

**FORT MYERS BEACH
TOWN COUNCIL MEETING
FRIDAY, SEPTEMBER 10, 2004
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER: An emergency meeting of the Fort Myers Beach Town Council was called to order on Friday, September 10, 2004 at 3:35 P.M. by Mayor Bill Thomas.

Members present at the meeting: Mayor Bill Thomas, Vice Mayor Garr Reynolds, Councilman Don Massucco, Councilman Howard Rynearson, Councilman Bill Van Duzer.

Excused absence from the meeting: Not stated.

Staff present at the meeting: Town Attorney Richard Roosa, Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo

Mayor Thomas began by stating that the meeting had been called to consider Ordinance 04-14 and asked Town Attorney Richard Roosa to read the ordinance. Mr. Roosa explained that the emergency ordinance was drafted because of the concern at last week's Town Hall meeting about several individuals who stated that they were never going to leave the Island in case of another hurricane. He said this was very serious and unfortunate for both these individuals and the emergency personnel who will have to place their lives at risk in order to protect them. He felt that if it were possible to get publicity about the reasons for evacuation and the condition of the Island, there would be many more people willing to evacuate. After reviewing the ordinance he gave consideration to how people could be assured that they would be allowed to return as soon as it is safe to do so. Accordingly, he drafted the subject ordinance to be considered at this meeting. He identified the priorities under the applicable section: (1) That the emergency response and recovery facilities have emergency fire, telephone and medical facilities; (2) water treatment and public facilities must be fully operable; and (3) wastewater treatment must be satisfactory. He said that the other priorities are important, but people could be allowed on the Island while those priorities are being addressed. Mr. Roosa called attention to Page 3 of the ordinance, where the change he is proposing, the new Paragraph D, "Procedures That Will Govern Return of Evacuees to Their Homes" appears. There was no such procedure in the original emergency ordinance. He proceeded to read the applicable provision, which he said sets a standard for the Task Force and eliminates the need for them to make a decision. He pointed out that this would show response to the public's concerns, and provide them with a yardstick to measure their eligibility for return.

MOTION: Motion was made by Councilman Howard Rynearson to adopt the ordinance as written. Motion was seconded by Councilman Massucco.

DISCUSSION: In reply to a question by Councilman Van Duzer, it was explained that this is an emergency ordinance and is only good for 60 days. Mr. Roosa suggested that it would be appropriate for Council to review this ordinance in its entirety at a later date, but by adoption at this meeting there would be a procedure in place in the event of any more storms during that period. Mr. Massucco asked how this would be relayed to residents, and Mr. Gucciardo suggested that the language be made more specific to define the priorities. It was determined during discussion that there was no need for Council to declare a state of emergency before adopting an emergency ordinance.

Vice Mayor Reynolds answered the question about disseminating this information by suggesting that the public in attendance each be given copies.

Mayor Thomas opened the meeting for public comment at this time.

Jean Matthew from the *Sandpaper* came forward and agreed that she has heard many people declare they will not leave no matter what severity of the storm. She offered to have any information the Town wishes to disseminate sent electronically to their printer in Winter Park, saying that they can have it available within a day. She offered to help in any way with communication, including standing at the foot of the bridge with leaflets.

Jamie Diaz of 260 Egret St. came forward. He acknowledged that Council is in a no-win situation and cautioned against coming up with more restrictions, or wording that will be perceived by residents as restricting their rights and abilities. He said there was never a problem in the past, even after Andrew, with people being able to get back to their properties, and he stressed that this must be a primary responsibility. He said he appreciates concerns for safety, but does not feel that the public intended to give Council that responsibility, and he doubts that any type of restrictive language will be acceptable to the people.

Neal Hopgood, General Manager at Sunstream Beach Resort came forward and recalled helping the local EMS. He said the hotel will be closed this time in the event of evacuation. He also offered to open the hotel as a staging ground again, but requested communication so that key personnel can be made available for that purpose.

Herb Atkin came forward and stated that there is nothing anyone can say to convince him that the right decision was made last time, and he beseeched Council not to lock him out of his home and business again. He said that his relatives will simply not leave if they feel they cannot return when they want, and he felt capable of coping with conditions. He made the statement that he did not believe the Town incorporated and elected a Council to be treated like children incapable of making their own decisions. He also offered his business as a staging area.

Councilman Van Duzer advised that the speaker's comments had changed his mind. He said that he is against the ordinance because he feels it will be misconstrued and used as another tool to add to the fight in the community. He felt that a magnificent job had been done to get residents safely back on the Island, and said that while he realizes that we are all grown people, he thinks Council would be delinquent in their duties to allow people to come back to a larger disaster. He spoke in favor of off-Island meetings and photographs to show the public. He expressed the opinion that Council is being held hostage by the people when they say, "We voted for you, don't tell me I can't come back to my home." He said then let those people serve, because he will not allow himself to be used in that manner. He does not agree with allowing people back on the Island until it is reasonably safe, pointing out that comparisons with Punta Gorda or Cape Coral are invalid because there were no means of control. He said he cannot believe that people do not understand that what was done, was done for their safety and their well being. He also noted that all the roads into DeSoto County were blocked after Charley.

There was discussion about issues and criteria contained in the draft ordinance. Ms. Segal-George offered the suggestion that the 3 priorities used before be the criteria for residents, business owners and properly identified individuals to return: (1) Water pressure sufficient for the Fire Department to fight fires (e.g., generator fires,) (2) an operational sanitary sewer system, and (3) that there be a building assessment conducted for the entire Island. She cautioned against adding criteria that were not used previously. She stressed that power is not a criteria.

Councilman Massucco noted that Priority 3 as drafted was too comprehensive. Mr. Gucciardo suggested using language such as "satisfactorily repaired" with respect to water and sewer systems.

Mr. Roosa suggested alternative language as a result of the discussion.

Mayor Thomas commented on the sewer, citing that he had heard people say that everything worked very well. He has spoken with nurses who worked at a hospital in the area where Hurricane Andrew struck, and there were numerous people coming in with a variety of infectious diseases, including typhoid, because they were walking in sewage in the streets. He said there was concern at that time that there would be a major outbreak of infectious disease in Dade County because the people were allowed back too soon before the sewage was cleaned up. Mr. Thomas suggested that there would be many lawsuits if the Council had neglected its

duties in this regard. He stressed that the sewage situation must be the number one priority; otherwise the residents and tourist business would be affected for a long time to come.

Mr. Reynolds suggested that there should be a generator at Town Hall, and meetings held at which the public can be present. He was advised that there is one, but generators cannot be left on the Island during the storm because of the elevation. He expressed the opinion from personal observation that the only safety concern was downed electric wires and suggested that FP&L be asked to have a team ready to address this immediately after the storm. He said this was the only immediate emergency he could see. Beyond that, he said that the existing neighborhood watches should be used to facilitate communication. He said that people were telling him they just wanted to know if their house was standing and were upset because they had received no information whatsoever. He said he had not known about DeSoto County, believing that this Town was the only one that closed to its residents. He does not consider Sanibel's situation the same. He felt that residents should be given the opportunity to inspect their properties, and that FP&L should be asked to attend to the live wires immediately.

Mr. Van Duzer noted that FP&L will not come onto the Island to make repairs until trees and vegetation have been cleared. They will not come until it is safe for their personnel to work on the lines. He added that he owns property in Marathon and was going to go down this morning to retrieve some valuables and his boat, but upon calling the Sheriff's Department he was told that as of 7:00 A.M. everyone not off the Keys with a boat in tow would be stopped, told to unhook the boat and leave it there, and leave. This was a mandatory evacuation, and the only way he will be allowed back on the Keys following this emergency is when they deem it safe and with a pass. He noted that people can live without power, so this should not be a priority, but they should not be allowed to walk in sewage.

Mr. Reynolds explained that he was not recommending that electricity be working, but was referring to removal of downed wires that might be live. He advocates making further attempts with FP&L. He also recommended putting Port-A-Potties at various locations around the Island. He pointed out that whether or not Council makes decisions during an emergency, they carry the burden of those decisions with the public.

Mr. Roosa read the following revised wording: "Upon the satisfactory restoration of the water supply for fighting fires, an operational sewer system and assessment of structural damage, properly identified residents, property owners and business owners will be permitted on the Island." Mr. Rynearson amended his motion accordingly. Mr. Massucco seconded.

Councilman Van Duzer agreed that Council is responsible, and that the Emergency Management Task Force operates under Council's direction. He therefore asked Mr. Gucciardo as Chair of this task force whether that wording would be suitable to him, and Mr. Gucciardo replied that the revised wording is much closer to the original criteria that they were using as their model.

VOTE: Motion carried on a vote of 4 to 1, Vice Mayor Reynolds casting the "Nay" vote.

Mr. Massucco asked whether references to Council's responsibility meant liability in the event of lawsuits, and he was told that this means "the buck stops here." In response to questions about liability, Mr. Roosa advised that there is no personal liability for legislative decisions of the Town Council.

Mr. Reynolds stated that he voted "No" because he disagrees with holding the people off the Island.

MOTION: Motion was made by Councilman Rynearson for an immediate declaration of emergency at this time. Motion was seconded by Councilman Van Duzer.

DISCUSSION: Mr. Gucciardo advised that he had a copy of Resolution 4-30, Emergency Declaration of the Town of Fort Myers Beach declaring a State of Local Emergency, which is exactly the same as the ones done for Charley and for Frances. Mr. Roosa noted that the "Whereas" clause has changed, because in the previous resolutions the Governor had already established a State of Emergency for the state by Executive Order. At the time of this

meeting, the Governor had not yet adopted such an Executive Order. Several members expressed surprise that the Governor had not done this. It was noted that the area is not yet in a Hurricane Watch designation; however, due to the previous damage and the time of the week it was deemed appropriate to make such declaration.

VOTE: Motion was passed by unanimous vote.

Ms. Segal-George reported on the efforts resulting from last week's Town Hall meeting. She said the Fire Dept. staging area is the Gulf Waters RV Park off Pine Ridge Rd., and the Town will also maintain a presence there and will use this as a gathering spot for re-entry to the Island and a staging area for recovery efforts. This will be the Town's public information center, where lists will be kept of people with special problems such as medications and pets, and hopefully also pictures and video available. She noted that FMB does not have the same resources as Sanibel. There are also 2 radio stations, WINK-FM and Oldies 95 AM, which have allowed the Town to give updates with information particular to FMB. There will be a press release sent out about these stations.

Mayor Thomas complimented the progress attained since last week's meeting.

Herb Atkin again came forward and asked for clarification about who was responsible for making decisions. He had received conflicting information during the previous emergency. He referred to "The buck stops here" statement. He said that while he does not agree with what was done, he knows that everyone had the public's best interest at heart.

Councilman Van Duzer responded by saying that the Emergency Management Task Force, which is comprised of John Gucciardo, Chair; Town Staff, Fire Dept., Sheriff's Dept., and all the contractors and utilities, including Lee County Sewer and the Lee County Emergency Operations personnel. He pointed to Mr. Gucciardo as the responsible individual. Mr. Gucciardo respectfully disagreed and advised that while he runs the meetings, he does not believe he has a vote. Decisions are made on a consensus basis, and he said he will not take responsibility for these decisions. Ms. Segal-George pointed out that each of these professionals has responsibility for their respective areas of expertise. She also stressed that the 3 criteria adopted at this meeting are the same as were used previously. The intent was to put these in writing and clarify what was already in place to dispel innuendo, rumor and misinformation. It was determined that these operational meetings would be held on the Island, but information would be available at the aforementioned staging area.

Mr. Roosa pointed out that there is a difference between who is implementing the policy and who is responsible for the policy. He stated that this Council is responsible for the policy by setting the ordinances, rules and guidelines. The Emergency Management Task Force implements that policy, and each member of that body has a different responsibility.

Mayor Thomas adjourned the meeting at 4:32 P.M.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary