

**FORT MYERS BEACH
TOWN COUNCIL MEETING
NOVEMBER 16, 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, November 16, 1998 at 6:36 P.M.
Present at the meeting were: Mayor Cereceda; Council Members Daniel Hughes, Garr Reynolds, and John Mulholland; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.
Excused from the meeting: Vice-Mayor Ray Murphy.

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 Tafel of The New Church.

IV PUBLIC COMMENT ON AGENDA ITEMS

A MARTY HARTEN

Ms. Harten thanked the Council for the wonderful concerts at Santini. Any support and money the Council can give will be appreciated. So far Al Durret has sponsored all the concerts.

B OLLIE KERN

Ms. Kern stated that she lives on Connecticut Street and she is happy that the Mound House belongs to city. But she said that it is a residential area and a family area, and they would appreciate if the town considers the impacts of all the traffic for public swim lessons, holiday lights, etc. She is afraid it will be another big Edison Home. They already have problems with traffic so they would like the town to let the residents of Connecticut and Shell Mound know before planning activities down there. They have to read it in the newspaper now.

C ROBERT KEENE

Mr. Keene spoke about Gullwing. He said that the donation by the developer is essentially the private access of Fairview Isles. He hopes to hear full discussion about that. Regarding the Primeau case, he said that the present trolley stop is not so attractive or necessary that it is worth meeting the demands of the injured property owner.

D JACK CAPPS

Mr. Capps said that he is president of the Fairview Isles Condo Association, which represents 55 units on Estero across from Pointe Estero and 30 yards from the Gullwing property. In 1964 Fairview Isles (175 homes) and Fairview Isle Condominiums were given a 4' beach access on the southern side of Gullwing, but not part of the Gullwing property. When he purchased his property, it included a deeded beach access. When a property is resold, they pass on the condo documents, including the deeded beach access. He read from the easement agreement which is being presented to the town which says that the agreement is being entered into by Point Estero and Gullwing, grantors, and the Town of Fort Myers Beach grantee. (At this point the council discussed whether to allow Mr. Capps more than his allotted 3 minutes. Mr. Hughes and Mr. Mulholland wanted to allow more time, and Mayor Cereceda and Mr. Reynolds wished to adhere to the rule of only 3 minutes. Mayor Cereceda suggested allowing 5 minutes this evening because there are two controversial issues on the agenda. The Council agreed.) Mr. Capps said the town, if this is voted on tonight, may receive land with no public hearing and no notification to the households. If the town removes their deeded access from the documents, it will diminish their property value. He said that at the hearing, Mr. FitzSimons specifically said that they would have to have a 5' easement through the Gullwing property and Gullwing agreed. Mr. FitzSimons said they were not to take property from the land south of Gullwing to create this easement. This easement tonight is south of the Gullwing property. It should be dismissed.

E BEVERLY GRADY

Mrs. Grady said that this agreement is so that a 5' access to the public will be granted to the town. This was required as a condition of approval. They have already stated that in order to comply,

they proposed using the 4' existing walkway easement and making it public. It is clear that this is an easement in relation to an old easement. Some of the residents of Fairview think they are taking their easement. They have had a 4' non-exclusive easement on the northerly portion of Pointe Estero. That does not mean that they own the property. Non-inclusive means anyone can use it. The net effect that it will widen their easement by 1'. The Fairview Isles easement has not been affected. They still have the right to use the same easement and they can now use the extra foot. The easement will be improved and maintained, and there will be a landscape buffer. No rights are being taken away.

F MARK EBELINI

Mr. Ebelini said he is representing Stardial, in response to the resolution from the MRTF. They are not members of the public, but are the affected property owner. Apparently the council is going to receive a videotape into evidence. They would like the right to respond in a due process setting. He has experts here that can react to the evidence. They can speak to the item now, or they can speak after they have seen the evidence. Mr. Roosa said the Council will be discussing a specific parcel that may be in violation, and if they were to rule to bring them into compliance, they would have to make a determination that they are not in compliance. Stardial should have the right to show that they are not in violation and to rebut the evidence. Mr. Gucciardo reminded everyone that this is not a hearing. The Council is just being asked to receive a resolution from the MRTF for their consideration. The Council agreed to let Mr. Ebelini and his experts speak during that agenda item.

G BETTY CRAWFIS

Mrs. Crawfis talked about Bay Beach water quality. The water problems go back for many years and she has documented evidence from DEP and warning letters from the Department of Pollution Control, going back 23 years. The water table at Bay Beach is not compatible to septic tanks or systems not connected to the sewer system. The bathrooms on hole 4 of the golf course are not hooked into the sewer system. They must pump excess water into the back bay, which needs our protection, and the discharge is greater than the mangroves can take. She cited many violations. She said that the recent test results of coliform stated they were too numerous to count. They are polluting our back bay.

V APPROVAL OF MINUTES: NOVEMBER 2, 1998

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

Discussion: Mr. Mulholland said that on page 2, his comment about the back bay should be that it is the "jewel of our town." Mr. Hughes said that on page 4, where he was suggesting that the charter review committee should have more than five members, he wanted to make sure that this statement was not to be construed as a criticism of the five members. **Action:** The motion carried unanimously.

VI REVIEW OF FINANCIAL REPORTS FOR OCTOBER 1998

Mr. Gucciardo apologized for the lateness of the report to the Council. Staff had been waiting for the monthly report from FMIT on the bond portfolio, but they were not able to get that report in time. There were no comments on the financial report from the Council.

VII PROCLAMATION ON WORLD AIDS DAY

As there was no one to receive the proclamation, the proclamation was not read to the public.

VIII COUNCIL MEMBER ITEMS AND REPORTS

A JOHN MULHOLLAND

Mr. Mulholland said that Bay Beach is getting more and more attention of the town residents, and they are becoming involved, which is good. Everybody thought that Bay Beach was grandfathered, but our town staff has become involved and asked Mr. Spikowski to look at the files. There are a complicated group of legal issues regarding permits and missing records. Some candidates for office have stated they can stop all construction at Bay Beach. That is an irresponsible statement and he cautioned people not to be misled by it. The Council will pursue all avenues.

He also reported that Johanna Campbell has resigned from the LPA, and he thanked her for her 2 1/2 years of service.

B DAN HUGHES

Mr. Hughes thanked Jean Matthew for the Mainstreet concert last night at Santini. It was well-attended and it was very positive for the community.

He asked Mr. Roosa if there had been a response from Mr. FitzSimons to Mr. Roosa's letter in which he concluded that the allegations made by Mr. FitzSimons were not a sunshine violation. Mr. Roosa said that he had not received a reply.

He asked Mr. Gucciardo for an update on the animal control contract. Mr. Gucciardo said that we are in the process of working with the county as the lead agency to replace the Humane Society. We have a contract with the Humane Society through December. The county bid it out and did not get any significant responses. They are currently putting together a service that will rely on the former Humane Society employees. They are now fine-tuning the plan, and he hopes to have hard numbers by the second meeting in December. He is confident that they will be able to do the job well. We have been able to prove our usage of the service, so he feels the contract price will be more in line with what we thought it should be.

He mentioned a letter from Sheriff MacDougall about the wife of Deputy Partington who has leukemia and is seeking financial support and bone marrow donors. He asked if this plea could get disseminated to the general public.

C GARR REYNOLDS

Mr. Reynolds said he has been working with Mr. Bedore on a solution to the shortcut on Connecticut and Donora. The residents have requested that those streets be one way south on Shell Mound during season. The Sheriff's office thinks it probably would work. The Fire Chief will inspect further, but sees no problem. The residents are concerned about speed and noise and the safety of children. This is necessary to keep people in line on Estero instead of jumping ahead to gain a few blocks. Last year deputies gave out 17 tickets in 2 hours on Shell Mound. The deputies didn't even check speeding because the distances are too short--these tickets were just for running stop signs.

He asked Mr. Roosa about his letter of October 28 to Ted FitzSimons. He feels that Mr. Roosa trivialized his question when he asked at the council meeting if it was a sunshine violation when two council members and an LPA member met together without advertising it as a public meeting. He did not ask for a legal opinion about stuffing envelopes. He was asking about 10 issues leading to envelope stuffing regarding the actions of the two council members. They misrepresented him by using town letterhead, and probably discussed the issues in the letter. He was mystified about Mr. Roosa's response to Mr. FitzSimons. Mr. Roosa is paid to give legal guidance, but it appears he gave a protective answer for some members but not legal guidance to all the council. Always in the past Mr. Roosa has advised the council that if it doesn't appear right, don't do it. He believes the issues in the letter were personal and should not have involved other council members. He asked Mr. Roosa for a written response to these question: 1. Is he putting his stamp of approval on such meetings? At the last meeting, Mayor Cereceda said she was also present and that makes three members of council and one LPA. 2. Is the public to understand that when three members are present, rather than two, does it make it more OK? 3. Is he still putting his stamp of approval on meetings that include a third council member? 4. What advise would he give the Town Council for their future guidance? Mayor Cereceda said that one of her deepest regrets was to allow suspicion to exist over the council. She would appreciate Mr. Roosa addressing Mr. Reynolds' questions now. She would also appreciate if Mr. Reynolds is not satisfied with Mr. Roosa's comments and if he wants an inquiry, that he do so. But if he has no desire to file charges, he should withdraw the suspicion. Mr. Roosa said his response to Mr. FitzSimons was not intended to be a response to Mr. Reynolds' comments. The issue of violation of the Sunshine Law is the discussion of matters that will come before the council for a vote. It does not have to do with any other unrelated matter. The mere meeting of two council members does not constitute a violation. However if they start a discussion on a matter to come before the council, that would constitute a violation. In the facts presented to him about this issue, there were no discussions on any matter to come to the council. They met and were stuffing envelopes. There is even less suspicion when meeting here at town hall because they are expected to be meeting there. If they had met at a secret place that would create a suspicion. In the facts presented to him, even with three members present, it does not constitute a violation, even if all five were present. It is the conversation that triggers the offense. He will provide a written opinion to Mr. Reynolds. Mr. Roosa said the answer to question number 2 is no. Mr. Hughes said he felt that he had a right and a duty to respond because when they keep being brought up they seem to become a fact. He asked Mr. Reynolds if he ever saw three members of the council together in that room at the same time. Mr. Reynolds said no, but other people did. Mr. Hughes said it is totally heresay then. Mr. Hughes asked him if he was one of them that he saw there. Mr. Reynolds did not answer. Mayor Cereceda said Mr. Reynolds has made a charge against council members and inaccurately reflected her comments at the earlier meeting where she said she also helped Mr. Mulholland stuff the letters. She did not help him stuff letters here at Town Hall. Mr. Hughes asked if Mr.

Reynolds overheard any discussion by any two or three council members in that room about matters that were pending before the council. Mr. Reynolds said he would not be interrogated. Mr. Hughes said he has the right to challenge when he says there were three people present and they held a meeting. It is absolutely not true, and he will testify under oath. Let's put an end to this. If you have facts, file charges and have it be heard. He said he is upset because Mr. Reynolds keeps saying there were three people present. Who are they? Mayor Cereceda asked Mr. Reynolds if he would like the town attorney to conduct an inquiry as to the charges against Council members Mulholland, Hughes and herself. Mayor Cereceda said she will not allow the suspicion to continue. Regarding question #4, Mr. Roosa advised the council to continually be diligent about violations of sunshine. He advised the council to be cautious whenever meeting another council member not to discuss a matter that will come before the council for a vote. Mayor Cereceda asked Mr. Roosa if his written comments will address whether there has been anything inappropriate. He replied yes. She asked him if he believes there was anything inappropriate. He replied no. It is not the number that are present, it's the conversation.

Mr. Reynolds spoke regarding the resignation of Ms. Campbell from the LPA. He said he believed that she resigned because she felt harassed. She was embarrassed, harassed, investigated by the town attorney without first talking to her, ridiculed by letter in the newspaper, etc. This is not a good sign of the direction of this town. We must show more support for our volunteers. She gave so much to this community that she will be missed

Regarding the potting soil that Mr. Murphy requested for planting the coconut palms, Tom Myers has asked him to announce that a business has donated the potting soil. The group will not need money from the town council.

Regarding the Comp Plan, he said that the council needs to be more vigilant to deep density more controllable. The majority of the council voted to go to 15 units per acre in one area, to allow two duplexes on two single lots in a residential area where it was changed from residential to mixed residential, and to allow duplexes along a residential stretch of the gulf. With each increase comes a proportionate number of cars, other vehicles, and pedestrians. Once a direction is chosen, it is difficult to change. Bill Spikowski is doing a good job, and the council should follow his recommendations. Mr. Mulholland said the reason for setting at the cap at 15, was to allow them to come forward at some future date for a ruling. The Comp Plan gives nothing away, but Mr. Reynolds gave that illusion, and it is wrong.

D ANITA CERECEDA

Mayor Cereceda said she had a productive meeting with the board of the Civic Association. They shared their frustrations and anxieties and she hopes it is a step in the right direction for communication. She will prepare a summary of issues for the council.

For the public record, she stated that she was served with a complaint from the Commission on Ethics filed by Jack Heyman in which he said that she misused town assets. She contacted the commission to dispute the charge, and faxed a waiver to her right to confidentiality because she intended to make this public. She also faxed information to substantiate that there was no ethics violation. Her only remedy is civil action, which she intends to pursue. Unfortunately, the complaint remains on her record forever. Years from now if someone asks if a charge has ever been made against her, the answer will be yes, regardless of whether it has been dismissed or proves to be completely false.

IX RESOLUTION: CALLING FOR ELECTION

Motion: Mr. Mulholland moved and Mr. Reynolds seconded that the resolution be accepted. The motion carried unanimously.

X ACCEPTANCE OF BEACH ACCESS EASEMENT: GULLWING

Mr. Gucciardo said the intent tonight is potentially to accept an easement from property owners in favor of the town which gives the public the right to use a 5' strip between Pointe Estero and Gullwing. The town does not want to infringe on any previous easement rights. The most comforting document is a letter from the attorney for the Fairview Isles Subdivision homeowners, which states that this easement will not preclude their continued use of the easement. The public will now be able to use the easement, including the owners in Fairview Isles. They are probably in a better position now, because the easement will be bigger and will be maintained by the developer. Mr. Mulholland asked Mr. Roosa if the easement will go on top of the original 4' plus adding a foot. He said that is correct. Mr. Mulholland asked if the easement will be maintained by Gullwing. He said that is correct. Mr. Mulholland asked him to verify that the residents are not losing anything and will continue to have something they always had. Mr. Roosa said

they can continue to advertise the deeded access. Their deeds are all still valid. Mr. Hughes said that in the letter dated October 19, they refer to it as a non-exclusive pedestrian easement, but the deed does not say that it is not exclusive. This creates a public easement over an easement that is not stated whether it is exclusive or non-exclusive. That makes him question the validity of that grant. If it is exclusively for the benefit of the people in the subdivision, you can't make it public. Also the grant of the easement is from Pointe Estero Condo Association by its director, and he wondered if that is valid without the action of the condo association. Gullwing is the other grantor (by the president of Sunstream), but he understands the title is in the name of Daniel Reinfried and Sunstream is only his agent. Are the parties granting the easement the ones who have the fee titles? In Mrs. Grady's letter she said that they will be closing at the end of the week, but the document was executed in September and her letter is dated October 26. Mr. Roosa said he has a concern that the original resolution adopted by the council included a property description, which was the Gullwing property. The easement is outside of that property description. The condition was that there would be a 5' easement on the property, but this would only be 1' on the property.

Ms. Grady said that the property has closed, so that the grantors are the owners of the subject property. Mr. Hughes said the easement is dated before that time, and that unless the deed is dated retroactively prior to the date of the easement, it is not an effective easement. Ms. Grady said it is valid, but she can give a deed with a different date if he would like. The grantors are the owners. Mr. Hughes suggested that for something as important as this, we should request that we get a title insurance that the grantors were entitled to at the time of granting the easement and that the parties executing the document have the proper authority to do so. Mr. Roosa agreed that the title insurance is a good idea.

Motion: Mr. Hughes moved acceptance of the easement subject to further evidence of title insurance that guarantees the interest of the Town as recipient. Mr. Mulholland seconded the motion.

Discussion: Mayor Cereceda said she would like to withdraw the motion and table it. Mr. Capps brought up the question about the easements overlapping and she remembers the discussion. She can't believe Mr. FitzSimons would have allowed that. She would like to listen to the minutes of that hearing again. Also she would like to have Mr. Hughes' questions about exclusivity answered. Ms. Grady said to be exclusive it must state that it is. Otherwise it is not. Mayor Cereceda asked what right we had to agree to something that was not part of the property in question. Mr. Roosa said that our only jurisdiction is the legal description before the council. The abutting parcel was not part of it. If the issue were that they were to provide a 5' easement and it wasn't limited to their property, this would meet the conditions. If the intent of the council was that 5' of the applicant's property be given as an easement, this would not meet the conditions. But he does not have the resolution or the minutes before him. Mrs. Grady said that the council was looking to provide pedestrian access. At the hearing, the response was that Gullwing would work with the adjacent property owner. The record talks about a 5' pedestrian access because they thought the existing easement was 5'. If you look at the practical affect, it makes no difference. There will be no parking available for the public. They will have an improved walkway with a buffer that will only serve the neighbors in the area. The easement remains untouched. Mrs. Grady said the easement property belongs to Pointe Estero, not to the residents who have the deeded access. Mr. Reynolds said he would like to see Gullwing agree to what was voted on. Ms. Grady said they are. Mr. Hughes said the issue is whether this to be in addition to the 4', or if it was just to be a 5' easement. If it just has to be an easement, it doesn't matter to him where it is located because it would still give public access. If the intent was 5' in addition 4', that is another matter. Gullwing is a very narrow parcel and if he recalls at the LPA they were concerned about room for landscaping. If you put the access on Gullwing's property, you may inhibit their ability to put in the landscaping. Mr. Reynolds agreed it should be tabled. Mr. Gucciardo suggested that the staff prepare a memo, copy the minutes that addresses the easement, and copy the resolution, then hopefully it will clear up the confusion. Mr. Hughes withdrew his motion. Mr. Mulholland withdrew his second.

Motion: Mr. Reynolds moved and Mr. Mulholland seconded that this item be tabled until the next meeting. **Discussion:** Mr. Gucciardo said that he also believes that in Florida, if it doesn't say it is exclusive, it is not. Mrs. Grady said you can't grant anything that would interfere with the property owners' rights, but the owner can grant those same rights to others or to the town. If an easement is non-exclusive, it can be used for several purposes, but not inconsistent purposes. For instance, you can grant an easement for a water line, because that wouldn't preclude the right that has already been given. **Action:** The motion passed unanimously.

Mr. Gucciardo clarified that staff will put together some documentation about what happened at the earlier council meeting. He asked the council if they wanted to pursue Mr. Hughes' question about ownership and the recording of the easement and also about title insurance. He felt that it would probably be good to require title insurance or an owner encumbrance report. Mr. Hughes said that the encumbrance report would not address the issue of the authority of the signatories. Mr. Roosa said that he thinks it would be wise to have a title policy.

The council took a break at 8:18 PM and reconvened at 8:35 PM

XI DISCUSSION OF INVESTMENT OPTIONS

Mr. Gucciardo said that his memo has set out options and a summary about risk and return. In addition, the auditor had questioned whether certain types of investment were appropriate, so the council has received a memo from Mr. Roosa that they are all appropriate under the charter and the investment ordinance. The intent of the memo was to see to what extent the council wants to get involved in where we put the money. We have around \$2 million in the operating account, which generates about 5.1%, but he anticipates that that rate will be dropping. His biggest concern is that we have about \$770,000 in the Florida Municipal Insurance Trust bond fund. The rate of return has been about 9.8% but it has the potential of risk to the principal. He has called around to other cities who invest in that fund, and all the feedback has been positive. Mr. Mulholland thanked Mr. Gucciardo for his analysis. He asked why Mr. Gucciardo recommended that about \$1,000,000 be left in the general operating fund at 5.1%, and that the balance be invested in 3- and 6-month CDs so that they roll over. He wanted to know why he wanted to leave so much in General Operating. Mr. Gucciardo said that 5.1% is very close to what you would earn in CDs, and we would still have the comfort level to be able to get at funds instantaneously. We haven't experienced the need to get to funds that quickly, but he is reluctant to put all the money in something less fluid. Mr. Mulholland said that recommendations #1 and #2 are good, but he would like to hear from the rest of the council on recommendation #3. Mr. Gucciardo recapped for the public that #1 is to leave the \$250,000 that is invested in the Florida Surplus Funds Account. #2 is to leave half of the money in the General Operating Account and to move the other half to rotating CD's. #3 has to do with money in the bond investment fund where there is a potential for risk since it is tied to bond market. His recommendation is to consider taking that out. He hasn't found any of the finance directors who are taking that direction, and in fact most are recommending putting more money in there. On the other hand he feels funny taking money out of the place where we have the greatest rate of return. Mr. Hughes agreed with recommendation #1 and #2. He felt that the return on #3 is good and balanced--it includes federal home loans, treasuries, FNMAs, GNMA's and equities. It is a balanced fund and is probably more weighted toward fixed income than equities. He is reluctant to give that up. He considers it a good investment. Mr. Gucciardo said that since he wrote the memo he has talked to about 10 finance directors around the state, and his comfort level has risen since then. CDs are about 5.75% now.

Motion: Mr. Hughes moved that the town take about \$250,000 from the bond fund and put it in the State Board of Administration (which would put about \$500,000 in each), and that they adopt recommendation #2 to split the operating account money between the operating account and short-term CD's. Mr. Reynolds seconded the motion. **Discussion:** Mr. Mulholland said that he would like to see the money in the bond portfolio go into CDs. Mr. Hughes said he is not worried about the bond portfolio but he feels that taking some of it out would be a move toward conservatism but still retaining a half million in a fund with a very good return. Mr. Reynolds said he does not want to tie Mr. Gucciardo's hands. He would rather this motion be more of a guide rather than a firm motion. Mr. Gucciardo said the memo was not to asking for a particular action as much as a direction. Mr. Hughes withdrew his motion and made it a recommendation. Mr. Reynolds agreed.

Mr. Roosa said that if the interest rate were to go up, the principal would go down on FNMA, etc. Unless the town is willing to hold them for the duration, you can't get your money back. Right now we are in a low interest rate and you can get your money back. Mr. Hughes disagreed. We are not talking about owning individual bonds--it is a structured fund. In general if the rates go up, the total value of the fund will go down. But this is like a mutual fund. We do not own something with fixed maturity that you can get stuck with. FNMA and GNMA are more a product of the mortgage market. There are not many corporates in this. He disagreed with that concern. Mr. Gucciardo reminded the council that over the next few months the ad valorem revenue will start coming in. So he may bring some other options for

consideration in the spring. In addition he has asked two of the local banks for proposals on money management. He will be bringing some options for the council to consider for placing the financial decision-making outside.

XII NEW BUSINESS

A. REQUEST FROM MAINSTREET FOR FUNDING FOR CONCERTS

Jean Matthew thanked the council for their financial support as well as for coming to the concerts and supporting them. Over 500 people attended last night's concert. Al Durett is asking the town to continue their support with \$1000 for each concert at Villa Santini (including the concert that just ended.) Costs are running about \$3000 per concert and are being sponsored by Mr. Durett, Villa Santini and Fish Tale Marina. She requested \$1000 for each of the scheduled concerts through next April. Mayor Cereceda asked what line item they would be drawn from. Mr. Gucciardo said there is community service, special events and cultural events. Ms. Matthew clarified that the money she is asking for will not be refunded to the council. She is also asking for an advancement of \$2500 for the December Big Band concert in Times Square. It will coincide with the boat parade and luminarias. That \$2500 will be refunded by merchants and sponsors. Her third request is for \$500 to rent a piano for the choral groups to use at the old fashioned Christmas at the Mound House. These requests do not include money for the New Years Eve celebration. The total for tonight's request is \$9000. Mr. Mulholland said he said he doesn't have a problem with spending the money because it is good for the town and the townspeople are becoming more and more involved. It was clarified that \$6000 would be an outright grant, and \$2500 is up-front money. The \$500 will probably be repaid also.

Motion: Mr. Hughes moved approval of \$9000, hopefully with a return of \$2500-3000. Mr. Mulholland seconded the motion. The motion passed unanimously.

B. TROLLEYS FOR HIGH SEASON

Mayor Cereceda said it looks like Lee County is anticipating that fares will generate \$3500 during high season. She asked if the Town were to pay that amount, could the trolleys be free? Mr. Gucciardo said that is a reasonable assumption, but the experts at Lee Tran have always indicated they are not in favor of the trolley being free. The increased riders are usually not those whom you are trying to attract, such as kids hopping off and on because it is free. He has a meeting with the new head of Lee Tran and he has promised to put together information for this year. The issue is the core level without enhancement. The last two years we have added to the core level and also have gotten contributions from individual members and from the state park system. We will follow up on all those leads again this year. He needs to know if the council wants the same as last year, less, or more. Mr. Gucciardo said that the feedback on last year's service is positive. The more trolleys people see, the more likely they are to take one. Last year we made some adjustments to the route and they all seemed to be well received. Mr. Hughes said that in the interlocal agreement, the town is holding Lee County harmless. That seems peculiar. They are operating the trolleys, so they should be holding the town harmless. It seems like it should be the opposite or perhaps it should be a mutual hold harmless. Mayor Cereceda said that this is only adding additional service. In the event of an accident, how would they decide if it was the core service trolley or the additional trolley that was involved in the accident? Mr. Reynolds said we are contracting with them, and as a contractor, they should cover their liability. The Council had no objection to Mr. Gucciardo continuing conversation with Lee Tran on enhanced trolley service.

C. RESOLUTION FROM THE MARINE RESOURCES TASK FORCE SEEKING INJUNCTIVE RELIEF AGAINST BAY BEACH

Mayor Cereceda said that she would like to adopt a policy for future meetings that any time a resolution is brought to the council from another committee, that the minutes be included in the council's packet showing the discussion that generated the resolution.

Mr. Mulholland gave some background information on this issue. The memo from the Town Manager also indicates some of the background. He said the MRTF has been looking at the water quality issue throughout the bay--they are not just going after any particular area. He said Bay Beach has been an issue with DEP since 1985. Some think that the first course of action would be to ask the entities to help us enforce the laws that are in place. He disagrees because these agencies have been dealing with this issue for a long time. The MRTF voted for this resolution unanimously except for one abstention and one

absence. Estero Bay is important for the town economically--to the homeowners, businesses, and even to Bay Beach. We all should be working toward better water quality. He is sure Bay Beach is saying they are working toward it too, but it has been going on for a long time. Mr. Roosa said the only issue is whether the owner is complying with the permit that has been issued. If they are not, why isn't the agency that issued the permit not enforcing it? We should start with what standards they are required to meet and then determine if they are meeting them. We are not trying to impose new standards. Mr. Mulholland said that there is a letter dated 1985 from the South Florida Water Management District that list 11 conditions. Condition #6 says that the permittee will be responsibility for any correction of water quality problems that result from operation of the surface water management system. Condition #7 requires that water quality treatment methods be incorporated into the drainage system if shown to be necessary. Mr. Hughes said he is confused about the December 1985 and November 1995 letters because the limiting conditions are not the same. Do some of the pages supercede the others? The two conditions Mr. Mulholland mentioned are not in the other one. Which one are we following? Mr. Mulholland said it doesn't matter which because they are both being ignored. He feels we are missing the point. The MRTF feels strongly about this and so do several people in the audience. The person who took the video is in the audience. Mr. Roosa said if the council determines that there is a degradation of the water quality, the staff will need to look into whether it is permitted or not. At times contamination might be allowed if it is properly permitted. Mayor Cereceda said that the resolution is asking the council to pursue injunctive relief. Mr. Roosa said that before then we would want to see if they are in compliance. We are not concerned with the conditions in 1985, except to the extent that it authorized conduct today. The issue is what is the condition today.

Mr. Arrington referred to the two memos from the permitting agencies. In the October 8 memo to Mr. Banks from the SFWMD, #1 shows that they reviewed the information submitted on September 11 of water testing done in August, which showed that the levels of nitrogen, arsenic, zinc, coliform and fecal coliform being discharged are greater than in the background samples. The memo also quotes Rule 62-302 which says that no degradation is to be permitted. Also attached are copies of the testing. A DEP memo to Margaret Bishop of the water management district from John Englehart, says that the samples were taken from the pipe where it discharges into the bay and along the shoreline 15' north. They were analyzed for turbidity and fecal coliform bacteria. Both exceeded the ambient conditions. He feels this is the documentation needed from two sets of testing in 1998. Mr. Arrington also said that Peggy Hollenback at DEP told him that the water management district should be able to seek enforcement under special conditions #6 and #7 of the original permit. He asked her why Florida DEP was not going to seek enforcement based on violation of water quality standards, and she said they probably would if some political pressure were applied. She said they have been working with Stardail and trying to get the changes they want and that is why they aren't seeking enforcement. But this has been going on so long that the MRTF felt like it could not go on any longer. The retrofitting could take another couple of years. They also have additional photo documentation taken by Heather Stafford that clearly shows the increase in turbidity in the outflow. Just the increase of turbidity is enough to take action, never mind the bacteria and metals in the water. Mr. Mulholland said that at the MRTF meeting, some of the members asked why we didn't go to the regulatory agencies and have them do the enforcing, but that does not seem to get results. That is why they went for an injunction. Mr. Arrington noted that his motion to pass the resolution was seconded by Mr. Everham who is on the Agency for Bay Management. A video was played for the council. Mr. Bellucci said the pipe shown in the video is about 12-16" in diameter.

George Evans stated that he works for ASC Geosciences, is a geologist and consultant and is experienced in ground water and surface water analysis. Stardail wanted to find out if the water quality problems were based on the water discharge that the town saw. Just because the discharge is brown and dirty may not mean there is a problem with the water. He tested the water quality from the discharge and also the background quality. He tested for herbicides, nutrients, metals, bacteria, etc. The results showed that there were no herbicides or pesticides. There are nutrients, but the background water in the bay has nutrients at similar levels. There were levels of some metals (arsenic, copper and zinc), but you could have 10 times those levels and not have a problem. The nitrogen and phosphorus levels are about the same as the background sample. Regarding fecal coliform bacteria, he said these are naturally occurring and are associated with animal waste, not just humans. All water except perhaps fast flowing water has coliform. What they found is that there is some discharge into Estero Bay, but there is also some in Estero Bay already. Whenever you get water off the bottom of a body of water, you will get coliform. The pipe at Bay Beach goes to the bottom of the pond and you will get that when you pump at a high rate. The rest of the levels are insignificant. Turbidity is also an issue and it relates to how material is pumped off the bottom.

If you don't take water off the bottom, you won't have these problems. He said that these results were based on the average of 10 samples over a 30-day period. The engineering that is proposed will solve the problem. Mr. Mulholland said that Mr. Evans seems to be rejecting what the DEP has tested. Mr. Evans said he is rejecting it because it was tested only one time, not 10 times. He said the town has very limited data so it is not valid. He faults the testing procedure therefore the findings are incorrect for the coliform. He did his testing according to how the DEP says it must be done. Mayor Cereceda asked if the stuff being pumped into the bay is degenerating our back bay. Is it killing fish? He replied no. Is it degrading the water? If it were your pool, would you want that pumped into your pool? Mr. Evans says no, because of the color not because of the content. The problem is how it is pumped out.

Paul Banks, an engineer with Agnoli Barber & Brundage, said that he has worked on the project for several years. He said that Bay Beach has always complied with the permit. There have been no problems reported to Stardial except in individual readings. Bay Beach has not been cited. The permit allows the pipe discharge. When the tide is low, a great deal of the brown is from stirring up of the ground at the discharge site. The discharge is just lake water. They are working to modify the discharge arrangement to avoid the problem. They have several solutions so that the water won't be sucked from the bottom of the lake and also so the end of the pipe will not stir up the bottom. Bay Beach is one of the few developments on Fort Myers Beach that has a water management permit. They are providing water storage. They are trying to do their part and they are working with the district for a solution. Some have cited the restroom on the golf course as a potential problem, but that has been tested and no problems have been found. They have applied for a permit modification, but it has not been granted yet. They are mostly working with SFWMD but DEP has been brought in too. Mr. Mulholland asked how much longer will it be. Mr. Banks said they are looking at doing some more engineering, then they will submit the plans, so it could be a month or two until they have a comfort level that they will comply with the regulations. Mr. Mulholland said our frustration is that things have gone on for a while and we feel Estero Bay is being degraded. Mr. Banks said the brownish water gives the perception that something is wrong, but testing shows there is not much difference. It is a perception problem more than a water quality problem. Mr. Hughes suggested there are four issues: 1. The surface water quality problem which is backed up with evidence but that they are disputing. That is a fact dispute. 2. Whose responsibility is this? The special conditions say that the permittee (Stardial) shall be responsible, but in the December 8 letter it says that the operation of surface water management shall be the responsibility of the homeowner's association, then it talks about a binding legal agreement between the homeowners association and the operator of golf course outlining responsibility for surface water management. This is a legal question. 3. Who enforces this? 4. If we conclude that there is an adverse affect, what can be done to correct it? Mr. Banks says he is addressing that, but it has been pending too long.

Rick Barber, a professional engineer and CEO of Agnoli, Barber and Brundage, said he has worked with Stardial for 13 years. The permit has been modified 5 times in the last 6 years. They have never been told until this last modification that there is a water quality problem. However they understand that in order to get the modification of the permit they are applying for, it will now require some different practices and more treatment. Part of the problem is where the pump picks up and how it discharges. There are several methods of modifying it, which would include switching to a gravity discharge probably at a different location. They are also looking at plantings around the intakes of the pipes and also some more storage at the discharge point. There is a permit that is before the water management district now. They have to bless what improvements they can make. However the first time they have heard of any problems was in March of this year. DEP wanted more treatment so they are complying. Regarding the resolution, he said that the first item is already being done--DEP and SFWMD are enforcing the permit by making them make the modifications. Regarding the second item about injunctive relief to stop pumping water into the bay, they are trying to make the water comply but there will be damage if the stormwater system is shut down. It is the only one that serves Bay Beach, not just the golf course. Shutting it down is not an option. Bay Beach's instruction to them is to have total compliance with the standards, and that is what they are trying to do. Mr. Roosa asked the status of the permit now. Mr. Barber said they had a meeting two weeks ago with DEP and SFWMD where they discussed the results of Mr. Evans' water testing, and they are in the design process now and should have the design work back to them within the next 30 days. If they approve the permit, it would take about 6 months to implement it. Mr. Hughes asked if they are submitting plans to follow the letter of October 8 where they suggest that they need to provide sufficient detention time for the contaminants to settle by adding a dry pond. Mr. Barber said that the water table is high and the ground is low, so a dry pond is not really an option. They plan to provide wet

retention after a pump discharge prior to discharge to the bay. He said that since they got notification of the problem, they have cleaned out underneath the pump as best they could. Mr. Mulholland asked if it is the position of Stardial that the pumping will continue forever. Mr. Barber said no. They are working on a solution now. Mr. Roosa asked if a turbidity screen would be helpful. Mr. Barber said he does not think it would work because of the high rate of discharge.

Mr. Ebelini said that the council should be aware that the permit was issued in 1985 when Estero Bay was a Class 3 water, not an Outstanding Florida designated water. The March 24, 1998 letter is trying to apply OFW standards to Bay Beach's permit. It is not subject to OFW standards. The only reason that Estero Bay is the beneficiary of this redesign is because of the modification process, not because of a violation. Mr. Hughes said the November 18 letter states that all future applications for construction will be reviewed in light of the criteria in effect at the time of submission. Mr. Ebelini said that is for future applications and does not address present conditions. The existing discharge is permitted. They disagree with DEP and SFWMD about what they can require them to comply with. Rather than disputing that, Stardial is making an investment to resolve the issue rather than argue the legal issue of present vs. future. They have engineers and water quality experts working to fix it. Mayor Cereceda said it will still take 7 or 8 months to come up with a solution. Mr. Ebelini said it takes that long for the administrative process. Mayor Cereceda asked how long it will take for Stardial to come up with a solution. Mr. Ebelini said they have already come up with a solution, but the administrative agencies want changes. So they apply and the agencies take their full 30 days then they ask for another change. Their engineers tell them they have already proposed modifications that would have resolved most or all of the problems. Mr. Ebelini said that when the permit was issued in 1985, there wasn't an Outstanding Florida Water non-degradation policy applied. In the modification process, there are new rules and it is in dispute whether they are applicable to Bay Beach, but they are attempting to meet them anyway. Mr. Mulholland said we are concerned with what is going on now, not back in 1985. Mr. Ebelini said you should consider some of the present discharges from the land within the town that is degrading the water. Mr. Mulholland said we will pursue the others. Mr. Ebelini disagrees that they have a water quality problem because they have a permitted discharge. Mr. Mulholland said it is good that they are going forward and trying to meet the standards. In the meantime we have stuff going out to the bay. Mr. Ebelini said the town has not brought forward an expert that has said that the discharge from the pipe is degrading Estero Bay. Yes, the water could be better, but it is meeting the way it was designed. Mr. Mulholland said if Estero Bay goes, we have a serious problem. Mr. Ebelini said they cannot make any changes until a permit is received from the SFWMD. Mr. Mulholland said while we are waiting for that permit, let's stop the dumping. Mr. Ebelini said it only goes on as needed to prevent flooding. If you stop the outflow at those times, people will be more upset because they will be standing knee-deep in water and it will be a public safety disaster. He said they respect what the task force is doing, but if they are going to take any action, they had better substantiate the allegations.

Mike Johnson said Bay Beach would have been happy to appear before MRTF and would have brought the same experts before it got to this stage. They should look into that before they go with any other investigations.

Mr. Reynolds asked Mr. Barber why they can't clean this sludge off the bottom of the pond and carry the waste for disposal rather than putting it into the bay. Mr. Barber said they cleaned it out after they got the notice of concerns. But they can only go so deep under the pump or they undermine the pilings. He said he used to be a beach resident and grew up here, so water quality in the bay is important to him and they take it very seriously and understand the concerns. Mr. Hughes asked if the addition of more than one outfall pipe is feasible since the flow is so heavy. Mr. Barber said yes and also the rate of pumping is an issue. The district has recommended a pumping rate and they are looking at that alternative. He said they think the turbidity is caused by the discharge around the pipe.

Mayor Cereceda asked Mr. Mulholland why the MRTF didn't go first to Bay Beach instead of to the council first. Mr. Mulholland said they invited Kitty Taylor to the meetings and she has talked to the MRTF. They have talked to Bay Beach, DEP and SFWMD. It has been going on for a while. He agrees with Bay Beach's frustration with the regulatory agencies. Mr. Reynolds said their evidence doesn't say they are polluting the bay. Our information indicates they are. It seems that we need to get more testing to see if it would be in line with Mr. Evans' testing. Mayor Cereceda asked if the agencies can be circumvented. Mr. Roosa said no, but if the town used their influence, we might be able to get them to accelerate their process.

Mr. Arrington said that the October 8 letter from the SFWMD to Mr. Banks is quoting the results of Mr. Evan's testing and telling him that the levels are too high. They are using Bay Beach's experts to tell them they are not in compliance with water quality standards. As far as there not being any complaints, he quoted a letter dated 1988 to Stardial from DER regarding discharge of raw sewage from a restroom to the stormwater system. Mr. Arrington also said that just because the Bay already has copper problems doesn't mean we need to put more into the bay. Regarding turbidity, he said it kills sea grasses. He showed a picture that showed that the water in the pump house at the turbidity screen is the same color as the rest of the lake and this is what is going into the bay. He said as far as the water being safe to drink, he has a jug of it that he wished he had brought to pass around. Mr. Hughes said that this permit is about surface water management but there is apparently a problem of sewage infiltration into the surface water.

Mr. Mulholland said he still stands behind the resolution that the MRTF has brought forward. Mr. Reynolds said he agrees with the direction Mr. Mulholland wants to go, but we are being defeated by the evidence they have. He wants more evidence and backup information. Mr. Mulholland asked who is going to do the testing. Will the town go to that expense or regulatory agencies? Mr. Roosa said that he thinks the town has a role because these are town waters and it was a great concern of incorporation. But he does not think it would serve any purpose to do further testing because the issue is not that, and they are willing to modify their current activities in order to come into compliance even though they are meeting the permit standards. He believes them when they say they suffer from delays from the agencies, however this is where the town may be productive. We should look toward solving the problem, not so much looking at what has happened in the past. An injunction would not be very successful because the only permit they have allows the discharge. First we can have the staff become more involved with the decision making process. They can call the people involved and let them know it is an issue. If the council registered a concern for water quality and an urgency for resolving this, not by stopping the outflow of water, because that is authorized by law. The urgency is to get the process approved but not taking any shortcuts. We just want to get expedited services. The council's role is directing staff to convey the message to the appropriate authorities for prompt action on the modification to the permit. We should find out if the applicant is causing the delay, but if the delay problem is with the agency and they realize a local government is concerned, they might do something about it. Also we could contact our legislators so they are aware of our concern for water quality and sufficient staffing to get these applications done in a timely manner.

Mr. Reynolds said Mr. Roosa is basing his advice on the assumption that their testing is correct. Mr. Roosa said they agree they need to improve their system and they are voluntarily willing to do that. The engineers and the agency need to get together to get something permitted. Mr. Hughes asked if there is an agreement that they will comply with OFW standards from this time on. If they will comply with that, he would agree with Mr. Roosa. We should communicate strongly with SFWMD to expedite the proposals that are pending with them. He would also like to try to put some time limit on it. He also asked to be copied on all communications between the SFWMD and the developer. He said he is sympathetic to the concerns, but he is afraid if we enjoin them and they stop pumping water without another alternative, that may not be a feasible alternative. Mr. Mulholland said we have little or no enforcement and he thinks the injunction has their attention and they will work harder and faster. Mr. Roosa said his concern on the injunction is because they are currently permitted. If we go before a judge, he does not believe they would issue it. Mr. Hughes said his concern about the injunction is about health, safety and welfare. You have to get rid of the water somewhere. We need to get the regulatory agencies to agree on something with the developer. Mayor Cereceda said stopping the pumping will not solve the underlying problem. Mr. Mulholland said it will give them an incentive to work faster. He believes they are working on it but not fast enough. Mr. Reynolds asked Mr. Barber how long he thinks it will be before this present discharge can be stopped. Mr. Barber thinks they can have the solution and plans to the agencies soon and then it will take about 6 months for construction. Mr. Roosa said there is no guarantee that we can put that much pressure, but we can let them know we will be monitoring their activities and making them enforce their regulations. Mayor Cereceda asked if Mr. Mulholland would consider a 30-day extension to fix the problem, with the town sending a strong letter to the agencies. Mr. Mulholland said he would agree.

Motion: Mr. Mulholland moved and Mr. Hughes seconded that Stardial be given 30 days to show substantial compliance with the town's requests, with the town writing a strong letter to the agencies to put political pressure on them to assist and expedite the submitted plans. **Discussion:** Mr. Hughes said it should be added that the plans should comply with the rule that says that no degradation will be

permitted to the water in the Bay. Mr. Mulholland said we need to realize that in 30 days we might have to allow another 30 days. **Action:** The motion carried unanimously.

XIII TOWN APPOINTMENTS: REQUEST FOR PERMISSION TO ADVERTISE POSSIBLE VACANCIES ON THE LPA, MRTE, PSTF AND NEW APPOINTMENTS TO THE CELCAB

Mayor Cereceda said that there are some terms that expire, some that are annual appointments, and some that are new appointments. She asked if the council wanted to ask current members if they would like to continue to serve. The Council agreed to advertise and also to ask if members wanted to stay on the committees. Mr. Gucciardo said that he has just heard that Dave Smith will not be able to fill his role on the Charter Review Committee. He suggested that the council wait to see how much progress they make at their first meeting this week and how many meeting they expect to have before advertising for the 5th position.

XIV TOWN MANAGER'S ITEMS AND REPORTS
A. SWIMMING LESSONS AT THE MOUND HOUSE

Mr. Gucciardo said that the League of Cities has told the town that there would be no extra liability if we allow swimming lessons at the Mound House.

He reported that tomorrow Sanibel is having the first meeting of their new council. He asked the Council if they would like to do something in thanking outgoing councilmen Wally Kane and Bob Davidson for their help in getting us started. The Council agreed that the staff should draft a letter.

XV TOWN ATTORNEY'S ITEMS
A. PRIMEAU UPDATE

Mr. Roosa said there was a meeting with Mr. Primeau, the county attorney, Mrs. Segal-George and himself. They met at the direction of the county commission. Ken Jones, attorney for the Primeaus, presented an offer of settlement, which includes authorization for parking spaces which would have to come from the town. He just received the drawing today so he hasn't had a chance to study the affect that might have on the Town. He just gave it to the council to read, not to make a decision tonight. Mr. Mulholland asked why the trolley stop must be removed. The town was the host but did not participate in the settlement. Mr. Roosa said that the town did not agree to this and he has told them he could not recommend it to the town council. He is not asking the council to accept this. He thinks there may be some possibility of settlement with the parking issue but he wants a traffic engineer involved. The town's position is that we want to keep the trolley stop. Mr. Roosa said the county put that shelter on Mr. Primeau's property, so there is a concern, but this is not the final word.

XVI PUBLIC COMMENT
A RICHARD BEDORE

Mr. Bedore stated that he lives at Shell Mound and Jefferson Court. He spoke about traffic on Shell Mound during high season. People trying to avoid traffic speed down their neighborhood just to get by five blocks of traffic. Residents on the street can't live the laid back lifestyle they would like to live. Two mailboxes were knocked down Saturday night after the sand sculpting contest. Next time it might be a child or a bicyclist. He requested that from January 15 to April 15 the town make Shell Mound one-way, that they permanently reduce the speed limit to 25 mph, and that they put a stop sign at Washington and Shell Mound. He has given a petition to Mr. Gucciardo with the signatures of 90% of the people on Connecticut and Shell Mound.

B MARIANNE DEMARS

Ms. Demars said she is in agreement with Mr. Bedore but she is also concerned with the Mound House traffic and why residents are not notified when there are meetings or decisions about holiday house, swimming lessons, where cars are going to park, etc. The town needs to start informing residents. They have a serious concern that the town is turning the Mound House into a business in a residential neighborhood.

C RAY MERTENS

Mr. Mertens spoke regarding Gullwing. He said that over recent years, that beach access has stated that it is for Fairview Isles residents only, and if he had purchased a home there, he would have

felt comfortable thinking that it was his own. Fairness would say that it should only be for Fairview Isles residents. He thinks Gullwing is changing their original application, so they should have to go back for a new hearing. Now that Gullwing has extra land available, since the access is on another property, we can require the buffer that we asked for. He said he remembers from the hearing that they have to come up with the additional 5' out of their own property. We need to call them on the carpet so that honest businessmen don't get burned.

D JOEL BELLUCCI

Mr. Bellucci said he is happy with the Bay Beach decision. It seems fair and he thinks the other members of the Task Force will agree. He asked the council to please stick to their guns. If Stardial has to hire tanker trucks to haul off the water, that is OK. It is their water and it is their problem.

E OLLIE CURREN

Ms. Curren said it is great that Jean Matthew wants to do all these things at the Mound House, but traffic and parking is a problem. Also that money could be used to buy clothes for kids at the beach school. The residents of Connecticut need to know what the Town is going to do about sidewalks.

Mr. Hughes said that he would like the council to direct the town attorney to draft an ordinance that makes Shell Mound one way from Connecticut to Voorhies from January 15 through April 15. Mr. Roosa suggested that we need to get input from a traffic engineer. The change must be based on traffic studies. Mr. Hughes said if it is a municipal road we should be able to make the change. Mr. Roosa said if the traffic engineer sees no problem, he will go ahead. If there are problems, he will get back to the council.

XVII ADJOURNMENT

The meeting adjourned at 11:25 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary