

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 21, 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, December 21, 1998 at 6:31 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

The Council was led in prayer by Pastor Bob Stuckey, First Baptist Church of Fort Myers Beach.

IV PUBLIC COMMENT ON AGENDA ITEMS

A FRANK SCHILLING

Mr. Schilling congratulated the LPA and Council for their work on the Comp Plan, but he has two concerns. He passed out information from the South Beach Group, which he said represents over 900 units. They have banded together about their beach, which is getting larger. They are unanimously opposed to Objective 5A, where the enhancement of coastal resources can be measured by restoration of sand dunes. They are also opposed to Objective 6E, which would work toward a naturally-appearing beach. They have made presentations to the LPA and to the MRTF. They want the language softened, but instead it has been hardened. Another concern is the \$13 million problem of beach erosion in the middle of the island. There is no policy in place that will address that specifically. Their group requests that the council either strike the language he referred to or table this matter and hold extensive workshops on these problems. They need to settle this amicably.

B BONNIE FEDDER

Ms. Fedder passed out a letter by members of the South Beach Condominium Group. It was signed by 425 people and by some commercial properties and by 403 visitors and tourists. They want the beach to stay as it is now.

Mr. Hughes pointed out that the information Mr. Schilling and Ms. Fedder passed out would not be in the public record because it was not presented during the public hearing.

V RESOLUTION: SETTING A PUBLIC HEARING FOR PETITION TO VACATE

Mrs. Segal-George clarified that this is the same resolution as was passed last week but it was necessary to change the date.

Motion: Mr. Murphy moved and Mr. Mulholland seconded that the resolution be adopted. **Discussion:** Mr. Hughes said he thinks this means we have a public hearing on two different dates unless we rescind the former resolution. Mr. Roosa said that could be added to paragraph one. Mr. Murphy amended his motion to include that language. Mr. Mulholland agreed to the amendment. **Action:** The motion passed unanimously.

VI PUBLIC HEARING: RESOLUTION TO CONSIDER RESTRICTING TRAFFIC ON A PORTION OF SHELL MOUND ROAD

Mrs. Segal-George said that all residents on Shell Mound and all the side streets received notices by mail. Mayor Cereceda read the memo by Mr. Himmelmann for the public. It said that the county traffic engineer has said that Shell Mound was not engineered for a one-way street. Drivers going south may have a false sense of security if all the traffic is going one way and they may speed more. He said bicycles would have to follow the same rules as cars and only go south. He said that it would require voluntary compliance unless you post a deputy there. He also noted that you would need so many signs that it may

result in sign pollution. He suggested instead that we put up a physical barricade across Shell Mound between Madison and Washington. This would not change the traffic pattern as drastically. Mrs. Segal-George noted that the postmaster has said that if the road is changed to one way, all mailboxes would have to be moved to one side. Mr. Murphy noted that the mailboxes would only have to be moved if it is one way, not if you use the barricade.

The public hearing was opened.

A FELDON BRIGGS

Mr. Briggs stated that he lives on Connecticut Street. What they are trying to do is punish some for the wrongs of a few. Some people will speed down that street, but when he wants to go to the store or off-island, he doesn't want to pull out on Estero and sit for 45 minutes. If you want to slow down traffic, put up speed signs and occasionally post a deputy.

B OLLIE CURRAN

Ms. Curran lives on Connecticut. She said the change will affect everyone, but any way to make the road safe for all the children is worth it. She is for speed bumps, which can be wide and low. She also said they need to do something about the corner of Shell Mound and Connecticut because that is very dangerous. She is not much for closing the street but she will suffer for safety.

C BETTY HOFFMAN

Mrs. Hoffman said it is dangerous on Shell Mound and all the cross streets. But she does not think that one way or barricades is the answer. Perhaps we need more stop signs. Bicycles need to obey the stop signs too. She is able to get to 7-11 without getting on Estero, and that helps the traffic problem. She said it is a year round problem, not just seasonal.

D ELIE SULLIVAN

Ms. Sullivan presented a petition with over one hundred signatures asking the Council not to make Shell Mound one way. Many of the signers live in that area. To take that avenue away from the people who live back there is not fair. It is not fair to punish everyone for the speeding of a few. Put a deputy there. People won't get a ticket for speeding more than once. Put it in the paper and tell the locals that they are going to lose it if they abuse it.

E RICHARD BEDORE

Mr. Bedore said he lives on the corner of Shell Mound and Jefferson and it gets worse every year. If the council defeats this and does nothing to slow the people down, it will be on their heads that someone will get hurt or killed.

F TOM SZYPERSKI

Mr. Szyperki said he uses Shell Mound and takes a neighbor to church on Connecticut. But if he has to get back on Estero to get home, he will think again about it. You can put up signs for 15 mph and spot check for speed. You won't get caught twice if the fine is big enough.

G CLIFTON GILD

Mr. Gild said it is drastic to try the barricade or one way on the first year. He recommended putting up warnings that it will be changed next year. Put up "slow--children" signs and lower speed limits. It saves the locals 15-20 minutes a day and it is not fair to take that away from them.

H JENNIFER KAESTNER

Ms. Kaestner said this issue came up so quickly and she felt that it could be dealt with by citizen groups such as the PSTF, not at the last minute so near the holidays. No one is saying they don't sympathize with the danger and potential for tragedy. She would like the council to give back to the committees the job that they have been created for. She attended the community policing seminar, which is a good example of lots of people getting together to talk about solutions and come up with a recommendation.

I RAY TROZZO

Mr. Trozzo said he lives at Andre Mar and Estero and he does not think that the locals are the real problem. He sees construction crews trying to start the shortcut at Andre Mar and using the sidewalk. It is unsafe. He approves of the one way idea, but he sees that the neighbors are not. It is a decision of convenience or safety.

J RICH CONGER

Mr. Conger lives on Connecticut and said that the problem is caused by motorcycles and trucks and cars and spring breakers. Newspaper notices are not going to reach them. They come flying around that corner on Connecticut. They have taken out mailboxes and even a girl on a bicycle. We need to put up speed bumps on the sidewalk to keep the motorcycles from using the sidewalk as a road. It is

dangerous when people come down the sidewalk. The problem happens whenever the traffic is backed up whether it is afternoon or evening. He feels something needs to be done to keep people off the sidewalk perhaps by using posts. He is not sure if speed bumps would work on a regular road. Posting an officer will help if you keep nailing them. We may need to put spring breakers in jail overnight because they may not be able to pay the fine.

K LINDA SCOLIK

Ms. Scolik lives on Voorhis and Shell Mound. She uses Shell Mound when the traffic is backed up. Does that mean she can't use it either when the traffic is backed up? Sometimes it takes an hour to get from the church to 7-11. She said Saturday night gets kind of loud and noisy with motorcycles and sometimes they destroy her mailbox.

L NEIL SPAGNOLA

Mr. Spagnola said he bought his house 8 years ago and he has only seen a patrol car once or twice. Why not have them patrol two or three times a day to eliminate a lot of problems? The town should concentrate more on patrol and issuing a lot of tickets. If the town advertises, it will just get more traffic. He is against the one way idea.

M CHARLENE RADERY

Ms. Redery lives on Shell Mound and she uses it to get to 7-11 too, but she doesn't have to. It is so dangerous that something needs to be done. She can't believe people would not want a one way street. If they lived there they would. Perhaps stop signs would work, but if you don't have patrols she is not sure that would work. Some people will scoot around just to save two blocks if you use a barricade. Even people from England know where the shortcut is. Maybe patrolling, together with a 15 mph speed limit, would help.

N ROGER ROMEREZ

Mr. Romerez said he is in favor of the one way idea. It is only a seasonal problem—there is no problem now. But there will be during Christmas week then again after the third week of January. The problem is all day long as long as the traffic is backed up.

The public hearing was closed.

Mr. Murphy clarified that this was not something the council dreamed up. It was brought to them by the residents of the neighborhood. It is apparent that the majority is not in favor of the one way solution. But he feels they have to have to do something. When he hears about a girl being dragged under a car, it is incumbent to come up with a solution to protect people. He feels that lowering the speed limit and the suggestion about poles in the sidewalk sounds like a good idea, and he is in favor of enforcement. He asked Mr. Roosa what sort of maximum fine could be set there--he would be in favor of a huge one of \$250 or \$500. Enforcement is the biggest deterrent. He disagreed that this needs to go to a committee. This problem is of a magnitude that people may be killed and they need to act on it and not get bogged down in a committee. Mr. Reynolds said this is not a new subject. Last year it was brought to their attention but by the time they decided something had to be done, season was over. In the fall when it came up again he encouraged them to go to their neighbors and approach the council. He did not suggest the one way idea. The people are concerned and he does not think they care whether they go with one way or a barrier. They just want something done for safety this season. Unless the council makes a decision now, it won't be in place by the middle of January. It will inconvenience some people, but safety is more important for three months. Mr. Mulholland agreed with lowering the speed limits and enforcing them. He does not think that one way is feasible. It is a safety and convenience issue, but safety outweighs. It is a good idea to handle this type of thing with community policing, but they don't have time this year. They have to take action. Mr. Himmelman said that the barricade would totally block traffic in both directions but would allow pedestrians and bicycles to go through. He said the town could get signs or barricade in about 2 weeks.

Motion: Mr. Murphy moved denial of the resolution and Mr. Mulholland seconded. All voted in favor of the denial except Mr. Reynolds. The motion carried.

Mr. Hughes asked about lowering the speed limit. Mrs. Segal-George said we do not need permission from anyone to lower the speed limit on our roads. Mr. Gucciardo said we may not have the flexibility to do the posts on Estero because of handicap accessibility and also because it is a county road. Mr. Hughes asked if we could put a guard rail on Estero in front of the church. Mrs. Segal-George said would have to ask permission but we could try. We can do what we want on Connecticut or Shell Mound. She suggested lowering the speed limit and putting in a 3-way stop on the corner of Connecticut and Shell Mound and see if it works. Mr. Mulholland agreed. Mr. Murphy said that without teeth to enforce, it is meaningless. Mr.

Roosa said fines are set by state statute and have to be uniform throughout the town except for school zones. The fine for running a stop sign is substantial already. Mr. Murphy asked if you could have a higher fine if you had a slow children sign. Mr. Roosa said no, that that is just a caution sign. Mr. Roosa said he feels that the patrol is core level service. Mr. Gucciardo said we cannot be sure that it would not incur extra costs, but that is OK if that is what the council wants. Mr. Reynolds said it doesn't matter what the solution is as long as we make it effective. He thinks a barrier would work. He has no objection to 15 mph and stepped up enforcement, but without enforcement it won't work.

Motion: Mr. Murphy moved to make the roads 15 mph where necessary, to look into posts or a shield on Estero at Connecticut, to add a three-way stop at Shell Mound and Connecticut, to look into stepped up patrols, and to follow up with the neighborhoods to monitor to see whether it is working or not. Mr. Hughes seconded. **Discussion:** Mr. Mulholland still has problems with barriers on the sidewalk and would hate to hold up the whole thing because of that. Mr. Murphy said that in the future if we have a more active role on Estero and have landscaping, that will be an additional deterrent to people on the sidewalks. Mr. Hughes said the motion was not specific on where the 15 mph would be. Did he mean Connecticut to Shell Mound, and Shell Mound to Donora? Mr. Murphy said yes. **Action:** The motion carried unanimously.

VII PUBLIC HEARING: ORDINANCE ADOPTING THE FORT MYERS BEACH COMPREHENSIVE PLAN

Mayor Cereceda read the titles.

She thanked Mr. Spikowski for involving the community all the way with this. People rode trolleys down the island and drew on tables with their ideas. The efforts were greatly appreciated.

Mr. Spikowski talked about the final changes. Since November 9, there are three changes to the future land use. The map has been modified to reflect the changes. He now has estimates of peak season population and a section on public schools and locations, which is a new law. The capital improvements element has been revised to reflect what was passed in the budget. (Each year the council will need to do a plan amendment after passing the budget to keep this element current.) Also he has added some housing data that substantiates the affordable housing efforts. In chapter 15 there is a new sentence that will be controversial. It addresses the two cases that are in litigation. In addition there are four small last minute changes. We needed to add a blurb saying that DCA helped fund the plan. Also some of the existing land use needed to be changed. Policy 4F-2 (Times Square Area) needed to be reworded to clarify that the ideas of the Estero Island CRA plan have been incorporated in the plan. DCA has asked for an additional map and table to illustrate the housing element.

Mr. Mulholland asked about storm water management--if that would be controlled through the land development code. Mr. Spikowski said yes. Mr. Mulholland said he is worried about a lapse on storm water management in Estero Bay. Mr. Spikowski said that what will go in the LDC will affect new development, but a lot of our current problems are from old development and that has to be addressed in a different way. The LDC will only help when a property gets redeveloped. The Stormwater Master Plan (a 3-year project) is our effort to go back and fix things that are fixable.

Mr. Reynolds asked why we are turning so many neighborhoods into Mixed Residential which can mean businesses. Mr. Spikowski said that the streets that are single family will stay single family. The ones with a mix of duplexes and motels and hotels will go to Mixed Residential. The plan does not forbid that you can put offices and motels in Mixed Residential. Mr. Reynolds pointed out an area along the middle of the island that is mostly single family and duplexes. He thinks they will go commercial eventually if they are changed to Mixed Residential because it will allow almost any kind of business. Mr. Spikowski said the Mixed Residential follows the existing zoning boundary. They are zoned for duplex and multi-family today. If it is changed to the Low Density category, it would down-zone all of them to single family. In the LDC they may want to do that in some individual areas. If it is zoned duplex today and is in Mixed Residential, you can't put in offices or motels tomorrow. They could ask for that zoning and the council could give it to them if they think it is the right thing to do, but you could never put retail in that area. Mr. Reynolds said he is concerned when you take a whole neighborhood and change it to allow businesses. He also had a concern that by changing these to Mixed Residential it will increase the multi-family average above the 17.2 per acre that it is now. Mr. Spikowski said Mixed Residential is capped at 6 units per acre. Buildings will generally be limited to two stories above flood elevation and exceptions will be in designated redevelopment areas in buildback situations only. It is far more restrictive than anything today.

The public hearing was opened.

A FRANK SCHILLING

Mr. Schilling stated that he is submitting as a part of the public hearing all of the previously-mentioned documentation of the vote of the 425 members of the south beach area. They are unanimously against the sand dunes, etc. that have been proposed. They have a beach that is excellent and well cared for, and the turtles are fine. Technical reports say that dunes do not solve the problem. Their beach is accreting and does not need change like some other areas. The specific things they want stricken are on objective 5A where they have underlined the sections they want removed. The other area is objective 6E where they want certain language removed. Mrs. Segal-George said that the MRTF is working on a comprehensive coastal ordinance that will address these issues and the regulatory language will be in that. They will be holding workshops and public hearings in March 1999. Mr. Schilling said he is concerned about policies and objectives which say that this is the direction we shall go. The MRTF will be guided by what is in the policy. If the Comp Plan says this is the way we are going, they will have to follow it. Mr. Spikowski said it does set the general direction and they tried to be specific enough to set the direction but not the regulations. When you go toward a naturally-occurring beach, it doesn't say whether it will be in one year or in 20. But if you don't want to go that way at all, then they need to do that now. Mrs. Segal-George said without an ordinance to enforce, nothing will be done. Mr. Spikowski said there are some statements that are specific and absolute such as requiring certain indigenous plants, etc. But much of the plan is general policy and direction. Mr. Murphy asked if we take on the renourishment project, would the agencies that are contributing to the cost require sand dunes be constructed? Mr. Spikowski said they are more concerned about whether there is public access when they fund something. As to dunes, that is more in terms of permitting. They will look to see if it does everything it can to protect the beach once it is funded. Mr. Murphy said we do need restoration in the middle of the island, but down where the beach is wide, it doesn't need restoration, so would the requirements for the middle part of the island apply to them? Mr. Schilling said he included in his package 7 studies on the beach and all are consistent and say that sand dunes won't fix the problem anyway. They will have to control the wave action.

B STEVE HARTSELL

Mr. Hartsell, of Pavese Garner, said he represents the owners of Fish Tale Marina. First he wanted a clarification. They have an approved CPD on the property. In chapter 15 he wants to make sure CPDs are consistent with the plan. Tables 4-6 and 4-33 appear to be outdated. It is a summary of permissible land uses. He has spoken with Mr. Spikowski and he said he labeled the table to indicate that it may change or may have changed. He wanted to have it on record that they are not limited by the table. Regarding Villa Santini, objective 3C proposes the Mainstreet concept and 3C1 states the town's desire to work out a private/public process to work with the owner to adopt a plan to implement 3C1 and 2. They look forward to working with the town in that. Figure 11 on page 4-29 seems to lay out a specific plan. They want to be sure that they are not locked into the pictures and conceptual drawings and that they just represent one possibility. He has addressed a letter on both issues to be put into the record. Mr. Spikowski said that figure 11 is in a part of the plan that is not being adopted into law. Only the policies, goals and objectives are actually being adopted. Policies 3C1 and 3C2 are specific. The LDC will help make that happen. The plan is clear that the regulations do not preclude the landowner from proposing something of his own. They have that option but it will be more cumbersome for them to go through the zoning process. Regarding Table 4-6, the information is as of July and is not in the adopted part of the plan. It is not controlling on anybody. They needed that information to determine water, sewer and road capacity.

C KITTY TAYLOR

Ms. Taylor, speaking on behalf of Stardial, said that they have two concerns at Bay Beach. The remaining properties 10 and 17 on the master concept plan are labeled on the map as Mixed Residential. While that is consistent with hotel, offices and bank, they are concerned that it does not adequately reflect the commercial uses of retail, personal services and restaurant that are permitted. They are also concerned that it does not clarify the vested status at least to the extent that the council has agreed. She requested that the appropriate changes be made to avoid any confusion.

D MICHAEL CICCARONE

Mr. Ciccarone said his comments reflect the litigation cases that his clients are involved in. One is the Mid Island Marina case and the other is the Sanbar case. Both cases have in common that in the most recent addition to the materials in chapter 15, the underlined language appears to be an attempt to vest development that is inconsistent with both the old and the new plan. If they choose to adopt this

language instead of the alternate language that he is suggesting, the town will incur their first comprehensive plan consistency challenge. The Mid Island Marina case has an additional issue. They can't tell how to interpret the concurrency provision. How would it be measured? It also has significant implications if it can't be measured, then either the town will never be able to deny anyone development regardless of traffic on Estero, or no one will be able to build anything because they won't be able to pass the burden of proof. In the context of Mid Island, it presents a potential issue and his clients are considering filing against the comprehensive plan. They also do not see sufficient data to warrant change it to Boulevard. If the town wishes to adopt the alternate language, they will not have a challenge in the Sanbar case or Mid Island Marina. He said he can't promise on the other issue except there may not be a challenge if it can be solved in the circuit court. The Council had talked about settling the Pasev case by agreeing on some density that might be better than permitted under the plan but not as much as what is requested and Mr. Pasev is studying that possibility. If the council adopts the language in the draft it will drag Mr. Pasev into the challenge too. Mr. Spikowski said that changing the Mid Island from Marina to Boulevard was based on a council decision based on that zoning case. They heard testimony for and against, they heard from the neighbors and from the general community and made their decision based on that and he made the corresponding change in the plan. He believes there is enough data to support that. Mr. Roosa agreed. As to traffic concurrency, if the question is whether there is some simple formula, of course not. Concurrency cannot answer our tough problems because you are constantly evaluating humans who change their patterns constantly. But is it more precise and measurable than most others in the state. It is based on 24-hour-a-day data at Donora for 3 or 4 years. What can't be measured is how people going to Publix will change their habits. It is not the fault of the concurrency system. The level of service of 1300 trips applies to all of Estero, and that is the capacity. There is no standard he could propose that is better. Regarding litigation, Mr. Roosa will address those. Mr. Roosa said both have been filed because they allege the action of the council is inconsistent with the transition plan (the Lee Plan.) It is possible that an action that is inconsistent with the Lee plan may be consistent with our new plan. Both property owners are committed to their projects. If the court rules they are not consistent with the Lee Plan, they would reapply under our new Plan. When that happens we will be back where we were. He must assume the council would approve them again and there will be another lawsuit and this time the issue will be it is inconsistent with the new plan. There is no guarantee whether we will have challenges and whether DCA may set it for administrative hearing. There is always an opportunity for negotiation and settlement. He has discussed the language with Mr. Spikowski and he suggests adopting Mr. Spikowski's language.

E CHARLES BIGELOW

Mr. Bigelow represents Mr. Figuerado in the Publix case. It was Mr. Figuerado's hope and Publix's hope that by Thanksgiving of this year the Publix would be opened. It has not occurred because the council's decision was challenged with being inconsistent with the transition plan. When the case was presented to the council, the decision was whether a Publix at that location was in the best interests of Fort Myers Beach. The council voted and approved it. The question tonight is whether they intend to invalidate that decision. Do they intend to render that zoning inconsistent with this plan? Or do they want that development to be consistent with the plan? If they want the project to go forward, then adopt the language proposed by Mr. Spikowski. If they intend to change their mind and set up a barrier, then adopt Mr. Ciccarone's language and tell Publix that they've changed their mind so they won't waste any more time and money. If they still believe it is in the best interests of the town, then they should do everything they can to make it clear that this plan permits that development.

The public hearing was closed.

Mayor Cereceda asked Charles Gauthier from the Department of Community Affairs what he thinks of the Plan. Mr. Gauthier said he likes it – it is very easy to read and understand. He likes the geographic themes. It can be implemented easily. Mayor Cereceda asked if there is anything about the plan that he thinks will not serve us well in the future or any advice that needs to be looked into. Mr. Gauthier said he would go to Mr. Ciccarone's requested policy language, because he thinks that saying any previous zoning approval is determined to be consistent is a contorted way to approach it. If this case goes to court and the judge says it is inconsistent, it is now consistent in this Plan. It seems to open a realm based on illegal actions by the town council. But he is not an attorney; he is a planner. The town has to be prepared to change the plan from time to time. State law evolves and there are new opportunities. Mayor Cereceda said there has been great debate that our Comp Plan will be stone tablets. She appreciates his saying that there are times that changes will be needed. Mr. Gauthier said that there is something before the state legislature now regarding the transportation concurrency that will probably speak to our situation.

The point is to do the planning so you don't create a moratorium. Every year we will have to update our capital improvements plan. He does not see some things changing such as the coastal high hazard area. In their review of the plan in May, they had some sweeping objections, which were mostly on vagueness. They want it specific and measurable. He feels that they are comfortable with the big themes. He is only uncomfortable with the phrase about being deemed consistent on pending litigation. Mr. Bigelow said he is not sure Mr. Gauthier has a clear understanding. The two cases were decided while the town was in the process of adopting the plan. They want to adopt a Plan that would permit one or both of those to go forward. What they are trying to accomplish is to tell the DCA and the court that they know what they decided and what they say tonight cannot be construed that those were bad decisions. If you don't say it this way, how do you propose to say it? Mr. Gauthier suggested perhaps the insurance would be to designate the property Boulevard, which would support this particular use. Mr. Bigelow said there needs to be a way to say it tonight that doesn't put them through having to come back. They don't want to be surprised. Mr. Gauthier said perhaps there is a policy that can be included in the future land use element that would recognize those zoning resolutions and assign those uses to this particular site.

The council took a break at 9:05 PM and reconvened at 9:25 PM.

Mr. Spikowski said that they discussed the language on 15-2 in the break, and he feels that by deleting some words, they can accomplish the same goal and eliminate some of the negative language. In the underlined section #5, put a semi colon after "incorporation" and eliminate the rest of the paragraph.

Mr. Reynolds asked Mr. Gauthier if it concerned him that they seem to be turning everything along the Gulf to increased units. Mr. Gauthier said that in the data and analysis supporting the Plan, there is a good demonstration that there is not a net increase of density so they are satisfied. He has to defer to Mr. Spikowski about the individual areas and distinctions. Mr. Reynolds said he is concerned about someone living in a residential area and suddenly it is Mixed Residential. He sees it spreading over the entire island and he sees that as more density. Mr. Hughes said Mr. Reynolds is unfairly characterizing Mixed Residential. Mr. Reynolds asked how the DCA feels about wetproofing buildings built to the ground. If we build our buildings so they are occupied on the ground level and also above, doesn't that create a problem with increased density? Mr. Gauthier said he is not familiar with that.

Mr. Spikowski said Kitty Taylor is right about Bay Beach. The Plan doesn't do anything to resolve the problems. She asked for an additional section in Chapter 15 that would guarantee their vested rights. There are a couple of sections in 15-2 that are relevant already. #4 already says that the planned development zoning approvals which have not been vacated by the developer are deemed consistent with the new plan. Also there is section on how the town will deal with other circumstances where development expectation may conflict with the Plan but where the judicially-defined principle of equitable estoppel may override. That is specifically designed for Bay Beach. He doesn't know what else they can add that will make things better and not more confusing. It will be more specific in the rezoning action this summer.

Mayor Cereceda asked Mr. Spikowski about the letter from Mr. Ebelini on Pink Porpoise that talks about 815 Estero becoming Recreation. Mr. Spikowski said this is a case where they transferred density across the street, and in the zoning resolution it is clear that the private development rights are gone on that land. That is now shown as Recreation, which includes all government uses. This validates the town's zoning decision in a definite way.

Regarding Mr. Schilling's comments, if the council doesn't want to go toward a more natural beach, they should say so now. The language used to be far pushier, and that is why it is more vague now. He believes that it is still the intent of the council and the LPA and the task force. As to where the restoration of dunes would take place, or if they would take place at their end of the beach, there is nothing that mandates that if it does not make sense in the implementation phase that it has to be done. Do they want to validate that dunes are good for protection and also for habitat? He realizes that dunes alone will not solve all the problems in the center part of the island. He encouraged the council to keep the restoration of sand dunes as a general policy without saying they have to be done everywhere. Regarding 6E (the gradual move to a more natural beach), he said the LPA and MRTF were very strong on this issue. Mr. Murphy asked if it would be possible, regarding sand dunes, to add some language to the effect of "where it makes sense" or "where required as a measure of beach restoration." This would recognize that it doesn't really apply to an area that doesn't need protection. Mr. Spikowski said that DCA was concerned because our plan didn't say how we would test the success. They wanted more specifics. The language is not a

mandate, just a direction they would like to see and a way to measure. In five years we may not have made any sand dunes, but it is still a measure of what we have accomplished. Mr. Murphy asked about 6E. To a lot of people that means Sanibel's beach where you don't touch anything on the beach by ordinance. We have a lot of fairly natural areas on the beach, but we also have areas that are groomed and maintained and a lot of people have become accustomed to that and that is why they live there. Some people don't care for the Sanibel kind of beach. Personally he is not in favor of going toward a naturally appearing beach. The majority of our beaches do function pretty naturally already. This is a little too strong for him in that area of the beach, but he doesn't know how you can not apply it island-wide. Mr. Spikowski said if they like the specific policies but are uncomfortable with the tone, that can be addressed. We are not aiming to be like Sanibel, just to avoid over-development. Mr. Murphy said some people have DEP permits to groom the beach. Does that go over our ordinance? Mr. Spikowski said DEP has reviewed this plan. They wanted us to forbid box blades, but their permits already do not allow it. Since DEP licenses that, we left it out of our plan. Mr. Hughes said he shares some of the concerns with 6E. Can it be worded in the second sentence to change "will" to "may" so it is not a mandatory goal. Mr. Spikowski said you can change that if it better captures where the council is. He also said that in 5A they could strike "sand dunes" and just have two measurable objectives. Mr. Hughes and Mr. Murphy said that sounded like a good middle ground without taking away the environmental concerns.

Motion: Mr. Hughes moved that the words "will be a noticeable transition" be changed to "may be a noticeable transition" in Objective 6E; and that the words "and restoration of sand dunes" in Objective 5A be stricken. Mr. Murphy seconded the motion. **Discussion:** Mayor Cereceda said she is worried about sand dunes because she looks at them differently. The dunes are where you are talking about grooming. Mr. Hughes said this language puts the onus on the town because if we don't start making sand dunes, we are not meeting the objective. He is not opposed to sand dunes, just making it an objective that we must use for measurement. Mr. Murphy said he is not against sand dunes—they did them 15 years ago at his place. He thinks when it is time for the sand dunes, they will tell us when and where to put them as part of the renourishment project. Mr. Mulholland said the MRTF has spent many hours talking to the south beach group. He thought they had a good understanding and they weren't opposed to sand dunes. This was a surprise. He thinks we need dunes as part of our beach and he has problems with eliminating them. Mr. Hughes suggested adding a qualifying clause such as "restoration of sand dunes in specific areas where it is feasible and consistent with the ecology of the area." Mr. Mulholland said he doesn't think that works. Mrs. Segal-George reminded the council that a key part of Gullwing is maintaining the natural dune system that has formed there and protecting and encouraging it. It is part of their landscaping plan and hopefully will be an example to the other condos in the area on how it can work and still have an attractive beach. Mr. Hughes said "restoration" means restoring something that previously existed. Mayor Cereceda said they did previously exist. Mr. Hughes said he has been here for 25 years and there have been no sand dunes. His condo likes the way the beach is and they don't want a sand dune. No one can remember a dune in that particular area. Mr. Mulholland said that if we want to renourish the beach, they will have to have some provision for sand dunes. Mr. Hughes said he is not opposed to sand dunes but we have a lot of people who are. We have a stack of petitions and he is trying to address it. Mr. Spikowski said to look in the policy themselves-- in 6-3E it says "wherever sand dunes have been destroyed." That is an affirmative commitment. Mr. Mulholland said he doesn't think we can say we will put sand dunes in certain areas and not in others. Mr. Murphy said you don't have to insist on a dune system where it is not really required. If they require it in order to have renourishment project, then you put it in. Mr. Reynolds said he agrees that you cannot have renourishment without a dune system. If you have a wide beach, then he sees no need for it. He lives where they are losing sand, so they started a dune. High tides no longer take away their sand. Mayor Cereceda said she is willing to go with "may" instead of "will" but she is not willing to get rid of the dune language. Mr. Murphy suggested we separate the two into separate motions. Mr. Hughes withdrew his motion and Mr. Murphy agreed.

Motion: Mr. Hughes moved that the words "will be a noticeable transition" be changed to "may be a noticeable transition" in Objective 6E. Mr. Murphy seconded the motion. The motion carried unanimously.

Motion: Mayor Cereceda moved adoption of the Comp Plan. Mr. Murphy seconded the motion.

Discussion: Mr. Reynolds complimented Mr. Spikowski on a fine job, but he doesn't like some of the

directions it is taking. He can't go with the change to the area around Crescent Street. There is a whole area from the firehouse to Sterling or Lazy Way that has gone to Mixed Residential which means that anything can pop up there at increased density which we do not need. All those duplexes can be enlarged. We have to think about our road capacity. Mr. Murphy thanked Mr. Spikowski for all his work and the LPA and the council also. He is on the Southwest Florida Regional Planning Council. Commissioner Manning wanted the backing of the Planning Council in opposition to the federal government getting involved in our planning. It was passed unanimously. We put all this work into our Comp Plan and now the federal government is coming down and we want to stand up for comp planning on a local level with local participation.

Mr. Mulholland echoed in thanking Mr. Spikowski and Victor Dover and the LPA and council. It is quite an accomplishment. Mr. Hughes expressed admiration for the work of Mr. Spikowski and his colleagues. He has been involved with comp plans before and he would say Mr. Spikowski is one of the most knowledgeable planners he has worked with. He appreciated Mr. Reynolds' concerns but he thinks it is regrettable we are not going to have a unanimous vote after all the public hearings. His primary concern seems to be his fears about Mixed Residential and they are not really founded. That designation is for mixed housing, mobile home, etc. and only lower-impact commercial that has to be sensitive to the nearby residential areas and comply with design concepts. Mayor Cereceda thanked Mrs. Segal-George and Mr. Gucciardo for their wisdom three years ago when they said this is what we need to spend our money on. Mr. Hughes also thanked Mrs. Segal-George for her work as the attorney for the LPA. Mr. Spikowski asked Mayor Cereceda to clarify that in adopting the ordinance we are also adopting the previous motion regarding Objective 6E; the change in 15-2 #5 that eliminates the rest of the sentence after "incorporation"; the changes dated December 21, 1998 and also the minor changes on the memo dated 12/21/98. Mayor Cereceda and Mr. Murphy clarified that those were all understood to be part of the motion. **Action:** Mr. Murphy, aye; Mr. Reynolds, no; Mr. Hughes, aye; Mr. Mulholland, aye; Mayor Cereceda, aye. The motion carried.

VIII COUNCIL MEMBER ITEMS AND REPORTS

A RAY MURPHY

Mr. Murphy noted that the council will be having their inauguration on January 4 and will also be reorganizing the council. He said that he wanted to go on record as saying he would like to be the mayor in the coming year. He has served well and thinks it is his turn. He is ready and able.

B GARR REYNOLDS

Mr. Reynolds said he would like to be the vice mayor.

He offered the council an apology and a correction that came out in the minutes of the Chamber Traffic Committee. After the meeting he asked someone how he felt about his resigning from the traffic committee, and then he said he needed to talk it over with council. But it came out as a P.S. to the meeting that he had asked to be removed from the committee. He has been on the committee for 2.5 years and he feels it is adequately represented by the town without his being on it. He is so busy that he feels it is a waste of his time. Mr. Gucciardo is there most of the time for the staff and we have six other members from the town on the committee. He would rather not continue on the committee.

He talked about dogs on the beach. He feels we need to work on that ordinance. We need to make it clear it is allowable, or take the signs down that say no dogs are allowed.

On committee assignments, he has asked to be appointed to the regional water authority.

C DAN HUGHES

Mr. Hughes stated that he has no interest in being the mayor or vice mayor.

He asked Mr. Roosa if he will comment on the Primeau case. Mr. Roosa said he felt it would be best to wait until the next meeting to discuss that.

He said the south end sidewalk job (which is not under supervision of the town) is perhaps the worst looking job he has seen. He asked if we can bring that to the attention of someone. Mr. Gucciardo said we have had various concerns including safety concerns. We have been involved almost daily and he has another meeting with them tomorrow. He said there will be handrails, and he hopes they will be put now since the ledge is already there.

D JOHN MULHOLLAND

Mr. Mulholland said he attended the community policing seminar for two days last week. It can be good for our town. It brings affected people together to work toward a solution.

Regarding the memo on the traffic signal at Times Square, he stated his support and agreed we should spend some money to move the traffic.

He agrees about dogs on the beach and will support any initiative toward working on that.

E ANITA CERECEDA

Mayor Cereceda asked if there will be a council liaison with the Mound House. If so, she would like to serve. Mrs. Segal-George said that is up to the council.

Mayor Cereceda said Mr. Murphy has waited a long time to be mayor, and it has been the greatest honor of her life to have served for three years as mayor, but she will be glad to support his bid for mayor.

IX TOWN MANAGER'S ITEMS AND REPORTS

John Gucciardo said the council has received an invitation to a legal seminar on Sanibel. They are asking for a response by January 4.

X TOWN ATTORNEY'S ITEMS

Mr. Roosa said that he has received a fax from Mark Ebelini. He advised that on December 3 Stardial's engineers submitted a revised surface water plan. Unfortunately the district will not be able to start reviewing it until late December. They will keep us posted.

XI PUBLIC COMMENT

A TERRENCE GRIFFIN

Mr. Griffin said he just moved to the beach a few months ago, but he plans to stay a long time. He is here after the fact, but the issue he has is the zoning in the Mid Island Marina area which has opened the door for a Publix. He lives in the building that overlooks the Publix site. There will be traffic. It will draw people to his back yard. They will have air conditioned trucks. They will have a heat exchanger. He has no objection to the owner developing the land and making money. But this use is not amenable to that neighborhood. He asked them to please rezone so he won't have to worry about another Publix coming in. Mr. Hughes asked if he knew when he bought his property that Publix was coming in. He said yes. He knew it was already rezoned, but he asked them to reconsider.

B FRANK SCHILLING

Mr. Schilling thanked the Council for hearing their concerns. He also thanked Mr. Reynolds and Mr. Hughes and Vice Mayor Murphy for not wanting to force sand dunes in areas where they are not needed.

XII ADJOURNMENT

The meeting adjourned at 10:50 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary