all and that this business should not have their license renewed. He recommended that previous operators who have lost their license through default by time-lapse, be given the opportunity to renew those licenses in the order of their loss. Mr. Hughes said the town manger has not had a chance to see this memo, so he should not ask her to take an administrative action. Mr. Reynolds said he just wanted the council to know that he was making that request of the Town Manager. Mr. Hughes felt she should have a chance to respond first, and we should not be concerned about other people who have lost their license unless they are applying to renew them. Mr. Mulholland asked if this is the same operator with whom Mr. Reynolds is in a lawsuit. Mr. Mulholland said he is afraid Mr. Reynolds is trying to involve the town in the lawsuit. He asked Mr. Roosa, since Mr. Reynolds is involved in litigation, if he is bringing the town into the case. Mr. Roosa said just addressing it does not involve the council. But he said all the facts are not in the memo and the town manager has not had a chance to respond and it is not appropriate to ask for action until she has that chance.

Regarding liquor licenses, he said that a man came to the council in the spring asking to change from 4COP to a lesser license. During public input this man was able to get the council to approve it. He has a problem with this, as did the town manager at the time. The town manager wrote a memo later and he got the impression that she said she could issue that liquor license administratively. Mr. Hughes said he made the motion to give the town manager the authority in accordance with a court order. It was implementing a court order, not granting something administratively. Mr. Roosa said he understood it was temporary until the litigation on the property was solved. Ms. Segal-George said she found that she could proceed, but Mr. Mertens has not requested anything to this point, so nothing has been done yet.

He asked Mr. Roosa about the update on the Sandbar lawsuit. There is no remodeling being done there now, even though the insides have been stripped and all the outside doors removed. This will be discussed during the Town Attorney's update.

He would like to see Mr. Weibe's plans for the Seafarer's mall be brought before the LPA and Council first.

**C DAN HUGHES**

Mr. Hughes commended Mrs. Segal-George for her monthly update report. It was very concise and helpful. He asked Mr. Roosa if his report on litigation will talk about the issue of who is bearing the cost of the litigation. He asked Mrs. Segal-George about the negligence action regarding the accident at Estero and Gulf Island Drive. They say the view is blocked by a telephone pole or a light pole. Are those poles in the county right of way? Mr. Gucciardo said that has been the town's position whenever we turn these over to our insurance carrier. But he said that he looked at the site and could not even find a pole at that location.

**D JOHN MULHOLLAND**

Mr. Mulholland thanked the Town Manager for her fine idea about the archeo-eco trail on the town's web site. Mr. Mulholland said he agreed with Mr. Reynolds that we would do better not to make decisions that are not on the agenda. Perhaps the Snug Harbor problem could have been better solved with advance study.

He said that the MRTF believes that things that happen on Estero Bay have an impact on this community. They have passed a resolution asking the council to request the town attorney to draft pleadings regarding the Sahdev development with Lee County. He asked the Council to support the resolution to be involved in the litigation. The County Commissioners have agreed to a large increase in density on the development on the Estero River and it will have an adverse affect on the town. He wants us to let the commissioners to know that we feel we have a stewardship role regarding Estero Bay and we would like to be consulted before they make any decisions. Mr. Roosa said there is a state statute regarding this. There is an impact on us and there is a legitimate basis for the town to intervene. He recommends that he review the file in the courthouse and talk to the environmental attorneys and then come back to the council with a recommendation on whether to ask to have a meeting with the Commission. (We would have to meet with them first to try to solve it before going to court. Since taxpayers would be paying both bills, state law requires us to try to come to an agreement first.) We may be allowed to file an amicus. It will be an agenda item at the next meeting.

**E ANITA CERECEDA**

Mayor Cereceda thanked Peggy Salfen, Janeen Paulauskis, and Ron Himmelmann for the good work they did upstairs on the remodeling.

She said she spent some time with Porter Goss on Saturday at a meeting hosted by the Lee County Commission. They discussed hurricane evacuation, world safety, public safety in our communities, tort reform, etc.

She has attended the Coastal Advisory meeting. She is still trying to find out the portion of the cost of beach renourishment that will be the town's.

**X PUBLIC HEARING: ORDINANCE ESTABLISHING COUNCIL COMPENSATION**

Mayor Cereceda read the titles and opened the public hearing.

**A BILL VAN DUZER**

Mr. Van Duzer said he believes in paying for what he asks for. The council has been very generous with their time and the amount of time they give is staggering. This proposed amount will be less than minimum wage. They deserve compensation for their services and the headaches they must endure. If they don't want it, they can refuse it or give it back to the town.

**B TERRY LENNICK**

Mr. Lennick said we are selling ourselves cheap. It should be a minimum of \$1000 for everyone.

**C BILL THOMPSON**

Mr. Thompson said he feels the council members should be compensated. He appreciates their listening to the residents' complaints.

The public hearing was closed.

**Motion:** Mr. Reynolds moved that this ordinance be withdrawn. Mr. Mulholland seconded the motion for discussion. **Discussion:** Mr. Reynolds said he feels that we have done OK so far without compensation. Sanibel has been incorporated for 23 years and has not paid their council members and have found qualified people to run. **Action:** Mr. Mulholland, nay; Mr. Hughes, nay; Mr. Reynolds, aye; Mr. Murphy, nay; Mayor Cereceda, nay. The motion failed.

**Motion:** Mayor Cereceda moved the ordinance. Mr. Murphy seconded. Mr. Mulholland, nay; Mr. Hughes, aye; Mr. Reynolds, nay; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

The council took a break at 8:14 and reconvened at 8:28 PM.

**XI PUBLIC HEARING: ORDINANCE AUTHORIZING THE PURCHASE OF 8LL4 (MOUND HOUSE)**

Mayor Cereceda read the titles and opened the public hearing.

**A CHERYL BARNHART**

Ms. Barnhart asked for clarification on the details of what is planned for the Mound House.

The public hearing was closed. Mrs. Segal-George gave a brief history of the property. She said that it has historical and archeological significance, but it was scheduled to be subdivided and developed. They received a grant to purchase the property and have grants for building docks. They have applied for further grants so that it can be placed on the historic register. It will be available for events and lectures, it will have exhibits, it will have an ongoing archeological excavation, a learning center, and will be the center of the eco-archo trail by road and by water. The long-range plans have not been developed because it took so long to acquire the property. Arden Arrington has been working on the project and some kind of contract may be entered with him. It will hopefully be run by a foundation in the future. Mr. Hughes asked if the title could be corrected without affecting the public hearing. He asked if the documents have been executed by the trust. Mrs. Segal-George said they have been now and also by the estate. Mr. Hughes said he received one negative letter on this purchase, but he feels the writer was misinformed on many points. Her one valid point was that this would take the property off the tax rolls, but he felt that the positives would far out-weigh that one negative. Mr. Mulholland applauded the efforts of the staff for all their efforts. It will be a big plus for the town and was worth waiting for. Mr. Murphy said this property has a wonderful history and will be wonderful for the town and all the visitors.

**Motion:** Mr. Murphy moved and Mr. Hughes seconded that the ordinance be accepted. Mr. Murphy, aye; Mr. Reynolds, aye; Mr. Mulholland, aye; Mr. Hughes, aye; Mayor Cereceda, aye. The motion passed unanimously.

**XII PUBLIC DISCUSSION OF PROPOSED RESOLUTION ADOPTING FLOODPLAIN**

**MANAGEMENT AND FLOOD HAZARD MITIGATION PLAN**

Mr. Gucciardo explained that we have been dealing with these issues since incorporation but have not had a codified plan. In order to be recognized by FEMA, the town needs this codification. It must be open for discussion at least two weeks before it is open for adoption by the council. This will be on the agenda at the next meeting. The Council commended Mr. Gucciardo for the good work on the plan. The meeting was opened for public comment. There being no public comment, public discussion was closed.

**XIII OLD BUSINESS**

**A PEDESTRIAN OVERPASS**

Mayor Cereceda said she received a letter from Mr. Fowler just before the meeting stating that he would be happy with whatever the town decided. Mrs. Segal-George explained that we had a public/private partnership, but there was disagreement between the private parties so the contract was terminated. Mr. Weibe is not willing to pay his part of the bill. Her question is whether the town is willing to pay their part. Mr. Mulholland asked about the deliverables. Mrs. Segal-George said we have received three copies of an existing conditions analysis, two of an artist's concept, and written report. There was no survey done. Mr. Murphy asked if the bill for \$3130 was our half. She replied that our part would be half of that. Mr. Hughes said the documentation we got has some value even though we do not have a contract. He does not object to paying our half.

**Motion:** Mr. Hughes moved and Mr. Murphy seconded that the invoice be paid. **Discussion:** Mr. Mulholland stated that if we decide to go forward with the project, we will have to pay more. Mrs. Segal-George agreed that the contract was terminated before the final product. Mr. Fowler was not allowed to complete his work because the contract was terminated. If the contract had been completed, it would have cost the town more. \$1565 is a partial amount. **Action:** The motion carried unanimously.

Mayor Cereceda reminded the council that there is a workshop scheduled on this subject for September 10. Mrs. Segal-George said she believes that we are dealing with public property in that area.

**B CHARTER REVISIONS**

Mrs. Segal-George said the charter committee was officially dissolved. If the council wants to have them meet again, they will have to be re-commissioned. Mr. Reynolds said he would like to see them re-commissioned. Mr. Mulholland said it would be good to use the same people and do another study. Mr. Murphy said we should give them clear direction on what we want done. Mr. Roosa said he can prepare a resolution to reestablish the committee. It was decided to discuss which issues they would like the commission to address at the workshop on September 10.

**C DOVER/SPIKOWSKI PROPOSAL FOR PLANNING SERVICES FOR OLD SAN CARLOS BOULEVARD/CRESCENT STREET**

Mrs. Segal-George said this is back on the agenda from the last meeting because of the council's questions at the last meeting. Mr. Spikowski said he and Victor Dover have modified the contract along the lines of the council's requests. Mrs. Segal-George said we need this work desperately. We have tried to make the overlay plan work but it is only conceptual and is not engineered. Pressures are building to do something in that area and we have many unanswered questions regarding parking, paving, etc. We have some legal impediments to doing some of the concepts. Mr. Roosa said he has reviewed the contract and we will prepare a town contract.

**Motion:** Mr. Hughes moved that the contract be executed. Mr. Murphy seconded. The motion passed unanimously.

**D CONTRACT WITH COASTAL ENGINEERING ON THE MATANZAS HARBOR ACTION PLAN**

Mr. Mulholland said the subcommittee of Heather Stafford, Joe Workman, and himself interviewed three companies and evaluated them. They chose Coastal Engineering and recommended to the MRTF that they be hired. The MRTF agreed. He met with Michael Steven and has gone over the contract. He recommends approval. Mrs. Segal-George said she made a presentation to the Waterway Advisory Committee for Boater Improvement dollars asking for \$30,000 for the Harbor Plan and \$30,000 for the dock at the Mound House, and they were both approved. So this project will be funded by boater improvement dollars.

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

#### **E MOSS MARINE/SNUG HARBOR TRAFFIC PATTERN**

Mr. Roosa said he understood from the last meeting that the council directed that traffic be rerouted immediately and that he would meet with the attorney for Moss Marine to submit a document to the court for the modification to the agreement. They have agreed to the modification. When the language is worked up it would be submitted to the court and they would get a modification of the court order. What generated this was representation to the council about concerns about the safety of children. The town acted immediately because in that type of issue, they must take action. A letter was sent to the sheriff saying we wanted this action until documentation can be completed. Mr. Lennick said that having traffic go in one way and out another is fine with them. Mayor Cereceda said that the surrounding neighbors are not happy with the decision the council came to. Mr. Reynolds handed out a response to Mrs. Segal-George's response to his letter. He feels that the 40' easement at Sung Harbor should be sufficient and the neighborhood street should not be used for that. He feels that at the last meeting they said it would come back to the next council meeting. He said he has never seen any children playing there. It is clearly not a playground and children under 18 are not allowed in the clubhouse. He said they made an error in not asking first if they had discussed this with the community first. Mr. Mulholland said he agreed with Mr. Roosa. He thought he was acting in the best interest of the safety of the community at the time. He does not want to act on it tonight. We need to get everyone together rather than getting one side one night and the other side the other night. It is not public land we are talking about—it is private. Mr. Roosa suggested continuing under the current direction, then coming back to the Council with the agreement language and notifying the property owners to come have public input. He thinks we have the legal right to direct traffic over public roads. Mr. Freeland has public access by a public road to his property. He is not landlocked. The parcel that was landlocked was the parcel behind Snug Harbor and that one was granted an easement. The county commission requested that all traffic pass through the easement. We originally forced Moss Marine to take all boat traffic through the easement. Mayor Cereceda said traffic has always gone though Third Street and Harbor Court. What has changed is that now there are hundreds of cars going down those streets because of the gambling boat, yet the court has stated that the nature of the business at the marina has not changed. She suggested a workshop on the subject rather than a regular meeting. Mr. Hughes is in favor of that approach. Neither the easement or the private streets contemplated the burden of traffic that has been caused by the casino boat. He questioned whether the council can prohibit licensed vehicles from going over public roads. We will never have a resolution that will please everybody. Mayor Cereceda also suggested notifying neighborhoods of the meeting, even though we are not legally required to do so. In face, we should adopt a policy when there is something of major impact to a neighborhood, we will notify even though it is not required. Mrs. Segal-George said she did not think it would be that expensive or time intensive to do that. Mr. Roosa said if we make a policy, then it will become a requirement and could become cause for action. It would be better when the cases come up to ask if individually if we want to notify the neighbors. It might make an action invalid because the neighbors were not notified. Mr. Roosa said he thinks there is a traffic engineering concern because people do not realize they are crossing an easement and cars do not realize that there are pedestrians. There are no curbs or lines that would indicate it. We do not have the right to redesign that easement to make it more acceptable. We have to work with what we have. What we have is to allow the lawful use of the easement for both properties. Mr. Freeland's business is lawfully abutting a public road and he has the right to use it, but they have agreed to spread out the traffic anyway. Mrs. Segal-George said that Oct 15 is available for a workshop. The council agreed. The amended order will be discussed and property owners will be notified. Mr. Lennick said they want to get this resolved as quickly as possible and a workshop won't allow them to make any decisions. In the meantime his client is violating a court order. Mr. Roosa said it does not take a formal vote, just a consensus, because they have already taken action. He does not think the delay will be prejudicial. Mr. Murphy said this is classic damned if you do and damned if you don't. In defense of the council, this council fought on behalf of the residents to keep the casino business out. The impacts that are now happening were predicted. But it didn't work out to head that business off. This most recent action was in response to a request for immediate relief for what was presented to them as an emergency situation. The residents have to understand that the council is trying to do what is best for the town. Mr. Hughes asked about the direction to the sheriff. Mr. Roosa said that is just in terms of directing traffic. If someone decided to go in through Sung Harbor or out through Third Street, they couldn't be arrested.

After the settlement agreement, the property owner has the obligation to enforce it. You enforce by proper signing, not on a car-by-car basis. Mr. Reynolds said Moss Marine had someone directing traffic through the easement a few nights ago. Mr. Lennick said he told them to do that so they wouldn't be in contempt of a judicial order. A workshop with the amended order will be on Oct. 15.

#### **XIV NEW BUSINESS**

##### **A RESOLUTION FROM THE MARINE RESOURCES TASK FORCE RECOMMENDING BANNING OF PARAGLIDERS ON FORT MYERS BEACH**

Mrs. Segal-George clarified that paragliders are not the same as parasails. They are the ones with packs on their backs with a motor who fly by themselves. Mr. Mulholland said he has observed them going 20-25 feet above the beach and taking off and landing on the sand, which is totally unsafe. Mayor Cereceda asked if we ban them from taking off, how do we ban them from flying over the beach. Mrs. Segal-George said we can only control take-offs and landing. The MRTF was unanimous in their recommendation for the ban.

**Motion:** Mr. Mulholland moved to accept the MRTF resolution and direct the town attorney to come back with a draft ordinance. Mr. Reynolds seconded the motion. The motion passed unanimously.

##### **B REQUEST FROM LENA HEYMAN FOR PAYMENT OF ATTORNEY'S FEES**

Mr. Roosa sent a letter to Ms. Hubbard, the attorney for Lena Heyman, asking why the council should pay the invoice. She provided him with a case of a councilman vs. the City of Ft. Walton Beach, which involved someone who employed an attorney to defend himself on a petition to recall. The councilman applied for reimbursement of attorney's fees and it went to the supreme court. Mr. Roosa quoted that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose. This rule is to avoid the chilling effect that a denial of representation might have on public officials on performing their duties properly and diligently. This entitlement is independent of statute, ordinance or charter. For public officials to be entitled to representation at public expense, the litigation must arise out of the performance of their official duties and serve a public purpose. Mr. Roosa said that hey characterized a recall petition as litigation. In this instance, although charges were never filed against Mrs. Heyman because there was no probable cause found, the public was put on notice that the council had engaged an attorney to see if there was probable cause. Mrs. Heyman then hired an attorney. Mr. Roosa said he believes we have the legal authority to reimburse Mrs. Heyman for her attorney's fees. The issue is of reasonableness of attorney fees (\$150 per hour). He reviewed the services and hours and he believes they were reasonable in nature. The council needs to address a policy issue. The question is at what stage should a person seek legal council. Should she have waited until charges were filed? He thinks a prudent person will hire an attorney the first time an issue is raised. You are asking citizens to volunteer their time. Mr. Hughes asked if it would be different if there was a finding of violation. Mr. Roosa said then there would be no basis for recovery. It is the finding of no probable cause that justifies, but not obligates, the payment. Mr. Mulholland said the question is whether Mrs. Heyman was acting in an official capacity. Mr. Roosa said the charge rises from the fact that she voted on a zoning issue in her official capacity. Mayor Cereceda said she questioned the difference between the appointed member of a board and an elected official and the fact that there was never a charge filed. She feels this is different from the case in Ft. Walton Beach. Mrs. Heyman handed out a letter and asked that the letter be made part of the public record. Mrs. Heyman said she feels she is entitled to the reimbursement because she was embarrassed and her name was in the paper. She felt she was under an obligation to get an attorney after that meeting. Mr. Murphy thought the council should have handled this themselves from the beginning. Some of this was premature. He does not think the case cited is relevant because we were not in litigation. We have thrown too much money away on this already. There should not have been attorneys involved at all.

**Motion:** Mr. Reynolds moved and Mr. Hughes seconded that reimbursement be paid. **Discussion:** Mr. Hughes said he seconded the motion in light of the recommendation of the town attorney, but he shares Mr. Murphy's comments and feels it is unfortunate. We have not ultimately resolved this issue. The special counsel recommended that we pursue this policy further regarding ex parte communications. Mayor Cereceda said we need to discuss a policy. Mr. Roosa said he is afraid we are alienating people from volunteering for committees out of fear. On the other hand we don't want to give a blanket protection to people. Mayor Cereceda said she feels that the council did the prudent thing by pursuing the special counsel. If this should come up again, the council should be put on notice that they will be

seeking compensation. She does not agree that the case applies because Mrs. Heyman is not an elected official. Mr. Mulholland agreed the council needs a policy and guidelines on ex parte communications. He apologized to the council and the residents because he wanted a fair and impartial investigation. He felt good that we found out they were innocent. Mr. Reynolds said he thinks she needed to get an attorney when she did rather than wait. Mr. Hughes said there were no conclusions that the charges were false. The allegations were found to be true, but the attorney did not feel that under the particular case it was a violation that should require any sanction. Mayor Cereceda said the council does not need to adopt a policy on ex parte communications. That is a matter of law and Mr. Roosa has explained it to the council and Mrs. Segal-George has explained it to the LPA. **Action:** Mr. Mulholland, aye; Mr. Hughes, aye; Mr. Reynolds, aye; Mayor Cereceda, nay; Mr. Murphy, nay. The motion carried.

**C MOUND HOUSE STEERING COMMITTEE**

Mrs. Segal-George said there was a steering committee under the historic society. It has not met for a long time because of the problems acquiring the Mound House. She would like the council to make that committee as an official committee of the town and ask Mr. Roosa to draft an ordinance establishing it. There was no objection by the council.

**XV DISCUSSION ON 1998/9 BUDGET**

Mrs. Segal-George said that it is possible for the council to defer this until public hearing. The reason it is on the agenda is so that there could be public comment on it. We have two budget hearings set in September. Mr. Gucciardo passed out a request for funding from Mr. Tafel for his Kids Intervention program.

The council took a break at 10:14 PM and reconvened at 10:21.

**XVI TOWN APPOINTMENTS**

Ms. Segal-George said that the town has an opening for an appointment to the Citizen's Advisory Committee of the MPO. The staff will advertise to see if anyone would like to fill that appointment. There is also an opening on the Technical Advisory Committee, but that is usually for a staff engineer.

**XVII TOWN MANAGER'S ITEMS AND REPORTS**

**A ECO-ARCHEO TRAIL**

Mrs. Segal-George told the Council that Julia Campbell is now the editor of the Beach Bulletin. Last week there was a wonderful cover story and article about the eco-archeo trail that has just been put up on our website. There was also a good article about the Mainstreet string quartet.

**B UPDATE ON SANIBEL CAUSEWAY**

Mr. Gucciardo reminded the council that on Sept 8 at 1:30 there will be a meeting on the Sanibel Causeway. The County is considering redesigning the causeway and this meeting will be about environmental issues. The design of the causeway could impact our water quality and our ability to keep sand on our island. Town staff will be there and hopefully send the message to the county that this is an issue of great importance to the town. Mr. Mulholland said the council should show more than a passive interest. They should go and make their interest known.

**C UPDATE ON SOUTH-END SIDEWALKS**

Mr. Gucciardo said the project is going forward, the contract has been let by FDOT, and there will be a 75-80 day turnaround after construction starts in September.

**XVIII TOWN ATTORNEY'S ITEMS**

**A UPDATE ON PENDING LITIGATION**

Mr. Roosa provided the council with a memo. The first two cases have been fully briefed and are before the court. In the Hoffman case, there is a proposed settlement which will be scheduled before the council on September 21. In the Freeman case (Publix), we have filed an answer. In the Civic Association case we have filed a motion. The property owner has also filed a motion. There are negotiations going on for a possible settlement regarding the Sandbar. Regarding the CRA vs. the state of Florida, this is the bond validation hearing. We need an interlocal agreement between the council sitting as the town council and the council sitting as the town CRA. The Town will loan to the CRA at 4.5% interest. All loans are secured only by incremental funding. He asked the council to authorize the execution of this

document, then adjourn and sit as the CRA and authorize the execution and appoint Mrs. Segal-George as the secretary of the CRA.

**Motion:** Mr. Murphy moved and Mr. Hughes seconded approval. **Discussion:** Mr. Reynolds would like to read this first before voting. Mr. Roosa said it is timely and is holding up the bonding validation. It was drafted by our bonding attorney and Mr. Roosa has approved it. It will be a loan on an expenditure basis to a limit of \$500,000, not a \$500,000 loan outright. Mrs. Segal-George said the council will have to approve specific projects up to \$500,000. The bond validation is critical on how we handle the TIF. Even assuming \$500,000, it would probably be 2-3 years until the TIF could pay it off. They will be making decisions based on what you know will be coming in. There will be no other entity besides the council that can commit funds. This is a restatement of all the things that the council approved on June 29. There is just a change in form and the addition of the interest rate. Mr. Roosa said the significant difference is that now they are agreeing to buy them. **Action:** The motion carried unanimously.

The Town Council adjourned.

The Fort Myers Beach CRA was called to order.

**Motion:** Mr. Hughes moved and Mr. Murphy seconded that the CRA authorize the execution of the interlocal agreement with the Town. The motion passed unanimously.

**Motion:** Mr. Murphy moved and Mr. Hughes seconded that Mrs. Segal-George be appointed as secretary of the CRA. The motion passed unanimously.

The CRA adjourned.

The Town council reconvened.

## **XIX PUBLIC COMMENT**

### **A CHERI SMITH**

Ms. Smith said that on September 19, the Pilot Club is having their coastal cleanup at 9:00 at Beach Elementary.

## **XX ADJOURNMENT**

The meeting adjourned at 10:45 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary

From the minutes of September 14, 1998:

### **APPROVAL OF MINUTES: AUGUST 31, 1998 AND SEPTEMBER 1, 1998**

**Motion:** Mr. Hughes moved and Mr. Murphy seconded that the minutes be approved as submitted.

**Discussion:** Mr. Mulholland said that on page 3 (D) of the minutes of August 31, it should say "happen on the mainland shores of Estero Bay" instead of "happen on Estero Bay." Mr. Reynolds said that on page 2 of the August 31 meeting where it speaks about the corrections to the minutes from last meeting, he wanted to make sure that it was understood that it does not mean that he is for council compensation. Also on page 8 of the August 31 minutes, regarding Lena Heyman, he wanted to clarify that he was agreeing with a statement of Mr. Roosa when he said that he thought Ms. Heyman needed to get an attorney when she did rather than wait. Since Mr. Reynolds said he did make this statement, he did not need a correction to the minutes, just a clarification for the record. Mr. Hughes said that in that same discussion, Mr. Reynolds had alleged that there were false allegations against Ms. Heyman, and that statement by Mr. Reynolds should have preceded Mr. Hughes' statement that there were no conclusions that the charges were false. **Action:** The motion passed unanimously pending corrections being verified by the recording secretary.

*(The recording secretary determined that Mr. Mulholland's comment on page 3 was: "things that happen on Estero Bay, be it on our shores or the shore of San Carlos Island or even over by the Estero River..." Regarding Mr. Hughes' comment that there was no conclusion that the charges were false: that statement followed this statement by Mr. Reynolds: "I doubt very seriously if you are going to*

hear too many taxpayers out there objecting to paying a little bill for someone who was charged falsely or at least inaccurately." *The recording secretary has determined that the minutes were correct as submitted. These additional comments will be added in the way of clarification or amplification.)*