

**FORT MYERS BEACH
TOWN COUNCIL MEETING
December 7, 1998**
NationsBank Building, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Vice-Mayor Ray Murphy opened the meeting on Monday, December 7, 1998 at 6:33 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; Assistant Town Manager Ron Himmelmann; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

Mr. Murphy gave the invocation.

IV PUBLIC COMMENT ON AGENDA ITEMS

A BRIAN SCANLON

Mr. Scanlon said that he is representing some of the members of the Times Square Merchants Association. They had a meeting last week with Mr. Himmelmann and talked about the proposed MSBU and the questions of trash pickup, maintenance, etc. There were a tremendous number of questions raised. It is a very important issue that will affect them greatly, and they feel there needs to be a workshop to discuss such questions as: how much maintenance will cost, how shares will be computed, how it will be collected, etc.

B BOB GAYDOS

Mr. Gaydos said that now that the election is over, the Town can get back to doing business. He congratulated the winners and also everyone who ran for office. Mr. Gaydos reminded the council that today is December 7. On this date, Japan attacked Pearl Harbor, and he asked the Council for a moment of silence to remember those who gave their life that we could be free. He asked that God continue to bless this country and our town.

C JENNIFER KAESTNER

Mrs. Keastner said that she noticed in the budget that there was money for landscape buffering for Connecticut and Shell Mound. It was explained to her that this is one recommended way of slowing down traffic. She is in favor of that because people use those streets more during season and the residents need to be protected. It is against the law to drive on the sidewalk in order to turn on Connecticut Street, it is against the law to speed down Shell Mound, it is against the law to run stop signs. She feels that the council should consider more enforcement of the laws we already have on the books. Don't create new laws and then bill the residents for them.

D BEVERLY GRADY

Ms. Grady spoke on the MSBU for Times Square. A representative from her office attended the meeting last week with the Times Square merchants and Mr. Himmelmann. She is here tonight on behalf of West Coast Surf Shop, and she joins in asking for a workshop. More information is needed particularly on the issue of the town's portion vs. the merchant's portion. There is a question because it seems that the fee the merchants are paying now for tables is sufficient to cover the cost of maintenance. There needs to be a direct relationship between the benefit and the assessment. Part of Mr. Primeau's land has been taken for the public road, yet that part was assessed. What about the Dairy Queen, which is only assessed on one side? Pierside Grill was not assessed at all yet 100% of their customers must use the pavers. Mango Bay and Winds are across the street yet they still benefit. Please have a workshop on that issue before proceeding further.

She spoke on the Gullwing access. She said that the minutes from the hearing clearly show that having the access partially on the Pointe Estero property will satisfy the easement requirement and that the record has clearly determined that nothing is being affected for Fairview Isles—they will continue to have

everything that they had before. To answer Mr. Hughes' concern, a new beach easement has been signed by the title holder as of today's date. They will also be providing a title commitment.

E JOHN LALLO

Mr. Lallo of Pete's Time Out said that Mr. Scanlon and Ms. Grady have already stated his point that he believes we need a workshop on the MSBU. He also thanked the council for all the pretty lights in Times Square.

V APPROVAL OF MINUTES: NOVEMBER 9, 1998 AND NOVEMBER 16, 1998

Motion: Mr. Mulholland moved and Mr. Murphy seconded that the minutes be approved. **Discussion:** Mr. Hughes said that on the minutes of November 16, on page 4, D under Anita's comments, she stated that she contacted the Commission on Ethics. He does not think that it is worded properly because Mayor Cereceda does not have a claim against Mr. Heyman. She was simply responding to Mr. Heyman's charge against Mayor Cereceda. Mr. Reynolds asked that the minutes of Nov. 16 be moved to the next meeting because he does not have them in his packet and hasn't had a chance to read them. **Amended Motion:** Mr. Mulholland moved and Mr. Murphy seconded that council approve the minutes of Nov. 9 as submitted. The amended motion passed unanimously.

VI COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy thanked Jean Matthew and Al Durett and the Town Council for another successful concert at Santini Plaza. These are wonderful programs.

He said he was privileged this morning to ride with the VFW into the Gulf and lay a wreath past the pier at 7:55 AM. It was a nice experience. He said the VFW is filled with fine men and women.

He congratulated Dan Hughes on his election to his council.

Regarding the hearing on the 14th on Bay Beach, he has read the transcript of the LPA hearing, and it was apparent that there was a lot of difficulty that day and this council hearing may be the last step before it goes to court. He would like to avert that at all cost. Win, lose, or draw it will cost the town a lot of money. He has done some research and he wanted to see if there is any support for retaining an attorney from outside the area to review the case before the hearing. He feels they need someone who is not so close to the situation and can be impartial. Maybe they can give the council some outside enlightenment about the facts of the case. Mr. Hughes said that he has already requested an opinion from our attorney regarding vesting. Mr. Roosa said he is meeting Wednesday to work on that with Mr. Spikowski. The most important issue is the determination of the facts. He does not think the law will be that difficult. Mr. Hughes said he is not sure but what it isn't a case of law rather than facts. He is also afraid it is a short time to hire outside counsel. Mr. Reynolds said he believes we should let Mr. Roosa proceed. If this is going to be voted on, it should be on the agenda so the public will know about it. Mr. Murphy said his intention is not to circumvent the process, but time is of the essence. He was just given these transcripts a day or two ago and it was laborious just to get through it. What he kept hearing in the transcripts was about our height ordinance, not the issue of vesting. He thinks vesting is the greater issue and needs to be discussed later, but he feels this hearing was more about height. Mr. Hughes said Mr. Murphy is correct that that was the major issue of the LPA hearing. Mayor Cereceda asked if it was a problem talking about this before the quasi-judicial hearing. Mr. Roosa said this is just a procedural discussion, not a judgment, so it is OK. Mr. Mulholland said it seems that it is more than the height ordinance and that vesting is very much an issue. Mr. Murphy said he is only concerned about height—that is the reason the case was denied. Mr. Roosa said next Monday will be a judicial hearing. It is their responsibility to get the facts and apply them to the existing law. The applicant will present the position that the council should approve the application. So the council will only be getting one side of the issue. If they want it to be adversarial, they might want to hire an attorney to present the other side against approval. He feels that his position as town attorney is not an advocate for either side, but more to review the facts. That may or may not support the applicant. You don't want an expert to come and tell you what decision to make. That is the council's responsibility. In the past we have not have an adversary proceeding, but the council has that choice. We have never had an attorney representing the staff. Mr. Murphy said he was looking more for a consultative position that would give us a fresh look to avert a war. Mr. Hughes said that he would be concerned about the precedent if we make it adversarial. That is almost saying that the town council is taking a position prior to hearing the evidence. The property owner who is seeking a permit has an attorney. If the citizens feel strongly enough, he thinks it is their burden to obtain counsel, not for the council to take an adversarial position

before hearing testimony. He is not opposed to a consultant as long as he takes a non-partisan position, but that may be difficult before hearing the evidence. Maybe after the council hears the evidence, then if they feel there are questions of fact or law, they can then refer it to the attorney who will have a transcript of the hearing to deal with and his opinion would be responsive to the testimony and arguments. Mr. Murphy said that would be fine, if they come to a dead end at the hearing, to defer the decision and get additional expertise. Mr. Hughes noted that the evidence and the public hearing would be closed first, before we get outside help.

B GARR REYNOLDS

Mr. Reynolds thanked Mr. Roosa for his legal opinion about whenever two or more council members gather. He read the opinion for the public record. Mr. Roosa's opinion said that he would never recommend a meeting of two or more members without advertising and minutes taken. Regarding the use of office supplies, it should be for a public purpose. The same is true for the use of letterhead. If the letter is only signed by one member, it is generally understood that the statements on the letter are only those of the writer.

He thanked the charter review members for their work.

He reported that he has been appointed vice chair of the MPO (Ray Judah is the chair).

Regarding Sanbar, he stated that he has been in a lawsuit for a year and a half with Mr. Webber. Mr. Webber's attorney has sent a settlement that they prepared, that involves no money, and that has been signed and returned. He has no financial interest in that case. Therefore he intends to vote on the case.

C DAN HUGHES

Mr. Hughes asked if council could get a list of all agencies and task force vacancies that are to be filled. He is getting requests about what is available. He also feels we should have a representative on the TAC of the MPO. It should be included on the list of vacancies to be filled.

He noted that the charter review committee met and gave several sections they are recommending be revised, but only three of the five members were present. He thinks that number is not adequate when you are dealing with something as fundamental as our charter. Mrs. Segal-George said it would be on the agenda in January. Mr. Hughes said he would like it on the agenda to possibly increase the number on that committee. Mr. Roosa said that that meeting was their final meeting. They do not intend to meet again. These recommendations came from the original five members and have only been reworded. They are not just from those three people. They have performed their responsibility, but the council can create a new charter commission if they want. Mr. Hughes said he had some things he was intending to recommend. Mr. Roosa said that this commission was limited to those prior matters. It was agreed to discuss this issue further at the January meeting.

He said that Mr. Reynolds has brought up again the issue of the mailing by reading the legal opinion. He thought they had already put this to rest. If you keep saying there was a meeting, pretty soon people believe there was a meeting. He read from the minutes of the last meeting where he said it was absolutely not true that there was a meeting. He wants to make the point there was no meeting. Mr. Reynolds has started with an invalid assumption and then made a fallacious conclusion. If he feels that there was a meeting, he should file a claim and prove it. You do not need to waste the time of our attorney writing legal opinions about a meeting that did not exist.

D JOHN MULHOLLAND

Mr. Mulholland said that Mr. Reynolds has brought up the letter he wrote again by reading into the record the memo from Mr. Roosa. Mr. Heyman has brought up charges. The former Vice Mayor threatened to bring up an ethics investigation. He has done nothing wrong. He was on town business. He asked for help and got it. He reiterated what Mr. Hughes said—it was not a meeting. He felt he had to reply to falsehoods and he did so by notifying his constituents. He bought the envelopes, paper, copies, and stamps. There was no wrongdoing found by the town attorney. He really wants to end this.

He reported that the Town Manager received an award at the Chamber of Commerce banquet as Businessperson of the Year. Also our mayor received the Chairman of the Board award. He said they were both well-deserved.

He reported that his Leadership Lee County class has concluded. It was an enriching experience that helps strengthen the community. He thanked the council for allowing him to attend.

E ANITA CERECEDA

Mayor Cereceda noted that in the minutes of November 16th, Mr. Reynolds asked questions of Mr. Roosa. Mr. Roosa answered all questions and all answers were that there was no wrongdoing.

She noted that the sign ordinance is set to come before the council in January, and she asked Mr. Roosa what she can do to add something to the ordinance. Does it need to go before the LPA? She got a lot of complaints about political signs and would like to put a cap on the number, and she would like to require a written waiver from the property owner for every sign. Mr. Roosa said the LPA is finished with their work on the ordinance and the council can modify it in any way they see fit.

She noted that the council has a copy of her letter to the County Commission regarding the gas tax. Three years ago the council met with them and we were told that if they were not able to get Cape Coral, Fort Myers, and Sanibel to agree to lower their portion, they would renegotiate with the town. They need to be held to that. We stand to gain about half million dollars if we get the same as Sanibel.

VII PUBLIC HEARING: SANBAR SETTLEMENT AGREEMENT

Mr. Roosa said the parties in the suit are the property owner, the neighbors and Civic Association, and the town. The basis of the action was that the council had approved a development that some people believe was inconsistent with the Comp Plan. The property owner received a development order, but has since decided he would agree to the contention of the plaintiff that the resolution was not properly enacted. They have signed a stipulation of parties that would return them to the position they were in before the resolution was passed. The concerns of the neighbors were the condition of the facilities, the Tiki bar, and the jet ski operation. When the applicant came to the council to request rezoning, they came with a proposal that addressed all those issues. The Tiki hut was no longer to be an outdoor bar, and the jet ski operation would no longer exist. When the resolution was approved, the jet ski operation was terminated and they pulled the development order. Now the plaintiff and the property owner have agreed to place themselves back to where they were prior to the resolution. That creates a problem about whether under the flood elevation regulations they will be able to remodel and stay within the guidelines of the 50% rule. He understands from staff that they cannot. If we accept the settlement and they cannot remodel, we will be stuck with the existing structures. The other issues are the preexisting non-conforming jet ski and tiki hut operations. Both have been discontinued because of the development order. The stipulation will resolve the litigation, but there is a question of whether it will settle any of the other problems and whether the property owner will be able to his property and gain revenue from it.

Mr. Mulholland asked Mr. Roosa about Mr. Reynolds' earlier comments and wanted to know if he has a conflict of interest. Mr. Roosa said the issue has to be economic conflict. If the lawsuit involved damages, that would create a conflict and require that he not vote. He understands from Mr. Reynolds that it is resolved and that there are no damages awarded, so it would not create a conflict and Mr. Reynolds is required to vote. Mr. Reynolds noted that he has signed the settlement and sent it back, but he has not received a copy back.

Michael Ciccarone, representing the plaintiffs, said he is not here to lobby for a particular position but to explain how they got here. He said the Civic Association believed that the rezoning was inconsistent with the Comp Plan. He sent the case out for independent review, and their opinion was that the rezoning was inconsistent so he filed the lawsuit. They filed notice that the property was the subject of litigation on June 23 and amended it on July 1. The town and the property owner moved to dismiss, and a hearing was scheduled for Aug. 17. Before going to the hearing, the property owner called and surrendered. They signed the relief. The applicants filed for interior demolition on July 27 and did some demolition before they came in for the permit to remodel and were denied. The applicant put himself in a difficult situation, by choosing to demolish before he got the permit to remodel, but Civic Association is not part of that. The Association also does not like the Jet skis and tiki huts, but they were not part of the complaint. They have looked at some of the issues, though, and have been told that the same jet ski operator got another permit at another location that is too close to the Sanbar and he is not sure he can have both. That operator is not part of this litigation and he doesn't see how he can demand any rights under this stipulated settlement. He is not sure if the license was surrendered or revoked. There could be some estoppel issues. The Civic Association asked him to research whether we would be stuck with the jet ski operation if the council approves the settlement. If the basis for approving the original case was to get rid of jet skis, there are other ways to do it. Regarding the dilapidated state of the building, the demolition was not forced on the applicant. There are ways to eliminate an eyesore by adopting minimum building codes. They hope the litigation can be resolved in a satisfactory manner. They will try to work with the council to try to find a settlement solution that satisfies all three parties. It is not up to them to propose those solutions because they do not own the property. If something else is proposed, they will look at it. It is cheaper to continue the dialogue than to litigate.

Mr. Mulholland asked about item #3 that says it will go back to its non-conforming uses. Mr. Ciccarone said this is the applicant's proposal and he does not know how to interpret it. Mr. Mulholland said it seems that Mr. Ciccarone's clients are advocating going back to the bad building, opening up the tiki bar and letting the jet skis return. Mr. Ciccarone said that may be the applicant's intent. Mr. Hughes said his primary concern is with paragraph 3. He said he thinks that the motel can resume but he does think it means they must remodel. Mr. Hughes said we are being asked to agree to an agreement when one of the counsel cannot tell us what it means. Mr. Ciccarone said he only knows that it cleans up their complaint. Mr. Hughes said the agreement is ambiguous and is not favorable to the town. Mr. Ciccarone said this is the only agreement they have been presented, but that doesn't mean it is the only one they will sign as long as it settles their lawsuit issue.

Darrin Schutt, representing Mr. Pasev, said that his client does not think the resolution was invalid, he is just looking at it from a financial standpoint. He said that paragraph 3 addresses the non-conforming uses. Their position is that they want to go back to the status before April 19. Paragraph 4 says there was no wrongdoing by the town. They intend to go back to the tiki hut and the jet ski and then proceed to renovate. They have never conceded that the zoning was invalid. Mr. Pasev has a lease agreement with Mr. Webber and Mr. Pasev wants to hold to his contract. They don't want to settle this lawsuit and then get into another one. If he can't go back, they will have to go forward. Mr. Mulholland asked if he was aware that the property cannot be remodeled to more than 50% of the value. Mr. Schutt said he feels the main questions involve fire safety issues. The existing structure is not high enough for a 6'8" door. Mr. Mulholland said he had heard that the assessed value is \$156,000. They have filed two applications to remodel at \$90,000 each. That would not be allowed. Mr. Schutt said there are different ways to decide value. Taxable values are usually lower than property values. There is also the income approach to decide value. They realize that a smaller, older motel does not have the same revenue, and that is why they want to add the jet ski and tiki bar as revenue producers. He believes the jet ski license was revoked, not given up. Mr. Reynolds asked if he is confident the building can be remodeled and attract a good clientele. Mr. Schutt replied yes. Mr. Hughes said he does not understand how he can get by the provision in the LDC that provides that if you can't remodel without exceeding the 50% rule, which they clearly will, that you can only reconstruct to the lawful density, which was only 3 units. Mr. Schutt said he believed it was 12. Mr. Hughes said that was the non-conforming density, not the lawful density. Therefore we have a settlement that settles nothing. Mr. Schutt said he may have a point. Mayor Cereceda said that she finds it hard to believe there is any desire to let things go back to the way they were before, without being assured that they will be able to do what they want to do. Does his client realize that he may not be entitled to hold up his end of the agreement with Mr. Webber? The town's position is that there is no going back to non-conforming uses. Mr. Schutt said if this is not allowed, his client is willing to go forward with the rezoning and construction of the building. Mr. Hughes reminded him that that would require further litigation. Mr. Schutt admitted that they are concerned that they may be jumping from one litigation to another. Mayor Cereceda said she is willing to stand by her approval of the rezoning. She is not willing to see Mr. Schutt abuse of his client who is not able to communicate very well. She wants to be assured that his client knows what he is facing. Mr. Schutt said his client has invested a lot of money and wants to have a good relationship with the Town and get a business running. Mr. Mulholland said he also received the opinion this afternoon that the jet ski operation will not be allowed. He said it looks like the Civic Association has cut them adrift. Mr. Reynolds asked if his client would be willing to build a lesser structure with the same number of units and still stay within the ordinance regarding height. Mr. Schutt said he did not know because his client is in the Czech Republic. Mr. Reynolds said he knows an engineer who has drawn several plans that could accomplish two stories above flood plain. Mr. Schutt said that may be an option that will satisfy all concerned. Mr. Hughes said that if the issue is building height, then the Civic Association may have to give up on the violation of the Comp Plan if the development is more amenable in terms of aesthetics and still retains some of the good parts which are to eliminate the zero setbacks, the encroachment on the easement, and adds the trolley stop. All those things were positive for the town. Mr. Schutt said that if the building were lower, it might have to be broader.

Mr. Mulholland said he is concerned that the shell of a building with such a high assessed value will not be able to be improved. He asked Pam Houck, principal planner with Lee County Development Services, if her department will turn down the permits. She said they have not been denied because of the question between assessed and market value. She said she has no expertise on what the market value would be. She said there might be some flexibility in determining value on flood issues, but it is clearly over on the zoning issues. The zoning issues are clear and would not allow the remodeling.

The meeting was opened for public comment.

A ROBERT KEENE

Mr. Keene said the jet ski and tiki hut are straw men. If the operation of the jet ski operation follows with the same rules as others on the island, he doesn't see how it could be a going operation. He can't make enough money to be worthwhile. If the tiki hut is limited to selling to clients of the hotel, it cannot make enough money to keep going either.

B BILL VAN DUZER

Mr. Van Duzer said the town properly rezoned the property. It was a reasonable and suitable plan for the property. The controversy seems to stem from 1) the Civic Association contention that it violated the Comp Plan, and 2) the jet ski license. He can and did argue the merits with regard to the Comp Plan. It does not violate the existing or proposed Comp Plan. The proposed plan does not represent encroachment and it is not over the density. Height is regulated by town ordinance, not the Comp Plan and he got a variance for the height. The public who spoke in favor of the development live in the immediate area. The ones who spoke against it were members of the Civic Association and do not live in the area. Most people who attended the hearing spoke in favor of it. The basis of the suit is not reasonable and is not in the best interest of the neighborhood or the town. If this is allowed to be reversed, the jet ski and tiki hut would be allowed to return and the exiting building would remain and remodeling would not take place. It has many problems with FEMA, handicap accessibility, fire codes, etc. He asked, as a neighbor of the property, to allow improvement to his neighborhood. He wanted to send a message to Mr. Pasev that his development approval is good for 5 years and that the town wants the property cleaned up in the meantime. If he doesn't want to construct the building now, he should remove the structure and hold on to his development order. If he doesn't want to clean up the property, we will and send him the bill. We need to get the Civic Association to drop the suit and become a team player and accept the majority decision. That is why we incorporated. This decision will determine the future. Preservation is progress, but we don't want to preserve the present Sanbar as it exists. We don't want to keep others from improving their property on our island.

C JENNIFER KAESTNER

Mrs. Kaestner said if council members who voted to approve the project have changed their mind and decided that this development has violated the Comp Plan, they must be grateful to the Civic Association for bringing that to their attention. They must be grateful that they have said they are smarter and more experienced than the council. But if they don't believe it is a violation, then let them take it to court. Let's prove it once and for all. Do the people who are elected to run this town get to do so, or do the people who don't like it sue us and back us into a corner? Don't open the door again to lowering the floors and reconfiguring the building. They made a decision that the plan was better for the community and was legal, they granted a variance to the height ordinance, and they gave all of us a view of the gulf. To back off now just because a few did not like what was approved is insanity. Take them on in court.

E MICHAEL CICCARONE

Mr. Ciccarone responded to Mr. Hughes' suggestion that they let the litigation remain idle while other settlement avenues are explored. That is fine. They have no objection to the council going into executive session to discuss this, and no objection to continuing the litigation while Mr. Pasev considers his alternatives. They did not call for this hearing. If the council doesn't make a decision, a judge will. The Civic Association intends to have the problem resolved one way or another. He does not take on frivolous litigation and he doesn't lose too many. When he hears them saying that the density that is approved is higher than lawful density, they are right. That is the problem. You can't approve 12 new units on this location. This is not a silly argument. In fact to implement what Mr. Reynolds is suggesting would involve some twists in the law but probably is worth looking into. You do not have the option of proceeding as planned and Mr. Pasev does have the option to choose the old zoning or the new. A judge will ultimately decide this. This is not their settlement offer. They are just an interested party. The point of the memo was to respond to the suggestion that if they allow the jet ski to return, it must return forever.

The public hearing was closed.

Mr. Roosa said that there may be a misunderstanding by Mr. Pasev and Mr. Schutt about what would be accomplished by this settlement order. He suggested that the council have Mr. Schutt explain his interpretation of paragraph 3, but he does not think that takes into consideration that he may be allowed only 3 units and the tiki hut can only service those three units. Mr. Hughes said he thinks Mr. Schutt was under the impression that he could obtain a permit for 12 units provided they meet the 50% requirement. Mr. Schutt said that if the assessed value means the tax assessed value and no other assessed

value, then he has misinterpreted that statute. Mr. Roosa asked if he wanted to reconsider his consent based on that misinterpretation. Mr. Schutt said probably so because his intent was to remodel the existing 12 units. Mayor Cereceda asked if it is correct that the council now has nothing before them to consider. Mr. Schutt said that may be correct. There is no action for the town to take.

Mr. Roosa said he does not think that when Mr. Pasev agreed he understood the full consequences. If he signs without fully understanding the consequences, he should have the right to withdraw since we have not acted on it. We will continue to litigation as now, unless they can come up with some alternative agreement. Mr. Reynolds said he did not understand what he was withdrawing. Mr. Hughes said he was withdrawing because of a misconception because he thought he could have the tiki bar and jet ski but also remodel and have 12 units. Now he understand there is a difficulty with that on the basis of the 12 units. Therefore there is no stipulation. Mr. Schutt said they are withdrawing because they understood after discussion with community development that the rule applies to 50% of assessed value. The purpose was to permit them to remodel and to return all uses that they had before, and if that is not possible, they are withdrawing. Mayor Cereceda asked about Mr. Van Duzer's comment that our approval has a time limitation for completion. Mr. Roosa said that Mr. Pasev has an active development order that allows 5 years, and that time is running. Mr. Schutt said that Mr. Pasev is interested in moving forward with the property. He has a large investment and he wants it to be income-producing, and he wants for the town to be happy as well. Settlement negotiations are always possible. He knows the lawsuit will not just go away. His concern is to move forward. The building is boarded up and that makes no one happy. If there is a way to make all three parties happy, they need to look toward it. Mr. Hughes said that what will make the town happy is that Mr. Pasev and the Civic Association are happy. Mr. Murphy told Mr. Schutt to relay to Mr. Pasev that we are getting fed up with this situation. He said he would like to have police powers investigated to see if this building is a nuisance. It is apparent it is not going to be remodeled. Get Mr. Pasev to decide which way he is going to go. Mr. Schutt said that they have responded to safety issues promptly. Mr. Pasev is a Czech citizen who is also blind and is very reliant on those around him. He must have everything interpreted for him. Mr. Murphy said that Mr. Pasev says he is doing the honorable thing by honoring his previous contract with the jet ski vendor, but Mr. Murphy said he does not believe he has a contract any more. Mr. Reynolds said he lives across the street. He is not impatient. He wants the situation corrected properly within the bounds of the town ordinances. He asked everyone to be patient with Mr. Pasev. If he can take it, others should be able to.

Mr. Ciccarone said he feels ethically obliged to tell his clients that Mr. Pasev may not be able to withdraw a signed stipulation. If he decides to pursue this in court, he does not want the council to think he was sandbagging. He told the council they may want to continue this hearing for a date certain so they can come back with a progress report. They will be happy to chill the litigation during that time to see if Mr. Pasev can come up with something that will satisfy them. Mr. Hughes said he felt like the stipulation could be withdrawn if one of the parties has not signed. He felt that the town could not be bound.

Motion: Mr. Hughes moved and Mr. Mulholland seconded that that this hearing be continued to a date on or prior to March 8. **Discussion:** Mr. Reynolds asked if couldn't be sooner. Mr. Roosa said he thinks a lot of action will take place behind the scenes before then. Mr. Gucciardo said he understands that that building has already been cited as a dilapidated building. Does the council want to hold that in abeyance? Mayor Cereceda said no. Mr. Gucciardo said that seems inconsistent with the continuance. Mr. Reynolds said the person who did the boarding up did a good job and it seems very safe now. It is still an eyesore but not as bad as it was. Give them a chance to work this out. Mr. Mulholland said the only change is that the plywood is neater. **Action:** The motion passed unanimously.

The council took a break at 8:57 PM and reconvened at 9:10 PM.

VIII RESOLUTION: CERTIFYING THE RESULTS OF THE ELECTION

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

IX RESOLUTION: TO SET PUBLIC HEARING FOR PETITION TO VACATE

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

X OLD BUSINESS

A BENEFITS FOR BAY OAKS EMPLOYEES

Mr. Himmelmann said there are two memos. The one dated October 12 is the one we are looking at. The cost is just under \$9500, which would allow Bay Oaks to get the improved staffing. Mr. Reynolds asked why the county does not take care of their own employees. Mr. Himmelmann said they are part time employees, and the advisory committee decided they wanted this in order to get better quality people. They cannot keep good people without offering benefits. The county has guidelines for each rec center and they would not pay. Mr. Reynolds asked Mrs. Segal-George, since we have a contract with the county for a 50/50 split, does that mean we will not honor this? Mr. Gucciardo said the proposal was also sent to the county and the county did not see fit to fund the additional amount. It doesn't mean we are not going to do the 50/50 split, but the town is just trying to address a request made by the advisory committee.

Vicky Massey of Bay Oaks said that the advisory board had asked her staff what she would like to improve Bay Oaks. Bay Oaks has 3 full time employees, one part time with limited benefits, and two that are on call with no benefits. She said she would like to see them moved to full time and given benefits in order to keep good-quality staff for a long time. The turnover is unbelievable for every position other than those who are full time. It is a stepping stone job. They want benefits, sick time, and job security. One part time position has turned over 4 employees in 5 years. They spend a lot of time training them, then they leave. She would love to see the two grant positions go to full time also. The Sept. 17 memo had asked to increase all of them to full time, which would cost \$23,000. The town agreed to pay half if the county would pay half. The county said no--they would not turn the grant positions to full-time. They would allow for the town to pay for the one part-time position to go to full time. Therefore the Oct. 12 memo recommends that the one part-time position go to full time. That position is 58 hours bi-weekly with the additional hours coming out of grant money. To turn it into regular full time, the town must pay for the additional 11 hours per week plus 10% benefits, which comes to \$9500. Mr. Reynolds asked if the county doesn't see the need. Ms. Massey said they want to stay consistent with the entire department over the county. Mr. Reynolds said he has problems because he believes the county should provide for their staff and we have agreed to share it, but if they don't see the need, it is not fair to ask our residents to pay extra for a county employee. Mayor Cereceda asked if, by paying benefits, they become an employee of the town. Mrs. Segal-George said no, we would pay to the county and the county would pay the employee. Mayor Cereceda said she has difficulty contributing money to a county employee. The only reason we are paying half is because they said we had to pay or they would pull out. Ms. Massey said they pride themselves on a quality program. If they have quality employees, you will continue to have that. This employee was a director at the Y, and he may step on to another position. We need to take care of our employees. She believes the county should pay but she doesn't have the power to make them. All of their temporary staff have no benefits and if the center is closed for a holiday, they do not get paid. If the grant goes away, the teen program goes away. Mr. Mulholland said he had to agree that the county is stiffing us, and he has trouble with it.

Motion: Mr. Hughes made a motion for purposes of discussion to approve the recommendation of the advisory committee for additional funding to upgrade one part-time position to full-time. Mr. Murphy seconded the motion. **Discussion:** Mr. Murphy said that we put these people in an advisory capacity and they haven't come to us for much. We have budgeted for contingencies like this. They do such a great job at Bay Oaks and it benefits everyone in this community. It is unfortunate that the county won't pay, but we can't hold that against the people in the town. We need to take responsibility. Mayor Cereceda said it is a Pandora's box. She agrees there is no finer facility and no finer people, but this council has not looked at Bay Oaks comprehensively and they need to not be nickel-and-dimed. She feels that she can't agree to more than they have already agreed to in the interlocal. **Action:** Mr. Murphy and Mr. Hughes voted in favor of the motion. Mayor Cereceda, Mr. Mulholland, and Mr. Reynolds voted against it. The motion failed.

Ms. Massey asked if the advisory board should be doing more toward a comprehensive look. Mayor Cereceda said this is the town's single biggest expenditure. We have limited input on how that money is spent. They decide everything and then tell us we have to pay half. Bay Oaks is different than their other facilities because we have participation. The town should have some input and negotiation on what is best for Bay Oaks, without consideration for what is best for Lehigh or anyplace else. Ms. Massey asked if the advisory board should ask the county to reconsider half of the funding. Mr. Mulholland asked if the

council should take some initiative rather than leaving it to Ms. Massey. Mayor Cereceda said she will help with it. The dollars are irrelevant--it is the principle.

B DISCUSSION OF MSBU FOR TIMES SQUARE PHASE I

Motion: Mr. Mulholland moved that the council hold a workshop on this subject. Mr. Murphy seconded the motion. **Discussion:** Mrs. Segal-George said that there is already a workshop scheduled in January. The Council agreed to February 11 at 6:30 PM if that is convenient with the merchants.

Action: The motion carried unanimously.

C GULLWING BEACH ACCESS

Mr. Hughes said that the review of the tapes confirm that it was to be a 5' easement and it didn't matter where, as long as it was dedicated to the public. He thinks the appropriate action would be to go back to the tabled motion. Mr. Gucciardo said that the issues were not only the 5' easement, but also the acceptance date of the easement and the title insurance. Mr. Hughes said that Ms. Grady said the document has been re-executed and that they will provide title insurance.

Motion: Mr. Murphy moved and Mr. Mulholland seconded to remove the table. The motion carried unanimously. **ORIGINAL MOTION FROM 11/16/98:** 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:** Mr. Mulholland asked Mr. Roosa if the motion diminishes the rights of the people of Fairview Isles who have a deeded access. He replied no. Mr. Mulholland asked where the public will park. Mr. Roosa said there will be no parking for the public. They cannot park in Fairview Isles in order to use that access. Mr. Hughes said it doesn't diminish their rights, it just gives the rights to others also. Mr. Roosa said it is limited only by accessibility. If you can get to it, you can use it. If you ride a trolley there and it drops you off, you can use it. Mr. Hughes said this is just complying with a previous town council resolution that required it.

Action: The motion carried unanimously.

D MAINSTREET

1 Clarification regarding concerts

Ms. Matthew thanked the council for their support of the concerts and also the Christmas decorations. The clarification is about a concert that was given in October in which Al Durett asked her to ask the town to reimburse him, which was about \$2500. When she presented it to the council, she mistakenly left the impression that it would be reimbursed to the town. She meant it would be reimbursed to Mr. Durett.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that Mr. Durett be reimbursed for the cost of the concert. **Discussion:** Mr. Reynolds asked if Mr. Durett put in any money. Ms. Matthew said he put in about \$700. Each concert costs about \$3000, depending on the size of the performing group. Ordinarily Mr. Durett and the merchants pay for the rest of what it costs after the town pays \$1000. Ms. Matthew said she can give an exact accounting of what has been spent. Mr. Reynolds asked about future costs of concerts. He has heard a couple of complaints about the town approving \$9000. Ms. Matthew said if Mainstreet had a budget, she wouldn't have to ask for funds at all. Everything they do has to be funded by somebody. Therefore she is always asking for money. She would like to have events that are funded by merchants and sponsors off the island. There is a line item in the budget for cultural events and that is where they have been drawing funds. If we stay with what we are doing now, it will cost \$20-25,000 per year to fund the events based on what has been done in the past. But she plans to do more. She has not had the same reception all over the island about getting funding as she has had at Villa Santini. The only concert they are asking the town to pay for in total is this one for \$2500. She mentioned that Marty Hartung spends a lot of time working on these concerts. **Action:** The motion carried unanimously.

2 New Years Eve celebration

Ms. Matthew said this estimate is based on last year's expenditures that Shawn Holiday incurred. This year she left off some things. She said that Santa's Helpers is going to fix up a beach ball to drop at midnight. There is a lot of interest in this celebration and she is trying to provide a nice experience at Times Square. But it is a big expenditure, and she is not optimistic about getting it all back in donations although she is sure she will get some sponsors. The T-shirts, mugs, etc raised \$485 last

year so she put that back in. She has asked for \$1500 so will have supplies to sell. The fireworks at \$5000 would be 7 minutes at midnight, but that is optional. She is asking for about \$800 more than last year because she proposes to order the T-shirts. Mr. Reynolds asked if she is tying in with town's 3rd birthday. She said she did not understand that as a function of Mainstreet but she is working with Cherie Smith. Mayor Cereceda said that the council approved \$500 last year for the committee that sponsored the party and they are planning a party from 12-3.

Motion: Mr. Murphy moved that funds not to exceed \$6538 be approved for the celebration, with the expectation that some funds are to be refunded through donations, and that the proceeds from the sales will go to offset this amount. Mr. Hughes seconded the motion. **Discussion:** She said the bands will play from 5-8 and 9-12:30. Plaka intends to have the belly dancers again from 8-9. **Action:** The motion carried unanimously.

E CONNECTICUT/SHELL MOUND CUTOFF

Mr. Himmelmann said he has done some preliminary research and the Fire Department has no problem with the plan and Kimmins is OK. Mr. Reynolds said he asked for this to be on the agenda in order to get something moving and see if there is any objection on the council. He does not believe we need a traffic engineer. The sheriff has no problem with this. Mr. Roosa said the procedure is to adopt a resolution to hold a hearing, then adopt a resolution at the hearing. Mr. Mulholland said he sees no problem with doing it. He asked if we have agreement from some of the people or most of the people on Shell Mound. Mr. Gucciardo said he is sure it is not 100% but there seems to be a pretty good consensus. The town would need to add some signage and post some stop signs. Mr. Bedore said they have the signature of all except 3 houses on Connecticut and Shell Mound. Mrs. Segal-George noted that we have received a couple of phone calls from people who are against it. Mr. Roosa said we could adopt a resolution tonight to set the hearing date. Mr. Roosa read the resolution. The Council decided to set the hearing for 6:30 PM on December 21.

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

XI NEW BUSINESS

A RESOLUTIONS FROM THE PUBLIC SAFETY TASK FORCE

- 1. Use of electric carts**
- 2. Loitering Ordinance**
- 3. Beach access signage**

Mr. Gucciardo said that no action is required by the council. These resolution are an attempt by the PSTF to keep the council informed on what they are working on. The electric cart wouldn't take effect unless or until the town receives any grant money. The loitering ordinance was a follow up of the council's request for the task force to look into this. They recommend that we mimic the county's ordinance. The sheriff recommends this also and feels it would be a useful tool. Mr. Mulholland asked if a financial analysis will be done of what would happen when a juvenile is picked up. Mr. Gucciardo said there is every indication that there would no financial obligation on the part of the town because it would be no different than what is enforced anywhere else in the county. This is different from the curfew ordinance

Mr. Gucciardo said that the beach signage would help visitors know where they are located in case of emergency. They need direction from the council to continue on this path and also to pursue grant funding. This can be brought back on a future agenda if they would like.

He said they were overwhelmed with the response to the surveys--they got about 25% back. The group divided them up and are tallying the results. They will probably want a workshop. (The college class was not available until March and the task force thought it was too important to wait that long.)

XII TOWN MANAGER'S ITEMS AND REPORTS

Mrs. Segal-George asked for council to provide legal representation to defend the ethics complaint that has been filed against her. She and Mr. Roosa agree that it would probably be better that he not represent her. It was charged that she allowed a councilperson to use town property and allowed Mr. Mulholland to use town supplies. When they decide if it is legally sufficient, only then will she be able to respond to the complaint.

Motion: Mr. Murphy moved to approve hiring legal counsel to represent Mrs. Segal-George in defending the ethics complaint against her. Mr. Mulholland seconded the motion. **Discussion:** Mr.

Reynolds said he was upset when the letter came out, especially when he found out later that it was done in Town Hall. Mrs. Segal-George asked if he felt she did something wrong. He said he didn't think he should discuss that in detail, but he can't support the motion. Mr. Mulholland agreed that the town manager should defend herself against these allegations. It is apparent that there are nine complaints against various people. To date none of them have stood up. He still feels strongly that he was on town business when he wrote and sent the letter. **Action:** All voted in favor of the motion except Mr. Reynolds. The motion carried.

Mr. Gucciardo said that news about the animal control contract has already been reported in the New Press, and it looks like our cost will be significantly lower with no drop in service.

Mr. Gucciardo said that the West District has been sponsoring some community policing events. On December 17 and 18, they will hold one here in Town Hall. He invited all council members to participate.

Mr. Gucciardo said that a few months ago Ed Cusick made a presentation about signage coming over the bridge. The Council agreed to pay half. The cost has since jumped from \$19,000 to about \$32,000 because of additional engineering. He asked if the council would agree to continue to that split. There was no objection from the council.

XIII TOWN ATTORNEY'S ITEMS

Mr. Roosa reported that there will be a mediation hearing tomorrow in the Publix case.

A PRIMEAU LITIGATION

Mr. Roosa said that the proposal of settlement came from Mr. Primeau's attorney. Mr. Crawford said he felt there was a public safety issue with allowing parking there. He recommends that the council not approve the parking spaces and not approve the shelter being moved.

Motion: Mayor Cereceda moved that the council deny the proposal that the shelter be moved and that the town grant Mr. Primeau three parking spaces. Mr. Hughes seconded the motion. **Discussion:** Mr. Roosa explained where the three spaces are located (between the bollards and the trolley stop.) They are half on Mr. Primeau's property and half on ours. It would create a hazard. Mr. Mulholland said he has a problem with the three spaces. After Mr. Primeau gave us the space for the trolley stop, he came to the LPA and said what a great guy he was and we gave him two spaces. Mr. Mulholland thinks we should take back the two we gave him. Mayor Cereceda said that the square is no longer vehicular and people don't think of it as a place to drive or park. They don't even use the parking lot at Top O Mast like they used to. She thinks those spaces are only for the convenience of Mr. Primeau's employees. Shoppers do not go there any more to park. Mr. Hughes said he thinks Mr. Primeau also got an enhancement of the building and created the problem of needing the additional parking spaces and we granted it. Mr. Reynolds said he feels the town went a long way for Mr. Primeau and he doesn't want to give him parking within the mall area. **Action:** The motion carried unanimously.

Mr. Hughes asked what happens now that we have rejected the since we are not a party. Mr. Roosa said he will communicate that to the county attorney's office. Mr. Roosa said the county can't give up the parking spaces and the commission is well aware of our concern about the shelter. The shelter is half on our property and half on his. That would give him some compensation.

Mayor Cereceda asked Mr. Roosa about people that she has asked to act on committees on her behalf. How can she change that? Mr. Roosa said if she just asked them, and they were not officially appointed by the council, she just needs to tell them they are no longer appointed.

XIV PUBLIC COMMENT

A DAN PARKER

Mr. Parker spoke about beach accesses. We are now the owner of 34 beach accesses now that we have accepted Gullwing. But of those 34, four are not marked: Canal Street (30' wide), Lovers Lane (10' wide), Hyde Park (20' wide), and Gullwing (5' wide). He doesn't want the town to lose accesses like Boca Grande. The site at Hyde Park is probably a problem. It is at Mr. Newcomb's property and there is boardwalk. He asked the Council to give the staff direction to have all the accesses marked so we can all enjoy the beach.

B DALLAS SAUPE

Mr. Saupe thanked Mainstreet for allowing him to perform at the concert last night. He said he is a professional juggler who has performed on the Jerry Lewis telethon, the Letterman Show, etc.

He was one of the founders of the Sunset at Pier 60 Festival in Clearwater. When he came to Fort Myers Beach, he contacted Jean Matthew and has performed regularly for about a month on private property. He would like to perform in Times Square every night. It is a very good family show and he has the support of almost all the merchants and thousands of visitors. Mr. Hughes asked how he is compensated. He said he puts out a hat. He said he could bring in quality acts from all over the country and it would make our area well-know. Mr. Hughes asked staff if we have an ordinance. Mrs. Segal-George said we have a policy regarding performing in the public parts of the square. Most merchants have had them on the private portion instead of the public section. Mayor Cereceda said if you allow a legitimate performer, then you are going to have someone come along who wants to do origami and then sell it for \$10 and claim they are performing, but they are also vending. The council should beware that they are looking at something that they need to put their hands on firmly. In the past, Mainstreet allowed performers on Wednesday evening only at sunset. That has been very lax lately. People genuinely enjoy Mr. Saupe, but you have to distinguish between performing and selling and making a living in public space. This is a Pandora's box. There are many people, musicians, etc. who are chomping at the bit to go into the square. It is wonderful but we have to draw the line. Mr. Saupe said that in Clearwater they said you must have no vending. Mayor Cereceda said she will meet with Ms. Matthew and Mr. Saupe and come back with a recommendation.

C RAY CHESTER

Mr. Chester talked about dogs on the beach. This afternoon he was sitting in a chair and he dug up a big clump with his feet. Do the signs mean anything at the accesses that say no dogs? Is there anything we can do? Some people pick up after their dog but not the urine. He has seen dogs chasing kids. There has to be something done about it. Mrs. Segal-George said that this is another issue that gets constant complaints. Our ordinance allows dogs. Only in county parks and accesses are they not allowed. The council may have to change their ordinance, and it can be brought back if they wish. Mr. Mulholland said he loves dogs but he doesn't believe they should be on the beach. The problem is how to enforce it. Mr. Gucciardo said what Mr. Chester is talking about is already an ordinance. To ban dogs may or may not be the way to go. The public safety survey asked this question, and he thought that the council might want to wait to see how the public feels about it before pursuing this further.

D MARTY HARTUNG

Ms. Hartung said she works for Fish Tale Marina and Villa Santini. She thanked the Town for helping sponsor the concert last night. She said that if anyone wants to see the reports of the concert expenses, she has them. The stage alone costs \$900.

E TOM MERRILL

Mr. Merrill said there are a lot of problems with dogs on the beach and he is not sure it is adequate to wait. He has seen tourists molested by dogs and when the tourist season hits, does not think we want to be caught sitting on our hands.

XV ADJOURNMENT

The meeting adjourned at 11:10 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary