

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
SEPTEMBER 14, 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, September 14, 1998 at 6:36 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 Jeanne Davis of Beach United Methodist Church.

**IV PUBLIC COMMENT OF AGENDA ITEMS**

**A JOHANNA CAMPBELL**

Ms. Campbell said she has seen the budget and is very impressed. She likes the hidden bike path and streetscape. She requested that the town work a little faster on the streetscape so she could see something in her lifetime. Also she visited the Mound House yesterday and it is great. She thinks it will be our Edison Home. But she is worried about traffic impacting that street in the future when it is opened to the public. Please keep them in mind.

**B JEAN CUNNINGHAM**

Ms. Cunningham said she is a member of the Board of Directors at Harbour Pointe, and she is representing many owners who could not be here. Many of their residents, who have vested and financial interests are out of town at this time of year. They have concerns and are interested in seeing what direction the council takes.

**C ROGER WELTON**

Mr. Welton has read that there will be construction of two 10-story buildings at Casa Marina. That would be bad for residents at Harbor Pointe. Many people will lose their view and the value of their units.

**D SANDRA SCHOFIELD**

Ms. Schofield read a letter from Marshall T. Bower of the state attorney's office. It said that Lee County is one of three pilot sites in the country for the Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders. It requires participation of the community and its goal is to prevent delinquency and to respond when children commit criminal acts. The New Church has developed a program for Fort Myers Beach. He said that if we all work together, we can insure that our children will be good citizens.

**E CLAUDIA MAYER**

Ms. Mayer talked about Operation Coconut. She makes coconut hats and she has a lot of knowledge about sprouting and raising coconut palms. There is nothing to make coconut palms blight resistant. The best way to address the problem is to keep sprouting them. This is not the best place for that and we might only get about 1 in 10 or 20. She can get coconut sprouts that would be more viable that have been started in the Keys. She is available for help if the council needs it. Th best thing to help with sprouting is mulching, much like in the natural environment. You can also put them in black plastic bags for extra heat. They also like partial shade. You don't need dirt to sprout them. Most nurseries bring them up from South America where they have already sprouted.

**F DICK TAFEL**

Reverend Tafel read a letter from the office of the Lee County Sheriff, which speaks toward the Kids Intervention Program. It said that The New Church has been instrumental in developing a local program which would help enhance the safety of the youth of the community.

**G FRANK JEFFREY**

Mr. Jeffrey said that he is president of the overall organization for residents of Bay Beach. He wished to speak about the plans for high rises which are not on what they presented as their master plan. They have no rules other than what they determine is good for them. Amenities have been removed or are about to be removed for things that were implied in their brochures. It is not a fair situation. Isn't there a limit about the height of buildings and how it fits in the community? They had a good thing, but now things are changing. They make remarks to the residents such as "read your documents." He is not a lawyer. But after digging into the documents, he is wondering what he bought. They are taking away the ponds in order to make this all work. He knows they are an investment company and are only interested in money. He represents about 1044 people, and this is the feeling of all the people at Bay Beach.

**H RONALD FINNEGAN**

Mr. Finnegan believes that Stardial has no vested rights to build 10-story buildings all over Bay Beach, and it is not the wishes of residents of Bay Beach. The high rise on parcel 13 (Casa Marina) would be totally detrimental. All buildings are now 6 stories, and they want to add a 10-story building. It is totally out of line with any plan that should be approved. Also the filling-in of ponds is out of line and is detrimental ecologically. Even partial filling should be rejected. At the last meeting, Mr. Humphrey did not accurately show the area. He said they were all high rises down there, but that is wrong. There are only 4 tall buildings, and the rest are 6 stories or less. If you follow a plan that you are able to add 10 stories no matter when you want and where, the people of Bay Beach will be totally opposed. He wants them to show the 78% green space. They count the canals, and that is not right because you have docks that cover a lot of the canal.

**G CHRIS SCHAUB**

Mr. Schaub wanted to talk about the vessel control ordinance. He thinks it is great idea. Open the channels to a controlled speed and let the rest of the area be slow speed.

**V 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.)*

**VI PRESENTATION ON PILOT CLUB COASTAL CLEANUP**

Lisa Grinter said that this Saturday will be the statewide annual coastal cleanup which is sponsored by Keep Lee County Beautiful and organized locally by the Pilot Club. They have always had a successful cleanup thanks to the help of residents and tourists. It will be from 9 AM until noon, and they will meet at Beach Elementary parking lot. There will be free drinks, pizza, and flower seeds for all participants.

**VII PROCLAMATIONS**

**A DECLARING SEPTEMBER 13-19 AS CONSTITUTION WEEK**

Mayor Cereceda read the proclamation. The proclamation was accepted by a member of the Sons of the America Revolution. He said that they have a great interest in the past and well as what is going on today. He thinks this proclamation is very applicable to the things in the newspaper today.

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

#### **A RAY MURPHY**

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

#### **B JOHN MULHOLLAND**

Mr. Mulholland said that on September 9, the subcommittee of the MRTF met with Coastal Engineering to discuss the scope of services and deliverables and schedule of the Matanzas Harbor Action Plan. A joint workshop with the town council is planned for the future. They will be working on putting an anchorage at Matanzas Pass. He said that Gene Steffan joined them from the San Carlos Island Redevelopment Planning Committee. Mr. Mulholland reported that the MRTF voted to meet once a month on the 4<sup>th</sup> Wednesday and the subcommittee will meet on the 2nd Wednesday.

The Agency on Bay Management met this morning and he informed them that the MRTF and Council have favorably endorsed getting involved in the Sahdev litigation.

#### **C GARR REYNOLDS**

Mr. Reynolds said that he attended the traffic committee meeting. Captain Erne said they would have a neighborhood vehicle on the road for demonstration and the council will decide whether to purchase it for the Sheriff's Department to use. He also said that on Pine Ridge Road they plan to build 320 RV spaces. Some of these vehicles are 25 feet long and can present a problem. They do not at this time plan to have a pull-off lane. You can call John Davis at LeeDOT if you want more information. He also talked with the committee about the pedestrian overpass. They did not come to a decision or recommendation. There were some who are opposed strongly, some in favor, and some who didn't know. He did not see it as a popular idea.

Regarding the license renewal for the Mid-Island jetski rental, he said that what started last August as a sharing of information with the town manager appears to have turned into a contest. He does not consider the letter that he received last October as answers to his questions. He gave information about a situation. Future direction for issuing a license at a new location or not issuing a license is up to the town manager as it has always been. He always tries to go along with the decisions of the council whether he agrees or not. For the record, he has no vendetta or ill feelings toward the man who operates this business.

#### **D DAN HUGHES**

Mr. Hughes asked if the town manager would be bringing up the item about the Primeau case during her agenda time. She said that she had not planned to because it just happened Friday and it could not be on the agenda. She sent the council a memo because she wanted them to know what was going on. Mr. Hughes said it raised a number of significant issues he was not aware of. It involves property at West Coast Surf Shop and the use of the property and abutting property. If he remembered correctly, Mr. Primeau came before the LPA and said that he needed additional parking. They allowed him to park vehicles as requested. Mrs. Segal-George said it is correct that the Council gave him a parking variance. She said that she raised that issue with the mediator. The town is not involved, but in solving the case with the county, there are some things that could be detrimental to the town if we have to move the trolley stop. We are not sure we could find another location that would work. Mr. Primeau came to the council and said he had given the easements, as a good neighbor, that had allowed the CRA project to go forward. Mr. Hughes said he thinks that is a major issue and he questions whether we should intervene in the litigation. He wonders if it would affect our decision about the pedestrian overpass. Mrs. Segal-George said they are working on a settlement and then it would have to go before the county commissioners. Mr. Hughes said we are definitely an interested party and thinks we should consider this because it is so serious. Mr. Roosa said one of the dangers of becoming a party is that we would subject ourselves to a claim for damages from unlawful taking. We could become an indispensable party and this whole litigation would have to start over. He thinks it might be appropriate to authorize him to review the case, so we will be in a position to review the merits of the settlement. It could be that we can negotiate through the county commission. They may have jurisdictional problems and that might help us. We could also intervene as the CRA instead of as the town. Mr. Mulholland agreed that it is important because that is the entrance to the town. We gave him additional parking. If he goes on with what he wants to do, he will put a big hole in our CRA project. He agrees with Mr. Hughes that we should do something. Mr. Murphy shares the

same sentiments, but he doesn't know how far along the settlement is and about the indispensable party. When would that come up? Mr. Roosa said it could come up at any time. If we are, the court has no jurisdiction and the judgement would be invalid. It would be opposed by saying the county was the agent at the time, and therefore the county is the representative of the town in the case. The county did not have the regulatory power at the time. He is proposing something between the two extremes of joining the lawsuit or doing nothing. We might have a cause of action against the county. He recommends reviewing the county files and providing the staff with the facts and legal issues. If they adopt a settlement agreement, we would then negotiate with the county. Being a party to litigation gives you more rights, but also more exposure. Mr. Hughes said they would have to amend their complaint to say that we did some act to cause monetary damages. Mrs. Segal-George said she does not know how long it will take, but they were trying to come to terms on Friday. Mr. Reynolds said he does not see the emergency of the situation, and he suggested sitting on it and discussing it at the next meeting. Mayor Cereceda said Mr. Roosa would have to be given direction to review the case. She said that even though she is a friend of Mr. Primeau, she feels like she is being played. The CRA negotiations with the county occurred, then the presentation to the council was that he did all this so the town could have that, and now he goes back to the county to see what he can get from them. If the council made a decision to give Mr. Primeau variances, and if part of that decision is what Mr. Primeau had given away to the county, and if he is now taking back what he gave away, we should have the right to take back what we gave Mr. Primeau. Mr. Hughes agreed. When it came before the LPA, he might have had a different opinion if he had known it was only step one and then he was going to file a suit and seek something else. We need more information.

**Motion:** Mr. Hughes moved to direct the town attorney review the pleadings and bring to the council at the next meeting an analysis of those pleadings and what the alternatives of the town are. Mr. Mulholland seconded the motion. **Discussion:** Mr. Mulholland asked what Mr. Primeau came to the LPA about recently. Was this related? Mrs. Segal-George said it has to do with a different property. Mr. Reynolds said he is disappointed that Mr. Primeau is coming back. He thinks the council was generous with him. **Action:** The motion carried unanimously.

#### **E ANITA CERECEDA**

Mayor Cereceda said you will see quite a few electric cars on the beach in the future. It is a promotion by a company, Bombardier, to put out about a dozen cars throughout the county to promote them. They can only be driven on streets of 35 MPH or less. Fort Myers received grants to purchase two and are using them for code enforcement and community policing. Our PSTF will probably look into this also.

She has been speaking with the city manager and mayor of Sanibel discussing the Sahdev litigation. The city of Sanibel will be discussing this tomorrow at their meeting and it is expected to pass. Mr. Roosa will bring it up under attorney's items. If we pass a resolution tonight, she may attend their meeting to encourage them also. Mr. Roosa passed out a draft resolution. He has talked with Bob Pritt, the attorney of Sanibel. They will not intervene because to intervene, you have to have standing. Sanibel has a stronger case for standing than we do. They have an interlocal agreement with Lee County that any development that could have impact in this area, they would be copied during the staffing process and have a chance to appear at hearings. He thinks we may want to make a similar interlocal for rezonings in the future. Our concern has to do with water quality. He talked with DEP who said they will send a letter, but they are going to insist that there is no adverse impact on water quality in the design of the project. That meets the legal objections from a zoning point of view, but it doesn't address the adverse impact that people have. They were permitted for 400 people, and now the number of people is doubled who will be using these waters. That would give us adverse impact, but it is tenuous, but he doesn't think there is anything we can do short of joining Sanibel. Mr. Roosa read the resolution supporting the action taken by the Responsible Growth Coalition. It says the town has a vested interest in the waters of Estero Bay and that we support the lawsuit by other plaintiffs and urge the county commission to reconsider its position regarding the zoning action. This will be voted on during the Town Attorney's agenda time.

### **IX FIRST PUBLIC HEARING: 1998/9 BUDGET**

#### **A RESOLUTION TO ESTABLISH AND LEVY AD VALOREM TAXES**

Mayor Cereceda read the titles and opened the public hearing. There being no comment, the public hearing was closed. The second public hearing will be on September 21. Mr. Reynolds asked about the rollback rate. It looks like we are increasing property taxes by almost 1/2 percent. Mr. Roosa said they deduct the new construction. Because we have new construction, the total revenues collected will

be greater even though we assess the same millage. Most people's taxes will stay the same. It is a way of calculating to make it uniform through the state, but the bottom line is that the millage rate is the same as last year. Mr. Hughes said all property owners got TRIM notices and the rate is exactly the same.

**B RESOLUTION ADOPTING THE OPERATING BUDGET FOR 1999**

Mayor Cereceda read the titles and opened the public hearing.

**1. DAVID SMITH**

Mr. Smith asked about the expenditure in the 5-year Capital Improvement Plan on the Times Square overlay of \$175,000 this year plus \$500,000 for the next four years. Mr. Gucciardo said that the \$175,000 indicated is grant money that we have already received for tourist development and it can only be used in that area. The following years show projected revenue from the TIF that we will try to get. If it generates more or less money, it will be adjusted. If it doesn't generate it, it will not come out of the general fund.

**2. JACK HEYMAN**

Mr. Heyman spoke about the Connecticut short cut. He cautioned the council to not put the fire district in a position where they cannot move through the streets easily. Please check with fire department first to see if the plan is OK.

The public hearing was closed. Mr. Mulholland thanked Mr. Gucciardo for the analysis on the pre-incorporation studies and how it compares with the current budget. There were some things missing from the pre-incorporation study. It comes very close when you compare them equally. It is not a runaway budget and extravagant spending.

Mr. Reynolds said he is not that rosy about the analysis. He would like to meet with Mr. Gucciardo during the week and go over some figures. He talked about the salary structure that is proposed. Mr. Gucciardo clarified that the memo dated August 27 indicated a salary range of \$80-95,000 for the town manager and they are recommending \$85,000, which is what the budget is showing. The range would give the council flexibility. Mr. Reynolds said the salary surveys do not tell him much because it doesn't tell about the number of staff or population. Mrs. Segal-George said none of the salaries have changed up to now, and the recommendation is that no position will be raised more than \$7000 over what is being paid from the beginning for that position. The bonuses have never been added to the base. Mr. Mulholland complimented the staff on the excellent presentation of the budget. The salary memo is a fine analysis. Regarding the projected salary for the town manager, there are 38 towns cited, and out of that, 18 towns will be paying more than we will, and 20 will be paying less, so if she gets the raise, she will be right in the middle. Marco Island has just begun, and he has heard that they are paying their town manager \$85,000. The low salary is \$62,000, and the high is \$105,000. For the deputy town manager there are 15 higher and 2 lower. It shows we are in line with other towns for our fine staff. Mr. Murphy complimented the staff for the excellent document and complimented the council for having the foresight and wisdom to include the five-year plan for the future. It is amazing how far we have come in less than three years. Where other municipalities have long lines commenting on the budget, it speaks well for the staff and the council that we don't have long lines asking questions about the budget. Mr. Hughes added that the community he represented for many years was about the same size but they don't have the tourist situation and the major growth during the wintertime. They have about 30 employees. They have all kinds of administrative personal to administrate a budget that is not very significantly different from this one. In addition, we have beaches and the back bay, and that doubles the problems that a municipality on land only has. This is being done with five people, which is remarkable. The ranges are actually on the low end of the scale. He doubts if very many if any of the municipalities listed are operating with only five people.

Mayor Cereceda asked if we really get \$47,000 worth of animal control? Can we eliminate it completely and do it ourselves? Mr. Gucciardo said this item is very irritating, and it is \$17,000 more than last year. Two years ago, we were told by the Humane Society that the average price per call is about \$51, so for the first two years they based the contract price on that figure times 4%. (They said the beach accounts for about 4% of their calls.) After the first year we found out we are really only 1.5 % of the calls, which means we are paying over \$80 per call. But they did not want to negotiate. The county had a contract with the Humane Society as did all the other cities. The county had been negotiating with the Humane Society because they were saying they could not do the job for less than 40% increase. Now the Humane Society has backed out of the business altogether but they have given us the courtesy of continuing service for 3 months. The county is going to start negotiations with other organizations. No

one does this in-house, and we can probably never do it ourselves. We would have to have an incinerator, bonding, and a medical license. We are not alone in trying to get it done more cheaply. But we are stuck now and are in negotiations with the county and other municipalities for someone else.

She also asked about Bay Oaks, which is about our biggest expenditure. Is the county still agreeable for a 50% split? Last year they indicated they were going to put it all on us. Mr. Gucciardo said we have an interlocal agreement that extends the 50% split for Bay Oaks and the park for 5 years. He said the survey showed close to 50/50 every month. The contract will be \$150,000, but the budget has a cushion in case the advisory group may recommend some enhanced programming. She also asked about beach renourishment. Are we going to build a reserve to draw from or do we plan to put in a taxing district? Mr. Gucciardo said it depends on how long away it is until beach renourishment. The TDC money will continue to build and we think that the entire pot is for beach renourishment, and ours is the priority project. He doesn't know if TDC will agree though. We will do an interlocal with the county partnering with WCIND and TDC to set up the scope of the project. The next critical part is design and permitting, which will cost about \$720,000, which should be about a 50% split with state and local. We have set aside \$175,000, which we think is the worst-case scenario. We need an economic study to better set out the percentage between town, county, TDC and other players. It will cost about \$50,000 for the study. We will be proposing to Coastal Advisory that that study be funded by TDC to be reimbursed at the end. The whole project will be between \$9-12 million. The large question is whether there will be federal money. In past there has been. Even with the worst case of no federal involvement, we can still anticipate 50% statewide, and the balance split with local entities. At some point the town may have to consider an assessment if it looks like the town must pay most of the 50%. He hears that usually the local municipality does enact some sort of taxing assessment.

Mr. Gucciardo went through some minor changes. Based on what the council has said about wanting to do more mailing on land use cases, on page 15 there will be a slight increase in postage and delivery. On page 16, one of contracts is with community development and \$88,400 has been confirmed. We will be changing the name of flood/control to show up as "Flood Management Plan" based on the approval of the plan tonight. Water enforcement grant money has changed, so the expenditure line may change. Mrs. Segal-George said we beefed this up because they have heard the council say they want that. The WCIND money we will receive is the same as Cape Coral and Sanibel, which \$18,400. The rest would have to come out of general funds, which would allow them to patrol 40 hours per week. Now we are doing 20 hours. We would get some patrol in the back bay and it would also allow some patrol in the harborage area. Mr. Mulholland encouraged us to keep the money there. Mr. Gucciardo said that on page 33, in note 1 there is a typo, and the figure \$699, 892 should be \$699,842. The final public hearing will be September 21.

## **X OLD BUSINESS**

### **A REQUEST BY COUNCILMAN MULHOLLAND TO RECONSIDER THE CLAIM FOR ATTORNEY'S FEES FOR LENA HEYMAN**

Mr. Mulholland said that at the August 31 meeting, he voted for paying Ms. Heyman's expenses based on a misunderstanding of the town attorney's comments. He understood him to say that we had an obligation to reimburse her. When some colleagues voted not to pay, he was surprised. So he listened to the tapes and found out that he misunderstood. Now he is trying to set the record straight and he regrets any pain or hardship. He asked the town council to reconsider the claim. Mr. Roosa said that when Mr. Mulholland first raised the question, after a quick review of Roberts Rules of Order, he represented to him that it couldn't be reconsidered because of the action of reliance of the party who was present at the hearing. He felt that if that had happened while the applicant was still present, it would have been permissible. But that was an off-the-cuff opinion, and since then he researched and found a case of the BOCC vs. Webber, which involved a zoning matter in 1995. The commission voted at a zoning hearing to approve a request, then they adjourned. A member who voted in favor realized he had done so based on erroneous facts. When they re-adjourned, they re-voted and decided to hold another hearing and turned down the zoning. The Circuit Court said they could not do that, but the 2<sup>nd</sup> District Court of Appeal said they could. They said the basic rule of parliamentary law, is that unless some right of a third person intervenes, all deliberative bodies have the right to reconsider their proceedings during their sessions. They said it would be unreasonable to conclude that an official change of mind was detrimental. Because of the shortness of time, there was no opportunity for the applicant to act in reliance upon it. In addition, the board member who moved to reconsider was part of the initial majority. Also they said that the board

afforded the respondent the due process before it reached its final decision because they reopened the hearing and allowed the party to make a presentation before voting. The difference in that case is that it all occurred in the same day and while the people were still present. That issue is the issue of action in reliance. In this case, the attorney fees had already been paid, so the only reliance would be the loss of income. When Ms. Heyman left here she felt like she would have the money. But he does not think that is too distinguishing and that this case would still apply and that they have the right to reconsider if the majority agrees. Then they would open the case again and allow the petitioner to speak again and present her case and then they would re-vote.

**Motion:** Mr. Mulholland moved to reconsider the claim. Mr. Murphy seconded. **Discussion:** Mr. Reynolds said that Mr. Roosa said it was a fair cost and it was legal to pay it. If an error has occurred, it should be brought back, but he does not believe an error has occurred. We should stand by our word and not quibble about paying the bill. It is a contract. Mr. Roosa spoke about the issue of whether it was a contract. He said it became a contract when the council agreed to make compensation. It was the decision that created the contract. There was no contract prior to the vote to approve. The first question was whether they had the authority to pay. The case presented gave them that authority, but when they exercised that authority, they made a contract. If that was in error, then there would be no contract. Mr. Hughes felt that it would be a different situation if a party appeared before the council as a defendant against an allegation and asked that the city pay her counsel fees and they adopted a motion to do so. Then if that person, in reliance on that vote, went out and expended money with the expectation that the council would pay, it would be different. In this case the expenditure had been incurred and they were offering to pay on a retroactive basis, so he does not believe there is a reliance situation. Mr. Roosa agreed. **Action:** All voted in favor of the motion except Mr. Reynolds. The motion carried.

The original discussion of the request for reimbursement was re-opened and Mrs. Heyman made a presentation. She said she has spoken to her counsel and with the League of Cities. She believes that it was a contract, not only here, but again in the local newspapers that town would pay, and also in New Press which is a county newspaper. She also called Ken Small of the League, and he said that when person is exonerated who serves in a quasi official capacity, they are entitled to legal reimbursement. Ms. Hubbard, her attorney, said that any verbal agreement is a contract under Florida law. She told the council that it had caused her humiliation and this action is additional humiliation. Last Tuesday at the LPA meeting they approved the minutes of June 2, where David Smith asked Mrs. Segal-George, the attorney for the LPA, about the hearing, if would they need to find independent representation. Mrs. Segal-George said that the members were not being investigated as individuals and would need to have independent counsel. So to say she had not been advised to seek counsel is not true. Mr. Heyman said that after the council meeting where they said they would pay, he promised one of his daughters that he would help with her car problems. He may not have told her that if he had not expected to receive the money. He also said that the town has an insurance policy. Has anyone checked to see if they will pay? The town needs to cover their volunteers in the future. Mr. Hughes asked if the insurance company wouldn't require that we get consent in advance of the legal fees. Mr. Roosa said that prior to hiring an attorney, you must contact the insurance company. Mr. Reynolds said he doesn't feel good about what is happening here tonight. Mayor Cereceda commended Mr. Mulholland for his courage because she is sure it is embarrassing. She hopes she would have the courage to come before the council if she makes a mistake sometime. Mr. Murphy said he feels the same way, but he doesn't think Mr. Mulholland should be embarrassed. It was an easy mistake to make. Mr. Reynolds said he is not sure Mr. Mulholland needs a pat on the back for bringing something back that shouldn't have been brought back. Mr. Hughes said whether it should be brought back is a subjective decision, but Mr. Mulholland had the absolute right to bring it back to reconsider and that it was properly done under Roberts Rules of Order and under the case law cited by Mr. Roosa.

**Motion:** Mr. Reynolds moved that the council stand by their decision and allow Ms. Heyman to be reimbursed \$855 for legal expenses and that the town manager be instructed to see if it could be reimbursed to the town by the insurance company. Mr. Hughes seconded the motion. **Discussion:** Mr. Hughes said he had somewhat the same feeling that Mr. Mulholland did regarding Mr. Roosa's opinion at the last meeting. He asked Mr. Roosa if this is a discretionary matter and a question of policy, and not a legal obligation. Mr. Roosa said it was discretionary and a matter of policy. The only case that was presented was about an elected official that was challenged by recall. He thinks there is sufficient case law to support if you want to pay, but not enough case law to require it. If she had been found guilty, there would be no question of recovery. Mr. Hughes said he voted in the affirmative on the original motion, but the spin that has been given by a certain group in the Tidelines,

is that she was vindicated and wrongly accused. She was never wrongly accused. In paragraph 17 of the report of the special counsel, he points out that Johanna Campbell's ex parte communication should have been disclosed before the meeting, and that Ms. Heyman's conversation with Al Van Horn should have been disclosed before or during the public meeting on March 31. Mr. Hughes said he is sympathetic with the motion, but he does not want it twisted and used for total vindication of what occurred. That is not what the special counsel said occurred. He asked that communications to the public be fair and clear about the facts. Mr. Reynolds said that article wasn't written by an attorney so don't read that much into it. Mr. Hughes said there is no name attributed to the article so he doesn't know who wrote it. Mr. Murphy said the Tidelines also said that Murphy and Cereceda voted against the payment rationalizing that Heyman was appointed, not elected. He wants to be on record that he never said that. Mayor Cereceda said she said that in the context of saying that the case that was cited was about an elected official. **Action:** Mr. Reynolds and Mr. Hughes voted in favor of the motion. Mayor Cereceda, Mr. Murphy and Mr. Mulholland voted against. The motion failed.

Mr. Hughes said he wanted it to be made clear that his vote is not an endorsement of ex parte communications that were imprudent, and it is no guarantee that anyone who engages in such communications in future zoning cases will be protected by this council. Mr. Reynolds said we do not put enough value on our volunteers. Why would they want to keep serving? Mayor Cereceda said she places a high value on volunteers. Mr. Mulholland said he has been a volunteer almost since the beginning. Ms. Heyman is a good solid worker for the town and he hopes she continues to do that, but he felt that he had to exercise what he thinks is the right thing to do. The volunteers are terrific. Mr. Murphy said we are all on record about how valuable volunteers are. But when someone is alleged to have done something before formal charges have been filed, and they go out and hire attorneys, that is uncalled for. He doesn't see how we could operate if we reimburse attorney fees for everyone that had something alleged against them. If there are formal charges, it would be incumbent on us to defend them.

Mr. Roosa said that when the council voted not to approve the payment, that is a denial. There is no need for a motion to deny the payment.

The council took a break at 9:00 and reconvened at 9:23 PM.

#### **XI DRAFT ORDINANCE: ESTABLISHING ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD**

Mr. Roosa said the important section is section 16. Otherwise this is a standard ordinance that was used for the creation of the LPA and all organizations since then. It sets out the functions, powers and duties of the board. Mrs. Segal-George said she would like to request 12 members instead of 9. Initially she sees this group as an advisory board that may transition into a foundation. For now they would be managing something that is the town's property, so she would rather see it as an advisory board coming to the council with recommendations rather taking an operating function. We have funds budgeted for the property and initially there will be a lot of expenditures, and she does not feel comfortable with this arrangement. Mr. Roosa said he could add "to advise the town council on". There was no objection to having 12 members. It will be set for first reading on September 21.

#### **XII RESOLUTION : ADOPTING FLOODPLAIN MANAGEMENT AND FLOOD HAZARD MITIGATION PLAN**

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

#### **XIII RESOLUTION: RESOLVING THE AMBIGUITY IN DETERMINING THE DEVELOPMENT RIGHTS OF BAY BEACH**

Mr. Roosa handed out a resolution that includes changes requested by Mr. Humphrey. The changes are underlined. The first page remains the same. He met with Mr. Humphrey with the understanding that the council could make modifications to the resolution at this hearing. He said the difference in the version he handed out tonight is that Stardial agrees to withhold all further development order applications "for residential and motel units" until the findings as to Stardial's rights have been formally approved by the town. They have 60 days to present a development plan and we have 60 days to review it and set it for public hearing. Mr. Hughes asked if there are any pending development orders for commercial development. Mr. Humphrey, representing Stardial, the developer of Bay Beach, said that it

would apply to residential and motel only, not commercial or recreational. There is a pending development for commercial but it has not been filed with Lee County yet, but if it is, the council would have the right to address it. If this resolution is approved, the council would be permitting only the two that are in process by Lee County and are on appeal by Stardial. One of the parties who spoke was mistaken: one of the 10-story buildings will be in Casa Marina, and the other one in Waterside 3. If the council allows those two to proceed, in consideration, they would bring a site plan with full buildout and address the issues regarding open space and height. They would not ask for any more permits during the 120 days. Mayor Cereceda said she has a problem with this. If the council adopts the resolution, Stardial will put together the rest of the plan and present it to the council. If their position is that they are entitled to do what they wish to do, what is the purpose of compiling the plan? Wouldn't the argument be the same then that they have the right to build 10-story buildings? What authority or right are they giving to the town? Or are we going to be in the same position of whether we have the right to address the vested rights? Mr. Humphrey said the objective of Stardial is to avoid litigation. They believe any party loses when litigation takes that much time. They are willing to come forward and show a plan, but they will not concede their legal right. They may still ask an appeal for the issue of 10-stories. The council may decide that seven stories is OK but not ten. Then the burden shifts back to them to acquiesce or appeal. They have not conceded a position, just agreed to show more detail and address green space, lakes, etc. They hope the council will make findings about what the commission said in 1987 and will narrow down the problem. Mr. Mulholland submitted that Stardial is asking the town to give away something by giving them two 10-story buildings. What are we getting out of it? Mr. Humphrey believes that Stardial has a clear right. They think their appeal is good because of estoppel issues. In return for removing the denial on those buildings that have already been sold, their reciprocity is to come in with a detailed plan. They do not want a lawsuit and don't think the town does either. He thinks the problem the residents have is that they don't know what the future holds out there. This will address that. Mr. Mulholland thinks we are giving up a whole lot and getting nothing in return. Mr. Hughes asked if we are getting a site plan or the opportunity to deny all or part of a proposed site plan? It says we can make findings. But what if the findings are that they are entitled to a certain number of units but we disagree on the height or open space or some amenity? Under this agreement, what happens then? We haven't taken testimony, and there hasn't been a review by the LPA. What is the legal affect of making findings? Mr. Roosa said it will be reviewed by the LPA before it comes to council. The findings are what is vested. They will review what the county passed and compare it to what their plan says. The council will set limits on how you interpret the past county action. If the council decides that they have the right to the remaining units, but not to the 10-story buildings, they will take us to court, then the issue becomes what the county granted to them. If they granted it, we can't take it away. They get a lot out of this. The value of their property is directly related to the development rights, which gives value. Now there is uncertainty and it needs to be resolved. If it can be resolved so that it is economically reasonable to them, it will end there. If not, they will litigate that issue. He sees a lot of benefit for the property owner. For the town, we don't know what they can build and that is not good for our planning for infrastructure. They shouldn't have a blank check. We will set limits on it. Those limits can be incorporated into the Comp Plan. Mayor Cereceda said if the premise is that the 1987 plan grants them certain things and they are not budging from that premise, we are not going to decide anything unless we challenge them. Mr. Roosa said that if 30 days passes and they don't file a lawsuit, they are stuck. That brings it to issue this year, instead of going on for five years, and every time they go in for development, they get denied. Mr. Mulholland said he went to Bay Beach and rode around, and he also gathered lots of information from the county, but it is confusing. We are getting a site plan and nothing else. Maybe they aren't entitled to the two we would give them. Mr. Humphrey said they will bring a definite plan and he agrees that would give them the benefit of having some certainty that they won't be marketing something that may be denied. Mr. Mulholland asked why they can't give us the site plan first. Mr. Humphrey submitted that their best case in court is for the town to deny these two permits and then they can argue based on the right of estoppel. If you take away the arguments of estoppel and vested rights, then they don't have as good of a case if they don't have those two permits to challenge. Then they only have the interpretation of what the county gave them in the way of vested rights. But they have contracts and they need to move forward. That is why they are conceding. Mr. Hughes said that ultimately we must resolve what is vested. At the last meeting, the controversy centered on whether 10 stories were vested in 1987. But he still raises the seeming acceptance by the county (and us inheriting that) of the vesting of the whole plan retroactively to what is referred to as their site plan. There was not a public hearing on that. The PUD concept was not even part of the Lee Plan or LDC at the time. He would like a legal opinion of what is

vested there. Mr. Spikowski gave a good history but he can't draw a legal opinion. Mayor Cereceda asked if we remove the objection to the permits, does it assume a legal basis to then say the town would approve the same thing at some future point? If we have taken an action to approve two 10-story buildings, but then during the hearing we say that we don't want 10-story buildings, will that be used against us? Mr. Humphrey said for the public record, they cannot use the town's removal of the denial as a basis for saying the town has acted to approve the permits. Mr. Hughes said he thinks that the resolution should expressly say that this would be without prejudice to the municipality and not be deemed as a precedent or acknowledgement of the 10-story height limitation. Mr. Humphrey said he has no problem with that, but he also does not expect it to be without prejudice for them also. Mr. Roosa said this is a settlement offer and you cannot use that as evidence of agreement, but he does not have any problem about adding the language to the resolution for clarification. Mr. Mulholland asked Mr. Roosa if the council would hold a public hearing after going to the LPA. Mr. Roosa said that it would. The issue is whether they have the right to do what they are asking for, not whether we think it is a good idea. If the council decides they don't have the vested right, but they agree to go along, they would have to go through the variance process. Mr. Mulholland asked if they could put this off and send it to the LPA first. Mr. Roosa said they do not have to pass this tonight, but they have filed appeals and if you do nothing it will go through the normal process. But then they would never have to submit a site plan. Mr. Hughes said then it would happen again every time they wanted a permit, but he shares Mr. Mulholland's concern about whether it has to be done at this time. Mr. Roosa said in his opinion, the county erroneously issued two permits. But the mistakes they made have been perpetuated, and in reliance on those mistakes, they went out and got contracts sufficient to get funding for the construction. These two cases, if taken to circuit court, would be his best two cases. That still wouldn't solve the rest of his property, and that would affect their marketability. He is sure they are prepared to go to circuit court and he is fairly persuaded they will prevail, because our county staff will say that is how they interpreted it in the past. Mr. Mulholland said he thinks it is a mistake to do this without public hearings. Mr. Roosa said there are no public hearings in a court room. Mr. Murphy asked if there is any exposure to the town in this matter. Mr. Roosa said as of now there isn't. If the LPA denies the permits and it comes to council and they deny it, they would sue the town. This resolution brings some finality to it. The development at Bay Beach is more dense than anywhere else but we don't have a grasp on it. We are giving them time. Ultimately they will prevail but it may be a year from now, and that might result in damages that we would be liable for. Mr. Mulholland said they are dealing in good faith, but if we don't like the site plan, we have already given something away. Mr. Roosa said it is not whether we like the site plan, but do they have the right to build it. Mr. Hughes asked if it is correct that if we don't enter into this agreement, we will never get a site plan unless further down the line we come to another similar issue. Mr. Roosa believes before long they will come in with a site plan, but we are accelerating it. They want to make that property marketable.

Mayor Cereceda asked Mr. Spikowski to recap. Mr. Spikowski said there will be an appeal on these two buildings and we will have a chance to review our legal exposure on them. He doesn't think they have to do that tonight. The question is if we getting something important by passing this tonight. In the LDC next summer we have to show some zoning for Bay Beach whether they cooperate or not. We can show their plan, we can have Mr. Spikowski prepare a plan, or they can work together on a plan. His intention has been to work with the developer on a plan. This resolution would just speed that up by requiring them to submit something now. You have another chance to review the appeals on those two buildings. They need certainty on their land. This is one way to go, but not the only one. Mr. Murphy asked his recommendation. Mr. Spikowski said he helped draft the resolution, but he is not encouraging it. It is good to start working now, but by giving up these two so quickly, are you getting enough in return? It will have to be clarified before next summer anyway. Mrs. Segal-George said the appeal is set for the LPA in October. Then it goes to the Council, and if they deny, it will probably go to court. The issue would only be those two cases. Mr. Roosa said he can't say with certainty, but the court could easily rule that it construes the document to allow 10 stories throughout the development. Mayor Cereceda said her other concern is that we are circumventing. We are jumping in before the LPA and taking it away from them. Mr. Roosa said it went to a workshop before the LPA. We started out with a concern for the total development and these two issues became the bargaining point to address our concerns. Mayor Cereceda feels uncomfortable because she is not sure she has the authority. If they are vested, they are vested. But she thinks there is some exposure to the town if we hold up the permits. Mr. Reynolds said he feels like Mr. Roosa is Mr. Humphrey's strongest ally. Mr. Roosa helped us write an ordinance that says two stories. If they have vested rights for 10 stories, why was it denied? He also has a problem of taking it out of the

hands of the LPA. He asked Mr. Humphrey if the people who bought in Casa Marina had known that a 10-story building would be towering over them, would they have bought there? Some people bought higher for views, and now they will be taken away. Eventually Bay Beach will have to have a site plan. Mr. Hughes reminded that the question is 10 stories versus 7, not 10 stories versus zero. The question is not whether the neighbors knew because it was public record. Mayor Cereceda asked if we could table this until a presentation is made on the appeal to the LPA. Then Mr. Roosa can do some research on what he believes is vested and how strong our position is. Mr. Roosa said we are either going to grant it or deny it. If you grant it there is no quid pro quo and they would no longer be required to give a site plan. They might want to, but it won't be required. Mayor Cereceda asked Mr. Humphrey if this deal is only good today. Mr. Humphrey said he hasn't spoken with the client yet, but if it goes to the LPA for review, that is what they are looking at: vesting and estoppel. He does not see why Stardial would want to do the site plan, but he can't tell what policy decision they will make.

**Motion:** Mr. Mulholland moved and Mr. Reynolds seconded that the resolution be tabled until the appeal goes to the LPA and the council. **Discussion:** Mr. Hughes said he would still want an opinion from our counsel regarding vesting. When it comes back to the council, he is going to want to know what our legal position is to determine how much ground we have. He doesn't want to get us in more litigation. Mr. Murphy asked if the LPA will be asked to make a determination on the question of vesting. Mr. Roosa said that the question of vesting will be on the height issue only. He said there is no exposure by tabling, but they are losing an opportunity, and that is a value judgment. They know they will have their rights a year from now, but there is some value to having it now. Mr. Murphy said it is a tough call. He can see Mr. Roosa's point of view. He has been there himself and time is worth everything. But he can see that the will of the council is to send it to the LPA. Mr. Hughes said he felt it was a path we should pursue and hopefully get a site plan, but his decision is ultimately swayed by Mr. Spikowski's remarks that they can't develop this without coming in with a site plan. It does delay them and we will get a site plan. It was agreed that the town attorney should give a legal opinion on this to the council. **Action:** The motion carried unanimously.

#### **XIV DRAFT RESOLUTION: CREATING THE 1998 CHARTER REVIEW COMMISSION**

Mrs. Segal-George said that this came out of the workshop last week. The members have not been contacted yet.

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

#### **XV INTERLOCAL AGREEMENTS WITH LEE COUNTY**

##### **A BAY OAKS**

Mr. Gucciardo said that there are two significant changes to the interlocal this year: it acknowledges the advisory committee, and it extends the 50/50 split for five years.

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

**Discussion:** Mr. Hughes asked if this can be terminated by either party without cause for five years.

Mr. Gucciardo said there is no option for termination, but he is not sure it couldn't be terminated.

**Action:** The motion carried unanimously

##### **B COMMUNITY DEVELOPMENT**

Mr. Reynolds said that he has heard people say several times that the county is in the business of selling building permits. It is very expensive to get permits today. He is wondering if there is some way that all fees could be turned over to the town and then we pay more for them to do their job. That way they wouldn't be so loose in issuing permits if they don't get money from it. We are paying them \$88,000 which he thinks is reasonable because they make a lot of money on the permits. He thinks we would have a lot of trouble getting the county to reveal how much they make in permits. Mr. Mulholland said this agreement is the essence of government lite. We don't have to have a large staff. He does not think it is in the town's best interest. Mr. Reynolds said they would still charge and collect the fees and we would probably pay them part of the fee for collecting it. Then the money would come to us. Mr. Hughes said this interlocal has a 60-day termination clause. If they should terminate on us, we would be in a pretty tough spot. Who would we get to do that? Mr. Roosa said there are private engineering firms that will do this, or maybe the City of Fort Myers or one of the other cities. Mr. Gucciardo said we did try to negotiate with some private firms, but it was not cost effective and their record was not good. We would be in

trouble if they terminated. But we have a good working relationship with this department, and they do collect the fees. Our residents are paying the same fees as if they had not incorporated. He doesn't think the county is unhappy. Mr. Reynolds said maybe the council should consider asking them to change the termination agreement to six months, because that would give us time to find another source. Mr. Gucciardo said he could make that suggestion to the county, but if they have a problem with it, there would not be enough time to get this approved before Oct 1. Is it OK to sign the agreement as is if they will not accept the longer termination clause? The council agreed.

**Motion:** Mr. Hughes moved adoption of the interlocal as presented, with the request that staff seek a longer termination if possible. Mr. Murphy seconded. The motion carried unanimously.

## **XVI NEW BUSINESS**

### **A LPA SIGN ORDINANCE**

Mayor Cereceda said we need to direct the town attorney to put this is draft ordinance form. Mrs. Segal-George said the LPA approved it unanimously. They worked incredibly hard on this and it is the hardest thing she has ever drafted. It is unique. It is a mix of what they thought were some of the better sign ordinances across the country. Mayor Cereceda said the realtors did not seem to have any objection to the new rules. Mr. Mulholland said the LPA should be commended for their good work. They hammered out many of the objections as they worked on it. Mr. Hughes agreed and said that Ron Kidder's committee looked at many ordinances around the country. He appreciated how difficult it was for Mrs. Segal-George to put together this ordinance. Mr. Roosa was directed to put this in ordinance form.

### **B OPERATION COCONUT PLANTATION**

Mr. Murphy said he has spoken with Mr. Myers and some other people. There was some concern in the papers about what they were doing and where they were putting it. The area behind Red Coconut was chosen because it was volunteered. There are already people, including himself, who water trees back in the Matanzas Preserve. They are just looking for some seed money from the council and he doesn't know how much that will be. Saturday is the beach cleanup, and also the Myers have said there is a Boy Scout troop staying at the Red Coconut that is looking for a service project. We have a lot of coconuts already and some trees donated from the Langlois family. There is also some concern expressed in the recent newsletter about starting a town project on private property, but the goal is the beautification of Estero. It won't happen overnight. But in the future, if we get to the point where we have a surplus, we could make them affordable to the residents. It is not profit driven. They are not intending to sell coconut trees.

**Motion:** Mr. Hughes moved and Mayor Cereceda seconded that no more than \$2000 be approved for this project. **Discussion:** Mr. Reynolds said he has heard concern that coconuts will fall on cars and pedestrians. Is there another palm we can use? Mr. Murphy said the coconut is our tree on this island and what we use at Times Square. You do have to maintain them or they can be a hazard in storms.

**Action:** The motion carried unanimously.

### **C CONTRACT WITH ARDEN ARRINGTON**

Mr. Mulholland said he has been over the contract and would recommend it. He met Mr. Arrington about two years ago and he was one of the founders of the MRTF. He was able to get a lot of talented people on the committee. We are fortunate to have someone of his talent and background do this for the town.

**Motion:** Mr. Mulholland moved and Mr. Reynolds seconded that the contract be approved.

**Discussion:** Mr. Hughes agreed about the comments about Mr. Arrington. He asked about article 6 asking if there should be a requirement that items be presented every month. Mrs. Segal-George said there hasn't been a problem with that so far. Mr. Reynolds said we couldn't have found someone more capable and enthusiastic. He has done so much over there already. His concern is for the future to keep our budget under control. He hopes he will keep an eye on expenditures. Mayor Cereceda said she appreciates the attention and respect that Mr. Arrington has generated for the town and for the interest he has generated throughout Lee County and Florida in heritage and archeo-eco tourism and how that is essential to the environment of our town. The Mound House is a nice manifestation of that. Mr. Reynolds said he has heard some concerns about Mr. Arrington having an office located at the Mound House for his other tour business. Mr. Arrington said they haven't addressed that yet, but he intends to stay at Fish Tail Marina for now unless the steering committee decides that it would be appropriate to move it. **Action:** The motion carried unanimously.

**D REQUEST TO DIRECT THE TOWN ATTORNEY TO AMEND THE VESSEL CONTROL ORDINANCE**

Mr. Mulholland said he feels it is necessary for the council to take some steps in Estero Bay. The state wants to make the whole bay a manatee zone and make it all idle speed. One of the things he has tried to push is using water taxis to relieve our traffic. If we have idle speed, no one will use it. If we have a posted speed in the channel and then have idle speed everywhere else it could work. We have people who are not acting responsibly on boats and jet skis in that area. They are destroying the sea grasses and bothering the birds. This is a way to give the town some flexibility, keep the boaters happy, and solve some of problems. Mr. Mulholland will get with Mr. Roosa to discuss the details. Mr. Reynolds asked where most of the sea grass beds are. Mr. Arrington said they are not in the channel, but out of the channel where you get into water that is 2-3 feet deep.

**E REQUEST BY MAYOR CERECEDA TO ATTEND THE 1998 LEADERSHIP SOUTHWEST FLORIDA PROGRAM**

Mayor Cereceda said this is a step after Leadership Lee County. (There is also a Leadership Florida class.) The deposit is \$400, and the full price is \$950.

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

**F REQUEST FROM THE MAINSTREET PROGRAM**

This item will be rescheduled for September 21.

**XVIII TOWN APPOINTMENTS**

Mrs. Segal-George said that Mr. Bonkowski has resigned from the LPA and she asked if the Council wanted to advertise for this position or if they would like to appoint the other applicant from the last time there was an opening. Rod Vayo had submitted his name at the same time as Mr. Bonkowski. Mr. Murphy felt that if Mr. Vayo is still interested, he should be appointed. The council agreed.

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

**A SCHEDULE OF MEETINGS FOR LAND USE HEARINGS**

Under the regular schedule, the November land use hearing would be November 3, which is election day. Mayor Cereceda suggested changing the date to Monday, November 9 at 9:00 AM. The council agreed.

**B MOBILE VENDING**

Mrs. Segal-George said we have had some problems with someone who is selling lemonade on the beach. She has changed locations of her store and is trying to apply for a permit. We are trying to find a way to deal with this issue on a larger scope and not allow mobile vending on the beach. We have two ice cream guys who are now grandfathered. We have been telling everyone else that it is not allowed. Mr. Roosa provided two draft ordinances. One is an amendment to the land use regulations (a new ordinance) where mobile vending would be expressly prohibited in all zoning categories on the island. The other would be an amendment to the parks and recreation ordinance, which would include the beaches as part of our park system.

**C AUTHORIZATION REGARDING PEDESTRIAN OVERPASS**

**Motion:** Mr. Hughes moved to authorize not to exceed \$15,000 to be split equally with Mr. Jorge Wiebe for the purpose of advertising for an engineer to do preliminary design, prepare cost estimates and bid specs for the pedestrian overpass. Mr. Murphy seconded. **Discussion:** Mr. Mulholland said that originally he was enthused, but that was based on some significant improvement in traffic. He is not convinced we can see if it will help until we spend the dollars, so he can't support it. Mr. Reynolds agreed for the reasons already expressed. **Action:** Mr. Hughes, Mr. Murphy and Mayor Cereceda voted in favor of the motion. Mr. Reynolds and Mr. Mulholland were opposed. The motion carried.

**XX TOWN ATTORNEY'S ITEMS**

**A RESOLUTION ON THE SAHDEV CASE**

**Motion:** Mr. Hughes moved adoption of the resolution and Mr. Mulholland seconded. The motion passed unanimously.

**XXI PUBLIC COMMENT**

There was no public comment.

**XXII ADJOURNMENT**

The meeting adjourned 11:30 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary