

**FORT MYERS BEACH
TOWN COUNCIL MEETING
AUGUST 18, 1997**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, August 18, 1997, at 3:00 P.M.
Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by The Reverend Jeanne Davis, pastor of Beach United Methodist.

IV PUBLIC COMMENT ON AGENDA ITEMS

A JOSINA NIEVENDYK

Ms. Nievendyk stated that she lives on Tropical Isle, on a canal, and sometimes in the middle of the night there are people racing through canal. Six people on her block have been burglarized recently. She feels they need a little protection from the people that come and go from Casey's Bar. There is a problem with garbage in back of Topps Supermarket; vagrants and raccoons pick through the garbage, so perhaps there needs to be a fence. Mrs. Segal-George reported that Dave Crabtree and Captain Erne are trying to coordinate to deal with the issue. Mr. Gucciardo also said that the property owner has authorized Topps to put in new fencing and to post no trespassing signs.

V APPROVAL OF MINUTES FROM AUGUST 11, 1997

Motion: Mr. Reynolds moved and Mr. Murphy seconded that the minutes be approved as submitted. The motion passed unanimously.

VI REVIEW OF FINANCIAL REPORTS FOR JULY

There were no questions from the Council.

VII MOTION FOR RE-HEARING BY FIRST UNION BANK (ECKERDS 96-12-206.02Z 02.01)

Mr. Basinait, attorney for the Sembler Corporation, mentioned his letter of August 4 which sets forth the grounds for the request for rehearing. At the original hearing, the Council was shown the original plan (Plan A) and Plan B, which placed the building closer to the corner of the property. They had talked with some Eckerds representatives about Plan B before the hearing, but had not had time to get final approval. When the Eckerds real estate committee saw the plan which was approved by the Council, they said that they have tried this plan before and it did not work from an economic standpoint, so they rejected the plan. Now they want to go back to plan A with some enhancements. Not only did the real estate committee reject the plan, but there has been a groundswell of support from the surrounding property owners who do not think Plan B is a good plan, particularly because of the parking. He understands that Plan A does not fit in with the future design plan, but they have added some things to it, such as pedestrian friendly aspects and architectural style, to make it closer to the vision. He asked for the opportunity to appear before them again and present their case. Mr. Roosa said there is a provision for request for rehearing in our land use regulations. Normally this would not be a public hearing, but it was advertised that way. The council questioned whether the rehearing could be held today or if only the request could be handled. Mr. Roosa felt that it could not be done today because of the requirement of notifying the neighboring landowners. Mr. FitzSimons said the reasons to rehear would be if there is a significant change in the information available now that was not available at the time of the first hearing. Mr. Basinait

said the new evidence is the decision by Eckerds real estate committee making it so they can no longer proceed. Also there have been a number of letters written by the homeowner associations in the area that will be affected by the construction. They have made a number of substantial enhancements: they have ringed the site with sidewalks, they have added access points from Estero Cove with a sidewalk through the berm, there is a more refined pedestrian area in front of the store, and a refined buffer on the side. They are working with Estero Cove to see if they can use a portion of their site to put a larger berm and vegetate it more heavily than was possible before. They want to make their site a transition zone between the existing zone and the Santini zone plan. Mr. FitzSimons said that he has seen a new Eckerd's in North Carolina that does not appear to be the cookie cutter Eckerds and reflects the local feel of the college town. We are trying to do the same thing, and therefore he is interested in sticking with the vision plan and he felt the council was justified in doing that. But he also feels like it is not bad to hear any new information and the only way to do it is to go through the rehearing process.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that a rehearing be allowed, with the stipulation that it be heard before the LPA first. **Discussion:** Mr. Basinait said he was concerned about the extra time that would be required by going back to the LPA. Besides the plan is the same as Plan A, with enhancements, so they have already seen the basic plan. He thinks they will still come to the same conclusion because it still won't be consistent with the vision plan. He would prefer to come back to the Council. They have already talked with Mrs. Segal-George about the architecture and they do not think they will have a problem coming to an agreement on that. Mr. Isler said he thinks there is enough new evidence for a rehearing, and he does not think it needs to go back to the LPA. Mr. FitzSimons said he wants the LPA involved because he wants to make sure they have been apprised of the enhancements. Mr. Basinait suggested that the LPA be furnished with the enhanced plan and be invited to attend the council meeting and give their input at that time. It would save time and money. Mr. Reynolds said Eckerds has said they cannot live with the plan and we should listen to them. He thinks it does not need to go back to the LPA at this time. The only reason it was turned down was because it did not meet a vision plan which has not been adopted. Mr. Murphy asked if this could be fast-tracked to the LPA. Mrs. Segal-George said the LPA already has three hearings for Sept. 9 so this would have to be on the 16th or 23rd. Mr. Murphy said he is not averse to running it by the LPA first. Mayor Cereceda said she wants the Town and the Council to feel comfortable with the decision, rather than rushing this through because Eckerds says they have a time crunch.

The meeting was opened for public hearing.

A TIM KEENE

Mr. Keene, of Keene Engineering, said that if this goes to the LPA on the 16th, it will add about 6 weeks to the hearing process. He thinks it is unnecessary and it would serve everyone better to rehear the case and move on.

B RAY TROZZO

Mr. Trozzo said when the Town was formed there was a concern about layers of government. He thinks the Council can handle it without going back to the LPA.

The public hearing was closed.

Continued Discussion on the Motion: Mr. FitzSimons said the LPA has already seen Plan A, so they can weigh the changes. In addition, there will be more people available from mid-September forward to come to the rehearing. Mr. Isler said the LPA was charged with building the comp plan, then later was charged with doing the hearings. He thinks that has postponed the comp plan because of this extra job. There is a cost attached to delaying the comp plan. We would just be dragging Eckerds through bureaucracy. He thinks Plan B was a mistake and he thinks it would be a mistake to send it back to the LPA. Mr. Reynolds agreed we are pushing too much onto the LPA, especially where it is not needed. He thinks the council is more informed on this than the LPA. Mrs. Segal-George pointed out that the LPA never saw Plan B, so they never had an opportunity to speak on it. Mr. Isler asked if the LPA could listen to the plan without a formal hearing. It will still have to come back to the Council, and the public would have a chance to comment at that time. Mayor Cereceda said if the changes are substantial enough to grant a rehearing, then they are substantial enough to go back to the LPA. Mr. FitzSimons said the relevance to the LPA is that they are the experts on the future of this community and how it will look, which the council charged them with. Mr. Isler said the LPA should finish the plan before they start administering it. **Action:** Mr. Murphy, Mr. FitzSimons, and Mayor Cereceda voted for the motion. Mr. Isler and Mr. Reynolds were opposed.

The rehearing will be before the LPA on September 16 at 1:00 PM.

VIII COUNCIL MEMBER ITEMS AND REPORTS

A RUSTY ISLER

Mr. Isler wants to know how the Council felt, after the comp plan is complete, about hiring a different attorney to represent the LPA during hearings. He questioned if there might be a conflict to the client for the LPA to have the Town Manager as their legal representative, and then when the case comes before the Council, she is representing the Council. Mr. FitzSimons felt that we are getting a bargain and that she has great experience and he does not think there is a conflict of interest. Mayor Cereceda said she did not see a conflict or she would not have agreed to it in the beginning. Mr. Murphy said he does not see a problem. Ultimately the decision on the cases belongs to the Council, and they are not shaped by Mrs. Segal-George's input that much. Mr. Reynolds said he thinks it is strange that the town manager is guiding the LPA hearings as their attorney, yet he, as a council member, cannot sit in there. Mr. FitzSimons said the difference is that the town manager does not have a vote. Mr. Roosa clarified that it is not prohibited that council members cannot attend LPA meetings. But they cannot participate in the hearings because they might get information that is not presented at the Council hearing, which would not be fair. Everything they need to know to make a decision should be presented to them at the hearing. Anything else, they have to fill out an ex parte form. Mr. Roosa also said that having the town manager be the attorney for the LPA is not a conflict of interest. Conflict of interest is when the personal interests of the attorney are inconsistent with those of his or her client, because then their advice would be tainted. If she represented the client at the LPA and then represented the town at the hearing, it would be a conflict of interest. That is not the case here. The town attorney can be the attorney for the LPA and the Council and it would still not be a conflict of interest. Mr. Isler said his concern is not conflict of interest or ethics. He just thinks it is too much concentration, that someone has to go through the same person through the whole process. Mrs. Segal-George said she has far more involvement with the applicants as a town manager than as the LPA attorney. At the LPA hearings, she does not say much unless there is a specific legal issue or question in the case before them. The issue of one person taking applicants through the whole process is because we are so small. We don't have a planning department or building department or anyone else to take them through. She is the one with the land-use expertise. Mr. Isler said she is either taking away from her time as a town manager, or working overtime. Mrs. Segal-George replied that she has to be at the LPA meetings anyway.

B TED FITZSIMONS

Mr. FitzSimons said he received something from the Department of the Army regarding impact studies by the Corps of Engineers. It was determined that the staff had not received it and that it needed a response, so he passed it to staff for follow-up.

He spoke about the memo from Bill Spikowski regarding accessory apartments, which gives the consensus of the council and the LPA regarding the probable way the comp plan is going. Mrs. Segal-George said the plan in the memo is informally in effect until it can be brought before the council in ordinance form in the fall.

Mr. FitzSimons informed the Council that he has decided to seek reelection for his seat at the next election.

C GARR REYNOLDS

Mr. Reynolds asked Mr. Roosa to clarify whether he could sit in the hearings of the LPA. Mr. Roosa replied that he can sit in on the legislative sessions, but not the judicial hearings. If he goes to the LPA hearing, he would already have the opportunity to make up his mind before it ever came to Council. When he heard the case with the Council, he could not then be impartial and objective based on the documentation and presentation that was made at that hearing.

He asked about the status of the theater. Mrs. Segal-George replied that there had been a submittal by Mr. Hoffman, but it was denied by county staff. If the applicant decides to appeal, it would come to the council.

He thanked Mrs. Segal-George for her response to Mr. Gaydos' written concerns about the budget.

D RAY MURPHY

Mr. Murphy reported that on August 13 he went to the dedication of Treeline Ave. He thinks it was a significant event in the life of the university and the community. He and Mr. Reynolds were the only representatives from any municipality in the five-county area.

When he was on vacation recently he picked up a periodical that spoke about eutrofication, and the effort toward public education about clean water. He gave the periodical to the staff.

He reported that he stopped by Lovers Key to look at the progress. He asked the ranger if he would like to come talk to the council before it reopens, and he said he would be glad to come.

E ANITA CERECEDA

Mayor Cereceda said she attended the first part of the Leadership course. It was a very impressive group of people who are trying to better their communities. What they are visioning for the future of Lee County is what we are doing here now. They are talking about rebuilding a sense of community. She appreciates the opportunity to participate in the course, and she will copy the materials to share with the rest of the council.

IX FIRST READING OF REMOVAL OF NUISANCE ACCUMULATION ORDINANCE

Mayor Cereceda read the titles. Public hearing was set for September 8. Mr. FitzSimons asked if there was a way to add on page 2, 5B: "and the regulations that apply thereto." He wants this ordinance to cover the 24-hour rule regarding how long garbage and yard waste can be set out before pickup. Mr. Roosa said if garbage is put out more than 24-hours before pickup, it would not be part of the "regularly scheduled garbage program." Mr. Isler said it is common that if you cut down a large tree, it stays out up to a week before pickup.

X FIRST READING OF ORDINANCE REGULATING BODY PIERCING

Mayor Cereceda read the titles. Public hearing was set for September 8. Mr. FitzSimons asked if we aren't talking about a medical procedure when a needle penetrates the skin. Mr. Roosa said section 7 specifically exempts physicians, nurses, etc. The language in this ordinance was prepared by the Florida legislature, but it never got past committee. Mr. FitzSimons said if we have the right to regulate such an activity, don't we have the authority to define that it is a medical procedure? He would like to require that a licensed medical practitioner be involved. Mr. Roosa said that field has already been preempted by the state. We are just addressing the one area of minors.

XI DRAFT DISCUSSION OF TOWING OF PARKED VEHICLES ORDINANCE

Mr. Roosa said the Florida League of Cities has said that some municipalities have established rates in their area. So he added paragraph 5 to the ordinance and used guidelines in the Florida statues for various rates. The ordinance also requires that towers be licensed, and that when people come to retrieve their vehicle, they will be given a schedule of charges and the rules, so they know they are being treated fairly. Mr. Reynolds thought 6 PM was awfully early for people to be charged extra for after-hours. Mrs. Segal-George said she has gotten some information from Miami about their rates and rules. She recommended going forward with the ordinance, getting the licenses in place, and then a passing a resolution to set the fees and the rules.

Terry Dillon said the Miami code rates are set according to the type of vehicle that needs to be towed. Towers are given an hour to release someone's car after they have been called. He will make the Miami ordinance available to the council. Mrs. Segal-George said the Miami ordinance also give remedies for a person who is towed if they have been wronged. Mr. FitzSimons asked why we allow removal without the involvement of the sheriff. Mr. Roosa said property owners have the right to tow, but they must follow certain rules such as posting signs and telling people how to get their car back. If someone parks in your driveway, you can't have them towed because you have not posted a sign. Mr. Gucciardo said we are trying to make rules about what happens once the car is towed, such as licensing, abiding by rules and regulations, etc. But we can't tell them they can't tow. Mr. Reynolds said it is private property, but it is being used as a public parking area, so why is it still considered private property? Mr. Roosa said that the court has ruled in some cases that because shopping areas are used by the public, they lose some private property rights, but they haven't extended that to parking. Once you elect to park in their space, you must abide by their posted rules. The ordinance was set for first reading on September 8.

The Council took a break at 5:10 PM and reconvened at 5:35 PM.

**XII COASTAL ADVISORY COMMITTEE
A RESOLUTION**

Motion: Mr. FitzSimons moved and Mr. Isler seconded that the resolution be approved. The motion passed unanimously.

B TOWN APPOINTMENT TO THE COMMITTEE

It was decided that staff would cover these meetings in the interim until the Marine Resources Task Force has been able to meet and make a recommendation.

XIII REGIONAL HARBOR BOARD

A MEMORANDUM OF AGREEMENT

Mr. Gucciardo pointed out that on the last page there are standard rules and then a specific one for the Town which deals with liveaboards. This language was taken directly from the Punta Gorda agreement, but the Town might want to consider changing it. Mr. FitzSimons suggested the Marine Task Force should consider this question first. Mr. Roosa said if these are going to be binding, he thinks they should be adopted by ordinance. Mr. Gucciardo said at this point they are just trying to get some kind of standardized approach regarding rules and regulations. Mr. Roosa said it should be followed up by an ordinance and a public hearing. Mr. Isler suggested taking out the last paragraph for further study and adopting the rest for now until the Marine Task Force can discuss it.

Motion: Mr. Isler moved and Mr. Reynolds seconded that the agreement and the umbrella rules be adopted. The motion passed unanimously.

B TOWN APPOINTMENT TO THE BOARD

It was decided that staff would cover these meetings in the interim until the Marine Resources Task Force has been able to meet and make a recommendation.

XIV DISCUSSION ON THE PROPOSED BUDGET

A OFFICE SPACE (PERSONNEL NEEDS AND SECURITY ISSUES)

Mr. Gucciardo said that the office space we are using now costs \$4.16 per square foot for about 2800 feet. The bank approached us about the space downstairs, which is about 2300 feet. With the new staff members, he felt that we could stay up here and rearrange the space, but the problem is, as needs expand, the downstairs space might not be available when we do need it. He envisions using the space downstairs for offices and using the upstairs for meetings, but also using the upstairs for space for code enforcement, signs, and deputies to do paperwork. The other issue is security. Access to our computers and files cannot be secured when everyone is in a meeting. The property company was suggesting \$7.50 per square foot at first for the downstairs, but have now offered \$5.30 for both areas. It would change the monthly lease from \$1000 per month to about \$2300, including utilities. Renovations downstairs would be their responsibility. The only restrooms downstairs are used by the bank so they will have to reconfigure the space. If they rent it to someone else, they would have to put in extra restrooms. He envisions that the upstairs would be closed off during the day unless for a meeting. During council meetings, the work stations downstairs would be closed off. We are currently on a three-year lease, with three-year extensions. Mr. FitzSimons said he sees things happening in the Town that will be benefited by the space. Volunteer groups can do a lot for the town, but they need space to meet and store things. This is so centrally located and secure that it is an ideal Town Hall. He thinks we should leave the price negotiation up to staff. Mr. Murphy said he is in favor of continuing negotiations for the extra space. Mr. Reynolds said a bargain is not a bargain if you don't need it and we don't need it. He is sure we could fill it up, but we don't need it. Mr. Gucciardo said it is the decision of the council, but his opinion is that it would maximize the resources of the Town for the benefit of the Town. If Dave Crabtree could work out of Town hall without traveling back and forth, that would increase our efficiency. We have a problem communicating and connecting with the code enforcement history. Mr. Isler said at his work they used to have two separate buildings, and being in one building is tremendously more efficient. We would be in the same building but you are still separating your offices. This space is not laid out well, but there should be ways to improve the space that is up here. When you start moving walls around in this kind of building it is very expensive. But the LPA room could be made into two offices, and the county can use the small equipment room. He would rather see the Town add phone lines and try to get by in this space. Maybe whoever rents the space downstairs would sublease the storage room or a meeting room to us. Mayor Cereceda said there are fewer and fewer down moments here when there is not much going on. She is here a lot, and we are tremendously cramped

for space. Mr. Gucciardo said the staff has already considered some options for reconfiguring this space. It was suggested that the staff look into comparing costs between re-doing the space upstairs versus renting the space downstairs. Mr. Murphy said we should be looking to the future, many years down the line. If we find out later we don't need the space, we can then sublet it. Mr. Reynolds questioned whether we want to continue expanding at the rate we have expanded in the first year and a half. Upon individual questioning by the Mayor, Mr. Murphy, Mr. FitzSimons and Mayor Cereceda expressed interest in pursuing the idea of leasing the downstairs space; Mr. Isler wanted to pursue drawing up a plan to maximize the space upstairs by renovation; and Mr. Reynolds wanted to leave the Town Hall upstairs, using the space as is.

B INFORMATIONAL MAILING TO PROPERTY OWNERS

Sample mockups of the mass mailing prepared by Larry Ihnen were passed out. Mr. Isler said he felt there was too much space given to the TRIM notice and not enough for the ballot questions. It was noted that the TRIM notices are for 1997, not 1998. It was agreed to go forward with designing the mailout, but that Mrs. Segal-George will fax the copy to the council members before it goes to print.

XV OLD BUSINESS

A TOWN APPOINTMENT TO WATERFRONTS FLORIDA BOARD (SAN CARLOS ISLAND)

It was decided to defer this appointment until the MRTF has met and makes a recommendation.

XVI NEW BUSINESS

A PROPOSAL TO CREATE AN MSTU OR MSBU FOR THE CORE AREA

Mrs. Segal-George said Peggy Freshour used to set up benefit units and taxing units for the county. She thinks we can handle this in-house and not have to go to the tax collector who charges 3%. They are looking at creating a taxing unit, a benefit unit, or an assessment. Ms. Freshour will make a report which will come to the council with her recommendations on how to proceed. They could underground utilities on Old San Carlos, do landscaping, do bay side sidewalks, apportion the maintenance of Times Square, etc. There would have a public hearing before the taxes were assessed.

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that Ms. Freshour's proposal be accepted. The motion passed unanimously.

XVII INTERLOCAL AGREEMENT FOR STREET MAINTENANCE WITH LEE COUNTY

Mr. Gucciardo said that this is a draft agreement for study. On the next agenda the Council will have the agreement in final form and also one from Community Development. After our approval, it will go to the county commissioners.

XVIII TOWN MANAGER'S ITEMS AND REPORTS

A DISCUSSION OF POSSIBLE AMENDMENT TO ANIMAL CONTROL ORDINANCE

Mrs. Segal-George said that the town hall staff gets a lot of complaints regarding dogs. If we go to a strict leash law, we will still have a problem with enforcement. Currently the animal control ordinance mirrors the county's, and says that a dog must be on a leash or under voice control. Mr. Gucciardo said most of the complaints are about dogs running loose on the beach, but he feels the real complaint is that they are not being cleaned up after. It is already in the ordinance that you must clean up after your pet. Where we differ from the county is in our parks ordinance, because the county says animals are prohibited in parks. Our only park is Times Square. The accesses are county parks and still have posted that no dogs are allowed. Sanibel has a leash law, but dogs are allowed on the beach. Mr. Reynolds said he would like to see the part about voice control removed and go to a leash law. Mayor Cereceda asked if the staff could look into a "community policing center" like Bonita and Lehigh Acres, where deputies are permanently stationed in that community. The Council also questioned whether we could give the authority for giving citation to citizens. Could they cite boat launchings, open containers, dogs, etc.? Mrs. Segal-George said there is liability involved, and you would have to provide training, certification, etc. Citizens may encounter someone who doesn't want to comply with what they are being told to do and it could cause altercations. The staff was asked to look into contracting with someone. Mrs. Segal-George said the bigger question is what kind of enforcement the Town wants.

Mrs. Segal-George said that October 21 at 7 PM has been tentatively set for another joint LPA and Council meeting, where the Council will see the next three elements: Coastal management, conservation and recreation.

XIX TOWN ATTORNEY'S ITEMS

Mr. Roosa had no items to report to the Council.

XX FIRST READING OF AN ORDINANCE AMENDING THE CHARTER SUBJECT TO REFERENDUM, IMPOSING A 3% UTILITY TAX FOR THE PURCHASE OF REAL PROPERTY

Mayor Cereceda read the titles. Public hearing was set for September 8. Mr. Roosa explained that this proposed change to the charter was not suggested by the charter review committee, so the council can propose a change by amendment. It does not become effective until the referendum. Mrs. Segal-George suggested the addition of the words "within the Town limits" after "real property." This item will be included on the mailout.

XXI FINAL PUBLIC HEARING ON REFERENDUM LANGUAGE FOR PROPOSED CHARTER AMENDMENTS AND ADOPTION OF RESOLUTION

The public hearing was opened.

A RAY MERTENS

Mr. Mertens said he is against #1 because it doesn't say what the boundaries of the districts would be. If they were based on population, it would cause the voting block to be all on one end of the island. On #2, he is concerned that someone could take office in November, but someone who had to be in a runoff would not be seated until December. They should all take office at same time. #3 should not be on the ballot. #4 violates the contract with our present town manager, and we would have to be willing to break her contract. #5 must be allowed, because it is critical for the city. As for #6, 25% seems an awfully high percentage to be required.

The public hearing was closed.

The Council voted on which questions should remain on the ballot:

Question #1: Mr. Roosa said there is a typo. On the 3rd line down, "whom shall be elected from the town at large" should be lined out, and "single member" underlined. This question must be on the ballot.

Question #2 – Mr. Isler, no; Mr. FitzSimons, no; Mr. Reynolds, no; Mr. Murphy, no; Mayor Cereceda, no.

Question #3 – Mr. Isler, no; Mr. FitzSimons, no; Mr. Reynolds, no; Mr. Murphy, no; Mayor Cereceda, no.

Question #4 – Mr. Isler, no; Mr. FitzSimons, no; Mr. Reynolds, no; Mr. Murphy, no; Mayor Cereceda, no.

Question #5 – Mr. Isler, yes; Mr. FitzSimons, yes; Mr. Reynolds, no; Mr. Murphy, yes; Mayor Cereceda, yes.

Question #6 – Mr. Isler, no; Mr. FitzSimons, no; Mr. Reynolds, no; Mr. Murphy, no; Mayor Cereceda, no.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the resolution be adopted except eliminating #2,3,4 and 6. Mr. Murphy, Mr. FitzSimons, Mr. Isler, and Mayor Cereceda voted for the motion. Mr. Reynolds was opposed. The motion carried.

It was decided that the wording of question #5 should be clarified to "A Town Charter amendment changing the requirement of a referendum to two public hearings, prior to issuance of revenue bonds or prior to entering a lease purchase contract."

Mr. Isler said the Town was sold on the idea of "bare bones" and now we are talking about a bike path, sidewalks, buying properties, Mainstreet, regulating dogs, etc. At the design workshop everyone was told to think big and not think about the cost. Now things are becoming part of our comp plan without the cost being talked about first and priorities being set. He feels we are drifting into a full-service government. It costs money to build infra-structure, and he felt there should be a ballot question asking if that is what the voters want. He suggested "Do you want to change our unwritten mission statement of limited government to provide a full-service government?" Mayor Cereceda said we need a definition of "bare bones" because it means something different to everyone. She would like to see a sentence on the mailout asking residents to drop us a line saying what they think bare bones means. She also stated that it is not the duty of the Council to live up to what the pro-incorporation group promised. Mrs. Segal-George said some people want tennis courts, but may not want the pool. You have to define what basic

government is, which is the next step after “can the town survive?” which has now been proven. Mayor Cereceda said she would like to have a workshop on what bare bones government means to them. Bay Oaks is not bare bones to a lot of people, but it is essential to many. Mr. Isler said we need an overall plan. The council voted to pursue the grant for the hidden bike paths, but that may not have been a top priority, but it got attention because there was a grant. Mayor Cereceda suggested that we say on the flyer that the town is going to have a workshop on what a bare bones government means and asking what are your priorities for the future of this community. Mr. FitzSimons suggested just the last half of the question: what are your priorities? Functionally, the comp plan is a vision statement, but it must be supported with a financial element.

**XXII PUBLIC HEARING TO DISCUSS RECOMMENDATIONS OF SPECIAL MASTER
(GANIM/TARICK 96-08-175.02S)**

Mr. Roosa explained that the special master held a hearing to decide whether the restriction that the applicant must provide proof that food sales exceed 50% of total sales was reasonable. The special master said it was not reasonable, that it should be deleted, and he added three additional conditions: no happy hours or special sales of alcohol; promotions or advertisements of alcohol shall be prohibited; and no dance floor. Mr. Roosa informed the Council that if they deny the special master’s recommendation, the applicant could take the case to the circuit court saying it is overly burdensome or unfair.

The public hearing was opened

A GERRY WAKSLER

Ms. Waksler, attorney on behalf of Ganim and Tarick, said they have talked with several business owners on the beach and concluded that they could not run a profitable business with that rule. She gave the scenario of a diner who orders a drink, then orders food, then reorders another drink. The drinks would exceed the cost of the dinner and they would have broken the 50% rule. They would be the only restaurant of that size that would be under that rule. They have agreed to a number of conditions, such as no bar, food available at all hours of operation, and no outside entertainment. They can live with all those but not the 50% condition. They can also live with the alternate conditions of the special master. But if they stay with the 50% condition, her clients will go to circuit court.

B RAY MERTENS

Mr. Mertens thinks the 50% condition is wrong because it would be the only one in Florida. It would lose in court and be too hard to prove. He recommended adding an amendment that they will never have an awning and drop curtains so that it won’t turn into a larger restaurant. Make them keep it a very small Hooters-style restaurant. He said they had better do 75% in food sales in order to survive, but that is not the issue. They shouldn’t be the only one who is required to provide documentation.

C BUD BROWN

Mr. Brown, owner of the Parkside Café, said he has a 2-COP license with almost exactly the same seating and basically serving the same food. During season his sales are 70% alcohol (and he has a full kitchen), and off-season it is about 60% alcohol. His customers drink 2 or 3 drinks, but only one small sandwich. Food is just not that expensive unless you are an upper class kind of restaurant. It will not work. With that kind of license you are not going to get 51% food, and he testified to that effect before the special master. The restrictions that are already put in are enough to control the restaurant.

D NEIL VAN VLEET

Mr. Van Vleet is general manager of the Lani Kai, next to the proposed restaurant. 1) At the special master hearing, the town did not provide any witnesses, unlike the other side. 2) There is no access from the beach and they are getting away from a big parking requirement by putting a deck out to attract people from the beach. But they will have to cross private property or Lani Kai property to get there. If they put a large awning out, all of a sudden they are an enclosed restaurant with only 17 parking spaces. 3) They don’t have a variance yet next to his property. 4) It has been a condemned building for the last 1 1/2 years, and instead of making them knock the building down, they are giving them a 2-COP license. He would appreciate any restrictions we could put on it.

The public hearing was closed.

Mr. Reynolds said if the 50% condition had not been attached, he could not have considered voting for the license at all. It will be operated as a bar without this condition. Rather than deny the license totally, they wanted to give them an opportunity to run a business with restrictions. Mr. FitzSimons said the hearing focused on whether this would be a bar or restaurant. The applicant was strenuous that it would be a restaurant, not a bar. He would not have voted for this without the restriction. He will not consider

relinquishing that restriction. Mrs. Segal-George asked Mr. Roosa if they could add conditions at this point. Mr. Roosa said no, not without the approval of the applicant. Mr. Isler said it is a residential structure on a commercial property, and it was reluctantly approved because with the deck it would add less density. He does not think it is in the best interests of the community to have a bar in that spot. He finds it interesting that 70% of your revenues can be from liquor and you are not considered a bar. Mr. Roosa clarified that if it goes to court, the entire record of the first hearing will go to the judge. Mr. Reynolds said we should not be deterred by the attorney's threat to go to court. At some point we have to stand up and say we believe we had good reason for what we said.

Motion: Mr. FitzSimons moved and Mr. Reynolds seconded that the recommendation of the special master not be accepted. The motion passed unanimously.

XXIII PUBLIC COMMENT

A BILL THOMAS

Mr. Thomas talked about parking and towing. We are towing away the guests of our island. We charge them money to come here, then we charge them to take them away. After their towing experience, they check out of their motel, they don't eat here, and they don't shop here. When he got towed, he didn't have enough money because the sign said \$85 not \$125, there were guard dogs, and he was treated very poorly. It is \$40 in Miami and Daytona Beach to be towed, but here it is \$125. That is outrageous. Maybe the beach should go into the towing business because it must be the most lucrative business around. It is giving the beach a terrible name. People can go to Naples, Marco, Sanibel. They don't have to come here and be towed away. When we have a special event, we have no parking. Just changing towing companies out to Summerlin Road where you have to take a taxi in order to retrieve your car is not a good solution. The Town needs to lower the towing rate to a reasonable rate. It doesn't take much imagination to know what the motive is when a woman and her son watch the lot at all hours of the day.

B RAY MERTENS

Mr. Mertens said there are only two towing companies, so it can't be that lucrative. He is tired of people thinking that the parking lot owners are the offenders. They are the victims. They put out good money to provide the parking. The offenders are those business owners who do not provide a place for their customers to park.

XXIV ADJOURNMENT

The meeting was adjourned at 8:50 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary